



## **CORONER'S COURT**

**Name of Deceased:** Belinda Shirley Peisley

**File Number:** 2624/2009

**Hearing Dates:** 8-11, 15-18 October 2012, 20-21 March  
10-12 April and 25 September 2013

**Location of Inquest:** Katoomba Local Court, Parramatta  
Local Court and Coroner's Court  
Glebe

**Date of Finding:** 11 October 2013

**Coroner:** Magistrate P. A. MacMahon  
Deputy State Coroner

**Representations:** Mr P. Strickland SC and Mr R Ranken -  
Counsel Assisting  
Mr P. Saidi – Commissioner of Police.  
Mr J. Lekkas – Stephen and Justin  
Kondek.

**Non-publication order made pursuant to Section 74(1)(b)**

**Coroners Act 2009:**

**Pursuant to Section 74(1)(b) the following matters shall not be published:**

- The residential address of David Noble and Nerida Noble,
- The names and any other identifying features of C and B,
- The residential address of Raymond Martin,
- The evidence given by Witness 'A' on 10 October 2012,
- The date of birth of Joseph Ravesi
- The residential address and date of birth of Heidi Wailes
- Exhibit 41 – Homicide Squad 'Leadership of Homicide and Suspicious Death Investigations Protocol'.

**Findings made in accordance with Section 81(1) Coroners Act 2009:**

Belinda Shirley Peisley (born 23 August 1979) died on or about 26 September 1998 in or about Katoomba in State of New South Wales. As to the cause and manner of her death the evidence available does not enable me to make a finding.

**Recommendations made in accordance with Section 82 (1)  
Coroners Act 2009:**

To: The Commissioner of Police

That, consistent with the NSWPF policy that during the first 72 hours of an investigation into a homicide or suspicious death the Homicide Squad is the leading investigator, consideration be given to the amendment of the NSWPF 'Missing Persons – Standard Operating Procedures' so as to require that where the risk assessment undertaken identifies that there is a high, or very high, risk that the missing person has been the victim of a homicide or otherwise suspicious death, the Homicide Squad is to be immediately advised of the circumstances of the disappearance.

That the investigation of the death of Belinda Shirley Peisley be referred to the Unsolved Homicide Unit of the NSW Homicide Squad for further investigation in accordance with the protocols and procedures of that unit.

Magistrate P A MacMahon  
Deputy State Coroner  
11 October 2013

# **Inquest into the Disappearance and Suspected Death of Belinda Shirley Peisley**

**File number 2624/2009**

## **Reasons for Findings**

This has been an inquest into the disappearance and suspected death of Belinda Shirley Peisley. I will refer to her as 'Belinda' in these reasons.

### **Introduction:**

Belinda was born on 23 August 1979 the daughter of Lesley Peisley and Mark Wearne. At the time of her disappearance in 1998, at the age of 19 years, she was the mother of two young sons – C and B.

In late 1998 she resided in the Blue Mountains area west of Sydney living at 17 Trow Avenue Katoomba a property that she had purchased using an inheritance she had received.

Her last confirmed sighting was on 26 September 1998 when Belinda left the Blue Mountains Hospital at Katoomba at about 8:50pm.

Later that night, between 10:00pm and 10:30pm, she also had a telephone conversation with her mother. There is also the possibility that she had a further telephone conversation with a Ray Martin at about 10:30pm. The report of that possible telephone conversation was that at the time Belinda was looking for her then boyfriend Justin Kondek.

Justin Kondek reported her missing to the police on 28 September 1998. Her mother Lesley Peisley also reported that she was missing to the police on 7 October 1998. She has not been seen since.

On 23 January 2006 Detective Senior Constable Francine Ralph prepared a report to the coroner indicating that Belinda was a missing person suspected of being deceased.

In April 2007 Detective Senior Constable Dianne Erhardt was appointed as officer in charge of the investigation into the suspected death of Belinda Peisley. Detective Erhardt continued in this role until December 2012 when, at my request, a joint task force of officers from the Blue Mountains Local Area Command and the Homicide Squad assumed responsibility for the investigation of Belinda's disappearance. Detective Senior Constable Glen Moorcroft led that task force.

The inquest into the disappearance and suspected death of Belinda commenced at Katoomba on 8 October 2012 and continued over some 15 days during 2012 and 2013 at that court, at Parramatta Local Court and lastly at the State Coroner's Court at Glebe.

The inquest concluded on 25 September 2013. During that time a large number of witnesses gave evidence and the court received 42 exhibits consisting of many hundreds of pages of evidence.

### **Role and Function of the Coroner:**

The relevant legislation governing the conduct of this inquest is the Coroners Act 2009. All references to legislation in these reasons shall be to that Act unless otherwise indicated.

Section 6 defines a "*reportable death*" as including one where a person died a "*violent or unnatural death*" or under "*suspicious or unusual circumstances*".

Section 35 requires that all *reportable deaths* be reported to a coroner.

Section 18 gives a coroner jurisdiction to hold an inquest concerning a reportable death where the death occurred within New South Wales or the person who has died was ordinarily a resident of New South Wales.

Section 81(1) sets out the primary function of the coroner when an inquest is held. That section requires, in summary, that at the conclusion of the inquest the coroner is to make findings, should sufficient evidence be available, that a person has died, the identity of that person, the date and place of their death and the cause and manner thereof.

Section 78(3) gives a coroner the discretion, where the requirements of Section 78(1)(b) have been met, to either continue the inquest and make findings in accordance with Section 81(1) or to suspend the inquest

Section 78 (1)(b) deals with the situation where a coroner, having regard to the admissible evidence available, forms the opinion that:

- (i) The evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence, and
- (ii) There is a reasonable prospect that a jury would convict the known person of the indictable offence, and
- (iii) The indictable offence would raise the issue of whether the known person caused the death with which the inquest is concerned.

Section 78 (4) provides that where a coroner exercises the discretion to suspend an inquest in accordance with Section 78 (3) he or she is required to refer the evidence available to the Director of Public Prosecutions (the DPP).

Section 82 (1) of the Act provides that a coroner conducting an inquest may also make such recommendations, as he or she considers necessary or desirable, in relation to any matter connected with the death with which the inquest is concerned. The making of recommendations are discretionary and relate usually, but not necessarily only, to matters of public health, public safety or the conduct of services provided by public

instrumentalities. In this way coronial proceedings can be forward looking, aiming to prevent future deaths.

