



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

(These findings have been de-identified in relation to the name of the deceased, and family by direction of the Coroner pursuant to s57(1)(c) of the Coroners Act 1995)

I, Robert Webster, Coroner, having investigated the death of DS

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

- a) The identity of the deceased is DS
- b) DS died in the circumstances set out below;
- c) DS's cause of death was drowning; and
- d) DS died between 12 and 13 February 2022 on Lake Burbury, Tasmania.

In making the above findings, I have had regard to the evidence gained in the investigation into DS's death. The evidence includes:

- Tasmania Police Report of Death for the Coroner;
- Declaration of life extinct;
- Affidavits as to identity;
- Affidavit of the forensic pathologist, Dr Andrew Reid;
- Affidavit of the forensic scientist, Juliette Tria of Forensic Science Service Tasmania;
- Medical records obtained from Derwent Valley Medical Centre;
- Affidavits of NW;
- Affidavits of Mr James McIlhenny;
- Affidavit of Mr Peter Thompson;
- Affidavit of Mr Derek Reardon;
- Affidavit of Senior Constable Cameron Robertson;
- Affidavit of Sergeant James Scicluna;
- Affidavit of Constable Wayne Bradford;

- Affidavit of Constable Elmar Van Breda;
- Affidavit of First-Class Constable Mark Johnston;
- Report of Kedge Marine Surveyors;
- Correspondence from Marine and Safety Tasmania (MAST); and
- Photographs, video footage and forensic evidence.

Introduction

Lake Burbury is a man-made lake that forms part of the hydro-electric scheme operated by Hydro Tasmania. It is situated east of Queenstown on the west coast of Tasmania. It has a surface area 54 km² and it lies predominantly north to south with some narrows in the middle which divides the lake into two distinct north and south halves. The lake is approximately 13 km long but due to the topography it has well over 100 kms of shoreline and more than 64 islands. There are hundreds of coves along the shoreline.

Constable Bradford who, for the last 27 years, has been involved in marine and rescue as a Tasmania Police Coxswain, says his area of responsibility includes Lake Burbury. He has explored the lake extensively while off duty and he has also conducted marine policing duties and searches at night. He says he is aware of fishermen getting lost on the lake even during daylight hours. He says it is a challenging place to conduct search operations because the lack of clear felling before the land area was inundated with water, and unreliable depths make navigation, even in the middle of the lake, hazardous. He says despite previous requests, Hydro Tasmania has refused to supply the depth charts and without those charts larger radar equipped police vessels are unable to participate as search pattern radar controllers. He says traditional grid searches are largely rendered ineffective due to the regular requirement to change course because of hazards; that is the remains of trees in the water. In addition, the tannin content in the water makes it very dark, thereby easily hiding submerged objects. He says a large bright coloured object like a boat is invisible at a depth of 75 cm and an object like a body in the water cannot be seen if it is deeper than 25 cm under the surface.

Despite these difficulties, he says the lake is one of the most productive trout fisheries in Tasmania. The numerous creeks and rivers which feed into the lake ensure plenty of spawning opportunities. It is also popular among the fishing community for developing “wind lanes”, whereby long lines of froth and surface debris forms along the prevailing wind direction, and they are productive places to fish.

Background

DS was 47 years of age and he and his wife, NW, resided with their two young children in the Derwent Valley at the date of his death.

DS was born on 7 December 1974 in Bairnsdale, Victoria to AT and RO. He has one sibling; a brother. He attended school in Bairnsdale and finished high school in Numurkah in Victoria. DS was particularly close to his mother who passed away when he was in his early 20s. He was, during his adult life, in regular contact with his father and in contact with his brother a few times a year.

