

Findings into the death of David John Eason

The Coroners Act 1958 provides in s43(1) that after considering all of the evidence given before a coroner at an inquest the coroner shall give his or her findings in open court. What follows are my findings in the inquest held into the death of David John Eason.

Introduction

David Eason was a successful, middle-aged businessman, an executive director of an advertising agency in Beaconsfield, Buckinghamshire, England.

On 19 March 2001 he arrived in Melbourne intending to travel up the east coast as far as Cairns where Mr Eason planned to fulfil a long held desire to visit the Great Barrier Reef before leaving to return to England on 14 April.

On 29 March he travelled with a group of other tourists to Fraser Island. At about 1.00 pm, near Lake Wabby, he separated from the group agreeing to rejoin them a couple of hours later for the trip back to the mainland. He failed to keep that rendezvous and was never seen alive again.

Two years later, on 14 April 2003, another English tourist walking in the same area on Fraser Island found human bones and personal property that have been identified as being the remains and property of David Eason.

These findings seek to explain what became of David Eason. They also contain recommendations aimed at reducing the likelihood of similar tragedies occurring in the future and ameliorating their impact.

The Coroner's jurisdiction

Before turning to the evidence, I will say something about the nature of the coronial jurisdiction. There has been some disagreement about it in this case.

The basis of the jurisdiction

Although the inquest was held in 2004, as the death being investigated occurred before 1 December 2003, the date on which the *Coroners Act 2003* was proclaimed, it is a "*pre-commencement death*" within the terms of s100 of that Act and the provisions of the *Coroners Act 1958* (the Act) are therefore preserved in relation to it.

Initially, the investigation into Mr Eason's disappearance was, pursuant to s10 of the Act, reported to the coroner in Hervey Bay as a missing person matter. At that stage, no proceedings were commenced.

When the finding of the human remains near Lake Wabby was reported to the coroner he understandably formed the view that they evidenced "*a sudden death the cause of which was unknown*" within the terms of s7(1)(a)(ii) of the Act and the discovery was therefore a reportable death pursuant to s12(1).

Section 7(1) confers jurisdiction on a coroner to investigate such a death and s7B authorises the holding of an inquest into it unless the coroner considers that unnecessary.

The scope of the Coroner's inquiry and findings

The Act, in s24, provides that where an inquest is held, it shall be for the purpose of establishing as far as practicable:

- the fact that a person has died,
- the identity of the deceased,
- when, where and how the death occurred, and
- whether anyone should be charged with a criminal offence alleging he/she caused the death.

After considering all of the evidence presented at the inquest, findings must be given in relation to each of those matters to the extent that they are able to be proved.

In addition, s43(5) authorises a coroner to make recommendations – “riders” designed to prevent deaths recurring in similar circumstances.

During the course of this inquest there was some debate about which issues raised on the evidence were properly within the scope of the inquest and/or could be the subject of riders.

The issues which were raised for consideration in this respect were:-

- the adequacy of the searching after Mr Eason went missing,
- the quality of the communication between the Queensland Police Service (the QPS) and Mr Eason's family,
- the adequacy of the signage around Lake Wabby, and
- the adequacy of the information provided to tourists by the Queensland Parks and Wildlife Service (the QPWS).

Counsel representing Mr Eason's family submitted the inquest should receive evidence in relation to how police undertook the search for Mr Eason and how that could have been undertaken more effectively. He also submitted that the accuracy of communication between the family and the Queensland Police Service (the QPS) was relevant because if the family was made aware of the limited nature of the searching they could have elected to themselves devote resources to that which might have led to Mr Eason being found sooner. Counsel for the family submitted that evidence concerning these issues should be received to assist me consider making riders which might reduce the likelihood of future searches for missing people being as unsuccessful as was the search for Mr Eason.

Counsel for the Commissioner of Police submitted that as the evidence was unlikely to establish when the deceased died or the cause of his death, the searching undertaken by the QPS and others and the liaison between the QPS and the family of Mr Eason could not have relevance to how, when or where he died and was therefore outside the scope of the inquest as delineated by s24. Unless it could be established that Mr Eason was alive

when the search was undertaken, how the search was undertaken could not be relevant to how he died. Further as it would not be possible to prove how Mr Eason died it would not be possible to “*prevent the recurrence of similar occurrences*” and evidence relating to the search and liaison with the family could not therefore be admitted to assist in the framing of riders. It was submitted that the power to make riders is incidental to the power to inquire into the matters set out in s24 and if those matters can’t be established with sufficient certainty no power to make riders remains. Counsel for the Police Commissioner based his assessment of the evidence that was likely to be before the inquest and available to support findings by assuming that what was contained in the police report to the coroner would be the extent of the evidence at the completion of the inquest.

Initially, these submissions by counsel for the Commissioner of the QPS were based on the unreported decision of the Full Court of the Supreme Court of Queensland, *R v The Coroner, William John Randall, ex parte: The Salvation Army*.¹ Unfortunately the judgment in that matter only covers a page and a half and gives little guidance on the reasoning of the Court. They confirm the self evident proposition that a coroner’s inquiries must be limited to seeking to establish the matters set out in s24. However, as the judgment contains no information about the circumstances of the death in question it is difficult to gain much understanding of their Honours assessment of what this means in practice from the examples they cite of inquiries that go beyond that limit.

I ruled that the details and manner of searching was relevant to the s24 issues because it could shed light on whether Mr Eason’s body was in the location where it was found two years later when the search was being conducted a few days after he went missing. If I could be satisfied that it was not there, that would be evidence that might assist me make findings about when or how the death occurred. I also ruled that the evidence concerning the searching was relevant to the question of riders and that a coroner would not have to be in a position to make definitive findings about manner and cause of death before he/she had power to make riders designed to prevent similar deaths recurring.

Evidence was therefore taken in relation to how the search was undertaken and the results of it.

I ruled that the questions about the liaison between the QPS and the family of Mr Eason was too remote to the issues enumerated in s24 and should not therefore be the subject of inquiry. I accepted that the adequacy of the signage might also be relevant to preventing similar deaths. No ruling was made on the relevance of the adequacy of the information given to tourists visiting the island and no evidence of significance was received in relation to that issue.

