
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : MICHAEL ANDREW GLIDDON JENKIN, CORONER
HEARD : 21 MARCH 2024
DELIVERED : 26 MARCH 2024
FILE NO/S : CORC 2963 of 2022
DECEASED : WOODS, DAMIEN LYNDON

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Acting Sergeant C. Robertson assisted the coroner.

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the disappearance of **Damien Lyndon WOODS** with an inquest held at the Perth Coroner’s Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 21 March 2024, find that the death of **Damien Lyndon WOODS** has been established beyond all reasonable doubt, that the identity of the deceased person was **Damien Lyndon WOODS**, and that death occurred on or about 27 February 2021, in the waters of the Indian Ocean near Cheynes in Waychinicup National Park, about 68 km east of Albany, in the following circumstances:*

Table of Contents

INTRODUCTION	3
DAMIEN	4
<i>Background</i>	4
DISAPPEARANCE	4
THE SEARCH	9
<i>The search operation</i>	9
<i>Timeframe for survival</i>	11
<i>Family concerns regarding the search</i>	12
<i>Comments on the search</i>	15
POLICE INVESTIGATION	16
<i>Enquiries by Police</i>	17
<i>Conclusion reached by the police investigator</i>	17
HAS DEATH BEEN ESTABLISHED?	18
CAUSE AND MANNER OF DEATH	19
CONCLUSION	19

INTRODUCTION

1. Damien Lyndon Woods (Damien)¹ was 18-years of age when he went missing at about 1.45 pm on 27 February 2021. At the time, Damien and some family members were fishing off rocks near Cheynes in Waychinicup National Park, about 68 km east of Albany. A large wave washed Damien and his cousin Russell into the sea. Although Russell was about two hours later, Damien has never been found despite an extensive search.
2. On 18 May 2023, the Deputy State Coroner determined that on the basis of the evidence contained in a police report relating to Damien's disappearance, there was reasonable cause to suspect that Damien had died and that his death was a "reportable death".^{2,3}
3. Accordingly, pursuant to section 23(1) of the *Coroners Act 1996* (WA), the Deputy State Coroner directed that Damien's suspected death be investigated.^{4,5} In accordance with that direction, I held an inquest into Damien's suspected death on 21 March 2024, which was attended by members of his family by way of a video link with the Albany courthouse.
4. The documentary evidence tendered at the inquest comprised one volume, and included a report into the police investigation into Damien's disappearance and suspected death.⁶ Attachments to the police report included statements from relevant witnesses, and information relating to the search operation ("*Operation Mermaid*") to locate Damien.
5. Sergeant Vaughan MacKay, the police forward commander for *Operation Mermaid* gave oral evidence at the inquest. The inquest focused on the circumstances of Damien's disappearance, and the related issue of whether he is deceased.

¹ The deceased's family asked that he be referred to as "*Damien*" at the inquest, and in this finding. No disrespect is intended.

² Letter - Deputy State Coroner to Commr. of Police (18.05.23)

³ Section 3, *Coroners Act 1996* (WA)

⁴ Section 23(1), *Coroners Act 1996* (WA)

⁵ Direction by Deputy State Coroner contained in Letter - Deputy State Coroner to Commr. of Police (18.05.23)

⁶ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22)

DAMIEN

Background^{7,8}

6. Damien was born in Albany on 2 January 2003.⁹ He had two brothers, and he lived with family in Albany. After completing his schooling in Katanning and North Albany, he enrolled in a Certificate II course in plumbing at the Great Southern TAFE. Damien later withdrew from the course, and he completed a three-month work placement with a local seeding and harvesting company.
7. It appears that Damien had no significant medical issues, and although he was a moderate social drinker, his family say he did not use illicit drugs. Damien enjoyed sport and played football and basketball, and he was described as “*very family orientated*” and as a “*very good artist*”.
8. Damien also enjoyed rock fishing, and he was familiar with the spot he went missing from as he had been there before. Damien’s family later told police that his swimming ability was “*5 out of 10*” and that Damien was in the habit of wearing a “*safety vest*” when he went rock fishing. However, on this occasion, his family were:

“Unsure why on the day Damien went missing he wasn’t wearing his safety vest”.¹⁰

⁷ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp 4-5

⁸ Exhibit 1, Vol. 1, Tab 7, Statement - Ms E Coyne (10.09.21), paras 3-56

⁹ Exhibit 1, Vol. 1, Tab 1, P100 - Report of Death (18.08.23)

¹⁰ Exhibit 1, Vol. 1, Tab 7, Statement - Ms E Coyne (10.09.21), paras 48-49

DISAPPEARANCE¹¹

9. On 27 February 2021, Damien and his brother Caleb, his nephew Jye, and his cousin Russell^{12,13} went fishing off coastal rocks near Cheynes in the Waychinicup National Park, about 68 km east of Albany.^{14,15,16} The terrain in the area is rugged and rocky (see: Photo 1). The rocks are covered with black algae and waves that crash onto the rocks make them slippery and dangerous (see: Photos 2 and 3).¹⁷



