
**FINDINGS, RECOMMENDATION and COMMENTS of Coroner
Simon Cooper following the holding of an inquest under the
Coroners Act 1995 into the deaths of**

Luke William Davies,

Aleksander Drobnyak,

Magnus Julian Ritter, and

Anthony James Bernard Roche.

Record of Investigation into Death (With Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Simon Cooper, Coroner, having investigated the death of Luke William Davies, Aleksander Drobnjak, Magnus Julian Ritter and Anthony James Bernard Roche with an inquest held at Hobart in Tasmania make the following findings.

Hearing Dates

22, 23 and 24 May 2019 at Hobart in Tasmania

Representation

S Thompson – Counsel Assisting

Introduction

1. Just after 8.00am on Sunday 31 July 2016 Luke William Davies, Aleksander Drobnjak, Magnus Julian Ritter and Anthony James Bernard Roche set off on a fishing trip in Frederick Henry Bay. They left from a boat ramp at the southern end of the Cremorne Spit in a 4.88 metre Haines Hunter fibreglass runabout that was around 50 years old. The four men were friends, knowing each other through their involvement with the University of Tasmania Gym. Mr Drobnjak worked at the gym as a personal trainer and the other three men regularly exercised there.¹
2. Mr Ritter owned the boat with another man, Mr Jay Armstrong. Mr Ritter's partner Ms Alexandra Hayes was a work colleague and friend of Mr Armstrong.

¹ Mr Ritter also ran a personal training business at that gym.

3. None of the men in the boat had much boating experience. None of them, including Mr Ritter, held a motor boat licence or any other type of boating qualification at all.
4. The men did not return from the fishing trip. The next day the bodies of Luke Davies and Magnus Ritter were found. Mr Davies' body was on rocks at the southern end of Slopem Main. Mr Ritter's body was floating in the water off the northern end of Slopem Main.
5. A week later some remains of Mr Drobnjak were found in Frederick Henry Bay.
6. Although the area of Frederick Henry Bay was extensively searched, no trace of Mr Roche's body was found. The boat was not found either.

What a Coroner Does

7. Before an analysis of the circumstances surrounding the deaths of the four men is undertaken it is necessary to explain the role of a coroner. A coroner in Tasmania has jurisdiction to investigate any death which appears to have been unexpected or unnatural.² Obviously, the deaths of Mr Davies, Mr Drobnjak, Mr Ritter and Mr Roche meet that legislative test.
8. When investigating any death at an inquest, a coroner performs a role very different to other judicial officers. The coroner's role is inquisitorial. She or he is required to thoroughly investigate a death and answer the questions (if possible) that section 28 of the *Coroners Act 1995* asks. These questions include who the deceased was, the circumstances in which he or she died, the cause of the person's death and where and when the person died. This process requires the making of various findings, but without apportioning legal or moral blame for the death. The

² See the *Coroners Act 1995*, section 21 and the definition of reportable death in section 3

law requires a coroner to make findings of fact from which others may draw conclusions. A coroner may, if she or he thinks fit, make comments about the death and, in appropriate circumstances, must make recommendations to prevent similar deaths in the future.³

9. A coroner does not punish, or award compensation to, anyone. Punishment and compensation are for other proceedings in other courts, if appropriate. Nor does a coroner charge people with crimes or offences arising out of the death the subject of investigation.⁴ In fact, a coroner in Tasmania may not even say that he or she thinks someone is guilty of an offence.⁵
10. As was noted above, one matter that the *Act* requires is finding how the death occurred.⁶ It is well settled that this phrase involves the application of the ordinary concepts of legal causation.⁷ Any coronial inquest necessarily involves a consideration of the particular circumstances surrounding the particular death (or deaths) so as to discharge the obligation imposed by section 28(1)(b) upon the coroner.
11. The standard of proof at an inquest is the civil standard. This means that where findings of fact are made a coroner needs to be satisfied on the balance of probabilities as to the existence of those facts. However, if an inquest reaches a stage where findings may reflect adversely upon an individual, 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 great caution.⁸

³ See section 28 (2) of the *Act*.

⁴ The circumstances were different in the past, see, for example, section 16 of the *Coroners Act 1957* (Tas).

⁵ Section 28(4).

⁶ See section 28(1)(b).

⁷ See *March v E. & M.H. Stramare Pty. Limited and Another* [1990 – 1991] 171 CLR 506.

⁸ (1938) 60 CLR 336 (see in particular Dixon J at page 362).

The Issues at the Inquest

12. Every inquest must attempt to answer the questions referred to above concerning identity, how death occurred, cause of death and when and where the death occurred.⁹ This inquest was no different. In addition evidence was heard at the inquest addressing the following matters:

- What was known about the condition of the boat and by whom;
- The adequacy of the current marine regulatory regime so far as it relates to the inspection, sale and registration of recreational vessels;
- What safety equipment was on board the boat on Sunday 31 July 2016, in particular the availability and condition of personal flotation devices (PFDs) or lifejackets; and
- What steps, if any, could have been taken to prevent the four deaths.

The Evidence at the Inquest

13. During the inquest evidence was heard from the following witnesses:

- Mr Anthony Wareham, Mr Roche's father;
- Ms Michelle Lutton, Mr Roche's mother;
- Ms Sabine Wagner, Mr Ritter's mother;
- Sergeant Bruce Henderson, the investigating officer;
- Mr Jay Armstrong, co-owner of the boat;
- Mr James Castle, the immediate past owner of the boat;
- Ms Alexandra Hayes, Mr Ritter's partner at the time of his death;
- Mr Scott Saunders, a previous owner of the boat;
- Mr Jack Krajcinger, a prospective purchaser of the boat;
- Mr Jaymes Coad, Mr Krajcinger's friend; and

⁹ See paragraph 8 above.

- Mr Peter Hopkins, General Manager – Recreational Boating Safety and Facilities, Marine and Safety Tasmania (MAST).¹⁰

14. In addition, a letter from Mr Davies' parents was read to the court and a very large number of affidavits and other exhibits were tendered. The evidence heard at the inquest and the documents tendered are the material relied upon to make the findings of fact set out further in this finding as well as the comments and recommendations at the conclusion. Specifically, courts give very little weight (and normally no weight at all) to unsolicited correspondence from members of the public.