When the inquest re-convened, after some further inquiries I requested had been made, counsel for the QPS again made submissions about the scope of the inquest and my power to make riders. On this occasion he relied upon the

¹ OSC 21 of 1983, 24 August 1983

Victorian Supreme Court decision of *Harmsworth v The State Coroner*.² In that case it was held that the power to make comments or recommendations arises as a consequence of the obligation to make findings and those powers are not independent of that obligation, instead they are incidental and subordinate to the mandatory, primary obligation to make findings about the particulars of the death in question. Counsel for the Police Commissioner repeated his earlier submission that if none of the information admitted into evidence enabled the manner and cause of Mr Eason's death to be established with sufficient certainty to make findings, no riders could be made in the matter because it could not be shown that anything would prevent similar deaths when the details of this death were not known.

Counsel for the Police Commissioner also sought to rely on the decision and some observations in *R v H.M. Coroner for North Humberside and Scunthorpe, ex parte Jamieson*³ but it is apparent from a close reading of the decision that the different wording of the English legislation relating to a coroner's jurisdiction⁴ and the intricacies of the special verdicts applicable under the English coronial system mean that the decision has little relevance to the issue here under consideration.

There are however comments in that case which I feel are of general application. For example the Master of the Rolls quoted from an earlier judgment of Lord Lane who said of inquests:-

*It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*⁵

In my view the public interest does require some examination of how Mr Eason's remains were not found by the authorities despite their apparently being in an area the authorities claim was thoroughly searched on a number of occasions and in my view it is unworthy of the QPS to try and prevent this issue being ventilated during the inquest.

More importantly, in my view, the submission is wrong in law because it confuses relevance with proof and the process of the inquiry with its outcome. The submission appears to assume that what is contained in the reports and statements tendered at the commencement of the inquest is all that can ever be known of the death and if that material can not prove how, when and where Mr Eason died, no further inquiries should be made. In my view counsel for the QPS is mistaken when he submits that the course of an inquest is limited by the evidence available in the documents tendered when

² [1989] V.R. 989

³ [1995] 1 Q.B. 1

⁴ Indeed if anything some comments support a wide construction of the Qld legislation. (*T*)he task is not to ascertain how the deceased died which might raise general and far reaching issues but "how ..the deceased came by his death", a more limited question. at p24 The Qld wording, "how the death occurred" seems closer to "how the deceased died".

⁵ *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

the inquest commences. An inquest is merely one part of a coronial investigation and when one is considering what evidence may be of relevance to that inquiry one must take a broad view. As was demonstrated in this case, the expectation that a witness will in the box merely repeat the evidence contained in his/her statement is naive.

Further the submission asserts that if as a result of a review of the searching that was undertaken there is not enough evidence to prove that Mr Eason died at a particular time or place it is not relevant to those issues.

Relevance, even in its legal sense, is an imprecise and to some extent relative concept, but I can not accept that, in the context of this case, whether Mr Eason's remains were, three days after his disappearance in the place where they were subsequently found two year's later, is not relevant to the findings I need to make. I am not dissuaded from the view even if after all of the evidence is considered I am unable to be satisfied of all of the details of the death to the requisite standard.

A related concept is that of remoteness. In determining how the death in question occurred, a coroner is not limited to considering only the medical cause of death but must also consider the factors that contributed to that coming about. The difficulty is how far along the chain of causation is it appropriate to enquire. If a causative factor is too remote from the death it will cease to be relevant and therefore beyond the jurisdiction of the coroner. The examples cited in *Harmsworth's case* illustrate the point. Nathan J accepted that the prisoners who died in a fire would not have perished if they hadn't been imprisoned but that the sociological factors that led to their imprisonment were too remote to justify being considered by the coroner investigating their incineration. Similarly, investigation into the general management of prison services and the classification of prisoners was also said to be too remote. While a requirement to produce records relating to all fires in the last decade was too wide, any previous fire in the same division or like circumstances could be within jurisdiction if the coroner considered they were illustrative of the cause of the fire in question.

Comments made by the High Court in *Annetts v McCann*⁶ are also on point. In that case the deaths of two youths had resulted from their leaving their place of employment in the arid north west of Western Australia. One died of a gunshot wound, the other of thirst. The case dealt with whether people who had been granted leave to appear had a right to address the coroner on his findings but the court acknowledged that those findings could relate to the employment conditions of the boys and the manner in which the search for them was conducted. Such a view of a coroner's jurisdiction is, in my view, consistent with the Queensland legislation having regard to s7(1) which provides that a coroner shall inquire into "*the cause of death and the circumstances of the death.*" I can see no basis on which the scope of the inquest should be more narrowly confined than the inquiry the coroner is obliged to undertake.

⁶ (1990) 170 CLR 596

Having regard to these matters I am of the view that the manner in which the authorities searched for Mr Eason and the signage in the area which should assist people to avoid getting lost is within the scope of this inquest and can be the subject of riders.

The admissibility of evidence and the standard of proof

Proceedings in a coroner's court are not bound by the rules of evidence because s34 of the Act provides that "*the coroner may admit any evidence the coroner thinks fit*" provided the coroner considers it necessary to establish any of the matters within the scope of the inquest.

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt: an inquiry rather than a trial.⁷ In view of the very different character of the various outcomes that can result from an inquest, such versatility is probably essential. A coroner is likely not to need evidence of such precision or weight to justify making a recommendation for review or procedural change as would be required to make a finding of a cause of death for example. On the other hand, when considering whether to commit a person to stand trial, a coroner will only consider evidence that would be admissible in criminal proceedings because the test applied to resolve that question is whether a properly instructed jury could convict the person.

There is authority for the proposition that a coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the *Briginshaw sliding scale* is applicable.⁸ This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.⁹

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.¹⁰ This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann*¹¹ makes clear that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation, even the deceased.

