



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 46/15

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the suspected death of **KHOR Foo Kun**, with an Inquest held at Perth Coroners Court, Court 58, CLC Building, 501 Hay Street, Perth, on 23 November 2015 find that death has been established beyond all reasonable doubt, the identity of the deceased was **KHOR Foo Kun** and that death occurred on 12 June 2013 approximately 4 kilometres north of the blow holes, in the Indian Ocean, off Quobba Station, Carnarvon, as a result of Drowning in the following circumstances:*

Counsel Appearing :

Sergeant L Housiaux assisted the Deputy State Coroner

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INTRODUCTION

On 12 June 2013 KHOR Foo Kun (the deceased) was swept into the ocean off a rock ledge from which he had been fishing, north of the blow holes on Quobba Station. His friend, LEE Boon Hooi tried to assist the deceased by throwing an emergency life ring into the water but the deceased was unable to reach the life ring before he disappeared under the waves. He did not resurface and has not been seen since.

A significant rescue operation was undertaken but the body of the deceased was never recovered.

The deceased was 39 years of age in June 2013.

The Office of the State Coroner received a letter from the Consulate General of Malaysia on 29 June 2014. The Consul was writing on behalf of the deceased's wife expressing her concern that her husband was missing whilst fishing at Quobba Station near Carnarvon and was now deceased.

The State Coroner had reasonable cause to suspect the deceased had died and that the death was a reportable death and directed the suspected death of the deceased be investigated. In those circumstances an inquest into the circumstances of the suspected death must be held,

pursuant to section 23 (2) of the *Coroners Act 1996*, to establish beyond all reasonable doubt the death of the deceased and, if possible, into how the death occurred and the cause of the death.

BACKGROUND

The Deceased

The deceased was born in Malaysia on 3 October 1974. He was married and had four children, two boys and two girls.¹

On 23 March 2012 the deceased arrived in Western Australia on a three month tourist visa but with a return ticket to Malaysia for 27 March 2012.² He arrived with two others, only one of whom spoke English, and is recorded as intending to stay at Beatty Lodge Backpackers in Perth. He checked out of Beatty Lodge on 25 March 2012 and it seems likely he then travelled north to an area around Carnarvon where he worked on various plantations when needed.³

The details of the deceased's life once in Western Australia are difficult to establish due to the circumstances of many of the plantation workers wishing to avoid detection.

Sometime prior to June 2013 the deceased met with Mr LEE, possibly in Perth, and travelled North with him to

¹ Ex 1, tab 5

² Ex 1, tab 13

³ Ex 1, tab 6

Carnarvon where a number of Malaysian Nationals were working on the plantations.

His visa expired in June 2012 and there is no record of his leaving Australia.

The Coast Line North of the Blow Holes

The blow holes at Point Quobba are approximately an hour's drive north of Carnarvon on the coast of Quobba Station. They are near a point, south of which is a sandy beach, from which boats can be launched and landed and shore fishing can occur.

The blow holes themselves are on a very rugged, rocky portion of coast which extends north for some distance. The blow holes are the result of significant wave action against the rocks.





Exhibit 1, Volume 1, Tab 18, Photographs 6, 8 & 13
Depicting the Nature of the Coast Line

The coast is popular for fishing but dangerous due to the intermittent development of large waves which crash into the rocky coast with considerable force. In rough weather the sea spray extends some way over the top of the cliffs.

There are warning signs that fishing is dangerous and that, despite appearing calm, there can be monster waves, often 20 minutes apart.



Exhibit 1, Volume 1, Tab 18, Photograph 3

There is an emergency life ring with the signs, which are in English. There are no separate stylised pictorial signs within the vicinity depicting the hazard, or warning signs in different languages.

The coastal land is part of the pastoral lease for Quobba Station, but it is Crown land within the jurisdiction of the Department of Lands.⁴

The various locations along the coast used for fishing have been given local names and those in the area in which the deceased was fishing are called “*old boundary*” and “*second grid*”. The ocean below these points produces very dangerous water, even for those who can swim.⁵ There is a plaque near “*second grid*” which commemorates the deaths of three people swept from the cliffs into the sea.

THE EVENT

At approximately 9am on Wednesday 12 June 2013 the deceased and Mr Lee decided to go fishing north of the blow holes on Quobba Station. Once at the blow holes the deceased and Mr Lee turned right and drove north for approximately 4km along the coast until they saw a spot they believed would be suitable for fishing. They pulled over and commenced to fish from the rocks.