Photo 1: View of the rocks near where Damien went missing¹⁸

10. After collecting some crabs to use as bait, the group began fishing off some rocks. Sometime later, as Russell and Damien were standing on rocks near the water, they were both hit by a wave that came up to their knees. Russell and Damien started moving towards a flat rock further away from the sea, and as they were doing so, a second wave crashed onto the rocks and hit them both in the chest.^{19,20,21}

¹¹ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp1-4

¹² At the relevant time, Caleb was 16 years of age, Jye was 13 years of age, and Russell was 23 years of age

¹³ In this finding, I have referred to Mr Caleb Woods as "*Caleb*", Mr Jye Coyne as "*Jye*", and Mr Russell Wynne as "*Russell*"

¹⁴ Exhibit 1, Vol. 1, Tab 4, Statement - Mr C Woods (27.02.21), paras 2-4

¹⁵ Exhibit 1, Vol. 1, Tab 5, Statement - Mr J Coyne (27.02.21), paras 2-4

¹⁶ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (01.03.21), paras 2-28

¹⁷ ts 21.03.24 (MacKay), pp5-6 & 12

¹⁸ Exhibit 1, Vol. 1, Tab 37, Scene photo taken by police drone

¹⁹ Exhibit 1, Vol. 1, Tab 4, Statement - Mr C Woods (27.02.21), paras 5-8

²⁰ Exhibit 1, Vol. 1, Tab 5, Statement - Mr J Coyne (27.02.21), paras 5-6

²¹ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (typed version of statement dated 01.03.21), paras 29-57

11. As Russell and Damien were pushed towards a gap in the rocks, Damien called out “*Russ*”, before a third wave washed them both into the sea. Russell told Damien to “*stay calm*”, and that despite the “*very rough*” conditions, both men were able to swim to a nearby rock that was partly submerged (see Photo 3). As Damien and Russell lay on this rock and desperately tried to cling on, a large wave crashed onto them, and they were washed back into the sea.^{22,23,24}
12. Russell said he and Damien were “*caught in the white wash*” which forced them under the water, and when they surfaced he told Damien to “*swim out*” so they could try to get clear of the white wash. As they started to swim, Russell says they were hit by “*another big wave*” that “*knocked us under*” and that he was “*rolling over lots*”.²⁵
13. When Russell resurfaced, he could not see Damien, and he heard Caleb call out and ask where Damien was. Before Russell started swimming further out to sea away from the dangerous rocks, he called out to Caleb and told him to keep looking for Damien. A short time later as he was treading water, Russell yelled to Jye to call for help.²⁶
14. After Damien and Russell were washed off the rocks, Jye used a mobile phone to call emergency services. His call was taken by staff at the Police Operations Command Centre (the POCC) at 1.46 pm, and Jye told them his two family members were “*on a rock in the middle of the water*”. Before the call terminated due to the poor phone reception, Jye referred to their location as “*Bakers Junction*”.^{27,28}
15. On the basis of the limited information that was then available, police were immediately deployed to the Lower King area.^{29,30}

²² Exhibit 1, Vol. 1, Tab 4, Statement - Mr C Woods (27.02.21), paras 5-8

²³ Exhibit 1, Vol. 1, Tab 5, Statement - Mr J Coyne (27.02.21), paras 5-6

²⁴ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (typed version of statement dated 01.03.21), paras 44-57

²⁵ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (typed version of statement dated 01.03.21), paras 68-73

²⁶ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (typed version of statement dated 01.03.21), paras 74-84

²⁷ Exhibit 1, Vol. 1, Tab 5, Statement - Mr J Coyne (27.02.21), paras 2-4

²⁸ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p1

²⁹ Exhibit 1, Vol. 1, Tab 10, Statement - Sgt. D Grimes (23.03.21), paras 1-7

³⁰ Exhibit 1, Vol. 1, Tab 11, Statement - Sen. Const. K Logan (06.04.21), paras 1-6

16. However, at 2.24 pm, the POCC received a call from Caleb. Despite his obvious distress, Caleb was able to tell police that he and family members had been fishing off rocks at Waychinicup National Park. Caleb said that a big wave had washed his brother and cousin into the water, and now only one was still visible.^{31,32}
17. Due to poor phone reception, Caleb had been forced to drive the family car to a nearby track to make the call. Whilst he was in that location, he flagged down a passing car and the occupants (members of the Scott family) called the POCC and provided GPS coordinates for the incident location. The Scott family also told police there was a six-metre swell, and that sea conditions were treacherous, but again poor phone reception meant their calls to police kept cutting out.^{33,34,35}



Photo 2: Aerial view of the rocks near where Damien went missing³⁶

³¹ Exhibit 1, Vol. 1, Tab 4, Statement - Mr C Woods (27.02.21), para 13

³² Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p2

³³ Exhibit 1, Vol. 1, Tab 8, Statement - Mr L Scott (31.03.21)

