



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

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Saxon Phillip BIRD

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

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FINDINGS OF: Mr Michael Barnes, State Coroner

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REPRESENTATION:

Counsel Assisting:	Mr Peter Johns
Family:	Mr Chris Branson QC (instructed by Flower & Hart Lawyers)
Surf Life Saving Association:	Mr Ralph Devlin SC with Mr Mark Gynther (instructed by Lander & Rogers Lawyers)
Gold Coast City Council:	Mr Michael Nicolson (instructed by Cronin Litigation Lawyers)

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The *Coroners Act 2003* provides in s45 that when an inquest is held the coroner's written findings must be given to the family of the person who died, each of the persons or organizations granted leave to appear at the inquest and to various officials with responsibility for any issues that are subject of recommendations. These are my findings in relation to the death of Saxon Phillip Bird. They will be distributed in accordance with the requirements of the Act and posted on the website of the Office of the State Coroner.

Introduction

Saxon Bird was 19 years of age when he died on 19 March 2010 while competing in the 2010 Australian Surf Life Saving Championships (the Championships). He was competing in the ski leg of a semi final of the under 19 iron man event when he was stuck by an unmanned ski that had been lost by another competitor. Saxon was knocked unconscious and submerged by the large and choppy surf. Despite concerted attempts to locate him, 53 minutes passed before his lifeless body was pulled from the ocean.

These findings:

- Confirm the identity of the deceased man, and determine how he died and the time, place and medical cause of his death;
- Consider the adequacy of the arrangements and policies intended to ensure the safety of competitors at the Championships;
- Critique the way in which those arrangements and policies were applied to the running of the Championships – in particular to the decision to proceed with competition at Kurrawa on the day of Saxon's death;
- Assess the adequacy of the attempts to rescue Saxon after he was struck; and
- Reflect on whether changes to policy or practice in the management of future Surf Life Saving Australia (SLSA) events would enhance the safety of competitors and/or be likely to prevent similar deaths from occurring.

Social utility of SLSA

As the catalyst for these proceedings is a sad and unnatural death that occurred during a SLSA event and the investigation has scrutinised whether the policies of SLSA and/or the actions of its officials contributed to the death, it is inevitable that this report will give prominence to and focus on any shortcomings in those areas. To keep matters in perspective, it is appropriate to balance that by acknowledging the social utility of the organisation's activities, including the Championships and to acknowledge that death or serious injury during such events is extremely rare.

The origins of SLSA can be traced to 1907¹ driven by a boom in the popularity of bathing in the surf that occurred in the first decade of last century. Organised surf life saving helped Australians overcome their fear of the sea. It brought people from diverse backgrounds and social strata together in a healthier environment than existed in many other parts of the city. Life saving clubs provided a disciplined presence that made disrobing and cavorting by mixed gender groups less unseemly than the rigid morals of the time would otherwise have permitted. The movement contributed to the development of an urban leisure lifestyle centred around our beaches.

Surf life saving now has more than 153,000 members from more than 300 member surf life saving clubs. In addition there are more than 50,000 junior members or 'nippers'. Around a third of those members volunteer their time and skills to patrol more than 400 Australian beaches. SLSA's volunteer life savers perform on almost all Australian beaches near population centres. Since the creation of surf life saving clubs their members have saved hundreds of thousands of Australians from the risk of drowning.²

Our life savers are renowned around the world and contribute to our tourism industry.

To summarise the culture of the organisation and its significance I can do no better than to quote the former Governor General, Sir William Deane who wrote of SLSA:

*From the beginning, its ethos has been unselfish community service through teamwork, egalitarianism, friendship and disciplined training and competition. That ethos and a very visible presence on our beaches have combined with countless instances of personal courage to establish a movement and its clubs as emblematic of many of the very best features of our people and our way of life.*³

Important as rescuing people in peril is, the beneficial effects of the association spread more broadly and more deeply. I respectfully agree with Sir William that the values participation in SLSA activities aims to instil in its members have never been more needed:

*(I)n these days of often selfish preoccupation with material things, our surf lifesaving movement and its clubs continue to teach young Australians not only the value of leadership, initiative, and self reliance, but the basic importance of human decency, unselfishness and concern for others.*⁴

¹ On 18 October 1907, a meeting of representatives from a number of Sydney surf clubs met to form the Surf Bathing Association of NSW.

² It has been calculated 170,000 rescues had been performed by 1970 and approximately 10,000 per year since. Jaggard E.(ed),*Between the flags*, UNSW Pres, 2007, p xiii

³, *ibid* p xi

⁴ *ibid*

SLSA is a registered charity and is governed by a body known as the Australian Council made up of a President; the CEO; three directors of, alternatively, development, surf life saving and surf sports; and a representative of each state surf life saving association. The CEO is assisted by a number of paid staff, however in line with a long standing tradition, there is a heavy reliance on those willing to volunteer their time; indeed it is the largest volunteer organisation in the country.

I accept that part of the attraction to young people to join or stay in the organisation, and conduct volunteer patrols is the opportunity and structure of the surf competitions that SLSA and its constituent organisations provide.

I also accept that by testing themselves in tough competition the skills life savers depend upon to undertake rescues are enhanced.

However SLSA is more than just a competition based organisation; there is an essential public service and public good element in its overall aims. Without SLSA there would not be so many people saving lives on Australian beaches nor so many people developing attitudes to service and sacrifice that enrich our community.

The investigation

The Queensland Police Service (QPS) assumed the role of lead agency responsible for the investigation of Mr Bird's death. The QPS investigation was led by Detective Acting Sergeant Dean Anderson and Sergeant Steve McBryde. They maintained contact with officers from Workplace Health and Safety Queensland and Maritime Safety Queensland who examined the incident in the context of their own areas of expertise and responsibility; the latter agency compiling a report which was tendered at the inquest.

Counsel assisting attended regular meetings with the investigators and it is apparent that a co-operative and collaborative approach was adopted that minimised unnecessary duplication of effort that sometimes occurs in such circumstances. Each agency contributed its respective expertise to the investigation.

A large number of witness statements were taken and interviews conducted. Detectives Anderson and McBryde disseminated a questionnaire in order to identify relevant interviewees from the many potential witnesses. All relevant planning and policy documents relating to the Championships were obtained. This extended to copies of contracts between SLSA and commercial sponsors; contracts between SLSA and the Gold Coast City Council (GCCC) and State Government; minutes of planning meetings; safety manuals and policy statements.

Video footage of the surf conditions on 18 and 19 March 2010 and of the semi-final in which Saxon Bird was struck was provided by Channel 7, the commercial broadcaster of the event. Still photographs of the incident in which Saxon was struck were provided to investigators by an amateur photographer.

At the conclusion of the QPS investigation Detective Acting Sergeant Anderson compiled a report which was tendered at the inquest.

SLSA conducted an internal investigation and provided a copy of the findings to those assisting me. The organisation cooperated fully with the investigation from the outset and that cooperation and assistance continued throughout the inquest.

The family has acknowledged the respect and courtesy shown to them by the investigators.

As a result of the efforts of the various investigative agencies and SLSA I am satisfied that I was given access to all relevant material. I commend all involved.

The inquest

A pre-inquest conference was held in Brisbane on 10 November 2010. Mr Johns was appointed counsel assisting and leave to appear was granted to the family of Mr Bird, the Surf Life Saving Association, Gold Coast City Council and Maritime Safety Queensland, who later withdrew.

An inquest was held in Brisbane over two sittings: the first for five days commencing 28 February 2011, and the second for three days commencing 9 May 2011. The court also heard an interlocutory application brought by the family on 25 March 2011. Evidence was heard from 31 witnesses and 301 exhibits were tendered. After the conclusion of the evidence helpful submissions were received from some of those granted leave to appear.

Social history

Saxon Bird was born in Sydney on 4 November 1990 to his parents Dana and Phillip Bird making him 19 when he died. He is survived by them and his sister Arielle. After leaving school he commenced studying for a Bachelor of Business degree.

He had been involved in surf life saving since the age of nine when he joined the Queenscliff club on Sydney's northern beaches. He remained with that club and was competing in their colours when he died. Saxon quickly showed considerable talent, winning a NSW state medal in under 11 competition. He progressed to be crowned the under 15 and under 17 national surf champion and by the time he arrived at the 2010 Australian Championships he was the reigning NSW under 19 iron man champion. A member of the NSW high performance squad, the honing of his talent required extraordinary commitment and a disciplined approach to long hours of training. He was an elite athlete with a promising future in the sport.

Although noted for his particular strength as a swimmer, Saxon had spent many hours training on a surf ski and was considered very capable on the craft by his parents, coaches and other competitors. At the 2010

Championships he intended to compete in the surf swim, board, ski and iron man events in the under 19 division.

