



OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: **Inquest into the suspected deaths of
Derek Charles BATTEN
Peter John TUNSTEAD
James Alfred TUNSTEAD**

TITLE OF COURT: **Coroner's Court**

JURISDICTION: Townsville

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FINDINGS OF: Mr Michael Barnes, State Coroner

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REPRESENTATION:

Counsel Assisting:

Ms Julie Wilson

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Pursuant to s28 (1) of the *Coroners Act 2003* an inquest was held into the disappearance of Derek Charles Batten, James Alfred Tunstead and Peter John Tunstead. These are my findings. They will be distributed in accordance with requirements of s45(4) and s46(2) of the Act and posted on the web site of the Office of the State Coroner.

Introduction

On the morning of Sunday 15 April 2007, the *Kaz II*, an ocean going sailing catamaran, steamed out of the Abel Point Marina at Airlie Beach. On board were its owner Derek Batten, his neighbour and close friend Peter Tunstead and Peter's brother James Tunstead. Their ultimate destination was Mandurah in Western Australia but they expected to next make port in Townsville, after a two or three day passage.

They have not been seen since. Three days after leaving the Abel Point Marina, the boat was found drifting and unoccupied approximately 88 miles north east of Townsville.

These findings seek to explain what became of the men, comment on the adequacy of the authorities' response to their disappearance and make recommendations to improve sea safety.

The Coroner's jurisdiction

Before turning to the evidence, I will say something about the nature of the coronial jurisdiction.

The basis of the jurisdiction

Because the police officers who were involved in searching for the skipper and crew of the *Kaz II* came to suspect that they were dead and that their deaths, if they had occurred, were likely to have been "*violent or otherwise unnatural*" within the terms of s8(3)(b) of the Act, the disappearances were reported to the Office of State Coroner. As a result of considering the report, I also came to suspect that Mr Batten and Messieurs Tunstead were dead and that their deaths were reportable. Accordingly, pursuant to s11(6) I have jurisdiction to investigate the deaths. Section s28 authorises the holding of an inquest into the disappearance.

The scope of the Coroner's inquiry and findings

A coroner has jurisdiction to inquire into the cause and the circumstances of a suspected death.

The Act, in s45(1) and (2), provides that when investigating a suspected death the coroner must, if possible find:-

- whether the death happened, and if so,
- the identity of the deceased,
- how, when and where the death occurred, and
- what 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.

An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:-

*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.*¹

The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, in so far as it is relevant to this matter, the Act authorises a coroner to "*comment on anything connected with a death investigated at an inquest that relates to –*

(a) *public health or safety ; or*

(b) *ways to prevent deaths from happening in similar circumstances in the future.*²

The Act prohibits findings or comments including any statement that a person is guilty of an offence or civilly liable for something.³

The admissibility of evidence and the standard of proof

Proceedings in a coroner's court are not as constrained as courts exercising criminal or civil jurisdiction because s37 of the Act provides that "*The Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.*"

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.⁴

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.⁵ This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence,

¹ *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

² s46(1)

³ s45(5) and s46(3)

⁴ *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625

⁵ *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

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.⁶

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.⁷ 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*⁸ 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.

The investigation

I turn now to a description of the investigation into these suspected deaths.

In effect there were two parallel investigations commenced soon after the vessel was first sighted by the Coastguard. One was in the nature of a physical search for the missing men and was principally led by Senior Constable Jason Jesse, an experienced search and rescue co-ordinator. It is detailed later in these findings.

The other investigation was led by Sergeant Graham Patch, a senior detective attached to the Townsville Criminal Investigation Branch. That investigation focussed on whether the men may have met with foul play, and if not, how they came to leave the vessel. It also involved inquiries designed to establish whether the men were still alive and in some other place.

Some family members of the missing men are concerned that the search was terminated too soon and that the forensic examination of the vessel was a not sufficiently detailed.

As is almost always the case, it is clear that some further tests could have been undertaken and some of the evidence relied upon by the investigators to support their conclusions was anecdotal, rather than scientific. However, I am satisfied that further testing or inquiries would not have led to different results or altered the conclusions of these findings. I am therefore disinclined to criticise any of the investigators.

Conversely, a family member of each of the missing men gave evidence that Sergeant Patch and Senior Constable Jesse were very compassionate and communicative during the initial search and as events unfolded. They were effusive in their praise for those officers who made regular contact with a nominated family member. They said the officers were always willing to explain what was happening and what was planned. As can readily be appreciated, the distress family members go through in such situations is

⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

⁷ *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

⁸ (1990) 65 ALJR 167 at 168

likely to be exacerbated by officious behaviour or blockages to the information flow. That can easily happen inadvertently when the investigators are concentrating on the job at hand and give insufficient attention to the emotional needs of others involved. That did not happen in this case. I commend Sergeant Patch and Senior Constable Jesse for their compassionate interaction with the families of the missing men.

The inquest

Pre – inquest conference

A directions hearing was held in Brisbane on 25 June 2008. Ms Wilson, counsel from the Office of the State Coroner, was appointed Counsel Assisting. The families of the missing men were consulted before the proceedings commenced and elected not to seek separate representation. Maritime Safety Queensland was granted leave to appear but withdrew before the inquest commenced.

The hearing

The hearing commenced on 4 August 2008 and proceeded over four days. Twenty seven witnesses gave evidence and 107 exhibits were tendered. Ms Wilson conferenced with the families of the missing men throughout the proceedings and skilfully balanced her role of assisting them while fully discharging her duty to the court. She also ably assisted me with the summarising of the evidence in these findings. Mr Grice expertly managed the logistics of the inquest and the management of the digital and documentary exhibits.

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.

Social history of the missing men

Derek Batten was known to his family and friends as Des. At the time of his disappearance he was 56. He and his wife Jennifer had been married for nearly 30 years. They have two sons now aged 26 and 23.