³⁴ Exhibit 1, Vol. 1, Tab 9, Statement - Mr S Scott (08.04.21)

³⁵ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp2-3

³⁶ Exhibit 1, Vol. 1, Tab 38, Scene photo taken by police drone

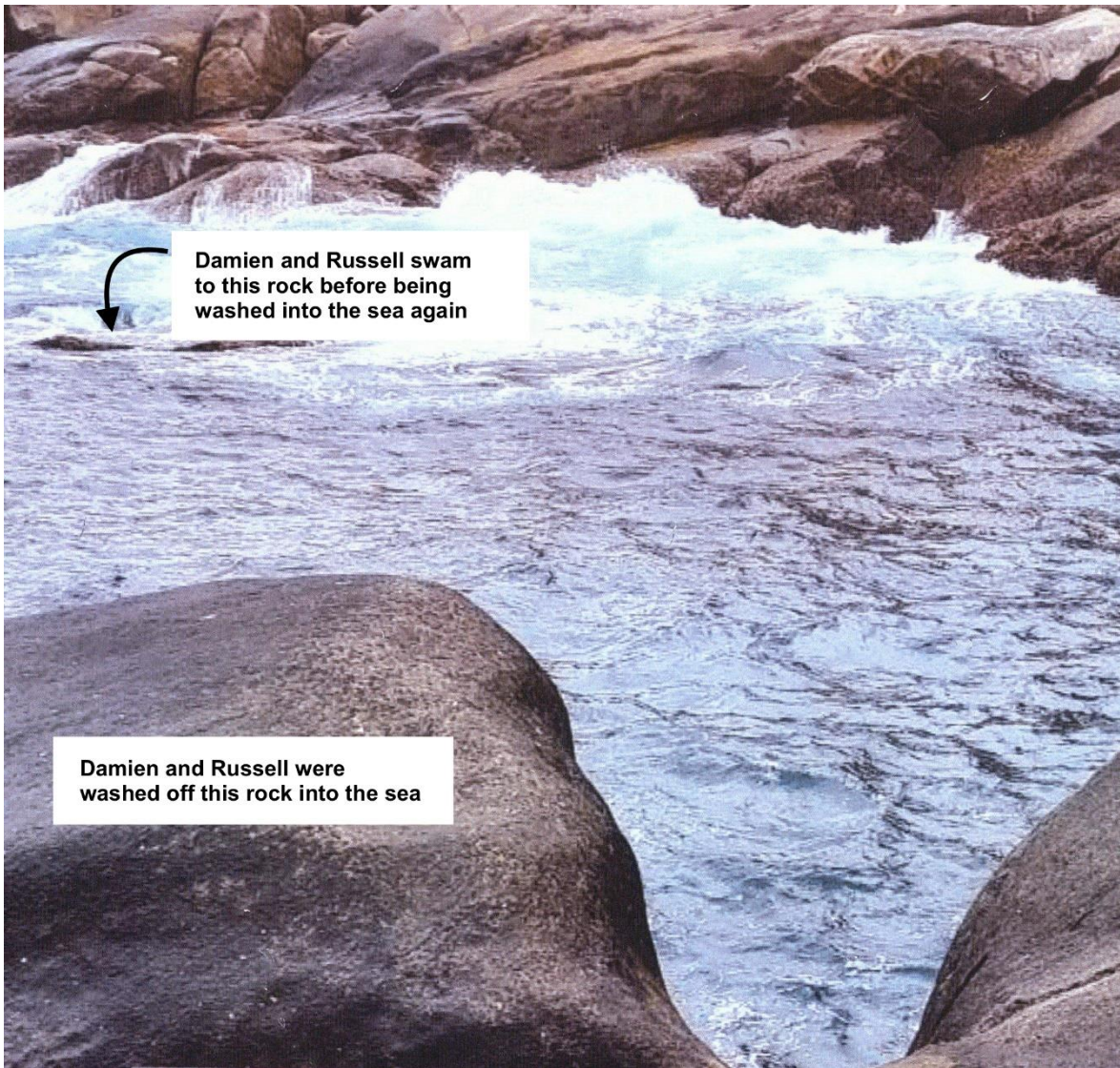


Photo 3: Showing the rocks Damien and Russell were washed off³⁷

18. Russell managed to stay afloat and as I will explain shortly, he was plucked from the water alive at 4.00 pm on 27 February 2021, by a rescue vessel (VMR1) from Albany Sea Search and Rescue (ASSR). Russell said when he saw the rescue vessel arrive, he tried to shout but “*water was getting into his mouth and he was going under*”. Russell remained on VMR1 and it continued to search for Damien until “*it was too dark and rough*”. Russell was taken ashore at Cheynes Beach before being transferred to Albany Health Campus for treatment.³⁸

³⁷ Exhibit 1, Vol. 1, Tab 40, Scene photo taken by police

³⁸ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (typed version of statement dated 01.03.21), paras 92-101

THE SEARCH

The search operation^{39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62}

19. After receiving the emergency calls alerting them to the fact that Damien and Russell had been washed into the ocean, police initiated a large scale, multi-agency search operation (“*Operation Mermaid*”) to locate them. During *Operation Mermaid*, police coordinated the deployment of the following resources:

- a. *Rescue vessels and jet skis*: after VMR1 arrived on the scene, police onshore were able to guide it towards Russell’s position in the water, and he was successfully rescued by the vessel’s crew at about 4.00 pm on 27 February 2021.