The Boat

15. The evidence in relation to the history of the boat was as follows. It was a V163 Haines Hunter fibreglass boat approximately 4.88 m (16 feet) in length and bore the registration number 19415. It appears that it was purchased new from the manufacturer by a Mr Frank Oldham, now deceased, some time in the late 1960s or early 1970s. Mr Oldham's son, Christopher Oldham, said in an affidavit tendered at the inquest that the boat was sold in the mid-1970s.¹¹ The boat's history between purchase and the early 1990s is largely unknown.

16. In the early 1990s the evidence was that a Mr Steven Hudson bought the boat from an unknown man in Clarendon Vale. Sometime after 1994, Mr Hudson sold the boat, freshly painted and without a motor, to a Mr Hedley Cook. The evidence suggests that while he owned it Mr Hudson did not use the boat.

17. Sometime around 1995 Mr Cook sold the boat to Mr Christopher Pepper. Mr Pepper owned the boat for 2-3 years. During that time he replaced the

¹⁰ MAST is the statutory authority responsible to ensure, *inter alia*, the safe operation of vessels in Tasmanian waters.

¹¹ Affidavit of Christopher Oldham, exhibit C 15.

windscreen and named it 'Grievous'. Mr Pepper was located by investigators during the investigation into the four men's deaths. He made an affidavit which was tendered at the inquest.¹² His affidavit dealt with aspects of his ownership of the boat. He said that when he purchased the boat it was fitted with a 115 hp Chrysler motor. He said in his affidavit that during the period he owned the boat he did not have any problems with it nor did the boat suffer any event which would have affected the integrity of the hull or transom (the transom being the rear part or stern of the boat to which typically an outboard engine is fitted).

18. In addition Mr Pepper's son Matthew was spoken to by investigators. He also provided an affidavit dealing with aspects of his father's ownership of the boat and his subsequent dealings with the boat in his capacity as a self-employed marine mechanic. The affidavit was tendered at the inquest.¹³
19. MAST records show that Mr Christopher Pepper cancelled the boat's registration on 1 December 1996.
20. Sometime between 1997 and 2000, the boat, unregistered, was sold to Mr Gavin Young. Mr Young owned it for around two years. Mr Young was also spoken to by investigators. He also provided an affidavit which was tendered at the inquest.¹⁴ Mr Young confirmed purchasing the boat from Mr Christopher Pepper. He said the boat's name was "Grievous". He confirmed that during the period of time he owned it, it was fitted with a 115 hp Chrysler outboard motor. Mr Young said he used it "many times without incident". He said that he never hit anything with the boat and had no concerns about the integrity of the hull or the transom.

¹² Affidavit of Christopher George Pepper, exhibit C 16.

¹³ Affidavit of Matthew Christopher Pepper, exhibit C 21.

¹⁴ Affidavit of Gavin Leslie Young, exhibit C 17.

21. On 17 January 2000, the boat was registered and sold by Mr Young to Mr Scott Duncan. Mr Duncan also made an affidavit which was tendered at the inquest.¹⁵
22. Mr Duncan said in that affidavit he noticed that the boat was prone to take on water. He reported that, after use, the boat would have 2-3 buckets of water inside it. Mr Duncan inspected the boat, discovering that it had at some stage been fitted with a new floor and that a 'couple' of screws had gone through the hull, making it no longer watertight. Mr Duncan engaged a fibre-glasser to fix the problem and later sold the boat to Mr Scott Saunders around 2002.
23. Mr Saunders was also found and spoken to by investigators. He made an affidavit which was tendered at the inquest.¹⁶ He also gave evidence at the inquest. His evidence was he owned the boat for over 14 years. Mr Saunders said that when he bought the boat, it was still fitted with a 115 hp Chrysler outboard motor. Due to that motor having a scored (i.e. scratched) piston, Mr Saunders replaced the Chrysler outboard with a 115 hp Mercury outboard motor.
24. Mr Saunders said that he used the boat for several years, during which time it took on some water in the internal floor buoyancy chambers. Like Mr Pepper he also replaced the windscreen. In addition Mr Saunders repainted the boat yellow. After another service he replaced the 115 hp Mercury outboard motor with a 150 hp Yamaha outboard motor, again because there was a similar piston problem. Mr Saunders' evidence was that the boat sat lower in the water with the 150 hp outboard than it had when fitted with the 115 hp outboard.
25. Mr Jaymes Coad, who then worked at Channel Marine, fitted the replacement. Mr Coad was interviewed by investigators. He made two

¹⁵ Affidavit of Scott Gerald Duncan, exhibit C 18.

¹⁶ Affidavit of Scott Francis Saunders, exhibit C 67.

affidavits and gave evidence.¹⁷ He said that he recalled when he was employed at Channel Marine fitting a Yamaha 150 hp outboard motor to the boat. He said as part of the preparation works required to fit the motor he drilled some holes in the transom. When he did, he said he noticed that the plywood within the fibreglass was wet. Mr Coad said he brought this to the attention of his boss and said he declined to do any more work on the boat. He was unable to identify his boss at the time, saying it was either Mr Adrian McNally or Mr Adam Riley.

26. Both Mr Adrian McNally and Mr Alan Riley were spoken to by investigators. Both made affidavits, which were tendered at the inquest.¹⁸ It is clear from the content of those affidavits that the “boss” Mr Coad was referring to must have been Mr McNally. Mr McNally said that at the time of fitting the Yamaha motor he inspected the transom of the boat. He said the transom was sound and did not show any defects. Mr McNally’s evidence was that had he had any concerns about the suitability of the motor for the boat, or any concerns about the integrity of the boat, he would not have fitted the motor (and I infer advised the owner). I am unable to determine where the truth lies, although I do note if Mr Coad was as concerned as he suggested then one would expect he might have told Mr Saunders of those concerns. Mr Saunders did not say in evidence he had received any such warning from Mr Coad or indeed anyone associated with Channel Marine.
27. In any event, the evidence means that in legal terms I cannot find to the requisite standard that the transom was rotten at the time the 150 hp Yamaha outboard was fitted by Channel Marine. It may have been or it may not. Any finding though about this issue is simply speculation.