DS was a qualified baker. He also attended the University of Tasmania and obtained a science degree. He later used that knowledge while working with the Fox Task Force. When that unit was disbanded he retrained and worked in aged healthcare. It was while working with the Fox Task Force that DS met his future wife and they were married on 8 December 2012. Their daughter was born in 2014 and their son was born in 2017. The family moved into the home in which they were living at the time of DS's death approximately two years after they were married. Before moving into that home DS had commenced working at Glenview aged care facility in Glenorchy.

In so far as DS's health is concerned, the records of his medical practitioner indicate he had struggled with depression and anxiety for many years, dating back to his early childhood. Although no trauma or life events were identified as the cause of this condition, the history is DS was teased at school and he became withdrawn and isolated. He moved schools on a number of occasions which did not assist and accordingly he had low self-esteem, self-worth and confidence. He did receive some counselling over the years for this condition. In addition, he was prescribed fluoxetine for depression and amitriptyline for sleeping difficulties. It also seems he suffered left knee pain for many years and neck pain, and he was prescribed the non-steroidal anti-inflammatory drug, naproxen. Finally, he was prescribed Nexium for gastro-oesophageal reflux disease. His general practitioner's records cover the period from 17 March 2009 until his last attendance on 18 January 2022.

NW describes her husband as a devoted father who loved interacting and playing with his children. In addition, he was a passionate fisherman and he fished predominantly in fresh water lakes. He owned his own Quintrex Hornet Trophy fishing boat and she says DS was very considered in the way he maintained both the vessel and his gear. He was also a member of the Kingborough Anglers Association (the Club).

Circumstances Leading to Death

On Friday 11 February 2022, DS left home in order to travel to Lake Burbury to attend a fishing weekend on the lake. He was intending to camp and fish with other members of the Club namely James McIlhenny, Peter Thompson and Derek Reardon at the Lake Burbury campsite. He arrived at approximately 6:40pm and advised NW he had reached the lake. He subsequently sent her another message indicating he had rigged his rod and was ready to go fishing the next day. NW sent him a message on the Saturday but did not hear anything back but she says that was not unusual.

DS went fishing on his own in his boat on the morning of 12 February 2022. He caught a number of fish before returning to camp in the early afternoon to refuel. He refuelled and returned to the lake in his boat alone. Mr Thompson last saw DS at approximately 5:00pm that afternoon from a distance of about 500m. At that time, Mr Thompson believes DS was travelling towards the bridge over the lake and moving in a southerly direction. He says the weather at this time was what he describes as perfect boating conditions; the lake was flat and visibility was good.

DS's friends from the Club returned to camp before dark and moored their boats. DS did not return at that time but they did not think this unusual as DS regularly stayed out on the water for longer. Mr McIlhenny, Mr Thompson and Mr Reardon went to sleep at about 10:00pm at which time DS still had not returned. They confirm throughout the day weather conditions on the lake were calm and sunny and it had been approximately 28°C.

In the early hours of Sunday 13 February 2022, the wind picked up significantly. DS's friends noted when they got up at 6:30am he had not returned. They planned to take three boats out to look for DS in different spots however the wind was too strong for the smaller boats. They all therefore went on Mr Reardon's larger vessel and searched the shore within around a 5km radius of the boat ramp in all directions. At around 8:00am there was still no sign of DS. They returned to the boat ramp at which time weather conditions were deteriorating. Mr McIlhenny contacted police.

Senior Constable Robertson was tasked to attend Lake Burbury at approximately 8:20am. He attended the campsite after checking in at the Thureau Hills boat ramp. On arrival, he spoke to DS's friends after which he coordinated officers from the Marine Division of Tasmania Police to commence a search for DS. Senior Sergeant Judges and Constable Van Breda acted as search coordinators. DS was located at approximately 3:52pm on 13 February 2022 by Sergeant

Scicluna and Constable Bradford. DS was recovered from the water and identified at the campsite. He was then transported by helicopter to Cambridge and then by road to the mortuary in Hobart.

