



*Western*

*Australia*

## RECORD OF INVESTIGATION INTO DEATH

Ref: 54/2015

I, Sarah Helen Linton, Coroner, having investigated the death of **Zainul MAARIF** and the suspected death of **Zhafran Bin KHAMIS** with an inquest held at the **Perth Coroner's Court, Court 51, CLC Building, 501 Hay Street, Perth, on 17 December 2015** find that:

1. the identity of the deceased person was **Zainul MAARIF** and that death occurred on **7 April 2013** at **Ethel Beach, Christmas Island**, as a result of **immersion**; and
2. the death of **Zhafran Bin KHAMIS** has been established beyond all reasonable doubt and that the identity of the deceased person was **Zhafran Bin KHAMIS** and that death occurred on or about **7 April 2013** in **sea off Ethel Beach, Christmas Island**, as a result of an **unascertained cause**;

in the following circumstances -

### **Counsel Appearing:**

Mr T Bishop assisting the Coroner.

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## INTRODUCTION

1. On 7 April 2013 a group of Christmas Island locals went to Ethel Beach on the Eastern side of Christmas Island. The group planned to swim, snorkel and spearfish off the Ethel Beach Boat Ramp. Some of the group swam out to what is known as the ‘drop off’ and the rest swam south towards Low Point. After being in the ocean for about an hour most of the group returned to the boat ramp. They then noticed that two members of their group, Zhafran Bin Khamis and Zainul Maarif, were missing. After conducting a short search themselves the group alerted the authorities and a full search and rescue mission was launched. Later that evening the body of Mr Maarif was recovered from the ocean. Despite extensive search efforts, the body of Mr Khamis has never been found, although some of his snorkelling equipment and clothing was recovered from the ocean on the day he went missing.
2. Pursuant to s 19(1) of the *Coroners Act 1996* (WA) (**the Act**) a coroner has jurisdiction to investigate a death if it appears that the death is, or may be, a reportable death (as defined in s 3 of the Act). A death is defined in s 3 of the Act to include a “suspected death”.
3. The death of Mr Maarif was a reportable death and was reported to the State Coroner by police. Section 22(2) of the Act permits a coroner who has jurisdiction to investigate a death to hold an inquest if the coroner believes it is desirable. It was decided by the State Coroner that an inquest was desirable in this case.
4. A direction was made by the State Coroner that an inquest should also be held into the suspected death of Mr Khamis pursuant to s 21(2) and 22(1)(e) of the Act. Further, given much of the critical evidence would overlap, the State Coroner directed that the death and suspected death should be investigated at the one inquest.<sup>1</sup>
5. Accordingly, I held an inquest into the death of Mr Maarif and the suspected death of Mr Khamis at the Perth Coroner’s Court on 17 December 2015.
6. The inquest focused primarily on determining whether the death of Mr Khamis could be established to my satisfaction beyond reasonable doubt.
7. The documentary evidence comprised two volumes of a police investigation report prepared by Federal Agent Stephen O’Neill, a

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<sup>1</sup> Pursuant to s 40 of the Act.

member of the Australian Federal Police who was on secondment to Christmas Island at the time of the incident.<sup>2</sup> In addition, some satellite photographs of the Ethel Beach area and Christmas Island were tendered.<sup>3</sup> Oral testimony was also given by Federal Agent O'Neill. The documentary evidence and the oral testimony formed the basis for the facts found below.

## **THE DECEASED**

### **Mr Maarif**

8. Mr Maarif was an Indonesian National. He was married and had five children. He arrived on Christmas Island on 17 April 2008 but was not accompanied by his family.<sup>4</sup>
9. Mr Maarif undertook the duties of a religious cleric and Imam within the Islamic community on Christmas Island. Mr Maarif had been granted a Religious Worker sponsorship on 20 September 2012 and had applied for a temporary Religious Worker visa on 3 October 2012.
10. Mr Maarif was not considered to be a strong swimmer by those who knew him on Christmas Island.<sup>5</sup>

### **Mr Khamis**

11. Mr Khamis was born in Perth on 26 October 1988. He lived for much of his life on Christmas Island with his extended family. At the time of his death he was living on Christmas Island.<sup>6</sup>
12. Mr Khamis was a fit young man who exercised on a regular basis and was a strong swimmer. He knew the waters around Christmas Island well, was experienced at spearfishing and very comfortable in the ocean.<sup>7</sup>

## **ETHEL BEACH BOAT RAMP**

13. The Ethel Beach Boat Ramp is located on the eastern side of Christmas Island, a short distance from Ethel Beach and between Ethel Beach and Low Point. Further south is Lily Beach.

