



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION



Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Olivia McTaggart, Coroner, having investigated the death of Graeme Anthony Bowerman

Find, pursuant to section 28(1) of the *Coroners Act 1995*, that

- a) The identity of the deceased is Graeme Anthony Bowerman;
- b) Mr Bowerman died as a result of drowning following the capsize of a boat in the circumstances described below;
- c) The cause of death was drowning; and
- d) Mr Bowerman died on 3 June 2018 at Marion Bay in Tasmania.

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Mr Bowerman's death. The evidence includes the police report of death; an opinion of the forensic pathologist who conducted the autopsy; police and witness affidavits; medical records and reports; an expert survey report and life jacket report; weather and tide information; video and photographic evidence of water and weather conditions; and forensic evidence.

Graham Anthony Bowerman was born on 29 August 1977 and was aged 40 years at his death. He lived at Gretna in Tasmania and was employed as a worker in the forestry industry. He is survived by his partner, Shelley-Anne Thompson, and two adult step-children. The evidence indicates that Mr Bowerman was in good health and that fishing was his favourite pastime.

On Friday 1 June 2018, Mr Bowerman commenced a weekend fishing trip with his long-term friends, Scott Marriott and Marcus Mayne. The boat to be used for the trip was a Bermuda Bluewater 5.6 metre fibreglass cuddy cabin, registration 38545 ("the boat"). The boat was fitted with two engines, a 135hp Mercury main engine and a 6hp four-stroke Suzuki auxiliary engine. The vessel was owned by Mr Marriott.

Mr Marriott had been involved with boats for many years. He held a current, full recreational motorboat licence, which he obtained in 2008 when he purchased the boat. He used the boat regularly and, in particular, used it for five or six multi-day trips per year.

The boat had been modified with the addition of plastic clears and a tarpaulin system to fully enclose the cabin of the vessel. A full complement of safety equipment was on board, including an EPIRB, fire extinguisher and flares.

Mr Marriott checked the weather forecast on the evening of Thursday 31 May 2018 and determined that the weather conditions over the next four days would be suitable, the indication being a small 1.5 metre south-easterly swell.

The trip commenced on Friday 1 June 2018 from Pirates Bay where the three friends launched the boat and spent the day tuna fishing. They stayed at Canoe Bay and stayed overnight on the boat.

On the following day, 2 June, they resumed tuna fishing before returning to Canoe Bay. They then travelled to Pirates Bay where they retrieved the boat from the water and slept on it overnight. That evening, a quantity of alcohol was consumed by the men but not an amount that they considered to be excessive.

The next day, 3 June, they rose at 5.15am and stopped at the Dunalley Bakery for food with the aim of launching the boat at Boomer Bay and then fishing for flathead at Marion Bay and potentially staying overnight on the boat or returning home that day. CCTV footage places the men at the bakery at 6.12am.

The boat was launched at 6.40am, in the dark, and was being skippered by Mr Marriott, who commenced to navigate through the channel known as “the Narrows” towards the entrance to Marion Bay. Mr Mayne was standing directly behind Mr Marriott, and Mr Bowerman was sitting on an esky in about the centre of the boat. According to Mr Marriott, who provided an affidavit for the investigation, this was Mr Bowerman’s usual position in the boat and there was a “god bar” available for him to hold.

A number of surfers were also launching vessels from the ramp at this time and there was an exchange of conversation between the occupants of the boat and some surfers.

The Boomer Bay boat ramp exhibits a large map and warning regarding the hazards of the Marion Narrows channel and bar way. It provides, amongst other matters, the following information:

- *“Bar way can be subject to breaking waves.*
- *Conditions around the Narrows are constantly changing.*
- *For up-to-date transit information visit the MAST website at www.mast.tas.gov.au.*
- *Do not attempt to enter Blackman Bay through the Narrows in heavy NE conditions.*
- *Only shallow draft vessels who have sought local knowledge should transit.*
- *Navigate only at high tide and in daylight hours.”*

The Boomer Bay navigation channel towards the Narrows is well-marked with a series of navigation lights. A further red buoy marker indicates a reef outside the channel on the southern side of the entrance known as Long Reef.