It is clear from the material tendered at the inquest that Saxon was liked and respected by a wide circle of friends and colleagues and that he was very much loved and is very much missed by his family.

The Australian Surf Life Saving Championships

Venue

The largest of the surf sports events organised by SLSA is the annual Australian Surf Life Saving Championships (the Championships). It has been held annually and without interruption since 1915. In 2010 it was scheduled to run from Tuesday 16 March to Sunday 21 March inclusive.

In the preceding three years the event had been held at Scarborough in Western Australia but in 2010 was staged at Kurrawa on the Gold Coast. The event was not new to Kurrawa having been held there in 2006 and on many occasions prior.

The family submitted that Kurrawa and adjoining beaches were inherently dangerous and an unsuitable venue for the Championships at which competitors of varying ages, experience and ability could be expected to participate. I am not persuaded that is the case: wherever the event is held, the organisers are obliged to ensure it is managed as safely as is reasonably possible. If the surf at Kurrawa is more frequently bigger and challenging than other beaches, that is something the organisers would have to plan for.

Similarly, when as in 2010, the Championships are run in surf affected by a cyclone, the organisers have to be alert to any changes this might warrant to the way the carnival is conducted. I am not persuaded, (and indeed I don't understand the family to have submitted) that the event should never have been held at Kurrawa or that it should have been cancelled or moved when it became known a cyclone off the coast of North Queensland might affect the surf.

Policies and planning for the 2010 Championships

SLSA policies and procedures that apply to each surf sports event are contained in the Surf Sports Manual (the Manual).

The (ACE) Committee

The Australian Championships Executive Committee (the ACE Committee) was referred to in the Manual as the "*organising committee*". It was charged with the planning and delivery of the 2010 Championships. This included the management of predominantly logistical issues such as venue layout, staffing, sponsorship and engaging suppliers. Decisions made by the committee were mainly tasked to paid SLSA staff, two of whom sat on the committee.

The 2010 ACE Committee members were:

- David Thompson: Director of Surf Sports (Chairman)
- Grant Baldock: General Manager – Sport (full time employee and acting as delegate for the CEO)
- Sally Fitzsimmons: Competition Manager (full time employee)
- John Brennan: Championship Referee
- Ken Bird: Protocol Officer
- Graham Bruce: Logistics Officer

In the lead up to the 2010 Championships the ACE committee met monthly and minutes of these meetings were tendered at the inquest. Relevantly for these proceedings, the minutes record some discussion in relation to the organisation of alternative venues and note that the Emergency and Safety Plan was in the process of being updated.

The Carnival Committee

The role of a “*competition committee*” is also set out in generic terms in the Manual. A requirement for such a committee was established following the death of Robert Gatenby in a surf boat accident at Kurrawa during the 1996 Championships. The Manual makes it clear the intention was to ensure there was a body responsible for the implementation of safety and contingencies prior to, and during, an event.

In practice the competition committee for the Championships convenes when competition is imminent. It was charged with the safe conduct of the Championships and the oversight, and if necessary implementation, of the Contingency Plan, Safety and Rescue Guide and Evacuation Plan (together, the Safety Plans). Neither the Manual nor any of the Safety Plans detail how decisions are to be made by the committee. The evidence at the inquest was that its members sought consensus. Presumably, were this not possible, the majority view would prevail with the chairman having a casting vote if necessary.

The Carnival Committee for the 2010 Championships consisted of:

- David Thompson: Director of Surf Sports (Chairman)
- Grant Baldock: General Manager – Sport (acting as delegate for the CEO)
- John Brennan: Championship Referee
- Darren Moore: Safety and Emergency Services Coordinator
- Graham Bruce: Logistics Officer

The committee met at least twice daily during the Championships along with a number of others including area referees and advisors on specific issues. The President and CEO of SLSA were also present at some meetings (notwithstanding that the CEO had a proxy on the committee). As recommended by the 1997 changes, the committee was provided with a private space in which decisions could be made away from the distraction of the throng of officials and competitors.

The Manual confers the power to postpone, cancel or relocate the Championships (wholly or in part) solely on the Carnival Committee. The decision of the committee is not reviewable and it answers to no other person or body of people within SLSA.

The Safety and Emergency Services Coordinator was a position established in 1997 and charged with overseeing the compilation and implementation of the Safety Plans. The person holding this role was purposely excluded from the ACE committee in order to assist with the perception of any conflict of interest between issues of safety and commercial considerations.

In 2010 the Safety and Emergency Services Coordinator was Darren Moore, a serving NSW police officer and surf life saver of many years experience. He served in this position on a volunteer basis, as had been the case when he performed the role of assistant to the coordinator at the previous two Championships and when performing the role at a state level with NSW.

Although highly qualified and experienced in surf life saving matters generally and in this role, it was acknowledged that Mr Moore did not have any formal training in coordinating marine search and rescue operations. Nevertheless, I do not accept the assertion in the family's submission that because he had no formal qualifications, Mr Moore was unable to provide any meaningful evaluation of the dangerous nature of the surf conditions. I am unaware of the existence of any formal qualifications relevant to that task. In any event, I consider Mr Moore's practical experience in competing in the surf and officiating at surf carnivals at a high level appropriately equipped him for that function.

The hundreds of officials involved in the running of events at the 2010 Championships were arranged into a hierarchy, atop which sat the Carnival Referee, John Brennan.

The beach at Kurrawa (and later at North Kirra) was divided into competition arenas, each assigned an Area Referee answering directly to Mr Brennan. This included a referee assigned to oversee the surf boat arenas and another to oversee the use of power craft. The Open area, being the largest, was further sub-divided into two sections, each with a referee. Each area or section was assigned a chief judge, assistants to the judge and referee, a starter and numerous other officials including first aid and competitor liaison officers.

The hierarchy of officials was designed so that information could be fed through recognised channels and ultimately reach Mr Brennan. The inquest heard that direct approaches were sometimes made to other members of the Carnival Committee. Indeed Mr Moore saw it, properly, as his role to seek out opinion from officials.

Surf Sports Manual

The Manual sets out the framework by which carnivals are to be planned and run. It sets out the following principles:

Preliminary

The provision of safety management is vital to the conduct of all SLSA competitions.

...

At all competitions, the organising group conducting the competition shall provide sufficient and properly equipped and qualified water safety personnel (at each venue) as required by the appropriate life saving authority.

If an emergency arises during a competition, correct control and discipline shall be maintained under the direction of the Referee or Safety and Emergency Coordinator.”

Safety and rescue plan.

A safety and rescue plan relevant to the scope of the competition being conducted is essential to the sound planning process. The plan should ensure appropriate procedures are in place if an emergency occurs during a competition.

The contents of a plan may include the following sections:

Implementation

Proper command and control needs to be maintained in an emergency or major incident. It is essential that the instructions outlined in the plan are widely communicated and that the personnel who have the authority to activate the Plan are identified. In this regard, the key persons usually are the Referee, the Safety and Emergency Coordinator and the Competition Organiser or the Event Manager.

Water Safety

The Water Safety Coordinator(s) and emergency safety personnel (including IRBs) need to be appointed and operate as per their position description. In addition, liaison and rescue protocols need to be identified and promulgated.

Competition Contingency Plan

If adverse weather conditions prevent the conduct of either a part, or the whole of a competition, it is essential that a clear and simple Contingency Plan be established to enable assessment of the conditions and, if appropriate, the safe completion of all competition.

The major threat for the conduct of open water competition relates to the advent of adverse weather conditions, either before or during the competition. Adverse weather can create extremes in heat or cold, storms, dangerous surf or swell and associated dangers for

competitors. Secondary natural threats are considered less likely, although man-made disasters, such as pollution of the surf and beach should not be discounted.

The following is put forward in SLSA policy as a draft Contingency Plan for surf life saving competitions:

Potential Threats

- Adverse weather
- Disasters

Weather Forecasting

Weather forecasts will be used by the Competition Committee (refer Section 12) to assist in the decision making. As the weather develops, more regular bulletins and information needs to be obtained depending on the situation. Subject to the size of the competition, and risk factors present, weather monitoring should commence approximately one week prior to the start of the competition. If the competition extends beyond one day, the Competition Committee should obtain weather forecasts each morning and evening.

The Chain of Command and Decision making

The Competition Committee shall determine the response to hazards as they occur, or otherwise as required. The sole responsibility for suspension, cancellation, postponement or relocation of part or all of the competition rests with the Competition Committee.

The decision to enact the Contingency Plan is the responsibility of the Competition Committee. The Referee is solely responsible to the Competition Committee for the recommendations concerning competition safety.

Alternative Locations - Contingencies

- Alternative similar (surf) location(s)
- Emergency locations – protected water

Aim and Principles of Relocation

The aim of relocating to an alternative venue is to ensure that the competition may be safely conducted within the timeframe set down. If water conditions prevent water-based competition, and the beach itself is unaffected, then only water events may need to be relocated.

