



# OFFICE OF THE STATE CORONER

## INVESTIGATION FINDINGS

CITATION: Non-inquest findings into the death of  
Gavin Joseph KELLY

TITLE OF COURT: Coroners Court

JURISDICTION: Southport

FILE NO(s): 2013/2509

FINDINGS OF: James McDougall Coroner

CATCHWORDS: Fishing trawler; capsized; search and  
rescue operation; vessel maintenance

REPRESENTATION:

Counsel Assisting: Ms Rhiannon Helsen, Office of the State Coroner

Gavin Joseph Kelly was 39 years of age at the time of his death. He resided at Coomera with his wife, Kellie, and their three children.

Mr Kelly was a professional fisherman who worked as a deckhand for Mr Robert Anstey, the owner of the prawn fishing trawler, D-TITAN ('the Vessel'). The Vessel was 14.9 metres in length, and without fuel weighed approximately 58 tonnes.

The Vessel operated out of the Southport Trawler Wharfs at Main Beach. The skipper of the Vessel was Mr David Burger, who had over 30 years' experience in the fishing industry.

At approximately 5:00 pm on 28 February 2013, the Vessel set off from the Gold Coast Trawler Wharf, manned by Mr Kelly and Mr Burger. According to Mr Burger, the Vessel was configured light, in that there was only half a ton of product and around three thousand litres of fuel on board (the Vessel was capable of carrying ten tonnes of product and around 18,000 litres of fuel). They departed from the Gold Coast Seaway and proceeded to travel 12 nautical miles east of the seaway. The weather and sea conditions at the time were good. The Vessel arrived at its destination at around 7:00 pm that evening, and trawling operations commenced immediately. The Vessel trawled north for around two hours before turning and heading south.

At around 2:10 am the following morning (1st March 2013) they proceeded to turn back north at the end of the southern leg of the expedition. As Mr Burger commenced a portside turn, he suddenly heard a loud bang. Neither Mr Burger nor Mr Kelly knew what the cause of the noise had been. At this time, Mr Kelly was reportedly standing at the open back door of the trawler. The Vessel then immediately rolled violently to the portside and completely capsized. The interior lights inside the Vessel went out and it was inundated with water, which washed Mr Burger into a cabin in the bow of the Vessel. Here, he was able to remain in an air pocket for a couple of hours. He repeatedly knocked on the hull of the Vessel in a bid to gain Mr Kelly's attention, however, received no response.

At around 5:00 am, Mr Burger was able to successfully swim out of the upturned Vessel and climb onto the hull. He did not hear or see any signs of Mr Kelly. Mr Burger recalls that the Vessel remained in the same position as it had when it capsized, which he believed was because it was snagged on the bottom of the sea bed. Mr Burger remained seated on the upturned Vessel for a number of hours until it completely sank. A short-time after the Vessel sank, a life raft floated to the surface. Mr Burger was then able to deploy an Emergency Position Indicating Radio Beacon ('EPIRB'), which was inside the raft. The EPIRB activation was received by the Australian Maritime Safety Authority Rescue Coordination Centre ('RCC') in Canberra, and a helicopter was tasked with conducting a search for the transmitting beacon. As a result, Mr Burger was found at a location in the Coral Sea, near Stradbroke Island. He was winched to safety and notified rescuers that Mr Kelly was missing.

The RCC in Canberra maintained overall control of the search and rescue

operation for Mr Kelly. The operation spanned a number of days and utilised Air and Surface assets, including Police and Volunteer Marine Rescue Vessels, which extensively searched the rescue area. The only debris located from the Vessel was the life raft Mr Burger utilised, an upturned dingy and a life ring tied to a drum.

During the course of the search and rescue operation, assistance was sought from survival expert, Dr Paul Luckin, as to the likely timeframe during which Mr Kelly may have survived following the Vessel capsizing. He was of the view that the window for survival would only extend until last light on 2 March 2013. Unfortunately, Mr Kelly was not located. The Australian Maritime Safety Authority subsequently provided a report detailing the scope of the search and rescue actions undertaken.

Unfortunately, as the Vessel sunk in 80 metres of water, it is not possible for divers to conduct a search of the wreckage, or for it to be retrieved.

As a result of the information obtained during the course of the coronial investigation, it is the opinion of Police that Mr Kelly likely died by way of drowning at sea. It seems probable that Mr Kelly was trapped inside the Vessel when it capsized, and was unable to escape before it sank. No suspicious circumstances were found in relation to the incident.

### **Maintenance of the Vessel**

Records suggest that the Vessel underwent regular repairs and maintenance. Some six months prior to the incident, the Vessel underwent a full service with an engine and generator rebuild, electrical overhaul, as well as a complete check and replacement of the hose and fittings.

On 31 July 2012, a Commercial Vessel Inspection was carried out by Mr Stephen Knowles, a Shipping Inspector from Maritime Safety Queensland ('MSQ') in order to ascertain the Vessel's level of compliance with the Transport Operations (Marine Safety) Act and Regulations. During this inspection, several non-compliant items were detected, including electrical non-conformances and the lack of provision of life saving and fire appliances. As a result of the deficiencies found, Inspector Knowles issued a Shipping Inspector's Direction, which prevented the Vessel from operating until the deficiencies were rectified. The deficiencies identified were immediately rectified by Mr Anstey. Inspector Knowles conducted a further inspection of the Vessel, following completion of the rectification work, and as a result the Written Direction was lifted.

In late February 2013, shortly before the incident, an array of repair work was carried out to the Vessel's generator and motor. Statements obtained from those responsible for the repair work confirm that the Vessel was fully operational, well maintained and in good mechanical order prior to its final voyage.

Mr Burger had operated the Vessel for fourteen months prior to the incident. He was of the view that the Vessel was a very seaworthy boat, which had been

exceptionally well maintained.

### **Family concerns**

During the course of the coronial investigation, Mr Kelly's wife, Kellie, has raised a number of concerns regarding the circumstances surrounding her husband's death. Whilst I do not propose to outline all the matters raised, Mrs Kelly's primary concern relates to the condition of the Vessel at the time it capsized, particularly whether it was safe and fitted with boom stays, which are essential for operating the vessel in waters off the Gold Coast.

In addition to the information outlined previously regarding maintenance of the Vessel, further inquiries were conducted by Police to ascertain whether the Vessel was fitted with boom stays prior to the incident. According to Mr Burger, the Vessel was fitted with boom stays which were fully operational.

I have considered all of the concerns and matters raised by Mrs Kelly during the course of the coronial investigation when reaching my conclusions regarding Mr Kelly's death.

### **Conclusion**

Based upon the evidence obtained during the course of the coronial investigation, I am able to conclude that Gavin Joseph Kelly died on 1 March 2013 in the Coral Sea, near Stradbroke Island. The most likely cause of his death is drowning.

Evidence obtained during the course of the coronial investigation suggests that the Vessel was seaworthy at the time of the incident. Given that the wreckage was unable to be retrieved or inspected by divers, allegations concerning the cause of the incident are purely speculative. Whilst I appreciate the matters raised by Mrs Kelly and her concern regarding the safety of the Vessel, I am satisfied on the information obtained by Police and MSQ that the Vessel was well maintained and in good working order prior to its final voyage.

The circumstances surrounding Mr Kelly's death have been thoroughly and professionally investigated by Police. Having considered all of the evidence obtained during the course of the coronial investigation, I am satisfied that I am able to make the requisite findings as required under the Coroners Act. Accordingly, I am of the view that there are no further lines of enquiry, which require consideration by way of an inquest.

**James McDougall**  
**South Eastern Coroner**  
**15 July 2015**