Des had been a floor layer before he went into semi retirement 4 or 5 years before he went missing. His retirement was mainly due to a bad back – a hazard of his vocation. He had suffered a heart attack shortly before this and was controlling high cholesterol with the aid of medication. He suffered from diabetes. Generally, however, his health was good, he was reasonably fit for a man of his age and he was a reasonably competent swimmer.

The family have been keen on boating for many years, and had owned many motor boats of various sizes including a 40 foot cruiser. He had a recreational

skipper's license and a marine radio license. When they lived in Peth, Mr Batten was an active member of a volunteer marine rescue organisation.

He and his wife Jennifer bought the *Kaz II* in mid 2006 and set about learning to use it by taking a sailing course. Later, when preparing to sail the boat back to W.A. Mr Batten also undertook a coastal navigation course, a radar course and a first aid course.

They sailed on the boat for two extended periods in 2006: a two week sortie in September and for about 6 weeks at the end of that year. During those trips they sailed all around the Whitsundays and to the outer reef. Mrs Batten said the boat was easy to handle and she considered her husband was proficient in its use.

Mrs Batten gave evidence that Des was very safety conscious. She recalled him insisting that they practice a man overboard drill. She was adamant he would not panic and would respond appropriately if that type of emergency unfolded.

Peter Tunstead was years 69 years old in April 2007. He was a retired small businessman who had been married to his wife Frances for 42 years. They have four daughters.

He was taking medication for the control of cholesterol and high blood pressure but he was very fit for his age as a result of his habit of taking extended daily bike rides. He had a medical examination shortly before he disappeared and was assured by his doctor that there were no health barriers to his undertaking the trip.

Mr Tunstead could swim, but usually chose not to. He prepared for the trip by undertaking a navigation course and a first aid course. He also obtained a recreational boat license. He was accomplished at sea mapping.

James Tunstead, or Jim or Jimmy as he was referred to, was 63 years of age at the time of his disappearance. He had been married to Marjorie since 1963 and they have five children.

He was a self employed truck driver and had a medical examination a few weeks before he disappeared in order to renew his heavy haulage license. He suffered from a degenerative disease in his hip that made him limp on occasions but it did not hinder him greatly as he played competitive football when he was younger and continued to play tennis regularly. He was for many years an active sailor competing in 14 foot skiff races.

It is readily apparent that all three men were hardworking family men. The strength of their family ties was evident in the touching testimony of those close relatives who gave evidence and the continual presence in court of so many of their extended family who had travelled from afar to participate in and/or witness this inquest.

The planning of the trip

The three men came to be on the boat in April, in the Whitsundays, largely by chance of circumstances. In 2003, Mr Batten and his wife moved from Perth to South Yunderup. The next door neighbours at their new address were Peter Tunstead and his wife. The families quickly became good friends. Because Des Batten was semi-retired he spent a lot of time socialising with Peter Tunstead during the day when Jennifer Batten was at work. Naturally, after the Batten's acquired the *Kaz II* the two men frequently discussed the boat and Des' plans to sail it to Western Australia.

Initially, Mr and Mrs Batten were to make the voyage together but after their extended cruise over the Christmas period, this proposal was reconsidered. They were concerned that if one of them fell sick the other might be overburdened, particularly if this meant that Jennifer Batten had to sail the boat on her own. For this reason it was decided that they would ask Peter Tunstead to make the trip; his brother Jimmy's enthusiasm for sailing made him the obvious choice for the third member of the crew.

The brothers readily accepted the offer and commenced preparations by undertaking the courses referred to earlier. They also spent numerous hours plotting charts and courses, entering them on two laptops computers they were taking with them and having them checked by more experienced sailors.

The vessel

The *Kaz II* is an Osprey built, Lock Crowther designed fibre glass catamaran built in 1989. Its length over all is 10.6 metres, it has a beam of 5.2 metres and it draws 1.2 metres. The vessel is powered by as a single 38 horse power Kubota diesel engine. There are three cabins and a central saloon. Water is carried in two bladders positioned under the floor. They have a theoretical carrying capacity of 100 litres each but the previous owner, Graeme Douglas said that it was difficult to fill them because of their position. The vessel has two electrical circuits; one to start the engine and the other to power everything else. Both systems have an alternator driven by the diesel engine and they also draw power from solar cells mounted above a seat set behind the cockpit.

There is a low transom forming the back wall of the cockpit. Each hull has a sugar scoop stern, with two steps down to a small platform just above the water line. A break in the rigid safety rails that surround the boat allows access to these steps. That space is secured by two safety lines that clip onto the stanchion inboard of the stairway. There is a fold down swim ladder on the inner aspect of the platform on the port hull.

Before being sold to the Battens, the vessel was owned by Mr Douglas who said he used it as a live aboard cruiser for most of the two years he owned it. He also said, however, that he moved ashore approximately six months before the boat was sold and that during that time it was used very little.

No independent survey or mechanical inspection was carried out on the boat before the Battens bought it. Although Mr Douglas gave evidence that it was in good condition, a survey undertaken as part of the investigation found a number of faults consistent with lack of recent maintenance. It is relevant to note that Mr Douglas had sold the boat some 10 months before the voyage and so he can not be held responsible for this.

The only maintenance defect which might have been of significance to an understanding of the fate of the boat's crew was the corrosion to the cable that releases and secures the stern drive. This is a leg that transmits power from the engine to the propeller. It pivots between the hulls and can be drawn up to reduce drag when the engine is not in use and the boat is under sail. Corrosion to the cable that secures it in the locked down position suggests that it might swing upwards if maximum power was applied while reverse gear was engaged. This would compromise the ability of the boat to be reversed and for the engine to be used to slow the boat's forward momentum.

The boat was carrying all the necessary safety equipment and was appropriately registered with the Queensland Department of Transport.

The incident voyage

Preparations

The three men flew into Hamilton Island on Wednesday 11 April 2007 and caught a ferry to Shute Harbour on the mainland later that day. They cadged a lift out to the yacht with a local marina worker. Comments they made about their not being particularly good sailors and Peter Tunstead's limited swimming ability were clearly jocular, but they also demonstrate the men were aware of their limitations.

