



**CORONERS COURT
NEW SOUTH WALES**

Inquiry:	Fire at 4411 Castlereagh Highway Capertee
Hearing dates:	25,26,27 and 28 September 2023
Date of findings:	24 October 2023
Place of findings:	NSW State Coroner's Court, Lidcombe
Findings of:	Deputy State Coroner Carmel Forbes
Catchwords:	CORONIAL LAW - fire inquiry; unknown cause of fire; death of an infant
File number:	2019/00204662
Representation:	<p>Mr C McGorey, Counsel Assisting instructed by Ms E McGee and Ms H Place, Crown Solicitors Office, NSW</p> <p>Dr K Fallah, instructed by Kingston Fox Lawyers representing AW's mother</p> <p>Mr T Weller-Wong, Barrister, representing AW's dad</p> <p>Mr S Cunningham, Solicitor, representing Mr B Fuller</p> <p>Dr H Bennett instructed by Mr D Chennell of the Department of Communities and Justice</p>

Non-publication orders:	Non-publication orders protecting the identity of AW and her siblings and family were made on 30 August and 25 September 2023. The orders can be obtained on application to the Coroners Court Registry.
Findings:	I find that the origin of the fire was near the junction of the north wall with the west wall in the kitchen area of the premises at 4411 Castlereagh Highway, Capertee, NSW on 14 APRIL 2018. I make an open finding as to the cause of the fire.

REASONS FOR DECISION

Introduction

1. This is an Inquiry into a fire at 4411 Castlereagh Highway Capertee on 14 April 2018. Tragically, AW, 2 years and 8 months old, was found deceased in the house that was catastrophically damaged by the fire.
2. AW lived at the premises with her mother, her mother's partner (referred to in these findings as 'AW's dad', although, he was not AW's biological father) and her half siblings: JW (4 years and 3 months) and ALW (1 year 3 months).
3. Pursuant to s. 30(1) of the *Coroners Act 2009* (Coroner's Act), a coroner has jurisdiction to hold an inquiry concerning a fire or explosion if the coroner is satisfied that the fire or explosion has destroyed or damaged any property within the State.
4. In the preparation of these findings, I have been assisted by a detailed written opening prepared by counsel assisting and cross-referenced against the brief of evidence. This document summarised a large volume of background information and was circulated to the interested parties for their consideration. I have also been assisted by the oral submissions of counsel assisting and other interested parties.

Overview

4411 Castlereagh Highway, Capertee, NSW

5. The Premises at 4411 Castlereagh Highway, Capertee is an 800 square metre block located about 1.5km or a few minutes' drive from Capertee township.¹
6. As of 14 April 2018, it had a cottage/house, with bushland on its three sides,² positioned about 200 to 300 metres from the Castlereagh Highway via a dirt driveway.
7. The house was reportedly anywhere between about 60 to 100 years old although its actual age is not known.³

¹ Distance sourced from Google maps.

² Ex 1, vol 2, tab 35 [3].

³ Ex 1, vol1, tab 20 A242.



Extract of maps in Appendix D to RFS Incident Report (Tab 66 Vol 3)

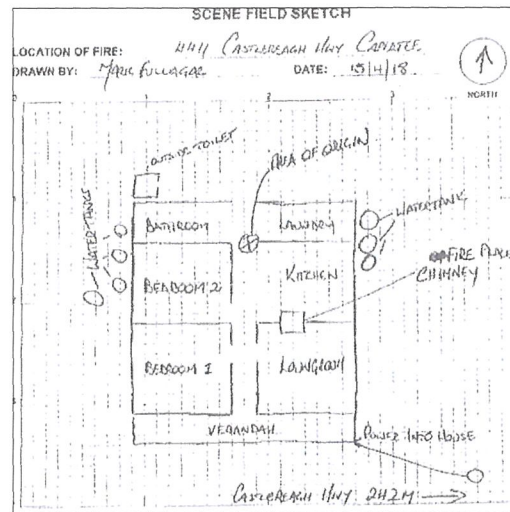
8. The property was owned by Barry Fuller. Mr Fuller inherited the property after his uncle passed away in 2012. He began renting the Premises to AW's dad and AW's mother on about 9 January 2014.
9. The agreement was a private one consisting of a short document which Mr Fuller, AW's dad and AW's mother signed confirming that a lease existed and giving Mr Fuller the right to end the agreement if he considered it appropriate. AW's dad and AW's mother had to pay \$200 weekly in rent and to also pay Mr Fuller for the phone and power bills which remained in Mr Fuller's name.

Construction and setup of the house

10. The house was rectangular in shape and about 9 by 10 metres in dimension. It was constructed externally of timber and fibro, with internal timber cladding on its walls. The ceilings, wall and ceiling frames consisted of timber with corrugated iron roofing.⁴ A powerline ran from the highway to the house.
11. The house consisted of two bedrooms, a kitchen, lounge room within a sunroom space, a laundry and bathroom at the back.⁵ A hallway ran through the centre of the house, from the front door to the back door, which provided access to each room. The front door led onto a front verandah.

⁴ Ex 1, vol 3, tab 61.

⁵ Ex 1, vol 2, tab 35 [3].



Layout Sketch by Fire Investigator Mark Fullagar on 15 April 2018

12. There was no wall separating the kitchen from the hallway, with the kitchen opening directly into the hallway.
13. At the time of the fire there were two slow combustion heaters positioned in each fireplace.⁶ Although emergency responders observed gas bottles near to the house on 14 April 2018, these were not connected.
14. AW's mother and AW's dad had a wood burner they used to heat the premises; however it is not clear if they had commenced using that burner as of 14 April 2018.⁷ It is understood that none of the bedrooms had heaters.

Sleeping arrangements

15. According to AW's mother, as of 14 April 2018:

(1) AW's mother and AW's dad slept in the front bedroom (which had a window facing onto front verandah) with ALW sleeping in a cot in that room (see "Bedroom 1").⁸

⁶ Ex 1, vol 1, tab 13 [9].

