
**FINDINGS and COMMENTS of Coroner McTaggart
following the holding of an inquest under the Coroners Act
1995 into the death of:**

ROBERT CHARLES MANSELL

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Record of Investigation into Death (With Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Olivia McTaggart, Coroner, having investigated the death of Robert Charles Mansell with an inquest held at Flinders Island, Launceston and Hobart in Tasmania, make the following findings.

Hearing Dates

6 March 2018 at Whitemark; 7 March 2018 at Launceston; 22 June 2018 at Hobart; 24, 25 and 26 September 2018 at Launceston; 9 November 2018 at Hobart; 11 and 12 February 2019 at Hobart; 13 and 14 March 2019 at Launceston; submissions received by 11 September 2019.

Representation

Counsel Assisting the Coroner: J Ansell

Counsel for Joshua Kennedy: G Tucker

Introduction

1. In the morning of 8 August 2015, Robert Charles Mansell, aged 42 years, was reported to police as a missing person and has never been seen again. His companion at the time of his disappearance, Joshua Kennedy, aged 20 years, gave an account that he and Mr Mansell had been fishing on Salmon Rock at the mouth of North East River on Flinders Island. Mr Kennedy said that, whilst they were fishing, Mr Mansell attempted to retrieve a lure that had become snagged. He then accidentally slipped into the deep and fast-flowing water and disappeared below the surface.
2. Salmon Rock is an exposed rocky outcrop jutting out from the mainland of Flinders Island at its far north east. It is surrounded by the waters of Bass Strait. The movement of water around the rock is influenced by the ingoing and outgoing tides in the nearby mouth of North East River. Not surprisingly, it is a popular spot for recreational salmon fishing. Although North East River Road runs to a point close to the rock, it is necessary to climb for several minutes to the fishing spot at the far end over very large, and sometimes steep, rocks. Once at the spot, the water below may be fast flowing and hazardous.
3. When Mr Mansell allegedly slipped from the rock into the water, Mr Kennedy reported that he too entered the water to rescue Mr Mansell, who was being taken out by the tide. He managed to assist him back to the rocks but both were swamped by a wave which caused Mr Mansell to be carried out again. Mr Kennedy was unable to save him and exited the

water to search the immediate area. He said he could not see any trace of Mr Mansell. Mr Kennedy said he then left the area of the rock in his car intending to raise the alarm. However, his car ran out of petrol shortly after starting the drive back and he then continued walking along the road. At about 9.45am, Mr Lawrence Wells, who was driving his vehicle in the opposite direction towards the same fishing spot, saw Mr Kennedy walking and stopped his vehicle to speak to him. Mr Kennedy told Mr Wells that Mr Mansell had “gone in off the rocks at the river”. Mr Wells asked Mr Kennedy whether he had called anyone, whereupon Mr Kennedy said he did not have any credit for his mobile phone. Mr Wells then called police from his own phone and drove Mr Kennedy back to the fishing rocks to look for Mr Mansell.

4. Sergeant Russell Judges arrived within an hour and started to coordinate a full search for Mr Mansell with advice from Australian Search and Rescue and others regarding the correct search area with regards to the movement of water. The search involved the immediate deployment of local fishing vessels and jet skis, as well as aircraft and personnel on foot. Despite the intensive air and sea and land search that followed over five days, Mr Mansell was not found. The active search was ceased on 12 August 2015.¹
5. Mr Mansell’s body has never been found. There has been no indication from the usual police enquiries that Mr Mansell is alive. I am satisfied that he is deceased.
6. In investigating this case, I considered that the circumstances of Mr Mansell’s disappearance were suspicious. In particular, the account of Mr Kennedy contained anomalies that suggested his version of Mr Mansell’s disappearance may not be truthful. There were further questions that arose in relation to the events during the evening and morning preceding Mr Mansell’s disappearance. Ms Stephanie Riggall, a mutual friend of Mr Kennedy and Mr Mansell, was present during some of this period. Her account also appeared unreliable.
7. The inquest, therefore, examined the following:
 - a) The movements of Mr Mansell from his return to Flinders Island on 7 August 2015 until his disappearance;
 - b) Mr Mansell’s relationships with Mr Kennedy and Ms Riggall; and
 - c) The version of events regarding Mr Mansell’s disappearance as outlined by Mr Kennedy.

¹ Affidavit R Judges C19.

Role of the Coroner

8. Before further considering the circumstances of Mr Mansell's death, it is necessary to say something about the role of a coroner. In Tasmania, a coroner has jurisdiction to investigate any 'reportable death'. A 'reportable death' includes a death where the death occurred in Tasmania and was unexpected, unnatural or violent.² Mr Mansell's falls within that definition.
9. When investigating any death, a coroner's role is inquisitorial. The coroner's role is to thoroughly investigate a death and answer the questions, if possible, posed by section 28 of the *Coroners Act 1995* ('the Act'). Those questions include the identity of the deceased, how the deceased died, the cause of death, and where and when it occurred. This process involves the making of various factual findings, but without apportioning legal or moral blame for the death.³ A coroner is required to make findings of fact from which others may draw conclusions.⁴
10. A coroner does not have the power to charge anyone with crimes or offences arising out of the death the subject of investigation. In fact, a coroner may not even say that she or he thinks that someone has committed a crime in relation to the death being investigated.⁵
11. As noted above, one matter that the Act requires is that a finding be made about how death occurred. It is well settled that this phrase involves the application of the ordinary concepts of legal causation. Any coronial inquiry necessarily involves a consideration of the particular circumstances surrounding the particular death so as to discharge the obligation imposed by section 28(1)(b).
12. A coroner may comment on any matter connected with the death into which he or she is enquiring. The power to make comment arises as a consequence of the coroner's obligation to make findings and is not free ranging. It arises as a consequence of the exercise of the coroner's prime function, that is, to make 'findings'.⁶ For a coroner to exercise the power conferred by section 28(2) and (3) to make recommendations and comments, it is necessary that any recommendations or comments are sufficiently connected with the death being investigated.
13. The standard of proof applicable to a coronial investigation is the civil standard. This means that where findings of fact are made, a coroner needs to be satisfied on the balance of

² Section 3 of the *Coroners Act 1995*.

³ *R v Tennent; Ex parte Jager* [2000] TASSC 64 at [7].

⁴ *Keown v Kahn* [1999] 1 VR 69 at 75-76.

⁵ Section 28(4) of the *Coroners Act 1995*.

⁶ *Harmsworth v State Coroner* [1989] VR 989 at 996.

probabilities as to the existence of those facts. However, if an investigation reaches a stage where findings may reflect adversely on someone, the law is that the standard applicable is that set out in the well-known High Court case of *Briginshaw v Briginshaw*, that is, that the task of deciding whether a serious allegation is proved must be approached with caution.⁷ I am particularly mindful of applying this standard in this matter, where I must examine the acts of Mr Kennedy and, to a lesser extent, Ms Riggall, in considering the circumstances surrounding Mr Mansell's death.

Evidence in the Investigation

14. Despite initial issues with the investigation which I will later explain, I am satisfied that this case has now been investigated thoroughly and there is no other evidence that could feasibly be of assistance in shedding light upon Mr Mansell's disappearance and death. The documentary evidence tendered at inquest comprised the following:
- a) Police Report of Death;
 - b) Affidavit and correspondence of Anthony Haines, Mr Mansell's brother;
 - c) Affidavit, three police video interviews, and prior convictions of Joshua Kennedy;
 - d) Affidavit and two police video interviews of Stephanie Riggall;
 - e) Affidavit and police video interview of Benjamin Howard - one of the last to see Mr Mansell alive;
 - f) Affidavit and police video interview of Jaryd Aitken - regarding circumstances before Mr Mansell's disappearance;
 - g) Two affidavits of Lawrence Wells;
 - h) Three affidavits of Aloma Riley, grandmother of Joshua Kennedy and friend of Mr Mansell;
 - i) Affidavits of Aaron Maynard, Maxine Roughly, Tanya Maynard and Timothy New – civilians with knowledge of Mr Mansell and Mr Kennedy in the period before Mr Mansell's disappearance;
 - j) Affidavit of Kellie Riggall, mother of Stephanie Riggall;
 - k) Telephone records and phone call analysis for Robert Mansell, Joshua Kennedy, Jaryd Aitken, Stephanie Riggall, and Aloma Riley, and explanatory affidavit of First Class Constable Nikki de Quincey;
 - l) Information regarding Flinders Island mobile telephone towers;
 - m) Medicare database search for Robert Mansell;
 - n) Report from Dr Tim Flanagan, Mr Mansell's general practitioner;

⁷ (1930) 60 CLR 336.

- o) Photographs (including drone photographs), maps, distance measurements, and video footage of the location of Salmon Rock and wider points of interest;
- p) Affidavits of Detective Sergeant Darren Turner and Detective Sergeant Jarrod Lightfoot – involved in the initial stage of the investigation;
- q) Affidavits of Detective Sergeant Peter Roberts and Detective Senior Constable Dean Logan, regarding their re-investigation of the matter;
- r) Video footage of the drift test conducted by Detective Sergeant Peter Roberts and Detective Senior Constable Dean Logan;
- s) Supreme Court Comments on Passing Sentence for five sentences of Mr Mansell;
- t) Mr Mansell's prior convictions in Tasmania, Victoria and South Australia;
- u) Three affidavits of Sergeant Russell Judges, regarding the search for Mr Mansell and investigation of his disappearance;
- v) Affidavit of Constable Bradley Collins of Northern Search and Rescue, regarding his involvement in the search for Mr Mansell;
- w) Reports of Dr Paul Luckin, survivability expert;
- x) Report of Dr Roland Watzl, survivability expert;
- y) Joint expert statement of Dr Paul Luckin and Dr Roland Watzl; and
- z) Forensic Science Services Tasmania report of forensic examination of Mr Kennedy's motor vehicle.

Course of the Inquest

15. The inquest process was protracted due to the need to undertake further extensive investigation, difficulties with Mr Kennedy's representation, and the non-attendance of important witnesses. It is worth briefly discussing the course of the inquest.
16. On 5 March 2018 a view of significant points of interest on Flinders Island was undertaken by myself, Ms Ansell and the original counsel for Mr Kennedy (Mr David Sikk of the Tasmanian Aboriginal Community Legal Service).
17. On 6 March 2018, the inquest hearing began in the council chambers at Whitemark. There was evidence from four witnesses on Flinders Island over two hearing days, these being Lawrence Wells, Aloma Riley, Maxine Roughly and Aaron Maynard. The evidence of both Mr Wells and Mr Maynard raised further significant concerns about Mr Kennedy's role in Mr Mansell's disappearance and death, as well as the sufficiency of the original investigation. Whilst Mr Kennedy was represented at this time, he did not attend the hearing, which restricted his counsel's ability to properly represent him as a person of interest. Mr Kennedy was not living on Flinders Island at that time. Due to the content of the evidence, combined

with the lack of attendance by Mr Kennedy, the inquest was adjourned for further specialised investigation into Mr Mansell's disappearance.

18. The case was subsequently examined over the following months by experienced detectives, Detective Sergeant Roberts and Detective Constable Dean Logan, of the Launceston Criminal Investigation Branch. Their investigation included a full examination of the alleged location of Mr Mansell's disappearance, the re-interviewing of key witnesses, as well as obtaining an expert report regarding cold water immersion relevant to Mr Kennedy's account of his attempted rescue of Mr Mansell. In July 2018 the further investigation was completed. Both detectives completed a most comprehensive investigation. Their task was made particularly difficult by deficiencies in the original investigation which was, unfortunately, based upon the assumption that no suspicious circumstances existed. I extend my appreciation to them for their work.
19. In September 2018, after the re-investigation took place, the evidence was referred to the Director of Public Prosecutions, who determined that no charges should lie against Mr Kennedy in respect of Mr Mansell's death.
20. On 24 September 2018 the inquest resumed in Launceston, scheduled for four days. At this time, oral evidence was given by Sergeant Russell Judges (the original investigating officer), Anthony Haines (Mr Mansell's brother), and Detective Sergeant Peter Roberts (one of the detectives involved in the re-investigation).
21. Despite having been served with a summons to appear at this time, Stephanie Riggall, a crucial witness in Mr Mansell's disappearance, did not board her arranged flight from Melbourne and then avoided taking calls from the Coroners Office knowing that attempts were being made to secure her attendance at court. When eventually she could be contacted by telephone in court, she was unable to provide an honest reason for her non-appearance. She was directed to appear at a future date.
22. Further, during this part of the inquest, counsel for Mr Kennedy (being a different counsel to counsel appearing at Flinders Island) was granted leave to withdraw on the grounds of conflict. The conflict arose due to a statement having been obtained in the re-investigation from a potentially important witness, Ms Marley Clarke, who had been in the employment of the firm where counsel had worked. The remaining days allocated to finalise the inquest were, therefore, abandoned, and the inquest adjourned to resolve the issues of Ms Riggall's appearance and Mr Kennedy's representation.

23. On 9 November 2018 the Inquest resumed in Hobart, with Mr Grant Tucker representing Mr Kennedy. On that day Mr Maynard, Ms Clarke and survivability expert, Dr Paul Luckin, gave evidence.
24. On 11 and 12 February the witnesses Jaryd Aitken, Stephanie Riggall, Timothy New, and Kelly Riggall gave evidence. Notably, Stephanie Riggall gave evidence over two days regarding her knowledge of the circumstances prior to, and of, Mr Mansell's disappearance, and her relationships with Mr Mansell and Mr Kennedy.
25. On 13 and 14 March 2019 in Launceston, Dr Luckin and a further survivability expert, Dr Roland Watzl, gave evidence together, with their evidence focussing upon the version of events alleged by Mr Kennedy regarding his attempted rescue and issues of survivability of Mr Mansell. Mr Joshua Kennedy was the final witness at the hearing and was questioned over the course of one day.
26. After receipt of the transcript, submissions from counsel assisting, Mr Tucker and Mr Haines, were filed by 11 September 2019.

Mr Mansell's Background

27. Mr Mansell was born on 6 April 1973 at Franklin in Tasmania to Ronald Haines and Francis Mansell.⁸ He was of Aboriginal descent. Mr Mansell has three siblings (including half-siblings) – Anthony Haines, Jamie Mansell and Mary Mansell.⁹ Mr Mansell was single at the time of his death.
28. When he was approximately two years of age, Mr Mansell's parents separated and he lived with his mother.¹⁰ Mr Haines reported that she suffered alcoholism. Mr Mansell was said to have been subjected to physical abuse in his childhood.¹¹ He reported to his psychologist that his father "bashed him".¹² Mr Mansell spent portions of his childhood in State care. In the early to mid-80s, when Mr Mansell was about 12 years of age, he resumed living with his father, step-mother and all of his siblings.
29. At about 16 years of age, Mr Mansell left home and lived on the streets. It seems likely that he had commenced to use drugs and alcohol by this time. He had also started offending and, in 1989, he was formally declared a ward of the State by a Court.¹³ He did not finish high

⁸ Exhibit C30.

⁹ C30 Mr Haines formally changed his surname from Mansell to Haines in the 1990s.

¹⁰ Together with siblings Jamie & Mary. Mr Anthony Haines remained with his father. Exhibit C30.

¹¹ Comments on Passing Sentence ('COPS') 17 February 2010 Exhibit C18(A4).

¹² Psychologist report- R Mansell.