They spent the next two days provisioning the boat, a task made more difficult by it being on a swing mooring far out in the harbour, rather than in a dock. This meant that they had to either bring the boat up to the jetty or pontoon when they wanted to load goods, fuel and water, or ferry it out in the boat's tender. At various times they did both. They did not have easy access to water as it had to be carried in jerry cans and then poured into the bladders. We have no way of knowing how much was loaded.

Mr Douglas is adamant he saw the boat being used in reverse. He says the manoeuvres he saw Mr Batten undertake could not have been undertaken without that capacity. This may contradict the opinion of the marine surveyor referred to earlier or it could simply mean that the boat's capacity to reverse was diminished but not eliminated.

The boat was fitted with a very high frequency (VHF) two-way radio but as this device can rarely transmit or receive beyond line of sight, they attempted to have a high frequency radio installed in the boat to augment the existing radio. They were unsuccessful because it needed work that could only be done with the boat out of the water.

It is clear that Mr Batten made a concerted effort to prepare the boat for the trip: he was described by one observer as being “*all over the boat*” but there is only so much a competent amateur can do to a boat on a mooring. I am left with the impression that the more major maintenance that perhaps should have been undertaken, in view of the boat having been largely left at anchor for a year, was not done because the men were keen to get underway. There is no evidence however, that any maintenance deficiency contributed to the incident.

The men told their families that they expected to take two or three days to reach Townsville and that they may not have telephone coverage along the entire route.

A false start

The boat left Shute Harbour at about 10.00am on Saturday 14 April. A witness is sure that when he saw them leaving the harbour, fenders were still hung over both gunwales rather than being stowed as is usual when a boat goes to sea.

The journey did not progress far before the crew encountered difficulty with their computerised navigation charts and course. Mr Batten telephoned Mr Douglas and he agreed to meet them at the Abel Point Marina in Airlie Beach. They arrived there early in the afternoon and Mr Douglas joined them. He says he was able to assist Mr Batten get the computers functioning as intended and to enter the desired course for the first leg of their journey into the GPS by inputting waypoints manually.

Because he was concerned that the men seemed to be frustrated by the difficulties they were having with the electronics and because this was being exacerbated by their eagerness to get going, Mr Douglas suggested a short leg the next day to the Eco Resort on the western side of Cape Gloucester. In keeping with what Mr Batten and Messieurs Tunstead had told their wives and repeated to Mr Douglas, the route he helped them plot was close in-shore. Mr Douglas is confident that the men knew where they were to go. They had plotted the route to the eastern entrance of the Gloucester Passage and entered it into the GPS. From there they would visually navigate their way through the passage to the resort. He estimated that would take them only three or four hours and so they also discussed another possible first night stop at Grey’s Bay, a few hours further on, just north of Bowen that they could aim for if they wanted to make more progress on the first day.

Mr Douglas noticed when he arrived at Abel Point Marina that despite the batteries being low of charge, the men had not taken advantage of having access to 240 volt shore power and he recommended they rectify this. He also reminded them to run the engine the next day to top up the batteries.

Another suggestion Mr Douglas passed onto the sailors was to make contact with local volunteer marine rescue organisations (VMR) as they made their way along the coast. As mentioned earlier, Mr Batten was an active

participant in such a group in Western Australian and so it is easy to accept he could have acted on this advice.

The second beginning

The *Kaz II* was seen to steam out of Abel Point Marina between 7.00 and 8.00am on Sunday 15 April. All on board were reported by those who saw them leave, to be in good spirits. It was also noted that the engine was very noisy, but Mr Douglas confirmed that this was usual for this vessel.

Peter Tunstead's wife telephoned him by calling Jim's mobile. She thought she made the call at 8.30am but telephone records show that the call was connected at 7.30am Perth time, meaning that it was 9.30am in the Whitsundays. She spoke to her husband and his brother and says she could hear Des Batten talking in the background. She says they told her everything was going well with the boat. It was clear to her that they were in good spirits, teasing Peter about injuring his foot. They told her that they were in the process of making coffee. I accept the evidence of the families of all three men that this is the last time any of them has spoken to any of the men.

There is however other evidence concerning the boat and its movements on that day.

A video camera found on board records vision shot at 8.05am Perth time, on 15 April; meaning that the scenes it depicts were recorded at 10.05am local time. The cameraman is obviously James Tunstead as he can be heard narrating it and the other two men are clearly seen. Matters of relevance to this inquiry are:-

- Des Batten is at the helm. A blue coffee mug is beside him.
- Peter Tunstead is sitting in the aft stairway of the port hull. He is fishing.
- The safety wires have been disconnected on both sides allowing open access to the sugar scoops on the stern of both hulls.
- The jib or head sail is set on the port side; it held wide out by a spar running from the mast to the clew of the sail, commonly referred to as a whisker pole.
- The mainsail is also let right out and is set on the starboard side.
- A long white rope can be seen trailing behind the boat.
- It is apparent that the engine is not running but Mr Douglas says the wake that can be seen between the hulls indicates the sail leg has not been hauled up.

- Fenders can be seen hanging from the safety rails on both sides of the vessel.
- The camera is panned through 360 degrees showing islands that enable the boat's position to be plotted with a high degree of accuracy. That position is shown as on map A.
- The sea is choppy with occasional whitecaps. Sailors who gave evidence estimate the wind speed to be 15 knots from the southeast. A squall can be seen up ahead.
- None of the men is wearing a life jacket.
- Jim's tee-shirt and sunglasses that are later found on a seat behind the back deck are not there.