Section 74 (1) (a) allows a coroner conducting an inquest to prohibit the publication of any evidence given in the proceedings where the coroner is of the opinion that it would be in the public interest to do so.

Section 80 requires that, in the case of a missing person suspected of being deceased, the Coroner must first consider whether or not he or she is satisfied that, on the balance of probabilities, the missing person is deceased. If the coroner cannot be satisfied of that matter then he or she is required to terminate the inquest.

If, however the coroner is satisfied that the missing person is deceased then he or she will proceed to examine the evidence available, consider whether or not the evidentiary requirements of Section 78 (1)(b) have been met and then, in appropriate cases, either to suspend the inquest or proceed to make findings in accordance with Section 81(1).

### **Is Belinda Deceased?**

There is a large body of evidence that suggests that Belinda died on or shortly after 26 September 1998.

First, the last independently recorded sighting of Belinda was when she walked out of the emergency department of the Katoomba Hospital at about 8:50 pm on 26 September 1998 before a doctor was able to see her.<sup>1</sup> Police had brought Belinda to the hospital from 17 Trow Avenue after concerned neighbors reported a female screaming and glass smashing at that address.<sup>2</sup> When police attended 17 Trow Avenue that evening, they found Belinda in an intoxicated state, but no other person was present.<sup>3</sup>

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<sup>1</sup> Ex 3 Vol 3 Tab 6 – Katoomba Hospital Medical Records at 788.

<sup>2</sup> Ex 21 Tab 9 – CIDS Message ID 19981067409DJ 16162 (Version 1); Ex 21 Tab 10 – Osman Kurt 14/02/13 at [12]; Ex 3 Vol 3 Tab 6 – Katoomba Hospital Medical Records at 788.

<sup>3</sup> Ex 21 Tab 9 – CIDS Message ID 19981067409DJ 16162 (Version P001).

According to Lesley Peisley, Belinda telephoned her at about 10:30 pm on 26 September 1998 and asked her to bring her son C (who was staying with Lesley Peisley at the time) up to the house at Trow Avenue. It is not known from where that telephone call was made. Available records indicate that there was no landline service for 17 Trow Avenue as at 26 September 1998 and Belinda's mobile service had been disconnected on 21 July 1998.<sup>4</sup>

The evidence also establishes that Belinda did not use the public telephone that was located on a street nearest to her home.

Secondly, her friends and family gave evidence that they did not see or hear from Belinda after the evening of 26 September 1998. They included: her mother Lesley Peisley;<sup>5</sup> her aunt Sharon Versace;<sup>6</sup> her father Mark Wearne (with whom Belinda's oldest son C resides);<sup>7</sup> Andrew Moffett (the father of Belinda's youngest son B with whom B resides);<sup>8</sup> her boyfriend at the time of her disappearance, Justin Kondek;<sup>9</sup> and her friends Bill Muir<sup>10</sup> and Joe Ravesi.<sup>11</sup>

A number of people including DOCS and police officers visited Trow Avenue after her disappearance on 26 September 1998 and noticed that it had been trashed.<sup>12</sup> There was no sign that Belinda had returned to Trow Avenue since the evening of 26 September 1998.<sup>13</sup>

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<sup>4</sup> Ex 3 Vol 1 Tab 11 – Records relating to disconnection of telephone services.

<sup>5</sup> Ex 21 Tab 1 – Lesley Peisley 31/01/13 at [30].

<sup>6</sup> T52.46 – T55.22 (Sharon Versace).

<sup>7</sup> T165.16-37 (Mark Wearne).

<sup>8</sup> T81.6-27 (Andrew Moffett).

<sup>9</sup> T343.5-6 (Justin Kondek).

<sup>10</sup> T257.33-42 (William Muir).

<sup>11</sup> Ex 2 Vol 3 Tab 63 at Q&A 187, 199, 329.

<sup>12</sup> See, for example, Heidi Wailes - Ex 2 Vol 2 Tab 52 at Q&A 362 and T18.10.12 p 64.26-27; Justin Kondek – Ex 2 Vol 5 Tab 88 at [5] and T309.10-33; C/Insp Reed – Ex 2 Vol 1 Tab 4 at [5]-[6]; S/Const Ries - Ex 3 Vol 3 Tab 2 at [6]-[8]; Kelly Brunclik (nee Ireland) – Ex 2 Vol 1 Tab 42 at [13]-[14].

<sup>13</sup> On 29 September 1998 following a report from a DOCS officer, Kelly Ireland (now Brunclik), a number of police attended 17 Trow Avenue. Detective Reed described the premises to be in a dishevelled state, sparse and upturned furniture and clothing scattered around and some damage to walls and windows: Ex 2 Vol 1 Tab 4 at [6]. No further investigations were initiated and no forensic examinations were undertaken. Polaroid photographs were taken but they have been lost. On 6 October 1998 DOCS made inquiries of Katoomba and Nepean Hospitals to check if Belinda had been admitted. There was no record of any admission in either hospital emergency: Ex 4 at p 196. DOCS continued to visit Belinda's home without success from late September to 13 October 1998: Ex 4 at pp 175-176 and 191.



Mark Wearne, Sharon Versace and Andrew Moffett all separately believe that Belinda has died.

Thirdly, a number of Belinda's personal items were left at Trow Avenue, which suggests that she did not leave the house intending never to return. Heidi Wailes gave evidence that on 27 September 1998, "people" came back to Ray Martin's house and told her that Wanda Loynds had bashed Belinda. Heidi then went to Trow Avenue to see if Belinda was OK.<sup>14</sup> She said that she found Belinda's yellow/green bag shoved under a cushion on the lounge, which Heidi found strange. The only items in the bag were a wallet, with no money in it, and a used syringe. Inside the wallet was a keycard and identification cards.<sup>15</sup> She said that it was Belinda's wallet in the bag.<sup>16</sup> Belinda normally carried that bag with her wallet, her ID, cigarettes and mobile phone.<sup>17</sup> Heidi Wailes said the phone was not there and the house keys were not there.