Investigation

Constable Bradford received a phone call from Sergeant Scicluna about DS's disappearance shortly after 9:00am on 13 February 2022. He went to the Strahan police station and prepared for a waterborne search. He arrived at the Lake Burbury campground at 11:39am and observed that a police helicopter was already present. He noted from information he obtained from the Bureau of Meteorology that conditions on the lake had been calm, however, a strong northerly wind had set in about two hours before dark on Saturday evening. That wind remained consistent overnight.

It was too rough to launch a boat safely from the boat ramp at the campground. There were regular rolling white-capped waves on the lake and wind speeds up to 50km per hour. The waves were approximately one metre high and they were crashing onto the boat ramp. The rescue vessel was therefore launched from the Thureau Hills boat ramp which is protected from northerly winds and was generally a safer location. Joining Constable Bradford in the vessel was Sergeant Scicluna. They concentrated their search directly to the south of the narrows where the Lyell Highway crosses the lake at Bradshaw's Bridge. The search they undertook was conducted in a clockwise direction from the boat ramp up the western shore to Bradshaw's Bridge and then back down the eastern shore, which included the Nelson River inlet which has 13km of shoreline alone. At 3:52pm while checking among trees in a small cove south-west of the Nelson River inlet, Sergeant Scicluna spotted something unusual on the surface of the water among the trees about 15m away. They weaved between the semi-submerged trees and found the sole of a boot which was attached to DS who was suspended head down under the water. A larger vessel was required to retrieve DS than that being operated by Sergeant Scicluna and Constable Bradford. Constables Murphy and Fitzgerald launched the larger vessel and the four officers returned to the water and retrieved DS. He was noted not to be wearing a life jacket. During this time Constable Bradford noted the water temperature was exceptionally warm. He estimated the temperature of the water to be around 25°C. He then returned to Strahan and prepared the vessel and his equipment to continue searching for DS's vessel the next day.

On 14 February 2022, Constable Bradford and Constable Johnstone launched a small police vessel from the Thureau Hills boat ramp and some three hours later those in a rescue helicopter notified them they had located a vessel which had run aground on one of the islands opposite the Crotty Dam. The officers then motored approximately 10km to that area and located DS's vessel which was a further 4km south from where DS was located the day before.

DS's boat was registered in his name with MAST. It is 4.43m long and it has a 2.02m beam. The hull is made of aluminium and it was manufactured in 2007. This type of vessel is marketed as being particularly stable for its weight and size and it is described as "*a stable casting platform*". Constable Bradford says it has relatively low gunwales and a lack of safety rails when compared to other aluminium dinghies of similar length. He says the design compromises man overboard features in exchange for angling ease.

Constable Bradford says when he found the boat it was upright and watertight and the bungs were fitted and in place. It was sitting higher in the water at the stern than normal which was likely due to wave action pushing the boat into the shallows and the outboard motor jacking the stern higher and/or because the John Butters power station was operating which can result in the lake's depth dropping by around about 25cm in a 24 hour period. The motor was observed to be a 30hp two-stroke Suzuki. Auxiliary power was provided by a bow mounted remotely controlled electric motor and stowed paddles. The engine was not running, the throttle was in the idle position and the gearbox was in neutral. The engine tiller was hard over to starboard and stuck into the back of the seat in a way to keep it in that position; perhaps to control vessel drift angle in the wind. The kill switch lanyard attached to the switch was in the live position and the end of the lanyard pushed into a small hole in the transom; likely to be a usual storage spot which indicates it was not regularly used. The boat's electrics were live and not isolated. The navigation (port and starboard) lights were switched on and illuminated correctly. There was a hand held spotlight plugged into an outlet sitting face down on the deck switched off. It was tested and it was in working order. There was a yoke type life jacket sitting on the deck next to three fishing rods. Another very similar life jacket was found in a grey bag which contained fishing equipment. The fuel tank was empty. The depth sounder was active. It was attached to the gunwale adjacent to the casting area on a bracket with a lower ball joint and upper hinge. The screen was facing forward and slightly outward at an angle which resulted in it being unobservable from the driver's seat. The driver's seat was aft and inboard of the sounder. Constable Bradford says in 27 years of marine policing he had never seen a depth sounder not facing the driving position and in the absence of depth charts for this lake the sounder is a primary tool for safe navigation.