VMR1 was joined by jet skis from the Albany Surf Life Saving Club (ASLSC), and despite the treacherous conditions, these vessels continued searching for Damien until about 6.55 pm, when bad light and rough conditions caused the search to be abandoned for the night.

Jet skis from ASLSC conducted further searches on day two of *Operation Mermaid*, and various rescue vessels from ASSR conducted searches on days two and three;^{63,64,65,66}

³⁹ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp4-11 and ts 21.03.24 (MacKay), pp7-12

⁴⁰ Exhibit 1, Vol. 1, Tab 10, Statement - Sgt. D Grimes (23.03.21), paras 8-61

⁴¹ Exhibit 1, Vol. 1, Tab 11, Statement - Sen. Const. K Logan (06.04.21), paras 7-36

⁴² Exhibit 1, Vol. 1, Tab 12, Statement - Sen. Const. B Moss (15.05.21), paras 2-37

⁴³ Exhibit 1, Vol. 1, Tab 13, Statement - FC. Const. H Gill (28.05.21), paras 2-28

⁴⁴ Exhibit 1, Vol. 1, Tab 14, Statement - Sen. Const. A Dollas (22.05.21), paras 2-33

⁴⁵ Exhibit 1, Vol. 1, Tab 15, Statement - Sen. Const. R Du Toit (04.06.21), paras 2-15

⁴⁶ Exhibit 1, Vol. 1, Tab 16, Statement - Sgt. V MacKay (20.06.21), paras 2-50

⁴⁷ Exhibit 1, Vol. 1, Tab 17, Statement - Sen. Const. J Daniels (17.05.21), paras 2-32

⁴⁸ Exhibit 1, Vol. 1, Tab 18, Incident Level Declaration (28.02.21)

⁴⁹ Exhibit 1, Vol. 1, Tab 19, Incident Action Plan (28.02.21)

⁵⁰ Exhibit 1, Vol. 1, Tabs 20.1-20.8, Incident Management Team Meeting Agendas (28.02.21 - 01.03.21)

⁵¹ Exhibit 1, Vol. 1, Tab 21, Running sheet - Operation Mermaid

⁵² Exhibit 1, Vol. 1, Tab 22, Emergency response incident summary

⁵³ Exhibit 1, Vol. 1, Tab 32, Search Area - Last known location

⁵⁴ Exhibit 1, Vol. 1, Tab 33, Search Area - Start point and finish point

⁵⁵ Exhibit 1, Vol. 1, Tab 41, Incident report timeline

⁵⁶ Exhibit 1, Vol. 1, Tabs 42-44, Dispatch Tasks (LWP21022700176110, LWP21022700176030 & LWP21022700176157)

⁵⁷ Exhibit 1, Vol. 1, Tab 45.1, Incident Report 27022114246983

⁵⁸ Exhibit 1, Vol. 1, Tab 45.2, Running Sheet - Incident Report 27022114246983

⁵⁹ Exhibit 1, Vol. 1, Tab 46, SAR TFFS Briefing Report

⁶⁰ Exhibit 1, Vol. 1, Tab 50, Albany Coast - Coastal Waters Forecasts (27.02.21 - 01.03.21)

⁶¹ Exhibit 1, Vol. 1, Tab 51, Incident Weather Forecast for Albany land search #514769

⁶² Exhibit 1, Vol. 1, Tab 52, Cheyne Beach Sunrise and Sunset Information (Feb 2021)

⁶³ Exhibit 1, Vol. 1, Tab 25, Task Briefing - Albany Marine Rescue and ts 21.03.24 (MacKay), p13

