



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 80/19

I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the deaths of **Uock PHAM, Justin Michael O'NEILL and Jacob Tuan PHAM** and the suspected death of **Tuan PHAM** (together referred to as "the deceased persons") with an inquest held at **Perth Coroner's Court, Court 85, CLC Building, 501 Hay Street, Perth, on 6 December 2019** find that the identity of the deceased persons, was as follows:

Uock PHAM and that death occurred on or about **4 October 2018** in the waters of the Indian Ocean near **Five Fathom Bank, west of Mewstone Rocks, from an unascertained cause;**

Justin Michael O'NEILL and that death occurred on or about **4 October 2018** in the waters of the Indian Ocean near **Five Fathom Bank, west of Mewstone Rocks, from immersion;**

Jacob Tuan PHAM and that death occurred on or about **4 October 2018** in the waters of the Indian Ocean near **Five Fathom Bank, west of Mewstone Rocks, from immersion;** and further;

I find that the death of **Tuan PHAM** has been established beyond all reasonable doubt, and the identity of the deceased person was **Tuan PHAM** and that death occurred on or about **4 October 2018** in the waters of the **Indian Ocean near Five Fathom Bank, west of Mewstone Rocks, from an unascertained cause.**

Counsel Appearing:

Sergeant L Housiaux appeared to assist the Coroner.

Mr J Carroll (State Solicitor's Office) appeared on behalf of the Western Australian Police Force (Police) and the Department of Transport (Department).

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INTRODUCTION

1. On 7 June 2019, on the basis of the evidence contained in a police report with respect to the disappearance of Mr Tuan Pham, the State Coroner determined that she had reasonable cause to suspect that he had died and that his death was a “reportable death”.¹
2. Accordingly, pursuant to section 23(1) of the *Coroners Act 1996 WA* (the Act), the State Coroner directed that the suspected death of Mr Tuan Pham be investigated.²
3. Further, on 7 June 2019, the State Coroner made a direction under section 40 of the Act that the deaths of Mr Uock Pham, Mr Justin Michael O’Neill and Mr Jacob Tuan Pham and the suspected death of Mr Tuan Pham, be investigated at one inquest.³
4. In accordance with the directions made by the State Coroner, I held an inquest on 6 December 2019, which family members of the deceased persons attended.⁴
5. The documentary evidence adduced at the inquest included independent reports concerning the deaths of the deceased persons by the Department and the Police. The Brief consisted of one volume.
6. The following witnesses gave evidence at the inquest:
 - i. Sen. Const. Nigel Brown, (Police Investigator);
 - ii. FC Const. Brendan Packard, (Water Police);
 - iii. Ms Sue Matthews, (Senior Investigator - Marine Safety); and
 - iv. Mr Ray Buchholz, (General Manager - Marine Safety⁵).
7. The inquest focused on the circumstances of the deaths of Mr U Pham, Mr O’Neill and Mr J Pham and the suspected death of Mr T Pham.

¹ Sections 23(1) & 3, *Coroners Act 1996* (WA)

² Direction by State Coroner, contained in letter to Commissioner of Police (07.06.19)

³ Direction by State Coroner, contained in letter to Commissioner of Police (07.06.19)

⁴ Section 23(2), *Coroners Act 1996* (WA)

⁵ Marine Safety is a branch of the Department of Transport

THE EVENTS OF 3 - 4 OCTOBER 2018

Overview^{6,7}

8. On Wednesday, 3 October 2018, the deceased persons set off from Woodman Point, Coogee, in a recreational vessel called the *Yeah Buoy*, on what was intended to be an overnight fishing trip to Rottnest Island. They never returned.
9. On Friday, 5 October 2018, the bodies of Mr J Pham and Mr O'Neill were found floating in the ocean on the south-west side of Garden Island in an area known as Five Fathom Bank.
10. On Wednesday, 7 November 2018, human remains were found on the seabed, west of Mewstone Rocks. DNA analysis established that the remains belonged to Mr U Pham.
11. The body of Mr T Pham has never been located.

Preparations and departure

12. Preparations for the fishing trip started on 2 October 2018. At about 11.00 am that day, Mr Ronald Cronin, a friend of both Mr J Pham and Mr O'Neill, arrived at Mr U Pham's home to help prepare the *Yeah Buoy* for the trip the next day. Mr Cronin had been intending to go on the trip, but he became busy with other matters and was feeling unwell, so he didn't end up going.⁸
13. Mr Cronin helped Mr J Pham clean the *Yeah Buoy* and loaded a large white esky and fishing rods and reels into the vessel. Mr Cronin says that Mr J Pham handed him an emergency position indicating radio beacon (EPIRB) and he put it in the boat, although he could not recall where.⁹
14. Mr Cronin says there was talk about mounting the EPIRB (which was brand new and had an orange base) under the steering area, but he did not actually see this happen.¹⁰

⁶ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, pp2-4

⁷ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p17

⁸ Exhibit 1, Tab 22A, Statement - Mr R Cronin, paras 3-10

⁹ Exhibit 1, Tab 22A, Statement - Mr R Cronin, paras 12-17

¹⁰ Exhibit 1, Tab 22A, Statement - Mr R Cronin, paras 18-19

15. Between 12.30 pm and 1.00 pm, Mr O'Neill and Mr U Pham arrived back from doing some shopping. Mr O'Neill told Mr Cronin they planned to leave Woodman Point before 12.30 pm the following day. Mr Cronin says he finished helping with the preparations and went home at 2.30 pm.¹¹
16. At about 11.00 am on 3 October 2018, Mr T Pham arrived at Mr U Pham's house and assisted with hooking up the boat trailer to the back of his car. The deceased persons left Mr U Pham's home and travelled to Woodman Point. They were in good spirits and they departed from Woodman Point at around 12.00 pm on 3 October 2018, as planned.¹²
17. Before he left, Mr U Pham discussed the trip plan with his step-daughter, Ms Ashleigh Hough. He told her that he intended to leave Woodman's Point and travel straight to Rottneest Island, where they would spend the night. Mr U Pham said he would then return to the mainland the following day, using the reverse of the course he had gone out on.¹³

Communications with the family

18. At about midday on 3 October 2018, Ms Shirley Sloan tried calling her partner, Mr T Pham, but there was no reply.¹⁴ Meanwhile, at about 3.00 pm on 3 October 2018, Mr O'Neill's fiancé, Ms Hough sent a text message to her brother, (Mr J Pham) asking how the trip was going. He responded saying they were "*going fine*". Ms Hough jokingly replied that he needed to try harder and have more news for her the following day.¹⁵
19. During the day on 3 October 2018, Mr Cronin checked the Bureau of Meteorology app on his mobile and noticed "*a storm was on the way*". He called Mr O'Neill's mobile to warn him but Mr O'Neill said that both he and Mr U Pham were already aware of the approaching storm.¹⁶

¹¹ Exhibit 1, Tab 22A, Statement - Mr R Cronin, paras 20-24

¹² Exhibit 1, Tab 19, Statement - Ms A Hough, paras 17-18 & 21

¹³ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 39-40

¹⁴ Exhibit 1, Tab 20, Statement - Ms S Sloan, paras 25-26

¹⁵ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 23-24

¹⁶ Exhibit 1, Tab 22B, Statement - Mr R Cronin, paras 4-6

20. After she finished work on 3 October 2018, Mr U Pham's daughter, Ms Jiordanne Pham, called her brother, Mr J Pham via Messenger. She told him about a severe weather warning she had heard on the radio whilst at work. She also spoke to her father Mr U Pham who told her not to worry and that "*we will be in the bay at Rottnest*".¹⁷
21. At about 6.10 pm on 3 October 2018, Ms Sloan sent a text message to Mr U Pham asking if they were at Rottnest Island. She received a reply from Mr U Pham at 10.25 am on 4 October 2018, saying that they were.¹⁸
22. At around 10.00 am on 4 October 2018, Ms J Pham called her father, and after a few attempts she was able to speak to him. He said the weather hadn't been too bad the night before and that they planned to be home "*by dark*".¹⁹
23. Meanwhile at around 10.00 am on 4 October 2018, Ms Hough sent text messages to Mr J Pham and her father Mr U Pham. She received replies from both men at around 10.30 am. The responses were to the effect that the fish were not biting much but everyone was happy and they were slowly making their way home and would be back before dark.²⁰
24. At 2.23 pm on 4 October 2018, Mr Angus McFarlane, a friend of Mr J Pham's, called and spoke to him by phone. Mr J Pham said that "*everything was good*" and that they would be back on the mainland at about 4.30 pm. They agreed to meet up once Mr J Pham was back. Mr McFarlane called his friend again at 6.19 pm that evening, but there was no answer.²¹
25. At about 2.30 pm on 4 October 2018, Ms Sloan sent a further text message to Mr U Pham asking if the deceased persons were back on the mainland, but received no reply.²² At about the same time, Mr Cronin called Mr O'Neill who said they were fishing around Rottnest Island and had caught a couple of fish. They agreed to catch up when Mr O'Neill was back on the mainland.²³

