



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 6/18

*I, Rosalinda Vincenza Clorinda FOGLIANI, State Coroner, having investigated the suspected death of **Norman Leslie BALE** with an Inquest held at Perth Coroners Court, Court 51, Central Law Courts, 501 Hay Street, Perth, on 30 January 2018 find the death has been established beyond all reasonable doubt, the identity of the deceased was **Norman Leslie BALE** and that death occurred between 23 September 2016 and 27 September 2016 in the waters off Nickol Bay, Karratha, as a result of immersion in the following circumstances:-*

Counsel Appearing:

Sergeant L Housiaux assisted the State Coroner

Table of Contents

INTRODUCTION	2
THE DECEASED.....	4
THE EVENTS LEADING TO THE DISAPPEARANCE	6
RISK FACTORS	13
The deceased's boating practices	13
The weather and tides	15
The condition of the dinghy and motor	16
The lack of safety equipment	18
THE DECEASED IS IDENTIFIED AS MISSING	19
SEARCHES FOR THE DECEASED.....	21
The first night	21
The first 24 hours	22
The dinghy is found	25
Time frame for survival	27
Other items are found.....	28



Search suspended, then resumed	29
The final day	30
CONCLUSION AS TO WHETHER DEATH HAS BEEN ESTABLISHED	31
CONCLUSION AS TO CAUSE AND MANNER OF DEATH.....	32
COMMENTS ON PUBLIC HEALTH OR SAFETY.....	33
CONCLUSION	35

INTRODUCTION

1. Norman Leslie Bale was a 53 year old man living with a house mate at Millar’s Well in the north of Western Australia, near Karratha. He was unmarried and had no children. In September 2016 he went on a fishing trip on his own, and failed to return. Following the evidence at the inquest I found that his death has been established beyond all reasonable doubt. His body was never recovered. In this finding, he is referred to as the deceased.

2. The deceased’s family live on the east coast. The deceased’s death is a great loss to them. Their grief is compounded by the distance from the family home when he went missing, and the fact that, despite the searches, it has not been possible to recover his body.

3. Understandably the deceased’s family have been anxious to know the circumstances surrounding his disappearance, and the efforts that were made to locate him after he was identified by the authorities as missing. It will become apparent to the reader that the search efforts were prompt, extensive and unrelenting. Searches were suspended only when it was abundantly clear that they were futile.

4. By way of background, ample evidence shows that the deceased had loved the ocean all of his life. He had spent a lot of time in it, from when he was a youngster. As he matured, he became an experienced fisher. As an adult, living near Karratha, one of his most enjoyable pastimes was to go out in boats to fish or catch crabs. He had a good network of friends in and around Millar’s Well. He was gainfully employed as a trade assistant for a painting business. His friends described him in the following terms: a really good guy; helpful to people around him; having a positive outlook on life; always reliable for work.¹

5. He was an unconventional character, and somewhat of an adventurer. His friends recalled many enjoyable times out on the waters off Nickol Bay with him. There were lots of fishing trips together. He had been a strong swimmer, and despite some

¹ Exhibit 1, tabs 8 and 11



emerging maladies, he still felt very confident being in or on the water.

6. However, not all of his friends were comfortable with his boating practices. He was too adventurous, sometimes to the point of recklessness. This was likely due to an overly confident belief in his ability to deal with an unexpected mishap on the water, and a disinclination to accept that he was no longer as fit and strong as he undoubtedly once was.
7. On his last ill-fated fishing trip the deceased could not find anyone to go fishing with him. A number of his friends warned him that the weather was unfavourable (it was windy and the sea was choppy). Undeterred, and in keeping with his character, the deceased borrowed a small dinghy and an engine and went fishing by himself.²
8. Unfortunately the dinghy and the engine were both in poor condition and not suitable for use on the waters off Nickol Bay, even if the weather had been propitious. Compounding these problems was the fact that the deceased chose not to take any safety equipment with him and, inexplicably, refused an offer of a life jacket from a friend.
9. Just after 5.00 pm on Friday 23 September 2016 the deceased launched his dinghy at the Back Beach boat ramp at Nickol Bay, near Karratha. The dinghy was laden with equipment and sat low in the water as it was launched.
10. The deceased's intention had been to go fishing overnight, and return the next day. He had crabbing equipment and he was heading for a nearby creek by following the shoreline. He was last seen motoring away from the Back Beach boat ramp in an easterly direction (right from the ramp) into the westerly wind.
11. At some point between that departure and 11.00 am on Tuesday, 27 September 2016, when his dinghy was found adrift and mostly submerged just off the ocean side (north-west) of Dixon Island, the deceased went missing and tragically died.
12. On 13 October 2016 the deceased's mother, through her lawyer, wrote to me to request that an inquest be held. After the receipt of further information from the Western Australia Police, on 20 December 2016 I determined that I had reasonable cause to suspect that the deceased had died and that his death was a

² Exhibit 1, tab 4



reportable death. Accordingly under section 23(1) of the *Coroners Act 1996* (Coroners Act) I directed that the deceased's suspected death be investigated.

13. As a result of that direction, under section 23(2) of the Coroners Act a coroner must hold an inquest into the circumstances of the suspected death, and if the coroner finds that the death of the person has been established beyond all reasonable doubt, into how the death occurred and the cause of the death.
14. I held an inquest on 30 January 2018 as required. As outlined above, at the conclusion of the inquest, I found that the death of the deceased Norman Leslie BALE has been established beyond all reasonable doubt.³
15. The inquest focussed on the events leading to the deceased's departure from the Back Beach boat ramp on 23 September 2016, the risks attending that departure, and the outcomes of the search and rescue efforts.
16. The documentary evidence adduced at the inquest comprised the investigation report of Senior Constable Steven Innerd of the Karratha Police Station, together with a brief of evidence compiled in the investigation, received into evidence as Exhibit 1, and containing 39 tabs.

THE DECEASED

17. The deceased was born on 30 January 1964 in Coffs Harbour Hospital in New South Wales. He was the second of three children. He had an older sister and a younger sister.
18. As a young child the deceased lived out of town on a small farm with his family. He loved animals, and horses in particular. He was a friendly happy-go-lucky child and well-liked by people who he came into contact with. He completed his first Intermediate Certificate at the age of approximately 16 years and since that time, he had been gainfully employed in a range of occupations.
19. As a young man the deceased travelled around Australia, but he remained in close and affectionate contact with his family on the east coast, returning home to visit his mother and father at regular intervals.

³ ts 37



20. Approximately six years prior to his disappearance, the deceased became employed in the building industry in Karratha. He was initially occupied mainly with concreting work. Every couple of years he would continue to return to the east coast to see his family.
21. On 30 December 2014 the deceased was on holidays at his parents' property for three weeks and he had an accident while he was riding their lawn mower up a slope. The lawn mower unexpectedly tipped over and as he put his left hand up to protect himself, the blades hit his hand. He sustained extensive injuries to his left hand with multiple fractures.
22. He required surgery after the accident and several follow-up operations. He subsequently had frequent outpatient reviews by occupational hand therapists in the eastern states. The medical treatment continued at various periods from the time of the accident to February 2016.⁴
23. The deceased's injuries affected the flexion and extension of his hand, compromising the rapid ability to straighten his fingers. This was a particularly intrusive injury for the deceased, given his manual labour and fishing trips.
24. Shortly afterwards, the deceased returned to live in Western Australia. The constricting effects of his hand injury improved over time. However, the plan was still for him to return to the east in October 2016 for further operative management to reconstruct the tendons in his hand.⁵
25. Before this could happen, in the middle of 2016 the deceased experienced a further deterioration in his health. His ankles had become sore and swollen and it was difficult for him to walk, especially in the mornings. His doctor ordered blood tests and he was found to have rheumatoid arthritis.⁶
26. He was promptly referred to a rheumatologist but as at September 2016 he had still not seen this specialist. As a result of the rheumatoid arthritis the deceased suffered a degree of ongoing pain, and swelling of his joints, particularly in his knees. His family and friends observed some deterioration in his physical health and mobility, consistent with this diagnosis.
27. There is no record of the deceased suffering from any cardiac or respiratory conditions. There is no record of the deceased

⁴ Exhibit 1, tab 2

⁵ Exhibit 1, tab 2

⁶ Exhibit 1, tabs 31 and 32



consulting a medical practitioner for mental health related conditions. Whilst the deceased was understandably concerned about his injured hand and his rheumatoid arthritis, according to his family and friends, he was not known to suffer from depression.