Heidi Wailes was an evasive and generally unreliable witness and I need to be cautious in accepting any assertions of fact by her however on the issue of Belinda's disappearance after 26 September 1998 her evidence is consistent with almost all the other evidence available.

Justin Kondek however impressed me as an honest and for the most part reliable witness. Justin Kondek gave evidence that he went to the rugby league grand final on Sunday, 27 September 1998. On Monday 28 September 1998, he traveled to Trow Avenue on his BMX bike.<sup>18</sup> He had not been back to Trow Avenue since the evening of 26 September 1998. He noticed that the front door was open and a few more windows had been smashed. The front door was normally locked.<sup>19</sup> He saw Belinda's "patchwork" handbag in the bathroom.<sup>20</sup>

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<sup>14</sup> T18/10/12 p 93.44-49 (Heidi Wailes).

<sup>15</sup> T18/10/12 p 95.5-9 (Heidi Wailes); Ex 2 Vol 2 Tab 52 at Q&A 378.

<sup>16</sup> T18/10/12 p 95.8 (Heidi Wailes).

<sup>17</sup> Heidi Wailes - Ex 2 Vol 2 Tab 52 at Q&A 368-370; Justin Kondek – Ex 2 Vol 3 Tab 63 at Q&A 489 ff.

<sup>18</sup> T308.35-40 (Justin Kondek).

<sup>19</sup> T309.10-33 (Justin Kondek); See also Wailes – "She always locked the door" – T18/10/12 p 49.19 (Heidi Wailes).

<sup>20</sup> T311.12-15 (Justin Kondek).

Although Kondek was not 100% clear, he believed this was normally the handbag that Belinda carried.<sup>21</sup> He saw Belinda's wallet in her bag.<sup>22</sup> He did not take the wallet. He did however take Belinda's keycard and Medicare card, which he said he found on top of the fridge.<sup>23</sup>

The evidence of the front door of the Trow Avenue house being open and Justin Kondek's finding of Belinda's keycard and Medicare card suggest that Belinda may have returned home after leaving the hospital. Given the evidence of Belinda's practice of closing and locking the door and that no one else was present when the police attended on the evening of 26 September 1998, it might be reasonable to infer that the house was locked up and secured when police left with Belinda. This raises the prospect that Belinda returned to Trow Avenue after leaving the hospital and was then taken, most probably involuntarily, from that address sometime after that. The fact of her bag and particularly her keycard and Medicare card being found at the house would also lend support to that conclusion.

Fourthly, the Police investigation has suggested that Belinda did not have any known contacts that would assist her if she wished to live outside the Blue Mountains area. Justin Kondek said that he and Belinda had some ill-defined plans to make a new start in Queensland, but no specific plans were made and Kondek was not aware that Belinda had any friends or associates in Queensland.<sup>24</sup> Belinda had no discussions with Kondek about her changing or assuming a new identity.<sup>25</sup>

Fifthly, Belinda did not have the initiative, energy or wherewithal (financial or otherwise) to disappear from her friends and family for an extended period of time. Many witnesses said that she did not like to walk or travel much.<sup>26</sup>

Sixthly, police enquiries revealed that Belinda has not used or had any contact with any relevant government service agencies, including Medicare, Centrelink, the

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<sup>21</sup> T311.18-37 (Justin Kondek). Joe Ravesi also saw Belinda carrying a Tibetan or woven paisley bag: T17/10/12 at p 41.46-50.

<sup>22</sup> T312.4-5 (Justin Kondek).

<sup>23</sup> T311.42 – T312.2, T312.7-8 and T312.22-30 (Justin Kondek).

<sup>24</sup> T201.36 - T202.10 (Justin Kondek).

<sup>25</sup> T211.17-28 (Justin Kondek).

<sup>26</sup> T 215.45, 228.25-30 (Justin Kondek).

Australian Electoral Commission and any Australian police service after 26 September 1998.<sup>27</sup> There is no record of her traveling overseas after 26 September 1998.<sup>28</sup>

Seventhly, Belinda had spent all her inheritance, other than her house, before she disappeared. Bank records indicate that the only credits recorded in her account from mid July 1998 were from social security and bank interest.<sup>29</sup> Social security payments continued to be deposited in Belinda's Westpac account up to at least 29 October 1998.<sup>30</sup> As Belinda was a drug addict at the time of her disappearance, it is telling that she has made no effort to gain access to her property or bank accounts since her disappearance. She had debts of about \$5,000 for MasterCard payments, electricity and telephone.<sup>31</sup> On 10 August 1998, Integral Energy disconnected Belinda's electricity due to non-payment of the account.<sup>32</sup> Others paid for the cost of Belinda's heroin, in particular her boyfriend.<sup>33</sup>

#### **Evidence that Belinda was alive after 26 September 1998.**

The evidence that Belinda was alive after 26 September 1998 is marginal. On about 27 December 1998, Lesley Peisley received a telephone call from Oliver Tipping (the father of Belinda's eldest son C) during which Tipping asked about Belinda. He told Lesley "*You must be worried*". Tipping then asked her "*Do you know about the Bank account?*" Lesley heard a female voice in the background and she was "*fairly certain*" it was Belinda saying to Tipping "*ask about C*".<sup>34</sup> Lesley Peisley has stated that she was fairly certain that she heard Belinda's voice in the background in late December 1998 when she was speaking to Oliver Tipping

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<sup>27</sup> Ex 2 Vol 1 Tab 3.

<sup>28</sup> Ibid.

<sup>29</sup> Ex 2 Vol 1 Tab 25 – Westpac Account Records (Statement No 14 at pg 6 of 15 ff).

<sup>30</sup> Ex 2 Vol 1 Tab 25 – Westpac Account Records (Statement No 14 at pg 12 of 15).

<sup>31</sup> Ex 2 Vol 1 Tab 4 at [26].

<sup>32</sup> Ex 4 – Records produced by DOCS at pg 144.

<sup>33</sup> T215.17-35 (Justin Kondek) (**Note:** This evidence was given under a certificate granted pursuant to s 61: see T213.20 – T215.13); Ex 2 Vol 5 Tab 90 at Q&A 353.