¹³ C18(A) Tasmanian Prior Convictions.

school and therefore his education was limited, resulting in long-standing literacy and numeracy difficulties.¹⁴

30. Mr Haines maintained regular contact with Mr Mansell and was interested in his welfare. Indeed, it was the concern of Mr Haines that highlighted some of the questions surrounding Mr Mansell's disappearance. Mr Haines, an intelligent and articulate person, resides in Bridport with his family and is employed as a machine operator in the civil construction industry. Mr Mansell told friends that he was incredibly proud of his brother and his brother's achievements in life.¹⁵
31. Mr Mansell has two children. Their names and ages are unknown. Attempts during the investigation to locate them were, unfortunately, unsuccessful. It is unlikely that Mr Mansell had any regular contact with them. Mr Mansell's sister, Mary, who was referred to in the evidence, was also unable to be located. It was said by a number of witnesses that Mr Mansell travelled to the mainland of Australia before his disappearance for the purpose of visiting Mary, however the details about her situation are scant.¹⁶
32. At the age of 15 years, Mr Mansell was seriously assaulted and suffered a brain haemorrhage. The haemorrhage resulted in Mr Mansell being partially paralysed through his right hand side. He had to again learn to speak, walk and eat.¹⁷ He was left with long-term incapacities, including walking with a noticeable limp, blindness in one eye and difficulty using his right hand side.¹⁸ He also suffered a level of cognitive deficit as a result.¹⁹ There was nothing in the evidence, however, that suggested that Mr Mansell did not have the capacity to make his own decisions about his health, finances, living arrangements and associates.
33. Mr Mansell was very lean in stature, being 178 centimetres in height and weighing about 60 kilograms.²⁰
34. Mr Mansell started, at an early age, to use alcohol and drugs,²¹ which regularly brought him to the attention of police (both within Tasmania and the mainland of Australia)²². He had a

¹⁴ COPS 17 February 2010 Exhibit C18(A4).

¹⁵ Timothy New 11 February 2019.

¹⁶ L Wells, T17, A Maynard T55, 6 March 2018.

¹⁷ Exhibit C30.

¹⁸ COPS 17 February 2010 Exhibit C18(A4).

¹⁹ COPS 17 February 2010 Exhibit C18(A4) and COPS 5 August 2010 Exhibit C18(A5).

²⁰ Exhibit C18(C) South Australia prior conviction and C47 medical records.

²¹ COPS 17 February 2010 Exhibit C18(A4).

²² Exhibit C18A, C18B, C18C.

history of episodes of excessive drinking²³ with pathological intoxication leading to amnesia and aggressive behaviour.²⁴

35. Mr Mansell was a long term and heavy cannabis user. He told Mr Haines that he used the substance to calm him down. During the 1990s, Mr Mansell's drug use extended to injecting illicit drugs, although Mr Haines said that his brother managed to wean himself from such drugs many years before his death.²⁵
36. Mr Mansell's criminal convictions consistently indicate a long-standing problem with alcohol. Many of his convictions were for street offences involving intoxication and use of cannabis. However, he had convictions for serious and violent offending. His propensity for violence and aggression whilst under the influence of alcohol and drugs is a matter of some relevance in this inquest, and deserves some mention.
37. In February 2010 in the Supreme Court, Justice Tennent noted in sentencing comments that Mr Mansell had eleven prior convictions for assault, eight convictions for assaulting a police officer and one count of being drunk in charge of a weapon.²⁶ Mr Mansell's convictions of note include:
 - a) A conviction for Criminal Code Assault committed on 15 September 1996. On this occasion, Mr Mansell assaulted a person that he believed had perpetrated a sexual assault upon his friend. It was an incident of spontaneous and impetuous response to a request for assistance.²⁷
 - b) On 7 March 2002 Mr Mansell committed the offence of attempted robbery and stealing by demanding money from his former partner and striking her with successive blows to her head and ear with a clenched fist.²⁸
 - c) On 8 November 2007 Mr Mansell committed the offence of wounding and was sentenced on 17 February 2010. Whilst in possession of a machete, Mr Mansell made slashing motions with it towards another male. Following a physical wrestle between the men, the other male suffered a deep wound to his right forearm.²⁹

²³ Exhibit C6 - Maxine Roughly – particularly when cannabis was not available.

²⁴ CO/PS 17 February 2010 Exhibit C18(A4).

²⁵ Exhibit C30.

²⁶ COPS 17 February 2010 Exhibit C18(A4).

²⁷ COPS 24 July 1998 Exhibit C18 A2.

²⁸ COPS 11 October 2005 Exhibit C18(A3).

²⁹ COPS 17 February 2010 Exhibit C18(A4).

- d) On 4 February 2009, on Flinders Island, Mr Mansell committed an unlawful act intended to cause bodily harm. At the time of the offence Mr Mansell had taken cannabis, dexamphetamine and consumed alcohol over a number of hours. He armed himself with what he described as two “razor-sharp” knives and went to his uncle, against whom he had animosity, swinging at him with the knives. There was an altercation which resulted in grievous wounds to his uncle, including two long lacerations to his throat. Mr Mansell was sentenced for this crime by Chief Justice Crawford on 5 August 2010 to a prison term of four years.³⁰
38. It is clear that Mr Mansell’s thought processes and actions were affected not only by his brain injury, but by the excessive consumption of alcohol and drugs. Over the years, he received many prison sentences. In sentencing him on 5 August 2010, the Chief Justice commented that: *“When sober he is more able to control his anger and walk away from confrontations. He would have been well aware that his abuse of alcohol and substances increased the risk of him engaging in aggressive acts and hurting others through loss of his temper”*.³¹ It seems that Mr Mansell was well aware of this issue and did make attempts to refrain from consuming excessive alcohol. Mr Haines said that: *“he would often tell me about issues he had because of the alcohol. He recognised this and was generally determined to stay away from alcohol, particularly in his later years.”*³²
39. Mr Mansell moved to Flinders Island in about 2007.³³ Upon his release from prison, he returned to Flinders Island and was living by himself in Lady Barron. Mr Mansell appeared to have found comfort living on Flinders Island where the community was accepting of who he was.³⁴

Relationship between Mr Mansell, Mr Kennedy and Ms Riggall

40. In the 12 months prior to his disappearance, Mr Mansell had a close association with Mr Kennedy and Ms Riggall. The three friends consumed alcohol and cannabis together regularly and engaged in recreational activities. They were also jointly involved in the enterprise of cutting and collecting wood for sale.³⁵
41. Mr Kennedy was 20 years of age at the time of Mr Mansell’s disappearance. Mr Kennedy was raised on the Island by his grandmother, Aloma Riley, who is a known alcoholic. He met Mr

³⁰ COPS 5 August 2010 Exhibit C18(A5).

³¹ COPS 5 August 2010 Exhibit C18(A5).

³² Affidavit – A Haines C30.

³³ Affidavit of Maxine Roughly – C6.

³⁴ T. New T54.

³⁵ S Riggall T104.

Mansell when he was 14 or 15 years of age. Mr Kennedy is 186 centimetres in height and weighs approximately 85 kilograms.

42. The evidence from all witnesses is that Mr Mansell and Mr Kennedy were close companions, despite the 22 year age difference. Ms Riggall relocated to Flinders Island approximately 12-18 months prior to the disappearance of Mr Mansell.³⁶ When arriving on the Island, she lived with Mr Mansell for a period of time, perhaps two months.³⁷ Ms Riggall gave evidence that there had never been any sexual aspect to her relationship with Mr Mansell. I do not know whether she is truthful in this assertion.
43. There is ample evidence to enable me to find that the relationship between Mr Mansell and Mr Kennedy was marked by episodes of violence when both men were affected by alcohol.
44. Maxine Roughly, the manager of the Flinders Island Aboriginal Association, described credibly the nature of the pair's relationship. She said that she had known Mr Mansell for about eight years before his death and said that he had worked for the Association for periods during that time. She knew him to be a heavy drinker and a daily smoker of cannabis. She said that Mr Mansell would "punch things" when he was drunk and that he would smash windows and punch holes in the walls of his house. She said that the Association had replaced numerous windows in his house.
45. Ms Roughly said that Mr Mansell and Mr Kennedy were close friends, engaging in kayaking and fishing on occasions, but when they both consumed alcohol they would regularly become physically aggressive towards each other. Ms Roughly said that, sometime before his disappearance, Mr Mansell told her that he had been in a fight with Mr Kennedy. She saw a cut above one of Mr Mansell's eyes and on his head.
46. She said: "*I can recall a number of occasions when Robbie either came to me or I went to him to assist him after an argument with Josh. On one occasion I actually had to physical(sic) separate the two boys.*"
47. Ms Roughly said that the occasion upon which she intervened in a fight between them occurred before Mr Mansell left for Queensland. She was at home and heard yelling and screaming from Mr Mansell's home close by. She went over to the house and saw the men grabbing and pushing each other around the inside of the house. She told the men to stop at which point Mr Mansell told Mr Kennedy to "fuck off". Ms Roughly said in evidence that she had not herself witnessed anything but pushing between them.³⁸ However, she clearly based

³⁶ Exhibit C24, C24A and Transcript 11 & 12 February 2019.

³⁷ A Maynard T59.

³⁸ M Roughly T93.

her belief that there was more serious physical violence between them upon her observations over a period of time and what Mr Mansell told her. She stated that, despite these incidents of aggression, the men remained close friends and would repair the friendship as soon as they were sober.³⁹ Ms Roughly's affidavit and court evidence were consistent. It seems that she may have been able to give further relevant evidence about the relationship between Mr Mansell and Mr Kennedy, but perhaps her position with the Association caused her to be circumspect about disclosing the full extent of her knowledge.

48. Timothy New gave credible and detailed evidence similar to that of Ms Roughly regarding the relationship between Mr Mansell and Mr Kennedy. He said that he met Mr Mansell when both were working for the Association on Flinders Island and had known him for about 15 - 16 months before his disappearance. Mr New said that both men were violent when intoxicated, and they would yell and swear and "behave poorly". He said that Mr Mansell would arrive at his place on occasions, very emotional and drunk, following a fight with Mr Kennedy. Mr New said that he would settle him down and walk him back home.⁴⁰
49. In July 2015, being the month before his disappearance, Mr Mansell told Mr New that he had had a serious fight with Mr Kennedy which had occurred the previous night. He said that Mr Kennedy had pinned him to the ground and choked him. Mr New advised Mr Mansell to reconsider the friendship. He passed the information to Ms Roughly in her capacity as the Chief Executive Officer of the Association. It is noted that Ms Roughly made no mention of this report to her in her statement or evidence and was not specifically questioned about receiving this information.
50. Mr New was an impressive and impartial witness, no longer working on Flinders Island. His evidence relating to the description of the altercation given to him by Mr Mansell was, I find, accurate. Further, there is no reason to consider that Mr Mansell was providing anything other than an account of the truth to Mr New. I agree with Ms Ansell's submission that Mr New appeared to be very concerned about Mr Mansell's safety upon learning of the incident, hence reporting it to Ms Roughly, particularly in light of the fact that Mr Mansell had not previously complained about Mr Kennedy.
51. There is no suggestion in the evidence that Mr Mansell was a person prone to lying. In fact, Mr New gave the following evidence about Mr Mansell: *"We built quite a strong relationship working together. We had a lot of trust – I had a lot of trust in Robbie as he was – he was a very reliable worker and he had a troubled past but I found him to be very honest and he was always*

³⁹ M Roughly C6 and T87.

⁴⁰ T New affidavit C34.

helping the community and there was more to judging a book by its cover...".⁴¹ This sentiment about Mr Mansell was broadly representative of evidence given by other witnesses about Mr Mansell's essential character.

52. Mr Aaron Maynard, cousin and close friend of Mr Kennedy gave evidence at the inquest on two separate occasions regarding the relationship between Mr Mansell and Mr Kennedy. He stated that about two months before Mr Mansell's disappearance, the two had a falling out over their respective relationships with Ms Riggall. Mr Maynard's evidence, although expressed articulately and with confidence, was not based on necessarily reliable sources. Mr Maynard, corroborating the evidence of Mr New, did state that Mr Mansell told him that Mr Kennedy choked him and at the same time threatened to kill him. He stated in court:

'Yeah, well I just asked him about what the bruises were that were on him, and he said "Oh me and Josh had a bit of a fight the other day" – and that's when they – because they were on and off talking, they were always fighting and arguing them two, and he said, "Oh, over this Steph" and I knew that Robbie had been running around with her and I knew Josh had been as well, and I said "Oh well he's not going to be doing stuff – stuff like, that" I said "What happened?" and he goes "Oh he put me on the ground, he was choking me, punching me in the head, and just told me, he said, oh I'll – I'll kill you, you mother fucker"'.⁴²

53. This evidence was given in a credible manner by Mr Maynard. Mr Maynard also gave evidence that Mr Kennedy, taking advantage of Mr Mansell's physical vulnerability, would "stand over" Mr Mansell, intoxicated, and demand alcohol and drugs. Mr Maynard said he had never seen the physical violence or intimidation, but he said that Mr Mansell was not a liar.⁴³ Mr Maynard gave evidence that he disliked Mr Kennedy, as did almost everyone on the Island. Mr Maynard painted a picture of Mr Mansell being significantly intimidated by Mr Kennedy. It is difficult to make findings on this point but certainly Mr Maynard was unable to give direct evidence apart from what Mr Mansell told him and I do not rule out some exaggeration on the part of Mr Mansell or Mr Maynard. Nevertheless, the credible evidence from the witnesses as described indicates the existence of a volatile relationship between Mr Mansell and Mr Kennedy, punctuated by episodes of violence and physicality when they were intoxicated. Mr Mansell was prone to violence when intoxicated, as his prior convictions consistently show. Whilst Mr Mansell was happy to be friends with Mr Kennedy, he was at a disadvantage physically during periods of violence due to his incapacity, weakness and size.

⁴¹ T New T37.

⁴² A Maynard T57.

⁴³ A Maynard 9 November 2018.

54. In his interview with police on 15 September 2015, Mr Kennedy, when asked about his relationship with Mr Mansell, stated that they were quite physical with each other in the past, and that he was the stronger of the two men.⁴⁴ However, he adamantly denied in evidence that they would become aggressive with each other.⁴⁵ He maintained these denials even knowing that credible evidence to the contrary had been given by several witnesses.
55. Mr Jaryd Aitken recounted an incident where Ms Riggall went to visit Mr Kennedy and subsequently she asked Mr Aitken to collect her. Upon his arrival, he noticed she had a cut on her face and Ms Riggall said that Mr Kennedy had used a candle to hit her.⁴⁶ In evidence, Mr Kennedy denied that such an event occurred. Ms Riggall gave evidence that she did not recall it occurring,⁴⁷ and denied that she told Mr Aitken about such an incident. Mr Aitken insisted that Ms Riggall did tell him this.⁴⁸ He was a credible witness that appeared intimidated by Mr Kennedy. On balance, it is likely that Mr Kennedy did throw a candle at Ms Riggall as Mr Aitken stated. This adds little to the issues at inquest, but does demonstrate Mr Kennedy's propensity for violence when intoxicated and Ms Riggall's propensity be less than frank in her evidence for the purpose of protecting Mr Kennedy and possibly herself.
56. I find that there were episodes of physical violence between Mr Mansell and Mr Kennedy as stated by the witnesses referred to above. At the least, these episodes involved verbal abuse and physical altercations that did not cause serious harm to Mr Mansell, the physically weaker party. Mr Mansell, also with a strong propensity for violence when intoxicated, tolerated such altercations and reciprocated the aggression. However, I find that in July 2015 Mr Kennedy did choke and threaten Mr Mansell as described by the credible evidence and I find that this incident was frightening to Mr Mansell who was concerned for his safety. I reject Mr Kennedy's denials that this incident occurred.
57. Their alcohol-fuelled altercations appeared to generally concern less significant matters. Mr New said in evidence that *"usually they argued over small stuff, whether it was who got paid for firewood or whose turn it is to buy the next drink, that type of thing..."*⁴⁹ However, there was some evidence that the tension between Mr Kennedy and Mr Mansell was due to their alleged respective sexual relationships with Ms Riggall. The transcript passage set out above from Mr Maynard's evidence referring to this issue was given in a credible manner. Mr Maynard also said in evidence in answer to Ms Ansell's questions:

⁴⁴ Exhibit C28 Page 40 interview 15 September 2015.

⁴⁵ For example, J Kennedy T299.

⁴⁶ Transcript 11th February 2019.

⁴⁷ S Riggall T93.

⁴⁸ S Riggall T186.

⁴⁹ T New T40 12 February 2019.