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<sup>2</sup> Exhibits 1 and 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 1, Tab 12 and Tab 19.

<sup>5</sup> Exhibit 1, Tab 19 pgs 18 – 20.

<sup>6</sup> Exhibit 1, Tab 25 pg 33.

<sup>7</sup> ts 13; Exhibit 1, Tab 25 pg 33.

14. The Ethel Beach Boat Ramp is situated a fair distance from the main Christmas Island community. It is an alternate launch and retrieval area for boats when they can't launch out of Flying Fish Cove.<sup>8</sup> It is also a popular area with locals for snorkelling and spearfishing.
15. The terrain in the area is inhospitable. The shoreline south of Ethel Beach Boat Ramp is comprised of jagged limestone rocks. A lot of the rock face is undercut along the shore line and the rocks are very sharp. Most of the shoreline is therefore inaccessible from the water.<sup>9</sup> There are caves and crevices located beneath the surface of the ocean that are also difficult to access.<sup>10</sup>
16. The seas vary from being very rough to quite flat, depending on the time of year.<sup>11</sup> There are also known to be strong currents in the ocean south of the Ethel Beach Boat Ramp as well as undercurrents. If the currents are strong then the water can be dangerous as it is possible to be swept south and have no way to access the shore.<sup>12</sup>

### **THE OUTING TO ETHEL BEACH**

17. On 6 April 2013 a social barbecue was arranged for the Islamic youth on the island and to farewell an Islamic scholar, Mr Hakim, who had been staying with Mr Maarif on a visit from Brisbane. The barbecue was attended by a large number of people from within the Malay Community on Christmas Island. It was suggested during the barbecue that the young male members of the community should have an outing the following day.<sup>13</sup>
18. The following morning the group met for breakfast and decided to go to Muriel Beach, on the western side of Christmas Island, to do some snorkelling and spear fishing. They arrived at the beach mid-morning. One of the men in the group, Mr Gregory McIntosh (who is also known as Isa), assessed the condition of the ocean on arrival. Mr McIntosh is an experienced surfer and swimmer with a good knowledge of the ocean. He noted there was two foot of wind swell pushing onto the rocks. In Mr McIntosh's opinion, entry and exit from the ocean was risky given the conditions, as entry to the water is made by jumping from a 1.5 metre limestone ledge.<sup>14</sup>

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<sup>8</sup> ts 5.

<sup>9</sup> ts 6.

<sup>10</sup> Exhibit 1, Tab 12, pg 4.

<sup>11</sup> ts 5.

<sup>12</sup> ts 6.

<sup>13</sup> Exhibit 1, Tab 19.

<sup>14</sup> Exhibit 1, Tab 19 pgs 18 – 21, pg 24.

