



Western

Australia

## RECORD OF INVESTIGATION INTO DEATH

Ref No: 47/13

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the suspected death of **Beng Keong HE**, with an Inquest held at Perth Coroners Court, Court 51, Central Law Courts Building, 501 Hay Street, Perth, on 18 December 2013 find that death has been established beyond all reasonable doubt, the identity of the deceased was **Beng Keong HE** and that death occurred on 4 November 2012 in the vicinity of Yanchep Lagoon, Indian Ocean, as a result of **Drowning** in the following circumstances -*

### Counsel Appearing:

Sergeant L Housiaux assisted the Deputy State Coroner

### Table of Contents

INTRODUCTION.....	2
BACKGROUND .....	3
YANCHEP LAGOON .....	4
THE EVENT.....	7
RESCUE EFFORT .....	12
CONCLUSION AS TO THE DEATH OF THE DECEASED .....	13
COMMENTS ON THE CIRCUMSTANCES OF THE DEATH OF THE DECEASED AND THE SAFETY OF ABALONE FISHERS .....	15
HAZARD WARNINGS .....	16
EDUCATION .....	17
BEACH CLOSURE .....	18



## INTRODUCTION

On 4 November 2012 Beng Keong He (the deceased) fell from the reef at Yanchep Lagoon into the ocean when fishing for abalone. His friend, Ong Peng (Joseph) Tam (Tam) went to his assistance but was unable to reach the deceased before he too ran into difficulties. Tam was rescued and returned to the beach. A lifesaver returned to the ocean but was unable to locate the deceased.

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

The deceased was 20 years of age in November 2012.

The Office of the State Coroner received a letter from John Robert Quigley MLA for Mindarie requesting an inquest into the death of the deceased whilst abalone fishing.

The then State Coroner had reasonable cause to suspect the deceased had died and that the death was a reportable death and directed the suspected death of the deceased be investigated. In those circumstances an inquest into the circumstances of the suspected death must be held, pursuant to section 23(2) of the *Coroners Act 1996*, to establish beyond all reasonable doubt the death of the deceased and, if possible, into how the death occurred and the cause of the death.



## BACKGROUND

The deceased was born on 29 December 1991 in Perlis, Malaysia. He was orphaned at five years of age and brought up by an aunt in Kedah, Malaysia. Information from the deceased's cousin in Malaysia, Kar Ping (Ping)<sup>1</sup>, indicated the deceased told Ping in early November 2011 he intended to go to Australia with friends to harvest tomatoes.

On 6 November 2011<sup>2</sup> the deceased arrived in WA on a UD-976 visa which allowed him to remain in Australia for three months, but not to work. Department of Immigration and Citizenship (DIC) records indicate the visa expired on 6 February 2012 and since that time the deceased was deemed to be an unlawful non-citizen.

The deceased had placed photographs of himself in Perth, WA, on his Facebook, which Ping had seen in Malaysia. The deceased had remained in WA since February 2012 but his employment, residences and friends are difficult to verify due to a reluctance by his peer group to disclose the location of other unlawful non-citizens.

Once in Perth the deceased met Tam, through their accommodation, while working on farms in the Wanneroo area. The residents at the accommodation were all Malaysian Nationals and became friends.

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<sup>1</sup> Exhibit 1 Vol 1 Tab 5

<sup>2</sup> Exhibit 1 Vol 1 Tab 6



Tam and the deceased applied for licences to go abalone fishing from Department of Fisheries (Fisheries) at Joondalup Post Office after researching information on the Fisheries website about the abalone fishery in WA. They also located Yanchep as having a reef where abalone could be found.

### YANCHEP LAGOON

Yanchep Lagoon is bordered on the Western edge by a reef which runs parallel to the shore for approximately 200 metres and is connected to the shore at the southern end. The surface of the reef is mainly flat and surf regularly flows over the reef into the lagoon. It is fairly uniform in width, about 20 metres wide, and where it does not abutt the beach forms a lagoon about 20 metres from shore to reef.

The water from the waves from the ocean break over the reef and fill the inside of the lagoon. The water that comes over the reef platform, swirls downwards at the reef's edge and forms an undertow, before funnelling north and picking up speed on the way. This forms a literal current running northward to the end of the lagoon where it joins a seaward rip. The seaward rip is formed by water which entered the lagoon from the swells breaking over the lagoon reef and Rafts beach.