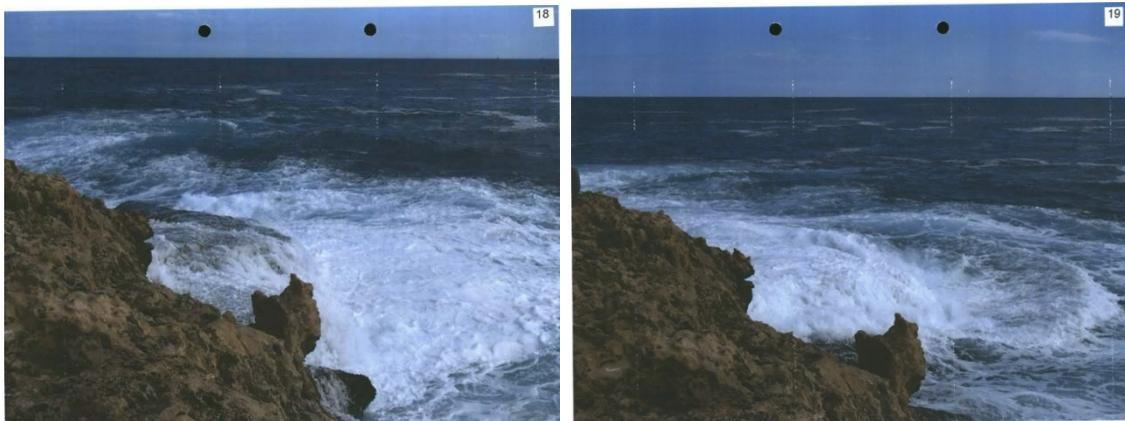


Exhibit 1, Volume 1, Tab 18, Photographs 18 & 19

⁴ Communication Carnarvon Shire Ranger 26 November 2015

⁵ t 23.11.15, p6

Mr Lee later advised the police that when they arrived at the fishing spot the sun was out, the sea was calm and there was very little wind. Mr Lee started fishing at the top of the rocks while the deceased decided to climb down to a ledge approximately 6 feet below the ledge from which Mr Lee was fishing.

Mr Lee advised the police they had not been fishing for very long when an abnormally big wave came in and washed over the ledge where the deceased was standing. As the water washed back out it swept the deceased off the ledge and into the water.

The deceased was screaming to Mr Lee to help him.

Mr Lee could not help the deceased and ran back to his car to see if he could find help. He saw two other people who ran with him to the cliff top with the emergency life ring from the warning sign. Mr Lee threw the ring to the deceased but he was not able to reach it. The two passers-by also provided two small surf boards which were thrown into the water for the deceased, but he was unable to reach any of the items thrown to him.⁶

Mr Lee saw the deceased was struggling, but not swimming, and the waves kept washing over him.⁷ He then saw the deceased disappear under the water, but not reappear. Mr Lee saw a boat out to sea at the time he was watching

⁶ t 23.11.15, p7

⁷ Ex 1, tab 6

for the deceased to reappear and attempted to attract the attention of the people in the boat. He did not realise he had been successful.

The skipper of the boat was an off duty Senior Constable attached to the Carnarvon Police Station. He had been fishing from his boat north of the blow holes with a friend.⁸

Mr Lee waited for the deceased to reappear between 5-10 minutes before he decided he needed to actively go for help because of his difficulty in communicating in English.⁹

Senior Constable Adam Wright (Wright) was in his boat at approximately 9:45am on 12 June 2013, about 2kms off shore from the Quobba cliffs, 4kms from Point Quobba. He and Leon Dunbar (Dunbar) were trolling away from the cliffs due to the waters being dangerous in closer proximity to the cliffs. They were heading roughly south east when Wright could see a group of people on top of the cliffs waving their arms. Wright could hear shouting but was not clear about what was being said. He was satisfied they were trying to attract attention.

Wright knew the water along those cliffs to be treacherous and it was necessary to be careful when fishing from the rock platforms. He was concerned someone had been swept into the water and he and Dunbar stopped fishing, put on

⁸ Ex 1, tab 10

⁹ Ex 1, tab 6

life jackets and headed the boat towards the base of the cliffs where he could see the people.¹⁰

Wright recognised the location as a popular fishing spot known as “*second grid*” or “*the old boundary*”. His boat was approximately 80 metres from the cliffs and Wright and Dunbar were trying to communicate with those on the cliff but found it difficult due to the noise of the water.