19. Mr McIntosh was concerned about the ability of Mr Maarif and Mr Hakim to cope with the conditions at that time, as he had snorkelled with them both in calm water previously and found they were not strong swimmers and their ability to snorkel was very limited.<sup>15</sup> Mr McIntosh was one of the first to get into the water as he wanted to check the conditions first hand out of concern for the other men. Once in the water Mr McIntosh swam quickly away from the rocks then turned and signalled to Mr Maarif and Mr Khamis not to enter the water. Mr McIntosh then returned to the beach and spoke to Mr Maarif. He apologised if he had insulted Mr Maarif's ability to look after himself but explained he did not think Mr Maarif's swimming ability was adequate for the conditions of entry and exit to the ocean. They waited on Muriel Beach until the remainder of the party came out of the water. After stopping for midday prayers and having something to eat the group made the decision to go to Ethel Beach to spear fish as they thought the conditions would be better there.<sup>16</sup>
20. The group arrived at the Ethel Beach Boat Ramp sometime around 2.00 pm. Mr McIntosh looked at the sea conditions and assessed the condition as not pleasant but not dangerous. Others described the sea conditions as being choppy with less than one metre waves, with a slight swell at the boat ramp.<sup>17</sup> Mr McIntosh believed it would be safe for the members of the group to enter and exit the water from the boat ramp (noting there is also an entrance at Ethel Beach on the northern side).<sup>18</sup>
21. The group had no dive plan or buddy system in place for when they entered the water at either Muriel or Ethel Beach. A buddy system is a system put in place by scuba divers and snorkelling groups to match one diver or snorkeler with another to ensure the safety of both.<sup>19</sup> Without any plan or buddy system in place, it was left to each individual to decide who to accompany or whether they would simply swim alone.
22. Mr McIntosh walked into the water alone via the stairs at the end of the boat ramp. On entering the water he swam straight out to the drop off. This is where the seabed drops away into very deep water, about 100 metres from shore.<sup>20</sup> Mr McIntosh was then carried by the current in a southerly direction towards Low Point.

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<sup>15</sup> Exhibit 1, Tab 19 pgs 18 – 20.

<sup>16</sup> Exhibit 1, Tab 19 pgs 22 – 24.

<sup>17</sup> Exhibit 1, Tab 21 pg 14.

<sup>18</sup> Exhibit 1, Tab 19 pgs 25 – 27.

<sup>19</sup> Exhibit 1, Tab 23 pg 33.

<sup>20</sup> Exhibit 1, Tab 20 pg 14.

The visibility was not good due to the disturbance of the sand by the current.

23. Prior to entering the water Mr Maarif was wearing a pair of long black tracksuit style pants, a dark blue t-shirt with red and white bands on the sleeve, blue dive fins, a mask and snorkel. He did not have a spear gun and was not wearing gloves.<sup>21</sup>
24. Mr Khamis was wearing a pair of brown knee length shorts, similar to board shorts, an Arsenal Football Club t-shirt and red Calvin Klein underpants when he entered the water.<sup>22</sup> He was also wearing a pair of black gloves<sup>23</sup> and carrying a spear gun<sup>24</sup> when he entered the water.
25. Mr Maarif and Mr Khamis entered the water together with other members of the group and they also swam in a southerly direction, being carried along by the current.<sup>25</sup>
26. The members of the group did not initially appreciate the strength of the current. It was only when they each turned to swim back towards the boat ramp that they noted the south running current was strong.<sup>26</sup>
27. Mr Hakim turned around first and headed back towards the boat ramp while Mr Maarif and Mr Khamis continued swimming towards Lily Beach with Mr Mohd Ahmad.<sup>27</sup>
28. As other group members also started heading back towards the boat ramp, Mr Ahmad spoke to Mr Maarif and Mr Khamis and suggested that they should head back to the boat ramp with the rest of the group. As they started to head back to the boat ramp Mr Ahmad noticed that Mr Khamis was pulling the top of his dive fin and it appeared that Mr Khamis had a cramp in his foot.<sup>28</sup> Mr Ahmad initially swam ahead of Mr Kahmis and Mr Maarif but he eventually dropped back and told them to swim ahead of him so that he could see them. Mr Ahmad fell behind them and a short time later he lost sight of them due to the very strong current and the rough water. Mr Ahmad ran into another member of the group and asked if he had seen Mr Khamis or Mr Maarif but the other person had not.

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<sup>21</sup> Exhibit 1, Tab 22 pg 19.

<sup>22</sup> Exhibit 1, Tab 23 pg 30.

<sup>23</sup> Exhibit 1, Tab 24 pg 29.

<sup>24</sup> Exhibit 1, Tab 22 pg 30.

<sup>25</sup> Exhibit 1, Tab 20 pg 13.

<sup>26</sup> Exhibit 1, Tab 20, Tab 22.