¹⁷ Exhibit 1, Tab 23, Statement - Ms J Pham, paras 5-8

¹⁸ Exhibit 1, Tab 20, Statement - Ms S Sloan, paras 27-28

¹⁹ Exhibit 1, Tab 23, Statement - Ms J Pham, paras 10-13

²⁰ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 26-27

²¹ Exhibit 1, Tab 21, Statement - Mr A McFarlane, paras 2-8

²² Exhibit 1, Tab 20, Statement - Ms S Sloan, paras 29-30

²³ Exhibit 1, Tab 22B, Statement - Mr R Cronin, paras 7-9

26. Ms Hough says she was later advised that two of Mr O'Neill's friends had spoken to him by phone between about 2.00 pm and 2.30 pm on 4 October 2018. Mr O'Neill had reportedly said that they were all fine but were not having much luck catching any fish and were on the way home.²⁴ Clearly, one of those friends was Mr Cronin.
27. Ms Hough sent further texts to her brother and father at about 6.30 pm on 4 October 2018, but received no reply. Initially she was not alarmed because she assumed the deceased persons were busy getting the boat out of the water. However, by about 7.00 pm, Ms Hough was becoming concerned and sometime before 8.00 pm, she messaged her sister, Ms J Pham, to see if she had heard anything.^{25,26}
28. Ms J Pham checked security cameras at Mr U Pham's home using her mobile phone. They showed nothing, and she went to Ms Hough's home at about 8.20 pm, so they could discuss what to do next. They watched the security cameras and tried calling the mobile phones of Mr J Pham, Mr U Pham and Mr T Pham, but received no reply.^{27,28}
29. By now, Ms Hough and Ms J Pham were very concerned about the non-arrival of *Yeah Buoy*. At 9.00 pm, Ms Hough contacted the WA Water Police to report that the vessel was overdue and had been expected to be back before 7.00 pm.^{29,30}
30. On receiving Ms Hough's report, the Water Police Coordination Centre arranged for a rescue vessel based at Fremantle to deploy. Mr T Pham's car and trailer were found at the Woodman Point boat ramp and multiple radio calls on the marine frequency and calls to the three mobile phones known to be on board the *Yeah Buoy* went unanswered. Attempts to locate the positions of those mobile phones using "Ping Assist" were also unsuccessful.³¹

²⁴ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 42-43

²⁵ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 28-30

²⁶ Exhibit 1, Tab 23, Statement - Ms J Pham, paras 14-15

²⁷ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 31-35

²⁸ Exhibit 1, Tab 23, Statement - Ms J Pham, paras 17-22

²⁹ Exhibit 1, Tab 34, Report - FC Const. B Packard, p4

³⁰ Exhibit 1, Tab 23, Statement - Ms J Pham, para 23

³¹ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp6-7

THE SEARCH FOR THE DECEASED PERSONS

Overview of the search

31. On 4 October 2018, First Class Constable Brendan Packard (Officer Packard) was the on-call marine and safety rescue officer. He assumed responsibility for the search operation conducted between 4 and 9 October 2018.³²
32. During the search for the deceased persons, approximately 400 square nautical miles of ocean was searched, including the ocean between Rottneest Island and Garden Island. A total of 5,000 square metres of seabed was also searched by nine police divers using three Water Police vessels. A total of 111 volunteer marine rescue personnel participated in the search.^{33,34,35,36,37}
33. The following resources were deployed:³⁸
 - i. *4 October 2018*: two marine rescue units (MRU) and rangers on Rottneest Island;³⁹
 - ii. *5 October 2018*: six aircraft including the police helicopter and 13 marine rescue units (MRU);^{40,41}
 - iii. *6 October 2018*: three aircraft and 10 MRU;^{42,43}
 - iv. *7 October 2018*: one aircraft, five MRU and two jet-skis;^{44,45} and
 - v. *8-9 October 2018*: targeted patrols were carried out by Water Police and the Police Air Wing after search operations were scaled back.⁴⁶

³² Exhibit 1, Tab 34, Report - FC Const. B Packard, pp4-5

³³ Exhibit 1, Tab 39, Report - Police Dive Squad, p11

³⁴ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp13-33 and ts 06.12.19 (Packard), pp34-35

³⁵ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, pp3-5

³⁶ Exhibit 1, Tab 41, MARSAR Debrief - FC Const. B Packard, p3

³⁷ Exhibit 1, Tab 42, Slideshow - Search debrief, FC Const. B Packard (19.10.18)

³⁸ See also: ts 06.12.19 (Packard), p36

³⁹ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp7-9

⁴⁰ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp16-18

⁴¹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, pp3-5

⁴² Exhibit 1, Tab 34, Report - FC Const. B Packard, pp19-21

⁴³ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p5

⁴⁴ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp22-25

⁴⁵ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p5

⁴⁶ Exhibit 1, Tab 34, Report - FC Const. B Packard, p26-31

Search aircraft

34. In accordance with Police policy, Officer Packard contacted the on-call officer at the Police Air Wing (PAW) to request assistance in the form of search and rescue aircraft. Officer Packard drew up plans of his proposed search areas and each time he obtained further information, he contacted the PAW to renew his request for search aircraft.⁴⁷ Officer Packard said that aerial searches can be undertaken at night and that search aircraft are equipped with heat sensing and other specialist equipment for this purpose.⁴⁸
35. Officer Packard created his proposed search area maps using modelling software called SARMAP. This software enables the user to enter a range of variables including wind speed, data from wave rider buoys and the speed and direction of ocean currents. The SARMAP system uses the data entered to predict the movement of drifting objects with remarkable accuracy and this allows a more targeted search to be conducted.⁴⁹
36. Officer Packard also factored in information obtained from “pings” to the mobiles known to be on board the *Yeah Buoy*.⁵⁰ The latest data came from the phone of Mr J Pham, and showed his mobile had been switched off or become inoperative at 6.30 pm on 4 October 2018 in the vicinity of Fremantle, in an area that included Garden Island, Straggler’s Reef.⁵¹
37. The on-call officer at the PAW on 4 October 2018, was the officer in charge of the PAW, Superintendent John Leembruggen (Officer Leembruggen). He was initially contacted by Officer Packard at 9.53 pm and told that the *Yeah Buoy* was overdue. Officer Packard contacted Officer Leembruggen again at 10.30 pm requesting search aircraft.⁵² Officer Packard made a total of 12 calls to the PAW, but was unable to obtain search aircraft until the morning of 5 October 2018.⁵³

⁴⁷ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7 and ts 06.12.19 (Packard), p26 & pp46-47

⁴⁸ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7 and ts 06.12.19 (Packard), p25 & pp26-27

⁴⁹ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7 and ts 06.12.19 (Packard), pp31-32

⁵⁰ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7 and ts 06.12.19 (Packard), p32 & p47

⁵¹ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp9-10 and ts 06.12.19 (Packard), pp28-31

⁵² Statement, Superintendent Leembruggen (19.12.19), paras 1 & 3-7

⁵³ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7 and ts 06.12.19 (Packard), p26 & pp46-47