28. It is against this background that the events leading to the deceased's disappearance are assessed, and together they provide some insight into what likely happened on his final ill-fated fishing trip.

THE EVENTS LEADING TO THE DISAPPEARANCE

29. As at September 2016 the deceased and his friend Mr Luke Prosser had for some time been planning a fishing trip. They intended to launch a vessel from the Back Beach boat ramp at Bulgarra, and travel to nearby Airport Creek, to put down some nets in order to catch mud crabs. This ramp is the launching facility for vessels to transit directly into Nickol Bay.⁷
30. Nickol Bay is a large bay exposed to the open ocean to the north. It is largely unsurveyed and subject to significant variances of diurnal tides, making the boat ramp and much of the creeks and waterways un-navigable during certain times of the day. The Karratha/Dampier region has one of the highest boating ownership per population rates in Australia.⁸
31. The bay is used for both commercial and recreational fishing. The evidence reflects that boating is a popular activity on the bay. The marine life in the bay presents some risk to a person falling overboard or being washed overboard in the bay. There is a prevalence of various species of marine predators, particularly tiger and bull sharks. Very rarely these are also crocodiles.⁹
32. The deceased did not own a vessel. On Wednesday 21 September 2016, the deceased had asked a friend, Mr Steven Lea, if he could borrow his dinghy. Mr Lea did not accede to this request because he knew the size of his dinghy was unsuitable, having regard to the deceased's known fishing plans.
33. From Mr Lea's perspective the weather was inclement and it would have been very dangerous for the deceased to go out to sea. When Mr Lea decided not to make his dinghy available, the

⁷ Exhibit 1, tab 12

⁸ Exhibit 1, tab 4

⁹ Exhibit 1, tab 4



deceased appeared to accept his position, going so far as to say: “*I don’t blame you for not lending me the dinghy.*” This was the last occasion upon which Mr Lea saw or heard from the deceased.¹⁰

34. The next morning on Thursday 22 September 2016 the deceased asked his friend Mr Donald Horton if he could borrow his outboard motor. This was a 15 horsepower Evinrude outboard engine, and a fuel tank. Unfortunately the engine was not in good condition. The deceased explained to Mr Horton that he wanted to go fishing with a friend the next day, as he had found a creek with lots of crabs. Mr Horton informed the deceased that he was still repairing the engine, but that he was welcome to use it.¹¹
35. Specifically, Mr Horton explained to the deceased that the engine’s gear box was stuck in forward gear, which meant there was no neutral or reverse gear. The deceased was not concerned about this malfunction. Mr Horton also explained to the deceased that the fuel in the tank was about four months old and that it would need replacing. The deceased said he would replace the fuel. Mr Horton helped the deceased load the engine and the fuel tank into his car. This was the last occasion upon which Mr Horton saw or heard from the deceased.¹²
36. On that same day (22 September 2016) the deceased was working with Mr Stewart Bullen at premises on North West Coastal Highway. The deceased mentioned to Mr Bullen that he might take a dinghy out that afternoon to go crabbing at or around Airport Creek.¹³
37. Mr Bullen, aware of the likely size of the dinghy, responded by telling the deceased quite emphatically that it was too windy, and he also spoke to the deceased about safety equipment. The deceased told Mr Bullen he did not need any safety equipment as he was only going to fish “*in-shore.*” This is, self-evidently, a dangerous assumption.¹⁴
38. They did not discuss the matter any further, and Mr Bullen dropped the deceased off at his home at approximately 1.30 pm on 22 September 2016. They arranged that he would collect the deceased for work on Sunday 25 September 2016 at 6.40 am. This was the last occasion upon which Mr Bullen saw or heard from the deceased.¹⁵

¹⁰ Exhibit 1, tab 6

¹¹ Exhibit 1, tab 7

¹² Exhibit 1, tab 7

¹³ Exhibit 1, tab 8

¹⁴ Exhibit 1, tab 8

¹⁵ Exhibit 1, tab 8



39. That same day (22 September 2016) the deceased then asked his housemate Mr Colin Harwood if he could borrow his 12 foot aluminium dinghy. This boat was unregistered and had no motor or anchor fitted. Mr Harwood had not ever used his dinghy on the open waters. He agreed to loan his dinghy to the deceased. The deceased took the dinghy and some oars but, inexplicably, declined Mr Harwood's offer of a life jacket from his canoe.¹⁶
40. Mr Harwood's dinghy had no EPIRB¹⁷ to alert search and rescue services in the event of an emergency. Nor was it fitted with a radio or any other safety equipment. The deceased hooked the dinghy up to his motor vehicle in the early afternoon of 22 September 2016 and towed it away, intending to later go to the house of his friend Mr Trent Simpson for them to work together on the motor and fuel tank. This was the last occasion upon which Mr Harwood saw or heard from the deceased.¹⁸
41. It is not known what the deceased did in the interim (nor does it raise any concern) but by the time the deceased arrived at Mr Simpson's home, it was 11.30 pm on 22 September 2016. Mr Simpson understood that the deceased wanted to go crabbing at Airport Creek and he helped him flush the old fuel out of the motor and put approximately 15 litres of fresh fuel into it.¹⁹
42. After it became apparent that the deceased was keen on venturing out in the dinghy that very night, Mr Simpson spent approximately two hours sitting and talking with the deceased at his home in order to persuade him not to go out. The deceased eventually fell asleep at Mr Simpson's home in the early hours of the morning on 23 September 2016 at approximately 2.00 am, as did Mr Simpson. This was the last occasion upon which Mr Simpson saw or heard from the deceased.²⁰
43. The next morning (23 September 2016) at approximately 8.30 am when Mr Simpson woke up, the deceased was no longer at his home. Mr Simpson's partner informed him that at approximately 4.30 am the deceased had asked her to wake him up so they could go crabbing, but when she informed the deceased that Mr Simpson was still asleep, he left and took the dinghy with him.²¹

¹⁶ Exhibit 1, tab 9

¹⁷ Emergency Positioning Indicating Radio Beacon

¹⁸ Exhibit 1, tab 9

¹⁹ Exhibit 1, tab 10

²⁰ Exhibit 1, tab 10

²¹ Exhibit 1, tab 10



44. Mr Simpson and his partner promptly drove down to the Back Beach boat ramp, and they were somewhat comforted when they did not see the deceased's motor vehicle in the carpark, as it indicated to them that he had not gone out in the dinghy.²²
45. Mr Simpson had been out fishing with the deceased on approximately 40 previous occasions, during the day and on occasions at night time. However, on the occasions when Mr Simpson had gone out at night time with the deceased, it had generally been on his own boat which is well set up for night fishing.²³
46. Whilst Mr Simpson considered the deceased to be an experienced fisher, from his observations, every time the deceased had previously gone out in a boat, he had someone else with him.²⁴
47. Mr Simpson had also noted that in the previous 12 months, the deceased had physically slowed down a lot. He was aware that the deceased struggled each morning with his arthritis. He had also observed that the deceased's balance had deteriorated over time.²⁵
48. When Mr Simpson first saw the dinghy that the deceased brought to his home, he noticed that the following items were in the dinghy:
- Four opera house traps;
 - Two or three normal drop nets with floats;
 - An orange Tropicool esky (i.e. an ice box), of about 100 litre capacity;
 - Two 1.25 litre Coke bottles filled with water, one being frozen.
 - Five Carlton Dry stubbies;
 - A high visibility orange rain coat;
 - A grapple style anchor with chain and rope;
 - Two canoe paddles;
 - A tackle box; and
 - An old fishing rod and reel.²⁶
49. Witnesses later described the dinghy as being laden with equipment when it was launched. It is likely that all or most of

²² Exhibit 1, tab 10

²³ Exhibit 1, tab 10

²⁴ Exhibit 1, tab 10

²⁵ Exhibit 1, tab 10

²⁶ Exhibit 1, tabs 2 and 10



these items were still in it. I am satisfied that there was no appropriate safety equipment on the dinghy.