As the boat reached the entrance to the Narrows channel, a surfer, Mr Aram Allanby, paddling on his board close by, observed the boat and believed that the skipper did not see him in the water. He stated in his affidavit for the investigation that this would have been at approximately 6.55am. He stated that the boat’s navigation lights were activated and functioning. He said that a 2 metre swell was forecast but he believed the waves were about 3 metres in height with a light off-shore wind and perfect for surfing.

Mr Marriott exited the channel towards the sand bar. Mr Marriott stated that he did not see any surfers in the water or at the surf break. He did not stop the boat at that time to scrutinise conditions outside the channel. In hindsight, this precaution may have alerted him to the presence of surfers and the likelihood of a strong swell.

In his affidavit for the investigation, he stated that he was driving the boat at a speed he estimated to be approximately 10-15km/h. At this time, he said that there was no wind at all and a slow, rolling swell of about one half a metre high.

From the channel entrance, he drove the vessel north of the entrance for approximately 100 metres and directly into the surf break which is known locally as “The Bone Yards”. He then turned the boat right (to the south) in order to travel parallel to the shore.

Almost immediately after the boat had completed the turn, it was hit by a large breaking wave which was not seen by Mr Marriott until it was at the boat.

In his affidavit Mr Marriott stated:

“Out of nowhere there was a wall of water coming at us from further out to sea. The wave was broken and it was well above the height of the boat. It was clear that I

wasn't going to have time to turn back into the wave. I was at an angle of about 45 degrees to the wave when it hit us."

In his affidavit for the investigation, Mr Mayne provides a similar account.

Mr Marriott was able to yell a warning to his passengers to hold on just as the wave hit the boat. The wave rolled the boat over and it remained upside down. Mr Marriott was able to clear himself from the vessel and inflate his life jacket. He attempted to climb onto the upturned hull but was unable to do so as a set of waves hit the boat. His exit from the boat was hampered by loose gear and the full canopy enclosing the vessel. After the wave set passed he climbed onto the hull.

Mr Mayne was trapped momentarily under the boat and he swam upwards to find a pocket of air. He was then able to swim back under the boat and clear himself from it. He did not inflate his life jacket as he saw another wave coming and felt compelled to hang onto the boat. He was then washed away from the hull but grabbed a rope and was able to stay with the boat.

Mr Bowerman was not sighted by either Mr Marriott or Mr Mayne from the time the boat capsized. The details of his predicament after the capsizing are therefore unknown.

At the time of the capsizing the outside air temperature was approximately 3 degrees Celsius, and the water temperature was 11 degrees Celsius. In such conditions there was only minutes to effect a rescue before the men would have succumbed to cold water shock, immobility and death.

The boat was observed by surfers in the vicinity just after it had capsized. A jet skier in the vicinity, Mr Zebulon Critchlow, quickly manoeuvred his jet ski to the boat, still in conditions of high swell. Mr Critchlow was, on the evidence, a highly experienced and skilful jet skier, who was fully familiar with the area of water and who had previously undertaken other rescues.

Mr Critchlow initially retrieved Mr Mayne as he was identified as the weaker swimmer. Mr Marriott was then also retrieved from the water by Mr Critchlow. The pair were both taken to a nearby boat being skippered by Anthony Rowe. Mr Rowe was with his friend, Robert O'Neill. Mr Rowe works as a boat skipper for TASSAL. Mr O'Neill and Mr Rowe immediately telephoned police and then conveyed Mr Marriott and Mr Mayne back to the Boomer Bay boat ramp to await the attendance of police and ambulance. In his affidavit for the investigation, Mr Rowe described them as being in poor condition and in shock.

Mr Critchlow alerted his friend, Tyler Hollmer-Cross, about a missing third person, trapped under the boat. Mr Hollmer-Cross was surfing nearby and is a very experienced surfer with knowledge of the area. Mr Critchlow and Mr Hollmer-Cross attended the capsized boat on the jet ski. Mr Hollmer-Cross then dived under the boat on several occasions attempting to locate the missing man. He became increasingly nervous about the danger involved in his attempts. He was not able to locate any person and realised that the person he was searching for could no longer have been alive in the present conditions. Mr Critchlow then took a turn in searching under the boat but also could not find any person.