38. Officer Leembruggen told Officer Packard that no PAW rotary assets were available. There had been pilot resignations and newly employed pilots were undergoing induction training. The only available pilot had already completed his maximum flight hours for the day and therefore, could not be deployed.⁵⁴
39. When he was contacted at 10.30 pm on 4 October 2018, Officer Leembruggen says he was told that the proposed search area (based on mobile phone triangulations), extended from City Beach to the west of Rottneest Island, down to Rockingham and back to City Beach.⁵⁵
40. Because of the vastness of the proposed search area, Superintendent Leembruggen did not consider that either the RAC Rescue helicopter, or the Challenger Jet (an aircraft contracted to the Australian Maritime Safety Authority), both of which were in fact available at that time, would be suitable. He asked Officer Packard to identify a more defined search area so that his request could be reconsidered.⁵⁶
41. For his part, Officer Packard, who has a diploma in search and rescue techniques, says he had created two search areas. One was larger than the other and both were specifically designed for the aircraft he had requested.⁵⁷ As Officer Packard explained at the inquest:
- So I prepared...two search areas, a...large square is for a plane, namely, the Challenger Jet, which is a bombardier jet that can travel at high altitudes, high speed, has all the search and rescue ViDAR, radar, heat cameras on there. It's a self-contained searching platform. The large square was designed and formulated for that. And there's also a smaller square which was for helicopter assets, if granted.⁵⁸
42. In any event, between 10.45 pm on 4 October 2018 and 1.00 am on 5 October 2018, Officer Leembruggen made various enquiries about the availability of the RAC rescue helicopter and the Challenger Jet.⁵⁹

⁵⁴ Statement, Superintendent Leembruggen (19.12.19), para 8

⁵⁵ Statement, Supt. Leembruggen (19.12.19), para 10

⁵⁶ Statement, Supt. Leembruggen (19.12.19), para 11

⁵⁷ ts 06.12.19 (Packard), p27

⁵⁸ ts 06.12.19 (Packard), p25

⁵⁹ Statement, Supt. Leembruggen (19.12.19), paras 12-17

43. The deployment of the Challenger Jet was approved at 1.00 am on 5 October 2018 and the use of the RAC was approved at 1.37 am the same day. Officer Leembruggen passed this information on to Officer Packard, but unfortunately, fog conditions prevented both aircraft from getting airborne until 5.50 am on 5 October 2018.^{60,61}
44. Officer Packard expressed the view that it would have been helpful if search aircraft had been mobilised when first requested and it is obviously unfortunate that the aircraft could not be deployed earlier.⁶² Officer Leembruggen's decision not to seek approval to deploy either the RAC rescue helicopter or the Challenger Jet at an earlier stage appears to have been based on the fact that the initial search area was too large and needed to be refined.⁶³
45. However, it makes sense that in the initial stages of any search, the identified search area will usually be quite broad and will be refined as further information comes to hand. The sad irony in this case, is that by the time approval was obtained for the deployment of both search aircraft, weather conditions had intervened to prevent them from taking off.
46. If this has not already occurred, I recommend that the PAW undertake a review of its approval procedures relating to requests for search aircraft, to ensure that there is an emphasis on deploying search aircraft at the earliest possible stage in any search operation.

Rescue vessels

47. At about 9.00 pm on 4 October 2018, a police rescue vessel began patrols at Woodman Point, Garden Island, Carnac Island, Rottnest Island, Mewstone Fish Rocks, Stragglers Reef and Five Fathom Bank. Rottnest Island rangers were contacted and asked for assistance. They conducted vehicle and marine patrols of the island in an attempt to locate the *Yeah Buoy*, but were unsuccessful.⁶⁴

⁶⁰ Statement, Supt. Leembruggen (19.12.19), paras 18-23

⁶¹ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7 and ts 06.12.19 (Packard), p25 & p47

⁶² ts 06.12.19 (Packard), p25

⁶³ Statement, Supt. Leembruggen (19.12.19), para 10

⁶⁴ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp7-9

48. A second rescue vessel was tasked to conduct searches between Fremantle Port and Rottnest Island, incorporating all navigational markers and points of interest. This included a circumnavigation of Rottnest Island. Satellite tracking devices fitted to both rescue vessels show that the searches they conducted were extensive.⁶⁵

Timeframe for survival

49. On 5 October 2018, Police consulted with Dr Paul Luckin, a consultant anaesthetist based in Queensland, who is also an expert in search and rescue operations. Dr Luckin advised that the “time frame for survival” (TFFS) for the deceased persons (assuming immersion in the ocean), was 18 hours from the time of immersion. The TFFS for the deceased persons was thought to have expired at about 12.30 pm on 5 October 2018.⁶⁶

Bodies of two deceased found along with debris

50. At 1.24 pm on 5 October 2018, the body of Mr J Pham was located southwest of Garden Island near Five Fathom Bank. The body of Mr J O’Neill was located in the same general area at 5.40 pm that day.^{67,68}
51. In the period 5 - 7 October 2018, a number of items of debris from the *Yeah Buoy*, along with fishing items, boating gear and clothing were located around the south and west sides of Garden Island. The items found included: backpacks, a portable battery pump, clothing and pieces of the *Yeah Buoy*’s carpeted cabin floor.^{69,70}

Diving operations

52. At about 8.10 am on 28 October 2018, a member of the public reported seeing an esky tied to an orange anchor rope that appeared to be attached to the bow rail of a submerged vessel, approximately four nautical miles west of Mewstone Rocks.⁷¹

⁶⁵ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp8-9

⁶⁶ Exhibit 1, Vol. 1, Tab 36, Email - Dr P Luckin (23.10.18) and ts 06.12.19 (Packard), p37

⁶⁷ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p4

⁶⁸ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p17

⁶⁹ Exhibit 1, Tab 34, Report - FC Const. B Packard, pp29-32

⁷⁰ Exhibit 1, Tab 37, List of items recovered during the search

⁷¹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p12

53. Police divers were deployed to the area and on 29 October 2018, they recovered four fishing rods and reels from the seabed at a depth of 20 metres. On 31 October 2018, Ms Sloan confirmed that these items, along with a shirt and a boot (which had also been found during the search operation), belonged to Mr T Pham.^{72,73}
54. Weather conditions did not allow dive operations to resume until 7 November 2018, when police divers recovered fishing and boating items, and the remains of what appeared to be a human foot.⁷⁴
55. On 8 and 9 November 2018, police divers continued their searches and found additional items including clothing and a white boat canopy. Weather conditions prevented further dives for almost a week, but at 11.22 am on 16 November 2018, police divers located the hull of the *Yeah Buoy*. It was lying upside down on the seabed, in 20 metres of water. A significant amount of debris was scattered about the area but there were no obvious signs of human remains.⁷⁵
56. The wreckage of the *Yeah Buoy* was recovered from the seabed by police divers on 21 November 2018 and transported to the mainland for analysis.⁷⁶

Comments regarding the search

57. It is unfortunate that Officer Packard's initial requests for search aircraft were not accommodated. Had they been, there is at least a possibility that the search outcome may have been different.
58. However, numerous aircraft were subsequently made available during the period 5 - 9 October 2018 and those aircraft, along with numerous rescue vessels, the Police helicopter and a number of jet-skis, conducted a thorough and comprehensive search of an extensive area of ocean.

⁷² Exhibit 1, Tab 20, Statement - Ms S Sloan, paras 33-39

⁷³ Exhibit 1, Tab 39, Report - Police Dive Squad, p4

⁷⁴ Exhibit 1, Tab 39, Report - Police Dive Squad, pp6-7

⁷⁵ Exhibit 1, Tab 39, Report - Police Dive Squad, pp7-10

⁷⁶ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p13

59. I am satisfied that every effort was made to locate the deceased persons. The comprehensive nature of the search is evidenced by the fact that the bodies of Mr J O'Neill and Mr J Pham and the remains of Mr U Pham were recovered. Further, the wreckage of the *Yeah Buoy* was located and recovered, along with numerous items of gear, clothing and debris.
60. All personnel involved in the search for the deceased persons and the police divers are to be commended for their efforts and professionalism in often difficult conditions.



Photo 1: The vessel *Yeah Buoy*

WHAT HAPPENED TO THE YEAH BUOY?