Outline Plan

There are four primary options:

- Complete relocation of the competition.
- Partial relocation, where only those events considered unsafe will be relocated.

- *Postponement of part, or all, of the competition to a later date.*
- *Cancellation of part, or all, of the competition.*

Action in the event of Death or Serious Injury

In the event of death or serious injury to a competitor or spectator during the period of the competition the Referee is responsible for any immediate decision to suspend or postpone competition. The Safety and Emergency Coordinator is responsible to the Referee for handling the situation. Once the situation is assessed, the Referee shall make recommendations to the Competition Committee.”

A set of safety plans was in place for the 2010 Championships.⁵ It is appropriate here to note the relevant parts of the safety plans:

Aim and Principles of Relocation

The aim of relocating to an alternative venue is to ensure that the Championships can be safely conducted within the time frame set down. A Risk Assessment will be conducted (sic) to ensure as many events as possible remain at Kurrawa.....

It was acknowledged by various officials when interviewed by police that the second sentence of this passage is unfortunately worded. This section of the plan was amended for the 2011 Championships.

Much was made at the inquest of the following passage in the contingency plan:

The decision to relocate is to be made as early as possible, preferably on the day before. For each option the timings are as follows:

To relocate the whole carnival to another location the decision must be made by no later than 12:00 midday on the day 7 days preceding the Championships.

To relocate part of the Championships the decision must be made by no later than four hours prior to the start of competition at the alternative venue, but preferably on the day before.

The plan goes on to say:

Obviously, relocation of only part of the Championships could take less time dependent on the size of the relocation.

The relevance of this passage to the events of 2010 is addressed below.

The 2010 contingency plan states:

⁵ Exhibits C8, C9, C10 and C11

In the event of the presence of natural or manmade hazards, particularly adverse weather conditions preventing the conduct of part or all of the competition events, it is essential that a clear and simple contingency plan be established to enable the competition events to be completed. The major threat identified by the contingency plan is adverse weather from prevailing cyclonic conditions, either before or during the Championships.

The evidence given at the inquest is that members of the Carnival Committee were mindful that cyclonic weather conditions offshore could cause difficult surf at Kurrawa Beach during the Championships. In order to address issues arising from this the contingency plan set out the chain of command for decision making:

The chain of command in decision making:

The Carnival Committee will determine the response to the threats as they occur, or as required. The sole responsibility for suspension, cancellation, postponement or relocation of part or all of the Championships rests with the Committee.....

The decision to enact this contingency plan is the responsibility of the Committee. The Referee is solely responsible to the Committee for recommendations concerning competition safety.

The Safety and Rescue Guide developed for this event is to be applied by the Referee in making the recommendations in consultation with the Safety and Emergency Services Coordinator.

The 2010 contingency plan identified the alternative surf locations for 2010 as being:

1. North Kirra Beach;
2. Burleigh Heads.

Emergency locations for protected waters are identified as:

- (a) Redcliffe (surf boats only);
- (b) Marine stadium (Southport Spit);
- (c) Tallebudgera Creek.

In respect to weather forecasting, the 2010 contingency plan states:

Weather forecasting

Weather forecasting will be used by the Committee to assist in the decision making. Forecasts will be provided by the AVFAX and the Internet on request. This is the responsibility of the Safety and Emergency Services Coordinator, who will disseminate the information to the Committee at regular intervals, or as required.

As the weather develops, more regular bulletins and information will be provided, dependent on the situation.

Monitoring weather should commence approximately one week prior to the start of the Championships.

The Safety and Emergency Services Coordinator shall provide a weather forecast each morning at 7.00am and a further update later in the day to the Carnival Committee. The Contingency Plan provides that the Carnival Committee may:

- (a) reschedule the program;*
- (b) use an alternative competition arena at Kurrawa;*
- (c) move the carnival arenas north or south along the beach;*
- (d) partial relocation away from Kurrawa;*
- (e) complete relocation of the Championships.*

The 2010 safety and rescue guide (“the guide”) sets out a risk assessment process, consisting of:

- (a) hazard identification;*
- (b) risk determination;*
- (c) development of an action plan;*
- (d) review/monitor the situation;*
- (e) report.*

It states:

*“(a) big surf conditions are more hazardous than small surf conditions;
(b) some events, such as the surf swim, are inherently less dangerous than, for instances, a surf boat race, while at the same time taking into account beach conditions, marine stingers or even available daylight.”*

The guide set out a requirement that the Safety and Emergency Services Coordinator complete “arena assessment sheets”. These sheets allocated a grading of risk to various elements, including the age, ability of competitors, nature of event and weather and sea conditions. The sheets completed by Mr Moore were tendered at the inquest.⁶

The guide also sets out procedures to be used in respect to:

*“(a) major event;
...
(c) death;
...
(h) missing person;
missing person in the water;
resuscitation*

On their face, the Safety Plans drafted by Mr Moore for the 2010 Championships adequately addressed the requirements as set out by the Surf Sports Manual. The issue for determination is whether the practices adopted

⁶ Exhibit C16

by individuals and committees during the 2010 Championships were in accordance with those documents. This will be dealt with later in these findings.

The QPS involvement

The Queensland Police Service allocated a Sergeant and two, two officer crews to police the carnival. Sergeant John Kazmierowicz, was the officer in charge. He gave evidence at the inquest. In the early part of 2010 he had attended two meetings of those involved with preparation for the Championships including the SLSA site manager, Craig Williams, and representatives of the GCCC.

Sergeant Kazmierowicz told the inquest that he had no formal training in the management of search and rescue operations on water, although during his service on the Gold Coast he had been called to deal with searches for, and recovery of, the bodies of numerous drowning victims. He had no background or experience in life saving or surf sports.

The District Officer for the Gold Coast at the relevant time was Superintendent James Keogh. He also gave evidence at the inquest and confirmed that prior to the carnival he had approved a QPS operational order for the event to which was annexed a copy of the SLSA Safety Plans. As someone with an extensive background in surf life saving himself he was well placed to critically appraise these documents. Superintendent Keogh was kept updated throughout the carnival through the monitoring of incident logs and contact with Sergeant Kazmierowicz.

In the lead up to the carnival Darren Moore met with two officers from the Gold Coast water police and they discussed how the water police would respond in the event that a person went missing. There is no doubt that the Gold Coast water police had superior resources and expertise to take charge of a protracted search and rescue but of course being based at Southport and having responsibility to patrol the length of the Gold Coast there was no certainty they could respond in a sufficiently timely manner in an emergency. Superintendent Keogh's view was that as the water police were to take control of any search he saw no problem with Sergeant Kazmierowicz' lack of surf life saving or search and rescue experience.

Events as they unfolded

Surf conditions prior to 19 March

As mentioned earlier, one of the important tasks for Mr Moore in the lead up to the Championships and for their duration was to collate information on weather and surf conditions and advise the Carnival Committee. He told the inquest he did this by monitoring a range of different sources including the Bureau of Meteorology (BOM) and various websites.

At the inquest much attention was given to the weather patterns affecting the Gold Coast in the week leading up to 19 March 2010. The most obvious of these was Cyclone Ului which had formed in the South Pacific the previous

week. In the week commencing 13 March it followed a relatively consistent, slow, south-westerly path. By the morning of 19 March it was around 550 nautical miles north east of Mackay. Focus was also placed on the effect of a high pressure weather system pushing up from the south over the same period.

The BOM forecast that the swell size at Kurrawa was likely to increase as the week progressed. Mr Moore's report to the Carnival Committee on Tuesday 16 March predicted seas of 3.5 metres on Friday 19 March, 4.0 metres on Saturday and peaking at 5.0 metres on Sunday. The actual swell size and conditions as recorded by Mr Moore as the week progressed showed the forecasts to be largely accurate, at least through to Friday 19 March. All of the officials who gave evidence or were interviewed about the issue, with one exception, were aware of the forecast and expected wave height and power to increase as the week progressed.

The exception to this general consensus was the view of Mr Brennan. He gave evidence that he believed the surf conditions were at their peak on Thursday 18 March and were likely to ease thereafter. He maintained in evidence that the conditions on Friday in fact reflected his forecast. This is inconsistent with the evidence of other witnesses who said the surf conditions on Friday morning were at least as difficult as they had been on Thursday. Importantly, it is inconsistent with the Arena Assessment sheets prepared by Mr Moore and signed by way of acknowledgement by Mr Brennan. These sheets show that Mr Moore estimated the swell to be 2.4 metres high at 3:00pm on Thursday and 2.7 metres high at 6:00am on Friday morning. Mr Moore explained that he made these estimates by going to the beach and observing the height of the waves at the point they were breaking.

