
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD : 22 MARCH 2022
DELIVERED : 28 MARCH 2022
FILE NO/S : CORC 2412 of 2021
DECEASED : HO, DINH LOI

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Senior Constable C Robertson assisted the Coroner.

Case(s) referred to in decision(s):

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Sarah Helen Linton, Deputy State Coroner, having investigated the death of **Dinh Loi HO** with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 22 March 2022, find that the identity of the deceased person was **Dinh Loi HO** and that death occurred on or about 2 March 2020 in the Indian Ocean adjacent to Sugarloaf Rock, Leeuwin-Naturaliste National Park, Dunsborough, as a result of an unknown cause in the following circumstances:*

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INTRODUCTION

1. Dinh Loi Ho was last seen by his friends on the morning of 2 March 2020 near Sugarloaf Rock in the Leeuwin-Naturalise National Park. They had driven from Perth to the area in the southwest of Western Australia with the intention of collecting abalone from the rocks in the shallow rock pools. Mr Ho was last seen walking along the reef area at about 6.30 am. When two hours had elapsed and he had not returned, his friends began searching for him without success and then called the police for help at 9.00 am.
2. The Water Police Coordination Centre initiated an immediate emergency response using available marine rescue resources and air support and local police officers from the Dunsborough Police Station attended the area to search on foot. Mr Ho's friends advised that Mr Ho did not know how to swim, so there was a significant concern that he had fallen into the water from the reef and drowned. No sign of Mr Ho was found on 2 March 2020.
3. The search for Mr Ho continued on 3 March 2020, shifting from a rescue to a recovery mission, and continued until 4 March 2020, but no sign of him was ever found.
4. On the basis of the information provided by the WA Police in relation to Mr Ho's disappearance, I determined that pursuant to s 23 of the *Coroners Act 1996* (WA), there was reasonable cause to suspect that Mr Ho had died and that his death was a reportable death. I therefore made a direction that a coroner hold an inquest into the circumstances of the suspected death.¹
5. I held an inquest at the Perth Coroner's Court on 23 March 2022. The inquest consisted of the tendering of documentary evidence compiled during the police investigation conducted into Mr Ho's disappearance, as well as hearing evidence from A/Sergeant Cameron Jolly, who is currently the Officer in Charge of the Dunsborough Police Station.

BACKGROUND

6. Mr Lo was born in the Quynh Chau commune in the province of Nghe An in Vietnam. He came to Australia in 2013 by boat and sought asylum as a refugee. He spent time in an immigration detention centre in Northam before being released to live in the community on a temporary protection visa on 20 November 2015, which was later extended on 22 August 2018. At the time of his disappearance, Mr Ho was 30 years of age and lived in a home in Marangaroo. He was single and worked as a forklift driver in a grocery store in Midland. Mr Ho's family still lived in Vietnam, but he had made a number of good friends while living in Australia and seems to have made a happy life for himself here.²

¹ Section 23 *Coroners Act* Direction of Deputy State Coroner.

² Exhibit 1, Tab 2.