In addition police observed a foldout type drink holder just aft of the depth sounder; it had been broken off. The drink holder cover was broken off and located on the deck approximately one metre forward of the mounting location. The broken hinge revealed a whiter core of plastic indicating the damage was more recent as the plastic had not weathered like the rest of the holder. Constable Bradford attempted to start the engine. The vessel is electric start and wound over for about five seconds before the starter motor slowed. A nearly flat battery was expected given it was not isolated and ancillary electrics were active overnight. The vessel did not start in the absence of fuel. The vessel was then towed, removed from the water and transported to the Queenstown police station.

On 23 June 2022 when the wind speed and direction at the nearby Mount Read weather station appeared similar to when the incident occurred, Constable Bradford returned to Lake Burbury with DS's boat to conduct waterborne testing. He says the conditions from Bradshaw's Bridge were similar to 12 – 13 February 2022, but with stronger gusts. When the vessel launched all its systems were in working order. He travelled to the area south of Bradshaw's Bridge and commenced wind drift testing. He motored into the wind five times and on each occasion he emulated the vessel's condition, at the time it was found; that is knocking the gearbox into neutral, swinging the tiller hard to starboard and locking it into the skipper's seat. On each of these tests the vessel drifted sideways; to starboard three times and to port twice. The drift speeds averaged between 2 and 3 km/h. After drift testing, he motored to the cove where DS was located and knocked the vessel into neutral but left the engine running for safety reasons. The vessel swung to the starboard side and drifted into the trees at around 2 to 3 km/h. It stopped with a significant shunt when it hit a semi-submerged tree. He says the forces were more than sufficient to tip a standing passenger overboard. The vessel was removed from the water and transported back to Queenstown.

Dr Reid performed a post-mortem examination on 16 February 2022. After conducting his examination and considering the results of radiology (which showed there was no evidence of trauma, intracranial haemorrhage or aortic rupture), histology, toxicology and microbiology Dr Reid says the cause of death is drowning. He goes on to say:

“Drowning is a diagnosis of exclusion. Asphyxia is the model/mechanism of death, associated with drowning. Non-specific but typical features [of] water immersion and of drowning were seen in this case, including skin wrinkling, over-inflated, partly overlapping lungs, and fluid levels in facial sinuses. Histological features of water immersion/aspiration (emphysema acquosum) were also seen.”

The results of toxicology found a combination of antidepressants and a non-steroidal anti-inflammatory drug, the concentrations of which were within or below the respective reported therapeutic ranges. He says these drugs did not cause or contribute to death. In addition, he says there was no macroscopic or microscopic evidence of any natural disease that would cause or contribute to death. Minor facial trauma was noted, however, Dr Reid says that was probably caused when the body contacted a hard surface when it was floating, immersed or otherwise suspended face down in the water. He says there was no major trauma or evidence of any other natural cause or contribution to death. He therefore concluded the criteria for drowning as a probable diagnosis of exclusion were satisfied. I accept his opinion.

NW says her husband maintained his boat and equipment well and he wore waders when he fished, along with a blue inflatable life jacket. She says he was a considered person who was risk averse and so he would never do anything silly or risky. She also says he was previously a scuba diver but gave up that pastime when he developed tinnitus in his ears. She says he was comfortable in the water and she believes if he fell into the water unexpectedly he would be able to remove himself from the water safely.