Mr Brennan sought to justify the inconsistency between his expectations and the BOM forecasts by explaining that he relied on local knowledge and experience; his interpretation of the raw metrological data on the BOM site; and the greater weight he placed on another website's prediction. He said he countersigned Mr Moore's assessment sheets simply because he understood it was Moore's role in the Carnival Committee structure to put forward the "official forecast". Apparently, he did not think to share his contrary view with the other members of the Carnival Committee.

Events of Tuesday 16 March

At 12:00 noon the Carnival Committee met and Mr Moore outlined that it was expected the swell would increase throughout the week and forecast to peak on Saturday at over 4.0 metres.

As a result it was anticipated that the Championships would not be able to be completed at Kurrawa and alternative venues were likely to be needed for some of the water based events. Accordingly, Messrs Moore, Thompson and Baldock inspected alternative sites including Marine Park Stadium by helicopter.

The Masters events were conducted on 16 and 17 March. The video footage shows large and powerful surf caused problems for some competitors. Some masters competitors gave evidence at the inquest and reported the surf was very powerful and challenging.

Michael Locke, who had competed in surf ski events at the Championships in each of the last 25 years, told the inquest that he and his wife competed in Masters ski events on the Tuesday and Wednesday. He arrived at Kurrawa on the Monday and spent some time watching the surf which he described as '*big and bumpy*'; so much so that he decided against training in it. He estimated the swell at six foot. He told the inquest that the surf on the Tuesday was "*still big*" but he was keen to race and completed his events. His wife also completed her races but Mr Locke noticed several other female competitors failed to finish.

Mr Locke described the conditions on Wednesday 17 March as '*slightly bigger, maybe up to 6 and a half foot, but breaking more consistently than the previous day*'. He noted that several crews in the women's double ski events were unable to get out through the inner break. Mr Locke went on to tell the inquest that in his estimation, the conditions at Kurrawa were bigger on each successive day of competition and at their peak in terms of both size and difficulty on Friday 19 March.

Events of Wednesday 17 March

At the early morning Carnival Committee meeting alternative timetables and use of the lay day were discussed as a result of the increasingly rough conditions. Weather reports continued to reflect increasing swell through to Saturday.

Further discussions about alternative venues continued at the midday meeting. It was reported by one member that the main alternative still water venue, Marine Park Stadium, might be suitable for four areas to be set up and used if necessary. However, the evidence from Mr Thompson was that he had been aware since Sunday 14 March that another organisation had booked that site which meant it was unlikely to be available.

Shortly after this meeting Mr Thompson was contacted by Boat Referee Tony Haven who advised that the Boat Panel wished to meet to discuss surf conditions for the open and under age boat competition that was scheduled to commence the following day. Mr Thompson indicated he was too busy to meet with them and advised Mr Haven to tell the Boat Panel that concerns should be raised through the Carnival Referee, Mr Brennan.

At a regular briefing for team managers held at about 2:00pm, Mr Moore confirmed the forecast for increasing wave heights. He said in evidence that he advised the team managers that they should consider whether individuals or teams within their clubs should compete having regard to their skills and the increasingly challenging conditions.

It is apparent that at least some of the boat teams continued to have concerns about the conditions they expected to confront the next day. The log kept by the Safety and Emergency Services Coordinator, Mr Moore, records that at 3:30pm Mr Haven spoke to him about “*concerns re program and expectations due to wave conditions*”.

At about 4:00pm Mr Thompson’s attempt to avoid meeting with the Boat Panel was undone when a number of them approached him as he was walking between venues. Mr Haven was also present. Apparently some of the group quite effusively articulated their view that the boat competition should be moved to North Kirra and that it would be unsafe to commence the competition at Kurrawa the next day. Mr Thompson remained steadfast in his view that it was not his role to intervene and advised them to discuss the issues with Mr Brennan. He challenged their assessment of the likely conditions by saying words to the effect; “*What makes you think your forecast is better than ours*”?

Mr Thompson gave evidence of various reasons for his response, including that the Masters competition had proceeded over that day and the previous day without complaints; he accepted Mr Moore’s advice that likely surf conditions on the following day did not suggest surf boat racing would be unduly dangerous; and that there was a pervasive culture within the boat competition to seek to manipulate the officials for tactical advantage. He nonetheless raised the Boat Panel’s concern with the Carnival Referee, Mr Brennan, who discussed the issue later in the afternoon the Boat Area Referee, Mr Haven. The decision to proceed with the boat races at Kurrawa the following day was confirmed.

Events of Thursday 18 March

On Thursday the daily early morning Carnival Committee meeting again focused on the expectation that the surf would be too dangerous for at least some of the events scheduled for Friday and Saturday. Accordingly, at about 8:00am Mr Baldock and Mr Ken Bird were detailed to review alternative venues.

The Boat Area Referee, Mr Haven attended the boat area before competition commenced and reminded the sweeps that in view of the conditions they should have regard to the competency of their crews when considering whether they should compete.

Notwithstanding this warning, soon after the surf boat events commenced, two rowers were injured. They were taken to hospital with precautions taken in case either had sustained spinal injuries, although after being examined they were not admitted.

A little later in the morning Mr Haven met with the Under 23 women’s boat sweeps and advised that their events were being postponed due to concern about the competitor’s ability to handle the conditions. He explained at the inquest that he was concerned that those competitors would not be strong enough to power their craft through the seas then being experienced.

Later in the morning a protest was lodged by Whale Beach under 23 men's crew against "*unfair and unsafe conditions, rips especially in the Northern Area*".⁷ They refused to start their race and were disqualified. The protest was dismissed by the Sectional Referee but an appeal was lodged with the Competition Appeals Committee. Pending the resolution of that appeal boat crews in the Southern Area also refused to race. The Competition Appeals Committee upheld the Whale Beach protest on the grounds of 'fairness' but noted that it has no jurisdiction in regards to the issue of safety which is a matter for the referee. It directed that all further Under 23 men's boat races be held in the Southern Area.

Mr Moore in his log noted; "*Boat area 1 surf conditions too big for U/23 males*"

Notwithstanding this decision, recorded vision of a boat race which proceeded in the Southern Area during the afternoon showed a violent collision in which one boat crashed over the other. The first boat was surfing in on a wave when it slewed across the face and sliced over the top of a boat rowing seaward. The bottom of the incoming boat slammed into the heads of two of the men in the other boat and both boats rolled over throwing all competitors into the foaming white water where all flail around until the two injured rowers are rescued. Remarkably no one was seriously injured. Nor was this an isolated incident. The recorded vision of other races shows similarly dangerous occurrences and numerous boats being capsized and sweeps catapulted from their craft.

Later in the afternoon, it was decided to move all further surf boat events to North Kirra the next day. It was also decided that all under 15 water based events and the R&R competition would also be moved there.

Events of Friday 19 March

At the regular 6:00am Carnival Committee meeting on Friday Mr Moore reported that the waves had increased in size to 2.7 metres. Mr Thompson said in evidence that he observed the conditions and considered them very similar to that of the previous day and suitable for competition. Mr Moore testified that alternative venues were discussed and it was agreed they would reconvene if the sea worsened over the day. He was to keep events under close review.

About 8:00am Mr Moore assessed the under 17 area. He spoke with Mr Mowbray, the Area Referee, Mr Brennan and others on the beach. After observing the under 17 men's ski relay Mr Moore noted in his log that the "*paddlers (were) getting smashed*" and he came to the view that the under 17s competition should be moved. Mr Mowbray was of a similar view. He said in evidence that he considered:

⁷ Exhibit C33

Events are going to take forever to get around and it's going to be a long day, and these - there could be possibly that someone here may get injured in these - in these conditions.

He also said in evidence that the waves at this time in that area were about 3.0 metres high.

At about 8:45am Mr Mowbray and Mr Brennan discussed those concerns over the radio. Mr Mowbray recalled that Mr Brennan told him to postpone all the events in the under 17 area and to come and meet with him up in the administration area behind the grandstand. Mr Brennan was meeting with Mark Fisher, Mr Moore and Mr Thompson when Mr Mowbray arrived. According to Mr Moore, "*that's when we decided to move the Under 17s to North Kirra.*"

About 9:00 am Sergeant Kazmierowicz and Superintendent Keogh attended the logistics/security meeting with Taylors Security and Graham Bruce of SLSA. Superintendent Keogh was dissatisfied that more senior officials were not present. In particular, as a result of surveying the condition of the surf, the officer, who is an experienced surf life saver, wanted to speak with Mr Moore on account of his responsibilities for safety. He said in his statement that he discussed with Sergeant Kazimierowicz "*the risks associated with continuing any events at Kurrawa.*" His concerns about these issues had been initially prompted by media reports quoting senior competitors questioning the safety of continuing at Kurrawa. They had been exacerbated by what he saw when he attended the venue. He said in evidence:

There was a lot of white water, the break was uneven. It was a considerable way out to sea. There were a number of pressure waves brought about by the bank. All in all, yes, it was extreme conditions.