50. In the meantime after leaving Mr Simpson's home, where he spent the night, at about 7.30 am on Friday 23 September 2016 the deceased arrived at Mr Prosser's home. The previous afternoon, Mr Prosser had agreed to go out in the dinghy at approximately 9.00 pm on that night. However, at 8.41 pm on the night of 22 September 2016 Mr Prosser, for perfectly logical reasons, changed his mind and sent the deceased a text message which said: *"If the wind doesn't die I'm not jumping in that boat"*. Shortly afterwards the deceased replied to the effect that he would nonetheless go out in the dinghy on his own or with someone else. The deceased's manner of communication indicates that he was fixated on going crabbing.²⁷
51. Mr Prosser had formed the view that he did not want to go out because it was too windy, the weather was deteriorating and the deceased's dinghy was not safe under those conditions. He was also aware that the engine was jammed in forward gear, the oars were plastic, there were no life jackets and the dinghy itself was generally in a poor state.²⁸
52. The deceased often had a coffee at Mr Prosser's home in the morning before heading off to his daily activities. When the deceased arrived at Mr Prosser's home at 7.30 am on 23 September 2016, he again informed Mr Prosser that he was going to go fishing with or without him that afternoon. Mr Prosser responded that he was not going to go because he had looked at the weather report and the forecast was not good. He was aware that it was still pretty choppy and he remained concerned about the condition of the dinghy.²⁹
53. The deceased left Mr Prosser's house at approximately 9.30 am on the 23 September 2016 taking the dinghy with him. This was the last occasion upon which Mr Prosser saw or heard from the deceased.³⁰
54. The deceased returned to Mr Prosser's address just after midday on Friday 23 September 2016 to look for him, possibly to endeavour to persuade him to go out in the dinghy, but he was not there. The deceased spoke to his mother Mrs Debra Prosser,

²⁷ Exhibit 1, tab 12

²⁸ Exhibit 1, tab 12

²⁹ Exhibit 1, tab 12

³⁰ Exhibit 1, tab 12



who informed him she did not know where her son was, at that point. Her offer to contact him was declined.³¹

55. Mrs Prosser described the deceased as being in a good mood when he left shortly afterwards, having discussed plans for the crabbing trip. He told her he intended to leave from the Back Beach boat ramp and go straight out towards the gas flame and down Airport Creek. This was the last occasion upon which Mrs Prosser saw or heard from the deceased.³²
56. When the deceased left Mrs Prosser's address, he drove to Mr Lea's address, and for some reason that is not clear on the evidence, he left his dinghy and trailer there. Mr Lea returned to his home just after midday and noticed the deceased's dinghy and the trailer parked on his front yard, but no vehicle was present. He did not see the deceased. When Mr Lea left his home at about 3.00 pm to visit a friend, the dinghy and trailer were still outside his address. By 6.00 am the next morning, being Saturday 24 September 2016, Mr Lea observed that the dinghy and trailer were no longer parked at his address.³³
57. Mr Lea did not know why the deceased would have left the dinghy and trailer at his property. As it transpired, later in the afternoon on 23 September 2016 the deceased had returned to that address and towed the dinghy to the Back Beach boat ramp, which is approximately two kilometres east of Karratha. The deceased then launched the dinghy, tied it up to the jetty and proceeded to park his vehicle and trailer in the adjacent car park.³⁴
58. At approximately 5.00 pm on 23 September 2016 Mr Darren Mitchell, a friend of the deceased, was parked alongside the Back Beach boat ramp when he spotted the deceased in the car park. After the deceased headed towards his dinghy, Mr Mitchell got out of his vehicle and walked down to the jetty to speak with him. When Mr Mitchell got closer he observed that the deceased was in what he described as "*an alloy 3.5 to 3.7 metre tinny*". He noted that there was a white Evinrude motor on the back.³⁵
59. Mr Mitchell observed that the dinghy appeared very crowded with personal items, and with not a lot of room available for the

³¹ Exhibit 1, tab 13

³² Exhibit 1, tab 13

³³ Exhibit 1, tab 6

³⁴ Exhibit 1, tabs 2 and 6

³⁵ Exhibit 1, tab 14



deceased to move about. He recalled seeing a red esky, crab pots, a green army coloured shoulder bag and a fishing rod.³⁶

60. The deceased told Mr Mitchell he was going to go crabbing in Fields Creek (unlike what he told other friends) and that he was going to “*do a tide*”. Mr Mitchell was aware that this meant that the deceased was planning on staying out until the next tide, which would have necessitated an overnight stay. During this conversation, Mr Mitchell observed that the deceased was limping badly on his left leg, and that he placed all his weight onto his right leg. The deceased had previously complained to him about the effect of his arthritis.³⁷
61. During their conversation Mr Mitchell noted that the deceased was very keen to get onto the water. The deceased told Mr Mitchell on numerous occasions that he was “*running out of water*”. This meant that the tide was getting low.³⁸
62. At the deceased’s instruction, Mr Mitchell untied the dinghy and threw the rope to him. The deceased had the Evinrude motor going and departed the shore. Mr Mitchell got into his vehicle and headed out the main entry to the car park to go home.³⁹
63. However, Mr Mitchell then executed a U turn and drove back into the car park. As he looked out over Nickol Bay he could not see the deceased behind the rocks, so he drove back along the foreshore in case the deceased needed his help. Mr Mitchell saw the deceased just out beyond the heads and remembered thinking that he should have been further out. However, on balance he dismissed his concerns and drove home at approximately 5.30 pm. This was the last occasion upon which Mr Mitchell saw or heard from the deceased.⁴⁰
64. In addition to Mr Mitchell the last known persons to see the deceased alive were Mrs Kathryn Dart and Mr Kieran Dart. They were also at the Back Beach boat ramp when the deceased departed the shore. At approximately 5.00 pm Mr and Mrs Dart observed the deceased standing alone in the dinghy when it was still tied to the jetty, whilst he was still talking with Mr Mitchell, who stood on the jetty. They did not know the deceased or Mr Mitchell, but from their descriptions I am satisfied that their observations were of those two persons.⁴¹

³⁶ Exhibit 1, tab 14

³⁷ Exhibit 1, Tab 14

³⁸ Exhibit 1, tabs 2 and 14

³⁹ Exhibit 1, tab 14

⁴⁰ Exhibit 1 Tab 14

⁴¹ Exhibit 1, tabs 15 and 16



65. Mr Dart observed that the dinghy appeared to be sitting low in the water. He considered that the weather conditions appeared rough for the size of the dinghy and he recalled south-westerly winds of about 14 knots (approximately 26 kilometres per hour).⁴²
66. Consistent with Mr Mitchell's evidence, Mr and Mrs Dart observed Mr Mitchell untie the rope that attached the dinghy to the jetty and saw the deceased depart the shore on his own, turning right (that is, in an easterly direction) towards the Nickol Creek side of the bay.⁴³
67. This is the last known position of the deceased. After that time there was no record of any person having seen the deceased alive or having heard from him
68. There were numerous risks attending the deceased's departure from the Back Beach boat ramp. They are outlined below.

RISK FACTORS

The deceased's boating practices

69. The deceased had a history of unsafe boating practices. If history is any indication of future behaviour, as it often is, this was a substantial risk factor.
70. It appears entirely within character for the deceased to have persisted with taking the dinghy out on Nickol Bay on 23 September 2016, with the intention of staying overnight, when almost every person he spoke with, hearing of his plans, endeavoured to dissuade him, for safety reasons.
71. Mr Horton, who lent the deceased his Evinrude motor, provided a statement for the assistance of the court which sheds some light on the deceased's incautious attitude towards boating safety. Mr Horton had known the deceased for about five years and had gone fishing with him on numerous occasions.⁴⁴
72. Mr Horton believes the deceased knew the Nickol Bay shoreline very well, having previously lived for some two years in a caravan near Cleaverville Beach, north east of the Back Beach boat ramp. However, he was of the view that the deceased would probably not

⁴² Exhibit 1, tab 16

⁴³ Exhibit 1 Tabs 15 and 16

⁴⁴ Exhibit 1, tab 7



know how to locate Airport Creek, to the west of the boat ramp, or the creeks to the east on his own.⁴⁵