Wright was unable to take his boat any closer to the cliffs in safety and attempted to contact the Carnarvon Sea Rescue VHF radio channel and transmit to other vessels he believed may be in the vicinity that he believed someone had been swept into the ocean.

The Search

Wright received no response to his transmissions and knew mobile telephones had no signal in that area. As his boat moved with the swell he could see the two body boards and an emergency life ring which had been thrown into the water for the deceased by Mr Lee. Wright described them as being in the water, just a few metres from the lower cliff ledge. That ledge was being repeatedly washed by the swell but neither Wright or Dunbar could see any sign of the deceased.

During a lull in the waters Wright managed to get his boat to within 10 metres of the ledge and again could not see any

¹⁰ Ex 1, tab 9

one in the water although they did see a thong. They moved the boat back out to sea as the danger increased. They continued to attempt to alert other vessels in the area and notify Carnarvon Sea Rescue.

Wright marked the position on his GPS for reference in a search operation. At that point Wright was at coordinates S 24deg26.546 and E 113deg24.186. The swell was partly from the south and Wright and his friend slowly motored north in an attempt to search close to the cliffs in the direction of the drift. He then commenced a semi-grid pattern backwards and forwards around those coordinates. At no time did they see anyone in the water and the people who had been at the top of the cliff began to dissipate.

Wright and Dunbar continued to try and contact other vessels while they conducted their own grid search parallel to the shore, expanding west.

Approximately an hour later Wright and Dunbar observed a large vessel (Menari) approaching from the south. The captain of this vessel was previously unaware of any emergency but started to assist Wright and Dunbar in their search of the area while also trying to raise radio contact with other vessels.

At approximately 10:50am Wright and Dunbar again saw both the body boards they had seen earlier at the base of the cliffs. They were several hundred metres off shore

almost directly west from the “*second grid*”. Wright entered those coordinates as S 24deg26.512 and E 113deg23.573. He did not recover the boards as he wished to leave them to record the drift pattern and rate, to assist any search effort. They kept the body boards in sight and searched in circles around them as they drifted.

The other vessel was searching closer to the coast and Dunbar and Wright were made aware the other vessel had located a life ring which they believed they had seen earlier.

Shortly afterwards a tug boat arrived and also assisted with the search.

Approximately an hour later the body boards had drifted to S 24deg26.671 and E 113deg23.045. Wright recovered one of the body boards and left the other to drift as a marker.

By this time Mr Lee had reached Carnarvon Police Station and with the use of a telephone interpreter managed to explain to the police what had happened to the deceased.¹¹

Once the police in Carnarvon understood the situation, contact was made with the vessels at the location by radio and the police drove Mr Lee back to the blow holes so he could show them where the deceased had been swept from the rock ledge.

¹¹ Ex 1, tab 7

Wright became aware police were now involved in the search due to the radio channel communication. He was low on fuel and decided to return towards Point Quobba leaving the other two vessels with the markers.

As Wright turned back to Point Quobba he saw police vehicles just north of the blow holes and observed police officers indicating he should go south. He returned to the beach south of Point Quobba and liaised with police officers, Evans and Fewster, as to what he had done and observed since seeing Mr Lee at the top of the cliffs shortly before 10am. Wright also provided Carnarvon Police Station with the relevant coordinates for them to be utilised in any search.

Mr Lee was introduced to Wright and although the language was a barrier it was confirmed the deceased had been swept from the ledge Wright had believed to be the point of entry to the water (splash point). Wright's initial coordinates matched with the fishing spot Wright referred to as "*second grid*".

By the time a central command station had been set up at Carnarvon Police Station tugs from West Tugs had received broken radio communications from the area someone had been swept to sea.

At approximately 1pm there was a briefing with all the known facts. Following that briefing the Acting Inspector

contacted Geraldton Air Charters and was advised there was an aircraft suitable for spotting in Carnarvon. The pilot and local SES, as observers, stood by waiting for further information.¹²

The Water Police were contacted for the availability of divers and the aircraft from Geraldton Air Charters travelled to the scene with three SES observers on board.