Rafts Reef is another reef which sits about 50 metres to the north or the northern end of Lagoon Reef.

This construction allows a rip to form and the water goes out to sea between the two reefs. The current is always present at that location to some extent and on occasions can become very strong and does not dissipate until it reaches deep water, approximately 200-400 metres off shore.<sup>3</sup>

It is the high wave action around these reefs which provides the ideal habitat for Roe's Abalone.

The abalone fishing season for the 2012/2013 season was restricted to the first Sunday of each month running from November 2012 through to March 2013, and was only operative between the hours of 7am and 8am. A licence is required for people to fish for abalone and there are enforced catch limits. The 4<sup>th</sup> of November 2012 was the first Sunday of the 2012/2013 abalone fishing season.

On Friday 2 November 2012 Fisheries issued a media release warning of potentially dangerous conditions for 4 November 2012 and advising fishers of the need to consider safety.<sup>4</sup>

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<sup>3</sup> Exhibit 1 Vol 1 Tab 8, Tab 9, Tab 10

<sup>4</sup> Submission for Department of Fisheries received 25 Feb 2014





Aerial Photograph of Yanchep Lagoon, Exhibit 1, Tab 21



## THE EVENT

The deceased, Tam, and three other Malaysian nationals decided they would go abalone fishing on the first day of the season. They left their accommodation at about 5am and drove to Yanchep Beach. They joined a large number of other people, mostly of Asian origin, waiting for the season to commence at 7am.

Also at the beach that morning were two fisheries officers, Alistair McLean (McLean) and David Lewington (Lewington). They were intending to supervise the proper regulation of the abalone fishery in that area. Also, in preparation for the expected abalone fishers that morning, were two volunteer lifesavers, members of the Yanchep Surf Club. They were Scott Jessamine (Jessamine) and John Heesters (Heesters). Heesters was the President of the Yanchep Surf Club and an off duty Police Sergeant.

The official start of the surf lifesavers season was 10am on 4 November 2012, however, because of the start of the abalone season at 7am, the two lifesavers attended at Yanchep Beach to conduct a surveillance patrol.

Both McLean and Lewington, and Jessamine and Heesters, noted the weather conditions at the 7am start were



*“atrocious”.*<sup>5</sup> Heesters described them as *“very stormy with a north westerly wind blowing at 20-30 knots, swell at 1-1.5 metres. The sky was overcast with patches of sunlight and rain passing over the area. Conditions were cold and the wind was causing the surf water to have short breaking wind wave (white caps).”*<sup>6</sup>

The deceased and his friends were noted by McLean to arrive in a small green hatchback sedan. The two fisheries officers provided them with brochures outlining the rules and regulations relating to abalone fishing. The deceased and his friends were photographed with the fisheries officers.<sup>7</sup>

Following the photograph the deceased and Tam assembled their fishing aids, screw driver, ruler and a modified washing bag and, at 7am, proceeded out onto the reef. They waded through knee high water and up onto the reef from where they started looking for abalone.

Tam described he was *“bending over to look and sometimes I was swimming. The waves were sometimes over here (indicates over his head) and sometimes up to here (indicates chest height).”*<sup>8</sup> Tam described the water pulling him towards the beach and needing to use his feet to stop

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<sup>5</sup> Exhibit 1 Tab 8 Para 8

<sup>6</sup> Exhibit 1 Tab 9 Para 10

<sup>7</sup> Exhibit 1 Tab 20

<sup>8</sup> Exhibit 1 Tab 6 Para 32



being pushed off the reef and sometimes having to grab hold of the rocks and seaweed with his hands.

Tam stated the deceased was always in his vicinity although sometimes he was behind him. Tam described the two of them on the beach side of the reef and the deceased as being quite excited when Tam located, and showed him, an abalone.