73. In Mr Horton's experience, the deceased always tried to push the limits when he went fishing. He was aware that it was not uncommon for the deceased to travel through dense mangroves, and to travel up a creek only a few metres wide to find some crabs.⁴⁶
74. In the past Mr Horton had cautioned the deceased not to stand up and walk around a small dinghy, due to the risk of capsizing. Mr Horton considered the deceased to have an impulsive personality, an observation that has been borne out by the evidence of the deceased's decision to persist with his fishing trip on 23 September 2016.⁴⁷
75. Mr Horton believes that, having regard to their past fishing trips, the deceased was likely to have sought to go up Nickol Creek or Fields Creek. Mr Horton was aware of an incident in the past when the deceased's dinghy had flipped over near Dixon Island. On that occasion the deceased managed to reach the shoreline, left the dinghy where it was, and walked back to his caravan, a distance of approximately five kilometres. Clearly, the deceased was not unaware of the potential dangers of heading out in a small dinghy, having had firsthand experience of capsizing.⁴⁸
76. In the days before 23 September 2016, the deceased had told a number of his friends that he intended to go crabbing at Airport Creek, which would have had him turning towards a westerly direction as he departed the Back Beach boat ramp. However witnesses observed him motoring away in an easterly direction, later leading to speculation that he had changed his mind and decided to go crabbing at Nickol Creek instead.
77. This was also a risk factor. The importance of providing friends or family and the local volunteer marine rescue group with accurate information about intended destination, as well as the expected return time, before departing in a vessel cannot be overemphasised.

⁴⁵ Exhibit 1, tab 7

⁴⁶ Exhibit 1, tab 7

⁴⁷ Exhibit 1, tab 7

⁴⁸ Exhibit 1 Tab 7



The weather and tides

78. Nickol Bay is sheltered on three sides by mainland and the Burrup Peninsula. Being sub-tropical, the bay is often subject to strong winds, particularly from the north. Strong winds in the bay area result in short and steep wind driven waves which can be a hazard to small vessels.⁴⁹
79. The weather conditions at the time were described by witnesses as being rough with south-westerly winds of about 14 knots (approximately 26 kilometres per hour). The witnesses' observations are consistent with the Bureau of Meteorology weather observations taken from Karratha Airport at 3.00 pm on 23 September 2016. They indicated a westerly wind direction of 30 kilometres per hour.⁵⁰
80. At 5.14 pm on that same date, the weather observations indicated westerly winds with maximum gusts of 44 kilometres per hour, with seas of up to 2.5 metres, and with wind driven choppy waves. The wind was picking up and the weather was becoming more unfavourable for boating. Having regard to the poor condition of the deceased's dinghy and motor, this was a significant risk factor.⁵¹
81. Tidal movements at Nickol Bay can result in some areas drying to mud as the tide lowers. Records from the Bureau of Meteorology tide chart reflect that on Friday 23 September 2016, high tide at Cape Lambert was 4.57 metres at 2.43 pm, low tide was 1.86 metres at 8.54 pm. The next high tide was 4.78 metres at 2.55 am on Saturday 24 September 2016. Low tide after that was 1.8 metres at 9.37am.⁵²
82. The tidal movements were also a risk factor, and they were well known to the deceased. They constrict the timing of departure and return to certain timeframes, highlighting the need for a seaworthy vessel, and adequate communication and safety equipment.

⁴⁹ Exhibit 1, tab 3

⁵⁰ Exhibit 1, tab 25

⁵¹ Exhibit 1, tab 2

⁵² Exhibit 1, tabs 23 and 34



The condition of the dinghy and motor

83. In the course of the search operations, the deceased's dinghy was subsequently recovered. Despite having been submerged, investigators were able to assess the dinghy and motor, and provide opinions on their condition and suitability.
84. Specifically, as part of the investigations that followed, a report was completed by the Department of Transport and a forensic report on the recovered dinghy was completed at the Karratha Police Station. The recovered Evinrude motor was examined by an automotive/marine mechanical technician, Mr Darren Mackenzie. I am assisted by these investigations.⁵³
85. It is known that the deceased borrowed the 12 foot aluminium dinghy from a friend. It was not a sturdy vessel. A number of witnesses referred to it as a "tinny." One witness described it as having low sides, almost like a "rooftop tinny." It was not registered.
86. After the dinghy was recovered it was examined and it was ascertained that there were numerous broken welds to the hull and transom area. There were cracks, dents and holes (most filled with putty, glue or silicone).⁵⁴
87. To make matters worse, when the deceased departed the shore, the dinghy was laden with equipment as previously described. It was observed to be sitting low in the water. The investigating officer estimated the known contents of the dinghy to weigh approximately 150 kilograms, and together with an estimated weight of 80 kilograms for the deceased, it is probable that there was a combined weight of 230 kilograms on board the dinghy.⁵⁵
88. The dinghy had a low keel to gunnel measurement (400 millimetres at the stern). It is likely that higher waves would have been able to wash over the sides and flood the vessel, and/or adversely affect its stability.⁵⁶
89. The dinghy had no seat at the stern for the deceased to sit upon when operating the outboard motor. He would have had to stand or kneel at the stern, sit on his esky, or sit on the transom. Unless kneeling (which would have been unlikely due to his arthritis) the deceased's position would place him at risk of falling

⁵³ Exhibit 1, tabs 22, 25 and 26

⁵⁴ Exhibit 1, tab 25

⁵⁵ Exhibit 1, tab 2

⁵⁶ Exhibit 1, tab 25



overboard. His centre of gravity would have been well above the gunwale.⁵⁷

90. The motor was an Evinrude outboard 15 horsepower engine, serial number A0305326. After recovery, when it was inspected, it was observed that the motor had been submerged, and that it had been removed from the transom in order for it to be transported to Karratha Police Station.⁵⁸
91. Previously, the police officer who dived on the dinghy when it was recovered had noted that the motor was still attached to the transom. The transom itself was in a poor state of repair after being damaged by the elements during submersion and it also had signs of old defects.⁵⁹
92. Upon inspection Mr Mackenzie noted that the outboard's gear shift connector inside the leg of the engine was not connected and the outboard was stuck in forward gear. It was incorrectly installed. Being a 1986 engine, it did not offer the option of a safety lanyard (kill switch) if the operator fell overboard with the engine running, meaning that the dinghy would continue on its course.
93. In Mr Mackenzie's opinion, the Evinrude motor was too large for the dinghy. The dinghy itself was not a seaworthy craft and Mr Mackenzie doubted whether it would have been wholly watertight prior to the incident. Mr Mackenzie considered the dinghy to have been suitable for creek use at best, and only with an engine of an estimated six horsepower.⁶⁰
94. When the fuel tank was recovered, it was intact with no holes or leaks. Approximately 7.5 litres of fuel was drained into measuring jars.⁶¹
95. For the reasons outlined above, I am satisfied that the dinghy was not seaworthy and the motor was defective. It was not at all suitable to proceed offshore. The deceased's contention that he proposed to go fishing "*in-shore*" did not mitigate these significant risk factors.

⁵⁷ Exhibit 1, tab 2

⁵⁸ Exhibit 1, tabs 2 and 22

⁵⁹ Exhibit 1, tabs 2 and 22

⁶⁰ Exhibit 1, tab 22

⁶¹ Exhibit 1, tab 26



The lack of safety equipment

96. The *Navigable Waters Regulations* 1958 (Navigable Waters Regulations) require that a vessel being taken outside protected waters (such as a lake, river or estuary) carry certain safety equipment. A vessel travelling between zero and two nautical miles from the mainland must carry:
- A bilge pump or bailer;
 - A fire extinguisher that conforms to specified standards;
 - An anchor and line;
 - An approved life jacket or personal floatation device for very person on board;
- and
- Compliant distress signals, being not fewer than two red hand held flares (or two parachute distress rockets) and not fewer than two orange hand held smoke signals (or one orange smoke canister).
97. Regrettably, the deceased refused an offer of a life jacket for his ill-fated fishing trip from Mr Harwood. If he was washed or fell overboard, he would not have been able to stay afloat for any length of time.
98. Erroneously, the deceased told Mr Bullen that he did not need safety equipment because he was only fishing “*inshore*”, a matter I have addressed above in this finding.⁶²
99. The Navigable Waters Regulations also require that a vessel travelling more than two nautical miles from the mainland must be equipped with a compliant and registered EPIRB.
100. Mr Horton, who had been on past fishing trips with the deceased, highly doubted that the deceased would have taken flares or an EPIRB with him, which as it transpires is correct. In a conversation the night before he left, the deceased told Mr Davies and another friend that he did not need an EPIRB or distress flares.⁶³
101. There was no sighting of an EPIRB or distress flares in the dinghy. Had the deceased been in a position to, he would not have been able to alert any person with an emergency signal.