⁶⁴ Exhibit 1, Vol. 1, Tab 26, Task Briefing - Rescue 1

⁶⁵ Exhibit 1, Vol. 1, Tab 27, Task Briefing - PV3

⁶⁶ Exhibit 1, Vol. 1, Tab 31, Search Pattern - Combined sea and air

- b. *Private charter helicopter*: a helicopter chartered by police began searching for Damien at 4.35 pm on 27 February 2021. Further searches with a police observer were conducted on days two and three of *Operation Mermaid*;^{67,68,69}
- c. *Police helicopter*: a police helicopter (Polair62) departed from Jandakot Airport at 6.15 pm on 27 February 2021, and conducted an air search until 7.40 pm;^{70,71,72}
- d. *AMSAR jet aircraft*: a jet aircraft operated by the Australian Maritime Safety Authority left Jandakot Airport at 6.15 pm on 27 February 2021, and conducted an air search until 7.40 pm;⁷³
- e. *Private charter fixed wing aircraft*: a fixed wing aircraft chartered by police conducted searches with a police observer on days two and three of *Operation Mermaid*;⁷⁴
- f. *Remotely piloted aircraft system (i.e. drone)*: a drone fitted with video recording equipment and thermal cameras arrived at the scene at 7.00 am on day two of *Operation Mermaid*, and conducted land and shoreline searches. The final search was conducted on 17 March 2022;⁷⁵
- g. *Visual observations*: in the early stages of *Operation Mermaid*, police used binoculars to scan the sea in the area where Damien had disappeared;⁷⁶
- h. *Foot patrols*: family members, members of the public, and police conducted searches of coastline in the area Damien went missing.^{77,78} and
- i. *Vehicle patrols*: police conducted vehicle patrols of 4WD tracks and areas of interest in the area Damien went missing.⁷⁹

⁶⁷ Exhibit 1, Vol. 1, Tab 24, Task Briefing - HELO and ts 21.03.24 (MacKay), p12

⁶⁸ Exhibit 1, Vol. 1, Tab 29, Search Pattern - Helicopter

⁶⁹ Exhibit 1, Vol. 1, Tab 30, Search Pattern - Plane and Helicopter

⁷⁰ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp4-11 and ts 21.03.24 (MacKay), p7

⁷¹ Exhibit 1, Vol. 1, Tab 23, Task Briefing - Polair 62

⁷² Exhibit 1, Vol. 1, Tab 29, Search Pattern - Helicopter

⁷³ Exhibit 1, Vol. 1, Tab 30, Search Pattern - Plane and Helicopter and ts 21.03.24 (MacKay), p12

⁷⁴ Exhibit 1, Vol. 1, Tab 28, Search Pattern - Goodwin McCarthy Aviation and ts 21.03.24 (MacKay), pp12-13

⁷⁵ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p11 and ts 21.03.24 (MacKay), pp14-15

⁷⁶ Exhibit 1, Vol. 1, Tab 17, Statement - Sen. Const. J Daniels (17.05.21), para 14

⁷⁷ Exhibit 1, Vol. 1, Tab 35, Map of coastline searched by police and family members (Footnote 41A)

⁷⁸ Exhibit 1, Vol. 1, Tab 36, Map of coastline searched by police and family members (Footnote 41B)

⁷⁹ Exhibit 1, Vol. 1, Tab 14, Statement - Sen. Const. A Dollas (22.05.21), paras 2-33

*Timeframe for survival*⁸⁰

20. Dr Paul Luckin is a consultant anaesthetist based in Queensland, and a specialist medical adviser to the Australian National Search and Rescue organisation. As a renowned expert in the field of search and rescue operations, Dr Luckin is routinely contacted by police during maritime rescue operations for advice on the missing person's "*timeframe for survival*". At 1.51 pm on 28 February 2021, Dr Luckin sent the following response to police about Damien's timeframe for survival: "**I note it is now +22.5 hrs since (Damien) was last sighted. If he is in the water, he will not still be alive**".⁸¹ [Original Emphasis]
21. In arriving at his conclusion, Dr Luckin said he had considered: the water temperature (17 - 20°C); the overnight temperature (13 - 16°C) with no warming effect from sunlight; wind speeds (15 - 25 km per hour); the fact that Damien's head would have been wet and exposed if he was above water; Damien's moderate swimming ability (rated at 5 out of 10 by his family); and the fact that Damien was not wearing flotation devices when last seen.⁸²
22. In his email, Dr Luckin outlined three possible scenarios to explain what might have happened to Damien after he disappeared, namely:
- 1). If he attempted to regain the rocks, and was again in the impact zone with 20 ft waves, he would not have survived unless he had regained the rocks, which he has not,
 - 2). If he attempted to swim out, away from the rocks, and remained on the surface, he would probably have been seen by the survivor, and possibly rescued with him. This has not occurred,
 - 3). If he swam away from the rocks, was not seen, but remained on the surface, he has now been in the water for 22.5 hours; he would no longer be alive.⁸³

⁸⁰ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp9 & 13 and ts 21.03.24 (MacKay), pp8-9

⁸¹ Exhibit 1, Vol. 1, Tab 47, Email - Dr P Luckin to Sgt B Bell, Water Police (1.15 pm, 28.02.21)

⁸² Exhibit 1, Vol. 1, Tab 47, Email - Dr P Luckin to Sgt B Bell, Water Police (1.15 pm, 28.02.21)

⁸³ Exhibit 1, Vol. 1, Tab 47, Email - Dr P Luckin to Sgt B Bell, Water Police (1.15 pm, 28.02.21)

23. In a previous inquest I conducted dealing with the death of a man who was swept off rocks while fishing near Esperance, Dr Luckin expressed the following opinion, which I would respectfully apply to Damien:

There is a high probability that death occurred within a few minutes of entering the water, as a result of the psychological effects of sudden cold-water immersions, the lack of a life jacket, and the physical impact of being swept against the rocks of the impact zone.⁸⁴

24. At the inquest, family members said they were aware that a shark had been seen the day before in the area where Damien disappeared. Sergeant MacKay said that although police were not able to confirm whether a shark had been seen in that area on the day Damien had gone missing, shark sightings were a common occurrence along the coast in that area.⁸⁵
25. This information raises the obvious possibility that after he died, Damien may have been the subject of marine predation, which might also explain why his body has never been found.