“Yeah, well there’s a girl named Steph – I can’t – don’t know what her last name is, but Robbie and Steph had a bit of a fling... Josh and Steph had a bit of a fling with each other. Two months prior to Robbie going missing they had a – had a fall out.”⁵⁰

58. Mr Maynard gave evidence that Mr Mansell told him that there had been a sexual relationship between him and Ms Riggall at the time when she was staying at Mr Mansell’s home but that had ended before Mr Kennedy had become sexually involved with Ms Riggall shortly afterwards. Mr Kennedy would then speak of that relationship to Mr Mansell, particularly when intoxicated.⁵¹ Mr Mansell told Mr Maynard that Mr Kennedy was being a “smart arse little prick” and trying to “rub it in his face”.⁵²
59. Mr Maynard conveyed in his evidence that Mr Mansell was not greatly upset about Mr Kennedy forming a sexual relationship with Ms Riggall, although it was a reason for Mr Mansell leaving the state.
60. Mr Kennedy and Ms Riggall consistently denied that there had been a sexual relationship between them in the months before Mr Mansell’s disappearance. As submitted by Ms Ansell, Ms Riggall continuously looked at Mr Kennedy whilst giving evidence (seemingly for confirmation of what she said) and they spent lunch together prior to Ms Riggall returning to the witness box. Their denials about the sexual nature of their relationship before Mr Mansell’s disappearance were not credible and cannot be accepted at face value.
61. Mr Aitken gave evidence that Mr Kennedy, whilst intoxicated, said to him that he loved Ms Riggall.⁵³ Mr Kennedy agreed that he had made this statement in evidence, but said that he only loved her as a friend. He also agreed that he would “do anything” for her but only in the context of their relationship as friends.⁵⁴ Mr Aitken also gave evidence about his dislike of Mr Kennedy keeping close company with Ms Riggall, with whom he was in a relationship at the time. He said that Mr Kennedy visited his home with Ms Riggall regularly despite him trying to prohibit him from coming. Mr Aitken described himself as a person who does not enjoy confrontation and therefore did not take further steps to ensure that Mr Kennedy did not visit his house.⁵⁵ Ms Riggall was of no assistance in helping Mr Aitken in this regard. It appears that a fear of Mr Kennedy’s potentially violent reaction was more the reason for his

⁵⁰ A Maynard T57 6 March 2018.

⁵¹ A Maynard T60 and 61, 6 March 2018.

⁵² A Maynard T60 and 61, 6 March 2018.

⁵³ J Kennedy T338 11 February 2019.

⁵⁴ Transcript 14 March 2019.

⁵⁵ J Aitken T85 12 February.

inability to resolve the problem.⁵⁶ Mr Maynard, who expressed a strong dislike for Mr Kennedy, also described Mr Kennedy as a violent and threatening person.

62. Because of the lack of reliability and honesty of Ms Riggall and Mr Kennedy in giving their evidence, I am not able to make a finding definitively about the existence of any sexual relationship between Ms Riggall and either of the men. Therefore, I am unable to make a finding about the relevance of any issues arising from such relationship/s to the circumstances surrounding Mr Mansell's departure for Queensland in the month before his death or in his subsequent disappearance. Whilst Mr Maynard's evidence (based upon what Mr Mansell had told him) is not sufficient to make a finding on this issue, it has a ring of plausibility. Upon the evidence before inquest, certainly Ms Riggall's relationship with Mr Kennedy was unusually close, in light of the fact that she said that she was in a committed and serious relationship with Mr Aitken.⁵⁷
63. In any event, the friendship trio of Mr Mansell, Mr Kennedy and Ms Riggall was somewhat unconventional. In her evidence, Ms Riggall described the three of them as "black sheep". When Ms Ansell questioned her about what she meant by the use of that phrase, she stated

*"Well, no one liked Robbie very much on the Island and the same with Josh and when I went over there everyone sort of was a bit funny on me too."*⁵⁸

Events Before Death

64. It is unclear on the evidence why Mr Mansell left Flinders Island and went to Queensland in July 2015. The exact date of his departure is also unclear. The reasons for him leaving the Island expressed by witnesses were to see his sister⁵⁹ as well as to collect a four wheel drive with his cousin.⁶⁰ Mr Maynard, who gave the most detailed evidence on this point, said that Mr Mansell wanted to go on a trip, and it was paid for by his cousin. As already noted, he also suggested that Mr Mansell's falling out with Mr Kennedy was included in his reason for leaving.⁶¹ It is possible that this was the case. I am satisfied, however, that there was no pressure, coercion or threats exerted upon him and that he mainly left because he wanted to and had the opportunity to do so.

⁵⁶ J Aitken 12 February 2019 T30 - for example, describing an incident of Mr Kennedy allegedly smashing a fruit bowl.

⁵⁷ T132 13 February 2019.

⁵⁸ S Riggall T179 13 February 2019.

⁵⁹ T17 6 March 2018.

⁶⁰ T54 6 March 2018.

⁶¹ T56 6 March 2018.

65. Whilst away, it appears that Mr Mansell came to the attention of Queensland police. The precise details are unknown but he told Ms Riley that he had been robbed and his dog (which he had taken with him) had been locked up, and wanted to return home.⁶²
66. Only a few days before his return to Flinders Island, Mr Mansell contacted Mr Haines requesting money to help him return home.⁶³ He told Mr Haines that he had used his money to have his dog released. Mr Haines provided Mr Mansell with the money.
67. On 7 August 2015, the day before he disappeared, Mr Mansell returned to Flinders Island with his dog.
68. Mr Mansell arrived by plane at the Flinders Island airport at 2.30pm. An analysis of his phone records indicates that he contacted Ms Riley, his long-time friend, from the airport in Melbourne, presumably to advise her of his imminent arrival.⁶⁴ She also gave evidence that he had telephoned her to have Mr Kennedy pick him up.⁶⁵ Mr Kennedy lived with Ms Riley at 6 Shearwater Drive in Lady Barron. Mr Mansell's residence at 19A Lady Barron Road was only 250 metres from Ms Riley's residence.
69. Mr Kennedy, Ms Riley and Ms Riggall went to the airport to greet Mr Mansell. A question arose as to whether Jaryd Aitken and Benjamin Howard were also there. Both men gave credible evidence that they were present and Ms Riley also stated in her affidavit that they were both present.⁶⁶ There was some uncertainty about their attendance on the part of Ms Riggall and Mr Kennedy. I find that Mr Aitken and Mr Howard did go to the airport and saw Mr Mansell arriving home.⁶⁷
70. All persons greeting Mr Mansell at the airport found him to be in a good state of mind and expressing his relief to be back on the Island. Ms Riggall suggested that he was exhausted.⁶⁸ There was no evidence at that time of any tension or unresolved conflict between Mr Mansell and any other person.
71. As submitted by counsel assisting, Mr Mansell's greeting at the airport by five people represents the last time that multiple independent witnesses saw Mr Mansell alive and in person.

⁶² A Riley T109, 6 March 2018; also A Haines affidavit C30.

⁶³ Exhibit C30.

⁶⁴ Exhibit C17(3).

⁶⁵ T107 6 March 2018.

⁶⁶ C2.

⁶⁷ J Aitken T22 12 February 2019, B Howard interview C9(A).

⁶⁸ S Riggall T130 13 February 2019.

72. There were some discrepancies in the evidence about the content of the discussion within the group at the airport, but there is no indication of anything sinister or untoward in the discussions at that time. There is evidence of discussions about going fishing and having beers with Mr Mansell. Mr Kennedy vacillated about whether there were discussions with Mr Mansell at the airport about going fishing, finally settling upon there being no such discussions.⁶⁹
73. Ms Riggall maintained that it was her suggestion that the three of them (being herself, Mr Mansell and Mr Kennedy) should go fishing at North East River. She said that she suggested fishing and beers to Mr Mansell so that he could overcome his exhaustion. She suggested fishing at North East River because, she said, “I love fishing up there” and “it’s a beautiful spot, like, it’s lovely up that end”. She was unable to give clear details of the timing and meeting arrangements for the proposed fishing trip or the sourcing of the fishing equipment.⁷⁰
74. I do not accept at face value the evidence of Ms Riggall in this regard. She did not ultimately go fishing with Mr Mansell and Mr Kennedy. Her evidence, as with much of her other evidence, appeared reconstructed to try and bolster Mr Kennedy’s account. In concluding this, I had credible evidence from Mr New that he spoke to Mr Mansell on 7 August 2015, presumably in the afternoon after his arrival at the airport. Mr Mansell said to Mr New that he was happy to be back on the island with his dogs and in his own bed and further, that he was going camping and drinking that night with Mr Kennedy to West End.⁷¹ The records show that this call was made at 4.45pm and lasted 62 seconds. This statement does not appear consistent with Ms Riggall’s evidence about her idea of fishing, although it is clear that in the context of this friendship, plans were chaotic and changeable. In her subsequent evidence, Ms Riggall effectively conceded that she had invited Mr Kennedy and Mr Mansell to her house at West End for the evening, even though Mr Aitken would not have wanted that to happen.⁷²
75. Regardless of the precise nature of the conversation at the airport, I find that Mr Mansell had discussions with Mr Kennedy at a time soon after Mr Mansell’s arrival and an arrangement was made by them to get together on the night of 7 August and to drink alcohol. It seems that Mr Kennedy, possibly separately, intended Ms Riggall to be involved. Exactly how any plan to get together that night was formulated cannot be ascertained. It was, however, almost inevitable (given the evidence of the peculiar friendship between the

⁶⁹ J Kennedy T329 14 February 2019.

⁷⁰ T130-131 Transcript 12 February 2019.

⁷¹ Exhibit C34.

⁷² T132 13 February 2019.

three of them), that they would eventually gravitate together for the evening and consume alcohol. There is nothing about the discussions or plans that indicated any ill-will or malice by Mr Kennedy or Ms Riggall towards Mr Mansell, at least at that time. I do not know why they gave evidence on this point that was vacillating and unreliable, except to try and give answers that would help themselves.

76. The difficulties in ascertaining the movements of Mr Mansell after he left the airport arise because no other credible or reliable witness spoke to, sighted or otherwise had contact with him. For the reasons that will be apparent, I cannot be satisfied that the accounts of Mr Kennedy or Ms Riggall are truthful or credible on important points.
77. Specifically, the evidence of Mr Kennedy regarding the disappearance of Mr Mansell contained several significant anomalies, which I deal with below. As submitted by counsel assisting, his evidence at inquest was muddled and unclear, even in respect of simple matters. Nevertheless, as the last person to see Mr Mansell, his evidence requires scrutiny. Despite its unreliability, the only account of the movements of Mr Mansell is from Mr Kennedy. I will examine his version of events.
78. Mr Kennedy said that after leaving the airport, he, Ms Riley and Mr Mansell went to Whitemark to collect Ms Riley's groceries and to drop Ms Riley off before going to Mr Mansell's home.⁷³ However, Ms Riley gave evidence in court of travelling straight to Mr Mansell's house to talk inside whilst she consumed some white wine from a cask. She said that Mr Kennedy and Mr Mansell did not have alcohol at that time.⁷⁴ However, in her affidavit sworn 11 days after Mr Mansell's disappearance, she stated that Mr Kennedy dropped Mr Mansell at his house and took her back home.⁷⁵ Whether or not she entered Mr Mansell's home and consumed alcohol is not significant. The significant matter is that she did not see Mr Mansell again after that time, and there is no reason on the evidence to doubt this evidence. Mr Kennedy's account on this matter is a little different, although on both accounts, Ms Riley was eventually dropped home by Mr Kennedy with Mr Kennedy returning to Mr Mansell's house by himself. I accept that this did occur as it is consistent with the plausible evidence of Ms Riley who stated that, after Mr Kennedy had dropped her home, he walked off towards Mr Mansell's house.⁷⁶
79. Whilst at Mr Mansell's home on the afternoon of 7 August, Mr Kennedy and Mr Mansell consumed a number of beers. The phone records indicate that at 5.03pm that afternoon, Mr

⁷³ Exhibit C26, C27, C28, C28A, C2, C3, C4.

⁷⁴ A Riley T111 6 March 2018.

⁷⁵ C2 affidavit A Riley.

⁷⁶ T111 6 march 2018.

Mansell's phone was used to leave a message on Ms Riggall's phone.⁷⁷ It appears from the affidavit evidence of Ms Riggall that Mr Kennedy made this call to ask her if he and Mr Mansell could come to her residence at West End. In a further call one minute later, a conversation between Mr Kennedy and Ms Riggall occurred, again using Mr Mansell's phone, with a duration of 89 seconds. Ms Riggall told Mr Kennedy that he could come to her house and it appears that she also conveyed to Mr Kennedy that Mr Aitken did not wish Mr Mansell to come.⁷⁸

80. Between about 5.00pm and 7.00pm Mr Kennedy left Mr Mansell's house and drove to see Ms Riggall at her residence. In his affidavit made shortly after Mr Mansell's disappearance, Mr Aitken stated as follows:

*"We got to the shack on Friday afternoon, after work, but I'm not sure of the time, it would have been around 6pmish. When I got there I had Ben (Howard), Steph (Riggall) and Lila (Ms Riggall's daughter) with me. About an hour later, Josh arrived at the shack. He was on his own. Steph had asked me earlier if Robbie could come up as well but I had said no. I just didn't feel like having that many people about my dad's shack, and I knew they'd be drinking. I had heard Robbie's reputation on the drink and didn't want to risk the hassle."*⁷⁹

81. In light of the above passage, I fully accept that Mr Mansell was alive at that stage and that Mr Kennedy was intending to involve him in the evening activities at the property at West End.
82. The property at 277 West End Road, West End (referred to as "West End") is owned by Mr Aitken's father who was the publican of the hotel at Whitemark.⁸⁰ Living at the property was Mr Aitken, Ms Riggall, Ms Riggall's infant daughter (Lila) and Mr Howard.⁸¹ At the time, Mr Aitken and Ms Riggall were in a relationship.
83. For some time before Mr Mansell's disappearance, Mr Aitken and his father had decided not to allow Mr Mansell to come to the shack because of his reputation for anger when intoxicated.⁸² This decision was communicated by Mr Aitken to Ms Riggall, who was aware of the direction.⁸³ Mr Kennedy was also aware of the fact that Mr Mansell was not welcome in the house.⁸⁴

⁷⁷ C17(3) R Mansell phone records.

⁷⁸ C25-Affidavit J Aitken.

⁷⁹ C25.

⁸⁰ Exhibit C25 & C25A.

⁸¹ It is noted that Mr Howard was living at the house on the instigation of Ms Riggall, with Mr. Aitken not really knowing why he was there. It is a clear example of Ms Riggall ignoring other persons wishes and doing as she sees fit.

⁸² P24 12 February 2019.

⁸³ T191 13 February 2019.

⁸⁴ T279 14 March 2019.

84. As I have stated above, Mr Aitken also gave evidence that Mr Kennedy was regularly at West End visiting Ms Riggall when he did not want him to be there, and that Ms Riggall often ignored his wishes in this regard. He said that most of the time Mr Kennedy would drink the alcohol in the house rather than bring his own.
85. Mr Kennedy was evasive about his knowledge of the fact that Mr Aitken did not wish him to come to West End, although it seems clear upon the whole of his evidence that he would come and go as he pleased from the house with the support of Ms Riggall.⁸⁵ As outlined in her own evidence, Ms Riggall ignored this direction and continued to invite Mr Kennedy to the house.⁸⁶ Specifically, Ms Riggall stated in response to a question whether she invited Mr Mansell to the house on 7 August
- “I knew Jaryd didn’t really want him up there, but I didn’t care what he thought. So, I probably did invite him up”.*
86. Mr Kennedy presented as a person of somewhat low intelligence and someone who likely did not function as well as many others. It is difficult to say how much of his disrespectful attitude was due to lack of insight or simply an inherently uncaring and selfish attitude. He was not a sensitive person to the wishes of others, as shown by his attitude to visiting Mr Aitken’s house to see Ms Riggall. I agree with Ms Ansell that his treatment of the inquest process, prior to retaining Mr Tucker, showed that he either did not understand the significance of the matter or did not care, despite the fact that Mr Mansell was his stated best friend and despite the question of his own involvement being a central issue. In particular, his non-attendance at the first day of the inquest on Flinders Island demonstrates little care, consideration or respect for the process.
87. On 7 August 2015 Mr Kennedy, at the suggestion of Ms Riggall went to West End for the express purpose of seeing Ms Riggall. I question why Mr Kennedy did not remain in the company of Mr Mansell shortly after his return from the airport but rather proceeded to West End for the evening without him to see Ms Riggall.
88. It is likely that Mr Kennedy arrived at West End about 7.00pm.⁸⁷ Mr Kennedy told detectives in an early interview that Mr Mansell was welcome at the property but just did not want to go. He also said that Mr Mansell did not want him to go there.⁸⁸ It seems likely that Mr Mansell knew that he was not welcome given that he did not go to West End. Mr

⁸⁵ T338 14 March 2019

⁸⁶ Transcript 11 & 12th February 2019

⁸⁷ Affidavit of J Aitken C25.