⁷ In her 26 May 2020 interview, the maternal grandmother said AW's mother and AW's dad used their wood burner "all the time" and had a gate to stop AW entering the kitchen area. However, she did not say when exactly the wood burner was used or assert that she believed it was being used at the time of the fire. Susan Bennett, who lived nearby to AW's mother and AW's father said she asked AW's mother on 14 April 2018 (at the scene) if they had lit a fire. AW's mother responded to the effect that they had not lit their fire so far that year.

⁸ Ex 1, vol 1, tab 17 A204-206.

(2) JW slept in the other bedroom (“Bedroom 2”). KMW (AW’s maternal half-sibling) also slept in this room when living/staying with his mother and AW’s dad (but he was staying with his biological father at the time of the fire).⁹

(3) AW often slept on the couch in the lounge room (which also had a window facing onto the front verandah). Although there was a bed for AW in the other bedroom (“Bedroom 2”), AW had a habit of falling asleep there watching TV.¹⁰ The family also had a dog that either would either sleep with JW or would lay on the lounge.¹¹

The house’s condition and electrical wiring

16. Based on the accounts given by AW’s dad and AW’s mother, the house was in poor condition as of April 2018. Mr Fuller gave evidence regarding concerns that AW’s dad and AW’s mother had that the property had white ants, and needed to be “condemned”. Further, they said the toilet and hot water system was broken, and the family were having to heat water for bathing on the stove. Mr Fuller told the Court that he made arrangements for the property to be inspected on 19 April 2018, to see what repairs should be made. Unfortunately, the house fire occurred prior to the scheduled inspection.
17. Additionally, the arrangements for providing power to various appliances in the home were not adequate. For example, there were reportedly no power points in the bedrooms or kitchen.
18. According to AW’s dad, the lounge room was the only room “that had its own power points” which were used to connect a TV and DVD player in that room.¹²
19. A “four one” outlet block (General-Purpose Outlet) was used to power numerous appliances in the kitchen and power to the main bedroom via an extension cord. The appliances were typically a stove (electric¹³ with one workable hotplate¹⁴), a kettle, a George Foreman Grill Press (*also*

⁹ Ibid A346, 347-353.

¹⁰ Also see: Ex 1, vol 1, tab 22 A50-52 and A131-34; Ex 1, vol 1, tab 29 A154.

¹¹ 2-year-old Bullterrier Cross Staffie (remains found in the children’s bedroom understood to be Bedroom 2). Ex 1, vol 1, tab 17 A329; Ex 1, vol 1, tab 22 A152.

¹² Ex 1, vol 1, tab 22 A120-122.

¹³ Ex 1, vol 2, tab 35 [3].

¹⁴ Ex 1, vol 1, tab 17 A110-112.

referred to as the sandwich press) and possibly a range hood positioned over the stove.¹⁵ AW's dad or AW's mother would unplug kitchen appliances from the power block depending on the appliances being used.¹⁶

20. An extension cord was connected to the kitchen's four block outlet and run through to AW's mother and AW's dad's bedroom (Bedroom 1).¹⁷ This was running across the wall.
21. According to AW's mother a "*couple of years*" before the fire, AW's dad "*drew a hole through the wall*" to run the cord into their bedroom.

Smoke alarm

22. There was one smoke alarm in the home at the time of the fire. AW's dad and AW's mother told police they first heard the alarm activate after they exited the house. I received evidence that the smoke alarm was not affixed to the ceiling at the time of the fire.
23. AW's dad said the smoke detector was "on top of the fridge". It was put there because "*it would go off straight away - - - so we put it on the fridge so we could turn it off, you know*".¹⁸ AW's mother made similar statement, stating "*I'm sure it was sitting on the fridge*".¹⁹
24. Mr Stephen Netting, Manager Fire Safety Compliance with FRNSW, completed a report on 23 September 2022 regarding the Premises and compliance matters.
25. Mr Netting, in his report, opines:

(1) At the time of the fire on 14 April 2018, the Premises' owner/landlord had to ensure a the building had smoke alarms that "*were located on or near the ceiling*" in any storey containing bedrooms or a corridor or hallway associated with a bedroom.²⁰

¹⁵ Ex 1, vol 1, tab 22 A113-118.

¹⁶ Ex 1, vol 1, tab 17 A566-70, also see Ex 1, vol 1, tab 22 A277-79.

¹⁷ Ex 1, vol 1, tab 22 A119; Ex 1, vol 1, tab 17 A552-56.

¹⁸ Ex 1, vol 1, tab 22 A180-112.

¹⁹ Ex 1, vol 1, tab 17 Q720-26.

²⁰ Current requirements for smoke alarms in dwellings commenced effect on 1 May 2006. As of 14 April 2018 the regulatory regime required the installation of a smoke alarm in Class 1a buildings within each corridor or hallway associated with a bedroom (at the very least) : Ex 1, vol 3, tab 63 [10f]. A landlord or landlord's agent may lawfully enter premises to inspect, repair or replace a smoke alarm with notice: Ex 1, vol 3, tab 63 [10p]. The owner/landlord must ensure that an installed smoke alarm is repaired or replaced in

(2) The positioning of a smoke alarm on top of a fridge (facing up, as described above) would “cause a significant delay in the smoke alarm sensing the presence of smoke and activating”. The alarm would not activate until the smoke layer had descended to the height of the smoke alarm. The delay could allow a fire to develop to a size that the occupants may not evacuate safely from. Smoke alarms are most effective positioned on or near to the ceiling as it gives the earliest warning of the presence of smoke.²¹

(3) The position of a smoke alarm (facing up) on a fridge is not compliant with the legislative requirements (it therefore appears the Premises was not fit for purpose as a residential dwelling from a fire safety perspective).²²

26. Mr Netting noted that in the past 5 years, about 25% of residential fires attended to by FRNSW have involved a premises without a working smoke alarm.

27. Mr Netting was satisfied that one smoke alarm was sufficient for the layout of the premises. Unfortunately, it had been removed from the ceiling by AW’s dad and placed on the fridge.