¹⁷ Exhibits C 22 and C 23

¹⁸ See affidavit of Adrian David McNally, exhibit C 19 and affidavit of Alan John Riley, exhibit C 20

28. Mr Saunders subsequently experienced problems with the outboard motor due to a water pump overheating and, following its repair, in January 2016, sold the boat to Mr James Castle. Mr Saunders in his evidence said that in all the years he owned the boat he never had any safety concerns. He did qualify this evidence by saying he avoided using the boat in rough weather. The only experience of problems with the boat reported by Mr Saunders related to the various outboard engines fitted to it and not the hull or the transom.
29. The boat's registration was transferred to Mr Castle on 21 January 2016.¹⁹ Like Mr Saunders, Mr Castle gave evidence at the inquest. More will be said about his evidence later in these findings.
30. Finally, Mr Castle sold the boat for \$3200 (having paid Mr Saunders \$3500 for it in January) to Mr Ritter and Mr Armstrong on 29 May 2016.²⁰ The transfer of ownership of the boat was recorded by MAST on 20 June 2016.²¹
31. The boat itself was never located and, obviously, unavailable for inspection. However a Marine Surveyor, Mr Peter Keyes, provided a report about the characteristics of Haines Hunter V 163 boats.²² Mr Keyes said that boats of this type were very popular in the late 1960s and early 1970s for recreational fishing, waterskiing and powerboat racing.
32. In his report Mr Keyes said that boats of this vintage were all constructed from GRP/polyester resin stiffened with plywood. In his report Mr Keyes said that the form of construction used in the industry at the time was standard but that as any vessel ages structural issues will emerge. The issues often arise as different fittings are bolted onto the boat or, typically,

¹⁹ See Affidavit of Peter Hopkins, Exhibit C 66, Page 2.

²⁰ See Affidavit of James Robert Michael Castle, Exhibit C 69

²¹ *Supra* note 15 above.

²² Report Kedge Marine, undated, exhibit C 82

motors are changed, causing deterioration in the structure which in turn allows water ingress to the plywood stiffening. The ultimate result of water ingress is rot and delamination.

33. Mr Keyes said that in his experience a vessel constructed in this way, and of the same age, would have deteriorated substantially, particularly in the area of the transom and the flooring. Mr Keyes carried out research into the V 163 dimensions and maximum rated horsepower. He said the maximum horsepower the vessel was designed for was 115 hp with a maximum outboard motor weight of 176 kg. I note that the evidence was that the boat was fitted with a 150 hp outboard motor.

34. In his report Mr Keyes said that the suitability of the boat for use on Frederick Henry Bay depended entirely upon the prevailing weather conditions, how the boat was handled and equipped and its condition. This is consistent with the evidence of Mr Peter Keyes of MAST regarding the nature of 'seaworthiness', which is addressed later in these findings.

35. There was evidence from several people – Mr Christopher Oldham, Mr Gavin Young and Mr Saunders amongst others – of the tendency for the boat to 'chine walk' at high speed. Chine walking describes what occurs when a boat rolls back and forth from side-to-side at speed. As the action becomes more pronounced the hull begins landing from each bounce on its chines (i.e. that part of the hull where the hull bottom meets the boat sides). The rocking is caused by the propeller's action on the water it propels through. The water's resistance to the rotating torque of the propeller blades causes the boat to roll up on its right side. Ultimately, if not controlled, a boat will eventually flip over.

36. The tendency for a boat to chine walk is pronounced when over powered (and the evidence was that this boat was) or inexpertly operated (and again the evidence is that no one in the boat was experienced).

What Was Known About the Condition of the Boat and By Whom?

37. It is clear from the evidence of Mr Armstrong that neither he nor Mr Ritter perceived that the boat had any defects when they bought it from Mr Castle in May 2016. However they did not take any steps to have the boat professionally inspected to assess its seaworthiness before or at the time of purchase – Mr Armstrong explaining in his evidence that he simply didn't think to do so.
38. The question is whether the boat did in fact have some defect or defects which in some way caused or contributed to the deaths of the men. Although it is clear the boat must have sunk, and the sinking must, logically, have been the cause of the death of the four men there is a complete absence of evidence as to how or why it did sink. Thus the task of identifying whether the boat was in some respect defective and that defect was in effect fatal, is extremely difficult.
39. The only person in a position to really cast any light on the issue was Mr Castle. He said, in substance, that there was nothing wrong at all with the boat.
40. I note however that he bought the boat for \$3500 in January and sold it four months later at a loss of \$300. This fact raises a question as to what motivated such a quick sale, and at a loss. His explanation that he needed money to 'upgrade' to a bigger boat was on the face of it not implausible. However under questioning by Mr Thompson, it emerged that Mr Castle had not bought another boat until late 2018, despite giving the impression that he had made a purchase effectively straight after the sale to Mr Ritter and Mr Armstrong. I also note that he gave another, inconsistent explanation for the quick sale. That explanation was that he, as a small business owner, had other 'priorities', none of which he could remember. Both explanations are unlikely to be correct.

41. I also found unbelievable Mr Castle's claim to have serviced, or had the engine serviced, three times in the four months he owned it. I simply do not accept that as plausible – at least in relation to a boat in good condition.
42. Significantly, it emerged under questioning by Mr Thompson that Mr Castle advertised the boat for sale on the online marketplace Gumtree on 2 March 2016, just 6 weeks after he had bought it.
43. Mr Castle was an unimpressive and unco-operative witness. So unco-operative was he that it was necessary for him to be arrested and be brought before the court to actually give evidence, having failed to answer his summons. He claimed that he had forgotten that he had been served with a summons. I observe that the summons required him to attend an inquest into the deaths of four men in a boat which he had sold to one of them a couple of months before the tragedy. I found his excuse for non-attendance to be, frankly, ridiculous, disrespectful to the court and above all insulting to the families of the four men who died. His non-attendance was, in my view, an attempt by him to avoid giving evidence altogether.
44. Seeing and hearing him give evidence left me with the distinct impression he was being less than honest about his state of knowledge of the condition of the boat. He had an extremely poor recall of all relevant detail and was at pains to attempt to distance himself from the boat – or any knowledge of it. However, the evidence does not allow me to reach a concluded view that, in fact, he was dishonest or, if he was, about what he was being dishonest.
45. Evidence was heard at the inquest from Mr Jack Krajcinger about the boat. He said that in 2016 he was interested in buying a boat. He found a boat on the online marketplace Gumtree. A screenshot of the likely advertisement was in evidence. Shown the screenshot, Mr Castle

accepted that it was his advertisement for his boat. I am satisfied that it was.

