



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

Inquest:	Inquest into the disappearance and suspected death of Theo Jean HAYEZ
Hearing dates:	30 November 2021 to 10 December 2021; 23 February 2022 to 25 February 2022
Date of findings:	21 October 2022
Place of findings:	Coroners Court of New South Wales at Byron Bay
Findings of:	State Coroner, Magistrate Teresa O'Sullivan
Catchwords:	CORONIAL LAW – Missing persons, Mutual Legal Assistance Treaty (MLAT), telecommunications data, “the cloud”, land searches, LANDSAR, CCTV, Byron Bay
File number:	2019/00281850
Representation:	Counsel Assisting the Coroner: Ms Kirsten Edwards instructed by James Herrington and Ellyse McGee (Crown Solicitor's Office) Family: Mr David Evenden (Legal Aid NSW) NSW Commissioner of Police: Ms Claire Palmer instructed by Alaana Wooldridge and Timothy Lowe (Office of the General Counsel) Cheeky Monkeys staff B Hill and S Mackie: Mr David Price
Non-publication orders:	Non-publication orders made on 24 February 2022, 22 February 2022, 14 December 2021, 30 November 2021, 15 November 2021 and 12 November 2021 prohibit the publication of various information and particular evidence contained within the brief of evidence. The orders can be obtained on application to the Coroners Court Registry.

Findings:	<p>Identity The person who died was Theo Hayez.</p> <p>Date of death While I am unable to determine the exact date of death, I find that Theo is likely to have died on, or shortly after, 1 June 2019.</p> <p>Place of death I find that Theo is likely to have died in Byron Bay, NSW.</p> <p>Manner and cause of death I am unable to determine the cause or manner of Theo's death.</p>
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Recommendations:	<p data-bbox="568 206 1407 280"><u>To the NSW Law Reform Commission and the Australian Law Reform Commission</u></p> <p data-bbox="568 297 1407 667">(1) That the NSW Law Reform Commission and the Australian Law Reform Commission conduct a joint reference into the available legislative powers (and absence thereof) in the investigation of missing persons cases and make any appropriate recommendation. Without limiting the scope of the inquiry, the reference should include examination of:</p> <p data-bbox="644 685 1407 831">(a) powers available to coronial investigators under the <i>Coroners Act 2009</i> (NSW) including but not limited to:</p> <ul data-bbox="721 848 1407 1435" style="list-style-type: none"><li data-bbox="721 848 1407 1211">(i) the applicability and availability of existing coronial powers to obtain information from modern technology such as smart phones, computers, tablets and laptops, tele-communications data and information contained on the “The Cloud”; and<li data-bbox="721 1234 1407 1435">(ii) the absence of available powers under the <i>Coroners Act</i> where there is little or no evidence to suggest that a missing person is deceased. <p data-bbox="644 1458 1407 1715">(b) powers available to NSW Police where there is little or no evidence that a person is missing due to the commission of a crime, or a serious crime, including the availability or otherwise of powers to:</p> <ul data-bbox="721 1733 1407 1991" style="list-style-type: none"><li data-bbox="721 1733 1407 1771">(i) enter property without consent;<li data-bbox="721 1794 1407 1877">(ii) search persons or property without consent;<li data-bbox="721 1899 1407 1991">(iii) access computer or social media data of the missing person;
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(iv) compel the assistance of telecommunications carriers including accessing and interpreting telecommunications data, preserving phone numbers and conducting number re-allocation inquiries;

(v) compel a service provider to alert authorities when a person uses a service, for example a bank account, phone or SIM card; and

(vi) seize or compel the production of information, documents or things including password protected phone and computer data and CCTV footage.

(c) the difficulties encountered by missing persons investigators (in criminal and coronial investigations) with the Mutual Legal Assistance Treaty (MLAT) process when seeking to:

(i) promptly obtain relevant information from multi-national companies such as Google, Uber, Facebook and Apple (including personal data, location data and “geo-fence” information); and

(ii) promptly obtain investigative product from investigative agencies and police forces outside Australia.

To the Commissioner of the NSW Police Force

(2) The NSW Police Force develop a pilot “CCTV Register” in the Byron Bay region (the boundary to be determined by the Crime Manager) which identifies on a map the location of all known private

and public CCTV cameras and has recorded:

- (a) the contact details of the owners of the CCTV footage;
- (b) the period after which footage is stored or overwritten; and
- (c) software details and any relevant details about how to easily download the footage or issues which may be encountered.

The purpose of the Register is to enable Police to identify relevant cameras and quickly obtain footage for review. The Register should be updated on a regular basis, and at least annually.