7. On 2 March 2020, Mr Ho collected two of his friends, Duc Pham and Thi Nguyet Le, and they began the drive to Dunsborough with a plan to go sightseeing and fishing. They left in the early hours of the morning. Along the way, they stopped in Bunbury to collect another friend of Mr Ho, Nho Thi Pham. The four of them then drove to Dunsborough. They saw a sign in Dunsborough that indicated they could go abalone fishing. Although the abalone fishing is very limited on the WA coast (between Moore River and Bunbury including Perth), further down in the south-west, the abalone season is much longer and March is a popular time of year to do it.³ Mr Ho had been abalone fishing in the area before, and he and his friends were excited at the opportunity.⁴
8. Sugarloaf Rock is a very popular tourist attraction in the Dunsborough area and also a very popular location for people who engage in land-based fishing activities, such as rock fishing and abalone fishing. Mr Ho was believed to have gone abalone fishing there before. They drove to Sugarloaf Rock in Dunsborough and parked in the main carpark at about 5.30 am.⁵
9. Mr Ho and his three friends then walked down the rocks to the water. Mr Ho's friends followed him, as he told them he knew where to fish for abalone. They walked for about a kilometre before stopping at a location Mr Ho suggested would be suitable. Mr Ho and his friend Mr Pham went into the ocean, while the two women remained on the shore, sheltering behind a rock due to the cold. They started fishing for abalone at about 6.10 am.⁶
10. Mr Ho was dressed in a shirt, jeans and trainers and he was not wearing a lifejacket when he entered the water, walking along a shallow reef ledge. Mr Pham recalled that they initially stood knee deep in the water, about three to four metres apart. They would look down into the water for the abalone, then bend down and pry them from the rocks with a flat head screwdriver. As they fished, Mr Ho began to move south and the distance between them extended. Eventually, they were about 10 to 15 metres apart. After about an hour of fishing, Mr Pham had caught a few abalone, so he left the water and took the abalone to the women on the shore. Mr Ho remained in the water on his own and continued fishing.⁷
11. It took Mr Pham two to three minutes to walk to the women over the rocks. When Mr Pham turned around to return to the water, he could no longer see Mr Ho. Mr Ho's three friends began to look for him. Mr Pham looked for him in the water in the area where Mr Ho had last been seen sitting, while his two female friends looked around on the land. They eventually decided to return to the carpark, in case Mr Ho had returned to the car. They walked back to the carpark, but there was no sign of Mr Ho. Ms Pham stayed with the car while the others returned again to the shore to keep looking, but they still could not see Mr Ho, so they called the police to report Mr Ho as a missing person.⁸

³ T 5.

⁴ Exhibit 1, Tab 4 and Tab 5.

⁵ T 5; Exhibit 1, Tab 4 and Tab 5.

⁶ Exhibit 1, Tab 4 and Tab 5.

⁷ Exhibit 1, Tab 4.

⁸ Exhibit 1, Tab 4.

THE SEARCH FOR MR HO

12. The call to emergency services came through at 9.15 am. The Water Police based in Perth were notified at 9.22 am and they began to coordinate an immediate emergency response using available marine rescue resources and air support in the local area. Acting Sergeant Alan Trist was the on duty Search and Rescue Mission Controller at Water Police, and he assumed the role of police commander of the search.⁹
13. The police were advised by Mr Ho's friends that Mr Ho had previously been abalone fishing in the same area a number of times. Mr Ho was not able to swim, so he only ever stood knee deep in the water and never went in deep or tried to dive under the water. It was, therefore, surprising to his friends that he had might have got into trouble in the water. However, it is known by locals to be a coastal risk area and there are multiple signs in the carpark and along the path to the beach warning of the risks in the area. Although Mr Ho was not intending to go deep into the water, the particular area where he had been walking is a shallow limestone edge that then becomes deeper before it drops off several metres. It was noted that if someone's attention was fixed on abalone fishing, it could be very easy to not see the drop off and fall in. That is what was suspected by the police to have happened to Mr Ho.¹⁰
14. The SJA Rescue Helicopter was dispatched to the area and Surf Life Saving WA were contacted and requested to bring jet skis to search the water, as well as some volunteer marine rescue vessels based locally. They were assisted by computer generated drift modelling that indicated the areas where Mr Ho may have drifted if he was in the water. The modelling was assisted by a photograph taken just before Mr Ho entered the water, so the geo data from the photo could assist to pinpoint his location at that time. The results showed Mr Ho was likely to have been pushed back towards the coastline, rather than out to sea, but this relied upon him being on the surface of the water, rather than below the surface.¹¹
15. The Officer in Charge of Dunsborough Police Station was also contacted and local police attended the area to take statements from witnesses and conduct shoreline searches.¹²
16. Whilst it was not believed that Mr Ho would have deliberately entered the water from the reef, it is known that the reef is cluttered with holes and ledges and is subject to strong currents and hazardous waves. The reef edge also ends abruptly, with the water level dropping from half a metre deep to over three metres. The police involved in the search believed it was highly likely Mr Ho had slipped and fallen and accidentally entered the water. As he could not swim and was not wearing a flotation device, if he fell into the water there was a high chance of him drowning. There were, therefore, immediate grave concerns for his safety¹³

⁹ Exhibit 1, Tab 3.

¹⁰ T 7; Exhibit 1, Tab 4.

¹¹ Exhibit 1, Tab 3.

¹² Exhibit 1, Tab 3.

¹³ Exhibit 1, Tab 6 and Tab 8.