⁷ *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625

⁸ *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

⁹ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

¹⁰ *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

¹¹ (1990) 65 ALJR 167 at 168

The investigation

I turn now to a description of the investigation into the disappearance of Mr Eason which was undertaken in two parts; the missing person investigation that commenced soon after he was reported missing on the afternoon of 29 March 2001 and the coronial investigation that commenced when the human remains were found on 14 March 2003.

The missing person investigation consisted of police speaking to the people who went to Fraser Island with Mr Eason, friends he had visited in Sydney and Melbourne and family and friends in the United Kingdom. Air and land searches were undertaken by police, rangers employed by the Queensland Parks and Wildlife Service (the QPWS) and volunteers of the State Emergency Service (the SES). Public notices were posted at strategic positions on Fraser Island and news media items were generated. Business operators on Fraser Island were advised of Mr Eason's disappearance. Inquiries were made of Interpol to obtain the missing person's banking details. Scuba divers searched the floor of the lake. Checks were made with pawnbrokers in an effort to locate any property of Mr Eason. None of these inquiries were productive and the investigation petered out after a couple of months.

In March 2002 a missing person investigation report was made to the Hervey Bay Coroner. That report asserted that it was unlikely that Mr Eason had been the victim of a crime that led to his body being concealed. It suggested the most likely scenario was that he had by some means gone into the ocean and been swept away. It did not countenance the possibility that his body was lying undiscovered on the island.

When human bones were found near Lake Wabby on 14 April 2003, they were left in situ and the find was almost immediately reported to police. The area was cordoned off and officers from the QPS scientific section examined the scene. SES volunteers were brought in to search the surrounding area. The bones were sent to the John Tonge Centre for examination by a pathologist and a forensic odontologist. The personal property found was kept by police for identification by family members.

The remains were immediately recognised as likely to be those of David Eason and when the finding of them was reported to the Hervey Bay Coroner two days later they were tentatively identified as such.

The inquest

On 19 December 2003 the Hervey Bay Coroner requested that I take over responsibility for the matter and I did so. A directions hearing was held on 29 April 2004. Mr Tate of Crown Law was appointed counsel assisting. Leave to appear was granted to the family of David Eason, the QPS, the QPWS and the Department of Emergency Services (the DES) as the agency responsible for administering the SES.

A view of the locality where Mr Eason was last seen and the area around Lake Wabby was undertaken on 17 May 2004. Evidence was taken in the Hervey Bay Courthouse on 18, 19 and 20 May. The matter was then adjourned to allow further inquiries to be undertaken. The hearing resumed in Brisbane for further directions on 12 October when I ruled that no further evidence would be taken.

In all, 21 witnesses gave evidence and 181 exhibits were tendered.

The evidence

I turn now to the evidence. I can not, of course, even summarise all of the information contained in the exhibits and transcript but I consider it appropriate to record in these reasons the evidence I believe is necessary to understand the findings I have made.

On Wednesday 28 March 2001, Mr Eason arrived in Hervey Bay on a tour bus he had joined in Sydney. The touring party consisted of 16 foreign tourists and a tour leader/bus driver, Mr Quentin Davidson.

On the following morning, Mr Eason went to Fraser Island with 13 of the tourists and the tour leader. The group planned to stay on the island for the day only. They caught a water taxi to a resort on the western side of the island where three of the party spent the day. The remainder of the group drove in two four wheel drive hire vehicles to a number of points of interest on the island, including Lake Wabby.

Lake Wabby is an almond shaped, fresh water lake approximately 800 metres long and 200 metres wide. It has a north/south orientation. It is approximately 1.5 kms inland from the beach. A large sand blow is very slowly advancing from the east into the lake with the result that along almost all of its eastern shore a sand bank rises very steeply right from the waters edge to a height of between 20 and 30 metres.

It is not possible to drive right up to the edge of this lake. There are three walking tracks into the lake: two from the beach and one from a car park situated to the north west of the lake. The track from the car park emerges from the bush onto the sand blow above the northern end of the lake. The two beach tracks are about 800 metres apart and are referred to as the "southern beach walking track" and the "northern beach walking track" respectively.

Shortly before 1.00pm, the people in the two hire vehicles arrived at the entrance to the southern beach walking track. Five of the tourists, including Mr Eason, arranged with the tour leader that they would walk along that track to the lake and then along the track leading from the lake to the car park situated to the north west of the lake where they would be collected and driven back to the resort to catch the water taxi to Hervey Bay.

After some discussion among the group, it was agreed that they would meet at the car park at 3.00pm. This time was settled on after Mr Eason expressed

some dissatisfaction with having too little time on the beach. He indicated that he did not want to go swimming in the lake but would prefer to sunbath on the beach.

The group were given their directions for the walk by Mr Davidson. He had not been into the lake and had only been part way along the tracks. To give the directions he relied on the maps on the information boards erected by the QPWS at the trail head and comments made by other tourists he'd taken to the area. They stood near the information signs while this was happening.

Mr Davidson gave evidence that he told the group that when they reached the lake they should follow the eastern side of the lake to join the track that led up to a look out and then on to the car park where they would be collected. He told them to keep to the right of the lake and "*pick up the track at the far end.*"¹²

These instructions are not particularly helpful because if one follows the southern walking track from the beach, it emerges from the bush at the water level of the lake. If a walker heads north along the eastern shore of the lake, almost immediately the sand blow rises on the walker's right hand side and continues to obscure any view to the east until the northern end of the lake is reached when the bush again comes down to the water's edge. To connect with the track to the car park a walker has to scale the sand dune and pick up the trail head 50 to 60 meters to the east of the northern end of the lake. When Mr Eason was on the island there were no signs that would guide a walker coming from the southern walking track on how to connect with the track to the car park. The information boards at the trail head near the beach were also of little use in this regard; they simply showed the track to the northern car park leaving from the northern end of the lake without making it clear that a walker had to climb the dune to find this track.

The other four tourists set off almost immediately for the lake. Mr Eason indicated that he intended remaining on the beach for some time and was last seen walking near the information boards back towards the beach.

