



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

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| Inquest: | Inquest into the disappearance of Stuart Michael Butler |
| Hearing dates: | 6 & 7 January 2015 |
| Date of findings: | 7 January 2015 |
| Place of findings: | NSW State Coroners Court sitting at Byron Bay Local Court |
| Findings of: | Magistrate Michael Barnes, State Coroner |
| Catchwords: | Coroners Court; missing person; presumed drowning; surf safety |
| File number: | 14/229801 |
| Representation: | Sgt Sasha Harding assisting the NSW State Coroner, Magistrate M. A. Barnes. |

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| Findings: | <p>Identity of deceased: The identity of the deceased person is Stuart Michael Butler.</p> <p>Date of death: Mr Butler died on 19 July 2014</p> <p>Place of death: He died in the sea at Cape Byron</p> <p>Cause of death: The cause of Mr Butler's death was by drowning</p> <p>Manner of death: Mr Butler was accidentally drowned while attempting to surf in unsuitably rough sea conditions.</p> |
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The Coroners Act 2009 in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the suspected death.

These are the findings of an inquest into the suspected death of Stuart Michael Butler

Introduction

On the morning of Saturday 19 July 2014 three young male tourists, in Australia on working visas, went into the ocean at Tallow's Beach, Byron Bay with their surfboards. The conditions were extremely rough. A high wind was blowing and large waves were crashing against the coast.

Soon after entering the water all three got caught in a rip. Mr Butler and one of the other men attempted to paddle towards the rocks of Cape Byron. The other man managed to clamber out of the water onto the rocks. Mr Butler also tried to do this but was swept away by waves. He has not been seen since.

The Inquest

This inquest is being held to make findings confirming that Stuart has died and if so when, where by what cause and in what manner that occurred. Because his body was never found, the incident is treated as a suspected death and an inquest is mandatory.

The Evidence

Background

The three men involved in these events were all from overseas. Michael Fuller, 19, was from England. At the time of the incident in July 2014 he had been in Australia for about four months. Levi Fahrenholtz, 26, was from the United States. He had been in Australia for three months. Stuart Butler, 20, was from Ireland. He came to Australia in early May 2014.

They each intended to stay an extended period in Australia and gained work here soon after arriving. None had significant surfing experience before coming to this country. By the time of the incident, Mr Fuller had gained some proficiency through organised training and instruction; Mr Fahrenholtz had also improved his surfing prowess but Mr Butler was still very much a beginner and he was not a strong swimmer.

A couple of months before the incident, the three had met and become friends when living and working at a surf camp run by Mojosurf at Arrawarra near Coffs Harbour. At the surf camp Mr Fuller undertook a three month course in life guarding, first aid and surf skills while the other two worked for their food and lodging.

In late June, Mr Fuller moved to Byron Bay. On 17 July the other two men also relocated to the Mojosurf facility there. They decided to go surfing two days later on 19 July. Mr Fuller had enjoyed surfing at Tallow's Beach just south of Byron Bay a few days before and so decided to take his two friends there.

The fatal incident

The weather forecast for the Cape Byron area on Saturday, 19 July predicted gale force winds in a south westerly direction of 20-30 knots with seas of 2-3 metres and increasing to 3-4 metres around midday. It is clear from the evidence that this forecast was realised. Indeed, two witnesses, the officer in charge of the investigation and the Surf Life Saving Australia (SLSA) member who coordinated the search, both of whom have decades of experience in local surf conditions, described the circumstances as treacherous and indicated they would not themselves have gone out into the water.

As a result of the forecast a hazardous and dangerous surf conditions warning was broadcast on local television and radio. Mr Butler and his two colleagues did not hear it.

When the three men arrived at Tallow's Beach at about 9.30am they passed two signs indicating, among other things, that there were no lifesaving services at the beach and there were strong currents and rough surf. Those warnings had no impact. Mr Fuller explained that he had been there a few days previously and found it a pleasant place to surf.

After a cursory inspection of conditions, during which Mr Butler expressed some apprehension, the three friends grabbed their surf boards, jumped into the water and attempted to paddle out through the break. Mr Fahrenholtz said although he was conscious the surf was big, he had attempted to surf big waves before with no serious adverse consequences. He did not realise the conditions he was going into on this day were any more dangerous.