<sup>34</sup> Ex 2 Vol 6 Tab 97 at [29]. Note that Lesley Peisley claimed to have heard the words "*ask about Cody*" because that is something that Belinda would have said.

about C.<sup>35</sup> Oliver Tipping denies having seen or had any contact with Belinda since she went missing.<sup>36</sup>

I do not accept that the voice Lesley Peisley heard in the background during the telephone conversation she had with Oliver Tipping was Belinda. On Lesley Peisley's version, she only heard the female say three short words. Those words were not spoken directly to Lesley Peisley and Lesley Peisley did not speak to the person who uttered them. Lesley Peisley was not totally sure that the voice she heard was Belinda. In addition, Lesley Peisley did not give evidence at the hearing. She is a long time sufferer of bi-polar and has been taking a variety of medications for her illness including lithium and, more recently, Epilim, Tetrabenazine, Serquel, Liptor and Thyroxine.<sup>37</sup> She has told police that her memory is not good and she believes this is part of her illness.<sup>38</sup>

In May or early June 1999, Priscilla Payne, who had known Belinda since the end of 1997, believed that she saw Belinda in the car park area of Jewels at Katoomba. She told Police at the time (22 June 1999) that she was 70% sure it was Belinda. She thought that when she made the observation she was about two car lengths away and the girl she thought was Belinda was getting into or out of a dark colored sedan at the front passenger side. She was wearing a maroon colored cloak with a hood over her head and her hair was dyed a red/blonde light color.<sup>39</sup> Ms Payne has subsequently told police that she believes the girl she saw in the car park area may have been someone other than Belinda and she is completely unsure as to which of the two it was.<sup>40</sup> I am not satisfied that the woman seen by Ms Payne is likely to have been Belinda.

In the circumstances I am satisfied that it is more probable than not that Belinda is deceased and that she died on or about the date of her disappearance on 26 September 1998.

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<sup>35</sup> Ex 2 Vol 6 Tab 97 at [29].

<sup>36</sup> T125.14-23 (Oliver Tipping).

<sup>37</sup> Ex 21 Tab 1 at [6].

<sup>38</sup> Ibid.

<sup>39</sup> Ex 2 Vol 6 Tabs 101-102.

<sup>40</sup> Ex 2 Vol 6 Tab 102.

## **Cause and Manner of Death**

Belinda's body has never been located this poses considerable difficulty in making findings as to the cause and manner of her death. The police investigation that has occurred since her disappearance has however established a number of matters that allow me to draw inferences as to these issues.

When it is considered that a missing person is deceased there are only a number of possibilities as to the manner of their death. Those possibilities are:

- Natural cause,
- Misadventure,
- Self inflicted death, or
- Homicide

It is therefore necessary to examine the available evidence to determine whether or not that evidence makes one of the alternatives more likely than others.

### **Evidence of a natural cause process or misadventure**

There is no evidence available to suggest that Belinda was suffering from any illness that may have caused or contributed to her death. Hospital, Medicare and PBS records do not record that Belinda suffered from any chronic or acute illness or disease at the time of her disappearance or was taking any prescribed medications.

Her most recent admission to hospital prior to her attendance on the evening of 26 September 1998 was in July 1998, when she presented with a probable urinary tract infection with associated muscle pain (myalgias), which was treated with panadeine.<sup>41</sup>

Equally, it appears unlikely that Belinda died as a result of misadventure. Certainly, when she was brought to the emergency department of the Katoomba Hospital on the evening of 26 September 1998, she was observed to have a laceration on her right hand and was uncooperative to the extent that she was not

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<sup>41</sup> Ex 3 Vol 3 Tab 6 at pp 790-791.

willing to remove her jacket to show if any other lacerations were present.<sup>42</sup> However, her injuries were not considered to be life threatening by the triage nurse.

Belinda was under the influence of alcohol and most probably upset at the time she left the hospital on 26 September 1998. She was a user of heavy drugs. Belinda was not known to walk a great deal and often preferred to take taxis. She was not known for going on bushwalks and, given the relative close proximity of her house to the hospital, it is unlikely that she wandered into bush land.

If Belinda had died of some natural cause process or as a result of misadventure (including a drug overdose), it would be reasonable to expect that her body would have been found.

I am satisfied that it is unlikely Belinda died as a result of either a natural cause process or due to misadventure (including accidental drug overdose).

### **Self-inflicted death**

In a letter tendered at the request of Saxon Holdforth, it was contended that there was no direct evidence to refute the possibility that Belinda's death was not self-inflicted.<sup>43</sup> Holdforth pointed to medical and other testimony that Belinda had suicidal thoughts and committed acts of self-harm in the period immediately prior to her disappearance.

It is true that in about 1991 or 1992, Belinda had recorded in a diary that she occasionally felt suicidal.<sup>44</sup> In July 1994, Belinda attempted to slash her wrists and took 15 antibiotics. She was taken to Katoomba Hospital. A Community Health worker contacted DOCS to express concern about Belinda's state of mind and her potential suicidal behavior.<sup>45</sup> In August 1994, Belinda's mother reported to DOCS that Belinda had made several attempts at cutting her wrists and other self-injurious behavior such as taking medications.<sup>46</sup>

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<sup>42</sup> Ex 3 Vol 3 Tab 6 at pp 788-789.

<sup>43</sup> Exhibit 6.

<sup>44</sup> Ex 2 Vol 6 Tab 99 – Versace 08/09/07 at [5].

<sup>45</sup> Ex 4 – Records produced by DOCS at p 16.

<sup>46</sup> Ex 4 – Records produced by DOCS at p 20.

David Rooney knew Belinda two or three weeks before she disappeared. He said that she was very emotional and depressed and each time he saw her, he thought she was getting worse.<sup>47</sup>

The preponderance of evidence is however that Belinda was not suicidal at the time of her disappearance. Justin Kondek was present at Trow Avenue on the evening of 26 September 1998 when Belinda was in a highly intoxicated and upset state. She was yelling and screaming and causing damage to the house and windows. He did not, however, think she was suicidal at that time.<sup>48</sup> There was also no significant history of suicidal ideation or self-harm since Belinda's earlier teens. She did not report any thoughts of suicide to social workers, to Justin Kondek, Heidi Wailes or other associates prior to her disappearance. In addition she did not express any thoughts of self-harm or suicide to the police who attended Trow Avenue on 26 September 1998 or to the triage nurse at the emergency department of Katoomba Hospital later that evening. There was also no suicide note.