Tam described the deceased as being behind him by about 4-5 metres when he heard him call out for help in Mandarin. Tam turned around and saw the deceased in the lagoon on the beach side of the reef. Tam could see the deceased's head going up and down under the water and he was waving his arms. Tam also called out for help before going to the assistance of the deceased. Tam described himself as a "not good" swimmer and he found swimming to the deceased, only 4 metres away, hard. He was scared and trying to move forward but found he could not. Tam called out for help and both people on the reef and on the beach moved to assist them.

Tam was taken ashore by the people assisting and Heesters, who had been dealing with another rescue on the beach requiring oxygen, ran towards Tam to assist. Heesters observed Tam to be extremely stressed and pointing back towards the water saying "my friend, my friend". Tam



managed to convey to Heesters there was someone else still in the water and pointed to sea. Heesters, who had been keeping a rough time log, estimated the time to be 7:35am and he began scanning the ocean for the deceased.

Heesters paddled out into the strong rip for approximately 30 metres then sat upright on his rescue board to look for signs of the deceased below the water. Heesters stated the visibility in the water was very poor and he allowed the rip to take him in the same direction, through the reef gap, and out to sea for approximately 200 metres before paddling back to where he had started. Heesters described the area in which he believed the deceased to be as, just north of the Lagoon reef, and fully exposed to the effects of the wind and swell. He stated large breaking waves knocked him from his board on two occasions hampering the search. Heesters continued to search for the deceased for approximately 12 minutes before he became too exhausted to continue. He decided he needed to return to shore and, in the process, had to rescue another person from the water who had tried to assist.

On his return to shore Heesters ensured the second person was provided with help and commenced to arrange for help using the radio in the patrol vehicle.



Heesters requested the presence of ambulance, police and other surf lifesaving assets including helicopters, jets skis and personnel from other clubs. As he was doing this the 8 o'clock deadline for the end of the season for that day occurred and he saw the two fisheries officers getting people in off the reef.

In the permissible fishing hour the two lifesavers at Yanchep beach had rescued 12 people from the surf, become exhausted themselves on a number of occasions, and not been able to locate the deceased. Jessamine had observed people he had gone to rescue return to the reef.<sup>9</sup>

One of the other fishers, Bradley Johns (Johns), who had been out on the reef at the time Tam and the deceased fell into the water, attempted to assist Tam and the deceased before he too fell from the edge of the reef and into the lagoon. He had not appreciated how close to the edge of the reef he had been and realised there was a strong current running which he was unable to swim against. He managed to get back to the reef and continued looking for Tam and the deceased. He saw Tam being taken onto the beach but could no longer see the deceased, who had been under the water at the time Johns entered the water from the reef. Johns was able to see where he had originally seen the deceased and observed Heesters moving out to



sea looking for the deceased. Johns did not see the deceased again.<sup>10</sup>

### **RESCUE EFFORT**

Heesters coordinated the rescue effort until the arrival of police and later the operation was taken over by the water police. Tam and another person Heesters had retrieved from the ocean required oxygen therapy from ambulance officers and on the arrival of police in patrol vehicles statements were taken from relevant witnesses.

Heesters provided information to Surf Life Saving Communications Centre (Surfcom) and other surf clubs attended to offer resources to assist in the rescue operation. The surf lifesaving helicopter, Lifesaver 8, arrived at the scene and were guided to the search area by Heesters.

At 10am Heesters closed the beach due to the further deteriorating weather conditions and the large crowd located at the lagoon beach car park. Fremantle Water Police contacted Heesters and advised they would coordinate the aircraft and the volunteer marine rescue vessels for the sea search. Heesters remained responsible for the beach and land search area. City of Wanneroo Rangers attended and Sergeant Peter Reeves, OIC Yanchep Police



Station, arrived and took control of the operation and command centre. Heesters remained involved with the search due to his local knowledge.

The search was suspended later in the afternoon due to the weather conditions and continued again at 6am the next day.

The deceased was never recovered from the ocean despite police hopes initially he would be washed ashore further afield.

Heesters itemised the period between 7am and 8am on 4 November 2012 at the Yanchep Reef Lagoon as having required 12 rescues, three of which required oxygen therapy, two requiring further treatment at hospital and one person missing, presumed deceased.

The deceased was never seen again and his body not retrieved. There was no evidence he had survived and no evidence the deceased had planned to fake a disappearance.