It soon became apparent they had seriously underestimated the ferocity of the surf. The two survivors said they quickly became aware that they were being swept northwards, towards the towering and rugged cliff faces of Cape Byron. Mr Fahrenholtz attempted to paddle back towards shore but realised he was not making headway while continuing to be swept north towards the rocks. He saw and heard some people on the cliff top gesturing for him to paddle out to sea away from the cliffs. He took that advice. He did not know where his two friends were - he had lost sight of them when he attempted to paddle back to shore.

The distance from where the men entered the water to Cape Bryon was approximately 500 metres but Mr Fuller said he and Mr Butler were swept that distance very quickly before they had a chance to get back to shore. They found themselves close up against the bottom of the cliffs surrounded by jagged rocks jutting out into the sea in irregular formations. They tried unsuccessfully to paddle further out to sea but were unable to paddle through the breaking waves. Mr Fuller said he quickly came to the conclusion they had to get out of the water if they were to survive. They were caught in an extremely dangerous situation with no easy or safe way out.

Mr Fuller was knocked off his board by a breaking wave. The next one smashed his board into two pieces. He undid his leg rope and let the broken board float away. He was then in the invidious position of being in the water, unable to swim away from the cliff face and at risk of being smashed against it by the waves.

He said he quickly became very tired – the effort to stay afloat in the churning water was enervating. The fatigue manifested itself by his inability to think clearly. He saw a platform on the rocks that he thought could provide access to safety and he swam towards it. A wave lifted him up onto the platform and he tried to cling on as the water subsided but was unable to and was washed back into the swirling water. The next set also lifted him up onto the shelf and this time he was able to scramble higher out of the reach of the waves.

Mr Fuller said he then turned his attention to trying to assist Mr Butler who was still on his surfboard. He told him to paddle towards a similar shelf and get up on to it. He said Mr Butler looked panicked and frightened. He had a large laceration on his back. He asked if help was coming and whether they were going to be alright. Mr Fuller said his friend got drawn into a cove or indentation in the cliff face. At this stage Stuart was treading water a few metres off the rock face with his arm over his surfboard. Mr Fuller said he saw Mr Butler make a number of attempts to climb the rock face but on each occasion he was swept back by retreating waves.

He says that after a few minutes in this situation Mr Butler managed to get onto the rocks and Mr Fuller told him to release his leg rope. It seemed that Mr Butler was in the process of doing this when another large set of waves hit him and swept him off the rock shelf and back into the roiling spume. He said that when this occurred Mr Butler disappeared under the white water and did not resurface. He was flailing around in the foam and white water as waves continued to pound him. He sank from view. Mr Fuller screamed for him but he did not resurface. Mr fuller said he never saw his friend again.

On-lookers gave a similar version. One saw the person we now know was Mr Fuller attempting to climb onto the rocks. This witness said he was washed against the

rocks three or four times before he was eventually able to hang onto the rocks and climb out of the water.

The witness said Mr Fuller was seen to sit on the shelf for about five minutes looking exhausted before recovering sufficient strength to climb up the rocks to get further away from the water.

The same witness saw another surfer wearing only board shorts who we now know was Mr Butler, still in the water at this stage. The witness said Mr Butler was no longer lying on his board but in the water with his arm over the board using it to keep himself afloat. The witness said Mr Butler was getting hit by a lot of waves. He was about ten metres from the rocks. The witness saw him let go of his board and attempt to swim toward the rocks. She saw that he was getting knocked under by the waves coming through over the top of him. She says he got to about one metre away from the rocks and she lost sight of him and his surfboard.

Search and rescue

The horrified on-lookers on the cliff top saw the disaster unfolding and called emergency services. A jet ski from the Byron Bay Surf Lifesaving Club was quickly on scene. It first came across Mr Fahrenholtz who was near the northernmost tip of Cape Byron. Mr Fahrenholtz told the lifesaver that he was not in need of assistance but that his two colleagues were still in the water further south and nearer the headland. The lifesaver on the jet ski directed him to paddle towards Wategos Beach and set off in the direction he had been told the others were last seen.

The jet ski operator could see Mr Fuller on the rocks and tried to get close to the cliff base at that location but the crashing waves made it too dangerous.

About fifteen minutes later a helicopter arrived and attempted to pick up Mr Fuller from the rocks but could not get sufficiently close to do that. It then moved further north and dropped green dye into the water with a view to indicating the direction of the current.

After about thirty minutes Mr Fuller managed to climb up the rock face where lacerations to his feet and hands were attended to by ambulance crews.