⁶² Exhibit 1, tabs 8, 9 and 25

⁶³ Exhibit 1, tabs 11 and



102. There is no evidence of the deceased having carried any other safety equipment, no flares, nor radio either. Quite sensibly, the lack of safety equipment was a factor that caused Mr Prosser to decide not to go out fishing with the deceased.⁶⁴
103. Whilst there is evidence of the deceased carrying an anchor, and of borrowing oars from the dinghy's owner, these were hardly sufficient for safety purposes.⁶⁵
104. The deceased had a recreational skippers' ticket, and he would have had to pass a test in relation to safety of boats and associated safety equipment required to be carried on boats. I am satisfied that it is highly likely that he well knew, for example, that he ought to have carried an approved life jacket for himself.⁶⁶
105. The deceased was navigating alone, and also planned to do so at night time, elevating the risks he faced in the event of a sudden and unexpected emergency.
106. Adding to these substantial risk factors, as at September 2016, the deceased's safety at sea would have also been compromised by his injured hand and rheumatoid arthritis, particularly with regard to strength, balance and grasping items.⁶⁷

THE DECEASED IS IDENTIFIED AS MISSING

107. The deceased was known to sleep at friends' houses, or to stay out overnight fishing. His absence from his home for a few days and nights was not considered to be unusual. When he failed to return as intended on 24 September 2016, the alarm was not raised, because no one had reason to do so at that stage.
108. The deceased was last seen alive when he set out in his dinghy in the late afternoon of Friday 23 September 2016. It was not until after Mr Bullen, his friend and workmate, failed to make pre-arranged contact with him on Sunday 25 September 2016 that a concern developed for his safety. By this stage, within the context of a rescue, a lot of time had passed.
109. Mr Bullen and the deceased had both been in the employ of a painting business based in Karratha. When they last parted company on 22 September 2016, Mr Bullen had arranged to

⁶⁴ Exhibit 1, tabs 2 and 12

⁶⁵ Exhibit 1, tabs 2 and 25

⁶⁶ Exhibit 1, tab 2

⁶⁷ Exhibit 1, tab 2



collect the deceased at 6.40 am on Sunday 25 September 2016, to do some further painting work.⁶⁸

110. At approximately 10.45 am on Saturday 24 September 2016 Mr Bullen sent a SMS text message to the deceased's mobile device to the effect that he would collect him the next day at 6.40 am, for work. The deceased did not respond to this message, but Mr Bullen did not consider that this was out of the ordinary for him.⁶⁹
111. At approximately 6.00 am on Sunday 25 September 2016 Mr Bullen sent another SMS text message to the deceased to the effect that he would pick him up just before 7.00 am that morning, and again there was no reply. Mr Bullen arrived at the deceased's home shortly before 7.00 am on 25 September 2016, and he noted that the deceased's vehicle was not there. Mr Bullen waited outside the deceased's home for approximately 10 to 15 minutes, to no avail.⁷⁰
112. Mr Bullen considered that this was out of the ordinary for the deceased. In Mr Bullen's experience, the deceased had always been reliable for work appointments. Without the deceased, Mr Bullen was unable to undertake the work and accordingly he informed the client and returned home.⁷¹
113. Just after midday on Sunday 25 September 2016 Mr Bullen sent the deceased another SMS text message to ascertain whether he would be available for work the next day and again there was no reply to that message. This lack of communication impelled Mr Bullen to go out to look for the deceased.⁷²
114. At approximately 3.00 pm on the same date Mr Bullen drove to the Back Beach boat ramp and found that the deceased's vehicle, with his trailer attached, was in the car park but he did not see any sign of the deceased, or the dinghy. Mr Bullen became concerned. He returned home and every 30 to 45 minutes he drove back down to the Back Beach car park, but on each occasion the situation remained the same.⁷³
115. In addition to checking for signs of the deceased at the Back Beach car park at reasonably regular intervals on that date, at approximately 4.30 pm on the afternoon of Sunday 25 September

⁶⁸ Exhibit 1, tab 8

⁶⁹ Exhibit 1, tab 8

⁷⁰ Exhibit 1, tab 8

⁷¹ Exhibit 1, tab 8

⁷² Exhibit 1, tab 8

⁷³ Exhibit 1, tab 8



2016 Mr Bullen drove to the deceased's home and spoke with his house mate, Mr Harwood. Mr Harwood informed Mr Bullen that he had not seen the deceased for a couple of days, but that was not out of the ordinary because the deceased would sometimes stay with friends.⁷⁴

116. Mr Bullen made his last trip to the Back Beach car park at approximately 7.15 pm on the night of Sunday 25 September 2016 and when he saw the deceased had still not returned, he drove to the Karratha Police Station and reported the deceased as missing.⁷⁵

SEARCHES FOR THE DECEASED

117. Karratha Police, upon been informed by Mr Bullen that the deceased had failed to return from a fishing trip, initiated a search for the deceased on that very night of 25 September 2016. Two police officers were promptly recalled to duty and the Water Police Co-ordination Centre at North Fremantle were informed. Together, they began to coordinate an immediate response to attempt to locate the deceased.⁷⁶
118. Active and comprehensive searches for the deceased and/or any of his belongings continued for six days. Tragically, the deceased was not located alive. His body was not recovered. The details appear below.

The first night

119. The searches for the deceased commenced on the night the deceased was reported missing, being 25 September 2016 (Day 1 of 6). The West Pilbara Volunteer Marine Rescue Group, located approximately 20 nautical miles from the Back Beach boat ramp, was mobilised. Volunteers travelled to the boat ramp that night, but unfortunately they were unable to deploy their vessel due to the low tide.⁷⁷
120. Police officers were recalled to duty. Sergeant Scott Rogers Gillis (manager of North West Water Police) and Senior Constable Johnson also travelled to the Back Beach boat ramp that night, taking with them a Western Australia Police vessel, a 4.6 metre Naiad.⁷⁸

⁷⁴ Exhibit 1, tab 8

⁷⁵ Exhibit 1, tab 8

⁷⁶ Exhibit 1, tabs 2 and 3

⁷⁷ Exhibit 1, tabs 2 and 3

⁷⁸ Exhibit 1, tab 23



121. While police were on their way, they were informed by West Pilbara Volunteer Marine Rescue Group volunteers that they had not been able to successfully deploy their vessel. The volunteers arranged to return at 6.30 am the next morning.⁷⁹
122. Nonetheless, police continued on to the Back Beach boat ramp and they also attempted to deploy their vessel, at approximately 9.30 pm on 25 September 2016. Like the volunteers, unfortunately they were also unable to do so because of the low tide, and so they also planned to return the next morning.⁸⁰
123. It is clear that the tides at that degree of latitude severely impacted upon the launching of those search vessels on that first night.⁸¹
124. Having regard to the length of time since the deceased had last been seen alive, significant concern existed for his safety. I am satisfied that efforts to find him were promptly and properly initiated. He was immediately treated as a person “*at risk*”. It was very clearly appreciated that there would be a diminishing probability of locating him alive the longer the search operation continued.

The first 24 hours

125. At first light the next day, Monday 26 September 2016 (Day 2 of 6) a coordinated land and marine search was commenced. The marine search was under the coordination of Sergeant Scott Rogers Gillis (MARSAR). The land search was under the coordination of Senior Constable Kelsie Green of the Karratha Police Station (LANDSAR). Within the first 24 hours, a range of critical searches were undertaken.
126. The Joint Rescue Co-ordination Centre in Canberra was notified by the Water Police Co-ordination Centre in North Fremantle and they commenced EPIRB registration checks.
127. Karratha Police commenced inquiries and conducted patrols by four-wheel drive vehicle at Airport Creek and Nickol Creek, being the areas that witnesses said the deceased intended to go crabbing.