Events on 14 April 2018

Triple zero call about 7:55am on 14 April 2018

28. At about 7:55 am on 14 April 2018, Michael Giroto made a triple zero call reporting a fire at the Premises. Mr Giroto was not known to the family. He was driving by the Premises on the Castlereagh Highway when he waved down by AW’s mother seeking help and saw the blaze. When he approached the house Mr Giroto heard a fire alarm sounding.²³ He made the triple zero call soon after he realised the house was alight.

29. At the scene, AW’s mother reportedly told Mr Giroto she “*woke up to smoke, panicked and just out of bed [sic]. I said to [AW’s dad], the house is on fire and ran to the back door. [AW’s dad]*”

accordance with the regulation: Netting p.8 [10q]. The regulations also govern when a tenant may repair or alter a smoke alarm: Ex 1, vol 3, tab 63 p.10 [10r].

²¹ Ex 1, vol 3, tab 63 p.17 [13].

²² Ex 1, vol 3, tab 63 p.13 [11g-h].

²³ Mr Giroto said he heard it sounding as he approached the house after being waved down by AW’s mother.

came around and I opened the door and that's when the flames started. I noticed that [AW] was in the hallway".²⁴

Emergency response

30. The emergency response involved the Rural Fire Service NSW (**RFS**), Fire and Rescue NSW (**FRNSW**), Ambulance Service paramedics and NSW Police Force officers.²⁵
31. RFS units were the first to arrive on scene arriving at about 8:26am.²⁶ FRNSW and ambulance personnel were on the scene by about 8:37am. Paramedics attended to AW's dad, AW's mother, JW, and ALW at the scene. All four attended Lithgow Hospital for assessment and treatment. None suffered significant injury.
32. The house was described to be *"all but burnt to the ground"* when the first attending police arrived about 8:30am. The destruction to the house is apparent from the scene photographs (**photos annexure A and B tab 62 vol 3**) and an aerial image taken after the fire:



Aerial image sourced from media (presumably taken 15.4.2018)

33. Much of the premises was burnt to the floor joist level. Parts of the bathroom and laundry walls remained standing along with the brick chimney and nearby external water tank.²⁷ Most, if not all, appliances and household items within the house were destroyed.

²⁴ Ex 1, vol 2, tab 32 [21].

²⁵ Ex 1, vol 3, tab 71 notes that the firefighting response involved 7 x RFS appliances and 1 x FRNSW appliance.

²⁶ Ex 1 vol 3, tab 68 records that unit 'Capertee 9' was on scene at 8:26am and 'Capertee 7' and 'Capertee 1' on scene by 8:32am (protecting gas bottles).

²⁷ Milne [5] tab 9.

34. After the suppression of the fire, emergency responders located AW's deceased remains on a couch within the lounge room area. She was found lying on her back on the remnants of the couch. Her remains were badly fire affected.
35. Dr Hannah Elstub completed a paediatric autopsy report. Dr Elstub could not ascertain, from physical examination alone, AW's cause of death. The examination being limited by the severity of the "*incineration-related damage*". Within those limits no signs of acute traumatic injury were detected other than that which could be attributed to the effects of the fire.
36. Testing performed on heat-fixed heart blood showed a carbon monoxide level of 73% consistent with AW having ingested smoke before death. As the relative contributions of smoke inhalation and thermal injury could not be determined, the cause of death was given as "*effects of fire*".

Expert evidence

37. Fire Investigator Wayne Schweickle (FRNSW), Fire Investigator Mark Fullagar (Rural Fire Service), and SC Cameron Wells (NSW Police Crime Scene Examiner) examined the premises after the fire on 14 or 15 April 2018.
38. Ms Sonia Scott, a forensic scientist specialising in fire and explosion investigation, reviewed the documentary materials (including records of interview) and scene photographs. She offered an opinion but did not examine the scene firsthand.²⁸
39. None of the fire investigators could ascertain the cause of the fire. The possible causes open on the evidence include fault (e.g., electrical or appliance) and accidental or deliberate lighting of the fire.
40. Without being exhaustive, the opinions of the experts include:
 - (1) In the opinion of Mr Fullagar, although a precise origin point cannot be ascertained, he considers that the "general area of origin" was near the wall junction of the kitchen, laundry, and hallway.
 - (2) In the opinion of Sonia Scott²⁹, the electrical wiring was "*very dubious and high risk in relation to potentially causing a fire*" with the potential for overload on one or many

²⁸ Forensic Scientist with Fire Services Pty Ltd retained by the Coroners Court to prepare a report on the cause and origin of fire (completed a report dated 1 April 2020).

²⁹ Ex 1, vol 3, tab 60 [35a].

components within the electrical circuit within the property. There was “no evidence to suggest that the fire did not originate in the north-west area of the kitchen” (as described by AW’s dad and/or AW’s mother).³⁰

(3) In the opinion of Investigator Schweickle, a possible cause was a failure of an electrical nature in area where the General-Purpose Outlet was positioned in the kitchen. This may have occurred in the wall and spread vertically into the roof void and laterally through the roof. Considering that the house was almost of complete timber construction, a rapid spread of fire both vertically and laterally could have occurred.³¹ The fire described by AW’s mother and AW’s dad is reasonably explainable by a possible electrical failure in the area the General-Purpose Outlet was positioned in the kitchen.

(4) In the opinion of SC Cameron Wells (scene examiner), “[w]ith the information received from the occupant ([AW’s mother]) the possibility of the fire starting in the kitchen wall cavity is possible but the evidence at the scene does not support or contradict her version. This is due to the high level of fire damage and consumption of the wooden residence.”³²

41. On 15 April 2018, Senior Firefighter Joel Walton attended the scene with an Accelerant Detection Canine, Opal. Firefighter Walton placed a calibration drop of evaporated kerosene at the back of the premises. Accelerant Detection Canine Opal was then commanded to search the premises. The calibration drop of evaporated kerosene was detected, although Opal did not “indicate” at any other locations during her search of the scene.
42. I note that the expert evidence before me is clear that the absence of a positive accelerant detection does not establish the *absence* of accelerant given the extensive damage at the scene.³³

Unusual circumstances surrounding the fire

Pending eviction

³⁰ Ibid [32].