It seems likely that the men accepted the wisdom of advising the local volunteer marine rescue organisation of their presence in their area, as a member of the Bowen VMR, Ivan Ormes gave evidence that he had radio contact with the boat. His evidence is problematic however. He says that he manned the radio at the group's base on the morning of Sunday 15 April but took the call from a boat he believed to be the *Kav II* (sic) on Sunday evening at 6.45 when he was at home. He says the person he spoke to told him that there were three people on board, they were at Georges Point (sic) and that they were bound for Perth. Mr Ormes acknowledges that he heard the boat had been found deserted on "*Wednesday or Thursday*" but did not tell anyone in authority about it until he telephoned the club president on Sunday morning. The form of the notation he says he made contemporaneously with the call is unconvincing.

When recalled to the witness box, Mr Ormes conceded that he might have taken the radio call when he was at the base in the morning, forgotten to enter it in a log until he heard it was missing later in the week and then made a note, mistaking the time of the call due to the lapse of time. It is equally probable that he listed the time as late in the day to hide the fact that he had forgotten to record it when he took the call when he was at the base. This might also explain why he then deferred for three days passing on what he acknowledged was vital information. His repeated assertions that he was not highly educated and had a terrible memory were easy to accept, although that might not entirely explain his ambiguous evidence.

It seems the next evidence relating to the vessel's movements is that given by Isobel Wheeler. She told the inquiry that on the morning of 15 April she went to Champagne Bay to go fishing. As can be seen from the attached map, that position gave her a good view of boats coming from the south and heading towards the Gloucester Passage.

She says that after she had been fishing for "*a while*" she saw a large white sailing boat come into view past George Point sailing due west towards Gloucester Passage. She thought it passed on the outside of Eshelby Island .

When it got some of the way between Eshelby Island and Rattray Island (in her statement she said a quarter of the way; in oral evidence she said halfway) the boat changed course by 90 degrees and headed straight out to sea.

Mrs Wheeler is not able to identify the boat as being the *Kaz II*. However, if it was the boat, her evidence would explain why Mr Douglas could not see it when he went to the same area later in the day.

Mr Douglas told the inquest that he had a friend staying and was keen to take him for an outing. He also wanted to see whether the navigational assistance he had given the sailors on the previous day had addressed their concerns. He therefore decided to go to the Eco Resort, the destination he had suggested for their first stop to see how they were making out. On the way, he went to Dingo Beach. Mr Douglas thinks he arrived there at about midday. He considers this was plenty of time for the sailors to be in the area he could see from that vantage point as he thought the journey from Abel Point Marina to the Gloucester Passage would only take two to three hours in the prevailing conditions.

There was no sign of them coming across the bay and so Mr Douglas continued on to the Eco Resort which, as can be seen from the map, is at the other end of the Gloucester Passage. He didn't find them there and nor, after lunch, did he find the boat at another resort closer to the entrance to that passage. He tried to phone them on Jim Tunstead's mobile and got no answer. Mr Douglas assumed that the men on the *Kaz II* had sailed on to the other anchorage they had discussed, Grey's Bay, north of Bowen.

There are a number of other possible sightings that require comment.

Matthew Howie was at his home in Dingo Beach on Sunday 15 April but does not believe he saw the vessel then. He believes he saw it the next day, sailing in much the same position as Mrs Wheeler saw a large white yacht the day before. He watched it for only a few minutes and did not see it change course as described by Mrs Wheeler: it continued sailing from George Point towards Gloucester Island. He described a vessel that had some of the distinguishing features of the *Kaz II*.

Two weeks later, after Mr Howie returned from working in Bass Strait, he discussed the sighting with his near neighbour, Mr Ian Stonehouse, after hearing news of the vessel being found deserted. Mr Stonehouse had also seen a vessel he thought might be the *Kaz II* and the same vessel Mr Howie had seen.

Mr Howie says that Mr Stonehouse told him the sighting had occurred on Monday 16 April, which confirmed his recollection of the date. Mr Stonehouse says that Mr Howie told him that the boat in question had been off Dingo Beach on that date and Mr Stonehouse confirmed that to his satisfaction by recalling his movements on that day and the day before. He thinks he saw it early in the afternoon at which time it was sailing straight out to sea, in the

same direction Mrs Wheeler described after she watched it change course, albeit a little further north and a day earlier.

I believe Mr Howie and Mr Stonehouse are mistaken about the day on which they saw the boat. It is beyond doubt that the *Kaz II* was in the vicinity of George Point before noon on Sunday 15 April. But here is no reasonable explanation why it would still be there 24 hours later, when if by sailing on for an hour or so they would have reached their intended anchorage. Messieurs Howie and Stonehouse were at home on both days and looking out to sea. At the time, the sighting was completely inconsequential. Two weeks later they had to try and reconstruct their memories that are naturally fallible.

Adrift on the reef

The next positive sightings of the vessel were made by the crews of two coral trout fishing boats at the Darely Reef approximately 55 nautical miles off Bowen. A number of the fishermen report seeing the boat drifting across reefs and along channels between them on Tuesday 17 April. None of the fisherman saw anyone on the yacht and many noticed that its headsail was torn. None of them went on board the boat or tried to contact any occupants by radio.

Each of them who gave evidence said that they assumed the vessel was manned as it seemed to navigate among the reefs. One says he saw it stationary - he presumed at anchor - with the sails down but he concedes the boat was between 3 and 5 miles distant from him when he made that observation. I am sure he is mistaken. With the benefit of information later gleaned from the GPS on board the boat and plotted on map B, it is apparent that no conscious evasive action assisted the vessel avoid the reefs, it was just chance that its shallow draft and the state of the tide allowed it to float over them.

The Kaz II is located by authorities

At 3.45pm on Wednesday 18 April 2007 a Coastwatch surveillance aircraft operated by the Australian Customs Service (ACS) noticed the *Kaz II* heading in an easterly direction some 80 nautical miles off the coast from Townsville. An ACS officer notified the Australian Search and Rescue (AusSAR) of the sighting who, in turn, informed Senior Constable Jason Jesse of the Townsville Water Police (TWP).