The conditions were exceptionally dangerous to the two men attempting the rescue. The water had limited visibility and both suffered continued buffeting from sets of large breaking waves. The boat was not secured to anything and therefore represented a heavy, moving object that could have crushed or pinned them at any time. At one point, Mr Critchlow found himself wrapped by the tarpaulin under the boat and had great difficulty untangling himself to break free. In addition, there were countless pieces of the boat's rope, equipment and camping gear moving about in an enclosed space under water that amplified the perilous situation.

Both Mr Critchlow and Mr Hollmer-Cross considered that their search involving multiple diving efforts under the boat may have been in vain due to the possibility of confusion regarding the presence of a third person and their failure to locate anyone under the boat.

Nevertheless, the pair then continued to search the area surrounding the boat on the jet ski for a period of approximately 45 minutes. When this was also fruitless, they discontinued their search. I note that Mr Bowerman was not, in fact, trapped under the boat at the time of their rescue attempts but was some distance away and difficult to see by water.

Police officers subsequently arrived at the scene utilising two rigid-hulled inflatable dinghies and the Tasmanian Westpac Rescue Helicopter. The helicopter arrived at approximately 7.50 am and almost immediately identified a male person who appeared deceased on the water surface. A commercial fisherman, Stuart Peel, who had just arrived in the area to commence a commercial fishing trip, was signalled by the helicopter crew. Mr Peel was able to retrieve the body, a male, and secure it to his vessel to prevent it from floating away. The male was clearly deceased. A short time later, police recovered the male from Mr Peel's boat and it was conveyed to Boomer Bay. There, police forensics officers attended to photograph and examine the body as well as articles recovered from the capsized vessel. The male was conveyed to the

Hobart Mortuary, where Shelley-Anne Thompson formally identified the male as her partner, Graeme Anthony Bowerman.

Investigating police officers marked the location of the sunken boat with a life ring from a police vessel. A police dive team was assembled and re-attended the scene at approximately 1.00pm with assisting marine and rescue officers. At that time, the boat had been washed into shore further with the incoming tide and was located close to the mouth of the channel in approximately 5 metres of water. The vessel was rolled over and towed back to the Boomer Bay boat ramp where it was towed to secure police storage.

At 9.15am on 3 June 2018 Mr Marriott underwent a blood test at Hobart Police Headquarters under the provisions of the *Marine Safety (Misuse of Alcohol) Act 2006*. The subsequent analysis did not identify any alcohol or illicit drugs in his blood.

On 4 June 2018, Dr Donald Ritchey, forensic pathologist, performed an autopsy upon Mr Bowerman. Dr Ritchey concluded that the cause of Mr Bowerman's death was drowning. He noted that significant traumatic injuries were not identified upon Mr Bowerman's body, and that toxicological testing detected no alcohol or drugs in his blood. I accept Dr Ritchey's opinion as to cause of death.

The boat was surveyed by Mr Adam Brancher of Kedge Pty Ltd, who provided a detailed report, concluding that the boat was in a sound structural, mechanical and electrical condition at the time of the incident and equipped with good-quality, operative safety equipment.

Cause of the capsize of the boat

Mr Marriott, as skipper of the boat, was responsible for safely negotiating a difficult waterway. Although Mr Marriott perceived the water conditions to be benign as he navigated through the channel and towards the Narrows, other witnesses who provided evidence in the investigation described the conditions as requiring some caution. For example, Mr Rowe indicated that he reached the entrance to the Narrows and slowed his boat as he saw a swell and surf breaking heavily on either side of the channel. He also observed the surf breaking across the bar way. His concern about the conditions was such that he advised his friend in a second boat to wait and follow his course through the entrance to the channel. Mr Rowe is highly experienced in navigating this waterway and believed it may be dangerous for his less experienced friend. Mr Peel, a commercial fisherman and also very experienced in negotiating the waterway, said that he had been expecting calm conditions with a few waves in the surf

zone but, instead, there was a large swell and sets of big waves at regular intervals. Mr Critchlow and Mr Hollmer-Cross, both very familiar with the wave conditions in the area (and who had assessed the operative weather systems in detail) were expecting a significant swell.