46. Mr Krajcinger said that he arranged for his friend Mr Coad (coincidentally the same Mr Coad who had been involved in the fitting of the 150 hp Yamaha) who was more familiar with boats than Mr Krajcinger, to inspect the boat for him. Mr Coad did so as a favour for a friend, rather than in his capacity as a marine mechanic. The boat was on the side of the road on the Channel Highway, near the North West Bay golf course. Based on a visual inspection, Mr Coad believed that the transom was rotten. In giving evidence, he emphasised that this was based on a visual inspection (in his words, “appearance”) rather than a professional assessment. After inspecting the boat, Mr Coad advised Mr Krajcinger not to purchase the boat. Neither Mr Coad nor Mr Krajcinger had any contact at all with Mr Castle.
47. Mr Krajcinger said that he recognised the boat in Mr Castle’s advertisement. However, he said that he could not be sure it was the same one. There is no doubt that the advertisement in evidence was Mr Castle’s advertisement of his boat; Mr Castle admitted it was. However, it does not necessarily follow that Mr Coad inspected *that* boat, or, if it was the boat, that it was owned by Mr Castle (as opposed to, for example, Mr Saunders) at the time Mr Coad inspected it.²³
48. Both Mr Krajcinger and Mr Coad impressed me as honest and careful witnesses. They made appropriate concessions as to their memories and the passage of time.
49. Mr Coad was “fairly sure” that he inspected a boat on 1 March 2016. That is supported by screenshots of Facebook messages between Mr Coad

²³ There is some evidence suggesting that the boat was owned by Mr Saunders when inspected by Mr Coad. It was parked on the Channel Highway near a ‘Saunders Signs’ sign near Margate, and Mr Saunders lived on that side of the Derwent River. On the other hand, the Facebook messages suggest that the boat was inspected on 1 March 2016, which is more than a month after Mr Castle took possession of it. The most likely conclusion is that Mr Coad inspected a similar but different boat.

and Mr Krajcinger, in evidence, which suggest that the inspection occurred on 1 March. While I am satisfied that Mr Coad inspected a boat that day, I am not satisfied to the requisite legal standard that the boat that Mr Coad inspected was Mr Castle's. There are a number of reasons why that is the case:

- Mr Castle's Gumtree advertisement was placed on 2 March 2016, but Mr Coad's inspection was the day before. When recalled to give evidence, Mr Castle thought that he first advertised it for sale on 2 March 2016, although it was "possible" that he had advertised it before then.
- More significantly, there was no reason for Mr Castle's boat to be at Margate. He did not live or work in the area, nor did he use the boat down D'Entrecasteaux Channel. He had no reason to place the boat there and no connection with the area. He strongly denied ever placing the boat there.
- Mr Coad and Mr Krajcinger were each shown Mr Castle's Gumtree advertisement. Each said that it was similar to the boat that they saw, but neither witness could be sure that it was the same boat.

50. In short, it may be that Mr Coad inspected a different boat. It may be that it was the same boat, albeit when it was owned by Mr Saunders, but as I have said I cannot be satisfied to the requisite legal standard.

51. I am left suspecting that Mr Castle was less than forthright in the evidence he gave at the inquest, but am unable to advance the matter any further. The evidence does not enable me to make any finding as to whether the boat suffered from any defect which caused or contributed to the deaths of Mr Ritter, Mr Roche, Mr Drobnjak and Mr Davies. In light of Mr Saunders' evidence about being unaware of rot in the transom and Mr Keyes' evidence about the process of deterioration of boats of the type in

question, it seems likely to me that the boat was something less than entirely structurally sound. Whether that was so and if it was, whether that caused or contributed to the deaths of Mr Davies, Mr Drobnjak, Mr Ritter and Mr Roche, is something about which it is only possible to speculate.

What Safety Equipment was on Board the Boat on Sunday, 31 July 2016?

52. The evidence about what safety equipment was on board the boat was not entirely clear. The previous owner Mr Castle said when he sold the boat to Mr Armstrong and Mr Ritter he sold it with, relevantly, some flares of indeterminate age, paddles and a child's life jacket.²⁴ Ms Hayes said that the boat came with "two red vest type 'Stormy Seas' life jackets and an old yellow one".²⁵
53. Mr Armstrong told the inquest that he bought two adult life jackets after buying the boat and that those life jackets were left on the boat. He said the life jacket that was partially on Mr Ritter's body was one of those. On the evidence I am satisfied that there were likely only three life jackets on board the boat on 31 July 2016, one of which was suitable only for a child.
54. As far as other safety equipment is concerned Mr Armstrong said that flares had come with the boat, but he had not inspected them to determine their age. The wooden oars (or paddles) which also came with the boat, although apparently in reasonable condition, did not have rowlocks and thus might be thought to be of limited usefulness as an alternative means of propulsion.
55. The area of Frederick Henry Bay is 'sheltered waters'. Accordingly, it was a legislative safety requirement for the boat to have a life jacket for each person on board (and for them to be worn²⁶) as well as various other pieces of safety equipment such as flares, an alternative means of

²⁴ See Exhibit C 69

²⁵ See Affidavit of Alexandra Kate Hayes, Exhibit C 71

²⁶ Marine and Safety (General) Regulations 2013, regulation 9

propulsion, a bailer and an anchor and warp. In sheltered waters a marine radio is recommended by MAST, as is an EPIRB. It is quite clear on the evidence that the boat was not fitted with either a marine radio or an EPIRB.