- (3) NSW Police continue to investigate mechanisms, including commercial software platforms, to facilitate efficient downloading and effective viewing of CCTV footage across a variety of software and formats.
- (4) NSW Police consider developing a single point of contact service available on a 24-hour, 7 days a week basis to facilitate requests for data and information from multi-national technology corporations, such as Google and Facebook, to assist missing persons investigations.
- (5) That NSW Police give close and active consideration to the further development and appropriate resourcing of in-house technical expertise within the NSW Police Force so that missing persons investigations can adapt promptly to developments in modern technology.
- (6) That the investigative review component of the Missing Persons Registry ("MPR") be supported with adequate resourcing to continue their current review into the disappearance of Théo Jean Hayez and otherwise allow the MPR to continue providing their

current level of assistance to the coronial system.

(7) The following amendments be considered in the next revision to the Missing Persons Standard Operating Procedures:

(a) That the first missing person report (9.1, p23 and Annexure A, p92) include questions as to:

- the missing person's email accounts;
- their telephone and internet service provider;
- any relevant social media apps with a focus on those apps known to collect location data for example Garmin, Apple watch, Uber, Tinder; and
- any known passwords for those accounts.

(b) The officer who takes the first report to submit an iAsk request for Mobile Internet Records (internet activity and location data) within 72 hours of the first report (and 24 hours in high risk cases).

(c) That the references to the EDR process (p70-73) clarify that not all service providers have a time limit of 48 hours, for example Google has no time limit.

(d) That in high-risk cases (per the risk assessment process) the MPR will assess within 24 hours if the case is suitable for requests to be made for:

- (i) number and data preservation requests to telecoms and/or multi-national data companies; and
- (ii) location and account information through the Fast Track/Emergency Disclosure pathways.

(8) That active consideration is given to conducting a

CCTV canvas around the area of a missing person's "last ping" within 72 hours. That NSW Police consider if revisions are necessary to the Missing Persons Standard Operating Procedures and/or any applicable LANDSAR protocols and training to ensure that:

- (a) there is documentation of (at least) daily briefings between investigators and land search coordinators; and
- (b) adequate continuity between land search coordinators and oversight of searches for missing persons.

To Youth Tourism NSW

(9) That Youth Tourism NSW (previously the Backpacker Operators Association NSW Inc) be provided with a copy of the State Coroner's findings and implement a written policy, applicable to accommodation providers, regarding guests who fail to check out without a reasonable explanation. Whereby:

- (a) if a guest does not check out at the expected time, attempts should be made to contact the guest by phone and email, and their room should be checked for personal belongings within 24 hours; and
- (b) inform the police if a guest who cannot be contacted leaves behind a passport (or any other valuable possession).

Table of Contents

Introduction	1
Background to the inquest	1
Role of the coroner	2
The proceedings	3
Focus of the inquest	4
The facts	5
Theo as a person	5
Theo's time in Australia	6
Theo arrives in Byron Bay 29 May 2019.....	6
<i>Theo attends a BBQ at Wake Up! on the night of 31 May 2019.....</i>	7
<i>Theo goes to Cheeky Monkey's and is later asked to leave</i>	9
<i>Theo's strange route to Cosy Corner</i>	11
The police investigation.....	15
Theo is reported missing: 6 June 2019.....	15
Overview of ensuing police investigation	16
<i>Role of the family and community volunteers.....</i>	17
The digital trail	17
<i>Police request assistance from Telstra (7 June 2019)</i>	17
<i>The family provide Theo's Hotmail and Facebook account credentials (7– 8 June 2019)</i>	18
<i>Early attempts to obtain information from Google (8-9 June 2019)</i>	18
<i>Telstra provides location data (9-16 June 2019)</i>	19
<i>Accessing and interpreting Theo's Google data (16 – 20 June 2019).....</i>	21
<i>Police experiments with Telstra phones (August 2019)</i>	23
<i>Google geofencing task: September 2020.....</i>	25
<i>The independent expert's analysis of the digital data.....</i>	26
CCTV footage.....	30
Searches by Theo's family and supporters.....	31
<i>LANDSAR operation commences: 9 – 10 June 2019</i>	32
<i>Continued land searches and drone searches: 11 - 12 June 2019</i>	33
<i>Senior Constable Vidler's first search: 17 June 2019.....</i>	34
<i>Intensive searches of the Cosy Corner side of the cape: 18 – 20 June 2019 ...</i>	35
<i>Divers search: 20-21 June 2019</i>	36
<i>Review: 24 June 2019.....</i>	36
<i>Abseiling: 2 -3 July 2019, 15 August 2019, 11 March 2020</i>	36
<i>Theo's cap is found by volunteer searchers: 7 July 2019.....</i>	36
<i>28 August 2019: a purple Oppo phone is found at cosy corner</i>	37
<i>Further search for Theo's phone: October 2021</i>	37
<i>Offer of reward</i>	38
Other issues considered at the inquest.....	38
<i>Reporting of missing persons by accommodation providers in Byron Bay</i>	38
<i>Potential limitations on evidence gathering in missing persons investigations..</i>	39
<i>Streamlining access to electronic data from multi-national companies</i>	41
<i>Improving the ability to gathering CCTV.....</i>	42
Findings.....	44
Is Theo deceased?	44