Description of the vessel

61. Mr U Pham's vessel *Yeah Buoy* was a 5.4 metre, fibreglass, 'V' monohull design half cabin boat manufactured by Caribbean Boats in 1976. The vessel was not fitted with floatation devices and was powered by a 115 horsepower Evinrude outboard motor. The vessel was equipped with hydraulically operated lift arms, to raise and lower the outboard motor.^{77,78}
62. The evidence supports the conclusion that the *Yeah Buoy* was stolen from its original owner between 3 and 5 February 2018. When it was sold to Mr U Pham on 23 February 2018,^{79,80} the vessel was unregistered but there is no evidence that he was aware that it had been stolen. Mr U Pham received a signed receipt from the seller and he subsequently completed a statutory declaration of boat ownership in order to have the vessel registered.⁸¹
63. Mr U Pham made a number of modifications to the *Yeah Buoy*, including enclosing the forward cabin area of the vessel with a permanent plywood partition and door. He also added carpets and new decking to this area.⁸² The vessel was re-registered on 23 July 2018, having been given a new hull identification number as part of the registration process.^{83,84}
64. As to the impact that the modifications to the *Yeah Buoy* may have had on the incident, Senior Inspector Sue Matthews noted:

There is no evidence to suggest that the modifications made to the vessel prior to 4 October 2018 adversely affected its stability. This is due to the unknown weight variables including the weight of the materials used and the weight of fuels and other objects which may have been on board at the time.⁸⁵

⁷⁷ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p8 and ts 06.12.19 (Matthews), pp53-54

⁷⁸ Exhibit 1, Tab 28, Statement - Mr J Phillips, paras 20 & 48 and ts 06.12.19 (Matthews), p40

⁷⁹ Exhibit 1, Tab 28, Statement - Mr J Phillips, paras 43-47

⁸⁰ Exhibit 1, Tab 27, Report - Det. Sen. Const. A Giftakis

⁸¹ Exhibit 1, Tab 31, Statutory declaration of boat ownership (19.07.18) and receipt from seller (23.02.18)

⁸² Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p8 and ts 06.12.19 (Matthews), p54

⁸³ Exhibit 1, Tab 31, New boat registration form

⁸⁴ Exhibit 1, Tab 29, Statement - Mr J Mantle(19.10.18)

⁸⁵ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p17 and see also: and ts 06.12.19 (Matthews), p53

65. Mr U Pham was said to take marine safety requirements seriously, and to have ensured that the *Yeah Buoy* was equipped with all required safety equipment. This is consistent with the fact that a fire extinguisher and the housing of a marine radio were located amongst the wreckage of the *Yeah Buoy* and a bailing bucket, which may have come from the vessel, was also located.^{86,87,88}
66. On 9 October 2018, an EPIRB that was GPS enabled, was found floating in the ocean about 27.5 kilometres west of Mindarie.⁸⁹ A GPS enabled EPIRB is more accurate and provides a search area of 120 metres as opposed to 5,000 metres for a non-GPS EPIRB.⁹⁰
67. There is evidence that the EPIRB that was found had been sold at a store in Mandurah that Mr U Pham was known to have visited. Further, based on where the EPIRB was located, drift predictions suggested that it was likely to have come from the area where the *Yeah Buoy* was found.⁹¹ In my view, this evidence and Mr Cronin's observations, strongly suggest that this EPIRB was on board the *Yeah Buoy* at the relevant time.
68. It is unclear whether lifejackets were on board the *Yeah Buoy* at the time of the incident. Despite an extensive sea and air search, no lifejackets were seen or recovered and neither Mr J Pham nor Mr O'Neill were wearing lifejackets when their bodies were found. This leaves open the possibility that lifejackets were not being carried.^{92,93,94}
69. However, according to its original owner, the *Yeah Buoy* was equipped with five or six lifejackets when it was stolen⁹⁵ and Ms Hough saw an unspecified number of lifejackets on the vessel on 9 September 2018. In addition, Mr U Pham was said to be "serious" about his vessel and to have ensured all required safety equipment was on-board.^{96,97}

⁸⁶ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p16 and ts 06.12.19 (Matthews), p41

⁸⁷ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p2

⁸⁸ Exhibit 1, Tab 50, Statement - Mr R Buchholz, paras 15-16

⁸⁹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p5

⁹⁰ Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, p10

⁹¹ Exhibit 1, Tab 38, EPIRB sales information, drift predictions & email from Sen. Const. B. Packard (12.10.18)

⁹² Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p6

⁹³ Exhibit 1, Tab 37 - List of items located during search operation

⁹⁴ ts 06.12.19 (Matthews), pp42-43

⁹⁵ Exhibit 1, Tab 28, Statement - Mr J Phillips, paras 45-47

⁹⁶ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p2 & p15

⁹⁷ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7

70. If lifejackets were being carried on the *Yeah Buoy*, they may have been stored in an inaccessible area of the boat, meaning that they could not be reached before the vessel sank. This would explain why neither Mr J Pham nor Mr O'Neill were wearing lifejackets when their bodies were found.⁹⁸

Qualifications and experience of those on-board

71. Mr T Pham obtained a recreational skipper's tickets on 1 October 2014 whilst Mr U Pham obtained his on 16 January 2015.⁹⁹ Neither Mr J Pham or Mr O'Neill held recreational skipper's tickets, although Mr O'Neill was said to have been intending to obtain one.^{100,101}
72. Mr T Pham was described as a very experienced skipper and a keen fisher, who regularly went fishing around Cockburn Sound.¹⁰² However, the trip to Rottnest Island was said to have been either the first, or one of the few times, that the vessel had undertaken an extended trip in open waters.^{103,104,105}

Weather conditions 3 - 4 October 2018

73. In addition to standard weather forecasts, the Bureau of Meteorology (BOM) issues nautical forecasts which indicate likely wind speed and direction and sea states for the relevant period. A notice on the BOM website about nautical forecasts points out that wind gusts can be 40% higher than forecast. In addition, the significant wave height is noted to be the average of the highest one-third of the waves recorded and the maximum wave height can be up to twice the height mentioned in the forecast.¹⁰⁶
74. At the time of the incident, a storm front had passed to the south of Perth and as a result, "*residual weather conditions*" remained.¹⁰⁷

⁹⁸ Exhibit 1, Tab 34, Report - FC Const. B Packard, p33 and ts 06.12.19 (Matthews), p58, p60 & p65

⁹⁹ Exhibit 1, Vol. 1, Tab 30, Recreational Skipper's Ticket records

¹⁰⁰ Exhibit 1, Vol. 1, Tab 30, Email and attachments - Ms S Wenn, Department of Transport (18.10.18)

¹⁰¹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p8

¹⁰² Exhibit 1, Tab 20, Statement - Ms S Sloan, paras 4-5

¹⁰³ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p2

¹⁰⁴ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p15

¹⁰⁵ Exhibit 1, Tab 34, Report - FC Const. B Packard, p7

¹⁰⁶ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p5 & p15 and ts 06.12.19 (Matthews), p52

¹⁰⁷ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p15

75. The nautical forecast for 3 October 2018 included a strong wind warning for Perth local waters. Winds were east to south-easterly at 28 - 46 kilometres per hour, gusting up to 55 kilometres per hour by evening.^{108,109}
76. A low pressure system off-shore was expected to deepen and move south during the following day and there was an 80% chance of rain, with the chance of a thunderstorm. A swell of 1.5 - 2 metres was predicted.^{110,111}
77. The nautical forecast for 4 October 2018 was in similar terms. The strong wind warning remained in force, with winds turning northerly at 28 - 46 kilometres per hour by evening. Seas were at 1.5 - 2 metres with a swell from the south-west at 2.5 to 3 metres with the chance of a thunderstorm.¹¹²
78. Although these conditions were said to be manageable for a vessel like the *Yeah Buoy*, Ms Matthews described the sea state that the *Yeah Buoy* encountered during its voyages on the open ocean, as being “*rough to very rough*”.¹¹³
79. I note that a wave height of just 1.8 metres has been described as being at “*the limit of safe operation and family comfort*” for a 5 metre vessel.¹¹⁴

State of the Yeah Buoy when found

80. When found on 16 November 2018, the hull of the *Yeah Buoy* was lying upside down on the seabed at a depth of 20 metres, about 7.4 kilometres west of Mewstone Rocks in an area known as Five Fathom Bank.^{115,116}
81. The upper section of the vessel (superstructure) had been torn off, most probably by the action of the boat being rolled about on the seabed. Broken pieces of the superstructure lay scattered on the seabed, in the vicinity of the hull.^{117,118}