### **CONCLUSION AS TO THE DEATH OF THE DECEASED**

I am satisfied the deceased was a 20 year old Malaysian National, residing in Western Australia, as an unlawful citizen following the expiration of his Visa.



The deceased was working on farms in and around the Wanneroo area with other Malaysian Nationals and a group of them decided they would go abalone fishing after Tam had researched the requirements on the Fisheries website for abalone fishing. Abalone are considered a delicacy by most people of Asian origin.

On 4 November 2012 the deceased and his friends attended at the Yanchep beach car park in preparation for the commencement of the 2012/2013 abalone season at 7am. The deceased is recorded on camera on this day.

After approximately half an hour on the reef the deceased was swept into the lagoon and was unable to swim against the current running in a northerly direction towards the sea break. Tam went into the water to try and assist the deceased but was himself unable to swim against the current. Tam managed to move towards the beach where he was assisted by other people from the water and alerted the lifesavers to the fact his friend was still in the water.

Heesters went out to the reef to assist the deceased and allowed himself to be carried out with the rip in an effort to locate the deceased. The deceased was last seen under the water surface in the lagoon area by Johns.



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

I am satisfied beyond all reasonable doubt as to the death of the deceased and I find death occurred on 4 November 2012, sometime between 7:30am and 8am, when he was drawn into the lagoon by the action of waves over the reef. It is evident from Johns' description of the last sighting of the deceased being under the water, he would have drowned.

I find death arose by way of Misadventure.

### **COMMENTS ON THE CIRCUMSTANCES OF THE DEATH OF THE DECEASED AND THE SAFETY OF ABALONE FISHERS**

Aside from the statement of Sergeant Heesters about the conditions at Yanchep Lagoon on 4 November 2012, evidence was heard from Chris Peck, the Community Safety Manager from Surf LifeSaving Western Australia (SLSWA). Obviously, a concern for SLSWA is the safety of people they have to rescue from the water. This also endangers the lives of lifesavers on occasion, in their view, recklessly, due to a number of abalone fishers, as a generalisation, not understanding the basics of water safety in and around the West Australian Coast.



On the day in question the surf lifesavers, a mostly voluntary organisation, had organised surveillance patrols, in advance of their official patrols, specifically to assist people in danger in the water for the commencement of the abalone fishing season. A surveillance patrol does not have the back up available to an official patrol. It comprises two lifesavers, a patrol vehicle, two rescue boards, a first aid kit, with oxy viva and radios. It is there to provide support. It is not envisaged two lifesavers can sufficiently patrol a beach where people are completely disregarding any basic safety considerations.

Both the fisheries officers and the lifesavers on the beach that morning had noted the fishers were largely of Asian descent and of slight build, with entirely inappropriate clothing for conditions on a reef exposed to wave overlap in the best of conditions.

The conditions on 4 November 2012 were far from the best.

### **HAZARD WARNINGS**

In view of the conditions at that specific location at that time Mr Peck was of the view there should be serious community consideration of hazards warnings on known abalone fishing beaches at times the season is known to operate.

On 4 November 2012 there were two fisheries officers at the location to ensure the proper regulation of the fishery. It



would have been a simple task for fisheries officers to implement a wave/weather hazard warning, had there been one, similar to the fire hazard warnings in operation in most of remote Australian National Parks.

### EDUCATION

Mr Peck pointed out this type of hazard warning would be best served by prior education as to the hazard the warning portrayed. The fisheries officers on the beach that morning were there to ensure regulation of the fishery. Advice at that time by way of brochures promoting safety may well be too late to be effective.<sup>11</sup>

Mr Peck stated education with respect to suitable attire and safe weather conditions<sup>12</sup> needed to take place before people assembled to give them the opportunity to properly prepare. Mr Peck believed the education should take place at the time people applied for an abalone fishing licence.<sup>13</sup> He also believed there should be a restriction on the licencing of non-permanent residents, especially on holiday tours from Asia.<sup>14</sup>

Tam indicated he had researched the requirements for abalone fishing on the Fisheries website and, while I

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<sup>11</sup> t 18.12.13 p26

<sup>12</sup>t 18.12.13 p35

<sup>13</sup> t 18.12.13 p43

<sup>14</sup>t 18.12.13 p34



acknowledge the Fisheries brochure<sup>15</sup> does contain safety information, it would be preferable this also appeared on line and on posters and brochures in post offices. It is probably most educative in conjunction with pictorial representations of both a hazards risk board, if they are to be used, and generally recognised international pictures for the types of adverse conditions expected.