17. The initial coordinated search of the water and shoreline continued until approximately 6.30 pm, when the search had to be suspended due to failing light. No sign had been found of Mr Ho on land or in the water.
18. Dr Paul Luckin, who is the medical advisor to the Australian Maritime Safety Authority and state policing jurisdictions throughout Australia, was consulted to see if he could assist in calculating a likely survival time for Mr Ho, based on the known facts. Dr Luckin advised that, on the assumption that Mr Ho was in the water, his likely survival time had ended before the end of daylight that day, and he did not see there was any possibility that he would survive the night.¹⁴
19. Based upon the advice of Dr Luckin, when the search recommenced the following day, it was accepted that the focus was on the possible recovery of Mr Ho's body, rather than an attempt to rescue him. A dive team from the Water Police conducted operations in the area to search for Mr Ho's body below the water surface, as it is known that when a person drowns, they inhale water and will sink. However, Mr Ho's body was not located by the police divers.¹⁵
20. A land base search also continued, in case Mr Ho's body had washed up on one of the beaches in the area, but despite multiple teams searching, no sign of Mr Ho was found. After exhausting all investigative avenues to locate Mr Ho, the search was concluded after three days. There are many reasons why Mr Ho's body might not be found, even though he drowned in the water at the location where he was last seen, so the investigating police did not consider the failure to locate his body was suspicious.¹⁶

MISSING PERSON INVESTIGATION

21. A missing person report was filed and appropriate information obtained in the event that some remains were discovered that might be identified as Mr Ho. However, no human remains located in the area since that time could be positively identified as Mr Ho.¹⁷
22. The police investigation identified that the area where Mr Ho went missing has a submerged limestone shelf that drops off suddenly into the ocean, which is several metres to the ocean floor. There was signage in the area at the location that clearly denoted the dangers in the area, and specifically addressed abalone fishing requirements. The signage denotes the area as a "Coast Risk Area," indicating it is subject to dangerous rips, freak waves and swell, slippery rocks and loose surfaces. It was noted by Acting Sergeant Jolly that even seemingly calm waters, such as the conditions that were present on the morning that Mr Ho was abalone fishing, can hide rips and strong currents.¹⁸

¹⁴ Exhibit 1, Tab 3.

¹⁵ Exhibit 1, Tab 3.

¹⁶ Exhibit 1, Tab 2.

¹⁷ Exhibit 1, Tab 2.

¹⁸ T 12.

23. It would appear that Mr Ho did not take heed of these warnings when he entered the water. Sadly, it is not uncommon for people with no swimming ability to enter the water in search of abalone, unprepared for the dangers of this activity, and Mr Ho's is not the first coronial death that has occurred in this way. Sergeant Jolly gave evidence that the experience of the police based in Dunsborough in recent times is that the people who get into trouble in the waters of the area often have little or no experience swimming. That applies whether they are fishing for abalone, rock fishing or even just trying to take photographs at scenic spots. If they lack the ability to swim, then the importance of safety gear such as lifejackets is even more significant.¹⁹
24. I note that if Mr Ho had chosen to wear a lifejacket, there would have been a much greater chance that he would have been able to be located in the water, and potentially be saved, as it would have provided him with buoyancy in the water and made him more visible. Evidence was also given that the clothing he was wearing, including jeans and runners, was unsuitable for entering the ocean, and the catch bag he was wearing may well have added to his weight if he had filled it with abalone, making it more challenging for him if he got into difficulty and increasing his risk of drowning.²⁰
25. Subsequent inquiries by police have failed to identify any interactions by Mr Ho with any Australian institutions such as the Department of Immigration, Australian Border Force, Medicare or Centrelink. He was lawfully in Australia at the time of his disappearance, so he had no reason to hide his presence from the authorities. Mr Ho has not accessed his bank accounts since his disappearance, nor contacted any family members or friends, which is out of character for him.²¹
26. At the conclusion of the police investigation into Mr Ho's disappearance, it was determined that the only reasonable conclusion was that Mr Ho accidentally entered the water sometime before 7.00 am on 2 March 2020 and drowned soon after.²²
27. I note that there were some media reports at the time suggesting that sharks had been seen in the ocean in nearby Yallingup and Bunker Bay around this time, but the Dunsborough Police indicated to the media at the time that they had no reason to suspect that Mr Ho had fallen victim to a shark attack that had led to his death.²³ At the inquest, Acting Sergeant Jolly confirmed that, while marine predation could not be ruled out, there was no report of a shark sighting in or around that location at the time. He noted that, given how clear the conditions were and the proximity of his friends, you would have liked to think that his friends would have heard or seen something if that had occurred.²⁴

¹⁹ T 8.