The fact Wright had been at the scene and searching for the deceased with reliable coordinates was notified to the Command Centre at approximately 1:27pm. That was information used to assist in the air and sea search for the deceased. The search was joined by the Carnarvon Voluntary Marine Rescue 2 crew to assist with the search north, south and west of the “*splash point*” (point the deceased is believed to have entered the water). The swell increased. Despite the increased swell visibility was still reported to be good at 2pm and as vessels joined and left the search area they reported maintaining a grid formation in an attempt to locate the deceased.

Photographs of the scene were forwarded to the water police to allow an assessment to be made as to whether it would be safe for divers to enter the water and assist the search, and enquiries were made with respect to available transport to the scene for four divers and equipment to assist in the search. It was decided the area was unsuitable for divers to

¹² Ex 1, tab 16

undertake an underwater search in the conditions as they were on the afternoon of 12 June 2013.

Nothing had been sighted of the deceased late on the afternoon on 12 June 2013. The police commenced with arrangements for the search to continue by air and water the following day. At 6:30pm all search personnel were recalled and coordination continued for a search to commence the following morning at 7am.

The search continued by both air, water and land over the 13, 14 and 15 June 2013 at which time all search personnel were stood down. There had been no sighting of the deceased during the search time. Numerous private and public vessels and aircraft had been used in the search for the deceased without success.

The deceased was never seen again and his body was not retrieved. There has been no evidence he survived and no evidence the deceased planned to fake his disappearance. His family have had no word of him despite all having contactable mobile telephones and are satisfied the deceased has died.

CONCLUSION AS TO THE DEATH OF THE DECEASED

I am satisfied the deceased was a 39 year old Malaysian national residing in Western Australia, following the expiration of his visa, as an unlawful immigrant.

Although the evidence with respect to his background is somewhat scant I am satisfied he was working with a number of other Malaysian nationals on farms and plantations around Carnarvon, assisting in whatever way was requested. Apparently those willing to work are contacted by telephone and directed to specific places to work for a given period of time.

On 12 June 2013 the deceased and his friend, another Malaysian national, also on an unextended expired visa, decided to go fishing from a well-known fishing spot just north of the blow holes. Unfortunately, neither the deceased nor his friend spoke good English and may not have understood the signage along the coast which makes it quite clear fishing is dangerous along portions of the coast due to the unpredictable wave formations.

Shortly before 10am on 12 June 2013 the deceased was fishing with his friend off “*second grid*” and decided to fish from a lower ledge than the one used by Mr Lee. That particular ledge is subject to strong and unpredictable waves sweeping across it.¹³

The deceased was swept off the ledge by a wave described by Mr Lee as a “*freak*”. Mr Lee did not believe the deceased could swim but thought he might be able to float. Mr Lee ran back to the emergency sign and took the life buoy which he attempted to throw to the deceased. The deceased did

¹³ † 23.11.15, p6

not manage to reach the life buoy and two passers-by had surf boards they also threw into the water to try and assist the deceased.

The deceased submerged and did not surface again.

The people on the cliff attracted the attention of a boat out to sea. The boat was moved in closer to the cliff and commenced a search for the deceased despite not being able to communicate effectively with the people on shore. The skipper of the boat was an off duty police officer who maintained a grid pattern search using the floating surf boards and life ring as drift indicators until joined by official search and rescue vessels later in the afternoon.

The deceased was never seen again and his body was never located.

I am satisfied beyond all reasonable doubt as to the death of the deceased and I find death occurred on 12 June 2013 at approximately 10am, shortly after he was swept off the lower ledge at “*second grid*” and into the water. The description of Mr Lee of his last sighting of the deceased satisfies me the deceased did not survive and drowned very soon thereafter.

I find death arose by way of Misadventure.

Recommendation

I recommend that, in addition to the warning sign located above the fishing spot referred to as “*second grid*”, there be a separate large pictorial depiction of a fisherman being swept from a cliff similar to the stylised diagram at the top of the current warning sign.

In addition, in view of the number of overseas workers in the area, specific warnings in a number of languages would be helpful. Those suggested by the investigating police officer in this matter were Vietnamese, Japanese, Cantonese, French, German and Italian.¹⁴

I direct a copy of this finding be provided to:-

- 1.) Shire of Carnarvon
- 2.) Department of Lands WA
- 3.) Department of Tourism WA
- 4.) Department of Fisheries WA
- 5.) Recfishwest

E F Vicker
Deputy State Coroner
10 December 2015

¹⁴ † 23.11.15, p9