Mr McIlhenny says he has known DS for 20 years and in his view DS was an experienced fisherman who took great care of his boat and who was highly experienced in fishing on inland fresh water ways. He understood DS did not know Lake Burbury particularly well but he believed DS had obtained some advice from a friend. He also says he never saw DS in his boat without his life jacket. While DS might have a couple of drinks after returning from fishing he never consumed alcohol during the day while fishing. He says when they went fishing, they used to fish alone in their own boats and DS was the first out and always the last back. He confirms the water in Lake Burbury is dark with tannin and it is quite difficult to see obstacles in the water especially when the light fades at the end of the day. He also said the lake was full of obstacles, so it was quite easy to be caught off guard by hitting something you otherwise were not aware of.

Mr Thompson confirms DS was very particular and fastidious about his boat. DS was an experienced angler and very conscientious about the seaworthiness of his boat. Although not mechanically minded, he says DS was very methodical about ensuring his equipment was in good working order. He was not a risk taker. Mr Thompson also says when they went on fishing trips, DS would return later than anyone else and often after sunset. He too confirms DS had extensive experience boating on lakes and rivers.

All witnesses confirm there was no evidence of any self-harming behaviour or suicidal ideation. Although DS suffered from depression and anxiety, there is no mention of self-harming or suicidal ideation in his medical records. His wife and two young children were clearly protective factors in that regard.

Taking into account Constable Bradford's significant boating experience and what he found at the scene, he believes DS fell overboard while drift fishing and drowned from fatigue after a lengthy immersion in the water in darkness. The prevailing winds, prior to them increasing, resulted in good fishing conditions in the area just south of Bradshaw's Bridge. At the time of falling overboard, Constable Bradford believes it is likely the vessel was idling, in neutral, with its navigation lights lit. The spotlight was out of storage, sitting on the deck and plugged in and was ready to be switched on. Constable Bradford believes the spotlight would have been used when DS was returning to camp after concluding fishing for the day.

Constable Bradford says DS likely fell overboard at the casting area in the middle of the starboard side of the boat where there is no safety rail. He believes as DS fell he pushed the depth sounder out and broke the plastic drink holder. Drift testing revealed a high likelihood the vessel was travelling sideways, struck the bottom or a submerged object such as a tree and the momentum of a standing person would easily carry them overboard particularly at night when a place to hold onto is not instantly identifiable.

He goes on to say there are shallow areas well offshore up wind of the point where DS was located. He can see a scenario where the boat has stopped suddenly, DS has fallen overboard, the boat has lifted in the water without a person on board and floated away. Being able to see the navigation lights DS has swum after his boat but has been unable to catch up with it. Constable Bradford says there would be considerable difficulties seeing the boat's navigation lights from in the water by the time the boat was about 100 m away from DS. Without a point of reference and unable to locate a shallow area where the vessel may have hit the bottom or a submerged tree, DS has likely swum in random directions until he succumbed to fatigue. He says DS was not wearing a life jacket and although this is likely to have saved him, in this scenario, he was not legislatively required to wear a life jacket if he was not under power at the time. The investigating officer First-Class Constable Robertson has recommended consideration be given to amending the regulations so that people who are on smooth waters without another person present be required to always wear a type I PFD (personal floatation device or life jacket) even when not under power. Such devices are designed to turn most people including unconscious individuals to a face up position when in the water.

Mr Peter Hopkins, the Manager of Recreational Boating at MAST, was asked to comment on First-Class Constable Robertson's recommendation about the use of life jackets "[so] that [people] who are on smooth water without another [person] present be required to always wear a type I PFD even when not under power". Before commenting on that recommendation he said:

"With respect to the Police view, I am not certain that a drift of 2-3 kph or in nautical terms between 1 and 1.5 knots would cause a person to fall overboard if they were standing unless they were on the casting deck, then it may be possible. I am unaware of the location of the drink holder or sounder that were damaged."