Family concerns regarding the search

26. I note that at the inquest, member of Damien's family raised two concerns about the search operation coordinated by police. The first was that volunteers from the State Emergency Service (SES) had not been deployed to assist family members who were conducting a land search along the coast in the area where Damien went missing.⁸⁶
27. At the inquest, Sergeant MacKay explained that SES volunteers had not been deployed to conduct a coastline search because it had been determined that the terrain in the search area was too dangerous. Sergeant MacKay also explained that the coast to the east and west of the area where Damien was last seen was being extensively searched by a drone that was fitted with video and thermal cameras.⁸⁷
28. Sergeant MacKay said that two operators remotely monitored footage from the drone's cameras, which have excellent visual and zoom

⁸⁴ [2020] WACOR 8, Record of Investigation into Death, Mr Thomas Dominic Rae (14.05.20), p10, para 36

⁸⁵ ts 21.03.24 (MacKay), p10

⁸⁶ ts 21.03.24 (Robertson), p14 and ts 21.03.24 (Family members), pp17-18

⁸⁷ ts 21.03.24 (MacKay), pp14-15

capabilities. In addition, the drone's thermal camera is capable of detecting small amounts of heat emitted by objects, animals, and humans. Sergeant MacKay said that it was highly probable that if Damien's body had been washed ashore, the drone operators would have seen it during their searches.⁸⁸

29. The other concern raised by the family was that police divers were not deployed to check whether Damien's body had become trapped in rocks along the coast. A family friend had reportedly conducted a dive in the area where Damien was last seen and found nothing, and Damien's family wanted to know why police divers had not conducted a similar search.⁸⁹
30. In his investigation report, Senior Constable Fazio explained that although the Water Police had considered deploying police divers to search for Damien on the day he went missing, after assessing sea conditions it had been determined that it was too dangerous for police divers to be deployed.⁹⁰
31. In his dive report, Sergeant Brad Bell (Dive Supervisor with the Water Police) stated:

Diving operations could not be undertaken immediately after the incident on 27 February 2021 due to unsafe sea conditions for Police Divers. A review of forecasted weather conditions indicates the next possible window of favourable weather for dive operations near the (last known position) is on 5 March 2021, 7 days after the incident.

It is my opinion if a dive is to be conducted on 5 March 2021, there is almost no possibility of locating (Damien) on the ocean floor.⁹¹
[Emphasis added]

⁸⁸ ts 21.03.24 (MacKay), pp14-15

⁸⁹ ts 21.03.24 (Robertson), p15; ts 21.03.24 (Family members), p17; and ts 21.03.24 (Ms E Coyne), p19

⁹⁰ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p8 and ts 21.03.24 (MacKay), p12

⁹¹ Exhibit 1, Vol. 1, Tab 48.1 Water Police Dive Request - Sgt. B Bell (03.03.21), p3

32. By the time of his report, Sergeant Bell had access to “*drift predictions*” from SARMAP, a computer program that predicts the most probable location of a given object in the water. The drift predictions are based on known information including wind and current speed, and the object’s size and shape. Sergeant MacKay said that the program is used across Australia and has been found to be very accurate. In this case, drift models suggested it was unlikely that Damien’s body had been pushed into shore after he was washed off rocks and that instead, it was more likely that he had been washed out to sea.⁹²
33. The drift model, which became available at 7.00 am on 1 March 2021, was used to guide the searches being undertaken by rescue vessels.⁹³ In his report, Sergeant Bell noted that the rough sea conditions at the time Damien had disappeared meant it was unlikely that a body would remain on the sea floor. Sergeant Bell also said that the “*passage of time*” and the prevailing conditions meant it was unlikely that Damien’s body would still be in the search area.⁹⁴
34. As to whether Damien’s body might have been caught on rocks along the coast, Sergeant Bell expressed the following opinion in his report: “*The hypothesis that (Damien’s) body may be lodged in a crevice is not likely as forceful sea conditions are more likely to dislodge a body from these areas*”.⁹⁵
35. Having carefully considered the available evidence, I am satisfied that it was reasonable for police not to have deployed either volunteers from the SES, or police divers during *Operation Mermaid*. Apart from the obvious point that the safety of SES volunteers and police divers was paramount, foot patrols by family members and police had been unsuccessful, and considerable resources were already being deployed. Given the resources deployed, and taking account of the drift predictions, the treacherous terrain, and the prevailing conditions, it is my view that neither SES volunteers, nor police divers would have been of any significant assistance in the search efforts that were underway.