³¹ Ex 1, vol 3, tab 61 [12].

³² Ex 1, vol 1, tab 13 [20].

³³ FF Joel Walton (Ex 1, vol 3, tab 76).

43. Two days before the fire, on 12 April 2018, Mr Fuller personally served an eviction notice on AW's dad and AW's mother. The notice specified that they were to vacate the property by 28 April 2018.
44. According to Mr Fuller, he served the eviction notice because AW's dad and AW's mother had not paid rent or their phone and electricity bill (which was in his name) since November 2017. He estimated they owed him about \$5,000 by the time of the fire.
45. Neither AW's mother nor AW's dad in their 14 April 2018 interviews mentioned they were facing eviction at the time of the fire.
46. When questioned about this matter on 26 May 2020, AW's mother told police:
- (1) She did not intend on moving until they had found another house³⁴, stating *"I'm not gunna put my kids on the street for him - - - When it had sat there vacant for 2 years - - - As a deceased estate"*.³⁵
 - (2) She was hopeful she would receive priority to secure alternative housing owing to AW's health.³⁶
 - (3) She applied before the fire for another property. This application was made to Ray White in Lithgow sometime between January and April 2018 (it appears nothing had come of this application by the time of the fire).³⁷
 - (4) AW's mother said she had asked Mr Fuller for a report or confirmation to say the house was "unsuited" to assist her in getting new accommodation, but she had no idea how long that might have taken.
47. AW's mother had applied to FACS on 12 March 2018, about 4 weeks before the fire, for Housing Assistance.³⁸ The Application recorded AW's mother had to leave her current premises by 1 April 2018. The reason for leaving her present premises was recorded as *"due to chromosome disorder, experienced by my daughter AW, making the house and location of premises unsuitable*

³⁴ Ex 1, vol 1, tab 20 A165.

³⁵ Ibid A170-174.

³⁶ Ibid A205-08.

³⁷ Ibid A53.

³⁸ Ex 1 (Supplementary Bundle) tab 14.

for doctors and pediatrician [sic], physiotherapy, Occupation Therapy, Speech Therapy and Early Intervention appointments”; there were “[s]ignificant medical costs that limit my rental affordability” being “medical appointments and travel Costs”.

Sourcing of the petrol in jerry cans before the fire

48. There is evidence of AW’s dad sourcing jerry cans of petrol from the Capertee Petrol Station in the days or week before the fire. This is of interest given its proximity to the time of the fire.
49. Richard Trounson, owner of Capertee Petrol Station, told police after the fire that:
 - (1) In the 2 to 3 years before the fire, he would usually see AW’s dad every day. AW’s dad bought odd amounts of petrol (e.g., \$10) either on card or, in later times, on credit with the station.
 - (2) Over time AW’s dad booked up more fuel and items from the station and would come in on his payday (usually Wednesday) to pay his balance. They did not keep proper written records of this ‘tab’.
 - (3) One day, either on 8, 9 or 10 April 2018, stood out to Mr Trounson as AW’s dad attended and filled “two red plastic jerry cans” three times in the same day.
50. In his interview with police on 14 April 2018, when asked what he did the day before the fire, AW’s dad mentioned cutting wood in the morning. In his 26 May 2020 interview:
 - (1) AW’s dad said he supplemented his disability payments by cutting wood (. likely in the State Forest). He said he sold wood to three persons, being Good Earth Landscaping Supplies (Paul Curran), Ali Bayer and a third person (possibly Dwayne?). He says he attempted to sell wood to Good Earth on 13 April 2018 but was knocked back. He then sold wood to Ali Bayer.
 - (2) AW’s dad did not dispute he likely purchased fuel from Capertee Service Station between 8 and 10 April 2018. He also admitted to having jerry cans, which he said he would use for his chainsaw when cutting wood. He did not think there would have been any petrol remaining in the jerry cans at the time of the fire.
51. Recently, in January 2023, AW’s dad spoke with Detective Senior Constable Eardley, the officer in charge of the investigation. When asked about how often he attended Capertee Petrol Station before the fire to get petrol, AW’s dad reportedly said to the effect he would have attended 3

times a day as the volume of petrol he was getting was minimal, being about 1-2 litres each time as he only had ‘church money’ to pay for it.³⁹

52. There is corroboration for AW’s dad having a practice of cutting wood for use or sale purposes. This includes:

- (1) Paul Curran (Good Earth), who confirmed purchasing wood from AW’s dad.
- (2) DSC Sinton, who observed about 1 cubic metre of cut wood in a black trailer at the Premises on 14 April 2018.
- (3) RFS Investigator Mark Fullagar who saw a “burnt chainsaw” in the laundry area.

53. Further, jerry cans were found in plain view at the scene on 14 April 2018. This included:

- (1) On 14 April 2018, DSC Sinton, who attended the scene, sighted a red plastic jerry can and green metal jerry can in the yard which he kicked and ascertained to be empty: see **photos at Tab 53** (vol 2).⁴⁰
- (2) On 15 April 2018, during a search of AW’s dad’s Mitsubishi Pajero, he found a red 5L jerry can with about 2 to 3 litres of petrol inside it (determined by smell). However, I note that a photograph of this jerry can was not taken.⁴¹

54. There was no attempt to conceal the jerry cans at the scene of the fire.

Statements allegedly made by JW

55. JW has reportedly stated that AW’s mother lit the fire. It is necessary to outline some background matters to put this issue in context before summarising what this evidence is.

56. Caseworkers placed JW and ALW in the care of their uncle and aunt on about 15 April 2018 (detailed further below). JW and ALW have remained in the day-to-day care of the uncle and aunt since then, with the Minister holding parental responsibility for both children.⁴²

³⁹ Ex 1, vol 1, tab 9 [15(2)(ii)].