⁷⁹ Exhibit 1, tab 23

⁸⁰ Exhibit 1, tabs 2 and 3

⁸¹ Exhibit 1, tab 3



128. A search of Airport Creek to the west of the Back Beach boat ramp was conducted by the local Water Police vessel as the tides dictated. Searches of Nickol Creek and other tributaries to the east of the Back Beach boat ramp were conducted by the West Pilbara Volunteer Marine rescue vessel as the tides dictated. Soldiers on two inflatable boats from the Australian Defence Force, Pilbara Regiment, who volunteered their services, assisted with searching a number of creeks off Nickol Bay.
129. A Department of Fisheries patrol vessel with two trained observers on-board searched Nickol Bay from Flying Foam Passage to Hearsons Cove.
130. A Beechcraft King Air aircraft from the Karratha Flying Services with two trained State Emergency Services (SES) observers aboard was tasked to search Nickol Bay. A Police Air Wing PC12 aircraft was tasked to search over all creeks in Nickol Bay at low tide.
131. The Dampier Port Authority advised their helicopter pilot and conducted radio broadcasts to vessels in the area of the search and rescue operation.
132. Two officers from the Department of Fisheries on quad bikes searched creeks from Yandekajena Creek to Airport Creek. Karratha Police in a four-wheel drive vehicle conducted patrols from Karratha to Cleaverville.⁸²
133. At this stage if the deceased was still on the surface of the water or if he had reached land, there would have been a high probability of locating him due to the early deployment of a significant number of searchers.
134. However the potential for success was hampered by a lack of consistency concerning the deceased's intended destination and his actual movements. As I have outlined above, the deceased told some of his friends that he was going crabbing at Airport Creek, but when last sighted he appeared to be heading in the opposite direction, towards Nickol Creek.
135. Whilst the tides adversely impacted on the launching of search vessels, their duration of the operation, and access into areas of low water, the use of airborne assets afforded an advantage. Unimpeded by the tides, the airborne searches greatly increased



the chances of detecting the deceased in the water, and enabled a larger area to be searched quickly.

136. In an effort to focus the searches, the Western Australia Water Police employed a recognised computer search program to assist with the prediction of movement of objects through water using recorded winds, tides and sea currents, known as SARMAP (Search and Rescue Model and Response System).
137. The Joint Rescue Co-ordination Centre in Canberra also provided results from their net water movement prediction calculations, which closely reflected the SARMAP predictions. These gave the search parties the guidance and confidence that they were covering the right areas, and avoided as far as practicable, the unnecessary dispersal of resources.
138. The results of these calculations indicated that the missing dinghy or the deceased, if on the surface of the water within Nickol Bay, would most probably be carried back and forth by the tides, and eventually be washed towards or onto the shoreline in the bay.⁸³
139. The initial search activities continued until last light on Monday 26 September 2016. Unfortunately, at this stage there was no sighting of the deceased, the dinghy or any items that he had carried with him.
140. By this stage, 70% of the creeks leading off Nickol Bay had been physically checked by smaller inflatable vessels; some creeks were inaccessible due to a range of factors, including falling tides.
141. The air search of Nickol Bay achieved a reported 70% probability of detection. Visibility in open areas was reported to be very good without haze. Visibility over creeks was less clear due to the mangroves.
142. The vessel searches of areas of Nickol Bay achieved a reported 80% probability of detection. Observers were confident that they would have located the deceased's dinghy if it was on the surface of the water within the search area.
143. I accept that there was a high probability of detection if the deceased was on the surface of the water or on land in these search areas.



The dinghy is found

144. On Tuesday 27 September 2016 (Day 3 of 6) the land and marine searches continued and the search pattern continued to be guided by the SARMAP and net water movement calculations. On this date the co-ordination of marine search operations was handed over to the Water Police Coordination Centre, with overall incident control, and land search operations remaining the responsibility of Karratha Police.
145. Again significant search and rescue assets were utilised. On this date, this involved the deployment of six vessels from entities including the North West Water Police, the Port Walcott and Dampier Volunteer Marine Rescue Groups and the Department of Transport, and a number of Australian Defence Force inflatables.⁸⁴
146. Together they searched areas of highest probability in Nickol Bay, with the smaller inflatable vessels concentrating on completing the creek searches. It included searches on the eastern side of Nickol Creek, through the tributaries and to the shoreline.⁸⁵
147. The search on this day also involved fixed wing aircraft being tasked to search Nickol Bay initially covering an area of 450 square nautical miles. Land searches using four-wheel drive vehicles and quad bikes were continued by Karratha Police.⁸⁶
148. Again on this day, the limited information about the deceased's intended destination resulted in a potentially large search area.
149. While these searches were under way, shortly before midday on 27 September 2016, Mr Scott Atkinson who was fishing near Dixon Island observed an orange object near the mangroves on the western side of the island. He photographed it but was unable to get close to it because of the tides and the rocks close to Dixon Island. As it transpired, this object was the esky that the deceased had taken with him in the dinghy.⁸⁷
150. Mr Atkinson then passed to the north west of Dixon Island, where he observed a partially submerged vessel with only a portion of the bow protruding above the water line. It was approximately

⁸⁴ Exhibit 1, tab 3

⁸⁵ Exhibit 1, tab 4

⁸⁶ Exhibit 1, tab 3

⁸⁷ Exhibit 1, tabs 2, 3, 18 and 23



two metres from the edge of a cliff face. As it transpired, this was the deceased's dinghy.

151. Mr Atkinson was already aware through social media that the deceased was missing after launching his boat from Back Beach boat ramp in Karratha. Promptly, at 11.10 am on 27 January 2016, he contacted the Karratha Police on his mobile device to report what he had found. He provided them with the photograph and the GPS coordinates, and waited for them.⁸⁸
152. Search vessels and air assets were swiftly redeployed to focus on a more intense land and sea search of areas within the vicinity of Dixon Island. Sergeant Scott Gillis went to the location identified by Mr Atkinson, with Senior Constable Andrew Johnson, who dived on the vessel. Shortly afterwards the police officers also located the deceased's esky and a crab pot within the range of high tide on Dixon Island.⁸⁹
153. The police officers arranged for the recovery of the dinghy, the motor and the other items, and transportation to the Karratha Police Station. These items were all within the planned search area.
154. The finding of the partly submerged dinghy and other debris provided a more defined and reduced search area but also indicated, alarmingly, that the deceased was most probably in the water. In response, the track spacing of all surface and air assets was decreased to suit a visibly smaller target.⁹⁰
155. Nonetheless, given also that the upturned dinghy had been located in close proximity to the mainland which was possibly accessible from Dixon Island at low tide, the air search also included a large portion of land area. One possibility was that the deceased may have made it to shore on Dixon Island, or surrounding Cleaverville Beach, where he had once resided.⁹¹
156. Karratha Police coordinated a foot, motorcycle and four-wheel drive search using police and SES personnel. The shoreline between Cleaverville Beach boat ramp, to the southern tip of Dixon Island, and through the mangroves adjacent to Point Robinson was searched.⁹²

⁸⁸ Exhibit 1, tabs 2, 3, 18 and 23

⁸⁹ Exhibit 1 Tab 19

⁹⁰ Exhibit 1 tab 3

⁹¹ Exhibit 1, tabs 3 and 4

⁹² Exhibit 1, tabs 3 and 4



157. The SARMAP predictions were also backtracked from the location of the dinghy, indicating a possibility that it had either drifted over time within Nickol Bay under the influence of the tides or had capsized near the island. It was also possible, given that the gearbox of the outboard motor was locked in forward gear, that the dinghy had made its way to Dixon Island under its own propulsion before capsizing without being under the control of the deceased throughout most of the voyage.⁹³
158. Air and vessel searches continued throughout the day until last light before recommencing the next morning. Overnight police on off-road motorcycles were tasked to search the coastline from Cleaverville to Cape Lambert.⁹⁴

Time frame for survival

159. Whilst the land and marine searches were continuing, on Tuesday 27 September 2016, police contacted Dr Paul Luckin, a recognised expert in determining time frames for survival. Dr Luckin is a specialist anaesthetist, and has been involved in rescue operations since 1974 (as a paramedic) and since 1982 (as a doctor). He advises federal and state entities on survivability during search and rescue operations.⁹⁵
160. On 27 September 2016 Dr Luckin provided the following opinion to the Western Australian police:
- There was very little chance of survival after four days, if the deceased had no drinking water; and
 - If the deceased had reached land and had access to drinking water, his best limit for survival was dawn on 27 September 2016.
161. This was important information, but it did not immediately lead to the suspension of the searches for the deceased. Search and rescue parties remained hopeful that the deceased would be found alive. However, it was also understood that if this could not be achieved within a reasonable time frame, then inevitably the aim would become to recover the deceased's body, so that his family could lay him to rest.