Senior Constable Jesse was the Assistant Search and Rescue Coordinator on duty. He was told that the vessel was travelling east at two knots into prevailing winds. Although the headsail was torn and the mainsail damaged, he thought it unlikely the vessel was in distress since it appeared to be underway. Radio contact with the vessel could not be attempted because the aircraft's air to ship radio was not functioning. Senior Constable Jesse was told that the only identifying marking that could be seen from the air was the name of the vessel which he recorded as *Kaz II*. The Coastwatch plane had flown over the vessel a number of times and did not see anyone on board.

The information available to authorities at that time did not indicate a search and rescue mission should be initiated. However Senior Constable Jesse set in train steps to identify the vessel and ascertain the welfare of her occupant(s).

The Kaz II is boarded and the missing men identified

The Townsville Coast Guard advised that no distress calls had been received and attempted to call the vessel on HF Channel 4125. The Townsville police communications centre was asked whether they had received any information that might be related to the vessel and to perform an electronic search for the registration number using the name that had been provided and variations of it. Coastwatch later provided information that suggested the name might be KAZZI 2 and further checks of the database were performed. Since those searches were fruitless, it was thought that the vessel might be internationally registered.

An “all ships” broadcast was made by personnel at the Hay Point Shipping Control centre which was said to be aimed at raising a response from the vessel and alerting other vessels to the *Kaz II*. No response was received.

AusSAR was asked to prepare a ‘net water movement’ model with a view to surveillance of the recommended area by Coastwatch the following day. This programme analyses real time data from various sources, including information about prevailing tides, winds and currents to help determine the best search area. The net water movement model was provided to Senior Constable Jesse at 5.20am on Thursday 19 April.

Efforts continued on Thursday morning to identify the vessel and Coastwatch was asked to traverse the area indicated by the net water movement model on their way to relocate the vessel. It again located it at 12.45pm. This time the vessel was facing east and appeared to be “*dead in the water*”. This escalated the concern held by authorities, and Senior Constable Jesse was given authority to dispatch Emergency Management Queensland’s (EMQ) Rescue 521 helicopter for the purpose of having someone board the vessel.

At that stage authorities did not know if there were crew on board who might not want to be found, might be injured or perhaps deceased. For that reason two police officers accompanied EMQ crew to the vessel. Rescue 521 left Townsville at approximately 2.30pm 19 April.

Corrie Benson, a rescue officer with EMQ, was winched into the sea as the vessel was yawing too much to enable him to be lowered onto its deck. A film crew recorded Mr Benson swimming hard to reach the vessel and having some difficulty hauling himself onto it. That is partly because he became tangled in fishing line running off the port side stern, and partly because of the boat’s movement in the water. The fishing rod seen being used by Peter Tunstead in the video found on the boat was tethered to a stanchion adjacent

to the port side sugar scoop. The swim ladder appears folded up out of the out of the water.

Mr Benson found the engine idling in neutral. He turned it off. He entered the cabin feeling understandably apprehensive. There was an undisturbed newspaper dated 15 April 2007 on the table in the main saloon. The three berths revealed evidence of the three men having slept in their beds but little else. Mr Benson saw what he thought was a small, empty bottle of liquor on the floor outside the port forward cabin. Aside from that there was nothing out of the place.

On deck, Mr Benson saw a blue coffee cup that remained upright and contained what looked like tea or coffee on the hatch in the floor of the aft deck on the starboard side. On the foredeck, the starboard side hatch was open and there was a length of rope beside it. That rope was identified as the secondary anchor rope. It wasn't tied to anything and wasn't neatly coiled.

A crew member on Rescue 521 commented that the port side navigation light appeared to be on and a police officer observed the stern light on. The video recording does not show the lights to be on. I am aware from experience that it is easy to mistake sunlight reflecting off the sea and refracting through coloured lenses with the lights being illuminated. This is more likely to happen when the lights are viewed from above on a bright sunny day. The comments suggesting the lights are on are made after Mr Benson has entered the cabin. In evidence Mr Benson said that he flicked the switches on the control panel in an effort to operate the radio. However, in the footage he is heard to say that he couldn't find the radio. I am unable to resolve the conflicts in this evidence.

The registration number was seen from the air and passed on to the Search and Rescue Mission Coordinator, Sergeant Glen Lawrence. By that stage Sergeant Lawrence had established the ownership of the vessel through enquiries with the Whitsunday Water Police and Graeme Douglas. Mr Douglas was able to inform the police of the identity of the men, their departure date and intended route.

The forensic examination

On Friday 20 April the QPS vessel *George Young* steamed to the *Kaz II* to bring her back to shore. A scenes of crime officer was on board the *George Young* and it was intended that he board the yacht and conduct a preliminary investigation before the vessel was towed to Townsville. However, in view of the weather and the manner in which it was causing the yacht to heave, Sergeant Lawrence decided that it was unsafe for the scenes of crime officer to board it. I accept that Sergeant Lawrence's decision was soundly based.

After some difficulty a hawser was secured to the *Kaz II* and it was towed to Townsville.

Three officers conducted an examination of the vessel at the Townsville Harbour on 21 April 2007. Sergeant Bardell, an experienced crime scene

investigator, and Sergeant Molloy, a fingerprint expert, spent considerable time on the vessel. They were searching for evidence of foul play, or other third party involvement. No such evidence was found.

Sergeant Molloy said in evidence that the cabin area was neat and tidy while the photographs taken during the examination clearly show various items on the floor, including magazines, part of a newspaper and a wine cask. Those items were not out of place when Corrie Benson boarded the boat on 19 April. They must have been dislodged when the vessel was towed from the reef to Townsville.

There were no knives found on the floor, rather there were some butter knives in the sink (a result of a cutlery container tipping over) and a plastic sheath of fishing knives on the bench in the galley. There was nothing suspicious about the location of the fishing knives and they did not appear to have been recently used. Of course, it would not be surprising if they had been used since the men were keen fishermen and Peter Tunstead is seen fishing in the video footage. Flippant comments made by an understandably relieved Mr Benson after he returned to the helicopter, concerning knives may have been misconstrued.