56. The evidence satisfies me that it is likely the boat was deficient in critical (and mandatory) safety equipment in that not enough operative life jackets were on board when the four men put to sea. As I have said the evidence suggests that there were only three life jackets, one of which appears to have been a child's type, wholly unsuited for an adult. I note that Mr Davies' body did not have a life jacket on it when it was recovered. To my mind, it is inconceivable he entered the water wearing a life jacket and then took it off. It is also extremely unlikely that had he entered the water with a life jacket correctly worn that it would have become in some way accidentally dislodged. I am satisfied in light of the evidence that Mr Davies did not have a life jacket on when he entered the water, as he was required to by law.
57. In the same way, the manner in which Mr Ritter's life jacket was on his body when it was recovered suggests that it was not being worn (or worn properly) when he entered the water.
58. The fact that only a small part of Mr Drobnyak's body was recovered suggests, to my mind, that he was not wearing a life jacket when he entered the water. I consider it likely that had he been wearing a life jacket then his body would have been discovered.
59. Finally, the fact that no sign of Mr Roche's body was ever found (despite a very extensive air, land and sea search) also suggests he was not wearing a life jacket when he entered the water.
60. I turn now to consider the circumstances of the fatal fishing trip.

The Fishing Trip

61. Throughout Saturday, 30 July 2016, the men made arrangements, by telephone, to go fishing the following day. Mr Ritter did not have a vehicle with a tow bar, so he organised for Ms Hayes to collect Mr Armstrong's Toyota Kluger (which did have a towbar) from Mr Armstrong's home at Lauderdale. She took it home so that it could be used for the fishing trip the following day.
62. The four men left Mr Ritter's Lauderdale house at about 7.10am the following day, Sunday 31 July 2016, in the Kluger. The Kluger was towing the boat. Ms Hayes said that Mr Ritter put some beer in the fridge for the men to have when they returned from the trip. She did not see them take alcohol of any type with them and the fact that no alcohol was identified as being present in the bodies of Mr Ritter and Mr Davies after they were recovered satisfies me that alcohol played no role in the tragedy.
63. The weather in Frederick Henry Bay was calm and fine that day. The temperature of the water was roughly 12 degrees celcius. Bureau of Meteorology data tendered at the inquest shows that winds were W to NW 15-20 knots, decreasing to 10-15 knots in the evening.²⁷ Swells were below 1 metre. The afternoon was mostly sunny, with a chance of a shower in the morning. The meteorological data accords with witness accounts of the prevailing conditions on the day.
64. It is notorious that the weather can quickly change in Tasmania. However, there is no evidence that inclement weather or the sea state contributed to the tragedy.
65. Apart from Ms Hayes (and it must be said that her knowledge of what was planned was extremely limited indeed) it would appear that few, if any,

²⁷ Affidavit of Detective Senior Constable Karina Lane, exhibit C 64

people knew of the group's plans. Mr Ritter told Ms Hayes that their intention was to spend the day fishing and to be back between 2.00pm and 4.00pm. Despite extensive enquiries there was no evidence anyone else knew anything about the group's plans for the day.

66. The men drove to the beach at Cremorne. Each man had a mobile phone with him. They launched the boat off the end of the Cremorne sand spit at Pipe Clay Lagoon and parked the Kluger and trailer on the beach. Police photographs tendered at the inquest showed there were a number of warning and advisory messages displayed on signs adjacent to where the men launched the boat.²⁸ Those signs dealt with, amongst other things, the need to "tell someone where you are going and when you are going to return", as well as the mandatory safety equipment for smooth, sheltered and open waters.
67. It is impossible to be certain about the group's intentions. No member of the group seems to have told anyone where they intended to fish. However, given the evidence about where the boat had been used before 31 July 2016 whilst owned by Mr Ritter and Mr Armstrong, it is reasonable to assume, I believe, that the group's intention was to spend the day (or a good part of it) on the waters of Frederick Henry Bay. It seems unlikely that they intended to, or in fact did, venture any further afield.
68. The evidence was that at approximately 8.15am a witness, Mr Michael Greenwood, saw the boat heading out to sea from Pipe Clay Lagoon. Mr Greenwood, the holder of a coxswain's licence for in the order of 20 years (and thus, in my view, likely to be a reliable witness in this case) described the boat as almost vertical. He said the motor was bouncing and the cowl (essentially the motor cover) was near the water line and there was hardly any freeboard at the back of the boat. He said he saw four people in the boat.²⁹ I am satisfied that Mr Greenwood's description was accurate. In

²⁸ See photographs 1121093 – 160 to 176 accompanying the Affidavit of Sergeant Bruce Henderson, Exhibit C 65.

²⁹ Affidavit of Michael Charles Greenwood, exhibit 25.

my view two things flow from Mr Greenwood's evidence. First, whoever was driving the boat (and given that it was Mr Ritter's boat it seems most likely it was him) did not know how to do so properly. Second, the boat was struggling under an excessive load. The objective evidence relating to Mr Ritter lacking any qualifications at all to operate the boat supports the first of these conclusions. Mr Keyes' evidence that the boat was designed to take an outboard 35 hp smaller than the one fitted supports the second conclusion.

69. Around 9.00am, another witness, Mr Andrew Scott, saw a boat coming out of Pipe Clay Lagoon near Flat Rock. Mr Scott lost sight of the boat as it rounded the point heading south. Based on the description that he gave in his affidavit, I am satisfied that this was the group's boat.³⁰ I note Mr Scott has a lifetime of experience with boats. Like Mr Greenwood, I am satisfied this experience means his evidence can be relied upon in this case. Mr Scott's was the last confirmed sighting of the boat.
70. At approximately 8.45am, Mr Davies' phone was active in an area over water off Cremorne. Over the hours following 11.55am, various text messages were sent to the men's mobile telephones. Evidence from mobile telephone providers leads me to conclude that:
- None of the messages, starting with the 11.55am message, were received by the telephone to which it was sent;³¹
 - Mr Ritter's mobile telephone 'communicated' with a Telstra tower at 8.42 am;³² and
 - The last activity of any telephone was from Mr Davies' mobile phone in an area over water off Cremorne at 8.45am.³³

³⁰ Affidavit of Andrew Scott, exhibit C 26.