At about 10:30 pm on 26 September 1998, Belinda telephoned her mother Lesley.<sup>49</sup> Belinda asked her mother to come to her place with her son C who was staying with her mother at the time. Lesley said Belinda "sounded her usual self pretty much". Belinda told her mother that she had broken a window by putting her fist through it.<sup>50</sup> Lesley Peisley states that because it was late in the evening and her only means of transport was public transport, she told Belinda she would bring C up to Katoomba the next day. The tone of Belinda's conversation with her mother is, in my view, inconsistent with the hypothesis of suicide. Notwithstanding the many troubles Belinda faced she showed a strong emotional attachment to her son as well as her mother. Making arrangements to have contact with her son shows forward planning that is inconsistent with an intention to end her life.

The most telling piece of evidence against self-inflicted death is, however, the absence of a body. All the evidence suggests that Belinda was not a person who

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<sup>47</sup> Ex 2 Vol 2 Tab 57 at Q&A 33-47.

<sup>48</sup> T299.48 – T300.6 (Justin Kondek).

<sup>49</sup> Lesley dates this incident as 16 September not 26 September. However DOCS records establish that the date was 26 September: Ex 4 – Records produced by DOCS at p 169.

<sup>50</sup> Ex 2 Vol 6 Tab 97.

traveled great distances on foot. If Belinda had killed herself, it could be expected that her body would have been found in relative close proximity to either the hospital (where she was last seen), her home at Trow Avenue or some other location that she was known to frequent. I am satisfied that it is unlikely that Belinda's death was self-inflicted.

### **Homicide.**

Although the term *homicide* is sometimes used synonymously with *murder*, homicide is broader in scope than murder. Murder and manslaughter are forms of criminal homicide. Typically, the circumstances surrounding a killing determine whether it is criminal. The intent of the killer usually determines whether a criminal homicide is classified as murder or Manslaughter. Were it the case that the manner of Belinda's death was homicide it is not necessarily the case that the perpetrator in fact intended to kill her at the time but their action may have nonetheless resulted in her death.

Having found that it is unlikely that Belinda died as a consequence of a natural cause process, misadventure or intentional self-harm I am satisfied that it is more likely than not that her death was the consequence of the action of a third party.

### **Section 78(1)(b)**

As mentioned above were I to be satisfied that the evidentiary requirements of Section 78(1)(b) had been met I have the discretion to suspend the inquest and refer that evidence to the Director of Public Prosecutions to consider the laying of criminal charges against a 'known person.' Having considered the evidence that is available I am satisfied that those evidentiary requirements have not been met.

### **Persons of Interest**

Throughout the police investigation a number of persons have been identified as possibly having some knowledge or involvement in Belinda's disappearance and subsequent death. Those persons are described as being persons of interest. Much of the evidence called at the inquest was therefore called with the intention of



exploring whether the possibility of the persons of interest's involvement was supported by evidence.

The persons identified as being persons of interest were:

- Justin Knodek – Belinda's boyfriend at the time of her disappearance,
- Steven Knodek – Justin Knodek's father,
- Wanda Loynds,
- Heidi Wailes,
- Jeremy Douglas, and
- Saxon Holdforth.

The evidence available at inquest is such that I have been able to come to the conclusion that some of the persons identified as being persons of interest are unlikely to have had an involvement in Belinda's disappearance and subsequent death. In the circumstances it is in the public interest to place onto the public record those conclusions as well as my reasons.

### **Justin Knodek**

Justin Kondek was initially a person of interest in the Police investigation. This was based upon two principal categories of evidence. First, he was present at Trow Avenue with Belinda on the evening of 26 September 1998, when she began screaming and smashing windows and until recently he was believed to be the last known person to see Belinda. More recent investigations have however discovered that police attended Trow Avenue later that evening, shortly after Justin Kondek had left the area, and conveyed Belinda to the Katoomba Hospital.<sup>51</sup> The last person now known to have seen Belinda was a triage nurse at the Hospital emergency department who recorded that she left without being seen by a doctor at about 8:50 pm.<sup>52</sup> In addition Lesley Peisley who I accept on this point, said that she spoke with Belinda at about 10:30 pm.<sup>53</sup> There is also the possibility, referred

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<sup>51</sup> Ex 21 Tab 9 (Annexure) – CIDS Message ID 19981067409DJ 16162 (Version P001).

<sup>52</sup> Ex 3 Vol 3 Tab 6 – Katoomba Hospital Medical Records for Belinda Peisley at p 788.

<sup>53</sup> Ex 2 Vol 6 Tab 97 – Lesley Peisley 06/01/99 at [18]-[21].

to earlier, that she spoke to Ray Martin at about the same time as she spoke to her mother.

Secondly, Justin Kondek, using Belinda's keycard, withdrew money from her account for a period of about 5 weeks following her disappearance. He initially lied to the police about the nature and extent of that use. Between 29 September 1998 and 4 November 1998, Justin Kondek made a number of withdrawals totaling \$1,772 from Belinda's Westpac account mostly in and about Katoomba. On 30 September 1998, Justin Kondek withdrew \$9.99 from Belinda's account at Wallerawang Supermarket.<sup>54</sup> Justin Kondek initially falsely told Police that Belinda's Westpac key card had been swallowed on 28 September 1998. When police confronted him with a copy of Belinda's Westpac Bank Statement, he admitted he had withdrawn money for a further 5 weeks.<sup>55</sup> Justin Kondek justified the withdrawals by stating that Belinda owed him \$700 from some cash she had taken from his tax return, and because he had given her money for drugs and other things.<sup>56</sup>

Kondek did withdraw approximately \$1,700 from Belinda's account without her permission. He admitted that it was wrong for him to do that. However, he appears to have some legitimate claim that Belinda owed him money because he paid for a number of items for Belinda and she also took (without permission from him) about \$700 in cash.