Some attention has been paid to the firearm and ammunition found on the boat. The weapon was registered and had been lawfully transported to Queensland. It remained in its sealed container under Des Batten's berth. Its full compliment of ammunition was accounted for. In addition there was a single bullet found in a drawer. Sergeant Bardell gave evidence that it was of the same calibre as the firearm found and did not raise any suspicion.

Sergeant Molloy described the cabin as neat and tidy and not displaying any evidence that would justify embarking on a fingerprint examination. He said that had there been any indication that someone other than the three men had been on the *Kaz II*, the vessel would have been 'pulled apart'. Photographs taken during the examination show some untidiness in the cabin. Sergeant Bardell explained that while the cabin may not have been as neat as Sergeant Molloy described, the items that had dislodged had done so in a way that was consistent with the boat having been towed some distance, under rough conditions.

Family members have raised concerns about the decision not to search for fingerprints or other scientific evidence on the *Kaz II*. I find that concern wholly understandable in the context of the men disappearing without a trace. However, I am equally satisfied that there was nothing to warrant such further steps.

The search

AusSAR were notified and they tasked a Navy aircraft surveying the area to search the reefs in the vicinity of the vessel. Three dories and a mothercraft, probably the *Alma Jane* and her crew, were seen but there was no sign of the men. A coastal and island search of the Edgecumbe Bay and Gloucester Island area, as well as around Holbourne and Nares Rock, was conducted by Bowen Voluntary Marine Rescue. That night an aircraft with infra-red capabilities searched the surrounding reefs and cays.

On Thursday 20 April, a full scale search was coordinated enlisting the assistance of Volunteer Rescue Units from the Whitsundays, Bowen and Burdekin, and the Townsville Coast Guard. Rescue 521 revisited the *Kaz II* to retrieve the Global Positioning System and onboard computers.

The data concerning the drift line of the vessel over the preceding two days was able to be extracted from the GPS by a local navigational electronics expert. The expert, Barry Dionysis, explained the device had limited memory capacity and when that was reached it commenced deleting the earliest data saved. This explains why the track plotted by transferring that data onto a chart, reproduced as map B, commences approximately 30 miles north of Gloucester Island rather than at Abel Point Marina.

The information from Jim Tunstead's video camera assisted authorities to focus the search. The aircraft involved in searching covered an area of more than 1000 square nautical miles that day.

Two rescue helicopters were engaged in coastal searches from Cape Bowling Green to Cannonvale, near Airlie Beach. Nine fixed wing aircraft conducted the wide area search off shore, around reefs and along the coastline. The surface search by VMR units and the Coast Guard encompassed mainland and island shore searches from Magnetic Island in the north, south to Airlie Beach. Two commercial vessels searched the Old, Stanley, Darley, Dingo and Charity reef systems.

That afternoon advice was sought from Dr Paul Luckin, a survival time expert. He opined that on the basis of the information he had been provided about the men, including that they had not been wearing flotation devices when they went into the water and that they probably went overboard on Sunday 15 April or Monday 16 April, there was no prospect of finding them alive had they remained in the water.

The following day the search continued in the hope that the men had reached land. AusSAR scaled back the air search however two helicopters searched the coastline of the mainland from Edgecumbe Bay in the north to Bluff Point to the south, again including Holbourne Island and Nares Rock. Vessels from the Whitsunday and Bowen VMR units complimented the air search in that area. Having found no trace of the men, the search was terminated at 4.00pm that afternoon. I accept the evidence of Sergeant Lawrence that appropriate procedures were followed in making that decision and that it was not taken lightly.

Coastline searching recommenced on Monday 23 April 2007 after Mr Ormes came forward with the information I have already mentioned. It continued until 25 April and took in the area between Cape Bowling Green and George Point and included the islands east of Bowen. Sadly, those efforts were also fruitless.

The families of the three men continued to search for their loved ones after the authorities had ceased. They expressed the view that the search was called off too soon and it is understandable that the families maintained hope of finding some clue as to the fate of those they loved. While I can easily empathise with the views expressed by the Batten and Tunstead families, I consider that the decisions made to terminate the search were appropriate in all the circumstances. I commend those involved in the search and its coordination which I find to have been thorough.

Findings required by s45(1)&(2)

I am required to find whether the suspected deaths in fact happened and, if so, who the deceased persons were, and when, where and how they came by their deaths.

Conclusion as to death and identity

I have regret, but no hesitation, in finding that the three men are dead. The inquiries conducted by police with financial and government agencies revealed none of the transactions usual for the living. Nor can there be any credible suggestion that they conspired to stage their disappearance with a view to setting up new lives elsewhere. I have not the slightest doubt that each of the men would contact their wives and families were they alive.

There is also no doubt that the dead men were Derek Charles Batten, James Alfred Tunstead and Peter John Tunstead.

Conclusion as to manner of death

I can not be so definitive about the circumstances under which the deaths occurred. However, the following scenario can be deduced from the video recording found on board, the eye witness accounts and the state of the yacht when it was found.

At 10.05am on Sunday 15 April, they were sailing along contentedly in the vicinity of George Point. In the next hour or so things changed dramatically. Perhaps unfortunately, they retrieved the white rope that had been trailing behind the boat and left it bundled on the foredeck adjacent to the locker it was kept in, probably to dry. Something caused James Tunstead to take off his tee-shirt and glasses and leave them on the back seat. An obvious explanation is that he or his bother Peter fell in while trying to retrieve his lure which was found wrapped around the port side rudder and the other went to his aid. Even standing on the platform in the sugar scoop would be precarious while the boat was underway. Falling in would be easy and getting back aboard nearly

impossible. Des started the motor, but he knew that he had to drop the sails before he could go back for the two men. As the boat was running square before the wind, any deviation in its heading or the wind's direction that occurred as he left the helm and went to the winches and halyards was sure to result in an uncontrolled jibe. The swinging boom could easily have knocked him over board. This could well have happened before he even had time to unlash and launch the life ring. A blue coffee mug found adjacent to the life ring may support this reconstruction.