¹⁰⁸ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p5

¹⁰⁹ Exhibit 1, Tab 34, Report - FC Const. B Packard, p11

¹¹⁰ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p5

¹¹¹ Exhibit 1, Tab 34, Report - FC Const. B Packard, p11

¹¹² Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p6

¹¹³ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p13 and ts 06.12.19 (Matthews), p51

¹¹⁴ <https://www.rms.nsw.gov.au/maritime/safety-rules/before-boating/wave-heights.html>

¹¹⁵ Exhibit 1, Tab 39, Report - Police Dive Squad, p9 and ts 06.12.19 (Matthews), p54

¹¹⁶ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p15 and ts 06.12.19 (Matthews), p54

¹¹⁷ Exhibit 1, Tab 39, Report - Police Dive Squad, p9 and ts 06.12.19 (Matthews), p54

¹¹⁸ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p15 and ts 06.12.19 (Matthews), p54

82. The *Yeah Buoy*'s hull had some minimal scrapes, caused when it was recovered from the seabed. However, there were no tears or fractures and Ms Matthews expressed the opinion that it was unlikely the *Yeah Buoy* had collided with another vessel a submerged object or a marine mammal.¹¹⁹
83. The *Yeah Buoy*'s ignition key was in the "on" position and its throttle lever was in the forward position. This tends to suggest that the vessel was underway when it sank, although Ms Matthews noted there was a possibility that the throttle lever may have been moved into the forward position by wave action after the vessel sank. The hydraulic lift arms for the outboard motor were found in the fully upright position, suggesting that the outboard motor had been raised, or that the motor had been repeatedly smashed against the seabed.^{120,121}

Marine Safety Investigation

84. Ms Matthews completed an investigation into the loss of the *Yeah Buoy*. She had been in regular contact with Police during the search for the vessel, and departmental assets had been involved in the search operation. Her report suggested two possible scenarios to explain why the *Yeah Buoy* sank.¹²²
85. Both scenarios were based on the nautical forecasts at the time and on information about the planned voyage obtained from family members. Further, both scenarios assumed that the *Yeah Buoy* was returning to the mainland using the outside passage west of Stragglers Rocks. This represents a straight line track from Rottnest Island to the mainland. Given the location of the wreckage, this is the *Yeah Buoy*'s most likely route.¹²³

Scenario One - snagged on a cray pot rope^{124,125}

86. In the first scenario, the *Yeah Buoy* may have been heading for Challenger Passage on its return trip to the mainland. This area is a popular spot to catch crayfish using pots attached to floats by way of ropes.

¹¹⁹ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p8 & p15 and ts 06.12.19 (Matthews), pp54-55

¹²⁰ Exhibit 1, Tab 39, Report - Police Dive Squad, p9 and ts 06.12.19 (Matthews), p39

¹²¹ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, pp14-16 and ts 06.12.19 (Matthews), p59

¹²² Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, pp13-16 and ts 06.12.19 (Matthews), pp57-61

¹²³ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p13 and ts 06.12.19 (Matthews), pp57-58

¹²⁴ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, pp13-14

¹²⁵ ts 06.12.19 (Matthews), pp57-58

87. The *Yeah Buoy*'s propeller may have become entangled on a crayfish pot rope, causing the outboard motor's propeller to stop spinning.
88. In order to clear the tangle, those on board may have raised the outboard motor using the hydraulic lift arms. While the motor was in the raised position, waves may have swamped the *Yeah Buoy* from the rear, causing it to sink.

Scenario Two - the vessel broached^{126,127}

89. In the second scenario, the *Yeah Buoy* encountered "following seas" on its return voyage, meaning that waves were coming from behind the vessel. This is generally regarded as a more challenging navigational situation.¹²⁸
90. The *Yeah Buoy* may have been taking waves on the quarter (i.e.: at an angle), and been surfing down the face of the waves. As it was doing so, the *Yeah Buoy* may have lost steerage and been pushed sideways whilst at the bottom of a wave (i.e.: broached). This would have caused the vessel to capsize and sink.

Comments about the scenarios

91. Ms Matthews said that in her view, both scenarios were equally plausible. She agreed that the fact that the *Yeah Buoy*'s ignition key was in the "on" position and the throttle lever was forward, might tend to suggest that the *Yeah Buoy* was underway when it sank. However, she noted that the throttle lever could have been pushed into the forward position by wave action after the vessel sank.¹²⁹
92. Although Scenario One explains why the outboard motor lift arms were found in the upright position, it is surprising that the ignition switch was found in the "on" position. It would have been dangerous to have attempted to clear a fouled propeller with the vessel in this condition, and as an experienced skipper, Mr U Pham would presumably have known this.¹³⁰

¹²⁶ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, pp14-15

¹²⁷ ts 06.12.19 (Matthews), pp59-61 & pp62-63

¹²⁸ ts 06.12.19 (Matthews), p64

¹²⁹ ts 06.12.19 (Matthews), p59

¹³⁰ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p14 and ts 06.12.19 (Matthews), p58

93. The fact that the ignition key was in the “on” position may suggest Scenario Two is more likely. Navigating a small vessel in following seas is known to be difficult, even with experience, and the hydraulic lift arms may have been forced into the upright position by wave action after the vessel sank.
94. After carefully considering all of the evidence, I have been unable to arrive at a definitive conclusion as to what caused the *Yeah Buoy* to sink. However, it seems clear that the vessel suffered a catastrophic marine incident which probably caused it to sink quickly.^{131,132}

¹³¹ See: Exhibit 1, Tab 34, Report - FC Const. B Packard, p33 and ts 06.12.19 (Packard), p41 & p42

¹³² See also: ts 06.12.19 (Matthews), p60 & p65

THE DECEASED

Overview

95. The tragedy in this case is magnified by the fact that the deceased persons were related. Mr U Pham and Mr T Pham were brothers. Mr J Pham was Mr U Pham's son and Mr O'Neill's partner, Ms Hough, was Mr U Pham's step-daughter.^{133,134}
96. The Pham family was described as a happy one and in the six months prior to October 2018, family members are said to have placed great effort into making the family group "*better and happier than ever*".¹³⁵

MR UOCK PHAM

97. Mr U Pham was born in Vietnam on 9 September 1968 and came to Australia with his parents in the 1970's. He had a large family with whom he was very close. He was 50 years of age when he died on or about 4 October 2018.^{136,137}
98. Mr U Pham completed Year 12 and worked in a variety of jobs until 2005, when he began working in the mining industry. He had progressed to the position of plant operator by the time of his death.¹³⁸
99. Mr U Pham had two children (Ms Jiordanne Pham and Mr J Pham) and a stepdaughter, Ms Ashleigh Hough.¹³⁹ Mr U Pham was described as a "*good father*" with a "*cheeky sense of humour*". He had a small circle of friends and mostly socialised with his brother Mr T Pham and Mr O'Neill.¹⁴⁰
100. Mr U Pham was described as physically and mentally fit. A pre-employment medical assessment dated 20 August 2018, was normal, with no health issues identified.^{141,142}

¹³³ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p2 & pp7-10

¹³⁴ Exhibit 1, Tab 49, Pham family tree

¹³⁵ Exhibit 1, Tab 19, Statement - Ms A Hough, para 12

¹³⁶ Exhibit 1, Tab 1C, P100 - Report of Death (Mr U Pham)

¹³⁷ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p8

¹³⁸ Exhibit 1, Tab 17, File Note of discussion with Ms A Pham (03.12.18), p1

¹³⁹ Exhibit 1, Tab 49, Pham family tree

¹⁴⁰ Exhibit 1, Tab 17, File Note of discussion with Ms A Pham (03.12.18), pp1-2

¹⁴¹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p9

¹⁴² Exhibit 1, Tab 26, Pre-employment medical (20.08.18)

Cause and Manner of Death - Mr U Pham

101. A forensic pathologist, (Dr J White) and a forensic anthropologist, (Dr A Buck) conducted an examination of identifiable human bones within tissue (the remains) on 8 November 2018. They confirmed that the remains were consistent with a human right foot. The remains were x-rayed and samples were forwarded to the PathWest laboratories for DNA analysis.¹⁴³
102. On 13 November 2018, PathWest compared DNA from the remains with DNA taken from a toothbrush and razor known to have been used by Mr U Pham.¹⁴⁴ The analysis concluded that it was 100 billion times more likely that the DNA on the toothbrush and razor and the DNA from the remains belonged to Mr U Pham than to any other donor.¹⁴⁵
103. On 4 December 2018, after reviewing the results of DNA analysis, Dr White and Dr A Buck expressed the opinion that the cause of death was unascertained.¹⁴⁶ I accept and adopt that finding.
104. Notwithstanding the fact that the cause of death in Mr U Pham's case cannot be identified, the evidence establishes that he was on board the *Yeah Buoy* with Mr J Pham and Mr O'Neill. Given that the cause of each of their deaths was immersion, I consider it more likely than not that Mr U Pham also died from immersion. After his death, his body was presumably the subject of predation by marine animals.
105. In view of the circumstances, I make an open finding as to Mr U Pham's death.