³¹ Affidavit of Sergeant Bruce Henderson, exhibit C 65, page 11.

³² Affidavit of First Class Constable Michael Preshaw, exhibit C 36, page 3.

³³ Affidavit of Sergeant Bruce Henderson, exhibit C 65, page 11.

71. The only inference open is, and I find, that, by 11.55am all four men were already dead or at the very least in the water, with their telephones not functioning and/or not in their possession.
72. Ms Hayes began to become concerned when she had not heard from the group by 4.00pm. Over the next 90 minutes or so, she made repeated attempts to contact Mr Ritter and Mr Roche, without success. Ms Hayes subsequently contacted Mr Ritter's father, Ottmar Ritter. Mr Ritter senior contacted Tasmania Police at 6.30pm and reported the group overdue.

The Search

73. Immediately after Mr Ritter senior contacted Tasmania Police enquiries were commenced to attempt to locate the four men. Tasmania Police conducted a land, sea and air search. Throughout the remainder of the evening and into the morning of Monday, 1 August 2016, the areas of Frederick Henry Bay, Norfolk Bay and Storm Bay were searched utilising three vessels and a helicopter with crew using night vision goggles. Searching ceased, albeit briefly, at 4.15 am on Monday 1 August. It was recommenced a few hours later.
74. The Australian Maritime Safety Authority assisted with the search. The search focused on the areas around Cremorne, Clifton Beach, Sloping Island and Betsy Island. Nothing of interest was located during the initial search activities.
75. Highly experienced Marine Search and Rescue specialist officer Sergeant Paul Steane, who was involved in the search that night said:

“search conditions [that night] were good with good visibility and a light north westerly wind. Using the nightvision goggles we were confident, that had there been the missing boat in the search area there was a high chance we would have seen it. The goggles are

very sensitive to light and the smallest of lights or reflective material becomes obvious. Vessels engaged in the search were visible through the goggles at ranges of over 10 miles. A 5 metre white boat in the search area would be virtually impossible to miss.”³⁴

76. On Monday, 1 August 2016, Tassal offered its services to assist with the search. The company was tasked with searching the coast line north of Nubeena.
77. At 12.05pm on the Monday, the operators of a Tassal vessel found Mr Davies’ body on the rock shoreline at the southern end of Slopen Main. Police were called to that location (a police vessel was searching the waters nearby) and arrived a short time later. Mr Davies’ body was recovered. He did not have a PFD on and there was no sign of one in the vicinity.³⁵
78. There was an obvious injury to Mr Davies’ head. The subsequent autopsy suggests that the injury was caused by an impact at the time of the boating incident. The clothing found on Mr Davies and his condition suggests that he survived the initial boating incident and possibly attempted to swim to shore.
79. Mr Ritter’s body was next recovered. At 12.56pm that same day, his body was found floating in the water off the northern end of Slopen Main. He was fully clothed and partially wearing a Stormy Seas yoke lifejacket. The lifejacket was not fitted properly (it was hanging over his left shoulder), and although the PFD had a CO₂ cartridge device fitted it appeared that there had been no attempt made to inflate it.³⁶ This suggests that Mr Ritter either did not know how to inflate it, or was unable to in the circumstances

³⁴ Affidavit of Sergeant Paul Steane, exhibit C 34, page 2

³⁵ See affidavit of Richard Trevor Potter, sworn 27 September 2016, exhibit C 39

³⁶ Affidavit and photographs of Constable Paul Hyland, exhibit C 41

in which he found himself. The yoke was subsequently inspected by Mr Peter Hopkins, General Manager, Recreational Boating, Safety and Facilities, MAST. Mr Hopkins, whom gave evidence, said that the yoke, manufactured in 2008, was in reasonable condition, apart from the fact that the CO₂ cylinder was in poor condition with obvious rust, and some corrosion of the buckles. Further, Mr Hopkins said that the service record on the PFD was empty, indicating that it had never been serviced. I am satisfied that the PFD had never been serviced and that that fact was readily apparent to anyone carrying out even the most cursory inspection of the yoke.

80. State Forensic Pathologist Dr Christopher Hamilton Lawrence carried out autopsies on the bodies of Mr Davies and Mr Ritter. He expressed the opinion, which I accept, that both men died as a result of drowning.³⁷
81. Over the next few days, the search continued. Various personal items such as clothing and money were located in the area, along with items subsequently identified as belonging to the boat such as the fuel tank. The boat itself was not recovered.
82. On Monday, 8 August 2016 at about 11.25am, human remains were discovered floating in the water in Frederick Henry Bay, at approximately 42 58.513S, 147 34.805E.³⁸ DNA profiling and a pathological examination established the material to be part of Mr Drobnjak's gastrointestinal tract.³⁹
83. The search of Frederick Henry Bay and the surrounding waters and land continued until 18 August 2016, at which point it was suspended on the basis that the area had been thoroughly searched and there was no reasonable prospect of locating the boat, Mr Roche or further remains of Mr Drobnjak. The evidence at the inquest satisfies me that the search was

³⁷ Post Mortem Affidavits Dr C. H. Lawrence, exhibits C 9 and C 10

³⁸ Affidavit of Sergeant Paul Steane, exhibit C 34

³⁹ Affidavit of Rita Westbury, forensic scientist, exhibit C 13.

professional, thorough and comprehensive.⁴⁰ I am also satisfied that the decision to suspend (in real terms, cease) the search on 18 August 2016 was appropriate in all of the circumstances.