The four tourists who walked into the lake swam there and then followed some other tourists they had seen climb the dune to join the track that led to the inland car park past the lookout.

When the two four wheel drive vehicles arrived at the car park to collect the walkers, it was realised that Mr Eason was not with them and that he had not been seen by any of the group since they split up near the commencement of the southern walking track.

None of the group, including the tour leader Mr Davidson, made any significant effort to look for Mr Eason. Mr Davidson walked a small way down the track towards the lake but only went so far as a lookout near the top of the track. He then returned to the car park and left a note for Mr Eason before the

¹² T p191

group went back to the resort from where they had hired the vehicles. No thought seems to have been given to the possibility that Mr Eason was injured and in need of assistance or that he had been the victim of a crime that should be reported to police.

When the group arrived at the resort, the tour leader checked with staff there and looked in the bars and café for Mr Eason. He telephoned the tour company and advised them of the situation. It was agreed that Mr Davidson should stay on the island until the next ferry left at 8.00pm.

At about 5.15pm, Mr Davidson called the ranger station at Eurong on the eastern side of the island and told the ranger that Mr Eason was missing, that he was last seen at the entrance to the southern walking track and that he had failed to keep a rendezvous with the rest of the group. He then rang the Hervey Bay Police Station and conveyed the same information.

Two rangers from the Eurong ranger station then drove up to the commencement of the southern beach walking track to see if Mr Eason was there. They spoke to some campers who were camping near the entrance to the track and told them of the missing person and requested that contact be made with the ranger station if he was located. One of the rangers then advised police at Hervey Bay that the missing man had not been found. Hervey Bay police notified Senior Constable Martin Webb of the matter because he was the Assistant Search and Rescue Mission Co-ordinator (ASARMC) for the area. From that point Senior Constable Webb was responsible for the search, although he took direction from and needed the consent of the District Officer, Inspector Ryan (as he then was) for the expenditure of any resources.

On the evening of 29 March, Senior Constable Webb spoke by telephone to the ranger who had driven to the entrance of the southern walking track and to Mr Davidson, the tour leader. He calculated a search area having regard to the principles set out in the Land Search Manual and arranged for a search helicopter to be ready to commence searching at first light. His request to get the helicopter into the search area immediately – that night – was refused by Inspector Ryan who told Senior Constable Webb that further inquiries as to the missing person's possible whereabouts should be undertaken first.

Either that night or the next morning, Senior Constable Webb also contacted the local co-ordinator of the SES and told him that searchers would be needed on the island on 30 March but that decision was also countermanded by Inspector Ryan, who instructed that the helicopter search be first undertaken.

The next morning that occurred with the helicopter deployed over the search area determined by Senior Constable Webb.

The search area was calculated by reference to the point at which the missing person was last seen and average distances a pedestrian could cover in the time elapsed. The possible area of search was refined to areas of higher

probability by reference to such matters as natural barriers and particulars of the person being searched for.

The air search was very thorough. The helicopter flew so low as to break small branches from trees and was manoeuvred at various angles to ensure that the best possible view was had of the ground. The search extended a few kilometres from Lake Wabby in all directions and along all tracks in the area.

During the search Inspector Ryan spoke with Senior Constable Webb and told him that further inquiries should be made with the tour group to better assess the possibility that Mr Eason had left the island by other means before committing SES personnel to a ground search.

The helicopter then landed near the Eurong ranger station and the QPWS rangers were then tasked to conduct further searches along the tracks in the vicinity of Lake Wabby. Consequently, three rangers walked and drove the walking tracks and vehicular roads around the lake. This included two of them walking down from the car park where the tour group had ended their walk to the lake and out along both tracks to the eastern beach. These rangers spent the rest of the day undertaking these searches and inquiring of any people they came across as to whether the missing person had been seen.

Senior Constable Webb returned to Hervey Bay where he took up with Detective Senior Sergeant Hodgins to arrange for the further inquiries Inspector Ryan wanted to be undertaken. He also again put the SES officers on stand by to attend Fraser Island the following morning.

In the afternoon of 30 March, the day after Mr Eason went missing, Senior Constable Webb conducted a search from another helicopter. That aircraft was fitted with Forward Looking Infra-red Radar (FLIR) but on the advice of the aircraft crew that it would not be effective in the daytime, especially through the vegetation that covered most of the search area and in the weather conditions prevailing at the time, this equipment was not utilised.

Just before the second aerial search commenced, Senior Constable Webb apprised Inspector Ryan of the results of the searching undertaken to that point. He again told Senior Constable Webb that the SES search should not proceed at that stage. That decision also seems to have been based on speculation that Mr Eason may have left the island by himself because he wanted to discontinue travelling with the tour group. This speculation was based on comments made by the tour leader and the contents of letters found in Mr Eason's hotel room indicating that he was not completely satisfied with the tour.

On the morning of 31 March QPWS officers conducted further searches of tracks nearer to the western side of the island leading to the resort where the tour group had first landed when they came to the island and they again looked around the beach where the walking tracks from Lake Wabby emerge.

Mr Eason's brother in law, Mr Eames, spoke to Senior Constable Webb that day and assured him that Mr Eason was a responsible person who would not leave the tour group voluntarily without advising them of this. He also insisted that Mr Eason would not have voluntarily entered the surf.

There was no searching undertaken on the afternoon of 31 March.

On 1 April the members of the tour group were spoken to in some detail for the first time and statements taken from them. The statements did not include specific or exact detail of what directions the group had been given as to how they should make their way from the beach to the lake and then on to the car park. However, the contents of the statements and the information provided by the family in England persuaded Inspector Ryan that the SES should be used to search and they did so on 3 April. Inspector Ryan was responsible for delaying the search by the SES until that time. He sought to justify this on the basis that until the inquiries outlined above were made there was no way of adequately identifying what area should be searched although it is difficult to see how those inquires in fact did this.

On 3 April Senior Constable Webb, Senior Constable Upton, Janice Eason, the missing person's sister, and 8 SES volunteers conducted a search of the area around Lake Wabby. There is general agreement about what particular parts of the locale were searched but uncertainty as to a crucial part, namely the location where the human remains were found two years later.