The use of Belinda's keycard by Justin Kondek can probably be explained by his expectation that Belinda would return in due course and that as her boyfriend he could use her card in the interim. This is supported by the small transactions over a period of time, rather than, for example, a one-off withdrawal of all the money in the account. Similarly the lies Justin Kondek initially told police about the nature and extent of his use of the keycard can be explained on the basis that upon being spoken to by police he realized that his use of the keycard was wrong and he tried to rationalize or explain it so as to avoid getting in trouble for that use. When he

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<sup>54</sup> Ex 2 Vol 1 Tab 25 – Westpac Statement No. 14 at page 9 of 15. Justin says he does not know why he was in Wallerawang four days after Belinda went missing. He speculated he might have been at "Mullo's birthday or that party": Ex 2 Vol 5 Tab 90 at Q&A 1398.

<sup>55</sup> Ex 2 Vol 1 Tab 27 and Vol 5 Tab 89 at [26], [28].

<sup>56</sup> Ex 2 Vol 5 Tab 90 at Q&A 707-713. He felt bad about it: Q&A 722.

was confronted with the bank records for Belinda's account he admitted to the full extent of his use of the keycard.

There was no known motive for Justin Kondek to have killed Belinda. The overwhelming evidence was that Justin Kondek was a gentle person who had no history of violence towards women, let alone violence towards Belinda. Virtually everyone who came into contact with Justin Kondek and Belinda noted that they were a good couple.

Heidi Wailes' evidence was that Belinda had become aware that she was pregnant and believed Justin Kondek was the father. There was no evidence that Justin Kondek knew, or was made aware, of that fact prior to Belinda's disappearance. In fact, the evidence is that Belinda was not pregnant at the time of her disappearance. Although Karla Priestley has said that she believed Justin Kondek knew Belinda was pregnant,<sup>57</sup> he denies any such knowledge. Furthermore, even if such evidence did exist, there is no evidence that Justin Kondek would have been unhappy about that fact at the time. It certainly provides no evidence of a motive by Kondek to kill or seriously harm Belinda

According to Karla Priestley, Justin Kondek was really distraught after Belinda went missing. She met Justin at the pub and he was really concerned about where she had gone. He knew it was really out of character.<sup>58</sup>

Wanda Loynds has stated that after Belinda's disappearance she met Justin Kondek who allegedly said to her "*Belinda was just a junkie. She's probably dead and deserved to be anyway, a waste of space junkie*".<sup>59</sup> Justin Kondek denied saying that to Loynds.<sup>60</sup> Loynds was a most unimpressive witness whose evidence on this, and other, issues I consider was unreliable.

Furthermore, there is no evidence that Justin Kondek had the opportunity to dispose of Belinda's body if he had in fact caused her death. He did not own a car at the time. In addition Justin Kondek was able to account for his movements over

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<sup>57</sup> Vol 3 Tab 61 at A148, 149

<sup>58</sup> Vol 3 Tab 61 at A122

<sup>59</sup> Vol 3 Tab 66 at Q&A 52-56; T145.4-37 (Wanda Loynds).

<sup>60</sup> T324.40 (Justin Kondek).

the entirety of 27 September 1998 because he attended the NRL grand final with a number of other persons, leaving for Sydney early that morning and not returning until very late in the evening. There was no evidence that Justin Kondek's behavior over the course of that day was strange or unusual in any way.

One of the most compelling pieces of evidence exculpating Justin Kondek is the fact that he was the first person to report Belinda missing. On 28 September 1998 he contacted Katoomba Police concerning the break and enter that had occurred at Trow Avenue on or about 24 or 25 September 1998 and told police that Belinda had gone berserk on 26 September 1998, smashing property and windows and had thrown him out of the premises and had not been seen since.<sup>61</sup> He also made numerous attempts to contact Belinda's friends and her mother after her disappearance.

As I indicated above Justin Kondek impressed me as an honest witness who was trying to assist the inquest. He was open about his errors such as withdrawing the money. It is also the case that contemporaneous police records corroborate his version of events concerning him leaving Belinda at Trow Avenue on the evening of 26 September 1998. I am satisfied that it is unlikely that Justin Knodek was involved in Belinda's disappearance and subsequent death.

### **Steven Kondek**

Steven Kondek (Justin Kondek's father) was also a person of interest in the investigation. Steven Kondek did not like hard drugs or people who used hard drugs.<sup>62</sup> He was disapproving of the relationship between his son Justin and Belinda and was particularly concerned that Belinda was introducing Justin to hard drug use.<sup>63</sup>

He said he had met Belinda only a couple of times when he attended Trow Avenue to check on Justin. He was disapproving of the manner in which the house was kept.

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<sup>61</sup> Ex 2 Vol 1 Tab 15 – COPS Event Ref No. E5491756.

<sup>62</sup> T18/10/12 at p 3.17 (Kathleen Langley).

<sup>63</sup> T18/10/12 at p 3.11-13, 25-25 (Kathleen Langley).

Steven Kondek denied having any involvement in Belinda's disappearance. There was no evidence that Steven Kondek had the opportunity or intent to do any harm to Belinda. In particular, there is no evidence that Steven Kondek had any knowledge of the fact that Belinda believed she was pregnant with Justin's child.

There is no evidence linking Steven Kondek to any location of interest, such as the house at 75 Parke Street or Trow Avenue, around the time of Belinda's disappearance. There is an entry in a notebook kept by Belinda's aunt, Sharon Versace of information provided to her by one of Belinda's elderly neighbors (herself since deceased) to the effect that Steven Kondek attended Trow Avenue a few days after the house was trashed to see the damage and made a disparaging comment, presumably about the persons who had caused the damage.<sup>64</sup> Steven Kondek did not recall that attendance at Trow Avenue.<sup>65</sup>

The principal piece of evidence said to indicate possible involvement or knowledge of Steven Kondek in Belinda's disappearance is a fragment of a conversation between Steven Kondek and Ryan Kondek in late 2007 that was overheard by the sometime partner of Ryan Kondek, Ms Sharon Tull. On Ms Tull's version, the discussion between Ryan Kondek and his father concerned an ex-girlfriend of Justin Kondek who was described by Steven Kondek as a 'druggo' who was dragging Justin down as a result of her drug lifestyle.<sup>66</sup> At a point in the conversation, according to Ms Tull, Steven Kondek said words to the effect, "*That girl, she's probably at the bottom of the Sydney Harbor by now*".<sup>67</sup> Ms Tull also said that at another point in the conversation, Steven Kondek said words to the effect, "*Back in those days you could make someone disappear easily... without getting their hands dirty*".<sup>68</sup>

Ryan Kondek recalled that the conversation between himself and his father concerned his (that is, Ryan Kondek's) doubts about the paternity of the child that Ms Tull was carrying and that it was in that context that Steven Kondek made a

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<sup>64</sup> Ex 2 Vol 1 Tab 22 – Contemporaneous handwritten note made by Sharon Versace on 22 October 1998.