<sup>27</sup> Exhibit 1, Tab 26 pgs 14 – 15.

<sup>28</sup> Exhibit 1, Tab 26 pg16.

29. Earlier, when Mr McIntosh had realised the strength of the current, he had felt a slight concern for Mr Hakim swimming in those conditions and returned back to find him. Mr McIntosh swam back towards a group of boys from his group who were putting burley in the water to attract fish. The burley had attracted a number of small sharks.<sup>29</sup> Mr McIntosh began to look around for other members of the party and saw Mr Hakim further in towards shore. He swam towards Mr Hakim and when he reached him he noted that Mr Hakim appeared frightened. Mr Hakim had got a cramp in his leg and he asked Mr McIntosh for help to return to the boat ramp.<sup>30</sup> Mr McIntosh towed him back to the boat ramp, moving slowly against the current with some difficulty. They eventually reached the ramp and Mr McIntosh assisted Mr Hakim from the water.<sup>31</sup>
30. Mr McIntosh then re-entered the water to look for Mr Maarif and met Mr Ahmad. When he spoke to Mr Ahmad in the water Mr Ahmad expressed surprise that Mr Maarif and Mr Khamis were not at the boat ramp as they should have been ahead of him. It was at that time that the group realised that something was wrong and that Mr Maarif and Mr Khamis were missing.<sup>32</sup>

### **THE SEARCH FOR THE MISSING MEN**

31. The members of the group began to search the shore and Mr McIntosh climbed a lookout to try to spot anybody who was in the water. Some of the group walked down to Lily Beach to look for the two men there. When they arrived at Lily Beach they spoke to some people on the beach, including a doctor, who confirmed that they had been there since midday and had not seen any snorkellers.<sup>33</sup> The doctor used his mobile phone to telephone the police and report the two missing snorkellers.<sup>34</sup> Mr McIntosh also contacted the police around the same time. That call was received at about 4.00 pm.<sup>35</sup>
32. Zarul Khamis, the deceased's brother, returned to the water with another male, Norezuan Melan in between the boat ramp and Lily Beach. About ten metres from the shoreline they spotted a spear gun lying on the ocean floor. They retrieved the spear gun and Zarul Khamis noted it was similar to the one used by his brother, Mr Khamis, that day.<sup>36</sup> The sea became rougher as they

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<sup>29</sup> Exhibit 1, Tab 19, Tab 20, Tab 21.

<sup>30</sup> Exhibit 1, Tab 25 pg 17.

<sup>31</sup> Exhibit 1, Tab 19.

<sup>32</sup> Exhibit 1, Tab 26 pg 20.

<sup>33</sup> Exhibit 1, Tab 24 pg 24.

<sup>34</sup> Exhibit 1, Tab 25 pg 14.

<sup>35</sup> Exhibit 1, Tab 11, pg 2.

<sup>36</sup> Exhibit 1, Tab 22 pg 30.

continued to search, with the current pushing them towards Lily Beach, and they eventually returned to the ramp and left the water.<sup>37</sup>

33. At a later stage in the afternoon a boat was launched from the boat ramp crewed by a number of the members of the original group, including Zarul Khamis. While searching the water they found a pair of black “Cressi” brand dive gloves they recognised had belonged to Mr Khamis.<sup>38</sup> The gloves were located approximately 100 – 150 metres from shore near Lily Beach.<sup>39</sup>
34. Zarul Khamis and Nasir Abas later re-entered the water and continued to search in the area of Low Point. They recovered a blue shirt with red and white markings from the ocean floor, which Zarul Khamis recognised as having been worn by his brother, Mr Khamis, when he entered the water that day.<sup>40</sup>
35. In the meantime, a Search and Rescue operation was commenced by the Australian Federal Police (AFP).<sup>41</sup> The search operation was conducted on both land and sea in the area and utilised the resources of the AFP, the Royal Australian Navy, members of the Western Australian Police Service Specialised Diving Team, the Dive Master who operated the local Christmas Island Diving Business and members of the local community.<sup>42</sup>
36. When the Royal Australian Naval ship the HMAS Pirie attended the scene they were asked to launch their Rigid Hull Inflatable Boat (RHIB) to assist with the search. The RHIB was launched at 6.00 pm.
37. At about 6.05 pm an AFP officer saw a male person face down in the water, partly submerged below the water’s surface. The person was at the bottom of a cliff face and moving in and out of view due to the strong current flow. The coxswain of the RHIB was directed to this area of the coastline by AFP officers on shore who were shining torches into the water. At the time the RHIB approached the cliff face the swell was approximately three metres in height, with surges up to four metres, and a strong ocean current. The waves were breaking over the rocks. Able Seaman Jack Rochford entered the water at that location at about 6.10 pm and found Mr Maarif’s body submerged in the ocean and wedged between two rocks.<sup>43</sup>