⁴⁰ Ex 1, vol 2, tab 53.

⁴¹ Ex 1, vol 2, tab 54.

⁴² A final care order vesting all aspects of Parental Responsibility for JW and ALW was made by the CSNSW

57. AW's mother objected to the placement of the children with her brother and his wife given past allegations against him by her. In the initial stage of the CCNSW proceedings, AW's mother and AW's dad sought the restoration of the children to their care.
58. The ICDR completed in November 2019 found the placement of ALW and JW with the uncle and aunt, and the initial carer assessment of them, did not adequately consider AW's mother's historic allegations against the uncle nor was there appropriate consultation with AW's mother and AW's dad as to their views about this placement.⁴³
59. A review of the uncle and aunt's authorisation was undertaken. They have remained authorised and continue to have day to day care of ALW and JW.
60. There is evidence about statements JW has reportedly made about the fire since about 2019. In summary this includes:

19 December 2019	Report by the aunt about JW's statements	JW reportedly said to his aunt that he missed AW. JW said, "mum lit the fire". His aunt asked, " <i>are you sure that she done that mate, you can't say she done it if she didn't</i> " and JW said " <i>yes</i> ". On another occasion soon after JW said he missed AW. The aunt told JW to say, " <i>if mummy lit the fire [JW] says – no she didn't light fire</i> " and spoke about " <i>a bad man that shot through the window with a gun</i> ". ⁴⁴
16 July 2020	Report by the aunt about JW's statements	The aunt was driving with JW in the car. JW was " <i>talking about missing AW</i> " and on their return home she typed a note of their conversation. She recorded " <i>He then went on saying that his mum lit the house fire when I ask how did he know that he said he was standing at his bedroom doorway and seen her, I then asked where were his sister's ([AW] and [ALW]) his reply was in a porta cot that has wheels. - - - When I asked how he and his sisters got out of the house, he</i>

on 15.9.2020: Ex 1, vol 2, tab 59.

⁴³ Ibid [24c].

⁴⁴ Ibid annexure KA-24.

		<i>said he followed behind his mum and she got [ALW] out of the cot and I said and [AW] his reply was no she was in the cot still! My reply was ok....</i> ⁴⁵
19 August 2020	Police interview of JW (outlined below)	
15 September 2020	Care proceedings finalised (PR to Minister)	
26 May 2021	Report by the aunt about JW's statements	A caseworker report of a home visit on JW/ALW on 26 May 2021 noted (presumably based on the report of the Aunt) that "[JW] continues to have nightmares and says that "Mum lit the fire". ⁴⁶
9 February 2022	Statements JW reportedly made to a psychiatrist	<p>A DCJ caseworker emailed DSC Darren Eardley on 16.2.2022 referring to a psychiatric assessment ALW and JW attended on 9.2.2022 (relating to a public liability action being brought by AW's dad and AW's mother). During the assessment, JW reportedly "without any prompt or even being introduced [to the psychiatrist], randomly stated "mum lit the fire". When questioned further about this JW reportedly "shut down" and stated "I dunno" when asked further questions on the topic.⁴⁷</p> <p>The caseworker also noted the aunt's report that police had attended her home on 8.2.2022, her belief that occurred owing to a report AW's mother made and that the DCJ caseworker contacted police and was told there was no record of police attendance as reported.</p>

⁴⁵ Ibid annexure KA-25; Ex 1, vol 1, tab 31.

⁴⁶ Ibid annexure KA-27.

⁴⁷ Ibid annexure KA-30

61. On 19 August 2020, JW (aged 6) participated in an interview with a Child Abuse Squad investigator.

62. Without being exhaustive, in that interview JW said:

- (1) He had been brought to the interview by his “mumma” (*presumed to be a reference to his aunt*).⁴⁸ He travelled from Parkes to Bathurst for the interview.⁴⁹
- (2) When asked if there was anything he didn’t like about and his biological mother and her partner, JW said “*nothing*”.⁵⁰
- (3) When asked what he told his teacher (Ms Jones), JW said “*I miss [AW]” and “I really miss [AW] so much*”.⁵¹ He said AW “*died in a fire --- in the house --- [AW’s mother] and [AW’s dad’s] house*”.⁵²
- (4) When asked what happened with the fire, JW said “*I don’t know*”.⁵³
- (5) When asked who else was in the house at the time of the fire, JW said “[*KMW*] --- *Sissy* --- *Not [AW’s mother] and [AW’s dad]*”.⁵⁴ When asked where his mother and AW’s dad were, JW did not reply.
- (6) When asked what he remembered happening that day, JW said “*I don’t remember*”.⁵⁵
- (7) When asked what he remembered happening to him, JW said “*I got out - - - Behind mumma [his biological mother]*”.⁵⁶
- (8) When asked where the fire was, JW replied “*In the kitchen*”. When asked what happened in the kitchen, JW said “*I don’t remember*”.⁵⁷

⁴⁸ Ex 1, vol 1, tab 27 A45.

⁴⁹ Ibid A395-96.

⁵⁰ Ibid A157-158.

⁵¹ Ibid A166-169 and Ex 9.

⁵² Ibid A172-175.

⁵³ Ibid A174.

⁵⁴ Ibid A177-182.

⁵⁵ Ibid A183.

⁵⁶ Ibid A184-187.

⁵⁷ Ibid A189-93.