Once the three men were in the water there was very little chance they could get back on the boat as it was blown before a 15 knot wind and they struggled in lumpy seas. It would be beyond their reach in seconds.

Foul play

There is no evidence that any third party was involved in the men leaving the yacht. I can not conceive they would all have left the boat voluntarily, mid ocean and had they been on an island they would have been found by the extensive search which followed the discovery of the boat. They were not young men, but they were far from feeble. The three of them could not have been overcome without very considerable violence that would almost certainly have left evidence of it having occurred.

Some family members questioned whether the scientific examination of the vessel by police was sufficiently thorough. In the circumstances I believe it was. Forensic examiners have to exercise professional judgement about what tests and inspections to undertake. I do not consider I am in a position to conclude their judgment misfired in this case.

It has been suggested that the fenders being hung over the gunwales indicates another vessel came along side but eye witnesses and the video vision testify to the fenders being out when the boat left the Abel Point Marina on 15 April.

Money and valuable electronic equipment were found on board when the boat was recovered, ruling out robbery as a motive.

Some concern was expressed about the state of the knives found on the boat: the suggestion being, as I understand it, that Jimmy was careful with them and would not have allowed them to deteriorate as they did. The answer to that would seem to be; he had no time to do what he would usually do as a result of his leaving the boat so precipitously.

It is possible to dream up scenarios that could account for some of this evidence and accommodate third party involvement, but I am convinced that such speculation is without substance. The overwhelming weight of the evidence is against any foul play being involved in the men's disappearance.

Time, place and cause of death

With more certainty, I can find the timing of the disaster. The calendar found in the saloon show days crossed off up to 14 April. The next day is marked "*Left Airlie.*" It is not crossed off, nor are any following days. There was no more

video recording on the camera after the scenes shot at 10.05am on 15 April. Until then frequent use had been made of the camera. No more phone calls or radio transmissions were made or received after the boat passed George Point.

The change of direction seen by Mrs Wheeler and Mr Stonehouse that took the vessel beyond the view of Mr Douglas would not be attempted with the headsail poled out when the mainsail was also on the port side and the vessel was reaching across the wind; yet the boat was found with the whisker pole still in place. And indeed there was no reason they would make that change of course. Whether they were headed for Gloucester Passage or around Gloucester Island there can be no explanation for the boat deliberately turning out to sea, away from any safe anchorage.

I therefore conclude that the men were all in the ocean, without life jackets soon after the boat passed George Point. From that point, the end would have been swift. None of them was a good swimmer, the seas were choppy; the men would quickly have become exhausted and sunk beneath the waves. Although I can't exclude the possibility of a shark attacking them, drowning is a far more likely cause of death.

I find each of the men died in the sea off George Point in Queensland on 15 April 2007.

Condolences

Each of the men was undoubtedly a loved and loving member of a close knit family. Not knowing exactly how they died, and not recovering their bodies has inevitably added to the terrible grief the three families have suffered. I offer them my sincere condolences.

Comments and preventive recommendations

Section 46, insofar as it is relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety or ways to prevent deaths from happening in similar circumstances in the future.

It is difficult to conceive of changes to policies or procedures that would lessen the likelihood of similar deaths occurring in future. It might be that this is a case that truly deserves the appellation "misadventure" or even "freak accident."

Going to sea has always involved risks. It might be that the increasing popularity of bareboat chartering has engendered a perception that sailing is safe and simple. However, charter boats are professionally maintained, they operate within defined limits and they are supervised by twice daily radio schedules. The Sydney to Hobart Yacht Race disaster of 1998 reminded people that blue water racing was far more dangerous than a day sail. It is hoped the publicity these deaths have attracted will make others focus on how easily a happy day cruising can so suddenly turn to tragedy.

I have considered whether I should recommend the wearing of harnesses or personal floatation devices be mandated on cruising yachts. I decided not to based on the disparity of circumstances under which cruising boats operate and the impossibility of enforcing such regulations.

There are however, a number of other aspects of the matter that warrant some further comment with a view to improving safety in future. I don't suggest that any of the recommended reforms would have led to a different result in this case had they preceded it.

Liaison between police and VMR

It seems that there was no effective procedure by which police could establish whether any VMR volunteers had radio contact with the boat. It may be a purely local problem or a singular mix up in this case. Nevertheless it should be reviewed.

Recommendation 1 – Review of dissemination of VMR information

I recommend that the QPS and the VMR review the procedures governing their interface to ensure information gathered by VMR volunteers is disseminated to police in a timely and consistent fashion

Futility of “all ships” broadcast

The “all ships” broadcasts failed to produce any response even though numerous fishermen had seen the subject vessel and one VMR volunteer had radio contact with it. The fishermen all denied hearing any broadcasts of relevance even though they noticed the search aircraft flying over their position repeatedly. It seems likely that it was not broadcast over radio channels fishermen regularly monitor.

This is of on-going significance as commercial fishermen spend extended periods at sea and should be a valuable source of information to SAR operations.

It seems the police officers who arranged for the broadcasts to occur gave no instructions as to what radio bands or frequencies should be used, presumably relying on the experience of the agencies to which the requests were made.

Emergency Management Queensland and Maritime Safety Queensland have both advised that they do not consider they have administrative responsibility for such search strategies. It seems therefore it will be left to police to investigate the matter with a view to developing protocols that might increase the effectiveness of these broadcasts.

Recommendation 2 – Review of “all ships” broadcast protocols

I recommend that the QPS State Search and Rescue Coordinator liaise with commercial fishing bodies and other boating organisations to ascertain how

“all ships” broadcasts” can be made most effective and that QPS SAR protocols be amended accordingly if necessary.