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<sup>37</sup> Exhibit 1, Tab 23 pg 23.

<sup>38</sup> Exhibit 1, Tab 11, pgs 15, 17.

<sup>39</sup> Exhibit 1, Tab 11, pg 15.

<sup>40</sup> Exhibit 1, Tab 11, pgs 15 – 16.

<sup>41</sup> Exhibit 1, Tab 11, pg 2.

<sup>42</sup> Exhibit 1, Tab 11, pg 3.

<sup>43</sup> Exhibit 1, Tab 11, pgs 22., 26.



38. Able Seaman Rochford attempted to swim with Mr Maarif's body but was thrown against the rocks by a wave and sustained three fractured ribs. He returned to the RHIB but then chose to re-enter the water a second time and this time successfully recovered Mr Maarif's body and swam with him to the surface where his body was recovered by the other crew members on the RHIB. Attempts were made to resuscitate Mr Maarif but he exhibited no signs of life and was pronounced life extinct by a doctor just after 7.00 pm.<sup>44</sup>
39. The area where Mr Maarif's body was found is between the Ethel Beach Boat Ramp and Low Point.<sup>45</sup> The currents in the area converge at Low Point, which is a short distance from where the body of Mr Maarif was located.<sup>46</sup>
40. During this time there was no sign of Mr Khamis other than his personal items that had been found by searchers. In total, the personal items found that were identified as belonging Mr Khamis were:
- A pair of "Cressi" brand dive gloves;
  - A pair of brown "Billabong" pants;
  - A pair of black "Calvin Klein" underpants;
  - One yellow dive fin with a grey heel;
  - One "Clubman" brand spear fishing gun; and
  - One "Cressi" brand dive mask.<sup>47</sup>
41. An examination of the items of clothing recovered were examined by police officers and they were noted to be torn in such a way that it raised the possibility that the tearing had been caused by a shark.<sup>48</sup> The clothing was later examined by a forensic chemist with particular experience in fibre and textile examination. She was unable to determine the cause of the damage to the clothing, however contact with sharp rocks, coral or damage by shark teeth could not be excluded. Of note, the damage sustained by the clothing worn by Mr Khamis was noted to have been caused by a cutting and tearing action, whereas the clothing worn by Mr Maarif was only torn.<sup>49</sup>
42. The search for Mr Khamis continued on both the land and sea during daylight hours for another week until a decision was made to suspend the search on 14 April 2013. The decision to suspend the search was based on the fact that the timeframe for survival

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<sup>44</sup> Exhibit 1, Tab 12, pg 5.

<sup>45</sup> Exhibit 1, Tab 11, pgs 1 - 2.

<sup>46</sup> Exhibit 1, Tab 5, pg 2.

<sup>47</sup> Exhibit 1, Tab 11, pg 25.

<sup>48</sup> Exhibit 1, Tab 11, pg 23.