### BEACH CLOSURE

In addition SLSWA and Sergeant Heesters are of the view there should be power to close the beach for the fishery in adverse weather conditions.

Information from Fisheries obtained for the benefit of the inquest<sup>16</sup> outlined reasons why the Director General for the Department of Fisheries is cautious as to the concept of closure of the beaches in the event of adverse weather conditions. In support of that proposition he outlined the history and management of the Roe's abalone fishery, from a species perspective.

The Director General pointed out Roe's abalone inhabits areas of high wave action and is most abundant on intertidal and shallow subtidal limestone platforms. This results in this species being easily fished from the shore and highly

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<sup>15</sup> Exhibit 1 Tab 21 Page 15

<sup>16</sup> Exhibit 1 Tab 18



vulnerable to overfishing, especially with its popularity with the increasing Asian population in Western Australia. It is very necessary to manage the fishery to maintain it as a viable fishery located on the beaches of a major city.

The Director General pointed out there have been many strategies over the years to try and provide recreational fishing options with the least pressure to the fishery to allow its sustainability. It is for this reason the 2012/2013 fishing season was limited to one hour per day on the first Sunday of each month from November through to March. This is a total of five hours of season spread over five months.

The Director General indicated the logistics of being able to close a particular area on a date which had been predetermined to ensure the safety of the fishery, would be very difficult. It would probably result in non-compliance which could not be monitored. Fisheries do not see the "simple" closure of a beach at a specified time to be the answer to a much more complicated issue.

With respect to the 2012/2013 season the department had issued a media release on 2 November 2012 warning of the potentially dangerous conditions, the need to put safety before all else and urging fishers to carefully consider any planned abalone fishing activity. The Director General stated following the death of the deceased there was



ongoing discussion about ways to raise self safety awareness via education information initiatives and the likely success of different propositions whilst also safe guarding the safety of the fisheries.

It is to be noted there was another death at Yanchep Lagoon on 13 October 2013 in the current season. <sup>17</sup>

The Director General indicated Fisheries intend to continue collaboration with SLSWA and provide safety education information to fishers via their fishing brochures, direct mail out of licence renewal and media outlets.

At the conclusion of the inquest I asked that Fisheries be appraised of the SLSWA proposals and asked for their comments and whether they would wish to appear at a later date as part of the current inquest to respond to those proposals. I asked they be provided with both the report in the event that they did not already have it and the transcript.

On 10 January 2014 an acknowledgement of the receipt of the relevant information was received. Fisheries advised they would consider the report and provide input if that was their intention, within the timeframe allocated.



A response to the position of SLSWA at the inquest was provided on behalf of the Department of Fisheries by Dr Lindsay Joll, Director, Aquatic Management. Fisheries does not have a formal public safety role and does not consider it should enter into discussions other than to provide their comments on proposals which do affect their management.

Dr Joll provided very comprehensive submissions and I thank Fisheries for that input.

Essentially, with respect to the SLSWA proposal there be a review of the legislation covering abalone fishing from a safety perspective, Fisheries outlined a proposal by which it would work with SLSWA and local government to provide for local laws pursuant to powers under the *Local Government Act 1995* to make local by-laws related to beach reserves and closures in certain conditions or circumstances.

Fisheries pointed out closure is not part of their function, however, they were happy to provide input to any such proposal. The proposal suggested was nominated people or classes of people could potentially be authorised to do whatever was necessary to ensure the safety of beaches and adjacent waters in dangerous conditions. This would be an on the spot safety precaution, rather than the futility of attempting to predict in advance conditions on particular days.



To the suggestion the season be adjusted to allow for more coverage in the better weather months, and less in the poorer weather months Fisheries suggested there were options which may reduce the potential for bad weather, but either option would still be subject to unexpectedly adverse conditions.