A meeting with more senior officials was organised for 9:50am. At that meeting attended by Messrs Brennan, Moore and Thompson, Superintendent Keogh raised concerns about the surf conditions and emphasised his apprehension with morbid prescience by warning that in the event of "*an incident*" the coroner would scrutinise the decision making of the organisers. Following this meeting the three Carnival Committee members who had attended it gave renewed attention to the safety of the surf conditions.

Mr Thompson said he consulted a number of athletes on the beach:

I took it upon myself without consultation with anybody to walk down to the beach and consult some elite athletes and - and to seek their opinion about what the conditions were like and what they thought the conditions - so I had some - I could relay that back to the carnival committee, you know, this is - this is real time information from - from the athletes, and then I walked along.

Shannon Eckstein, an elite competitor, said that he told David Thompson that he had just completed the iron man and it was right at the "*top end of what an open competitor should be racing in*".

In his statement Mr Eckstein said:

The waves were too big and powerful to get through.... I thought the conditions were at the top end of what we as open competitors should be racing in. I take into account the entire conditions including power/height of waves, the strength of the sweep, rips, wind, and tide level. I thought that it was dangerous.

Mr Thompson also recalled that other elite competitors told him that it was "*challenging, testing surf*" and that they were concerned about the effect of low tide on the back bank at 3:00pm.

Christopher Allum, an elite competitor recalled discussing the conditions with Mr Thompson:

Yeah, I'm pretty sure the conversation did say that (that a decision had already been made to move the under 17s) and I said "This is not safe for 15 and 17s but I believe it's safe... for 19s and over."⁸

Mr Eckstein also shared his concerns with Open Area Sectional Referee Alan Parsons. He told him that the conditions were "*pretty dangerous*" and at the "*top end*" of what he as a professional athlete could handle. After he finished his iron-man heat he and spoke to Rod Hennessy, the Chief Judge in the Open Mens area 1 and said words to the effect, "*... it was probably at the top end of - of what I've raced in and probably what we should be racing in.*" Mr Eckstein told the inquest that he thought the most difficult conditions at Kurrawa could be expected at high tide on the Friday.

Michael Booth, an under 19 competitor estimated the waves on the outer bank to be 10 feet high but he did not believe the surf was beyond his capabilities. He and other competitors gave evidence that they considered the conditions were not so challenging as to require competition to be suspended.

Mr Allum said that:

At no point had I ever thought that... any Open event should be cancelled unless the courses couldn't be laid and I also expressed at the time that I don't - didn't believe that any Under 19 events should have been cancelled at that time... The people who make finals in the under 19s, they are able to compete against Open athletes... so your elite under 19 athletes I believe wouldn't have any problem with conditions.

⁸ T/s 4-31 50-60.

Craig Sly, an experienced coach from Tasmania supported this view with reservations:

...I think it was manageable for the - for the older and more experienced competitors, definitely, on the morning...

Bruce Kolka, a QPS officer and very experienced life saver and former elite competitor strongly supported the continuation of the event; he wrote in his statement:

I support any decision made by the carnival referee and committee to continue to conduct the Australian Titles at Kurrawa beach in the testing conditions.

However, numerous competitors who responded to a questionnaire distributed by the police officers investigating this incident and/or responded to an invitation by SLSA to make submissions to its internal inquiry were of the opinion that competition should have been suspended or relocated.

For example, Greg Smith, a competitor in 36 Australian Championships and winner of 49 medals including 4 world championships competed in master's competition in 2010. He wrote to SLSA as early as 14 March expressing the view that events should not be run at Kurrawa given the forecast conditions. Receiving no reply he wrote directly to Carnival Committee member Grant Baldock expressing his disappointment that master's events had (by that time) been run. He noted "*...This may be a surf competition, but it isn't meant for everyone to be iron persons, and waste money in travelling here, only not to compete because it is way beyond their capabilities*".

In his statement to police on 20 March 2010 Mr Smith stated:

With all competitors aware of the rising seas, predicted to be almost 4m by today, it seems ludicrous officials simply kept delaying a move.

Chris Trapscott, Life Member of Port Elliot SLSC and surf boat rower and sweep of 40 years experience submitted the following to the SLSA inquiry:

The managers of the surf boat competition appeared to ignore...the many highly dangerous incidents occurring over the Wednesday and Thursday, including multiple collisions between surf boats, and a rising toll of damage to boats and gear, and injuries to competitors.....

....The spectacle of a clear majority of a large meeting of surf boat sweeps voting, on the Thursday, to take drastic action to have the surf boat competition relocated was a clear indication that the managers of the surf boat competition had misread not only the conditions, but the preparedness of sweeps to continue to place their crews at such high risk of injury. This was after similar boaties' meetings previously over the Wednesday and Thursday. Notwithstanding this meeting, racing continued on the Thursday.

The President of Catherine Hill Bay SLSC, Stephen Marley, provided a detailed submission to the SLSA Inquiry which seems to have been based on wide consultation within his club. In summing up his submissions Mr Marley stated:

I think the general feeling was that a firm decision to move, suspend or call off the carnival could and should have been made earlier. This can be seen to be easily said in hindsight, however, most people had grave concerns for the event if it stayed at Kurrawa very early in the week.

Ken Lupton, Team Manager for North Entrance SLSC says that when he “turned up at the beach on the Tuesday for the first day of competition this year, I was amazed that it had not been moved.” He told the SLSA inquiry that he decided not to compete and that this was the first time he, a competitor in 17 Masters titles, had not “had a go”.

In the material tendered at the inquest I noted six of the under 19 competitors who had competed in or were scheduled to compete in the iron man semi-finals for that age group expressed a view in the answers to the QPS questionnaire (albeit after the event) that competition should have been called off prior to the event in which Saxon was struck.

Surf Life Saving South Australia began a process of collating competitor comment about the management and safety of the 2010 Championships even before notification of the SLSA inquiry “because we were aware there was an enormous amount of discontent”. That organisation submitted a lengthy compilation of complaints and concerns from South Australian members, many of which express a view that events which were run at Kurrawa should have been moved.

The inquest viewed video vision of an under 19 double ski race that was run shortly after 10:00am on Friday. Every competitor was knocked from his craft on numerous occasions. Competitors narrowly avoided being struck by wayward skis. It was just lucky that somebody was not seriously injured. The SLSA submitted that the vision played was of the worst conditions experienced in that race but that would have been no answer if it had resulted in injury or death.

After being shown the vision at the inquest, Mr Brennan indicated that had he seen the race unfolding he would have caused competition to be suspended. Mr Moore said had he seen it he would have changed his assessment of the suitability of conditions for racing and he would have recommended to the Carnival Referee that the event be cancelled. Mr Kenny agreed that “carnage” was an appropriate description of what was depicted. Perhaps surprisingly, none of those officiating in the under 19 area took any action and none of those who gave evidence could recall seeing the events as they occurred.

Recorded vision of other events shows swimmers swept south out of their area catching large waves in while board paddlers in another event were seeking to go seaward among them.

At about the same time in the Open Area , Sectional Referee, John Restuccia, postponed double and mixed ski events because he felt it was desirable to avoid the strong sweep pulling the large double skis out of their competition areas with the risk of it interfering with competition in other areas. However, Mr Restuccia considered it was safe enough to run iron man rounds which included single ski legs in the same conditions.

Also at about this time, Mr Paul Kenny, the Under 19 Male Area Referee, discussed the surf conditions with Mr Brennan and whether the events should be relocated. They decided to conduct the semi finals of the iron man; then look at running the board races and then re-assess whether competition should continue.

When asked about this at the inquest, Mr Kenny said they had decided it was acceptable to run the iron man event even though it included a ski leg and other ski races had been postponed because there was still plenty of water on the bank at that time and:

I thought with the iron man it was the semi finals. Probably, you know, good quality, you know, the competitors and it's a single ski as opposed to a double ski, which - so, they were a bit more controllable.

Michael Booth took part in the same race as Saxon Bird. He described conditions this way:

I would describe the conditions as extreme. The swell was approaching 8 foot on the inner break and outer break was approaching 10 foot. The waves were breaking and dumping heavily with the lips of the waves extremely thick. A lot of waves were doubling up making them have two crests that break down on you. There was very little break between each wave and they kept coming down on you.

He said the race was the hardest he'd ever done; that swells were breaking over the competitors and the cans as they swam parallel to the shore. Mr Booth said:

The waves were sucking me down and breaking over my head. I was pushed into the ropes of the cans and had to untangle myself and swim out of them.

Mr Booth also provided insight into the psychology of young male surf competitors when he said he had never withdrawn from a race because of the conditions:

If they don't call off the event I'm going to race.