Visibility of boat registration numbers

It was a full 24 hours after the ship had first been sighted by the authorities before it was able to be identified. This was mainly because the registration number was too small to be seen from a fixed wing aircraft. The current regulations only require boat such as the *Kaz II* to have registration numbers painted on one surface, 75 mm high and visible from 30 metres. The difficulties of this case demonstrate the inadequacy of these specifications. Border security and quarantine considerations add to the need for change.

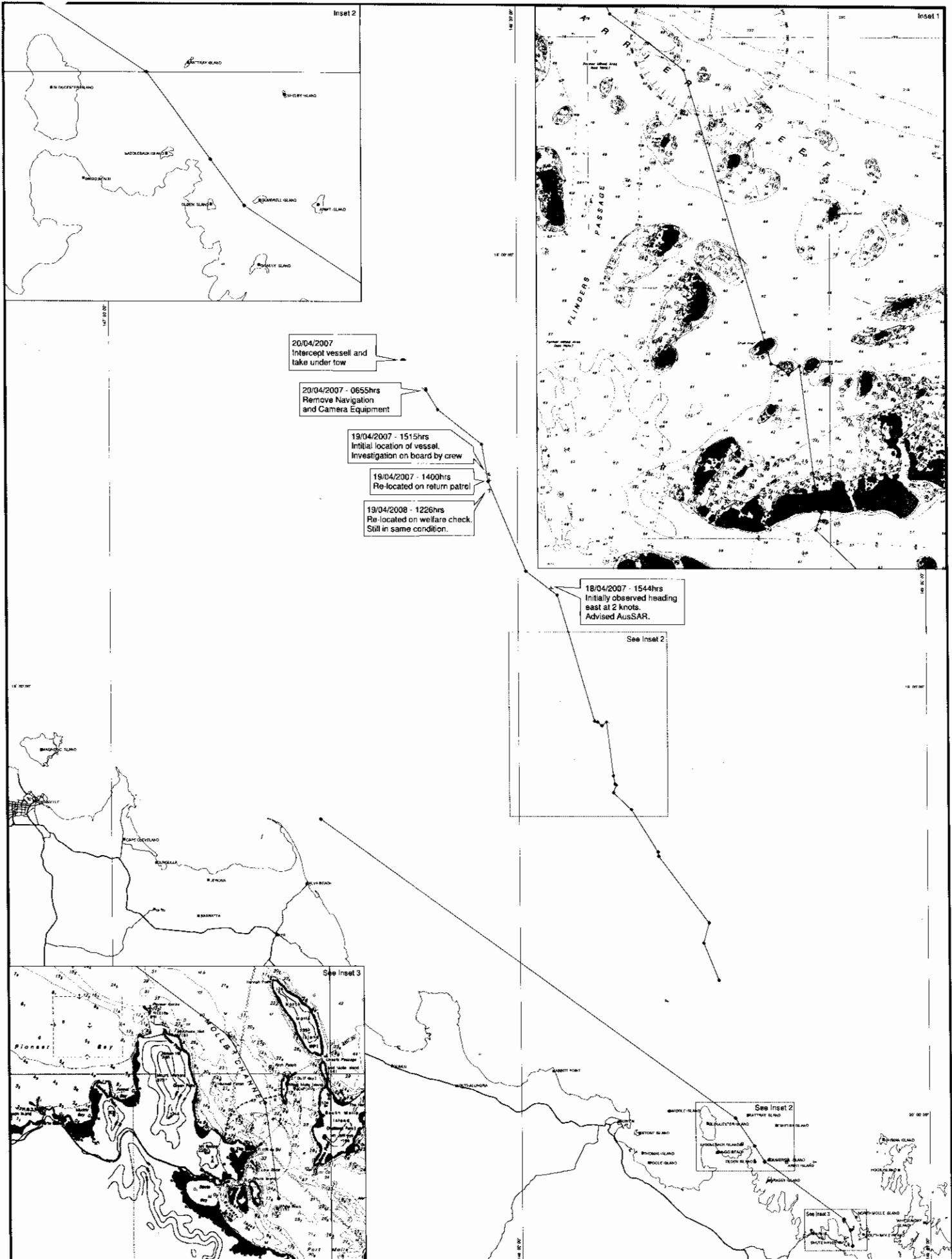
Recommendation 3 – Review of ship registration markings

I recommend that Queensland Transport consider amending the registration marking requirements of all sea-going ships to ensure that such vessels can be readily identified from Coastwatch, surveillance and search aircraft.

This inquest is closed.

Michael Barnes
State Coroner
8 August 2008

MAP B



20/04/2007
Intercept vessel and
take under tow

20/04/2007 - 0655hrs
Remove Navigation
and Camera Equipment

19/04/2007 - 1515hrs
Initial location of vessel.
Investigation on board by crew

19/04/2007 - 1400hrs
Re-located on return patrol

19/04/2008 - 1226hrs
Re-located on welfare check.
Still in same condition.

18/04/2007 - 1544hrs
Initially observed heading
east at 2 knots.
Advised AusSAR.

See Inset 2

See Inset 3

See Inset 2

See Inset 2

DATA SOURCES:
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| MAP TITLE | Mining Vessel under tow |
| OPERATION | Fishery |
| COMPILED BY | D.G. - Geographic Information Service |
| RELEASE | Kaib, Lindores, +Lava |
| REP. | 18/7/2008 |
| MAP. TR. | |
| DATE: | 26/07/2008 |

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SCALE: 1:50000
PROJECTION: Lambert Conformal Conic
Geographic Datum of Australia 1984

LEGEND:
● Fixed Markers
● Port GPS
● Starboard GPS
● Depth Soundings
● 100 Fathoms (10) Fathoms
● 200 Fathoms (20) Fathoms
● 300 Fathoms (30) Fathoms
● 400 Fathoms (40) Fathoms
● 500 Fathoms (50) Fathoms
● 600 Fathoms (60) Fathoms
● 700 Fathoms (70) Fathoms
● 800 Fathoms (80) Fathoms
● 900 Fathoms (90) Fathoms
● 1000 Fathoms (100) Fathoms

NOTES:
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