MR TUAN PHAM

106. Mr T Pham was born in Vietnam on 15 May 1975 and came to Australia with his parents in the 1970's. He had a large family with whom he was very close and was 43 years of age when he disappeared on or about 4 October 2018.^{147,148}

¹⁴³ Exhibit 1, Tab 12, Post Mortem Supplementary Report, p1

¹⁴⁴ Exhibit 1, Tab 51, Report - Forensic disclosure

¹⁴⁵ Exhibit 1, Tab 7, PathWest Forensic biology summary of laboratory results

¹⁴⁶ Exhibit 1, Tab 12, Post Mortem Supplementary Report, p1

¹⁴⁷ Exhibit 1, Tab 1D, P100 - Report of Death (Mr T Pham)

¹⁴⁸ Exhibit 1, Tab 18, File Note of discussion with Ms S Sloan (29.01.19), p1

107. Mr T Pham completed Year 10 and part of an apprenticeship as spray painter. He worked in a variety of jobs, including as a terminal operator in the shipping and fuel industry. He had two children with his long-term partner and a daughter from a previous relationship. He was described as a “likeable man” who enjoyed golf and river fishing. He kept himself physically fit and was said to be rarely unwell. He was known to use cannabis on a daily basis.^{149,150}

Has Mr T Pham’s death been established?

108. Mr T Pham was on board the *Yeah Buoy* when it set off to Rottneest Island on a fishing trip on 3 October 2018. Since the vessel sank, there has been no contact with him whatsoever.¹⁵¹

109. In my view, the evidence establishes that the *Yeah Buoy* suffered a catastrophic marine event, and probably sank quickly.¹⁵²

110. Three of the four people on board the vessel are known to have died¹⁵³ and in my view, it is inconceivable that Mr T Pham has not also died. It follows that in my view, the evidence establishes beyond all reasonable doubt that Mr T Pham has died.

Cause and Manner of Death - Mr T Pham

111. In circumstances where the body of Mr T Pham has not been located, the cause of his death cannot be identified. Therefore, I find that the cause of his death is unascertained.

112. However, Mr T Pham was on board *Yeah Buoy* with Mr J Pham and Mr O’Neill. Given that the cause of their deaths was found to be immersion, I consider it more likely than not that Mr T Pham also died from immersion.

113. However, given the circumstances, I make an open finding with respect to Mr T Pham’s death.

¹⁴⁹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p9

¹⁵⁰ Exhibit 1, Tab 18, File Note of discussion with Ms S Sloan (29.01.19), pp1-2

¹⁵¹ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, pp19-20

¹⁵² Exhibit 1, Tab 34, Report - FC Const. B Packard, p33

¹⁵³ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p20

MR JUSTIN MICHAEL O'NEILL

114. Mr O'Neill was born in Esperance on 20 September 1986. He had two siblings and was 32 years of age when he died on or about 4 October 2018.¹⁵⁴
115. Mr O'Neill completed Year 12 and had worked in the hospitality and building industries. He met his partner, Ms Hough, in 2008 and helped care for her two children, with whom he had a close and loving relationship. He had a close circle of friends and was a keen fisherman, who enjoyed going on fishing trips. At the time of his death, Mr O'Neill was between jobs and was assisting with the care of his children on a fulltime basis.^{155,156,157}
116. A report from his GP confirms that Mr O'Neill attended the practice on nine occasions in relation to routine physical issues.¹⁵⁸

Cause and Manner of Death - Mr O'Neill¹⁵⁹

117. Two forensic pathologists (Dr J White and Dr N Vagaja) conducted an examination of Mr O'Neill's body on 9 October 2018.
118. The examination found scattered soft tissue injuries and a bruise of the underside of his scalp. No other significant injuries were seen. Mr O'Neill's lungs were congested and inflated there was froth in his airways. These findings are consistent with drowning.
119. Toxicological analysis detected tetrahydrocannabinol, and methylamphetamine in Mr O'Neill's blood. Alcohol and other common drugs were not detected.¹⁶⁰
120. At the conclusion of their examination, Dr White and Dr Varagja expressed the opinion that the cause of Mr O'Neill's death was immersion. I accept and adopt that finding. Given the circumstances, I find that his death occurred by way of misadventure.

¹⁵⁴ Exhibit 1, Tab 1A, P100 - Report of Death (Mr J O'Neill)

¹⁵⁵ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p8

¹⁵⁶ Exhibit 1, Tab 19, Statement - Ms A Hough, paras 4 & 7-9

¹⁵⁷ Exhibit 1, Tab 15, File Note of discussion with Ms J King (10.10.18), pp1-2

¹⁵⁸ Exhibit 1, Tab 24, Report - Dr S Habashy (30.10.18)

¹⁵⁹ Exhibit 1, Tab 10, Supplementary Post Mortem Report (Mr J O'Neill), p1

¹⁶⁰ Exhibit 1, Tab 13, ChemCentre Report (Mr J O'Neill)

MR JACOB TUAN PHAM

121. Mr J Pham has two siblings and was born in Subiaco on 16 September 1994 and was 24 years of age when he died on or about 4 October 2018.¹⁶¹
122. Mr J Pham had a difficult birth and was without oxygen for a few minutes. He completed Year 12 and had been employed at McDonalds, as a paintball referee and for a time, as a concreter. He was said to be very good with his hands and his hobbies included paintballing, remote control cars and fishing. A report from his GP indicated that his only health issues were asthma and eczema.^{162,163,164}
123. Mr J Pham was known to use cannabis recreationally and at the time of his death, he was receiving a disability pension from Centrelink. He was described as a person with “*a warm heart*” that everybody loved.^{165,166}

Cause and Manner of Death - Mr J Pham¹⁶⁷

124. Two forensic pathologists (Dr J White and Dr N Varagja) conducted an examination of Mr J Pham’s body on 9 October 2018. The examination found scattered superficial soft tissue injuries, but no significant injuries or natural disease were seen. Mr J Pham’s hyper-expanded lungs and the froth in his airways were findings consistent with drowning.
125. Toxicological analysis found tetrahydrocannabinol in Mr J Pham’s blood, but alcohol and other common drugs were not detected.¹⁶⁸
126. At the conclusion of their examination, Dr White and Dr Varagja expressed the opinion that the cause of Mr J Pham’s death was immersion. I accept and adopt that finding. Given the circumstances, I find that his death occurred by way of misadventure.