Mr Moore said that at about or shortly after 11:00am he carried out a further assessment of conditions and considered the latest BOM forecast. He said he had decided to recommend cessation of competition at the meeting of the Carnival Committee scheduled for 11:30am. He said in evidence his decision was based on what he saw in the Open Men's area at about that time, namely, the unpredictable nature of the surf with waves breaking at different distances from the shore so that competitors were continually having to adjust to breaking waves. He also saw a competitor paddling parallel to the beach, out past the turning buoys being hit by white water side on. He told Sergeant Kazmierowicz of his intention.

As a result of speaking to a number of senior elite athletes, both male and female, Mr Thompson had also come to the conclusion that the competition at Kurrawa should not continue in the prevailing conditions which were expected to worsen as the tide dropped. He told a number of senior officials he intended recommending all water based competition be suspended at the meeting of the Carnival Committee scheduled to proceed at 11:30am.

The fatal incident

As far as I can ascertain the second semi final of the under 19 iron man event commenced between 11:05 and 11:20am. Recorded vision of the board leg shows numerous paddlers being knocked from their boards and a number of near misses as riderless boards spear among the others. Indeed, during that leg a board can be seen flying through the air and crashing onto Saxon's board just in front of his head. Large waves can be seen breaking out past the turning buoys and appear to be breaking all over the course.

After he had completed the swim and board leg Saxon took his ski from his handler and set off after two or three competitors who were slightly in front of him. None managed to get through the first break without being knocked over. After a few minutes other competitors joined the leaders and all were still trying to get through the first break.

The video recording shows a paddler attempt to power through a broken wave but he is slammed backwards and knocked off his ski which turns end on end and is then washed shoreward while lying along the face of the roiling white water.

Saxon was approximately 15 to 20 metres directly inshore from the paddler when he is dislodged. As it is buffeted before the wave, the riderless ski is almost entirely north of Saxon as it is washed towards the shore, bobbling in the foam. Because the bottom of that ski is white it is difficult to see, but I accept the evidence of Bruce Kolka, an experienced competitor, who was adamant Saxon would have been aware of the ski and the danger that it posed to him.

Just as it appeared the ski would pass harmlessly to the north of Saxon, the leading end digs into the water and the trailing end which is clear of the water scythes in an arc, catching him a sickening blow to the head. He was knocked from the ski and immediately submerged. Although one witness believes he

saw Saxon's cap surface just after he was struck, the video shows no sign of him from that point. This occurred shortly before 11:29am.

Rescue and recovery efforts

A number of competitors observed the ski strike Saxon and when he didn't surface people on the beach ran into the water and waded and swam the 50 to 100 metres from the shore to where Saxon had last been seen. They began duck diving and feeling along the bottom and in the water with their feet and hands searching for the missing man.

None of the officials noticed Saxon had been hit. Another competitor and friend, Tom Atkinson, witnessed the incident and rushed to assist, taking his board with him to paddle out to where he'd seen Saxon submerge. Before he went he told a judge from the open men's area, Rod Hennessy, that there was a problem. Mr Hennessy recalled being told, "*He hasn't come up, Saxon hasn't come up*".

Mr Hennessy says he immediately made radio contact with the power craft coordinator, Michael Keys, and alerted him to the issue. He says that one of the jet ski operators, Mark Edwards, then approached him and sought directions to the relevant search area.

Within a minute or two of Saxon's disappearance there were a number of swimmers in the water searching. Estimates vary significantly but range from 25 up to 100.

Mr Moore was alerted to Saxon's disappearance by a telephone call recorded to have been received at 11:29am on his mobile phone. He and Mr Brennan, with whom he was speaking, immediately made their way to the control tower to find Mr Keys directing power craft to the search area.

Sergeant Kazmierowicz was notified some minutes later and immediately made his way control tower but did not arrive until about 11:37am. He was the first police officer to arrive at the scene and by most accounts he then took charge of the search and rescue operation.

It is clear that there were difficulties in communicating the seriousness of the situation to officials and competitors. Mr Atkinson told the inquest that as he searched for Saxon he was pushed south with the sweep into other areas where competition was still underway and officials, seemingly oblivious to what was happening further north, told him to get out of the way. It is also apparent that the race in which Saxon was injured continued to its conclusion.

After a few minutes, the swimmers were told to clear the water so that the power craft which had been directed to the area could search without risk of striking a swimmer or mistaking one of them for the missing man. Many were reluctant to do so and the order had to be repeated a number of times generating frustration and anger.

The order to remove swimmers from the search was attributed at the inquest by several witnesses to Sergeant Kazmierowicz. However, video footage of the main control tower shows the power craft co-ordinator Mr Keys communicating with those under his command and telling them to get swimmers out of the water well before the arrival of Sergeant Kazmeirowicz. In any event there was no objection by other SLSA officials present to this course of action. The decision was taken on the basis that power craft could not safely manoeuvre and conduct their search effectively with swimmers in the area. The issue of whether power craft should have been the primary search mechanism is discussed later in these findings.

After fruitlessly searching with power craft for some 15 to 20 minutes a group of swimmers all wearing the same caps was organised to enter the water and search in line in an endeavour to establish the likely direction Saxon would have been swept. Surprisingly, apparently this was not already known to the officials. Mr Brennan and Mr Moore told the inquest they had limited understanding of the significance of the north-south sweep present at Kurrawa on 19 March 2010.

At about 12:10 pm the water police arrived on scene and it seems some time later a rescue helicopter joined the search. Mr Moore reported to an SLSA internal investigation, and again to the inquest, that difficulties were experienced with the radio communications between the Care Flight Helicopter, the Westpac Life Saver Helicopter and carnival officials on the beach due to incompatible radio frequencies. It appears that in addition to difficulties with the communication equipment, problems also arose from the incompatibility of map coordinates between the officials and the helicopter pilots.

As can be readily appreciated, the failure to locate Saxon and the refusal of the officials to let the hundreds of anxious life savers on the beach re-enter the water to search caused mounting frustration and anger. For example, Mitchell Trim said he and one of Saxon's best mates were "*fuming*". They had goggles and they wanted to "*get in and search.*"

About 45 minutes after Saxon was hit swimmers began to enter the water – by this stage it was clear the other search methods had been unsuccessful. Saxon's body was found at about 12:22pm by swimmers searching in an area 500 to 750 metres south of where he had disappeared.

QAS paramedics attempted to revive him in vain. He was pronounced dead at the Gold Coast Hospital at 1:15pm.

The autopsy

A post mortem examination was conducted on the body of Saxon Bird at the Gold Coast Hospital Mortuary on 22 March 2010 by an experienced forensic pathologist, Dr Dianne Little.

- An external examination showed an area of redness and swelling adjacent to the left ear. This was associated with an underlying depressed fracture of the left temporal and cheek bones.
- A CT scan revealed the presence of fluid within the lungs and in the airways. No other skeletal injuries were seen.
- On examination the lungs were heavy with a mottled appearance and exhibiting multiple small haemorrhages. Frothy fluid was found in the main bronchi and there was blood tinged fluid in the pleural cavities. In the opinion of Dr Little these observations were consistent with those one would expect to make when examining a victim of drowning.
- A neuropathological examination of the brain conducted by Dr Kathy Urankar confirmed the presence of a left temporal contusion and identified swelling of the brain and possible ischaemic changes.

In her autopsy report of 13 September 2010 Dr Little recorded the cause of death as:

- (a) Drowning, *due to or as a consequence of:*
- (b) Head injury.

Further medical evidence

Dr Theresa Withers is Director of Neurosurgery at the Gold Coast Hospital. She reviewed all relevant material and reported it was “*highly likely*” that Saxon suffered a loss of consciousness on being struck by the surf ski. The injuries were such that the force of the blow itself may have had this effect; alternatively, it may have resulted from the rotational whiplash secondary to the blow. She considered it highly unlikely that he regained consciousness.

Dr Withers also provided an opinion on how long after he was struck Saxon could have been saved had he been found. She said the accepted evidence points to the beginning of neuronal damage from a lack of oxygen after approximately four minutes which becomes irreversible after six minutes by which time, in any event, the aspiration of water will have caused sufficient change to the chemistry of the lungs that cardiac arrest would be imminent. Examples of people surviving for longer periods have usually been associated with either very cold water or young children.

Dr Withers concurred with the findings of Dr Little that the cause of death was traumatic head injury with subsequent drowning. She stated that it would have been necessary to retrieve Saxon and commence resuscitation within four to five minutes of being submerged for him to have had a reasonable chance of survival.

Section 45 findings

I am required to find, as far as is possible, who the deceased person was, how he died, when and where he died and what caused his death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, the material parts of which I have summarised above, I am able to make the following findings.

Identity	The deceased person was Saxon Phillip Bird.
How he died	Mr Bird died as a result of being knocked unconscious when he was struck in the head by a surf ski while competing in an iron man event at the 2010 Australian Surf Life Saving Championships.
Place of death	He died at Kurrawa Beach in Queensland.
Date of death	Saxon died on 19 March 2010.
Cause of death	He died from drowning after suffering a head injury.