⁹² Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p7 and ts 21.03.24 (MacKay), pp7-8

⁹³ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p9 and ts 21.03.24 (MacKay), p15

⁹⁴ Exhibit 1, Vol. 1, Tab 48.1 Water Police Dive Request - Sgt. B Bell (03.03.21), p3, paras 1-3)

⁹⁵ Exhibit 1, Vol. 1, Tab 48.1 Water Police Dive Request - Sgt. B Bell (03.03.21), p3, para 4

Comments on the search

36. In his statement, Sergeant Grimes (who arrived on the scene at about 3.30 pm) said after locating Russell in the water, he had “*considered the action of swimming out to the male person in the water*”. However, he wisely dismissed the idea for safety reasons, as the conditions were rough, and Russell had drifted further out to sea. Further, as Sergeant Grimes observed in his statement: “*I feared that if any person tried to swim out to the male, given the sea conditions and the distance to the male, another emergency would result*”.⁹⁶
37. At the time Sergeant Grimes was aware that a helicopter and a rescue vessel had been deployed to the scene, and in my view his assessment of the situation was entirely reasonable. Despite some difficulties in contacting VMR1 due to issues with radio and phone reception, those on shore were able to attract the vessel’s attention and guide it towards Russell’s location.^{97,98}
38. At great risk to themselves, the crew of VMR1 were then able to pluck Russell safely from the sea in very treacherous conditions. By his own account, by that stage Russell was “*getting really tired*”,⁹⁹ and it seems unlikely he would have survived had he been in the water for much longer.
39. During *Operation Mermaid* a police liaison officer assisted the family as they conducted foot searches in accessible areas, and provided them with hourly updates on progress.¹⁰⁰
40. However, despite the extensive land, air, and sea search I have outlined, no sign of Damien has ever been found. After carefully considering the available evidence, I am satisfied that every effort was made to locate Damien as soon as police were advised he had been washed off rocks while fishing.
41. At the inquest Sergeant MacKay said that in his opinion, all of the resources he required to conduct *Operation Mermaid* were made available

⁹⁶ Exhibit 1, Vol. 1, Tab 10, Statement - Sgt. D Grimes (23.03.21), paras 31-33

⁹⁷ Exhibit 1, Vol. 1, Tab 11, Statement - Sen. Const. K Logan (06.04.21), paras 25-30

⁹⁸ Exhibit 1, Vol. 1, Tab 10, Statement - Sgt. D Grimes (23.03.21), paras 41-51

⁹⁹ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (01.03.21), para 94

¹⁰⁰ ts 21.03.24 (MacKay), p9 and ts 21.03.24 (Ms E Coyne), p19

to the police.¹⁰¹ I am satisfied that police deployed extensive resources, and the search operation was comprehensive and appropriate.

42. In my view, given the considerable resources that were deployed, it is highly probable that Damien would have been located if his body had remained within the search area.¹⁰²
43. I highly commend all those who were involved in the search operation to find Damien, and I pay tribute to those persons (particularly volunteers) who placed their own lives at risk whilst doing so.
44. I also warmly congratulate Caleb and Jye for their efforts in providing information to police about what had happened to Damien and Russell. Given their respective young ages, and the extraordinarily difficult and traumatic situation they found themselves in, both Caleb and Jye should be proud of the efforts they made on that terrible day.
45. I also acknowledge and highly commend the considerable assistance that was willingly provided to police by members of the Scott family (namely Steven, Lawrence and Cathy) who stopped to help after being flagged down by Caleb. The Scott family were able to provide police with GPS coordinates for the incident location, and assisted police with efforts to locate Russell and Damien after they were washed into the sea.

¹⁰¹ ts 21.03.24 (MacKay), p15

¹⁰² ts 21.03.24 (MacKay), p15

POLICE INVESTIGATION

*Enquiries by Police*¹⁰³

46. Following Damien’s disappearance, police conducted an extensive investigation into his disappearance. Enquiries known as “*proof of life checks*” were made with various agencies including hospitals, banks, Australian Border Force, Centrelink, Medicare, and the Missing Persons units in all police jurisdictions in Australia.¹⁰⁴
47. Police determined Damien only had one bank account, and that there had been no transactions on this account since his disappearance. None of the proof of life enquiries made by police have unearthed any information about Damien’s whereabouts, and there has been no contact from Damien since his disappearance on 27 February 2021.¹⁰⁵

Conclusion reached by the police investigator

48. Following their investigation, police concluded there was no evidence of criminality or of the involvement of another person or persons in relation to Damien’s death. Further, in his report, Senior Constable Fazio expressed the following opinion:

As a result of the rough seas and large waves on the afternoon of 27 February 2021, I submit that (Damien) drowned at Waychinicup National Park, GPS coordinates, Lat: -34.90323833, Long: 118.36760194, shortly after being washed off rocks.¹⁰⁶

49. At the inquest, Sergeant MacKay confirmed Senior Constable Fazio’s conclusion about Damien’s death, and said further that no additional information relevant to Damien’s whereabouts had come to light since his disappearance.^{107,108}

¹⁰³ ts 21.03.24 (MacKay), pp10-11

¹⁰⁴ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp14-15

¹⁰⁵ Exhibit 1, Vol. 1, Tab 17, Statement - Sen. Const. J Daniels (17.05.21), para 33

¹⁰⁶ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p16

¹⁰⁷ ts 21.03.24 (MacKay), p13

¹⁰⁸ See also: Exhibit 1, Vol. 1, Tab 17, Statement - Sen. Const. J Daniels (17.05.21), para 14

HAS DEATH BEEN ESTABLISHED?