⁸⁸ Interview C28 pp4 and 5.

Aitken had specifically said to Ms Riggall that he did not want Mr Mansell there that evening, when she asked if he could come.⁸⁹

89. At the property, some food was eaten and alcohol was consumed by all. Mr Aitken, who gave credible evidence, which I accept, outlined that he had about six beers and two mugs of port. He said he was “4 out of 10” on an intoxication scale. Between 10.00pm and 11.00pm, he went to bed, leaving Ms Riggall and Mr Kennedy on the couch talking.⁹⁰ He said that he lay in bed and could hear Ms Riggall and Mr Kennedy “dribbling shit” for an hour or so.⁹¹ Mr Howard had already gone to bed. Mr Aitken said that before he went to bed, Mr Kennedy said that he was going to go fishing the next day with Mr Mansell but did not specify any details of the actual plan. He heard Mr Kennedy ask Ms Riggall if she wanted to go fishing, although she was non-committal.⁹² Mr Aitken remained awake until Ms Riggall came to bed.⁹³ Mr Aitken told the detectives in his video interviews that when Mr Kennedy came to his property to consume alcohol, he would mostly leave after doing so and not stay the night.⁹⁴

90. Mr Aitken stated in his affidavit:

“I went off to sleep and didn’t wake until the next morning. I woke up at about 6am, I heard someone in the fridge. Steph said straightaway that it would be Josh trying to get beer. She got up and went out to him. I heard her challenge him and ask what he was doing. I didn’t hear what he said but I heard Steph tell him to put the beer back. Steph told him to go and he drove off in his car. I don’t know who was with him if anyone, but I’m told Robbie was. This only lasted about five minutes. Steph came back to bed and I went back to sleep. I got up about 8am. Apparently Josh left during the night but I have no idea when he went, I didn’t hear a thing and didn’t wake up at all.”

91. Ms Riggall likely consumed most of a full bottle of bourbon and some beer.⁹⁵ She told the court that she could handle her alcohol well, although I am quite satisfied that she consumed a large quantity and was intoxicated.

92. Mr Kennedy told detectives, inconsistently, that he drank either half a dozen beers, half a carton or a full carton of beer that night.⁹⁶ Ms Riggall said that he had about a dozen beers.⁹⁷

⁸⁹ Interview C28 pp4 and 5.

⁹⁰ Transcript 11th February 2019, Exhibit C25 & C25A.

⁹¹ J Aitken C25.

⁹² J Aitken C25.

⁹³ J Aitken C25.

⁹⁴ C25A.

⁹⁵ C24 page 5; also affidavit S Riggall C23.

⁹⁶ Exhibit C27 pages 12 and 13 of the interview dated 10 September 2015.

⁹⁷ C24 page 5.

In his court evidence he minimised his consumption of beer to between half a dozen and a dozen and said that he was “not fully pissed but I could feel it.”⁹⁸ It is likely that he drank over half a carton of beer. He was certainly affected by having consumed a significant quantity.

93. Mr Kennedy stated in his original interviews and statutory declaration that he went to sleep in the back of his car parked outside the property at around 10.00pm to 10.30pm that night.⁹⁹ I prefer the evidence of Mr Aitken and find that, in fact, it must have been closer to midnight if he did so. Mr Howard said in his affidavit that earlier in the evening Mr Kennedy had said that he intended to stay in the back of his car as his bedding was there.¹⁰⁰ It is likely, at least, that he remained at West End until he departed shortly after 2.19am. Mr Howard said that, at one stage, Mr Kennedy came into his bedroom and woke him up to complain about Ms Riggall as he had been having an argument with her. I accept that this occurred and is consistent with Mr Kennedy’s lack of consideration for others generally. This incident must have occurred between about 11.00pm and 2.30am.
94. The phone records in evidence reveal that at 2.19am and 2.20am respectively, two telephone calls were made from Ms Riggall’s phone to Mr Mansell’s phone that were not answered by Mr Mansell.¹⁰¹ Ms Riggall said that she did not make the calls but found out later that Mr Kennedy had used her phone.¹⁰² Like much of her evidence, she was somewhat evasive and unconvincing on this point. In a different account, Mr Kennedy said that he walked into the house after having been asleep in his car, and asked Ms Riggall if he could use her phone. The following question and answer occurred at the inquest:
- “So she went to bed before you, but you’re indicating that when you got up she was in fact awake at 2am in the morning?.....Mm, well she must have got up and doing something – she might have went to the toilet and come out in the kitchen and she was doing something”.*¹⁰³
95. It seems implausible that Ms Riggall happened to have been out of bed at the same time that Mr Kennedy entered the house so as to be able to ask her permission to use her phone. Ms Riggall could not provide clear evidence on whether her phone required a passcode but indicating that if it did, Mr Kennedy would have known that code.¹⁰⁴ It seems much more likely that Ms Riggall remained in Mr Kennedy’s company for most of the evening before Mr Kennedy left West End.

⁹⁸ T341 14 March 2019.

⁹⁹ Exhibit C29A. Page 40 interview 15 September 2015.

¹⁰⁰ C9.

¹⁰¹ Exhibit C17(5).

¹⁰² C24 page 8.

¹⁰³ T346 14 March 2019.

¹⁰⁴ T146 13 February 2019.

96. In his original interviews with police, Mr Kennedy said that he used the phone belonging to Ms Riggall because his phone was either out of credit or flat.¹⁰⁵ However, in evidence, he said that he used his phone as a torch later on to find fishing rods at Ms Riley's house and therefore agreed that it was not flat.¹⁰⁶ I also observe that he said that he knew the time of leaving West End as he saw it on his phone.¹⁰⁷ He gave evidence that he had an iPhone for prepaid phone use and he would pre-pay \$30 credit once per month to cover all of his calls, although later in his evidence he said that he would purchase credit of \$30 every 2 to 3 months.¹⁰⁸
97. Mr Kennedy's evidence on the issue of whether he had an operational phone was most unsatisfactory. It became clear upon the evidence, including the phone records, that Mr Kennedy's phone was not flat, he had credit and he was able to make and receive calls. I agree with Ms Ansell that this appeared to be an attempt to try and explain the failure to use his own phone to call Mr Mansell during the evening or to call 000 later that morning. I also agree that the fact that Mr Kennedy had an operational phone brings into question his movements at the premises at West End after Mr Aitken had gone to bed. It may only mean that Mr Kennedy was trying to hide the fact that he and Ms Riggall were together for a longer time than he suggested. It is plausible that Ms Riggall herself dialled Mr Mansell's number whilst she was with Mr Kennedy. It seems unlikely that any plans to harm Mr Mansell were discussed, but it is difficult to see why their evidence is so unreliable. Perhaps it is explained by a high degree of intoxication.
98. There is plenty of evidence that a fishing trip involving Mr Mansell was spoken of at the airport. However, there is no evidence from any person subsequently that any specific arrangement existed that Mr Kennedy would go to Mr Mansell's house at about 3.30am on 8 August to take him fishing. In his affidavit, Mr Kennedy did not provide details of any plans previously made with Mr Mansell and in his interview told detectives that he left West End at 3.00am because he "just wanted to".¹⁰⁹ In her initial affidavit, Ms Riggall said that at the airport "vague plans" were made for the three of them, together with Ms Riley, to go fishing at North East River in the morning of 8 August when they were "up and ready". She portrayed that the trip would occur at a civilised time during waking hours in the morning. This is inconsistent with Mr Kennedy travelling at 3.00am to see Mr Mansell.

¹⁰⁵ Exhibit C26, C27, C28, C28A.

¹⁰⁶ T351 14 March 2019.

¹⁰⁷ C26 affidavit J Kennedy.

¹⁰⁸ Transcript 14 March 2019.

¹⁰⁹ C 28 Interview 10 September 2015 p9.

99. There being no evidence of any meeting time arranged with Mr Mansell, the trip by Mr Kennedy to see him may well have been for another purpose, such as to obtain drugs or simply drink alcohol, but this cannot be known. It would also seem that Ms Riggall would well have known why Mr Kennedy left to see Mr Mansell at that hour because, as discussed, it is quite plausible that she was awake and with Mr Kennedy at the time. She herself was a close friend of Mr Mansell and interested in his movements. It is also possible that Mr Kennedy, intoxicated, woke in his car and spontaneously decided to visit Mr Mansell to prepare for the fishing trip.
100. The unreliable evidence and unusual features surrounding the movements of Ms Riggall and Mr Kennedy on the evening of 7 August causes me to consider the significance of this particular evening in Mr Mansell's disappearance, given that he was not seen after this time by anyone but Mr Kennedy. The last phone connection made by Mr Mansell (from his own phone) was earlier that evening at 7.09pm when he made a seven minute call to his sister, Mary.¹¹⁰ Unfortunately, Mary could not be located to give evidence. Again, there is no evidence that either of Mr Kennedy or Ms Riggall bore ill-will towards Mr Mansell at this time or were involved in any plans to harm him at that time.
101. There having been no answer from Mr Mansell to the two calls made at 2.19am and 2.20am, Mr Kennedy said that he drove to Lady Barron to the home of Mr Mansell. Mr Aitken said in his original affidavit that he did not hear anything after he went to sleep,¹¹¹ but in his later interview told detectives that he heard Mr Kennedy's car driving off, after which Ms Riggall came to bed with him.¹¹² I cannot be certain that Mr Aitken's memory is correct and that he did hear Mr Kennedy driving off, but I am satisfied that he did so.
102. The evidence indicated that it would have taken Mr Kennedy between 50 and 57 minutes to drive on the gravel road to Lady Barron. The distance of the journey was 64.6 kilometres.¹¹³
103. Mr Kennedy, in his first affidavit made on 13 August, gives an account of his next movements:

"I drove straight back to Lady Barron, I stopped at Nan's and picked up my fishing rod. I put on a silver spinner which I took off another rod and then headed off to Robbie's place. I didn't have any other tackle except for a squid jig, I don't have any other lures, just hooks, sinkers and squid jigs, I knocked on his door and walked in, Robbie was just getting out of bed, I said I'd try to ring him and he said he hadn't heard it. We sat around and talked while he had a

¹¹⁰ C17(3) Phone records R Mansell.

¹¹¹ C25 21 August 2015.

¹¹² C25A p19.

¹¹³ C39.

smoke and put his boots on and then we drove back up to West End. The day before, we had made plans to go fishing at North East River early on Saturday morning. I spent about 20 minutes at Robbie's place before we got back into my car and headed up to West End. We stopped at West End Road intersection and I put in about five litres of fuel that I had and we drove into the shack. We arrived at the shack just as it was coming light. I drove slowly to avoid hitting kangaroos.”¹¹⁴

104. I observe that Mr Kennedy’s affidavit made 13 days after Mr Mansell’s disappearance, was articulate and coherent in its language and content. This was in stark contradistinction to his accounts given in interviews to detectives and in court at the inquest. These accounts were internally inconsistent, difficult to follow as a narrative, and minimal in answers. His affidavit contained the same general narrative as his further accounts, but there are many problematic inconsistencies and anomalies, as I will discuss throughout this finding. Mr Kennedy’s affidavit was taken by Sergeant Russell Judges at a time when his actions were not under scrutiny and the language of the document was far more sophisticated than his own.
105. Of particular significance in the above passage of evidence, which he repeated in all further accounts, is that he only took one rod and one lure, and a squid jig. The consistent evidence of Mr Kennedy and Ms Riggall was that it was a frequent occurrence at North East River, or fishing anywhere on the Island, that lures would get snagged.¹¹⁵ Ms Riggall stated in evidence that, as a consequence, they would take spare lures.¹¹⁶ Mr Aitken said he would take at least three lures.¹¹⁷
106. Therefore, having gone to the trouble of deciding upon an early morning fishing trip to North East River fishing, the following matters stand out as incongruous: Mr Kennedy took only one lure; he did not ask Ms Riggall or Mr Aitken for more lures; he took only one rod, when others were available for Mr Mansell; and he provided Ms Riggall and Ms Riley with no or no reasonable notice that the trip was occurring, even though it was allegedly Ms Riggall’s idea.
107. A further anomaly arises in Mr Kennedy’s assertion that Mr Mansell was already awake when he entered the house and, fortuitously, getting clothed for fishing when he arrived. There is no evidence to indicate that he knew Mr Kennedy was arriving at that time, especially since the missed calls (if he saw them) came from Ms Riggall’s phone. This evidence was in

¹¹⁴ C26.

¹¹⁵ I note that police divers in the purpose of searching for Mr Mansell searched the area of Salmon Rock. They made note of the number of lures that were located in the area below the rock but not the one as outlined by Mr Kennedy – Exhibit C32 J Pratt.

¹¹⁶ T128 Transcript 11 and 12 February 2019.

¹¹⁷ T88 Transcript 11 and 12 February 2019.

contradiction to his early interview with detectives where he said that Mr Mansell only got up when he knocked at the door.¹¹⁸

108. Where Mr Kennedy went and what he did between leaving West End before 3.00am and returning there at 6.00am on Saturday 8 August 2015 is not independently verified by any other person. I can be satisfied of one thing: that he did see Mr Mansell during those hours. It is not plausible or reasonable to think that he went anywhere else but to see Mr Mansell who was at his own house. Assuming that is the case, then I am still not able to determine what transpired between the two at this time. There is no evidence that anyone else was with them. No further calls were made to or from Ms Riggall's phone.
109. Mr Kennedy described meeting Mr Mansell at his house in the following passage of evidence:
- “Do you have any idea of what time you went down to Mr Mansell’s?... No, I can’t remember.*
- So what did you do when you went to Mr Mansell’s?... Knocked on the door and then walked in.*
- Yes. And what did you do there?... Asked him if he was coming fishing and he said, “Yes,” and we just had a couple of drinks there and he put his shoes and that on.*
- A couple of drinks of what?... I think it was two cans of beer.”*
110. At the inquest, Mr Kennedy could not remember how long he was at Mr Mansell's house at that time. He said that Mr Mansell put on big boots, a big blue heavy jacket, a vest over the top of that and baggy trousers.¹¹⁹ The evidence from several witnesses was that this clothing was Mr Mansell's usual attire, even in warm conditions.
111. In an interview with detectives, Mr Kennedy was not able to explain why, if he had arranged to go fishing with Mr Mansell, he did not organise to stay closer to him rather than drive 100 kilometres in the dark to collect him or why they did not fish closer to Lady Barron on the wharf where Mr Mansell lived.¹²⁰
112. Following the consumption of alcohol, the men returned back to West End whilst having a can of beer each.¹²¹

¹¹⁸ C28 p14.

¹¹⁹ C28 Page 10 of Interview 10 September 2015.

¹²⁰ C28 p36-37.

¹²¹ Ibid p14.

113. Another anomaly is Mr Kennedy's reason for stopping at the intersection of Palana and West End Roads. In the re-investigation, Detective Logan swore an affidavit stating the following:

"I also conducted enquiries on fuel efficiencies of Kennedy's vehicle, which was a 1998 Mitsubishi Magna wagon, the information was derived from the internet and in particular automobile_catalog.com. This information indicates that his model of vehicle, on average, should return about 9.2km per litre, giving the vehicle a 46km range for 5 litres.

Kennedy suggests that he filled his vehicle with about 5 litres of fuel at the intersection with Palana Road and West End Road during the morning prior to Mansell's disappearance. On Kennedy's information he has then driven only 32.6km before running out of fuel. It is not known why Kennedy stopped to fill his vehicle with fuel."