<sup>65</sup> T20/03/13 at pp 8.35 – 9.2 (Steven Kondek).

<sup>66</sup> T16/10/12 at p 50.34-37 and 56.6-14 (Sharon Tull).

<sup>67</sup> T16/10/12 at p 49.37-38 and 52.16-25 (Sharon Tull).

<sup>68</sup> T16/10/12 at p 51.42-50 and T56.22-25 (Sharon Tull).

comment to the effect, *"It's easy to get rid of one like the girl at the bottom of the harbor"*.<sup>69</sup>

Steven Kondek gave evidence that he recalled the conversation and says that he probably would have said words to the effect, *"Belinda's probably in the bottom of the harbor, who knows?"*<sup>70</sup> However, he said that the reason he said those words was because his thoughts were of Belinda's association with the drug scene and that she may have gone down to [Kings] Cross or somewhere in Sydney to buy drugs and something went wrong.<sup>71</sup> Steven Kondek could not recall the conversation about a girl Justin used to see that was a real druggo, but conceded that if such a conversation had taken place, he probably did refer to Belinda as a druggo and would have said that he was worried that Justin might get mixed up in drugs with her.<sup>72</sup> He said that he could not imagine that he would have said that he knew people who could make someone disappear easily without getting their hands dirty and he denied ever saying the words attributed to him by Ryan Kondek.<sup>73</sup>

Even accepting Ms Tull's evidence, the statements attributed by her to Steven Kondek are not probative of any knowledge or involvement of Steven Kondek in Belinda's disappearance. They do not reveal any esoteric knowledge on his part as to the circumstances of Belinda's disappearance that can be corroborated either directly or indirectly by any other evidence presently available.

I am satisfied that there is no cogent evidence implicating Steven Kondek in Belinda's disappearance and subsequent death.

### **Wanda Loynds**

In her most recent statement, Heidi Wailes claimed that Wanda Loynds once told her that she killed Belinda.<sup>74</sup> Wailes said that she did not believe Loynds at the time because she considered Loynds to be a compulsive liar who just makes up

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<sup>69</sup> T17/10/12 at pp 82.28 – T83.18 (Ryan Kondek).

<sup>70</sup> T20/03/13 at p 12.20-21 (Steven Kondek).

<sup>71</sup> T20/03/13 at p 12.10-14 (Steven Kondek).

<sup>72</sup> T20/03/13 at pp 12.31 – 13.13 (Steven Kondek).

<sup>73</sup> T20/03/13 at pp 14.5-15 and 15.1-10 (Steven Kondek).

<sup>74</sup> Ex 27 Tab 14 - Wailes 27/03/13 at [10].

stories. Wailes also stated that Loynds recently told her that what she had said about killing Belinda “*was just bullshit*”.<sup>75</sup>

Saxon Holdforth has alleged that Wanda Loynds threatened to go to Belinda’s house and beat her up.<sup>76</sup> Whilst the evidence establishes that Loynds did assault Belinda at 75 Parke Street on the evening of 26 September 1998, there is no evidence that Loynds harbored any pre-existing or continuing resentment or animosity towards Belinda except for Saxon Holdforth’s allegation. Indeed, the evidence is that they only met that day.

Wanda Loynds did not recall saying that she was going to go to Belinda’s house and beat her up, but said that she could have said that.<sup>77</sup> She said that she did not know how many times she had said that about different people as she “was always carrying a threat”.<sup>78</sup> She also said she had no particular reason to carry a threat to Belinda because she did not know Belinda before that day and had no gripe against her.<sup>79</sup> Loynds gave evidence that she did not go to Trow Avenue that evening or at any other time and there is no evidence direct or otherwise that she did so.<sup>80</sup>

Wanda Loynds’ “confession” that she killed Belinda is highly unreliable. Loynds retracted the confession. There is no evidence as to when that confession was made or any details provided whatsoever about when, how or why Loynds killed Belinda. Wanda Loynds was a long-term user of illicit drugs, particularly amphetamines, and has apparently been diagnosed as suffering from schizophrenia.<sup>81</sup> She admitted that she had previously told untrue stories to get attention, which she suggested was because of her illness.<sup>82</sup> Her memory of events when giving evidence was generally poor. In the absence of corroboration I could not regard any confession made by her as reliable.

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<sup>75</sup> Ex 27 Tab 14 - Wailes 27/03/13 at [11].

<sup>76</sup> Ex 2 Vol 4 Tab 72 – Holdforth ERISP 06/07/11 at Q&A 25.

<sup>77</sup> T137.19-29 (Wanda Loynds).

<sup>78</sup> T138.8-15 (Wanda Loynds).

<sup>79</sup> T138.17-27 (Wanda Loynds).

<sup>80</sup> T137.49-50 (Wanda Loynds).

<sup>81</sup> T132.17.

<sup>82</sup> See, for example, T132.16-31 and T145.39 – T146.5.

For these reasons I am satisfied that it is not likely that Loynds was involved in Belinda's disappearance and subsequent death.

### **Heidi Wailes, Jeremy Douglas & Saxon Holdforth**

These three persons were also identified as persons who may have been involved in, or have some personal knowledge of, the circumstances in which Belinda disappeared and/or died.

Heidi Wailes was a close associate of Belinda who claims to have attended the house at Trow Avenue on the morning of 27 September 1998 and found it to be in a disturbed state. She did not report that fact, or her claim to have found the bag containing Belinda's wallet, to Police when she was first asked as to her knowledge of the circumstances. This information did not emerge until some considerable time later. When she gave evidence she was most unimpressive and lacking in credibility.

Jeremy Douglas was the then boyfriend of Heidi Wailes. He had a reputation of being violent towards women (particularly those with whom he had a sexual relationship) and the evidence was that Belinda had expressed some fears of him.