Conclusions on issues investigated

The introduction section of this report sets out four issues other than the s45 findings which were the subject of evidence and submissions at the inquest. My conclusions in relation to those issues are set out below.

The adequacy of SLSA policies

The Surf Sport Manual provides that “*The provision of safety management is vital to the conduct of all SLSA competitions.*” However, as is detailed below, it may be that a more explicit statement is needed. I will return to that issue in the recommendations section.

The Manual required the production of a safety and rescue plan relevant to the scope of the competition being conducted. It advises: “*The plan should ensure appropriate procedures are in place if an emergency occurs during a competition.*” It stipulates the plans need to deal with contingencies in case the event is impacted by adverse weather or surf conditions and advises on the need to regularly consult weather forecasts. It grants full authority to the Carnival Committee to respond to hazards by suspending or relocating events.

A set of plans was produced that appeared to comply with these requirements. Perhaps, ill advisedly, the plans emphasised the desirability of “*ensuring as many events as possible, remain at Kurrawa.*” This is inconsistent with a focus on safety as the primary priority.

SLSA policies created a hierarchical structure for channelling information relevant to decisions about event management and safety up to the Carnival

Committee. While it appears comprehensive and practical it was shown in practice to contain spans of control that were difficult to maintain across the whole venue, especially when some events were relocated to another beach. For the reason detailed below, I am satisfied those weaknesses have been addressed.

Subject to these reservations and the recommendations made later in this report, I am satisfied the policies of SLSA were reasonably well suited to the safe running of major surf sports events.

The application of those policies

Generally, the Championships were managed consistently with the policies designed to promote fair and safe competition. Apart from Saxon's tragic death there were only a few other mishaps, none of which resulted in serious injuries. When one considers the nature and number of events completed over the three and a half days of competition, had it not been for Saxon's death, the organisers might rightfully have said their risk management strategies had succeeded. However, there were also a number of instances where a reasonable person could question whether safety was given the priority it deserves and SLSA says it seeks.

Contingency sites

Mr Thompson acknowledges there was a failure to put in place comprehensive alternative venue arrangements. The primary still water venue, Marine Park Stadium at Broadbeach was unavailable because another organisation had booked it. Mr Brennan's expectation that the weekend's adverse weather conditions would mean Marine Park Stadium would be unsuitable for wakeboarding, and thus available for SLSA, was misconceived.

Another venue, Redcliffe, which was under consideration as a surf boat venue was also in doubt.

However, while this demonstrates some weakness in the planning process, I am not convinced it had any impact on how the events unfolded.

Queens Counsel for the family repeatedly asserted that the clause in the Contingency Plan which indicated a decision to relocate the Championships had to be made seven days before they started meant that there was insufficient time to move the event in which Saxon was killed. This is misconceived. The seven day time limit referred to a total relocation of all events and infrastructure. I accept any or all of the water based events could have been moved with only a few hours notice or overnight and that the challenges involved in doing so did not prevent the under 19 iron man event being moved if those responsible had concluded it was unsafe to continue at Kurrawa.

Boat races

Although not directly relevant to Saxon's death, the reluctance of the Championship officials to respond constructively to the concerns about the

conditions raised by the boat crews on Wednesday 17 March is disturbing. A number of crews graphically demonstrated their apprehension by refusing to race, even when faced with disqualification. Their trepidation was articulated by senior and experienced sweeps and conveyed to the appropriate officials via the mechanism put in place for that purpose: the Boat Panel. Video footage of boat races the following day showing competitors narrowly escaping serious injury and news media photographs of other dangerous capsizes reinforces the boat crews' claims. Their unease was ultimately vindicated when the boat races were first suspended in the northern boat area and then relocated to another, more protected beach.

The readiness with which some of the officials discounted the safety concerns the boat crews articulated and instead imputed improper purposes, such as competitive advantage, as motivation for the claims was a fraught perspective from which to make decisions. In my view the organisers did not give sufficient weight to the views of the competitors and their representatives and insisted on boat racing continuing at Kurrawa on Thursday when it was probably unreasonable to do so and when there was another more protected venue readily available.

Continuing competition on Friday 19 March

SLSA has submitted the wave which dislodged the paddler from the ski that struck Saxon was not dangerously large or powerful; therefore it is inappropriate to attribute the accident to the surf conditions. Similarly, other witnesses properly pointed out that accidents can happen in almost any surf, in training or competition: it is a dynamic and volatile milieu and not even life savers are in their natural environment when they launch themselves into large surf on small and unwieldy craft.

However, I don't accept SLSA's submission that the competitors voluntarily participated and therefore assumed the intrinsic risk if that is meant to suggest the organisers were, as a result, freed of responsibility for determining whether it was sufficiently safe for the competition to continue. The organisers brought the participants together and offered recognition and acclaim to those who succeeded. To a cohort of notorious risk takers ill equipped to realistically balance their best interests, it offered powerful inducements to participate even if the conditions made doing so unduly dangerous.

Even if the particular wave which precipitated the fatal incident was relatively benign that does not obviate the responsibility of the organisers to ensure that the conditions are generally appropriate for the continuation of competition. If the surf is unduly dangerous the opportunity for an adverse outcome is increased. An inquest does not seek to prove causation in the legal sense but rather to layout for public scrutiny all of the relevant facts.

For all of these reasons a primary focus of the inquest was whether it was sufficiently safe to allow water craft competition to continue at Kurrawa on Friday 19 March. In addressing that issue the court has regard to the evidence of appropriately informed and experienced witnesses.

When the Carnival Committee met at about 6:00am on that day they were told by the principal safety person, Darren Moore that the surf was breaking at 2.7 metres and could be expected to stay at or about that size throughout the day. The Committee determined it was safe for competition to commence but that the conditions would be kept under review.

Before 9:00 am it was decided it was too challenging for under 17 competitors to continue and their events were suspended.

Soon after, an experienced life saver and senior police officer, Superintendent Keogh, attended the venue and expressed grave concern about the conditions, making morbidly prescient predictions about the coroner's involvement.

By mid morning some experienced people were having concerns about the conditions. Shannon Eckstein, a world champion surf competitor said he thought the conditions were at the top of the range that elite competitors should compete in and that they were dangerous. He conveyed his concerns to Mr Thompson and other officials. Numerous other competitors whose evidence I have cited earlier in this report also believed that it was too dangerous to continue. Conversely, other competitors thought that while the conditions were rough, big and challenging they were not so bad that competition needed to be suspended. There was a range of views with many competitors keen to keep racing and the more cautious content to sit out events in which they did not feel sufficiently proficient.

However, when shown recorded vision of the under 19 double ski race, referred to earlier in these findings, the Carnival Referee and the Carnival Safety and Emergency Services Co-ordinator said competition should have been suspended. Similarly, Mr Thompson said at the inquest he now also agrees that this should have occurred. This is compelling evidence that the conditions were in fact unsuited to competition continuing on Friday morning, as the graphic description of the conditions that I have summarised earlier in this report shows. At the least, all water craft competition should have been suspended before the commencement of events on Friday morning.

While there may well have been credible witnesses who were of the view that it was safe to continue, there were also numerous competitors who thought more events should have been suspended or relocated. When lives are at stake it is not appropriate to seek to balance competing views or to seek consensus. Those responsible can not try and calculate the average or most widely held view. The danger posed by wild surf is not capable of precise calibration. If there is any credible evidence that conditions are placing lives at risk then the only responsible thing to do is to suspend competition. When the cost of making the wrong decision is so high and the negative impact of acting more cautiously is so slight in comparison, officials should favour a wary approach.

It is no answer to say life savers need to compete in dangerous conditions so they can rescue members of the public should the need arise. First, in such

conditions beaches will normally be closed or usage severely restricted, as was the case with the beaches adjacent to Kurrawa. Second, surf skis will rarely be used to rescue swimmers with IRBs now so prevalent.

There is no evidence to support the suggestion that financial considerations influenced the organisers against relocating the competition, nor that time constraints made this impossible or even difficult. However, they did have fewer alternative venues available to them than had been anticipated because of a planning error. They were also committed to competition continuing at Kurrawa for as long as reasonably possible but I do not conclude they would have failed to suspend competition at Kurrawa on Friday morning had they been better informed of the conditions.

I conclude that members of the Carnival Committee underestimated the size, power and turbulence of the surf as it increased throughout the week, even though there was ample evidence it was large and rough and likely to get worse. They did not in all cases receive from area officials sufficiently accurate, insightful or timely reports to enable them to appreciate the true situation until that had become time critical. When they did become aware of the extant danger they hesitated briefly to await the formalities of a scheduled meeting and an innocent life was lost.