⁹³ Exhibit 1, tab 3

⁹⁴ Exhibit 1, tab 3

⁹⁵ Exhibit 1, tab 38



Other items are found

162. On Wednesday 28 September 2016 (Day 4 of 6) the coordinated land and marine search continued. The Australian Defence Force's Pilbara Regiment's inflatable vessels completed slow tracks of the mangroves along the eastern side of Nickol Bay, reporting good visibility into the mangrove vegetation. No further debris was sighted.⁹⁶
163. Karratha Police co-ordinated further land searches using SES personnel. The SES, with the assistance of a Department of Fisheries vessel, deployed four search teams to Dixon Island and completed a comprehensive search of the island, including some tidal areas through Point Robinson.⁹⁷
164. Just after midday on 28 September 2016 Ms Christine Merritt was walking along the beach near Cleaverville when she noticed a green canvas bag on the rocks approximately 10 metres from the water's edge. Ms Merritt was aware that the deceased had failed to return from his fishing trip. She saw a police car located further up the beach and drew their attention to the bag. The bag contained clothing, a wallet, a mobile phone and car keys found to belong to the deceased.⁹⁸
165. It was noted that the mobile device and some tobacco were sealed in bags, indicating possibly that the deceased had not used them while at sea.⁹⁹
166. Shortly before 2.00 pm on 28 September 2016, a dual red handled oar was located washed up on the shore on the northern side of Dixon Island. This was subsequently confirmed to be from the deceased's dinghy.¹⁰⁰
167. By this stage it was apparent that a catastrophe had befallen the deceased. His dinghy had been found partially submerged the previous day, his belongings were scattered over an area ranging from Dixon Island to the Cleaverville shoreline, and his whereabouts remained a mystery. No person had heard from him after he left to go fishing. It was reasonable to fear the worst.

⁹⁶ Exhibit 1, tabs 2 and 3

⁹⁷ Exhibit 1, tab 3

⁹⁸ Exhibit 1, tabs 2 and 19

⁹⁹ Exhibit 1, tab 4

¹⁰⁰ Exhibit 1, tab 4



Search suspended, then resumed

168. The next day, Thursday 29 September 2016 (Day 5 of 6) at 9.00 am the Incident Management Team held a meeting and, taking account of Dr Luckin's opinions and the surrounding factors, they decided to suspend all further search operations, pending any indication of the deceased's whereabouts. At that stage the time frame for survival as opined by Dr Luckin had expired over 50 hours earlier.¹⁰¹
169. I am satisfied that the suspension of the search at this stage was reasonable, given the comprehensive nature of the searches already undertaken and the fact that the time frame for survival had well and truly expired.¹⁰²
170. However, unbeknown to police at around the same time, being 9.00 am on 29 September 2016, two teenage girls had attended the Back Beach boat ramp for a swim, when they noticed what appeared to be a body in the surf. The girls were unable to see any arms or lower legs but were able to observe the head and shoulders down to the thighs. They observed the body for approximately 10 seconds before screaming and running out of the water. Later that day in the afternoon the father of one of the girls reported the sighting to police and advised that it was about one kilometre west of the Back Beach boat ramp.¹⁰³
171. Search operations promptly resumed, as a recovery operation. A Police Wing aircraft with two trained SES observers aboard was tasked to search up to three nautical miles offshore, from Nickol Creek to Airport Creek. The air search failed to locate the deceased's body. The crew reported that visibility was impaired by sunset and reflection off the surface of the water.¹⁰⁴
172. Land search operations also promptly resumed and police were deployed to where the deceased's body had been reported. They conducted a shoreline search which also included the mangrove mud flats east of the Back Beach boat ramp. The land search failed to locate the deceased's body or any items of interest.¹⁰⁵
173. Unfortunately boat assets were unable to be launched at that point due to low tides. The North West Water Police vessel was

¹⁰¹ Exhibit 1, tabs 2 and 4

¹⁰² Exhibit 1, tab 3

¹⁰³ Exhibit 1 Tabs 20 and 21

¹⁰⁴ Exhibit 1, tabs 2 and 3

¹⁰⁵ Exhibit 1, tab 4



unable to recommence a search until the following day and that search was also unsuccessful in locating the deceased's body.¹⁰⁶

174. The location of the reported sighting of the deceased's body by the two teenage girls was consistent with the SARMAP and net water movement predictions regarding calculation of drift. Those calculations showed that there was a high probability that the deceased and/or his dinghy would be washed back to the shoreline within Nickol Bay due to the tides during the first few hours.¹⁰⁷
175. Shortly before 7.00 pm on 29 September 2016 Karratha Police were informed that a boat fuel tank was found on the shoreline of Point Walcott. Police attended and recovered it. This fuel tank was from the deceased's dinghy.¹⁰⁸

The final day

176. On Friday 30 September 2016 (Day 6 of 6) some further searches were undertaken, and then the operations were suspended for the final time.
177. Shortly before midday on that date police conducted a land search of the shoreline east of the Back Beach boat ramp, but no items of interest were located. It was high tide at the time.¹⁰⁹
178. At approximately 1.30 pm on 30 September 2016 at low tide, a land search of the shoreline to the east and west of the Back Beach boat ramp was conducted by SES personnel but they did not find any items of interest either.
179. At 6.00 pm on 30 September 2016 the search for the deceased was suspended, and the following considerations were taken into account:
- Searches conducted had good coverage of all areas, which had been repeatedly searched over five days of the operation;
 - With a repeated and overlapping search, the probability of detection was high;
 - The timeframe for survival of a person in the water had passed;
- and

¹⁰⁶ Exhibit 1, tabs 2 and 3

¹⁰⁷ Exhibit 1, tabs 2 and 4

¹⁰⁸ Exhibit 1, tabs 2 and 4

¹⁰⁹ Exhibit 1, tabs 2 and 4



- The timeframe for survival of an uninjured person on land had passed.¹¹⁰

CONCLUSION AS TO WHETHER DEATH HAS BEEN ESTABLISHED

180. Pursuant to section 23(2) of the Coroners Act, I am required to consider whether the death of the deceased has been established beyond all reasonable doubt. I outlined my finding to this effect at the inquest on 30 January 2018, and my written reasons for this conclusion appear below.
181. I am satisfied that, although undoubtedly shocking for the two young girls, it is highly likely that their reported sighting, for a matter of seconds, of the deceased's body in the water, was accurate. I also take into account the fact that their reported location of the body was consistent with information as to the likely whereabouts that was generated by the SARMAP and net water movement calculations. However, even in the absence of this sighting, the evidence as to the deceased's death is compelling.
182. Given the comprehensive land and sea searches I am satisfied that if the deceased was alive during the duration of the search operations and he had reached land, he would have been sighted.
183. The deceased was unaccompanied and did not have a life jacket. He had intended to return from his fishing trip at high tide on 24 September 2016. If he fell overboard between 23 and 24 September 2016 and did not quickly reach land, there is no realistic prospect of him being alive in the waters off Nickol Bay by the time the coordinated land and marine search commenced on 26 September 2016.
184. Police inquiries established no further contact was made with the deceased by telephone after he left the Back Beach boat ramp in his dinghy. After 5.16 pm on 26 September 2016, all further calls to his mobile device were diverted. The deceased's bank account has not been accessed after 11 September 2016. He was on good terms with his family and friends, and had no reason to cease contact with them. No person has heard from the deceased after 23 September 2016.¹¹¹
185. Public awareness through the Western Australia Police Media and Corporate Communications section, together with the media, and also through the deceased's friends utilising social media,

¹¹⁰ Exhibit 1 tab 2

¹¹¹ Exhibit 1, tab 2



generated extensive inquiries which assisted with the search operations.