114. I do not know whether Mr Kennedy did stop at this point for re-fuelling with a small amount of fuel. It may have been less than 5 litres. Presumably, he was concerned about how much he had left and whether he would have sufficient fuel to travel to North East river and back to his house. If he was almost out of fuel then I question why he decided to drive a distance which would see him run out.
115. Mr Kennedy's alleged actions in driving long distances through the night, seemingly on a whim, with low fuel and little sleep to see Mr Mansell, who had not responded to his calls, seems improbable or even suspicious. However, Mr Kennedy was intoxicated and, in that state, likely irrational. It does not mean necessarily that his intentions were sinister. In many respects, Mr Kennedy was a rather thoughtless person and, like Mr Mansell, was likely prone to ad hoc decision-making.
116. Mr Kennedy, in his affidavit, outlined what next happened once arriving with Mr Mansell back at West End:

"When we got to the shack, I knocked on the door and walked in. Robbie stayed in the car. No-one was awake. I called out to Steph and she got up. I asked her if she wanted to go fishing. She said she didn't want to come. She was pretty angry with me for waking her up. I went back out and got back into the car and drove off to North East River with Robbie."

117. It might be asked why Mr Kennedy drove back to the property at West End when that meant a deviation from their journey to North East River and they were short of fuel. Mr Kennedy appears to suggest that it was for the purpose of asking Ms Riggall if she wanted to

go fishing. However, in his evidence he stated it was to obtain beer.¹²² There is nothing on the evidence that would have caused Ms Riggall to expect that Mr Kennedy would be back to take her fishing. Mr Kennedy himself said that his arrival caused her to wake up.

118. Ms Riggall gave evidence that between 6.00am and 7.00am she encountered Mr Kennedy in the kitchen of the West End premises getting beers out of the fridge. At that point, Mr Kennedy allegedly told her that he was going fishing and an argument ensued in relation to Mr Kennedy stealing the beer from the fridge.
119. I accept the affidavit evidence of Mr Aitken concerning Mr Kennedy returning to take beer from the fridge. I have set out the relevant passage previously, at paragraph 90. Mr Aitken reinforced his account in subsequent statements to police.¹²³ I find that Mr Kennedy intended to take beer from the fridge without wishing to make contact with Ms Riggall at all.
120. It is unclear upon the evidence whether Mr Mansell was seen in Mr Kennedy's car at West End by anyone other than Mr Kennedy.
121. Ms Riggall stated in her police interviews and in evidence that, upon Mr Kennedy waking her up, she walked down the stairs and had a view of Mr Kennedy's car from inside the front door. She initially said to police that she could see one fishing rod in the car¹²⁴ but gave evidence that she was certain that she could see two fishing rods in the back of the vehicle. She also indicated that she could see Mr Mansell in the passenger seat. In her affidavit, made only days after the disappearance of Mr Mansell, she did not make mention of any conversation with Mr Mansell whilst he sat in the car and said she simply chased Mr Kennedy out of the house.¹²⁵ A month later in her police interview she said that she said a few words (unspecified) to Mr Mansell whilst he remained in the passenger seat vehicle.¹²⁶ In her court evidence, she gave details of a conversation with Mr Mansell occurring as follows:
- “Well, I wasn't down there for very long. He just said – I just – he said, “Are you coming fishing?” I said no, I'll wait for Lila to get up and meet youse up there. And, that was pretty much all that was said, and I went back up.”*¹²⁷
122. Ms Riggall stated that Mr Mansell's dogs were in the back seat, although she appeared in her answers to have simply assumed that this was the case rather than having paid attention to

¹²² T361 14 March 2019.

¹²³ Exhibit C23, C24, C24A, C25, C25A, Transcripts 11 & 12 February 2019.

¹²⁴ C24 p6.

¹²⁵ C23.

¹²⁶ C24.

¹²⁷ T143 13 February 2019.

it.¹²⁸ At inquest, Mr Kennedy said that Ms Riggall stood behind the glass door 10 metres away from the car and did not talk to Mr Mansell in the car.¹²⁹

123. It is difficult to find (given the changeable and unreliable nature of the evidence of Ms Riggall and Mr Kennedy) that Mr Mansell was actually at West End (alive) that morning. Ms Ansell submitted that Mr Mansell may have already died at the hands of Mr Kennedy during this time. She speculated in her submissions that there may have been an incident of aggression between them resulting in Mr Mansell's death. I agree that there is no reliable evidence that could verify Mr Mansell being at West End or at North East River. However, I question why Mr Kennedy would go to West End to get beer if Mr Mansell had died before then. How and where would Mr Kennedy have disposed of his body? Did he drive to West End to seek help from Ms Riggall? This scenario does not accord with the evidence of Mr Aitken, who heard part of the altercation between Mr Kennedy and Ms Riggall. It is more likely that Mr Mansell was alive and travelled with Mr Kennedy to West End and then to North East River, a distance of 25.6 kilometres, taking 38 minutes.¹³⁰ I also cannot rule out an incident occurring between the men resulting in Mr Mansell's death whilst travelling between West End and North East river. There is no evidence of any other vehicles on the road or people at that dark hour of the winter morning. I will return to this.

Mr Kennedy's Account of Mr Mansell's Disappearance

124. I now set out in full Mr Kennedy's account of the circumstances of Mr Mansell's death from his affidavit of 13 August 2015:

"We drove straight there, the sun was coming up when we arrived and I think it was about seven o'clock. I didn't look at the time. I have a clock in the car but it isn't on the right time. We only had my rod with us. Robbie wasn't much into fishing when he first came over but started getting into (sic) when he started coming with me. I expected to share the rod with him; I don't think he owned one of his own. On the way up, Robbie drank two cans of Boags beer. When we arrived we filled the empty beer cans up with wine and we drank one each whilst we were fishing. Neither of us was affected by the alcohol.

We went down onto the beach that is just inside the mouth, not the one nearest the rock but the next one down on the road side of the river. We fished there for about half hour to forty five minutes without any action so we moved up onto Salmon Rock. Salmon Rock is a big rock right at the mouth of the river. I've had a bit of luck there before. I was only on my second or

¹²⁸ T196 13 February 2019.

¹²⁹ T409 14 February 2019.

¹³⁰ C39.

third cast when I got a snag. The lure got snagged in some mossy weed just below a little ledge near the tip of the rock. I couldn't free the lure up. Robbie said he would go down and try and get it out, I said 'Fuckin' be careful' and Robbie was saying he was right. He got about half down and stepped on some of the mossy weed and slipped and he went straight into the water.

He was in the water and yelling 'help me, help me', He was slapping the top of the water. I stripped off to my t-shirt and boxers and dived in after him. I swam over to him; he was a fair way from the rock heading out. The water was very cold. I got to him, he was panicking. He didn't calm down at all when I got there. I span him round onto his back and put my arm around him over his shoulders. I did a sort of side stroke back to a flatter rock just near the rock we went off. It was hard going. I'm (sic) can swim but I don't swim very well, I don't swim often. The waves helped me a bit but it was hard, I only just got back to the rock.

When we got to the rock we got hit by a big breaker. I swallowed a heap of salt water. I kept trying to get Robbie back up onto the rock. Then we got hit by a second wave and I lost my grip on Robbie, I didn't see him after that. The waves kept coming and I grabbed some seaweed trying to save myself. I dragged myself up the rock and scratched my side. When I got to my feet, I went back up onto Salmon Rock and looked around for him but couldn't see him anywhere. I kept looking for about fifteen minutes but can't be sure how long I took. I realised Robbie must have drowned. He couldn't have gotten out of the water without me seeing him.

Even when I was fighting the waves trying to get myself up onto the rock, if he had of been there I would have seen him.

Once I realised he was gone, I got dressed and I went back to the car. The rod was just sitting on the rock in front of me so I just grabbed it, broke the line and took it with me, My phone was in the car, I still didn't have any credit but I rang 000, I didn't have any coverage. I got in and started driving towards West End, I wanted to get help. Now that I think about it I would have stopped at one of the houses on the way. I don't know much about who lives where up there but that wouldn't have mattered. I didn't get that far. I got past the NE River boat ramp, a fair way past but I'm not sure how far, then I ran out of fuel. I started walking. I walked for a good half hour. I was still wet from my boxers and t-shirt soaking into my clothes. I may have dried out a little bit, but not much.

I saw John Wells driving towards the ramp, I was on a corner. I heard him before I saw him. I kept walking and he came round the corner, he was travelling reasonable quickly, 70 or 80 km/h. As soon as I saw it was John I expected he would stop. He went straight past me; I turned to get his attention and I saw him brake and then he stopped and reversed back to me.

I wasn't prepared to wave someone down, I don't know why, I just wasn't thinking straight. He asked me 'What's going on' and I said 'Robbie's gone of the rock'. John called the police and told Russell Judges what had happened.

I jumped into the car with him and we drove back down to the rock. On the way John asked me if we'd been drinking and I told him we had a couple of wines and that I had a wine bladder in the car. We stopped and got the bladder out of my car and put it in his. John wanted to, but I don't know why. We got back to the rock and we searched around for Robbie. John had some rope with him. We didn't see any sign of Robbie anywhere. We kept on searching until Russell Judges arrived. Whilst we were there, Stephanie rang me to talk. I told her that Robbie had gone off the rocks at the river. She told me she was coming up.

I don't know for sure but I think it would have been around eight o'clock or so when Robbie went into the water. At the time the tide was out, I think it was on the turn but I'm not sure. I don't know how deep it was where Robbie went in but it was fairly deep, I couldn't touch the bottom and I don't think anyone could have.

I stayed at the rocks for the day. Hoping someone would find Robbie. Later that day, Marley Clark brought 20 litres of petrol up for me and I took the car back to West End and then back to Nan's, I was back at the rock the next day too. I went through what had happened with Russell Judges. Sometime after that I found Robbie's phone on my dashboard on the passenger side, I hadn't noticed it before. Robbie had also left his tobacco in my middle console. We hadn't smoked whilst fishing, I don't know why, we just didn't worry about it. I didn't have any smokes so it just didn't come up for me.

I gave the phone and tobacco to Robbie's brother, Anthony Haines. I didn't use the phone or touch it in any way other than to see if it was on. The phone was flat so I left it in the car. I did smoke some of his tobacco."

125. Again, it is important to bear in mind that the account in this document is written in an articulate and flowing manner that was not a hallmark of Mr Kennedy's evidence or his interviews with police. His answers to detectives in his police interviews were of a simplistic nature and often provided after long pauses.
126. As discussed below, there are concerning features, anomalies and inconsistencies when comparing his evidence to the other objective and credible evidence. However, he did not resile from his essential account of the circumstances of Mr Mansell's death - the trip to North East River, fishing on Salmon Rock, Mr Mansell falling into the water as he went to free a lure, his own entry into the water to try and save Mr Mansell, and Mr Mansell's final disappearance into the water. Although the manner of Mr Kennedy providing oral evidence

may have been somewhat limited by his intellect, he was clearly able to understand the questions, certainly capable of distinguishing between the truth and lies and able to recall events. Although Mr Kennedy did not waver from his essential account of Mr Mansell's accidental fall, his oral questioning by police officers indicates the difficulties in accepting his account. The following passage from his interview only a month after the incident, demonstrates the difficulties with being able to rely upon his account.¹³¹

JK yea I tried to ring um triple 0 and I couldn't get any service and it would (sic) let me ring it

DT so you tried to ring triple 0

JK yea

DT but you couldn't get any service

JK no and me phone wouldn't let me ring it

DT cause you said in interview you just before you said 911 which is American

JK did I

DT yea you said 911 so do you know what the emergency number is for Australia?

JK triple 0 isn't it

DT yea well you said I'm, I just found that interesting and look it's no, it's, it's no shame if you did it on panic but did you or did you not ring triple 0 or try to ring triple 0

JK I did

DT yea

JK I tried to

DT but you, you, it didn't work

JK it just wouldn't, me phone wouldn't let me

DT yea

JK didn't work

DT did you have credit then?

¹³¹ C28 p23 onwards.

JK *I don't know*

DT *na didn't have credit so why do you think it didn't work cause of the credit thing or because of the service*

JK *probably the service*

DT *to your knowledge can you ring triple 0 when you don't have credit?*

JK *yes*

DT *yea*

JK *as far as I know you can*

DT *and did you know that back on the day when, during this fishing trip or you found that out since*

JK *no I knew then*

DT *you knew then did you, yea do you, do you get phone service up in that area?*

JK *no it's not very good phone service up there*

DT *no sometimes you do sometimes you don't would you agree with that?*

JK *depends where you are I suppose*

DT *yea did you try different locations or you just tried the once?*

JK *just I just tried the once."*

Mr Wells' Evidence

127. Any analysis of Mr Kennedy's account cannot be made without assessing the evidence of Lawrence Wells, who came across Mr Kennedy whilst on his way to fishing at Salmon Rock. Mr Wells made his first affidavit on 14 August 2015, seven days after Mr Mansell's disappearance. His affidavit contained the following passage:

"I have known Josh Kennedy mainly through his Nan, Aloma, I haven't had a great deal to do with Josh however I've had him work for me mutton birding and again doing odd bits and pieces at various times.

On Friday afternoon, the 7th of August 2015, I made the decision to go fishing up at North East River the following morning. I had worked out the tides and was planning to get some salmon just from the shore.

On Saturday the 8th of August 2015 I headed up to North East River at the top end of the Island at 9:00am and got up to North East River at approximately 9.45am.

Whilst travelling along NE River Road, towards the river mouth I passed Josh Kennedy. I would guess that it was about 1.5km up NE River Road from the Palana Road intersection. It was about 100 yards after the long straight.

When I saw Josh he was walking towards Palana Road, there didn't appear to be any urgency in his walk. I remember that he was wearing a (sic) nylon black pants however I can't remember what sort of top he was wearing, he wasn't carrying anything that I can recall.

When I passed Josh I saw him looking at me however he didn't give me any indication that he wanted me to stop, he didn't wave me down.

I initially drove straight past him however then thought that it was strange him walking like that, so I backed up and spoke with him.

I asked him what he was doing and if anything was wrong. I can't remember what order things were said however he told me that Robbie had gone in off the rocks at the river and that his car had run out of fuel.

I told him to get in my car and then asked him if he had called anyone. Josh told me that he didn't have any credit.”¹³²

128. Mr Wells proceeded to state in this initial affidavit that he immediately called his partner, Tanya Maynard, and briefly explained the situation before hanging up and calling 000. He also telephoned Ms Riley and informed her of the situation. During his car trip with Mr Kennedy back to Salmon Rock, Mr Wells noted that Mr Kennedy did not appear wet nor overly stressed, however, he acknowledged that people handle stress in different ways. He questioned Mr Kennedy about whether they had been drinking, whereupon Mr Kennedy told him they had been drinking “a boxy” and that the bladder was still in his car. He said that he drove about 1.5 kilometres down the road from where he located Mr Kennedy and found Mr Kennedy’s car. He told Mr Kennedy to take the wine bladder out of the car and Mr Wells kept it in his car. He explained in evidence that this was done to protect Mr Kennedy.

¹³² CI.

129. Mr Wells then described going to the mouth of the river where he asked Mr Kennedy to show him where Mr Mansell had gone into the water. He stated *“he took me to the edge of the river mouth. I asked him exactly where this happened and he took me to a rock that was the second rock back from the seaward side, it was the smaller of two rocks, there were two large rocks behind that”*.
130. Mr Wells went on to describe searching for Mr Mansell and calling out his name. He said that Sergeant Russell Judges arrived within three quarters of an hour of him being at the rock. Mr Wells assisted with the police search for Mr Mansell until 4.00pm.
131. In his initial affidavit, Mr Wells said that after returning home from the search that evening, he mulled over a few matters that *“did not quite add up”* and therefore spoke to Sergeant Judges the following day about these concerns. In his affidavit, Mr Wells stated that he thought it was unusual that Mr Kennedy had not waved him down to stop him, and that he had travelled 200 metres past Mr Kennedy before deciding to reverse back to find out why he was there at that time. He also could not see that Mr Kennedy had any fishing gear at all, and that, knowing Mr Mansell’s fear of water, he would not expect him to be fishing on the rocks. Mr Wells particularly noted that Mr Kennedy was not wet even though he had apparently gone into the water to save him.¹³³
132. Mr Wells swore his second affidavit on 28 February 2018, after he had been notified of the requirements to give evidence at the commencement of the inquest the following month. His evidence of encountering Mr Kennedy and the following search for Mr Mansell at the rock remained essentially unchanged but he gave further details. The following important passage from Mr Wells’ second affidavit is as follows:

“In my original affidavit I informed police that I picked Josh up as he was walking along North East River Road, Flinders Island. When I did this Josh mentioned something to me that gave me cause for concern. When I saw Josh walking along the road, I stopped and had a brief conversation with him and he told me what happened. I then called ‘000’, as I was waiting to be connected Josh was standing outside the car beside my driver’s side door, I had the window down to speak with Josh and I heard him say “I’m going to jail for this”. I don’t think that Josh said this to me directly however seemed to be mentioned at the point when I contacted police. Josh then got in my car and on Sergeants Judges’ request we headed to where Josh said Robbie had gone missing. I didn’t question him about this statement however I was concerned about what he meant by this.”