One option considered the moving of the season to the first Sunday of each month from December through until April, but would be likely to coincide with Easter, also a heavy surveillance time for compliance in the Fisheries world. In addition, although it would reduce the exposure to bad weather in November, it would still include bad weather in December. Similarly there would be the chance of bad weather in April and the risk of bad weather in the intervening months would remain the same.

Option two involved altering the season to provide for two Sundays per month in the calmer summer months January through to April. Fisheries pointed out this would then negate the desire of many fishers to provide abalone for Christmas fare as part of their cultural heritage. It would also involve heavier compliance measures in the doubled up months.

Fisheries does not intend to limit the issue of recreational abalone fishing licences to people with permanent



residency in Australia on the grounds of discrimination against people on the basis of their ethnicity.

With respect to the resourcing potential for Fisheries versus the volunteer status of SLSWA members risking their lives, Fisheries stated it did consider personal safety with respect to abalone fishers. The messages Fisheries provided by way of brochures are multilingual and do warn of all the concerns raised by SLSWA. Fisheries provides information with each licence, a RecFishWest brochure concerned with safety, an annual media release reminding fishers of their responsibilities with respect to safety and compliance with fisheries requirements and specific media releases if bad weather is forecast.

Fisheries pointed out it has, and will continue to work with SLSWA and RecFishWest to provide comprehensive multilingual safety awareness in collaboration with the local government authorities.

The objects of the *Fish Resources Management Act 1994* requires Fisheries to develop and manage fisheries and aquaculture in a sustainable way and to share and conserve the State's fish and other aquatic resources and the habitats for the benefit of present and future generations.



The general revenue for recreational fishing licences only covers about 1/3 of the costs associated with managing recreational fisheries and the majority of those costs are met by consolidated funds. Fisheries do not consider they have a requirement to specifically address public safety over and above any Department's concern for the safety of persons in the community. Fisheries does not consider revenue raised for the purposes of managing a fishery should be directed towards safety over and above that already provided by way of warnings, brochures, and collaboration with relevant parties.

In addition, Fisheries has provided funding to RecFishWest so that it can undertake a public safety role and educate the public about the dangers of fishing from rocks. There are subtitled videos in a number of Asian languages addressing rock fishing safety which would also apply to adverse weather conditions during recreational abalone fishing. Fisheries is considering proposals to translate the "abalone fishing safety information" brochure into the main Asian languages on its website and as an information brochure to be sent out in the post. It will also discuss advertising in Mandarin and Vietnamese Newspapers in the lead up to the start of any abalone season.

Specifically with respect to the 2013/2014 season, Fisheries has provided recreational fishers with a brochure when it



issues their licences and the brochures include advice on season open times, lifecycle information, recreational fishing rules, marine conservation areas and safety tips and catch care. Fisheries also provides the RecFishWest safety brochure which covers safety tips and advice on where to acquire basic swimming and water safety tips.

Dr Joll concludes his submission by pointing out Fisheries is happy to work with SLSWA and local government to further develop the local law approach, however, Fisheries are of the view that public safety matters are best dealt with on its behalf by providing information as stated above.

In my view it would seem appropriate there be powers to nominate specified persons to provide for “on the spot beach closures” where those with experience and knowledge consider the weather conditions to be a risk to public safety in a nominated abalone fishing season. The difficulty will always be policing those powers and the provision of penalties. A compromise may be the provision of local council rangers to relevant beaches to assist the lifesavers. Lifesavers could then have input to the decision making but not be involved in the policing and penalties, while they maintained their vigilance on the provision of safety. Hopefully, improved on a personal level by the rangers enforcing compliance with instructions to get out and stay out of the water or off the relevant reefs.



On the information I have to hand I do not feel in a position to make a specific recommendation with respect to the ability to close a beach “on the spot” without there being further discussion between the relevant parties.

**I do recommend**, however, that SLSWA, local government and Fisheries work together to maximise individual safety concerns alongside desirable fisheries management.

**I commend** Johannes Petrus Antoni (John) Heesters and Scott James Jessamine for their remarkable efforts to rescue people from the surf, at considerable risk to themselves due to the adverse conditions at Yanchep Lagoon on 4 November 2012.

E F Vicker

**Deputy State Coroner**

28 March 2014