- (9) When asked where he was when the fire happened, he said “...*in the lounge room* - - - *Away from it*”. No one else was in the lounge room with him.
- (10) “*Sissy*” was asleep in bed. KMW was with his dad (not there).⁵⁸
- (11) AW was “*in bed*”. AW’s bed was “*with Sissy*” (Sissy presumed to be a reference to ALW).⁵⁹
- (12) JW drew a diagram to indicate where ALW and AW slept.⁶⁰ JW shared a room with “*Sissy*” and AW.⁶¹ JW put his bedroom ‘in the middle’ between the back and front door.⁶²
- (13) When he followed his ‘mumma’ he followed her to “*behind the gate*”.⁶³
- (14) AW was “*still in the porta cot*”. “*Mum got*” ALW from her bed.⁶⁴ JW confirmed his mother “*left [AW] in the cot*”. When asked why, he said he did not know.⁶⁵
- (15) When asked if ALW was asleep when his mother got her, JW said “*asleep*” and his mother woke her by tickling her.⁶⁶ Asked if his mum tickle AW to wake her, JW said ‘*No*’ and then ‘*trying little tickles*’.⁶⁷
- (16) When asked what AW’s dad was doing, JW said “*sleeping* - - - then got out of the window, his window - - - next to the bed”.⁶⁸
- (17) When asked where the fire was in the kitchen, JW said “*It was on the stove*”.⁶⁹

⁵⁸ Ibid A195-201.

⁵⁹ Ibid A198-203.

⁶⁰ Ibid A208.

⁶¹ Ibid A214-17.

⁶² Ibid A319.

⁶³ Ibid A218-222.

⁶⁴ Ibid A219-229.

⁶⁵ Ibid A247-49.

⁶⁶ Ibid A333.

⁶⁷ Ibid A334-335.

⁶⁸ Ibid A230-33.

⁶⁹ Ibid A258.

(18) When asked again where AW's dad was when JW was at the gate, JW said *'He was at the gate as well'*.⁷⁰

(19) When asked if anyone went back inside to get AW, JW said *"No - - - some people came - - to try and get her"*.⁷¹

(20) When asked if he saw AW's dad or his mum go into the house to get AW, JW said *"the fire was at the back door"*. When asked if they could get inside, he said *"no"*.⁷²

(21) When asked if the 'gate' was at the back or front of the house, JW answered *'Front'*.⁷³

(22) When asked who else he had told *"about AW"*, JW replied *"Only mummy"* (being his aunt)⁷⁴ He has also told *'Miss Jones'*.⁷⁵

(23) When asked what he told his aunt, JW said *"I miss [AW]"*.⁷⁶

(24) When asked if he recalled whether 'mummy was shouting or screaming or was she just talking normal', JW said *'I don't remember'*.⁷⁷

In this interview JW did not positively say he saw his mother light the fire.

Crime Stoppers report

63. Ms Boyd was interviewed about a report she made to Crime Stoppers on 17 April 2018.

64. In an interview with police on 20 June 2020, Ms Boyd stated:⁷⁸

(1) She had two clients, John McCann and Trudy Lane in her car discussing the Capertee fire and they said the parents *"deliberately lit the fire"*.

⁷⁰ Ibid A265-67.

⁷¹ Ibid A274-78.

⁷² Ibid A283-288.

⁷³ Ibid A290-91.

⁷⁴ Ibid A304-08.

⁷⁵ Ibid A369.

⁷⁶ Ibid A309.

⁷⁷ Ibid A314.

⁷⁸ Ex 1, vol 2, tab 41 A6-7.

(2) Ms Boyd asked them questions and they said they were told “by somebody called Lucy [or Lacy] that they tried to give the child away before because it had disabilities and the child couldn’t walk apparently”.

(3) John McCann also spoke about “the family doing drugs and I said how do you know that they do drugs and he said that I've seen them and at one stage they'd gone to their place and I think somebody had said that you're not supposed to be here and they asked John and Trudy to leave and they were doing drugs at that stage, in front of the children”.⁷⁹

(4) Ms Boyd herself does not know the family in question or ‘Lacy’.⁸⁰

(5) Ms Boyd worked as a counsellor.

65. Ms Trudy Lane gave evidence that about two months before the fire when she was at Foodworks in Portland that AW’s mother came straight up to her and asked her if she knew anyone who wanted AW.

66. Ms Lacey McDougal also gave evidence that about a week before the fire that she witnessed a conversation where AW’s mother asked her sister whether she would take AW as she couldn’t handle her.

Parental response to the fire

67. At the scene of the fire Mr Girotto observed that AW’s mother’s ability to become calm was noticeable. The neighbour, Ms Bennet described AW’s mother as being unbelievably calm and looked off her face with dilated eyes and not really seeming to get what was going on. The paramedic who took AW’s dad to the hospital had to stop his vehicle on the way to check on AW’s dad as he kept falling asleep.

68. After the family arrived at the hospital AW’s dad and AW’s mother left the children (JW and ALW) at the hospital for a period of time despite being asked to wait for police.

⁷⁹ Ibid A34.

⁸⁰ Ibid A30-32.

69. An issue explored at inquest was whether AW's dad and, possibly, AW's mother, were affected by medications or substances on the night of the fire and the impact this may have had on how they responded to the fire.
70. Pharmaceutical records show that AW's dad was prescribed Diazepam 50 tablets about every 2 weeks in the months before the fire.⁸¹ AW's mother was prescribed Codeine and Amoxicillin.⁸²
71. On 14 April 2018 police sighted capped and uncapped syringes in and about the Premises. In particular:
- (1) DSC Sinton: observed within the house's remains "drug-related paraphernalia, mostly syringe containers and bulk packs of alcohol wipes in small silver sachets" (appeared unused) in the parent's bedroom.⁸³ He also sighted syringes within the cabin of the Mitsubishi Pajero belonging to AW's dad.⁸⁴
 - (2) DSC Shane Milne, when conducting a small search around the external perimeter fence, saw "numerous uncapped and capped syringes about the yard of the premises".⁸⁵
 - (3) SC Peipman, in his search of a caravan in the yard, sighted numerous hypodermic needles.⁸⁶
72. AW's dad had told caseworkers that he had used ice and heroin in the past. He had been diagnosed with drug induced psychosis. He said that AW's mother had used ice. He also told police he used oxycontin on a recreational basis.
73. Ms McDougal said that they both attended her sister's house daily before the fire buying drugs such as fentanyl patches, buprenorphine strips and "ice".
74. Paramedic Stacey Phillips gave evidence that at the scene on 14 April 2018 AW's mother said that she tried to wake AW's dad up, but couldn't and so she had run up to the road for help.