¹³³ C.I.

133. At the time of Mr Mansell's disappearance, Mr Wells was 53 years of age and had been a long-term resident of Flinders Island. He had known Mr Kennedy for a number of years. I agree with Ms Ansell's submission that he was a most impressive witness. His explanation as to why he did not disclose to police at an early time that he had heard Mr Kennedy stating "I'm going to jail for this" was that he was concerned about the consequences to Mr Kennedy of disclosing that statement and wanted to make sure his memory was correct.

134. The following exchange in his evidence at inquest represented his position on the issue.

"Now, that comment that – along the lines of, and I'm not saying word for word, 'I'm going to go to jail for this,' you haven't – you didn't say that in your original statement - why is that?.....I didn't say it in the original statement because I was most concerned – those particular words, and you know, I just could not say – I thought, you know, I must have been bloody hearing it and I knew – you just don't say things like that because if you get this wrong, you know, someone's life could, you know, sort of also be very much interrupted. I've got to be right knowing that what I'm saying is right what I heard, you know, and I wasn't happy with that because also a number of years ago I was in charge of a, like someone asked me to take care of their affairs after they passed away. Now, this particular person done time for murder but in his papers he said, "I did not do this thing," and so that hung on my mind as well and I thought, you know, just got to be very, very careful, you know, I've got to make sure that what I heard is right and look, out of as much love for Robbie and respect to the other person, I'd – that's got to sit right with me.

*So – and something in that 12 to 18 months, you've thought about it and what's caused you to come forward to change – to say it?.....No, well, you know, I'm sure of the words. I was sure of the words and that was a key to it."*¹³⁴

135. I fully accept the evidence of Mr Wells, notwithstanding that he did not provide that evidence in his initial affidavit. He was examined thoroughly at inquest and proved to be an honest, objective and articulate witness who had an excellent recall of encountering Mr Kennedy that morning. There was no evidence from any other witness at inquest that Mr Wells was a person prone to falsehoods or was ill-motivated towards Mr Kennedy for any reason.

136. In evidence, Mr Kennedy denied making the statement but was not able to give any reason why Mr Wells would give that evidence falsely. I am quite satisfied that the delay in Mr Wells in providing that particular piece of evidence was in order to protect Mr Kennedy.

¹³⁴ T15 6 March 2018.

137. Mr Kennedy did not give Mr Wells a great deal of detail concerning exactly how Mr Mansell went into the water or his subsequent actions. He said that, when they were at the rock together, Mr Mansell had tried to get a lure out and had fallen in.¹³⁵ Mr Wells gave evidence about what Mr Kennedy told him in their initial encounter, stating: "...he basically said he'd tried to save him and um, I didn't – he didn't indicate any more information so I just accepted that for what it was".¹³⁶ Mr Wells said that he didn't question Mr Kennedy any further because of the reference by Mr Kennedy regarding potentially going to jail. He gave firm evidence that Mr Kennedy did not say to him that he had entered the water.¹³⁷ However, it was apparent from his evidence that, at a stage later that day during the search for Mr Mansell, Mr Wells became aware of Mr Kennedy's account of entering the water to try and save Mr Mansell.

138. Another piece of significant evidence given by Mr Wells is his account of the behaviour of Mr Kennedy whilst Mr Wells was searching for Mr Mansell. He stated in his second affidavit:

*"As I went looking for Robbie as mentioned in my original affidavit Josh remained sitting down behind me. I noticed that he was playing on his phone and it looked as though he was texting but I can't be sure. I had told Josh that Sergeant Judges asked me to go and look for Robbie. There wasn't any conversation between us once at the rock but I kept looking around to see what he was doing. We remained at the rock for a bit over an hour and during this time Josh hardly moved."*¹³⁸

139. In his oral evidence at inquest, Mr Wells confirmed the above account and indicated that Mr Kennedy was looking at his phone and "mucking around with it".¹³⁹ Again, Mr Wells gave convincing evidence of his own movements and those of Mr Kennedy whilst they were alone on the rock. He did not attempt to be certain of matters when he was unable to recall but, for obvious reasons, had a good memory of this particular morning. I have no hesitation in accepting the evidence given in its entirety by Mr Wells. I will deal with the significance of Mr Wells' evidence at a later point in further considering the veracity of Mr Kennedy's account.

140. It is important to initially consider the opinion of the experts regarding Mr Kennedy's account of his attempted rescue of Mr Mansell.

¹³⁵ T9 6 March 2018.

¹³⁶ T 19 6 March 2018.

¹³⁷ T 38 6 March 2018.

¹³⁸ CIA.

¹³⁹ T14 6 March 2018.

Expert Opinion Concerning Mr Kennedy's Account of His Attempted Water Rescue

141. Mr Kennedy's account of his attempted rescue was a substantial focus of the inquest, and requires close examination. If it was the case that Mr Mansell was at Salmon Rock at North East River with Mr Kennedy and he did go into the water, the question arose whether, in the conditions that existed at the time, the attempted rescue as described was even feasibly able to be performed.
142. The evidence indicates that on 8 August 2015 the water temperature was 12.5 degrees Celsius and the air temperature 8 - 12 degrees Celsius. The wind strength was 10 knots (approximately 18km/h). There was an outgoing tide, with water flowing swiftly outwards through the narrow mouth of the North East River.¹⁴⁰
143. In order to replicate the water conditions, Detectives Logan and Roberts conducted two flotation tests on 9 May 2018 utilising a 'search and rescue' dummy. This date and time were selected due to the tide and weather conditions being very similar to the conditions on the day that Mr Mansell went missing. The first test was conducted at 7.35am and involved Detective Logan throwing the 'dummy' into the water at the spot where Mr Mansell allegedly went into the water. Detective Roberts remained on Salmon Rock and filmed the process. Detective Roberts estimated that the dummy had drifted seaward in excess of 100 metres in 10 minutes. The dummy was recovered. A further test was conducted at 7.47am. This test achieved the same results as the first.¹⁴¹
144. Two highly qualified experts, Dr Paul Luckin and Dr Roland Watzl, both provided detailed and considered reports and oral testimony based upon the evidence. Both are medical doctors with extensive qualifications and experience in the areas of survival and rescue in extreme environments, cold water immersion and hypothermia. I will briefly summarise the qualifications and experience of each expert, noting that a summary cannot fully do justice to their expertise.
145. Dr Luckin is specialist anaesthetist who has vast experience and qualifications in search and rescue. He has been involved in the area of Rescue since 1974 (as a Paramedic), and Search and Rescue (as a doctor) since 1982. From 1982 until 1989 he was the doctor in the Mountain Rescue Team, Natal Section, Mountain Club of South Africa.
146. Dr Luckin teaches medical aspects of Search and Rescue (SAR) to Police SAR teams at the state level, and has been on the directing staff of the National Police Search and Rescue

¹⁴⁰ C22.

¹⁴¹ C42 Affidavit of Detective Peter Roberts.

Managers' Course since 1991. He is asked for advice on survivability during SAR operations by AMSA (Australian Maritime Safety Authority, responsible for conduct of SAR operations in the Australian SAR region), and by Police SAR teams around the nation, and Australian Federal Police in PNG, Solomon's and Australian waters.

147. He has published and presented extensively and provided expert opinions on the topics of retrievals, rescues and hypothermia. Amongst the many other positions that he has held, he is the past president of the Tasmanian Branch of the Royal Life Saving Society Australia. He holds the rank of Captain in the Royal Australian Naval Reserve and has seen service for a period of over 20 years. Within the Navy, he is, amongst other positions, a member of the Submarine Escape, Rescue and Abandonment Service.
148. Dr Roland Watzl is the Deputy Chief Medical Officer of the Australian Antarctic Division in Tasmania. He is responsible for the provision of medical support to the Australian Antarctic Program as well as human biology and medicine research. He joined the Australian Antarctic Division in 2000. He is an expert in designing, setting up and operating medical support systems in extremely remote and austere environments, having been engaged in this field for 20 years.
149. He is an instructor on the Royal Australasian College of Surgery's 'Early Management of Severe Trauma' (EMST) Faculty. He has training and extensive experience in Military Medicine and Military Operational Health Support. He was a serving member in the Royal Australian Air Force for seven years.
150. Dr Watzl has training and extensive experience in expedition medicine, maritime medicine, retrieval medicine and aviation medicine. He is also trained and experienced in diving/underwater medicine and provides support to the Australian Antarctic Diving Program. He is a certified open water SCUBA diver. His experience in expedition medicine includes over-wintering as the sole medical practitioner at Casey Station in Antarctica in 2001 (13 months deployment) and multiple trips as an expedition doctor since that time.
151. Dr Watzl has published and taught extensively in these areas. He has previously provided written advice and testimony to courts in respect of cold-related deaths.
152. Both experts provided very detailed written and oral evidence supported by recognised learnings. I summarise in basic terms only their relevant opinions, which again, does not do justice to the depth of their reasoning.
153. Dr Luckin provided a detailed report upon the physiological and psychological effects of cold water immersion upon Mr Mansell and Mr Kennedy, taking into account the conditions and

their individual characteristics. He summarised his opinion of Mr Mansell's immersion as follows:

“On entering the water Mansell would have experienced the cold shock response, including an inability to coordinate his limb movements in order to keep himself on the surface. I would expect this to be severe, and carry a high risk of the respiratory effects causing drowning within the first 3 minutes.

To stay afloat requires powerful movements of the arms and legs, coordinated muscular function, and buoyancy. During the gasp response and hyperventilation subjects breathe at close to total lung volume - the lungs empty almost completely at the end of each breath. This decreases the volume of the chest, decreasing buoyancy until the next huge breath in. Thus the person sinks and rises with each breath out and in, adding to the difficulty of keeping the airway above water.

Mansell was very thin, with a very low BMI, with very little fat and very little natural buoyancy. He was not physically strong, a non-swimmer, with a weak arm and a weak leg, blind in one eye (limiting his ability to see and protect his face and airway from the 1-2 m swell). Maynard (06.03.18, p50) describes him as "having as much hope in the water as a two year old. He was wearing heavy boots, and either two complete sets of clothing or baggy trousers, a big blue heavy jacket and a vest. He had no life jacket. The clothing would have been very heavy, causing extreme drag and severely limiting his movements. The heavy boots would have made it impossible for him to kick efficiently, especially with one weak leg.

To stay afloat weighed down by the clothing, in the 1 - 2 metre swell, the outgoing tide, and water at 12.5degrees Celsius would be very difficult for the strongest and most capable of swimmers. I do not believe it is possible that Mansell was still alive and on the surface of the water for long enough to have been rescued.”¹⁴²

154. Regarding Mr Kennedy's account of his attempted rescue of Mr Mansell, Dr Luckin's opinion included the following:

“On diving into the water Mr Kennedy would have experienced the same physiological responses to sudden cold immersion. He makes no mention of this dramatic and notable event. He describes Mr Mansell as panicking, then says "I span him round onto his back and put my arm around him over his shoulders. I did a sort of side stroke back to a flatter rock". This is a description of standard Royal Life Saving Society training; it is very unlikely that an untrained person would know how to do this, or attempt to do it. I do not know whether Mr Kennedy has

¹⁴² C40A - Dr Luckin's second report, p8.

had any such training. He also says "I can swim but I don't swim very well". A swimmer rescue of this type is physically taxing even in still water. In very cold water, against a tide, it would be exhausting even for a strong swimmer..."¹⁴³

155. Dr Luckin further stated:

"Pratt (01.03.18) says "From the outgoing tidal conditions that I experienced while diving in the North East River on Sunday 09 August 2015, it is my opinion that a person floating in the water, or under the water, would have been quite easily carried out into the open water. I form this opinion due to the fact that whilst diving I was forced to face into the current and move along by finding hand holds on the rocks to prevent my movement being controlled by the tidal flow. It is my belief, due to the time the deceased went missing on the Saturday, and the time that I dived on the Sunday, the tidal flow would have been very similar.

Kennedy would have been swimming on the surface, in very cold water, in 1-2 metre swells, against the tide, and dragging Mansell in his heavy clothing. This would have been much harder than it was for the Police divers underwater, although the divers are fit, experienced divers, competent swimmers, wearing wet suits, with less drag from their equipment than Kennedy would have had from Mansell plus Mansell's clothing. If Pratt, underwater, in similar tidal conditions, had to hold onto rocks to avoid being controlled by the tidal flow, then Kennedy could not have towed Mansell back to the rocks. I do not believe it possible or plausible that Kennedy towed Mansell back to the rocks."

156. Dr Watzl differed in his opinion from Dr Luckin in respect to the issues of the length of time Mr Mansell may have been afloat and alive, the ability of Mr Kennedy to perform the rescue that he described and the manifestation of hypothermia in Mr Kennedy after exiting the water. Dr Watzl also supported his opinion with cold exposure survival modelling figures for Mr Kennedy's alleged rescue attempt.

157. Dr Watzl gave evidence that Mr Mansell would have had a very hard time staying afloat once he entered the water, but it was plausible that he was afloat for the approximately five minutes it took for Mr Kennedy to allegedly reach him in the water. The wearing of heavy clothes, he said, reduced the chances of his remaining afloat but it still would not have been impossible for him to have kept his head above water. In this regard, he noted that Mr Kennedy's account of Mr Mansell coughing when Mr Kennedy allegedly reached him is consistent with Mr Mansell struggling.¹⁴⁴ Dr Watzl indicated that he did not have the expertise of Dr Luckin in relation to surf lifesaving, he had completed basic training with the

¹⁴³ C40, Dr Luckin's first report, p8.

¹⁴⁴ T229 13 March 2019.

Defence Force and for his Coxwain's ticket and had spent a lot of time recreationally in and on the water. Nevertheless, his view was that, given the significantly greater physical strength of Mr Kennedy and the low body weight of Mr Mansell, it was possible in the circumstances that Mr Kennedy could have towed Mr Mansell back towards the rocks.¹⁴⁵

158. Dr Luckin on the other hand, said that Mr Mansell was panicking and therefore would have grabbed the rescuer and pulled him down. In such circumstances the only way to effect a rescue would be to use specific training manoeuvres. He went on to describe those manoeuvres and the inability of an untrained person to conduct them.¹⁴⁶ In his evidence, Dr Watzl stated that it could be postulated that when Mr Kennedy reached Mr Mansell, Mr Mansell was passive and in the process of drowning - therefore easier to rescue.¹⁴⁷ Dr Luckin maintained that, even if Mr Mansell had put up no resistance to Mr Kennedy, Mr Kennedy would not have been able to tow him. Dr Watzl agreed that, whether Mr Mansell was resisting or passive, a rescue would have been "an exceedingly difficult thing to do".
159. At this point, I should add that Mr Kennedy was examined about his ability to swim. As assumed by both experts, it appears that he was able to swim. He had learned to swim in annual "swim and survive" courses over a number of years at school, which included some techniques for assisting others in trouble. Mr Kennedy gave evidence that he did not participate in swimming carnivals at school.¹⁴⁸ He said he could swim but he was "not the best".¹⁴⁹
160. In relation to the issue of whether Mr Kennedy would have been visibly hypothermic upon encountering Mr Wells, Dr Luckin and Dr Watzl were in disagreement. Dr Luckin was adamant that Mr Kennedy would have exhibited signs of hypothermia such as thinking and acting slowly and unclearly. He said he would have had reduced understanding and have been shivering uncontrollably, with diminished peripheral sensation and reduced physical strength and dexterity. He said that this was the case even if Mr Kennedy had been submerged in the water for a very brief period of time. He emphasised that, in his opinion, Mr Kennedy's exposure to the cold air outside after being submerged and the temperature loss from his wet clothing would have caused his core temperature to continue to decrease due to the powerful cooling effect.¹⁵⁰

¹⁴⁵ T231 13 March 2019.