The party arrived on the beach near the entrance to the southern walking track shortly after 9.00 am. They had been briefed by Senior Constable Webb on the barge on the way to the island. There is no record of what the searchers were told but the evidence is that they were told Mr Eason was last seen on the beach near the southern walking track. It seems that they were not told that he was planning to walk along the southern walking track to the lake and up to the car park.

They broke into two groups and went to points approximately 500 metres south of the southern walking track entrance and 500 metres north of the northern walking track entrance respectively. The two groups then walked towards each other searching a strip of the fore dunes and coastal heath parallel with the beach and approximately 1800 metres long and sixty metres wide.

The whole party then walked along the northern walking track with individuals searching side tracks branching off it. About half way to the lake that track comes to a large sand blow that terminates on its western edge – its advancing face - in Lake Wabby. The party then again broke into groups so that the northern and southern edges of the large sand blow could be searched simultaneously as the group made its way to the lake. The two police officers and Ms Eason walked down the centre of the sand blow.

The SES officers searching the southern edge of the sand blow reached the lake before the others and it seems likely that one or two of them then went

down the steep terminal face of the sand blow to the water's edge and searched in the reeds and bushes near the southern and south western edge of the lake.

When the rest of the party arrived at the lake the whole group then walked out along the southern walking track to the beach searching into the bush for some small distance each side as they went.

The group was then driven up to the car park where Mr Eason was supposed to have met up with the tour group and they then proceeded to search down that track to the lake.

As they neared the lake, the searchers emerged from the bush onto the top of the sand blow. Senior Constable Webb and at least two, possibly 3, SES officers then went down the face of the blow to the waters edge and walked along it to the northern end of the lake. The sand blow extends past the lake in a northerly direction for only a short distance. Where the vegetation, which surrounds all sides of the lake other than the eastern shore, meets the blow there is a faint track going off into the bush in a north westerly direction. It was some 20 to 30 metres along this track that the human remains the subject of this inquest were found.

The evidence as to whether this locality was searched on 3 April is inconsistent and confusing.

Senior Constable Webb in the search running sheet records that there was a "search of the immediate lake area." In that log, that part of the search is listed as occurring after the northern walking track was searched, before the party went back to the beach along the southern walking track.

In his statement dated 16 January 2002, Senior Constable Webb says that after the search of the coastal strip, half the party walked into the lake along the southern track while half the party went into the lake along the northern track. Then, there was a "search of the immediate lake area that included a circumnavigation of Lake Wabby." According to Senior Constable Webb's statement, eight of the party then walked up the track to the car park. It is silent about what the other four did but in evidence at the inquest he said the remainder of the party walked back to the beach along the southern walking track.

In a statement made after the human remains were found, Senior Constable Webb said of the place where they were found,

In 2001 I was with a group of five volunteers from the State Emergency Service when they searched that same area. I remember standing at the northern corner of Lake Wabby and I viewed the searches (sic) walking off into that same direction as where the remains were later located. They searched that area in a creeping line forward search, which means that they walked side by side and were approximately eight metres apart.

At the inquest Senior Constable Webb maintained this account. He said he stayed at the north eastern corner of the lake where the vegetation meets the sand blow, while 5 (he thinks) SES volunteers searched right around the northern and western sides of the lake. He says he saw them go into the area where the remains were later found. It took them about half an hour to search the bush around the northern, western and southern sides of the lake.

It is clear that one of the SES volunteers who went with Senior Constable Webb to search the area in question is John Hamilton. It is less clear exactly what searching he did as he has given four accounts of the search and his various versions of what transpired in that part of the operation are inconsistent.

In his statement, Mr Hamilton says that after searching a strip parallel to the beach, the whole party walked in along the northern track and searched each side of the large sand blow. The whole group then made their way back to the beach along the southern walking track before driving to the car park above the lake. They then searched down that track to Lake Wabby. When they got to the lake, he and two other SES volunteers and Senior Constable Webb went to the north eastern corner of the lake where the sand blow meets the bush. His statement continues "*we then walked south along the western side of the lake.*"

It is perhaps noteworthy that this statement was taken by Senior Constable Webb after the human remains were found in the area in question.

At the inquest Mr Hamilton gave quite a different account of this part of the search. He said that he, Senior Constable Webb and one other SES volunteer walked into the scrub at the north eastern corner of the lake but found it to be very thick and only went in that direction for 20 or 30 metres. He said that it would have been difficult to force their way through the scrub and that Senior Constable Webb did not seem insistent that the area be searched because he and the SES people agreed that that it was most unlikely that the person they were searching for would have gone in there.

Unfortunately, no one at the bar table nor the bench queried this inconsistency. The matter is further complicated by yet another version of the same search given by Mr Hamilton when he was spoken to by Senior Sergeant Rob Graham, the State Coordinator for Search and Rescue within QPS, in May 2003 when Senior Sergeant Graham was undertaking a review of the search.

Snr Sgt Graham read to Mr Hamilton his account of the search of the area where the remains were later found that is contained in his statement and paraphrased above. Mr Hamilton was somewhat evasive in his responses and seems to have been intent on making excuses about the search. He says "*It was casual, it was right at the death, we were finished.*" And a little further on in the interview he said "*From what we were told in the brief that was the dead set lowest probability area.*" When asked about the condition of the people

searching when the material part of the search was undertaken, he said *“it was already getting dark and we were rat shit and I think it was a quick finish off.”* He indicated that a thorough search of the wooded surrounds of the lake would have taken a few hours and that they could not have done that and still caught the barge back that evening.

It may also be of some relevance that Mr Hamilton indicated that he didn't want his comments to cause any trouble for Senior Constable Webb.

On 20 June 2004, Mr Hamilton was re-interviewed by a Detective Inspector attached to my office. He re-iterated the account he had given in evidence at the inquest and rejected the suggestion that on 3 April 2001 he, or any of his team, had searched the area where the human remains were later found.