The adequacy of the rescue attempts

Although none of the officials overseeing the event in which the accident occurred saw Saxon get hit, it was quickly drawn to their attention and a rescue attempt commenced, first by swimmers spontaneously rushing into the area and soon after by converging power craft.

Despite Saxon being struck only 50 to 70 metres from the shore in front of thousands of competitors and spectators, he was not rescued for about 50 minutes by which time any chance of saving his life had long gone.

That naturally raises the question of whether the rescue attempts were adequately managed.

Some concern has been expressed that it seems to have taken about 10 minutes for the senior police officer at the scene to assume control and that the officer had no search and rescue accreditation. I share those concerns but it is clear that they did not contribute to the delay in Saxon being located. The official in charge of all the power craft at the Championships quickly assumed control of the response. He coordinated the deployment of numerous jet skis and IRBs to the area and after some initial frenzied unstructured searching a line search was repeatedly undertaken.

The water police and rescue helicopters took a significant time to arrive on scene but having regard to where they had to travel from and the small window of opportunity in which to save the missing man that was largely irrelevant to the outcome.

The issue of most controversy is whether the decision to exclude swimmers from the search area in favour of searching by power craft was appropriate.

Estimates of the number of swimmers involved and the time they searched varies but it seems somewhere between 25 and 100 swimmers entered the water within a minute or two of Saxon being hit and they searched until ordered from the water perhaps four to six minutes later by the power craft coordinator, an order reinforced by the police officer who assumed responsibility for the search when he came onto the communications tower from where the response was directed.

The power craft then searched as best they could for approximately 30 minutes until the first of two rescue helicopters arrived on scene.

Understandably, some are of the view that when thousands of Australia's best life savers were at hand and straining to assist, better use could have been made of them. It is argued that in the turbulent conditions with broiling water made opaque by foam and churned sand, the chances of seeing the unconscious man from a power craft were slight. It is asserted that only by having numerous swimmers in the water searching the bottom and the water between surface and the sea floor was there any likelihood of finding Saxon in time to save him. It is pointed out that a swimmer eventually found him after the power craft had failed to do so.

I have sympathy with that view. However, I also acknowledge that the Safety and Rescue Guide developed for the Championships in the section dealing with responding to a missing person in the water stipulates "*clear the water of all swimmers, competitors and craft.*" I readily accept it would have been dangerous for power craft and swimmers to attempt to operate simultaneously and there was no plan or procedures in place for a search by swimmers. Simply flooding the area with unmanaged swimmers would also have involved risks. Further, it needs to be acknowledged that a significant number of swimmers did search for some minutes without result before the power craft took over.

Although I readily appreciate the frustration of Saxon's peers being rendered impotent to help, I don't believe the officials should be criticised for adhering to the documented safety plan.

The Safety and Rescue Guide also requires those coordinating a rescue to "*immediately note conditions, especially direction of currents.*" Surprisingly, this did not happen for some time after Saxon went missing.

Preventative recommendations

The prevention of further deaths and a contribution to public safety are a primary focus of an inquest and so s46 of the Act invites coroners to make comments or recommendations dealing with such matters. There are a number of issues which warrant consideration from that perspective in this case but before dealing with them it is appropriate that I acknowledge the steps SLSA has already taken in that regard.

The inquest heard about a number of changes to the policies and practices of SLSA made after the 2010 Championships. High visibility vests were worn by all competitors at the 2011 Championships, a practice that I understand was well received and is to continue. Officials now record all finishers in events rather than just qualifiers. Statistics are kept in relation to non-finishers and this information is made quickly available to area referees, the Carnival Referee and the Safety and Emergency Services Co-ordinator providing objective feedback on how competitors are coping with the surf conditions.

Mr Moore has undertaken training in search and rescue and appropriate accreditations will be required of subsequent people filling his role as Safety and Emergency Services Co-ordinator. Search kits including grid maps, search dye and specialised radios for communication with search and rescue helicopters were in place for the 2011 Championships.

Those Championships were extended by two days to allay any actual or perceived pressure on officials to complete events in adverse weather. The inquest heard that a committee is to be formed to consider the relative strengths and weaknesses of the two types of power craft - IRB and jet skis - used in rescues. In any event, power craft resources were increased in 2011 and will remain at this higher level for future Championships.

At the 2011 Championships extra officials conducted surf patrols and provided information to area referees with respect to the safety of surf conditions. As I have identified earlier in these findings, this flow of information was absent from the under 19 Area at the 2010 Championships on the morning of 19 March, at least in regards to some events.

Attempts have been made to assist the area referees in the discharge of their responsibilities by providing checklists and having them fill out an issues log which is regularly supplied to the Safety and Emergency Services Co-ordinator.

A deputy has been provided to the Safety and Emergency Services Co-ordinator to allow the person in that role more time to, amongst other things, monitor surf conditions. This is further assisted by a reduction in the responsibilities attached to Mr Moore's role which in 2010 included oversight of the provision of first aid. A separate role has now been established to manage that area or responsibility.

The risk assessment process applied by Mr Moore to the 2010 Championships has been changed so that an assessment is conducted with specific reference to the conditions and events in each arena, rather than a single assessment for the beach as a whole.

I am persuaded these reforms will enhance safety. Further changes which may augment these improvements include:

- an explicit statement that safety is paramount;

- the use of devices to assist incapacitated competitors remain buoyant; and
- the utilisation of emergency response teams.

Safety

As quoted above, the Manual requires event organisers to prepare a safety plan but it is devoid of any statements about the paramount importance of safety. I expect that is because the authors anticipate that is axiomatic but when people are involved in preparing for and managing an event as large and challenging as the Championships, it is possible for anything that is not prominently and explicitly delineated as essential to slide down the list of competing priorities. That should be remedied.

Recommendation 1 - Make safety paramount

Because surf life saving carnival organisers have to deal with so many competing demands, it is possible the paramountcy which safety deserves can be unintentionally diminished. Accordingly, I recommend SLSA review the safety section in the Surf Sports Manual with a view to ensuring event organisers are directed to focus on safety in a way that does not invite them to seek to balance competing views as to whether competition should continue. Event officials should be required to suspend competition whenever there is a reasonable basis for concluding there is a risk of serious injury.

Floatation devices

Saxon was unable to be saved because approximately 50 minutes elapsed between his being struck and his lifeless body being pulled from the ocean. He was not recovered sooner because when he was hit he lost consciousness and sank in opaque water. Trials have been undertaken with competitors wearing high visibility vests. Apparently these proved not to impede the competitors and made them easier to see but may make little difference if the competitor is on the ocean floor. However, work is also progressing in the design and development of a self inflating vest suitable for use in iron man events. An experienced competitor who gave evidence said he had trialled the device and found it to be suited to its purpose. A designer of such a device was recently recognised in the Australian Design Awards.

Recommendation 2 - Continuing review of safety devices

As it is impossible to eliminate the risk of a competitor in a surf ski or board event being struck by a craft, it is essential that injured competitors be rescued as quickly as possible. This would be enhanced by devices that make the competitors easier to see and cause them to float on the surface even if unconscious. I recommend SLSA collaborate with the designers of such devices with a view to making the wearing of them compulsory once the organisation is satisfied they are suitable. Consideration should also be given to the use of helmets by competitors in surf craft events .

Emergency response

Aspects of the rescue and recovery effort in this case have been questioned: neither the police officer in charge nor the most senior SLSA safety official

had search and rescue training; the rescue helicopter took approximately 30 minutes to arrive and the expertise of the thousands of life savers anxiously waiting on the beach was not utilized to search for Saxon.

SLSA has addressed the lack of training for its Safety and Emergency Coordinator. The QPS could do likewise. Although at such a large event a general police presence will be a priority, at least one of the police contingent should be trained in marine search and rescue.

Recommendation 3 – QPS SARMC

I recommend that the QPS contingent at large surf life saving events includes at least one officer with advanced marine search and rescue training that will equip the officer to plan and co-ordinate the emergency response should a competitor or official go missing in the water.

The concern relating to the decision not to utilise swimmers to search for Saxon is not as easily addressed. Were they to be involved, swimmers would need to be coordinated and managed – an advantage of the power craft was that their operators were all in radio contact. The necessary arrangements could not be made instantaneously – planning would be required. It might be the role could most effectively be undertaken by the surf patrols which have been given a more prominent role in the Championships since 2010.

Recommendation 4 – Surf patrols for marine MPs

I sympathise with those who express frustration that better use was not made of the many life savers present when Saxon went missing. I acknowledge the need for any response to be planned and coordinated and for there to be various alternatives depending upon the emergency that presents. Accordingly, I recommend that SLSA investigate whether surf patrols could coordinate a search by swimmers for a person missing in the sea as an alternative to a search by power craft in appropriate cases.

I close this inquest.

Michael Barnes
State Coroner
Brisbane
2 August 2011