I am satisfied, given Constable Bradford's general boating experience, experience with respect to boating on Lake Burbury and the tests he conducted in the cove in which DS was found, that a drift of 2-3km/h and a collision with a submerged tree or the vessel running aground would have provided sufficient force for DS to be propelled into the water from his vessel. Constable Bradford described a collision with a submerged tree in the relevant cove to have resulted in a significant shunt, which was more than sufficient to tip a standing passenger overboard. In addition, the damage to the cup holder and the knocking out of position of the depth sounder support the view DS was propelled over the side of the boat with some force. I therefore prefer the evidence of Constable Bradford to that of Mr Hopkins on this issue.

Mr Hopkins was not in favour of First-Class Constable Robertson's recommendation for the following reasons:

- *"The recommendation would mean even if people were anchored having lunch a life jacket would be required to be worn – this is not practical.*
- *The recommendation is not specific to boat length.*
- *MAST statistics on fatalities since 2001 do not support the Police recommendation.*
- *When not under power MAST considers that access back into the boat is more important.*
- *Getting back into any sized boat with a life jacket on (without help from another person that is onboard) is problematical unless there is a device to enable the person in the water to get back onto the boat. A bulky life jacket would hinder access back into the boat greatly.*

- *Enforcing such legislation when a life jacket is not worn when not under power would be difficult and unpopular.*
- *MAST urges people to always wear life jackets.*
- *Many do continue to wear life jackets when drift fishing, this is observed during safety inspections.*

MAST considers that a life jacket should not be regulated to be worn when alone on boats when not under power in smooth waters. MAST considers it should be at the discretion of the individual but does see merit in educating the boating public to have suitable access to enable them to get back into the boat, not only in smooth waters but all classified waters – sheltered and open.”

The first thing to say about First-Class Constable Robertson’s recommendation is type 1, 2 or 3 PFDs do not comply with the current standard (AS4758). Amongst other things that standard increased the buoyancy of such devices. *The Marine and Safety (Motor Boat and Licences) By-laws 2023* (the By-laws) by clause 37(1)(a)(i) and (2) makes it mandatory for a person to wear a life jacket that meets or exceeds the requirements of AS4758 level 50 when on a motor boat in smooth waters which is proceeding and is less than 6 metres in length. Smooth waters is defined as all the waters identified in Schedule 1 of the *Marine and Safety (Limits of Operational Areas of Vessels) By-laws 2023* which includes the waters of any inland lake, river or stream. Given DS’s boat was less than 6 metres in length, clause 37(1)(a)(i) and (2) are the By-laws which apply to Lake Burbury. If DS was drift fishing rather than proceeding he was not required to wear a life jacket. Any recommendation, if made, therefore needs to refer to the approved life jacket under the By-laws.

Mr Hopkins’ first reason is focused on practicality or inconvenience. That is never a substitute for a measure which enhances public safety.

His second reason can be accommodated by specifying in any recommendation that it applies to motor boats which are less than 6 metres in length. It will therefore be consistent with clause 37(2) of the By-laws.

In so far as the third reason is concerned, MAST’s statistics suggest that since 2001 there have been 6 deaths, including DS’s death, where people have been boating alone in a boat which is less than 6 metres in length and a life jacket was not worn or required to be worn. In two of

the cases, legislation was changed to make the wearing of life jackets mandatory, two were due to criminal activity and one person had a heart attack and ended up partially in the water. That person's head was in the water so it was concluded a life jacket would not have helped. This leaves DS's death where it is conceded "*wearing a life jacket may have helped.*" This it is said would make little to no difference to drowning rates in Tasmania. My statutory duty under s 28(2) of the Act is as follows:

*"A coroner **must**, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate."* (my emphasis).

Given the undisputed evidence is DS was safety conscious, had there been a requirement he wear a life jacket when he was drift fishing it is likely he would have been wearing it. I agree with Constable Bradford that had DS been wearing a life jacket it is likely he would have survived. The water was unusually warm so hypothermia would not have posed a threat to his life. I note also that legislation was amended previously after two deaths and there appears to have been no further similar deaths after that legislative change.