The officer in charge of the SES volunteers gave evidence at the inquest and said he didn't believe the western and northern side of the lake had been searched, although he did recall Mr Hamilton accompanying a police officer to the northern end of the lake. He was not able to say what searching they undertook of that area.

All of the SES people involved in the search on 3 April 2001 have been interviewed by the Detective Inspector attached to this office. None of them say that they were involved in searching around the northern and western side of the lake and none of them recall seeing any of the other members of the party search that area. Nor has it been possible to identify who went with Senior Constable Webb and Mr Hamilton when they went down from the sand blow to the northern end of the lake.

The day following this search, 4 April 2001, the search for Mr Eason was suspended by Inspector Ryan but QPWS officers were instructed to continue to keep a lookout, to raise the matter with campers and other visitors and to continue to distribute the flyer concerning Mr Eason's disappearance.

The next ground search was on 6 May 2001, when an SES training exercise was used to again search for Mr Eason. On that occasion approximately 85 SES volunteers were engaged in apparently searching much the same area as had been covered previously.

Senior Constable Webb gave evidence that he was told that the area around the lake was again searched but he was given no detail of how that was done. Nor did the inquest receive any detailed evidence from any other source on that issue.

On 15 May 2001 three police divers searched the lake floor. Nothing of significance was found.

From that time on, no active searching was done. QPWS officers continued to raise the matter with other tourists and tour operators, there was some ongoing media coverage, some flyers were posted at various sites on the island and checks were made on the registers relating to property presented

to pawn brokers and second hand dealers to detect attempts to dispose of property of the missing man. However the next significant development occurred on 14 April 2003 when another English tourist, Arwen Heaton, was walking in the bush near Lake Wabby and found skeletal remains and some items of personal property.

On that morning, Ms Heaton had left her campsite and walked along the beach a few kilometres to the southern walking track. She intended to walk into the lake, and then walk up to the car park along the same track taken by Mr Eason's tour group. Ms Heaton is an experienced bushwalker and outdoor navigator. On the day in question she was relying for directions on a map of the island she had obtained from the QPWS.

When she came to the lake, she knew from the map that there should have been a walking path from the northern end of the lake leading up to the car park so she walked in a northerly direction along the eastern shore of the lake at the bottom of the sand blow. There were no signs indicating the path. When she came to the northern end of the lake she saw a track going into the bush and followed it for about 10 or 20 metres before concluding that it was not the track she wanted. She turned to retrace her steps and saw a skull.

Ms Heaton then made her way through the bush until she came across the track to the car park. She followed it to the lookout where she found a resort ranger who she told about the remains. He went with her back to where the skull lay in the bush. The ranger then took Ms Heaton to the police station at Eurong where they reported the find. Police then secured the scene and arranged for it to be photographed and comprehensively searched.

The search uncovered numerous bones and items of personal property which corresponded with items Mr Eason was thought to have had in his possession at the time of his disappearance including the colour and brand of his sandals and other clothing and a matching serial number on the camera.

The bones were all at the bottom of a steep slope near the base of a tree, although scattered over about 6 metres. The personal items were in two groups. Scattered down the slope were items that might be dropped by a person falling or stumbling – a compact disc, a tobacco tin, sunglasses and a camera lens and case.

Much nearer the bones, between 10 and 20 metres away from the items found on the slope, were things that might be expected to be more securely attached to the person – sandals and a swimming costume, a pair of shorts, a watch and a camera.

Some of the chattels had been damaged by fire but none of the bones nor the items of personal property found near them were burnt.

The skeletal remains were taken to the Queensland Health Scientific Services facility in Brisbane where they were examined by Dr Ansford, a forensic pathologist, who expressed the view that all of the bones were from the same

person who was likely to have been a middle aged male. The cause of death was unable to be determined because of the extent of the decomposition. However, there were no signs of recent ante-mortem injury. He noted that some of the bones had been gnawed by dogs or dingoes after death.

A forensic odontologist, Dr Alex Stewart, examined the skull found on Fraser Island by Arwen Heaton. By taking radiographs of the posterior dental quadrants and comparing them with the ante-mortem radiograph supplied by Mr Eason's dentist in England Dr Stewart formed the view that the skull was that of David Eason. He gave evidence at the inquest that he was convinced that the records showed teeth identical to the teeth in the skull found by Ms Heaton and this could only be explained by the teeth belonging to the same person.

Findings required by s43(2)

I am required to find, so far as has been proved, who the deceased was and when, where and how he came by his death. As mentioned earlier, these are not criminal proceedings and I am therefore to apply the civil standard of proof when considering these issues.

There is ample evidence that the remains found at Lake Wabby on 14 April 2003 were of David John Eason.

There is less evidence bearing on the other findings I must attempt to make, indeed it has been submitted from the bar table that there is no evidence in relation to these matters – that they are “*unknowable*.” In my view that submission wrongly subsumes all proof within the realm of direct evidence and fails to give sufficient regard to the conclusions that can be drawn from the evidence that is before the court.

It is well recognised that even when proof is required to the criminal standard, a court or a jury can make a finding based on circumstantial evidence – deductions or inferences that can be drawn from matters on which there is direct evidence. In making such deductions the court of jury has regard to their understanding of human nature and their experience of the way in which people act in circumstances like the ones in question – sometimes referred to as “*the common course of human affairs*.”¹³

To suggest that there is no evidence of how, when and where Mr Eason died wrongly assumes that these matters can only be proved by direct evidence and that no findings can be made in relation to them unless there is evidence that enables them to be proven to absolute certainty.

In *Briginshaw and Briginshaw* the Chief Justice said:-

There is no mathematical scale according to which degrees of certainty of intellectual conviction can be computed or valued. But there are differences in degree of certainty which are real and which can be

¹³ see *Martin v Osborne* (1936) 55 CLR 367 at 375

*intelligently stated, although it is impossible to draw precise lines, as upon a diagram, and to assign each case to a particular subdivision of certainty. No court should act upon mere suspicion, surmise or guesswork in any case. In a civil case, fair inference may justify a finding upon the preponderance of probability. The standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness or importance of the issue.*¹⁴

As a result of considering all of the evidence contained in the exhibits I am of the view that I can be sufficiently satisfied of some of the circumstances by which Mr Eason came to his death.