¹⁴⁶ T232 13 March 2019.

¹⁴⁷ T233 13 March 2019.

¹⁴⁸ T 400 13 March 2019.

¹⁴⁹ T 286 14 March 2019.

¹⁵⁰ T248 13 March 2019.

161. Dr Watzl, in contrast, was of the view that Mr Kennedy would not have been showing signs of hypothermia upon encountering Mr Wells. He gave evidence, based upon his expertise and using a recognised model, that in the environmental conditions on the day it would have taken 3.5 hours in the water for Mr Kennedy to become mildly hypothermic. He emphasised that this was only a guide and individuals may develop hypothermia at different rates. He gave evidence that Mr Kennedy, at the earliest, may have developed mild hypothermia after 30 minutes in the water.¹⁵¹ He also provided the opinion that he did not consider Mr Kennedy would have become hypothermic from his exposure to cold conditions on the land after allegedly submerging himself in cold water. Dr Watzl was also of the view that Mr Kennedy's clothing may have significantly dried by the time he encountered Mr Wells.¹⁵²
162. Dr Luckin and Dr Watzl debated this issue whilst they jointly gave evidence at inquest. The debate centred upon the use of the modelling tools and examples of Antarctic expeditioners provided by Dr Watzl. Dr Watzl gave evidence that, even though Mr Kennedy would not have reached the point of being hypothermic, he would expect him to have been "cold stressed" which can involve quite vigorous shivering and interference with normal function – however, not to the point of the mental and physical incapacitation seen in hypothermia.¹⁵³ Dr Luckin gave evidence that it appeared that Mr Kennedy was able to talk coherently to Mr Wells, not characteristic of a hypothermic person.¹⁵⁴
163. Over and beyond what was required, both experts collaborated and spent time outlining their commonalities and differences. Helpfully, they recorded their basic opinions in a document that I set out below in its entirety:

"We have both examined the information we have at great length and given it considerable thought over many hours. We accept that where our views differ this may in part be due to different information received:

- 1. We agree that the question of whether Mr Mansell was able to climb onto the rock from which it is alleged he fell must be left to those who can examine the rocks and knew Mr Mansell's physical ability.*
- 2. We agree that it is probable that Mr Kennedy would have been able to reach Mr Mansell in the water within approximately 5 minutes.*

¹⁵¹ T244 13 March 2019.

¹⁵² T251 13 February 2019.

¹⁵³ T250 13 March 2019.

¹⁵⁴ T267 13 March 2019.

3. *Dr Watzl believes it is possible that Mr Mansell may have been afloat on the surface when Mr Kennedy says he reached him. Dr Luckin does not believe that Mr Mansell could have remained afloat long enough for Mr Kennedy to reach him.*
4. *Dr Watzl believes the rescue of Mr Mansell (including towing him back to the rocks) as described by Mr Kennedy is plausible. Dr Watzl does not claim expertise in Life saving. Dr Luckin does not believe the rescue as described is possible or plausible.*
5. *Dr Watzl and Dr Luckin agree that Mr Kennedy may have been suffering early swim failure when he reached the rocks.*
6. *Dr Watzl does not believe that Mr Kennedy would have been hypothermic when he reached the rocks. Dr Luckin believes Kennedy would have been mildly hypothermic when he reached the rocks.*
7. *Dr Watzl believes Mr Kennedy would have warmed up once he was out of the water, on the rocks and exerting himself. Dr Luckin believes that Mr Kennedy would have cooled down further once out of the water, becoming more hypothermic.*
8. *Dr Watzl believes Mr Kennedy would not have been hypothermic when he started driving his car. Dr Luckin believes Mr Kennedy would have been hypothermic when he started driving his car.*
9. *Dr Watzl believes Mr Kennedy would have warmed up while undertaking a brisk 30 minute or so walk, now fully clothed, walking from his car until met by Mr Wells. Dr Luckin believes Mr Kennedy would have cooled further while walking, and become more hypothermic.*
10. *Dr Watzl believes Mr Kennedy would not have been hypothermic when he met Mr Wells. Dr Luckin believes Mr Kennedy would have been hypothermic when he met Mr Wells.*
11. *Dr Watzl and Dr Luckin agree that it is difficult to be sure of the exact timings of the alleged events.*

In Summary:

Dr Watzl believes the rescue as described may be plausible.

Dr Luckin believes the rescue as described is not plausible.”¹⁵⁵

¹⁵⁵ C46.

164. Both experts did not resile from these agreements and disagreements in their oral evidence, although Dr Watzl emphasised in his evidence that, whilst possible, it would have been very difficult for Mr Kennedy to attempt the rescue as he indicated he did. Their qualifications did not cause one to be preferred over the other, except that clearly Dr Watzl deferred to Dr Luckin's expertise concerning the implausibility of the manner of the attempted rescue as described.
165. Their debate upon the issue of hypothermia indicated a disagreement about the science, which I cannot resolve. Ultimately, Mr Kennedy did not present to Mr Wells as a person who had the characteristics of hypothermia. The experts acknowledged that any unusual behaviour exhibited by Mr Kennedy may have been due to cold stress or psychological shock. Outside the field of the expert evidence, I speculate that other reasons for Mr Kennedy behaving unusually to Mr Wells might be because of guilt or wrongdoing, or simply the nature of Mr Kennedy.
166. I note that the issue arose with the experts concerning the effect of Mr Kennedy's recent alcohol consumption upon his ability to rescue Mr Mansell. Dr Luckin and Dr Watzl did not express a concluded view upon the issue, perhaps due to the uncertainty as to how much alcohol he consumed. I am reluctant to find that the alcohol had any particular effect upon Mr Kennedy. It may be possible that a degree of intoxication might have given him the courage to enter the water after Mr Mansell. Similarly, I do not know whether the fact that Mr Kennedy had little sleep is particularly relevant in the face of the enormity of such an incident.

Other Unusual Features Surrounding Mr Mansell's Disappearance

167. In addition to the anomalies and inconsistencies already discussed, there are further matters that require mention.

Mr Kennedy's poor eyesight

168. Mr Kennedy has required glasses for his eyesight since he was a child. He said that he could not see far without them and yet he was able to see Mr Mansell in the water 20 metres away. At the inquest, Mr Kennedy was asked to demonstrate his sight without his glasses. Consistent with his medical records, Mr Kennedy had difficulty seeing further than 10 metres in front of him without his glasses. He gave evidence that he took his glasses off before diving into the water to rescue Mr Mansell and he was able to see Mr Mansell in the water. This may well be possible but his poor eyesight added further difficulty to the rescue.

169. Mr Kennedy said that after coming back to shore he walked around for 10 to 15 minutes without his glasses searching for Mr Mansell.¹⁵⁶ Mr Kennedy was a person heavily reliant upon his glasses for adequate vision. It is very odd that Mr Kennedy would not have picked up his glasses and used them to try and spot Mr Mansell.

Mobile phone reception at North East River

170. Sergeant Judges, the first officer upon the scene stated in his affidavit:

“During my time searching for Robbie Mansell, I experienced issues with telephone coverage. Throughout there were areas near Salmon Rock where I could reliably receive and make calls, however there were areas, in close proximity, where I could not. North East River is known to have bad reception, however good reception is usually experienced on the point/rocks where Robbie Mansell went into the water.”¹⁵⁷

171. Once an analysis was conducted, the telephone records revealed that Mr Kennedy almost certainly had phone reception immediately after Mr Mansell allegedly went into the water. Later that same day Mr Kennedy was actually receiving phone calls from the same area as where his vehicle would have been parked at the time of Mansell's disappearance.

Specifically, these calls are as follows:

- a) 8.47.01am Mr Kennedy dialled message bank in a two second call which connected. At the time he was at North East River;
- b) 8.47.44 Mr Kennedy dialled Ms Riggall in a three second call which connected. At the time he was at North East River;
- c) During the next one and a half hours, Aloma Riley tried to call Mr Kennedy. His phone did not connect. This would have been the time that he was walking along North East River Road;
- d) 10.25.23 Ms Riggall called Mr Kennedy for 65 seconds. At this time he was at North East River; and
- e) 10.46.54 Ms Riggall called Mr Kennedy for 38 seconds. At this time he was at North East River.

172. These records are in clear contradiction to the version of events outlined by Mr Kennedy. Mr Kennedy clearly had mobile phone reception, his phone was charged and at no stage did

¹⁵⁶ T386 14 March 2019.

¹⁵⁷ C19.

he attempt to call 000 despite Mr Mansell allegedly being in the water drowning. Mr Kennedy conceded under questioning that he did not in fact dial 000.¹⁵⁸ It is difficult to reconcile the act of a person who is prepared to dive into cold water to rescue a friend with the same person not having the presence of mind to dial 000 when that rescue failed.

Mr Mansell's ability to climb Salmon Rock

173. Ms Riggall gave evidence that she had seen Mr Mansell climb onto Salmon Rock on several previous occasions, stating that it was not difficult to do. She said that she had seen him walking all around the rocks.¹⁵⁹ Ms Riley also gave evidence that she had been with Mr Mansell whilst he had fished from Salmon Rock. Whilst she did not appear to know the name of the rock, she identified the rocks on a map in court. Ms Riley was somewhat erratic and illogical in her evidence, and it is difficult to know whether she was correct in giving this evidence.
174. Mr Wells, who also knew Mr Mansell, was of the view that Mr Mansell would have struggled to make it to the rock with his physical limitations. Mr Maynard gave evidence that Mr Mansell would definitely not have been able to climb the rock. He gave examples of situations where he observed that Mr Mansell would have difficulty due to his body not being able to “bend and stretch” even though he wanted to undertake the activity.¹⁶⁰ For example, he stated: *“he’s got a job to get off my fishing boat when I – when I pull the boat out of the water, we’ve got to get up to home so that I can put a chair and that down so that he can step onto it, he’s just got no – no, he can’t do it.”*
175. Mr Maynard and Mr Wells were credible witnesses, particularly Mr Wells. I would tend to accept their evidence on this point, certainly over the contrary evidence of Ms Riggall. I have also had regard to the credible evidence and submissions of Mr Haines who said that his brother would not have put himself in a position to have “gone off the rocks”. I agree that upon the evidence that Mr Mansell appeared to be cautious in taking risks that might jeopardise his safety. However, having heard evidence of Mr Mansell’s keenness to participate in suggested activities and his enjoyment of companionship, I cannot rule out that he may have had the determination to climb over the rocks to reach the fishing spot, potentially with some assistance from Mr Kennedy in the particular areas of difficulty.

¹⁵⁸ T391 14 March 2019.

¹⁵⁹ T123-4 13 February 2019.

¹⁶⁰ T 52 6 March 2018.

Questions surrounding the lure and fishing rod

176. I have already discussed the fact that, for recreational fishermen planning to fish at a place known for lures being snagged, it does not make sense that they would be equipped with only one lure. Overwhelmingly, the evidence was that several lures would be taken as a matter of course. The fact of taking only one lure, not attempting to find others, and bringing no rod for Mr Mansell may be explained by Mr Kennedy's and Mr Mansell's chaotic planning processes.
177. Police divers went to the area on 11 September 2015 and dived in and around the area of Salmon Rock for the specific purpose of looking for the lure of the description provided by Mr Kennedy. They located other lures and sinkers but not that allegedly used by Mr Kennedy.¹⁶¹ This fact does not disprove Mr Kennedy's account as the lure may have become dislodged in the previous weeks. It does not, however, assist in resolving this issue.
178. The anomalies surrounding the lure presuppose that Mr Kennedy did actually take a fishing rod in the first place. I do not accept the evidence of Ms Riggall that at least one rod was in the car at West End. As stated, Mr Wells did not see fishing rods in Mr Kennedy's car but did notice other items.
179. Two fishing rods were seized by Sergeant Judges from Mr Kennedy's residence at some time after Mr Mansell's disappearance.¹⁶² However, it is apparent that there were several rods kept there permanently, likely in Ms Riley's shed.

Mr Mansell's fear of water and inability to swim

180. It was well known that Mr Mansell was unable to swim. This fact, together with his significant physical incapacities, is relevant to cast doubt upon Mr Kennedy's account of the length of time that Mr Mansell was able to keep his head afloat. This, together with the wearing of his heavy clothes and boots, tends to support Dr Luckin's opinion that Mr Mansell could have been above water for only a very short time before being pulled down. Further and relevantly, it seems that Mr Mansell had some significant fear of water.¹⁶³ For example, Mr Maynard recounted an incident where Mr Mansell fell from a wharf into very shallow water on a boat ramp. Despite only needing to roll over and stand, he remained in the water

¹⁶¹ Exhibit C32.

¹⁶² C19

¹⁶³ Statement of Aaron Maynard Exhibit C5 & Transcript 6th March 2018; Timothy New Exhibit 34 & Transcript 11th February; Anthony Haines Exhibit C30 & Transcript 24 September 2018.

panicking and “just floundered around on his back” until he had to be dragged out.¹⁶⁴ Mr Maynard stated in his affidavit:

“Robbie and I have been fishing many times over the years and Robbie’s reaction to snags has always been the same, he just snaps them off. I saw him on Big Dog one day we were together fishing, this was either last mutton bird season or the one before. Robbie got a snag, it was literally 3 feet away from him in about 2 foot of water and he snapped it off rather than go in and get it. Robbie didn’t have any fishing gear of his own, he was always using, and losing, mine.”¹⁶⁵

181. There was other evidence that Mr Mansell, with Mr Kennedy, borrowed plastic kayaks from Ms Roughly and went paddling on occasions in relatively benign conditions for short time periods. On these occasions, he would remain fully clothed and wore a life jacket.¹⁶⁶
182. Mr Kennedy stated that when his fishing line was caught, Mr Mansell climbed down the rocks and stood on a small ledge to free the lure. Although I am sceptical of Ms Riggall’s evidence generally, I found her plausible when she said that she did not see this action as particularly unusual for Mr Mansell. The evidence indicated that Mr Mansell was a person who enjoyed helping and participating. Despite his fear of entering water, it is possible to envisage Mr Mansell may have proceeded down the rock to try and free the lure. Having been to the rock myself, the gradient to the water might not have been sufficiently steep to deter Mr Mansell.

Cigarettes and Phone

183. The evidence of Mr Maynard, Mr New, and family members was that Mr Mansell would smoke almost constantly.¹⁶⁷ Ms Roughly described him as a “full-time smoker”.¹⁶⁸ His practice was to keep his cigarettes and his phone within the pockets of his pants.
184. Mr Maynard stated:

“In my whole life of knowing Robbie, regardless of where he is and what he’s doing, that mobile phone and that tobacco are in his pockets at all times... in his jacket pockets, he’s always got a camo pocket, a camo jacket on or a zip pocket jacket, his phone – and because he wears cargo

¹⁶⁴ T 50 6 March 2018 and C5.

¹⁶⁵ C5.

¹⁶⁶ T83 6 March 2018.

¹⁶⁷ Statement of Aaron Maynard Exhibit C5 & Transcript 6 March 2018; Timothy New Exhibit 34 & Transcript 11 February; Anthony Haines Exhibit C30 & Transcript 24 September 2018.