186. I am satisfied that all reasonable and proper efforts to investigate the deceased's disappearance have been undertaken. All reasonable avenues of inquiry have been exhausted.
187. On all of the evidence before me, I am satisfied that, at some stage after the deceased left the Back Beach boat ramp (whether or not he reached and/or then left Dixon Island) he fell into the water either because the dinghy capsized, or because he lost his footing and fell overboard.
188. Sadly, I cannot discount the likelihood of the deceased's remains being subsequently taken by a marine predator.
189. I therefore conclude that tragically the deceased did not survive his ordeal in the water.
190. I cannot discount the deceased reaching Dixon Island alive at some point between 23 and 24 September 2016, and for this reason the period over which he died extends to 27 September 2016.
191. I am satisfied that the death of the deceased has been established beyond all reasonable doubt. He likely died between 23 and 24 September 2016, but taking account of the time frame for survival and the requisite standard of proof, I find that he died between 23 and 27 September 2016.

CONCLUSION AS TO CAUSE AND MANNER OF DEATH

192. On all of the evidence taken together I find that the cause of the deceased's death was immersion (that is, drowning). It is the only reasonable inference.
193. Whilst the deceased displayed remarkably reckless behaviour in setting out to go fishing as he did, there is no evidence before me that suggests he intended to somehow harm himself or take his life. There is some evidence to the effect that his friends considered him to have been unhappy about his ongoing hand injury and his recently diagnosed arthritis. He was concerned about his deteriorating health. He was annoyed that no one was going fishing with him and he appeared to be irritated when he was departing the Back Beach boat ramp.



194. None of these factors even taken together with his seemingly irrational decision to go out on his dinghy that night, cause me to consider that he was contemplating an intentional act of self-harm.
195. I am satisfied that the deceased fully intended to return to shore the next day, as he had done on numerous previous occasions, but that on this occasion he fell into the water, either by the dinghy capsizing, or by him losing his balance and falling off the dinghy, resulting in his death.
196. Therefore as to the manner of the deceased's death, I find that it occurred by way of misadventure.

COMMENTS ON PUBLIC HEALTH OR SAFETY

197. Pursuant to section 25(2) of the Coroners Act, I may comment on any matter connected with the death including public health or safety or the administration of justice.
198. Within the context of this inquest, it is so unfortunate that the deceased refused the offer of a life jacket from his friend. He was required to carry an approved life jacket by regulation. Had he worn a life jacket, it would have afforded him the best chance for survival.
199. Depending on where and when he fell into the water, at best if he was wearing an approved life jacket, it may have continuously prevented him from going under water, and enabled him to eventually reach land or to be sighted on the surface of the water.
200. At the inquest I was provided with information concerning the utility of life jackets by reference to an analysis by Dr Luckin, who has extensive knowledge in the area. After sudden and unexpected immersion into water, survival depends upon reaching the surface before drowning, and then remaining alive until rescue. Without a life jacket and positive buoyancy, the prospects of survival on the open seas are small.¹¹²
201. Because a life jacket is worn on the chest, possibly with a buoyant collar, a life jacket will turn the wearer into a head-up position, and tend to support them face up. This maximises the probability of having the head above water, and assists with keeping the airway clear of water, which can avoid a range of

¹¹² Exhibit 1, tab 38



physiological responses that may compromise effective breathing.¹¹³

202. It is to be borne in mind that there is not much water needed to create the circumstances for drowning. Dr Luckin explained that a small quantity of water entering the upper airway may hit the vocal chords resulting in a laryngospasm that obstructs breathing. This quickly leads to unconsciousness and, if the person floats face down, inevitable death by drowning. The positive buoyancy from a life jacket can also free up the wearer's hands (for protection from water) and mitigate the panic response, with its attendant risks to safety.¹¹⁴
203. The deleterious respiratory and cardiovascular effects of a sudden immersion in cold water can to a degree be alleviated for the wearer of a life jacket. Dr Luckin explained that after a sudden fall off a vessel into the water, the competing effects of stress hormones driving the heart rate up, and vagal stimulation driving the heart rate down, can lead to a lethal abnormal heart rhythm, and increase the risk of a heart attack.¹¹⁵
204. Regulations presently require that a vessel such as the deceased's dinghy, being navigated outside protected waters, be equipped with an approved life jacket (or personal floatation device). The regulations do not require that the life jacket be worn at all times during such navigation.
205. Whilst carrying a life jacket on a vessel is a requirement in such circumstances, as a safety measure, it presupposes a person having the time and ability to retrieve it and effectively attach it in the event of a sudden emergency. It is well known that attempting to attach a life jacket after a fall into water is, at the very least, challenging.
206. I am aware that as of March 2017, the Department of Transport issued a Discussion Paper concerning recreational vessel safety equipment, with the aim of reviewing the safety equipment that is required to be carried on recreational craft used in Western Australia on rivers or the seas.¹¹⁶
207. This is the first step in a review process, and includes comprehensive discussion on the wearing of life jackets. It presently involves extensive community and stakeholder

¹¹³ Exhibit 1, tab 38

¹¹⁴ Exhibit 1, tab 38

¹¹⁵ Exhibit 1, tab 38

¹¹⁶ Exhibit 1, tab 42



consultation, and includes industry representatives and representatives of user groups and Government Departments involved in recreational water safety or rescue. The Department expects to release a position paper for public comment later this year.¹¹⁷

208. In terms of the wearing of life jackets, the Discussion Paper reviews the current requirements for wearing a life jacket in Western Australia, and compares these with requirements in the other jurisdictions across Australia. It is readily apparent that in a number of jurisdictions, particular attention is paid to the wearing of life jackets in certain circumstances, for example, in the case of navigation in unprotected waters or open areas, where the vessel is shorter than 4.8 metres (such as the deceased's dinghy).
209. However, these are of course not the only factors. The type of vessel and the manner in which it is powered, the location, whether a person is navigating alone and/or at night time are some of the other factors that elevate the risks and have in certain circumstances militated the wearing of life jackets.¹¹⁸
210. Within the context of life jackets the Discussion Paper contains a comprehensive and rigorous review and seeks feedback about the compulsory wearing of life jackets and in what circumstances wearing should be compulsory.
211. Given the steps already being taken by the Department and taking account of the circumstances of the deceased's death and the range of risk factors that he faced, it is unnecessary for me to make a recommendation on the wearing of life jackets. Clearly, he should have carried an approved life jacket, and he should have been wearing it.
212. By way of comment, the investigation into the circumstances of the deceased's death highlights the ongoing need for all operators of vessels to take safety requirements seriously and to treat the safety requirements under the Navigable Waters Regulations as minimum requirements.

CONCLUSION

213. The deceased's death was an avoidable tragedy, and only he could have avoided it. Being a very experienced fisher, he likely thought

¹¹⁷ Exhibit 1, tab 39.1

¹¹⁸ Exhibit 1, tab 42



that he would be able to navigate close to the shoreline and then up one of the many creeks along that shoreline. However, the conditions at sea (even within Nickol Bay) can be unpredictable. When a change in the prevailing conditions occurs, it can be both rapid and powerful.

214. The combination of an unsuitable vessel and motor, adverse weather conditions, choppy waters, the lack of safety equipment, the inconsistent information that the deceased provided regarding his intended destination, his generally deteriorating health, the fact that he went fishing alone and that he was not necessarily expected at home the next day, all combined to make this tragedy close to unavoidable.
215. A life jacket, flares, and EPIRB are just some of the safety measures that would have assisted the deceased. Informing his friends and the local volunteer marine rescue group of his intended destination and return time would have immeasurably improved the prospects of a successful rescue.
216. However, in this case, the deceased should not have been out on the waters at all. The starting point to this tragedy is his decision to go out in an unseaworthy vessel, with a defective motor.
217. The evidence strongly suggests that the deceased had taken similar risks with his safety on the open waters in the past. It is known that on at least one previous occasion, his vessel capsized and he was forced to make it to the shoreline on his own and walk a considerable distance home. Unfortunately, on this occasion, and not for the first time, he was over-confident, and he dismissed the self-evident risks.
218. The search and rescue efforts were extensive and diligently carried out. The deceased's death was a sad loss to his family and to the wider community. He was a loving son and brother, a good friend to many people, and an interesting and adventurous character. Had he lived, he would have continued to enrich the lives of those he came into contact with.

R V C FOGLIANI
State Coroner
29 March 2018