In criminal trials the general rule is that to be sufficiently satisfied on the basis of circumstantial evidence all other reasonable hypotheses inconsistent with guilt must be discounted.¹⁵ In civil cases it is only necessary that “*the circumstances raise a more probable inference in favour of what is alleged.*”¹⁶

So, in this case no strict proof is necessary. On that basis, I am of the view that it is possible to exclude a number of explanations for the matters on which there is no direct evidence and draw positive conclusions about what is most likely to have happened.

For example, I consider there is no evidence that Mr Eason took his own life. He manifested no suicidal tendencies and was part way through a much anticipated journey. His material circumstances were generally quite prosperous and his personal life far from bleak.

Equally, it could not be reasonably concluded that he decided to leave the tour and therefore set about deliberately to break the arranged meeting in the car park at 3.00pm.

There is no basis to conclude that Mr Eason was the victim of a homicide. The only reasonably probable motive for a deliberate killing is robbery and although Mr Eason’s wallet was not found, other valuable property was with his remains. It is easy to accept that the animals which removed some of his bones may also have taken the wallet. If he had been killed by an unknown person there is no rational explanation for his belongings being strewn down the hillside in the manner they were found. The only reasonably probable explanation for the distribution of those items is that they fell from him as he moved down the slope in an uncontrolled manner. The prospect of someone lurking in the bush and killing Mr Eason after he missed the track and then leaving him and his belongings where they were found is so improbable it can be discounted.

There are more likely and reasonable explanations of what happened. We know that if he followed the directions he was given by the tour guide, Mr Eason would come to the very space where his remains were found, as did

¹⁴ (1938) 60 CLR 336 at 340

¹⁵ see *Plomp v R* (1963) 110 CLR 234

¹⁶ *Chamberlain v R (No 2)* (1984) 153 CLR 521 at 535

Ms Heaton on the day she found them. It is reasonable to conclude that he came to be there while trying to meet up with the group. If he had been delayed or had chosen not to keep the arrangement, there would be no point in him seeking to walk to the car park. There would be other easier options for him to seek assistance. It would only make sense for him to go to that place on the afternoon of 29 March. Additionally, he was not to be seen on the tracks leading to and from the lake the next day nor was he seen on the beach.

These considerations allow me to be reasonably satisfied that Mr Eason went to the place where his body was found on 29 March and while there he became incapable of moving the short distance back to the lake or calling for help when other tourists visited the lake the next day. If he did not die immediately he went into that place shortly before 3.00 pm it is reasonable to conclude that he was in such an incapacitated state that he would have only survived a relatively short time.

There is no evidence of what caused his death. We do know that heart disease is the largest single cause of death and the most common cause of death in Australia and that the rate is even higher in the United Kingdom. We know that age, smoking, lack of regular exercise, sudden unaccustomed physical exertion and being male, are all factors which significantly increase the risk of heart disease and that heart disease frequently manifests itself for the first time in a fatal event.¹⁷ However, there are other possible causes of death, both internal to Mr Eason and external, such as poisonous snakes and spiders for instance, that can't be excluded.

Having regard to these considerations I make the following findings:-

Identity of the deceased – The human remains found near Lake Wabby on 14 April 2003 were of David John Eason

Place of death – He died near Lake Wabby on Fraser Island in Queensland

Date of death – He died on or about 29 March 2001

Cause of death – Unknown

Criminal charges – No person should be committed to stand trial

Issues of concern

There are a number of issues of concern raised by the findings of facts that I have made in these reasons. The most significant is the failure of authorities to find Mr Eason. That failure significantly increased the distress his death caused his family and friends. Not knowing whether he was dead or alive or what had become of him naturally made it so much more difficult to cope with

¹⁷ See Australian Institute of Health and Welfare, 2004, *Heart Stroke and Vascular Diseases – Australian Fact 2004*,

their loss. The failure to find Mr Eason also meant that when his remains were eventually discovered there was no way of telling how he died, whether he suffered a long and lingering death or whether he died from a medical condition that should cause relatives to take precautions.

For the reasons set out above, I am of the view that on the afternoon of 29 March 2001, Mr Eason went to the place where his remains were found on 14 April 2003 and never went anywhere else. It is in that context that the attempts to find him must be critiqued.

There is no suggestion that the authorities wilfully or recklessly disregarded concerns for Mr Eason's safety, indeed it is apparent that considerable resources were expended and conscientious efforts made to find him. However in my view there were also some serious errors of judgement that contributed to the failure of those efforts that have the potential to cause similar sub-optimal outcomes in the future unless they are addressed.

The delay in mounting an intensive ground search until 4 days after Mr Eason went missing meant that it was unlikely that he would be found alive, even if he had not died on the afternoon he went missing. I can appreciate why it was thought desirable to first utilise helicopters and I accept the evidence of the expert operators of the FLIR equipment that the conditions prevailing on Fraser Island meant that there was nothing to be gained by using that equipment. However, I don't accept that the SES should not have been called in at the first opportunity, namely on the morning of 30 April. The officer directing the search also thought so and I consider the reasons given for overruling his call were not sound. Nothing was discovered from the interviews with the tour party on 1 April that was of assistance in making that decision.

I also consider there was an unnecessary delay in interviewing the other members of the tour party. If interviewing them was justification for not mounting a ground search promptly, then it should have happened immediately. I can't believe that the other tourists would have objected to their trip being delayed for a couple of hours if the reason for that was effectively communicated to them. Indeed the only information that the detective tasked with coordinating the criminal side of the inquiry seems to have gained from those interviews was that none of the tour party was likely to have been responsible for the disappearance. If there was any thought that they may have been involved, to let them wander off to other tourist sites and to be interviewed at their leisure was irresponsible.