¹⁶⁸ T82 6 March 2018.

pants with a heap of different trouser – pockets on them, his phone or his tobacco will be in one of them at all times, so he does not leave his phone or his tobacco...”.¹⁶⁹

185. Mr New said in evidence that Mr Mansell always had his phone on him and always in the pockets of his cargo pants.¹⁷⁰
186. Nevertheless, at the time Mr Mansell disappeared, he had neither on his person. They were in the car of Mr Kennedy. Again, this is an unusual feature of the evidence that causes me to question why Mr Mansell did not carry his phone and tobacco with him when they allegedly arrived at the beach on North East River. If Mr Kennedy is correct, then Mr Mansell was not fishing but walking his dogs on the beach for about 45 minutes. During this time, it is highly likely that he would have wanted to roll a cigarette from his tobacco supply during that time. Mr Kennedy returned the phone and tobacco to Mr Haines in the week following Mr Mansell’s disappearance. Mr Haines said in his affidavit that the phone was accessible without a passcode. I observe that Mr Kennedy did not try to call 000 using Mr Mansell’s phone, assuming that the phone was visible or that he knew it was in the car.

The accounts given by Mr Kennedy to Ms Riggall

187. As a result of the phone call between Mr Kennedy and Ms Riggall, Ms Riggall drove with Mr Aitken and Mr Howard to Salmon Rock on 8 August 2015. She said that when she arrived there, she hugged Mr Kennedy and both of them were in tears. She gave evidence that Mr Kennedy gave her brief details at that time about what happened.
188. In her affidavit of 13 August 2015, five days after the event, she detailed the content of the phone call between her and Mr Kennedy which caused her to leave for North East River:

“As I was still angry with Josh I called him and said to him ‘what do you want’, he replied with ‘be like that then’. I then noticed that Josh sounded like he was crying, I asked him what was wrong and he said that Robbie had slipped in and he had jumped in after him. He then told me that the cops were up there already.”

189. Ms Riggall described talking to Mr Kennedy at North East River about what happened, stating in her affidavit:

“I managed to get out of Josh that Robbie’s lure got stuck on the rocks and slipped when he went to get it. Josh said that Robbie yelled quietly for help but kept going under the water.”

¹⁶⁹ C78-79 6 March 2018.

¹⁷⁰ T45 12 February 2019.

190. She gave evidence at the inquest as follows about her discussion with Mr Kennedy at the scene:

“Was there anything else described to you at that time?.....He said he’ll never forget, like when Robbie slipped in, like he was there and he’ll never forget that moment when he like, glanced down at Robbie and he was just like, he was going under, like the water was pulling him under and he stripped off straight away and jumped in.

Did he say how he jumped in?.....No.

Sorry, he jumped in?.....I don’t know whether he dived or he bombed in. I don’t know how he jumped in but he got in there.

What else did he describe to you about what had occurred at the Rock?.....He said that he just kept going under and like, he was there and then, you know, he just vanished. He was just gone.

Did he say how long he was in the water for?.....No.

Did he mention minutes or seconds?.....No, he didn’t say exactly how long. I was in the water for five minutes and thirty four seconds, no, he didn’t.

No. I understand that. It has to be asked. And did he say how far out he went in the water?.....No, he said that the tide took him out – took him out and washed him back in.

Just him or him and Robbie?.....Well, just him.

Yes. Did he say he ever made any physical contact with Robbie?.....I think he might’ve grabbed him at one stage there.

Did he tell you that or is that just what you’re assuming?..... He said that.

Okay. And did he tell you that at the rocks?.....No.

He told you at a later stage?.....[No audible response].

Okay. So at this stage - ?.....There wasn’t much said, like, at the rocks. It was just, you know, he had a brief outline of what happened and, you know, I was just too worried about looking for him. He didn’t sit down in detail and sit there and have a cuppa and tell me exactly what happened right then and there. He told me what happened, like, he slipped in, he’s gone, I was right there, he jumped in and, you know, we were just too busy running up and down these rocks and back and forward along that beach trying to find him.”¹⁷¹

¹⁷¹ T161-2 13 February 2019.

191. As will be apparent, Ms Riggall's answers were regularly defensive, unhelpful and belligerent. She did not say in her evidence or in her original affidavit that Mr Kennedy gave her an account of a rescue which involved him reaching Mr Mansell and towing him in a rescue position back to the rocks, as he described in his affidavit. In her original affidavit, as well as her evidence, she conveyed that Mr Kennedy provided an account whereby Mr Mansell became submerged almost immediately after entry into the water, seemingly inconsistent with being able to make any effective attempt at the rescue as described. It is also inconsistent with accounts given by Mr Kennedy to police and at the inquest that Mr Mansell was keeping himself afloat for some minutes. If Ms Riggall is correct and Mr Kennedy did "glance **down**" at Mr Mansell whilst he was going under water, this strongly indicates that Mr Kennedy was still on the rock above the water when this was occurring. Further, the account of almost immediate submersion is also consistent with Mr Mansell wearing heavy clothing and boots. It accords with the opinion of Dr Luckin but does not necessarily accord with the opinion of Dr Watzl.

192. Ms Riggall agreed that Mr Kennedy did not tell her, whilst they were on the rocks together that morning, that he had made physical contact with Mr Mansell in an attempt to rescue him. It was apparent from her evidence that she had had numerous conversations with Mr Kennedy about the incident on subsequent occasions and was not reliable in her account of what he told her.

193. In her police interview on 10 September 2015, Ms Riggall reported a different account apparently given to her by Mr Kennedy:

"...and he slipped in and he said he was screaming out for help and Josh said I just can't get the image out of my head when he was like screaming out and Josh took his clothes off and jumped in after him and um he grabbed him and he had him and he had hold of the seaweed on the rocks...and then a couple of waves come over him and the last wave that come it um, it washed Josh on the rock and he had big grazes up here and pulled Robbie out of his arm and he was feeling around for him and looking around and he was just gone..."¹⁷²

194. Ms Riggall provided a further account to detectives in her interview on 10 May 2018:

"Josh said he was there, he was right there, he had hold of him in the water and the waves took them out and it bought them back in and washed them up against the rocks and Josh had all grazes up here from where he hit the rocks...and then the wave took them back out and a long time after that happened Josh said out there you know you had to make that decision, that whether, you know it's both of us or let him go, and that's, that's wrecked Josh he's, he's just a

¹⁷² P10 C24.

mess, and he's never been the same since. Josh and Robbie were like brothers they were the best of friends".

195. This version differed significantly from the version on 10 September 2015. This latter version entailed Mr Kennedy deliberately letting Mr Mansell go in order to save himself. Mr Kennedy himself did not give such evidence, instead stating that he lost grip on Mr Mansell due to the action of a wave.
196. Ms Riggall's mother, Kellie Riggall, gave evidence at inquest about a phone call from her daughter on 8 August 2015 to tell her about Mr Mansell's disappearance. In her affidavit made in May 2018 Mrs Riggall stated:

"On 8/8/2015 I received a phone call from my daughter, I was at McDonald's in Launceston and she was living on Flinders Island. The call was about lunchtime and she sounded very upset.

She told me that her friend Robbie was gone. I asked her what she was talking about, she said that Robbie had been fishing and slipped off a rock on Flinders. Robbie was wearing heavy boots at the time.

She said that Josh had tried to grab him but (sic) was swept away by the waves. Robbie disappeared in the waves and Josh never went into the water to save him.

Stephanie has been very upset of (sic) Robbie's disappearance. I had never met Robbie and I don't know his whole name. Josh is Joshua Kennedy she has been friends with him for many years".¹⁷³

197. Unlike her daughter, Mrs Riggall gave credible and coherent evidence at inquest confirming that she was provided with the above account by Ms Riggall. The following exchange occurred in evidence:

"Did she say whether Josh had gone into the water?.....She said that when he – when Robbie fell off the rocks that Josh had gone to the – like, to the edge of the rocks there and reached down to try and grab onto him and she – he grabbed onto him but the current and the waves were too strong and it just sort of like – he just couldn't hold him, he just sort of just slipped out of his hands.

So to confirm, it was your understanding that Mr Kennedy – or Joshua – had never gone into the water, according to Stephanie Riggall?.....Yes, he didn't actually get into the water, he was just

¹⁷³ C35.

*sort of on the side of the rocks leaning over to get into him – to try and get him out of the water.*¹⁷⁴

198. I am in no doubt that Mrs Riggall is accurate in recounting her daughter's words. She had no motive to embellish or exaggerate. She was a resident of Northern Tasmania and was not involved in the Flinders Island community. She had little knowledge of Mr Mansell and no apparent bias against Mr Kennedy. She said she had a good recall because she had been once in a similar situation in losing a friend. Of all of the versions provided by Ms Riggall, purporting to recount Mr Kennedy's words, this is likely to be the most accurate. At this time, she was genuinely distraught, seeking solace from her mother and did not have in mind any potential legal or other consequences. This account also is consistent with Mr Kennedy telling her that he glanced **down** at Mr Mansell who was in the process of disappearing under the water.

Marley Clark's evidence of the statement made by Ms Riggall

199. Ms Clark gave evidence that she had known Mr Kennedy and Mr Mansell for many years. She gave evidence that, on the morning of Mr Mansell's disappearance, she received a phone call from Ms Riggall, who was located at Mr Kennedy's car on North East River Road. Ms Riggall asked her to bring petrol and Ms Clark then drove to the location in her father's vehicle with petrol. There, she observed Mr Kennedy to be distraught. He said to Ms Clark that he had tried to save Mr Mansell. Ms Clark was a solid and credible witness. She did not observe that Mr Kennedy showed signs of intoxication and, in the 30 to 45 minutes she was there, did not notice anything unusual.
200. Ms Clark was reluctant to provide evidence. Nevertheless, she was called to give sworn testimony at the inquest. She gave evidence that a few months after Mr Mansell disappeared she was at the Whitemark Hotel with others. At that time, Ms Riggall was present with Mr Kennedy. She gave firm evidence that she heard an intoxicated Ms Riggall saying to Mr Kennedy words to the effect of "*are you going to push me off the rocks of the river next?*"
201. Having heard Ms Clark giving evidence, I have no hesitation in accepting that Ms Riggall did make this statement at the Hotel. Ms Riggall denied that she made the statement but I reject her denial. The issue raised by this is whether Mr Kennedy, who clearly had a very close friendship with Ms Riggall, disclosed to her an account of the incident involving him pushing Mr Mansell into the water. It is, however, unsafe to place any significant weight upon this statement. Ms Riggall may well have made this statement for unpleasant effect whilst intoxicated or was simply repeating speculation on the Island about the incident. It does,

¹⁷⁴ T7 12 February 2019.

however, serve to emphasise the difficulty of determining what happened between the two men on the morning of 8 August 2015, including whether Mr Mansell entered the water as a result of an episode of violence.

Conclusions upon the Evidence

202. The many anomalous and unusual features of the evidence are highly suspicious in suggesting that Mr Mansell's death did not occur as Mr Kennedy recounted.
203. Why did Mr Kennedy not do what any caring friend would do and dial 000 as soon as he knew Mr Mansell had disappeared in the water? He had reception and an operational phone. Why did he lie in his sworn affidavit that he did dial 000 and only admit that he did not do so when presented with his telephone records in evidence at inquest? Perhaps the experience of shock may account for his failure to alert police, and his subsequent lie was to hide his obvious failure. Perhaps shock also accounted for him not waving down Mr Wells, however to not actively seek his help (in a location where help was not readily available) is cause for suspicion.
204. Why did Mr Kennedy say that he would "go to jail" for what happened to Mr Mansell whilst Mr Wells was on the telephone to report Mr Mansell's disappearance? It is unlikely to imply that he was responsible for a cold-blooded killing, but does suggest that he felt criminally responsible in some way (whether justified or not). He may have felt guilty for not going into the water after Mr Mansell. It is unlikely that such a statement would be made after attempting a courageous water rescue and does suggest that he did not enter the water.
205. Although Ms Riggall was not present at Salmon Rock when Mr Mansell allegedly slipped into the water, why has she not been able to give a clear and credible account of the circumstances before Mr Mansell's death, including her subsequent discussions about the incident with Mr Kennedy. Why was Ms Riggall obviously protecting Mr Kennedy in giving her evidence? For the reasons discussed, the nature of their relationship is not clear. Perhaps Mr Kennedy told her that he did not in fact dive into the water to try and rescue Mr Mansell, as reported by Mrs Kellie Riggall? Or perhaps Mr Kennedy gave her another account altogether involving a physical altercation between the men? Was she truthful about seeing Mr Mansell in Mr Kennedy's car at West End early in the morning of 8 August? Ms Riggall may know a lot more than she has disclosed in this investigation.
206. Did Mr Kennedy invent the fishing trip as a convenient cover-up for a homicide occurring elsewhere on the Island? In this regard, Mr Haines correctly submitted that there is no evidence, apart from the uncorroborated evidence of Mr Kennedy, that his brother went into the water at Salmon Rock or that he was even there on that day. The fact that Mr

Kennedy had Mr Mansell's dogs with him may only mean that he was with Mr Mansell at some time earlier. I cannot rule out that this may have happened, but it is a significantly less likely scenario than his death occurring by entering the water at or around Salmon Rock.

207. Despite the weight of expert opinion suggesting a rescue such as that recounted by Mr Kennedy would be either very difficult or not possible, did Mr Kennedy bravely and without regard to his own safety, enter in to the water to attempt to help Mr Mansell? If he entered the water, it is unlikely that he could have undertaken the rescue attempt described, which may have been an exaggerated account. I cannot rule out, though, that Mr Kennedy entered the water to try and help Mr Mansell, whatever the reason for him going in. Although he was not seen by anyone to be wet, there is conflicting expert evidence that he may have significantly dried by the time Mr Wells encountered him.
208. For the reasons discussed, I cannot find that Mr Mansell was in the process of retrieving a lure before his disappearance. It is quite plausible that Mr Kennedy had a physical fight with Mr Mansell leading to Mr Mansell falling into the water or being pushed into the water by Mr Kennedy. If there was a fight between the men, it might have involved their respective relationships with Ms Riggall or simply have been the product of their characteristic drunken aggression.
209. The grazes on Mr Kennedy's body may well have been sustained in a fight with Mr Mansell on the rock, as a result of which Mr Mansell was pushed or otherwise fell into the water. They might also have been caused by Mr Kennedy attempting to help Mr Mansell, either from on the rock or in the water.
210. Although it is impossible to know what caused Mr Mansell to enter the water (if that is how he died), the most likely response of Mr Kennedy was to try and grab Mr Mansell in the water from a position on the rock, without actually entering into the water. This would better explain his subsequent actions. Even then, it does not reach the standard of satisfaction for a finding to be made.
211. For the reasons expressed, I am unable to make factual findings to the required standard about the cause and circumstances of Mr Mansell's death except to find that it occurred on Flinders Island between about 3.30am and 8.00am on 8 August 2015 whilst he was in the company of Joshua Kennedy.

Comment on Investigation

212. The search and rescue effort that was commenced immediately upon notification of Mr Mansell's disappearance into the water was timely, thorough and well-planned.
213. I observe that, in terms of the investigation, there were circumstances from the outset which required more thorough investigation as potentially being suspicious. These included, but were not limited to: the behaviour and demeanour of Mr Kennedy when found by Mr Wells; the fact that he did not appear wet; his failure to call police; and the known episodes of violence between him and Mr Mansell.
214. The investigation did not shift from the search phase to a critical consideration of the anomalies in the evidence. When Tasmanian Police detectives were tasked to travel to Flinders Island one month after Mr Mansell's disappearance, they were tasked in a limited capacity to address the concerns from Mr Haines, rather than to instigate a full investigation based upon the possibility of homicide.
215. In hindsight, a more critical approach to the suspicious features of this case was required at an early stage and may have resulted in more evidence being obtained which could have clarified the circumstances of Mr Mansell's disappearance.

Formal Findings

216. In accordance with section 28(1) of the *Coroners Act 1995*, I find as follows:
- (a) The identity of the deceased is Robert Charles Mansell;
 - (b) Mr Mansell died in the circumstances set out in this finding;
 - (c) The cause of Mr Mansell's death cannot be determined; and
 - (d) Mr Mansell died on 8 August 2015 on or in the waters around Flinders Island.

Acknowledgements

217. I extend my appreciation to counsel assisting, Ms Ansell, and counsel for Mr Kennedy, Mr Tucker. I also acknowledge the efforts of the Coroners' Associates and staff of the Coroners Office in this lengthy inquest.

Dated 27 October 2020 at Hobart Coroner's Office in the State of Tasmania

Olivia McTaggart
Coroner