50. I am satisfied that the available evidence establishes, beyond all reasonable doubt, that Damien died on 27 February 2021, in the waters of the Indian Ocean near Cheynes in Waychinicup National Park. In arriving at that conclusion, I have had regard to the following facts:

- a. Damien and members of his family were fishing off rocks near Cheynes in Waychinicup National Park at about 1.30 pm on 27 February 2021;^{109,110,111}
- b. Rocks in the area are slippery and treacherous when wet,¹¹² and sometime before about 1.45 pm on 27 February 2021, Damien and his cousin Russell were hit by waves and washed off rocks and into the sea;^{113,114,115}
- c. Although Damien was in the habit of wearing a lifejacket when rock fishing, he was not wearing one when he was last seen;¹¹⁶
- d. A survival expert (Dr Luckin) considered Damien's timeframe for survival had expired by 28 February 2021;¹¹⁷
- e. Given Dr Luckin's previously expressed opinion in a case with very similar circumstances, there is a high probability that Damien died within a few minutes of entering the sea;¹¹⁸
- f. Although Russell was rescued by a search vessel after he had been in the water for several hours, an extensive land, air, and sea search failed to find any sign of Damien;¹¹⁹
- g. since 27 February 2021, Damien has made no contact with any person, and there have been no reported sightings of him;^{120,121}

¹⁰⁹ Exhibit 1, Vol. 1, Tab 4, Statement - Mr C Woods (27.02.21)

¹¹⁰ Exhibit 1, Vol. 1, Tab 5, Statement - Mr J Coyne (27.02.21)

¹¹¹ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (01.03.21)

¹¹² ts 21.03.24 (MacKay), p12

¹¹³ Exhibit 1, Vol. 1, Tab 4, Statement - Mr C Woods (27.02.21)

¹¹⁴ Exhibit 1, Vol. 1, Tab 5, Statement - Mr J Coyne (27.02.21)

¹¹⁵ Exhibit 1, Vol. 1, Tab 6, Statement - Mr R Wynne (01.03.21)

¹¹⁶ Exhibit 1, Vol. 1, Tab 7, Statement - Ms E Coyne (10.09.21), p48

¹¹⁷ Exhibit 1, Vol. 1, Tab 47, Email - Dr P Luckin to Sgt B Bell, Water Police (1.15 pm, 28.02.21)

¹¹⁸ [2020] WACOR 8, Record of Investigation into Death, Mr Thomas Dominic Rae (14.05.20), p10, para 36

¹¹⁹ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p16 and ts 21.03.24 (MacKay), pp7-12

¹²⁰ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp15-16 and ts 21.03.24 (MacKay), p13

¹²¹ Exhibit 1, Vol. 1, Tab 17, Statement - Sen. Const. J Daniels (17.05.21), para 14

- h. A thorough police investigation (including proof of life checks) has failed to unearth any evidence that Damien is alive;¹²² and
- i. Police have expressed the opinion that Damien drowned shortly after he was washed off rocks and into the sea on 27 February 2021.¹²³

CAUSE AND MANNER OF DEATH

- 51. After carefully considering the available evidence, I have concluded that Damien died from immersion (drowning) shortly after he was washed into the sea whilst fishing off rocks near Cheynes in the Waychinicup National Park on 27 February 2021.
- 52. On the basis of the available evidence, I find Damien's death occurred by way of accident.

CONCLUSION

- 53. Damien was a much loved family member who was only 18-years of age when he went missing whilst fishing from rocks near Cheynes in the Waychinicup National Park.
- 54. For reasons I have explained, it is my view that the evidence in this case leads to the inescapable conclusion that Damien drowned on 27 February 2021 shortly after he was swept off rocks into the sea.
- 55. Once again, this case highlights the risks and potential dangers of fishing from rocks along the coast, without wearing a life jacket and/or being tethered to a strongpoint by a wearable harness.
- 56. I therefore **strongly urge** all those contemplating fishing from shoreline rocks in Western Australia to ensure that before doing so they carefully assess prevailing conditions, and take appropriate safety precautions.

¹²² Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), pp16-17

¹²³ Exhibit 1, Vol. 1, Tab 2, Report - Sen. Const. M Fazio (30.09.22), p17 and ts 21.03.24 (MacKay), p13

57. Finally, as I did at the conclusion of the inquest, I wish to again convey to Damien's family and loved ones, on behalf of the Court, my very sincere condolences for their terrible loss.

MAG Jenkin

Coroner

26 March 2024