Of equal concern is the quality of those interviews when they were undertaken. It seems that no one was asked the crucial question – what exactly were the walkers told about the route they needed to take. The importance of this information seems to have been ignored. Even during the inquest police witnesses were suggesting the searchers had no way of knowing where the missing person may have gone and that all directions from the point of last sighting were equal possibilities. It seems incredible that when looking for someone who is lost more regard was not given to where he said

he was going to go and what he had been led to believe was the route to get there.

As a number of the searchers made clear, the area where Mr Eason's remains were found was considered a low area of probability for him to be found in because they knew of no reason for him to go to that area. When they were told of the directions he had been given their view in that regard changed.

What the searchers were told is also an issue. According to Senior Constable Webb, the searchers were told that they were looking for a person who had gone missing "*in the vicinity of Lake Wabby*". Mr Hamilton says he was told that Mr Eason had gone missing on the beach and that he was not going to go to the lake. Even accepting that limited information was conveyed to the officer coordinating the search it is concerning that even less was told to the searchers.

It seems that in this case the SES volunteers were used as foot soldiers and given instructions about where to search rather than being given sufficient information to enable them to use their considerable knowledge and experience to contribute to the search plan. The search coordinator was inexperienced – this was Senior Constable Webb's first land search – and he received little support from his police superiors. The contribution that more experienced searchers could have made was needlessly wasted. An example of this was Mr Hamilton's view that the area they were required to search was too much to be done in a single day. Greater consultation in the planning stage may have led to the SES group staying on the island over night. There is a basis for concluding that if this had happened the area where Mr Eason's remains were found would have been better searched.

In trying to discover why Mr Eason was not found by authorities, the investigation has focussed on whether the area where he was found was searched. Only one witness, Senior Constable Webb, gave sworn testimony that it was. Another witness gave written accounts tending to support Senior Constable Webb's version but retracted it under oath and when re-interviewed after the hearing. I consider that Senior Constable Webb's evidence is not reliable and indeed have given consideration to whether it should be further investigated in an attempt to ascertain whether it was deliberately false. I have decided against that because it is apparent that it would be impossible to establish with sufficient certainty exactly what searching did take place. Further, it is apparent that like most of the other witnesses Senior Constable Webb is confused about many other aspects of the search. In his initial account of what was done there is a paucity of detail and his later accounts are inconsistent.

An absence of any effective recording of what was searched by whom and when, not only made it difficult for this investigation to reconstruct the operation but would have equally hindered those who came after the initial searchers in considering what further searching should be undertaken.

Another aspect to the searching that causes me concern was the failure to utilise trained search dogs. The statement from the State Coordinator of the Police Dog Squad makes clear that there was at least one properly trained dog unit near to hand when Mr Eason went missing. No adequate explanation was provided as to why this resource was not utilised.

It is basic flaw in investigative technique to fail to consider all possible explanations for the events under investigation and to make assumptions that are not supported by evidence. Regrettably that is what seems to have happened in this case. Only four scenarios were considered – murder, absconding, drowning and suicide - and then the authorities sought to eliminate those in turn rather than considering the need for a more focussed repose. From an early stage it was assumed that he had left the island or had drowned. If Mr Eason had left the island of his own volition he didn't need any help. If he'd been murdered, committed suicide or drowned he was beyond help. But if he was lost or injured in the bush, it was essential that he be found as soon as possible. By failing to consider that possibility those responsible for assisting Mr Eason deprived themselves of the perspective that may have prompted them to search more urgently and more thoroughly.

Some of the witnesses placed great store on the fact that a fire had burnt the area where Mr Eason's remains were found. While this may help to explain why he was found by a solitary walker who was not even looking for him, it provides scant comfort to those who say they conducted an effective search. It may explain why such a search would be more difficult to mount. It does not explain why so many items of interest were not found.

These issues focus on the response of the authorities after Mr Eason went missing. Of course it is probably even more important that those responsible for managing the island take steps to reduce the likelihood of people becoming lost. The signage at the entrance to the southern walking track when this court undertook a view of the area still contained inadequate information as to how a walker could get from there to the top car park. The signs at the lake are also inadequate. These shortcomings should be addressed by QPWS forthwith.

I am advised that the Department of Emergency Services, the government department responsible for administering the SES program, that changes are being made to their procedures concerning briefing and debriefing of searchers aimed at introducing a more comprehensive set of competencies. I am unable to comment on the likely effectiveness of that proposal as I have no detail of it but clearly unless the QPS also changes its procedures the improvements in SES practice will not have an impact on search outcomes.

After Mr Eason's remains were found, the search efforts that had failed to find him were reviewed by the QPS State Search and Rescue Coordinator. A letter from the Assistant Commissioner Operations Support Command to me¹⁸ indicated that steps have been taken to address some of the shortcomings

¹⁸ exhibit 161

identified by that review. I recommend that the further shortcomings identified by this coronial investigation should now be fed into that process.

Australia is deriving increasing economic benefits from eco-tourism and is advertising our wilderness in the national and international market place as suitable for such activities as those engaged in by Mr Eason and the tour group he travelled with. It is inevitable that some of the tourists who respond to this marketing will become lost and it is incumbent on the Australian authorities to respond to these incidents as effectively as possible. Sadly, that was not done in this case. Alarming, some of those involved were heard to say that they would do nothing differently if faced with the same circumstances in the future. That might have been a defensive reaction to the criticism they perceived directed at them in this case. It may be also that the unsatisfactory outcome of this case was the coincidental, cumulative effect of numerous unique aspects of it that are unlikely to be replicated. Certainly the record of the QPS in rescuing lost people appears to be very good. However the QPS is put on notice by the outcome of this case that there are issues that need to be addressed.

Riders

Pursuant to s43(5) of the Act I make the following recommendations:-

Recommendation 1

That the QPS State Search and Rescue Coordinator review the issues of concern identified in these findings and consider whether further changes to QPS policies and procedures are necessary to address them, in particular the manner in which searches are planned and recorded.

Recommendation 2

The QPWS review the adequacy of the signage in the vicinity of Lake Wabby.

Michael Barnes
State Coroner
6 December 2004