¹⁶¹ Exhibit 1, Tab 1B, P100 - Report of Death (Mr J Pham)

¹⁶² Exhibit 1, Tab 16, File Note of discussion with Ms A Pham (10.10.18), pp1-2

¹⁶³ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, pp7-8

¹⁶⁴ Exhibit 1, Tab 25, Report - Dr M Jacoub (28.11.18, signed on 04.12.18)

¹⁶⁵ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p8

¹⁶⁶ Exhibit 1, Tab 16, File Note of discussion with Ms A Pham (10.10.18), p1

¹⁶⁷ Exhibit 1, Tab 11, Supplementary Post Mortem Report (Mr J Pham), p1

¹⁶⁸ Exhibit 1, Tab 14, ChemCentre Report (Mr J Pham)

SAFETY ISSUES

Safety requirements with respect to the Yeah Buoy

127. The legislative obligations on skippers of recreational boats like the *Yeah Buoy* are set out in the *Navigable Waters Regulations 1958* (WA) (the Regulations) made under the *Western Australian Marine Act 1982* (WA).¹⁶⁹

128. For the *Yeah Buoy*,¹⁷⁰ the Regulations required that at least one person on board had a recreational skipper's ticket and that the vessel carried the following safety items:

[A] bilge pump or bailer, an anchor line and rope, a level 100 lifejacket¹⁷¹ for each person on-board, two parachute flares, two hand-held orange smoke signals (or a smoke canister), an EPIRB and a marine radio.¹⁷²

129. The evidence appears to establish that the *Yeah Buoy* was compliant with the Regulations. The vessel almost certainly had an EPIRB on-board, and although it is not entirely clear whether lifejackets, flares and smoke signals were being carried, this seems likely.^{173,174}

Review of boating safety equipment

130. In 2016, the Department embarked on a review of the safety equipment that needed to be carried on recreational boats. A discussion paper was published in March 2017 and community feedback via an online survey attracted 1,200 responses.¹⁷⁵

131. In October 2019, the Department published a position paper setting out 12 proposals related to the safety equipment to be carried on recreational vessels (the Position Paper)¹⁷⁶ and received feedback from 2,000 community members. Final recommendations are expected to be presented to the Minister for Transport in March 2020. Approved amendments would be introduced in 2021.¹⁷⁷

¹⁶⁹ Exhibit 1, Tab 50, Statement - Mr R Buchholz, para 5-8 & 13-16

¹⁷⁰ Which was a "private pleasure boat" operating more than 5 nautical miles from the mainland and more than one nautical mile from an island located more than 5 nautical miles from the mainland

¹⁷¹ A level 100 lifejackets provides about 10 kilograms of buoyancy for the average adult, see: Exhibit 1, Tab 50-RB2, Recreational vessel safety equipment review, Discussion paper summary, March 2017, p8

¹⁷² Exhibit 1, Tab 50, Statement - Mr R Buchholz, para 13

¹⁷³ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p2

¹⁷⁴ Exhibit 1, Tab 50, Statement - Mr R Buchholz, paras 15-16

¹⁷⁵ Exhibit 1, Tab 50, Statement - Mr R Buchholz, paras 17-20

¹⁷⁶ Exhibit 1, Tab 50, Statement - Mr R Buchholz, paras 21-24

¹⁷⁷ Exhibit 1, Tab 50, Statement - Mr R Buchholz, paras 26-30

132. Under the Proposals:¹⁷⁸

- a. Vessel length will no longer determine the distance a vessel can operate from shore;
- b. There will be no mandated safety equipment for vessels in protected waters or within 400 metres of shore in unprotected waters;
- c. Appropriate lifejackets must be carried by vessels operating more than 400 metres offshore in unprotected waters;
- d. Lifejackets must be worn by all those on vessels less than 4.8 metres in length operating more than 400 metres offshore in unprotected waters and by children¹⁷⁹ on any size vessel;
- e. A GPS EPIRB must be carried by vessels operating more than 400 metres offshore in unprotected waters;¹⁸⁰
- f. Two orange smoke flares and two hand-held red flares must be carried by vessels operating more than 400 metres offshore in unprotected waters;¹⁸¹
- g. A marine radio must be carried by all vessels operating more than 4 nautical miles (7.4 kilometres) offshore;
- h. It will not be mandatory to carry a fire extinguisher, bilge pump, bailer or anchor or line on any vessel although the Department continues to recommend that these items be carried.

Recreational Skipper's Ticket

133. A person in charge of a recreational vessel powered by a motor greater than 6 horsepower must hold a recreational skipper's ticket (RST). To obtain a RST, a person must pass a multiple-choice theory test and a practical assessment.^{182,183}

¹⁷⁸ Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, pp6-15

¹⁷⁹ That is, a child more than one year old and less than 12 years old

¹⁸⁰ A GPS personal locating beacon (PLB) may be carried in lieu, if worn by at least one person on the vessel

¹⁸¹ An approved electronic night signalling device may be carried in lieu of flares if a GPS EPIRB or PLB is carried

¹⁸² Recreational Skipper's Ticket Workbook, (7th Ed.), August 2018, pp5-6

¹⁸³ https://www.transport.wa.gov.au/mediaFiles/marine/MAC_P_RST_Workbook7.pdf

134. The RST practical assessment covers topics such as how to comply with safety requirements, preparing and starting a motor safely, conducting a safety brief, using navigational aids, safely departing and returning to a berth and performing a controlled stop.^{184,185}
135. During the inquest, Mr Buchholz explained that as part of the Department's role in educating boat users, marine safety education officers often invite skippers to participate in the "30 Second Challenge" (the challenge).¹⁸⁶
136. The challenge is aimed at testing the emergency readiness of skippers about to embark on a voyage and requires people to gather flares, an EPIRB, make a radio call and put on a lifejacket, all within 30 seconds.¹⁸⁷
137. The rationale behind the challenge is explained on the Department's website in the following terms:

The Department of Transport (DoT) wants those heading out on the water to be prepared and is advocating skippers and passengers take the *30 Second Challenge* which tests readiness for an emergency response on board a vessel. This initiative, which tests if people can gather flares, EPIRB, make a radio call and put on a lifejacket in 30 seconds, responds to boating incidents data which showed that better maintenance of safety gear and improved accessibility could have limited the number of boating tragedies.¹⁸⁸

138. Mr Buchholz said that many skippers are unable to achieve the challenge on the first attempt, but became motivated to make further attempts once they had placed relevant safety items in more appropriate locations. Mr Buchholz said the challenge is a fun way to impart a serious message, namely that safety equipment should be readily available in an emergency, and that skippers need to have a clear safety plan.¹⁸⁹

¹⁸⁴ Recreational Skipper's Ticket Workbook, (7th Ed.), August 2018, pp5-6

¹⁸⁵ https://www.transport.wa.gov.au/mediaFiles/marine/MAC_P_RST_Workbook7.pdf

¹⁸⁶ ts 06.12.19 (Buchholz), p71

¹⁸⁷ ts 06.12.19 (Buchholz), p71

¹⁸⁸ <https://www.transport.wa.gov.au/imate/marine/what-safety-equipment-do-I-need.asp>

¹⁸⁹ ts 06.12.19 (Buchholz), pp71-72

139. In my view, the challenge would be a useful addition to the practical assessments that people are required to achieve before obtaining a RST. Completing the challenge would make skippers aware of the critical importance of not just carrying the correct safety equipment, but crucially, knowing where to store it so the equipment is instantly available in an emergency situation.
140. Mr Buchholz agreed with this suggestion and said that there would be no difficulty with incorporating the challenge into the current RST assessment framework.¹⁹⁰

The wearing of lifejackets

141. Although the Regulations currently require recreational vessels to carry lifejackets in some circumstances, the wearing of lifejackets is not mandated.¹⁹¹
142. As noted, one of the proposals in the Position Paper would require the wearing of lifejackets by adults on board recreational vessels less than 4.8 metres operating more than 400 metres off-shore.¹⁹²
143. Mr Buchholz acknowledged that the 4.8 metre vessel length was arbitrary, but said the length was chosen because it was consistent with the requirements in other Australian states.¹⁹³
144. The rationale for the proposed change with regard to the wearing of lifejackets is explained in the following terms in the Position Paper:

It is accepted that survival is greatly enhanced if a person is wearing a lifejacket when they unexpectedly enter the water in a life-threatening situation. Repeated coronial enquiries have highlighted the speed at which vessels can capsize, leaving little time for passengers to locate and put on a lifejacket. It is also widely acknowledged that putting on a lifejacket once in the water can be challenging, particularly if the sea conditions are unfavourable or the person is unfamiliar with the lifejacket.¹⁹⁴