84. I am also satisfied that the initial search was hampered by the fact that the group had given virtually no information to anyone as to their intentions. This extended to no information as to where the boat would be launched which meant that police had initial difficulties even locating the Toyota Kluger and the boat's trailer. All these things meant that the search response was significantly hampered by the fact that the search area was not known with any precision. That having been said I do not consider that the delays in locating the vehicle and trailer (and hence identifying a start point for the search) caused or in any way contributed to the deaths of Mr Davies, Mr Ritter, Mr Drobnjak or Mr Roche. This is because I am satisfied on the evidence that all four men were dead well before Tasmania Police were contacted by Mr Ritter's father.
85. There were no witnesses to what happened to the men in the boat, and despite extensive investigation none identified. An exact time of the accident cannot be determined. However, it must have been between 9.00am (when Mr Scott saw the boat) and 11.55am (when a text message was sent but not received).
86. In all the circumstances I am satisfied that it is likely that the men had succumbed to the cold and died well before the alarm was raised, based on their overdue return.

⁴⁰ That evidence includes affidavits of a number of police officers involved in co-ordinating and carrying out the search, as well as a number of charts, maps and associated documents.

The Investigation

87. To a large extent the investigation of the deaths of the four men focused upon the condition of the boat, what safety equipment was on the boat, qualifications and experience of the men and whether any legislative reform would avoid similar, unnecessary, deaths in the future. To a large extent also the fact that Mr Roche's body was not recovered nor the boat ever found made aspects of the investigation more difficult. However, the extensive information that was available in relation to the boat to an extent at least enabled some of the disadvantages of not having recovered the boat to be overcome. It also enabled some reasoned conclusions to be reached as to any deficiencies in relation to the boat. It informed my view in relation to the issues set out below.

What Happened to the Boat?

88. Obviously the reason why all four men ended up in the water logically must be the result of something that happened to the boat. However the fact that the boat has not been located and recovered and that there are no witnesses or survivors means that it is impossible to reach a concluded view as to what happened to the boat. In my view weather per se can be excluded on the evidence as a cause of the tragedy.

89. The possibilities seem to include:

- A loss of control of the boat when operated high-speed (chine walking) leading to the boat flipping;
- The boat hitting something in the water, presumably at high-speed, causing a catastrophic damage; or
- The transom failing and ripping out of the stern of the boat causing it to sink rapidly.

90. Any of the three possibilities outlined above are equally plausible in my view. But in the absence of direct evidence which supports one possibility over the others it is in my view impossible to reach a concluded view.

The Adequacy of the Current Marine Regulatory Regime

91. MAST prepared a detailed report which was tendered at the inquest.⁴¹

The report dealt with:

- The regulatory regime in Tasmania relating to the inspection, sale and registration of recreational vessels;
- How the regulatory regime in this state compares to other Australian and overseas jurisdictions; and
- MAST's view as to the adequacy or otherwise of the current regulatory regime.

The report also included recommendations suggested by MAST as to how tragedies of the type that claimed the lives of the men might be avoided in the future.

92. The regulatory position in this State is that there are requirements to register boats with engines greater than 4 hp and to register the fact of a transfer of ownership, but no statutory requirements for any recreational vessel to be inspected at either registration or transfer of registration.⁴² I note that no other state or territory requires inspection at either registration or transfer of registration.

93. Some other jurisdictions require that boats be fitted with a Hull Identification Number (HIN). The purpose of such a number is to enable accurate identification of a boat. A HIN is not required in Tasmania for a

⁴¹ Exhibit C 78

⁴² See Marine and Safety (Motor Boats and Licences) By-laws 2013

vessel to be registered. In other states and territories where a HIN is required the process does not involve an inspection of the structural integrity or general condition of the boat. The evidence from MAST was that it is currently investigating the introduction of a HIN for all boats in Tasmania.

94. While I accept that the presence of a HIN would not have prevented the deaths of these four men, MAST's investigation of mandating a HIN is, as submitted by counsel assisting, commendable.
95. Further, as I have already noted, Mr Hopkins attended the inquest and gave evidence. In addition I received a significant amount of evidence about MAST's public safety campaigns. In this regard I have already mentioned the signs at the Cremorne launching area. The evidence was the signs at Cremorne were typical of similar signs at boat launching facilities throughout the whole state.
96. I also heard evidence about the conduct by MAST of public awareness campaigns, including the production of videos and advertising material and the conducting of workshops about how to retrofit buoyancy to older vessels.
97. It is apparent that numerous resources – particularly through the MAST website and publications by it – are available to the recreational boat user in this state to help ensure a safe return from a day on the water.
98. For recreational vessels, the required safety equipment is determined by the size of the boat and where it is intended to be used. Mr Hopkins expressed the opinion, which I accept, that the 'sheltered waters' categorisation of Frederick Henry Bay is appropriate. I also accept Mr Hopkins' opinion that the safety equipment required of a small craft in sheltered waters is appropriate.

99. A significant issue about which Mr Hopkins expressed concern, was the widespread failure to maintain life jackets in accordance with manufacturers' recommendations. MAST estimated that of the 70-80,000 inflatable life jackets being used in Tasmania, only 2% were being serviced in accordance with those recommendations. This is an alarmingly low figure. Mr Hopkins said, and I accept, that some (probably far too many) boat users "are too complacent".
100. In his evidence Mr Hopkins expressed concern about the number of older recreational vessels which do not have modern safety features such as proper buoyancy. MAST estimated that there were 30,000 registered recreational boats in Tasmania, with 10% changing ownership each year. As I have already noted there is no requirement for a vessel to be inspected as part of registration or transfer of registration (and neither is there when buying a second hand car – but few people would buy a car without having a mechanic look at it).
101. MAST has investigated mandating a 'seaworthy certificate' for new vessel registration and the transfer of existing registrations. Mr Hopkins gave evidence, which I accept, about the difficulties associated with such a scheme.⁴³ Three difficulties are worthy of particular mention. First, the definition of seaworthiness is somewhat imprecise and depends upon the use to which a vessel is being put and the sea state at the time. Second, there is no applicable national standard to guide the implementation of such a system. Third, there are significant resource and cost implications, particularly with respect to 'grandfathering'.
102. Mr Hopkins gave evidence about recreational motor boat licences in Tasmania and how they are obtained. The statutory requirement to have a licence is clear and unambiguous. To obtain a licence an applicant must complete a 4-5 hour course, comprising both a theory session and a practical test on board a boat. Motor boat licence courses are run by

⁴³ See generally C78, pages 4-6.

accredited training providers. Each course includes a number of core competencies prescribed by MAST. These include matters such as safety equipment on board, on shore safety, wearing engine kill switches and the dangers of chine walking. Obtaining a boat licence involves more than simply an awareness of the legislation. Aside from the legal requirement to have a licence the completion of a motor boat licence course is an important aspect of marine safety, particularly for those with limited experience in handling boats.