⁸¹ Ex 1 (Supplementary Bundle), tab 7.

⁸² Ibid.

⁸³ Ex 1, vol 1, tab 14 [24] tab 14..

⁸⁴ Ibid [25]; Ex 1, vol 2, tab 54 [5].

⁸⁵ Ex 1, vol 2, tab 10 [15].

⁸⁶ Ex 1, vol 1, tab 12 [10].

AW's mother's and AW's dad's accounts

75. The first known account given to investigators appears to be that given at the scene namely:

- (1) By AW's mother to police which included that she "last saw [AW] in the hallway".⁸⁷
- (2) By AW's mother (assumed to be) to FRS Senior Firefighter, Stephen Dalli – when asked if anyone was in the house, AW's mother reportedly said her 2 year old daughter was and "*We couldn't get her out of the hallway*".
- (3) By AW's dad to Senior Constable Owen Peipman (**SC Peipman**), which SC Peipman contemporaneously noted in his diary (see diary note annexed to SC Peipman statement tab 12 vol 1).

76. AW's dad and AW's mother voluntarily participated in two interviews with police conducted on 14 May 2018 and 26 May 2020.

77. AW's mother told police on 14 April 2018 that:

- (1) She woke in bed about 7am (she saw the time on her digital clock in the bedroom).⁸⁸
- (2) After waking, while in bed, she "smelt the smoke".⁸⁹
- (3) She got up and opened her bedroom door and saw "the big flame come up from near the stove" (in the kitchen).⁹⁰ AW's mother said, "Well I seen it as I, when I opened up the door and went to go I seen this massive flame come up past that cupboard above the stove".⁹¹ The flames were "going up the side of that cupboard and up towards the ceiling".⁹² She indicated the lowest point of the fire was at about her eye level and its

⁸⁷ Ex 1, vol 1, tab 10 [9].

⁸⁸ Ex 1, vol 1, tab 17 A414.

⁸⁹ Ibid A55-56.

⁹⁰ Ibid A55-56.

⁹¹ Ibid A411.

⁹² Ibid A420 and A428.

highest point was at the roof level.⁹³ She saw the fire moving away from the benchtop towards the eastern side of the house (indicated by a small arrow on her sketch⁹⁴).

- (4) AW's mother yelled out to AW's dad to "*get out the fuckin' house is on fire*".⁹⁵ She then "*scooped [ALW] up*" from the floor (not the cot) and ran out the back door.⁹⁶ At the backdoor she saw JW was behind her.⁹⁷
- (5) Before exiting the house, AW's mother saw AW standing near to the lounge room doorway. Once outside she put ALW on the ground and "*went back in to get [AW] and I couldn't get back in*" (through the backdoor).⁹⁸
- (6) AW's mother saw AW's dad come "*from somewhere one side of the house*". She ran around and saw a broken window. She said she tried "*going to get in...try to get in there to get [AW]*" but there was too much smoke and flames coming out.⁹⁹
- (7) She was standing there in her bra and undies. She grabbed JW's jacket (which he had) and ran for help.¹⁰⁰
- (8) After she exited the house, AW's mother heard the smoke detector alarm go off. AW's mother told police "*I'm pretty sure I heard it when I went to that front window and then I um, heard, heard it like I could still hear it when I was up the, up the driveway nearly all the way up the driveway I could still hear it going off. But it didn't go off for a long time.*"¹⁰¹
- (9) She planned to run to her neighbour but ran towards the highway when she heard cars driving by. JW followed her.¹⁰² After waving over a car she returned on foot towards the

⁹³ Ibid A770-776.

⁹⁴ Ibid A776-82.

⁹⁵ Ibid A55-56.

⁹⁶ Ibid A442-46.

⁹⁷ Ibid A56.

⁹⁸ Ibid A57.

⁹⁹ Ibid A57.

¹⁰⁰ Ibid A57.

¹⁰¹ Ibid A724.

¹⁰² Ibid A57-59.

woken (AW's dad stated that he believed he would have smelled or seen the fire earlier had the door not been shut).¹⁰⁹

- (4) AW's dad heard AW's mother yelling there was a fire and they had to get out.¹¹⁰
- (5) AW's dad opened the door into the hallway. He encountered intense heat emanating from the kitchen area and saw a "big glow".¹¹¹ He said "*the heat, heat, heat was whack. And it was way worse than I thought...I thought it would just be like a fire*"¹¹²
- (6) After he exited his bedroom (Bedroom 1), he saw AW's mother, JW, and AW in and around the hallway. JW was closer to his bedroom door (Bedroom 2). AW was moving around in the hallway near to or in lounge room doorway.
- (7) AW's dad moved towards the kitchen. His initially hoped to extinguish the fire but quickly realised he couldn't get near it because of the heat and smoke. He could get no closer than near to the fridge owing to the heat (fridge shown in his sketch positioned against the wall adjoining the lounge room close to the hallway).¹¹³
- (8) He saw the fire around a cupboard above or near to the stove and rising to the ceiling. The described the fire as being "*up to the roof. And - - - took the whole gap up. Like, half this cupboard - - - and to the stove*"¹¹⁴, the fire was "*probably 2 metres, a metre wide*"¹¹⁵ and he saw the "*smoke just runnin' along the roof*" and "*going along the eaves as well*".¹¹⁶
- (9) AW's dad described the heat as "*immense*" and he could not get "near it".¹¹⁷ Smoke came low and quickly and "*all of a sudden there's like, from that, it was, like, blackout*".

¹⁰⁹ Ibid A64, A155-57.

¹¹⁰ Ibid A64.

¹¹¹ Ibid A155-57.

¹¹² Ibid A64.

¹¹³ Ibid A64.

¹¹⁴ Ibid A155-57.

¹¹⁵ Ibid A370.

¹¹⁶ Ibid A64.

¹¹⁷ Ibid A159.

(10) He reported seeing or being aware that AW's mother had ALW and had headed out the rear door with JW following behind her.