¹⁹⁰ ts 06.12.19 (Buchholz), p72 & pp78-79

¹⁹¹ ts 06.12.19 (Buchholz), p74

¹⁹² Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, p9

¹⁹³ ts 06.12.19 (Buchholz), p74

¹⁹⁴ Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, p9

145. The Department currently recommends that lifejackets be worn by all passengers on recreational vessels “*at the first sign of bad weather and when operating with a following sea*”.¹⁹⁵ Both conditions applied to the *Yeah Buoy*’s voyage.
146. At the inquest, Mr Buchholz observed that there are real challenges with encouraging the occupants of recreational vessels to wear lifejackets in appropriate situations. Part of the challenge relates to overcoming the pervasive attitude of “*it won’t happen to me*”, especially amongst middle to late aged men.¹⁹⁶
147. As the tragic outcome in this case demonstrates, catastrophic marine incidents can and do occur. Had the deceased persons been wearing lifejackets during their return voyage from Rottnest Island, there is at least the possibility that the outcome in this case may have been different.^{197,198}
148. Evidence from on-water surveys conducted by the Department suggests that a higher percentage of children on board recreational vessels wear lifejackets when compared with adults. However, it is of concern that the wearing rates for adults are relatively low and appear to have fallen since 2016.¹⁹⁹
149. Mr Buchholz noted that there are now a number of lightweight inflatable lifejackets on the market, and that prices for these items have been dropping. The available options include “*waist belt*” type lifejackets that are inexpensive and easy to wear.²⁰⁰
150. Mr Buchholz noted that in the past 6 years, there were no instances where a person in distress in the water who was wearing a lifejacket had died.²⁰¹ Given the obvious safety benefits of wearing lifejackets, I strongly encourage all recreational boat users to follow the Department’s recommendations and, as a minimum, to wear an appropriate lifejacket at the first sign of bad weather and/or when operating in following seas.

¹⁹⁵ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p17

¹⁹⁶ ts 06.12.19 (Buchholz), pp80-81 & p83

¹⁹⁷ Exhibit 1, Tab 2, Report - Sen. Const. N Brown, p20

¹⁹⁸ Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, p9

¹⁹⁹ ts 06.12.19 (Buchholz), pp79-80

²⁰⁰ ts 06.12.19 (Buchholz), pp68-69

²⁰¹ ts 06.12.19 (Buchholz), p70

EPIRB

151. If the proposals in the Position Paper are accepted, it will be a requirement for all vessels travelling more than 400 metres off-shore to carry a GPS enabled EPIRB (or a GPS enabled PLB worn by at least one person on the vessel). As noted, GPS enabled devices are considerably more accurate and their use is therefore to be encouraged.²⁰²
152. The evidence supports the proposition that EPIRB and PLB devices save lives. In 2017, there were 132 marine emergencies that involved activation of these devices and 14 lives were saved as a direct result.²⁰³
153. In this case, the evidence strongly suggests that the *Yeah Buoy* was carrying a GPS enabled EPIRB. However, the device had not been “registered”, a process where the owner enters personal details on a website so that when activated, rescuers have access to information about who the device belongs to. Further, when the EPIRB was found it had not been switched on.²⁰⁴
154. The Position Paper proposes a five year phase in period for GPS enabled EPIRB and PLB, on the basis that the maximum battery life in older non-GPS enabled devices is about four years.^{205,206}
155. In his report, Officer Packard suggested that if the *Yeah Buoy* had been fitted with a “*water activated*” EPIRB that was mounted in a “*float free*” location, authorities may have been notified of the vessel’s location as soon as it sank. These types of devices will be required on commercial vessels from 1 January 2021.^{207,208}

²⁰² Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, pp10-11

²⁰³ Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, p10

²⁰⁴ Exhibit 1, Tab 38, Email from Sen. Const. B. Packard (12.10.18)

²⁰⁵ Exhibit 1, Tab 50-RB3, Recreational vessel safety equipment review, Position paper, Oct 2019, p10

²⁰⁶ ts 06.12.19 (Buchholz), p77

²⁰⁷ See: Exhibit 1, Tab 34, Report - FC Const. B Packard, p34

²⁰⁸ See also: ts 06.12.19 (Packard), pp42-44

Logging on and off with a marine rescue service

156. The Department recommends that the skippers of recreational boats embarking on voyages in the open ocean, provide details of their voyage to a marine rescue service and log on and off with that service, at the start and end of their trip.²⁰⁹
157. Skippers who do this can advise the rescue service as to how many passengers on board, how much fuel the vessel is carrying, the destination and planned duration of the voyage, the expected departure and arrival times, and the safety equipment on board.²¹⁰
158. Where a vessel that has logged in with a rescue service encounters difficulties, any emergency response is likely to be faster. Further, if a particular vessel fails to log off at the end of its trip, the rescue service can take proactive steps to determine if the vessel is safe.²¹¹

Conclusion regarding safety equipment

159. The proposals in the Position Paper aim to simplify and standardise the requirements with respect to the safety equipment that must be carried on recreational vessels operating more than 400 metres from shore in unprotected waters.
160. I agree with the views expressed by Mr Buchholz at the inquest, namely that the proposals in the Position Paper are sensible and measured and should be supported.²¹²
161. Clearly all required safety equipment must be placed in an accessible location, known to all passengers, so as to be immediately available in an emergency.
162. It is a sad truth, that had the deceased persons been wearing lifejackets at the time of the catastrophic marine incident that caused the *Yeah Buoy* to sink, and had the vessel's EPIRB been activated at that time, the outcome in this tragic case may well have been different.

²⁰⁹ Exhibit 1, Tab 32, Report - Sen. Inv. Officer S Matthews, p17

²¹⁰ ts 06.12.19 (Brown), p20

²¹¹ ts 06.12.19 (Brown), p20

²¹² ts 06.12.19 (Buchholz), p85

RECOMMENDATIONS

163. On 17 December 2019, after completing a review of the evidence in this matter, I asked Sergeant Housiaux to forward two draft recommendations to Mr Carroll, (counsel for the Department) for comment. In an email to the Court dated 18 December 2019, Mr Carroll advised that the Department had no concerns with respect to either of the proposed recommendations.

164. In light of the observations I have made in this Finding, I make the following two recommendations:

Recommendation No. 1

The Department of Transport consider including the “30 Second Challenge”, (i.e.: where boat users are required gather signal flares, an EPIRB, make a radio call and put on a lifejacket in 30 seconds) in the practical assessment for people seeking a recreational skipper’s ticket.

Recommendation No. 2

The Department of Transport consider initiating a public awareness campaign using appropriate communication methods, including social media, to encourage all skippers of recreational boat users to:

- a. ensure that all passengers (including the skipper) wear an appropriate lifejacket at the first sign of bad weather and when the vessel is navigating in following seas;
- b. ensure that all required safety equipment is stored in such a way as to be immediately available in the event of an emergency;
- c. consider, prior to commencing a voyage in open waters, the effect on the planned voyage, of all potential impediments to safe navigation, including the weather; and
- d. provide details of all voyages on open waters to a volunteer marine rescue service prior to setting out and to log on and off with that service at the start and end of the voyage.

CONCLUSION

165. That a fishing trip should end in the deaths of four much loved family members is an unspeakable tragedy. The incident is truly shocking and the sadness and pain that this event has caused is frankly, unimaginable.
166. Although the precise chain of events that caused the *Yeah Buoy* to sink can never be known, it seems clear that the vessel suffered a catastrophic marine event and probably sank quickly, before the deceased persons could access lifejackets. The vessel was operating in following seas and those on board had limited experience with voyages in the open ocean.
167. Despite the initial unavailability of aircraft, I am satisfied that the search operation coordinated by Police was extensive and appropriate. As a result of that search, the bodies of Mr J Pham and Mr O'Neill, and the remains of Mr U Pham were located. Although the body of Mr T Pham was not found, I am satisfied beyond all reasonable doubt that he has died.
168. This tragic case demonstrates the importance of ensuring that safety equipment is not only carried on recreational vessels, but also that this equipment is available for immediate use in an emergency.
169. The Department's proposed changes to the safety equipment required to be carried by recreational vessels seem sensible and appropriate and I trust these changes are implemented as soon as possible. I have made two recommendations which, in my view, arise squarely from the evidence at the inquest.
170. It is my hope that the changes the Department has proposed and the recommendations I have made may, if adopted, provide the family and friends of the deceased persons with some solace for their terrible loss.

MAG Jenkin

Coroner

30 December 2019