Saxon Holdforth was an associate of Jeremy Douglas and Heidi Wailes who also had a reputation for being violent, particularly towards his girlfriend at the time, and about whom Belinda had expressed some disliking. He gave evidence at inquest. His answers to questions put to him were generally unresponsive and on many occasions abusive of the questioner. His performance in the witness box did nothing to remove the suspicion that he had some involvement in the disappearance and /or death of Belinda.

Much of the hearing at the inquest was directed towards exploring whether any or all of these three persons had some direct knowledge of or involvement in Belinda's disappearance and/or subsequent death. The evidence available was inconclusive. The evidence did, however, raise considerable suspicion as to the possibility of such knowledge and/or involvement. Because the matter is to be referred to the unsolved homicide unit of the NSW Police Homicide Squad for further investigation in accordance with that unit's protocols and procedures it



would be inappropriate for me to undertake an analysis of the evidence available that gives rise to the suspicion of such knowledge and/or involvement or draw any conclusions concerning those matters as doing so may interfere with such future investigation. I therefore do not propose to deal with such possibilities any further in these reasons.

### **Police Investigation**

The fact that Belinda was missing was reported to police very soon after her disappearance on 26 September 1998. Considerable investigative activity occurred and a great deal of evidence was obtained in the initial period following her disappearance however as time went by the police investigation stalled.

The investigation was reactivated in April 2007 when Detective Senior Constable Dianne Erhardt was appointed as officer in charge of the investigation. Detective Erhardt undertook a detailed review of the evidence available and identified and obtained a large amount of additional evidence that needed to be gathered.

The work undertaken by Detective Erhardt was, following my request to the Homicide Squad, supplemented from late 2012 by further investigation undertaken by a joint Homicide Squad/Blue Mountains LAC investigation team led by Detective Moorcroft.

Although the police investigation into the disappearance and suspected death of Belinda was initially an issue to be examined at the inquest I subsequently decided not to deal with that issue. In the circumstances, subject to what follows, I do not propose to make any comments or draw any conclusions concerning the appropriateness or the adequacy of the police investigation at any time since Belinda disappeared.

One proviso to the above is that I am, however, satisfied that by the time the inquest had concluded all reasonable lines of inquiry that could be investigated had been adequately examined by the investigating police.

## **Report to the Coroner**

Belinda was last seen on 26 September 1998. Her disappearance and suspected death was not reported to the coroner until Detective Senior Constable Francine Ralph did so on 23 January 2006 – almost 8 years after she disappeared. The evidence, which I accept, was that it was done at that time at the request of Belinda's father Mark Wearne.

The Coroners Act 1980 (the Old Act) was the applicable coronial legislation at the time. Section 12A of the Old Act required that all reportable deaths and suspected deaths be reported to the coroner.

Section 12A(2) of the Old Act required that a police officer who became aware of a reportable death or suspected death was required to report such death or suspected death 'as soon as possible'.

Whilst the possibility of Belinda's death might have been a moot issue in the period immediately after her disappearance the failure to report her suspected death until almost 8 years after that disappearance would suggest a failure to comply with the reporting requirements of the legislation by some or all of the officers who were responsible for the investigation of her disappearance.

Were this to be unique situation it would warrant a more substantial comment and possibly recommendations in accordance with Section 82 of the Act. I am, however, well aware that at the relevant time there was an apparent lack of understanding on the part of police as to their obligations to report such matters to the coroner and the failure to report Belinda's disappearance and suspected death can be explained by this systemic lack of understanding.

Were nothing to have changed in the 15 years that have passed since Belinda's disappearance it would be appropriate to make recommendations for change in accordance with section 82. The evidence is however that, in part following coronial recommendations in other matters, police procedures dealing with the investigation of missing persons has undergone significant change and that police understanding of their reporting obligations has been better developed. I am

therefore satisfied that this is not a matter that requires further recommendations in accordance with section 82.

There is, however, one matter relating to the police investigation of persons who are reported as being missing where I consider it would be appropriate to recommend a change to the current police procedures.

### **Police Missing Persons Standard Operating Procedures**

Each year over 11,000 persons are reported to police as being missing. Fortunately the vast majority (about 99%) of such persons are located in a very quick time. There is, however, a small minority of such persons who go missing in suspicious circumstances and are later found to have been the victims of a homicide. It is very important that such cases be identified and that an appropriate police investigation be instigated as quickly as possible.

Current NSW police procedure provides that for the first 72 hours of an investigation into a homicide or suspicious death a detective from the Homicide Squad should be the leading investigator, unless or until, the Homicide Squad decides otherwise.<sup>83</sup> This procedure was introduced following recommendations made by Magistrate Jane Culver, now Deputy Chief Magistrate, on 5 August 2008 following the inquest into the death of Rachelle Leigh Childs<sup>84</sup>. In my view the reasons identified by Her Honour for the introduction of this procedure apply equally in the case of a person who goes missing in suspicious circumstances.

The current NSW Police Missing Persons Standard Operating Procedure (SOP) provides that when a person is reported missing to a police officer a risk assessment is to be undertaken in order to determine the possible risk of harm to the missing person and to guide the police response to the notification. Consistent with the current police procedure that during the first 72 hours following a homicide a detective from the Homicide Squad should be the leading investigator I believe that it would be appropriate, and in order to ensure that that procedure is implemented effectively, that in the case of a missing person report where the risk

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<sup>83</sup> See E41

<sup>84</sup> Glebe File 0430/2005

assessment indicates that there is a high, or very high, risk that the missing person has been the victim of a homicide or otherwise suspicious death, the Homicide Squad should be immediately advised of the circumstances of the disappearance and if they consider it appropriate assume leadership of the investigation in accordance with the first 72 hour procedures. I propose to make a recommendation to the Commissioner of Police to this effect.

## **Conclusion**

I would like to express my condolences to Belinda's parents, children and family members and friends for their loss. I would also like to express my appreciation to them for their assistance with the conduct of this inquest. I would also like to thank the members of the NSW Police Force who have spent a vast number of hours trying to establish what happened to Belinda at the time of her disappearance. Even though their efforts have yet bear fruit they are nonetheless appreciated. That investigation has not yet concluded and hopefully at some point in the future information will become available that will provide answers to the questions that are outstanding.

Magistrate P.A. MacMahon

Deputy State Coroner

11 October 2013