²⁰ T 9 – 10.

²¹ Exhibit 1, Tab 2.

²² Exhibit 1, Tab 2.

²³ Exhibit 1, Tab 8.

²⁴ T 12.

COMMENTS ON PUBLIC SAFETY

28. The fact that Mr Ho did not know how to swim is not unusual, given his background. Many new arrivals to Australia have poor or non-existent swimming and water safety skills, for many reasons. Correspondingly, recent research has shown that people from multicultural communities are drastically overrepresented in drowning statistics in Australia. Interestingly in connection with this inquest, the research also shows that migrants were more likely to drown when swimming or rock fishing at beaches and around rocks, in comparison with those born in Australia.²⁵
29. In Western Australia, Royal Life Saving WA estimates that approximately 40% of drownings recorded in Western Australia over the last five years involved people who were born overseas. Research has found that within culturally and linguistically diverse groups, awareness of the importance of swimming and lifesaving skills is significantly less than the rest of the population.²⁶ In order to rectify this problem and to address the alarming drowning statistics, Royal Life Saving WA has been working to engage with people from these multicultural groups and find ways to encourage and support them to participate in swimming and water safety education.
30. The water safety education, some of which is available on the Royal Life Saving and Royal Life Saving WA websites, includes information about the appropriate clothing to wear in the ocean, including culturally appropriate options that are available.
31. More specifically for abalone fishing, which is recognised as one of the most dangerous coastal recreational activities in Western Australia, there is information available on the Surf Life Saving WA website about the dangers of abalone fishing and the kinds of clothing, equipment and other safety precautions that should be taken.²⁷ The issue is of particular concern to Surf Life Saving WA, as their members often have to rescue people who go abalone fishing, particularly in the Perth area, where the fishing season is limited to a number of one hour periods that are often frantic, require multiple rescues by surf lifesavers and have resulted in many fatalities.
32. There is also safety information available from the WA Government's Department of Fisheries²⁸, who are involved in issuing the mandatory fishing licences required to go abalone fishing, and the peak industry body Recfishwest on their website.²⁹
33. Acting Sergeant Jolly, who is currently the Officer in Charge of the Dunsborough Police Station, gave evidence that despite all of this information being available, and a large amount of signage at Sugarloaf Rocks, the majority of people that his officers come across when doing their patrols are not using safety equipment.³⁰

²⁵ *Royal Life Saving National Drowning Report 2021*, Royal Life Saving Australia, <https://www.royallifesaving.com.au>.

²⁶ <https://www.royallifesavingwa.com.au>.

²⁷ <https://www.mybeach.com.au/safety-rescue-services/coastal-recreation/abalone>.

²⁸ <https://www.fish.wa.gov.au>.

²⁹ <https://www.recfishwest.org.au>.

³⁰ T 8.

CAUSE AND MANNER OF DEATH

34. I am satisfied beyond reasonable doubt that Mr Ho died around the time of his disappearance on the morning of 2 March 2020. The death was most likely due to drowning, but there is insufficient evidence for me to be able to be satisfied of a cause or manner of death, noting that he could have injured himself on the reef. Therefore, the cause of death must be recorded as unascertained. I am, however, able to conclude that his death occurred by way of misadventure, which is the usual manner of death entered in cases of this kind.

CONCLUSION

35. Sadly, Mr Ho's death is yet another example of a death that probably could have been prevented if he had worn appropriate safety gear and taken heed of the many warning signs that have been placed to alert people to the known dangers of the Western Australian coast. This is particularly important for people, such as Mr Ho, who have not yet learned how to swim.
36. Hopefully, hearing about the circumstances of Mr Ho's tragic death, a young man who was beginning to make a life for himself in Australia, may encourage others to heed these warnings in the future and take appropriate safety precautions. This includes, wherever possible, taking up the many opportunities available in Western Australia to learn to swim.

S H Linton
Deputy State Coroner
28 March 2022