The evidence in the investigation indicates that a heavy east-south-easterly swell had developed, which was combined with a tide that had just turned to be incoming and a sand bar which had built up and shifted. The combination of these factors provided more dangerous conditions than Mr Marriott had anticipated.

Mr Marriott was a responsible skipper, being well-prepared and having maintained his boat in excellent condition. Whilst negotiating the Narrows channel, the boat's navigation lights were activated and functioning. The boat also had a spot light illuminated, which was fitted to the top of the railings. Whilst the activation of this light was intended to provide a safer journey in semi-dark conditions, the investigating officer, Senior Constable Eileen Langford, believed that it may have contributed to Mr Marriott's inability to actively monitor the wider conditions. Although the spot light would have provided an illuminated area in front of the boat, it is likely to have reduced his peripheral night vision outside the scope of that beam.

Mr Marriott had had extensive boating experience in fine weather conditions and had utilised the Boomer Bay ramp on approximately 50 prior occasions. This might have resulted in him expecting benign conditions upon his exit into Marion Bay. He did not have extensive experience handling a vessel in poor weather conditions or during hours of darkness. He stated he had checked the weather forecast the previous day. Ideally he might have checked the forecasts prior to starting out that day, as well as discussing the likely conditions with others at the boat ramp.

As it happened, Mr Marriott inadvertently navigated the boat towards the left as he emerged from the channel into the midst of a surf break with an active swell of 3 metres which hit the vessel side on and caused it to capsize. It would appear that Mr Marriott misjudged the extent of the swell they would encounter. More importantly, his observation as he navigated through the Narrows channel was not as effective as it could have been, leading to him to enter into the surf break. Navigating further to the right hand side would have avoided the situation they encountered. He may well have been overly focused upon his depth instruments and not sufficiently observing his position or the state of the water.

All three men were wearing inflatable life jackets at the time of the capsize. As part of the investigation all three life jackets were inspected by Peter Hopkins of MAST.

The evidence indicates that Mr Mayne deliberately chose not to activate his vest as he believed he would have become trapped under the vessel if he had done so. Mr Mayne's jacket had been serviced professionally in 2017 although one press stud holding the bladder in place had detached which may have inhibited its functioning.

Mr Marriott was wearing an inflatable jacket which he chose to activate. The jacket may have contributed to his survival. It was fortunate for Mr Marriott that his jacket operated correctly, it having been manufactured in 2001 and not having been serviced by the manufacturer since its purchase. Mr Hopkins, in his report, stated that the average lifespan for a life jacket is approximately 10 years.

Mr Bowerman did not activate his life jacket during the course of the capsized. Whether this was a deliberate action cannot be determined on the evidence. The testing identified that there was a faulty "O ring" in the jacket which would have resulted in the gas leaking and not inflating the bladder as required. Therefore, the jacket would have failed in its use. This jacket had not been professionally serviced but appeared to have been "self-tested". Mr Hopkins stated that self-testing using the oral inflation tube would not have detected the fault.

Comments

Several people came to the immediate assistance of the three men. Mr Hollmer-Cross and Mr Critchlow are responsible for the recovery of the two surviving men. Their understanding of the nature of the conditions, skill and willingness to retrieve the two men and attempt to rescue the third whom they believed was trapped under the vessel, undoubtedly saved two lives in conditions where few would possess the skill or ability to execute such a rescue. They placed their own lives at risk over an extended period of time. The actions of Mr Hollmer-Cross and Mr Critchlow deserve consideration for formal recognition for bravery.

Mr Peel also placed his own safety in peril as he attempted to manoeuvre his vessel single handedly in dangerous conditions to assist police to recover Mr Bowerman's body from the water.

I also acknowledge that Mr Rowe and Mr O'Neill participated in the rescue of Mr Marriott and Mr Mayne and carried them to safety in their boat.

I acknowledge that Mr Marriott was a very close friend of Mr Bowerman. He clearly feels responsible for the death of his friend and is traumatised by the unfortunate and unexpected incident leading to it.

I extend my appreciation to investigating officer Senior Constable Eileen Langford for her most thorough investigation and comprehensive report.

Finally, I convey my sincere condolences to the family and loved ones of Mr Bowerman.

Dated: 10 September 2019 at Hobart Coroners Court in the State of Tasmania.

Olivia McTaggart
Coroner