In the meantime Mr Fahrenholtz had made land further north and he too came to the top of Cape Byron.

Two other SLSA jet skis and an off-shore jet rescue boat joined the search which extended two miles to sea and two miles to the north of the position of the last sighting of Mr Butler. The search was suspended at 15.45 due to the increasing danger to the water craft operators.

The search recommenced the next morning and utilised the same vessels, 20 SLSA volunteers plus a number of helicopters and fixed wing aircraft. Conditions were again treacherous and the searchers exposed themselves to considerable danger.

At the end of the third day the search was terminated.

Sadly, throughout the search there was no sign of Mr Butler and he has not been seen since.

I am satisfied the police and other emergency services did all that could have been done to attempt to rescue Mr Butler and that when that failed, to recover his body. It is deeply regrettable that these efforts were unsuccessful and I offer his family my sincere condolences.

I especially commend the SLSA volunteers who undertook demanding and potentially dangerous water based searches over three days in horrendous marine conditions.

Missing person checks

The officer in charge of the investigation, Senior Constable Colin Jones, has maintained contact with Mr Butler's family who have confirmed they have had no contact from him. Checks have confirmed that his bank accounts and mobile phone have not been used since his disappearance and immigration records indicate that Mr Butler has not departed from Australia.

Findings required by s81(1)

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

The identity of the deceased

The identity of the deceased person is Stuart Michael Butler

Date of death

Mr Butler died on 19 July 2014

Place of death

He died in the sea at Cape Byron, NSW

Cause of death

The cause of Mr Butler's death was by drowning

Manner of death

Mr Butler was accidentally drowned while attempting to surf in unsuitably rough sea conditions.

Recommendations

Pursuant to s 82 of the Act, Coroners may make recommendations connected with a death designed to contribute to public health and safety and/or to reduce the chances of deaths occurring in similar circumstances in future.

Young men are notorious risk takers. However, I am satisfied that had Mr Butler and his colleagues realised how dangerous the seas were they would not have exposed themselves to the risks that they did when they went into the water on the day Mr Butler died. The stark reality is they should not have entered the surf from Tallow's Beach on the day in question and that when they did they unwittingly put their lives at risk.

Weather warnings

The authorities attempted to warn all members of the public of the risks of entering the surf on the day Mr Butler died by two methods: they caused warnings to be broadcast over the electronic media alerting listeners to the anticipated dangers; and they posted fixed signs at the beach in question. The first failed because young travellers are not assiduous consumers of electronic news media. The second was disregarded: it lacked credibility because it failed to reflect current and changing conditions. Mr Fuller knew from experience that on a calm day Tallow's Beach was in fact a reasonably safe place to surf and many people have and continue to swim there.

Recommendation 1 – Accommodation providers to communicate warnings

Accommodation providers are better placed than news media to communicate relevant weather warnings to their guests. Byron Bay police meet bi-annually with many of the budget accommodation providers who cater to the backpacker market. I recommend that the NSWPF Local Area Command instruct the officer attending that meeting to regularly encourage all accommodation providers to institute a system for bringing weather alerts and warnings to the attention of their guests.

Recommendation 2 – Real time signs

Mr Butler's friends acknowledged there were signs warning of the absence of life saving services and the presence of hazardous conditions at Tallow's Beach but they ignored them because the signs did not reflect contemporary conditions and were incongruent with the conditions experienced at the beach a few days before. In my view, to be credible, such signs need to reflect current conditions. Accordingly, I recommend Byron Shire Council consider installing signs that are updated daily with current information about the surf conditions.

Lifesaving services at Tallow's Beach

The inquest was told by informed witnesses that:-

- Tallow's Beach is a notoriously dangerous beach in certain conditions;
- It is frequently used by a significant number of people;
- The local authority provides life guard services to the beach only over the summer holiday period; and
- The local surf lifesaving club is frequently required to respond to incidents at the beach.

This might normally prompt me to recommend that the local authority reconsider its provision of life guard services to the beach. However, I was also informed the Byron Shire Council recently obtained a safety/risk audit of all beaches within its

boundaries and I did not have an opportunity to ascertain how it had responded to that report. In those circumstances it would be inappropriate of me to make a formal recommendation about the issue. However, I intend causing a copy of these findings to be forwarded to council for its consideration.

I close this inquest.

M A Barnes
NSW State Coroner
Byron Bay
7 January 2015