<sup>49</sup> Exhibit 1, Tab 11, pg 24.

had expired (estimated to have ended on 8 April 2013)<sup>50</sup> and, given the extensive nature of the search already conducted, there was considered to be little probability that the body of Mr Khamis would be located.<sup>51</sup>

### **CAUSE AND MANNER OF DEATH – MR MAARIF**

43. At the request of the deceased's family, taking account of their religious beliefs, a full post mortem examination of the deceased was not conducted.
44. On 10 April 2014 an external examination only of the body of Mr Maarif was made by a forensic pathologist, Dr D M Moss. Superficial abrasions and lacerations were noted as well as changes to the hands and feet consistent with immersion. At the conclusion of the examination, and taking into account the known history of events, Dr Moss formed the opinion that the cause of death was consistent with immersion (drowning).<sup>52</sup>
45. I accept the conclusion of Dr Moss as to the cause of death and, taking into account all of the evidence before me, I find that the deceased died as a result of immersion.
46. Further, I find that the manner of Mr Maarif's death was by way of accident.

### **CAUSE AND MANNER OF DEATH - MR KHAMIS**

47. Following the events on 7 April 2013 Mr Khamis has not made any contact with his mother, father or siblings.<sup>53</sup> All the evidence suggests he would have made contact with his family and friends if he was able to do so. There has been no activity recorded on his bank account, other than pre-arranged automated transactions, since the day of his disappearance.<sup>54</sup>
48. As noted above, many of the items Mr Khamis had in his possession that day in the water were found, and even more tellingly, some of the items of clothing he was wearing were found floating in the water during the search. The fact that the clothing items were torn suggests Mr Khamis came into contact with rocks or coral or even a shark, while wearing them.

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<sup>50</sup> ts 8.

<sup>51</sup> Exhibit 1, Tab 11, pg 3.

<sup>52</sup> Exhibit ,1, Tab 6.

<sup>53</sup> ts 12.

<sup>54</sup> Exhibit 1, Tab 10.

49. I am satisfied on the basis of all the evidence before me that the death of Mr Khamis has been established beyond reasonable doubt and I so find.
50. Based upon all of the evidence he collated, and his personal knowledge of the area, Federal Agent O'Neill concluded that Mr Khamis was most likely washed out to sea by the strong current and rough seas and drowned.<sup>55</sup> Federal Agent O'Neill noted that due to the strong currents in the area, if you get swept south it would be almost impossible to get back to land.<sup>56</sup>
51. Federal Agent O'Neill also acknowledged that sharks have been seen in the area and he had himself seen sharks in the area, although he had never felt threatened by them. He was not aware of any reported shark attacks in the area but was aware of a report of two divers who dived from Ethel Beach out to the drop off and were followed by an oceanic Great White shark up onto the reef.<sup>57</sup> I have noted above that some of the swimming group were seen to put burley into the water to attract sharks for spearfishing that day, and some small sharks were seen in the vicinity.
52. In the circumstances, although I am satisfied that Mr Khamis is deceased, I am unable to be satisfied beyond reasonable doubt that the cause of Mr Khamis' death was as a result of immersion (drowning), as there is also the possibility he received life-threatening injury from the rocks or an encounter with a shark. Nevertheless, based upon either cause of death, the manner of death would remain the same.
53. Therefore, while I find that the cause of Mr Khamis' death is unascertained, I find that the manner of Mr Khamis' death was by way of accident.

## **CONCLUSION**

54. On 7 April 2013 a group of young male Christmas Island locals went snorkelling and spear fishing from Ethel Beach Boat Ramp. The group underestimated the sea conditions at the time they entered the water, not appreciating the strength of the currents. By the time they realised the currents were strong they had been pushed south and had to make their way against the current to reach the boat ramp and safety.

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<sup>55</sup> Exhibit 1, Tab 11, pg 27.

<sup>56</sup> ts 6 – 7.

<sup>57</sup> ts 9.

55. Most of the members of the group managed to make their way safely to the boat ramp, although some of them required assistance and found the passage tiring and difficult. Mr Khamis and Mr Maarif also attempted to do so, but for some reason they both experienced difficulties in the rough ocean conditions and never made it to shore. Mr Maarif drowned in the waters near the boat ramp and his body was eventually found by members of the search and rescue team. Sadly for Mr Khamis' family, his body has never been found, although I am satisfied Mr Khamis also died that afternoon.

S H Linton  
Coroner  
January 2016