103. I accept Mr Hopkins' view as to the usefulness of a mobile telephone for recreational boat users as a method of communication in an emergency. I note that to encourage mobile telephones to be carried MAST had previously handed out waterproof plastic covers for mariners' mobile phones. Nonetheless a mobile phone is not and should not be used as a substitute for a VHF marine radio.

104. Looking at the issues in a broad way I am not persuaded that it is appropriate or necessary to make any recommendations for legislative or regulatory changes. Mr Hopkins' evidence allows me to conclude that MAST is appropriately considering such issues as any necessary reform and public awareness regarding vessel standards and registration, retrofitting buoyancy, boat licensing, and recreational boating safety more generally.

105. As Mr Thompson submitted, correctly in my view, this tragic case involved four men who were unlicensed (and thus unqualified) to use a boat. It appears that none of them (in particular Mr Ritter who as skipper had ultimate responsibility) checked their safety equipment. Neither of the co-owners appear to have considered the capacity of the boat having regard to its age. Neither appears to have turned their mind to the need to have the boat inspected before (or even after) purchase.

106. No member of the party seems to have told anyone where they were going. Crucial, mandatory safety equipment - life jackets - was missing. Recommended equipment (marine radio, EPIRB) was not on the boat.

107. It is likely that any of these things – inspection, proper qualification, compliant minimum safety equipment, and recommended safety equipment – may have altered the outcome of what should have been an enjoyable day's fishing.

Formal Findings

108. At the beginning of this finding I indicated that I am required to make a number of formal findings in relation to each death. I set those findings out below. Each of the formal findings is based on the evidence I heard at the inquest. In two cases – those of Mr Drobnyak and Mr Roche – I could not answer the question section 28(1)(c) of the *Coroners Act* 1995 asks because there was an understandable lack of evidence about the issue.

Luke Davies

109. I find, pursuant to section 28(1) of the *Coroners Act* 1995 that

- a) The identity of the deceased is Luke William Davies;
- b) Mr Davies died in the circumstances set out earlier in this finding;
- c) The cause of Mr Davies' death was drowning; and
- d) Mr Davies died on 31 July 2016 in the waters of Frederick Henry Bay in Tasmania.

Aleksander Drobnjak

110. I find, pursuant to Section 28(1) of the *Coroners Act* 1995, that

- a) The identity of the deceased is Aleksander Drobnjak;
- b) Mr Drobnjak died in the circumstances set out earlier in this finding;
- c) Although I suspect that the cause of Mr Drobnjak's death was drowning the evidence does not allow me to make a finding to the requisite legal standard; hence I am unable to determine the cause of his death; and
- d) Mr Drobnjak died on 31 July 2016 in the waters of Frederick Henry Bay in Tasmania.

Magnus Ritter

111. I find, pursuant to Section 28(1) of the *Coroners Act* 1995, that

- a) The identity of the deceased is Magnus Julian Ritter;
- b) Mr Ritter died in the circumstances set out earlier in this finding;
- c) The cause of Mr Ritter's death was drowning; and
- d) Mr Ritter died on 31 July 2016 in the waters of Frederick Henry Bay in Tasmania.

Anthony Roche

112. And finally, I find, pursuant to Section 28(1) of the *Coroners Act* 1995, that

- a) The identity of the deceased is Anthony James Bernard Roche;
- b) Mr Roche died in the circumstances set out earlier in this finding;
- c) Although I suspect that the cause of Mr Roche's death was drowning the evidence does not allow me to make a finding to the requisite legal standard; hence I am unable to determine the cause of his death; and
- d) Mr Roche died on 31 July 2016 in the waters of Frederick Henry Bay in Tasmania.

Recommendation and Comments

113. For the reasons I hope are clear, and notwithstanding the careful attention I paid to Mrs Sabine Wagner's detailed and thoughtful contribution to the inquest, I have concluded that the circumstances of the deaths of the four men do not require me to make any recommendations pursuant to Section 28 of the *Coroners Act* 1995 in relation to the regulatory regime relating to recreational boating in this state.

114. I do however consider it necessary and appropriate to make one recommendation and a number of comments.

115. Although the reason why the boat sank and the four men drowned cannot be determined, it is at least a reasonable hypothesis that it may have been due to the failure of the boat's hull, or possibly transom, due to rot. The evidence was that when the boat was purchased neither Mr Ritter nor Mr Armstrong gave any thought to having it professionally inspected to

determine its condition. I observe that few people would buy a second hand car without having it inspected by a mechanic; the situation in relation to a second hand boat does not appear to me at least to be materially different. I therefore **recommend** that all persons purchasing a second hand boat have it inspected before use by a suitably qualified person.

116. Based on the evidence at the inquest I consider that I should make the following **comments**:

- a. It is critically important for those on the water to wear a PFD, service that PFD and wear it correctly.
- b. Recreational boat owners should carefully consider a vessel's capacity, especially when buying a second hand boat and pay careful attention to whether buoyancy should be retrofitted.
- c. A recreational boat licence is not simply a piece of paper or a formality. It is a way of ensuring that boat users are qualified both in terms of practice and theory. All recreational boat users are required to have one. It is not just the law, but also a matter of life and death.

117. I wish to extend my particular thanks to Mr Sam Thompson and Sergeant Anthony Peters for their assistance in relation to the inquest.

118. I convey my sincere condolences to all those who knew and loved Luke Davies, Magnus Ritter, Aleksander Drobnjak and Anthony Roche and were touched by their lives and tragic, untimely loss.

Dated 30 August 2019 at Hobart in the State of Tasmania.

Simon Cooper
Coroner