(11) AW's dad said he was (or felt) "*forced back*" into his bedroom.¹¹⁸ He further stated, "*...I just had to go back in there and I thought, fuck, I'm, I'm goin' to die in here*". He told police he felt other routes were not viable as he may have passed out or become trapped or stuck. His bedroom was "still clear" and smashed through his bedroom window (which put him on the front verandah).

(12) When he got around the (eastern) side of the house, he could see the flame "*belting out the window*" about "3 metres high".¹¹⁹

(13) Once outside he saw AW's mother. AW's mother said, "*I haven't got [AW]. Where's [AW]?*".¹²⁰

(14) AW's dad went on to the front verandah (assumed to be lounge room window facing on to the verandah). The heat was intense at this location.¹²¹ He saw smoke in the window and smashed it. As soon as he did this the "*fire went, whoop, over my head - - - up to the verandah roof*" followed by smoke.¹²²

(15) He went back and went down to the grass.¹²³

(16) He heard the smoke detector for the first time *after* he got outside the house (not while he was in the house).¹²⁴

80. AW's dad indicated, by reference to a circle on a hand-drawn sketch, that he last saw AW moving forwards and backwards near the doorway leading from the lounge room into the hallway:

¹¹⁸ Ibid A64.

¹¹⁹ Ibid A175-177.

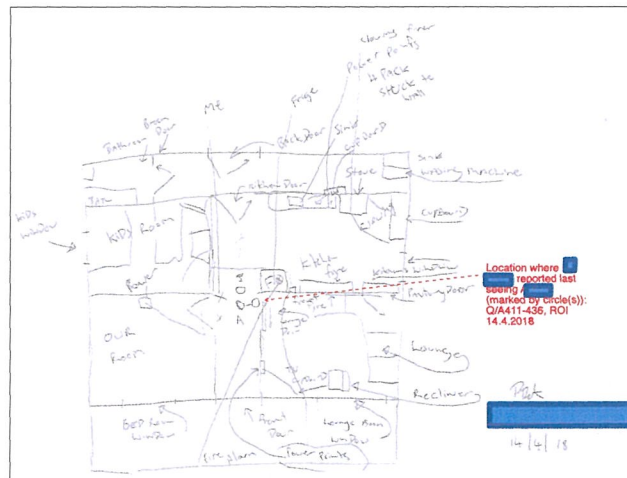
¹²⁰ Ibid A178-181.

¹²¹ Ibid A178-181.

¹²² Ibid A178-181.

¹²³ Ibid A185.

¹²⁴ Ibid A101-2.



Sketch of house made by AW's dad on 14.4.2018¹²⁵

(Circle marks where AW last seen by AW's dad)

81. Both AW's mother and AW's dad reported smoking cigarettes in the house.¹²⁶ There were ashtrays either side of their beds in the bedroom.¹²⁷ AW's mother expects there was another ashtray in the kitchen but did not know where exactly because she had not been smoking in the kitchen.¹²⁸ There had been a lighter on their bedhead near to a radio.¹²⁹ She did not know if they had matches in the house.¹³⁰

Cause of the fire

82. At the time of the fire the family were living in a small 9m x 12m timber house that was set on brick piers with an iron roof. It was said to be 100 years old and prior to their moving in had been vacant for two years. The toilets and hot water system did not work. It had white ants and an ad hoc electrical system. The smoke alarm was not positioned so that it would provide an early warning. The expert evidence is that the fire could have been caused by an electrical fault.
83. It certainly was a house that had the potential for a rapid and devastating fire and it is possible that the fire was started by an electrical fault. The experts were of the opinion that the

¹²⁵ Sketch annexed to Ex 1, vol 2, tab 49C.

¹²⁶ Ex 1, vol 1, tab 25 A283-85.

¹²⁷ Ex 1, vol 1, tab 17 A646-50.

¹²⁸ Ibid A646-50.

¹²⁹ Ibid A752-60.

¹³⁰ Ibid A754.

descriptions by AW's mother and AW's dad of the fire were consistent with a fire starting by an electrical fault.

84. While the expert evidence is that the fire may have started by an electrical fault the expert evidence could not rule out the possibility that the fire was started accidentally by an unattended cigarette left burning or that the fire was deliberately lit.
85. AW's mother and AW's dad stated in their record of interview that they did not deliberately light the fire. This was not adapted on oath or tested by examination. They did not mention in their interview that they had been evicted. This was relevant information that they were not forthcoming with.
86. AW's mother said that AW's dad was not using drugs. I accept on the available evidence that AW's dad was using drugs at the time, and I find that AW's mother was not being truthful on this point.
87. There is also the following strange circumstances surrounding the fire:
 - the eviction notice they were served with two days before the fire;
 - the available jerry cans of petrol;
 - the alleged statement by JW that his mother lit the fire;
 - the evidence that AW's mother had been trying to give AW away prior to the fire;
 - the parents' reported unusual response to the fire.
88. These unusual circumstances are certainly worthy of pause and consideration. However, I am not satisfied that they are of a quality on their own or together to support a positive finding that the fire was deliberately lit by AW's mother or AW's dad.
89. They are suspicious circumstances that could possibly support a finding that the fire was deliberately lit but there is also the very real possibility that the fire was caused by an electrical fault or even by accident from a cigarette.
90. There are three available possibilities as to how the fire started. I could not be satisfied on the balance of probabilities that any one is more probable than another. Police are of the opinion that there is no further investigation that could be done to assist with this conundrum. The totality of the available evidence does not permit me to make a positive finding as to what caused the fire.
91. I conclude this inquest

Findings: s.81(2) Coroners Act 2009

DATE: 14 April 2018.

PLACE: 4411 Castlereagh Highway, Capertee, New South Wales.

CAUSE: Undetermined.

ORIGIN: Near the junction of north wall with the western wall in the kitchen area of the premises.



Magistrate Carmel Forbes

Deputy State Coroner

24 October 2023

NSW State Coroner's Court Lidcombe