While I agree when not under power access back into the boat is important there is no By-law directed towards this consideration. The only relevant clause is clause 4I which prohibits the operation of a motor boat which is an unsafe vessel as defined in clause 4 of the By-laws. There is no suggestion in any of the evidence DS's boat was unsafe. In any event, easy access back into the boat will not assist when someone drowns after falling overboard as a result of not wearing a life jacket and before attempting to access the boat.

I agree with the sentiments expressed by Mr Hopkins in his fifth reason, however, today most life jackets are not bulky. In addition, a life jacket will at least give a person a chance of accessing the boat after falling overboard, whereas if a person is not wearing a life jacket then that chance may not materialise.

As to Mr Hopkins' sixth reason, enforcement difficulties and any change in the law being unpopular are irrelevant to my determination as to whether or not a recommendation to change the law should be made. There are many laws which are difficult to enforce. An example is the trafficking of illicit substances which can often go undetected because of the sophisticated means used by criminals to avoid detection. Despite this governments around the world spend vast sums of money in what some might call an unrealistic attempt to stamp out this offending. Other laws are very unpopular. An example of this is the trespass law, which is

used to prosecute environmentalists who protest against logging in the forests of this State. There are arguments for and against both these laws, but in these examples, the government has determined, whether rightly or wrongly, “the greater good” is served by these laws being on the statute books and any alleged breaches being investigated and prosecuted.

The last 2 dot points mentioned by Mr Hopkins are comments rather than any argument against such a recommendation.

DS’s boat was inspected and assessed by a marine surveyor on 25 March 2022 at the Queenstown police station. The make, model and size of the hull and the outboard and auxiliary motor were noted. The builder’s plate indicated the vessel had basic flotation which indicates that if the vessel is flooded it should float, but it would not necessarily be upright or float in a stable manner. Most likely it would float with the bow on the surface and the stern underwater. The maximum sized engine for the hull is 30 kws, whereas the engine which was fitted was well within that restriction at 22 kws. Generally, the boat was found to be in good condition with only minor scratches and scrapes. The vessel is suitable for use on inland lakes in Tasmania, but it was vulnerable to flooding and capsize due to the configuration of the fitted buoyancy material. It is noted in this case that is not an issue because the vessel did not capsize.

Comments and Recommendations

I am satisfied DS died as a result of drowning. In the absence of any evidence leading to the conclusion that he fell into the water due to a medical event, I am satisfied he fell into the water in the circumstances suggested by Constable Bradford. The evidence of damage to the inside of the boat suggests an unexpected fall as a result of the boat running aground or hitting a submerged tree or log. I also conclude at the time of the fall DS was drift fishing with the boat’s engine in neutral. Had he not been drift fishing then given his safety conscious nature I would have expected him to have been wearing his life jacket. There is no evidence DS’s death occurred otherwise than by accident.

In my view further deaths may well be prevented if the By-laws are amended. I therefore **recommend** the By-laws are amended so that people who are alone and on a motor boat in smooth waters are required to wear an approved life jacket even when not under power; that is for example when they are drift fishing or stopped in order to have lunch. Clause 37(2) of the By-laws is currently as follows:

“A person must wear an approved life jacket if the person is on a motor boat that is – (a) proceeding; and (b) less than 6 metres in length. Penalty: Fine not exceeding 5 penalty units.”

The recommendation I have made can be easily implemented by deleting paragraph (a) of Clause 37(2).

The circumstances of DS’s death are not such as to require me to make any further comments or recommendations pursuant to Section 28 of the *Coroners Act 1995*.

I extend my appreciation to First-Class Constable Robertson for his investigation and report.

I commend Constable Bradford and Sergeant Scicluna for their thorough and methodical search. Without their efforts it is unlikely DS would have been located because of the difficult search conditions which confronted them.

I convey my sincere condolences to the family and loved ones of DS.

Dated: 18 September 2024 at Hobart in the State of Tasmania.

Magistrate Robert Webster
Coroner