Manner and cause of death	44
<i>Did Theo die by misadventure?</i>	45
<i>Did Theo meet with foul play?</i>	47
<i>Did Theo die by suicide?</i>	49
Findings required by s. 81(1).....	50
The identity of the deceased.....	50
Date of death	50
Place of death.....	50
Cause of death	50
Manner of death.....	50
Recommendations	50
Conclusion	54

Introduction

Background to the inquest

1. Theo Jean Hayez went missing in Byron Bay on the night of Friday 31 May 2019. He was 18 years old and had been travelling and working around Australia, on a working holiday visa, since November 2018. He was coming to the end of his trip and had a flight home to Belgium booked from Melbourne in mid-June 2019.
2. Theo arrived in Byron Bay on Wednesday 29 May 2019 and checked into the Wake Up! hostel until Monday 3 June 2019. He had a bus ticket to travel to Sydney on 3 June and then on to Melbourne on 4 June 2019. He was travelling alone at that point.
3. On the night of 31 May 2019, at approximately 9:30pm, Theo attended a bar called Cheeky Monkeys along with five other travellers whom he had met at the Wake Up! hostel. Just after 11:00pm, Theo was ejected from the bar by security staff who suspected him of being intoxicated or approaching intoxication.
4. That was the last confirmed sighting of Theo and what happened next remains largely a mystery. While Theo's mobile phone has never been found, Google account data linked to his mobile phone reveals that after he left Cheeky Monkeys he walked to Tallow Beach, stopping along the way at the cricket nets in the Byron Bay Recreational Grounds for about seven minutes and then taking the Milne Track through Arakwal National Park. Once he reached Tallow Beach, Theo walked to Cosy Corner at the northern end of the beach, near the Cape Byron cliffs. The last available GPS data places Theo's phone at this location at 12.05am on 1 June 2019. There is user activity on Theo's phone for approximately an hour after this point, until 12.56am, showing him accessing YouTube and exchanging messages with friends and family. At 1.02am the phone loses data connectivity to the network but reconnects again at 6.17am. At 1.47pm on 1 June 2019 Theo's phone disconnects permanently from the network. Cellular data, while not as accurate than GPS data, is consistent with the phone being located on the headland area just north of Cosy Corner in the period after the GPS signal is lost.

5. Theo was reported missing to police by his family on Thursday 6 June 2019. A large-scale missing persons investigation was conducted by the NSW Police with ongoing and invaluable support provided by Theo's family, the local community in Byron, and the Belgian authorities. Extensive land and sea searches were conducted in the areas all around the Byron Bay headland, with a particular focus on Arakwal National Park, Cosy Corner, the surrounding headland, and the cliffs to the south of the lighthouse.
6. Despite the scope and scale of the searches, the only trace of Theo that has ever been found is the grey Puma cap he was wearing on the night he disappeared. That cap was found by community volunteer searchers on 7 July 2019 in Arakwal National Park, behind Tallow Beach.
7. On the basis of the evidence that has been gathered during the investigation and inquest, I find, on the balance of probabilities, that Theo died on, or shortly after, 1 June 2019 in Byron Bay.
8. Tragically, I am unable to make any findings as to the manner or cause of his death. The police working hypothesis is that Theo died by misadventure: falling from the cliffs while attempting to climb from Cosy Corner towards the lighthouse and being swept out to sea. Theo's family, knowing him to be a careful and responsible young man, find this theory difficult to accept and strongly suspect that he met with foul play. There is simply insufficient evidence before me to substantiate or exclude either theory at this point in time.
9. Further, the possibility of suicide appears highly unlikely on the evidence available to me. There were no relevant factors (such as mental health issues or financial stress) present in Theo's life. On the contrary, the evidence appears to indicate that Theo was forward-looking, excited about his future and being reunited with his family in Belgium. The possibility that Theo took his own life can be excluded on the balance of probabilities.

Role of the coroner

10. Section 27(1) of the *Coroners Act 2009* NSW (**the Act**) requires an inquest to be held if it has not been sufficiently disclosed whether a person has died or what the manner and cause of a person's death was.

11. In a missing persons case, the Coroner must first determine as a threshold question whether the evidence establishes, on the balance of probabilities, that the person is deceased.
12. Where the Coroner reaches a conclusion that the person is deceased, the Coroner must then proceed to consider the matters set out in section 81(1) of the Act, namely:
 - (a) the deceased person's identity;
 - (b) the date and place of the person's death;
 - (c) the manner and cause of the person's death.
13. The Act does not define the phrase "manner and cause of death". It is generally accepted that it is a composite phrase involving inter-related, but distinct, concepts. The manner of death relates to the circumstances in which a death took place whereas the cause of death is the direct and proximate physiological cause of the death.
14. Pursuant to s. 82 of the Act, the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question. I have seen fit to make a number of recommendations in this matter which are outlined below.

The proceedings

15. An inquest into Theo's disappearance and suspected death was held at the Byron Bay Local Court between 20 November 2021 and 10 December 2021 and between 23 February 2022 and 25 February 2022. The progress of the coronial investigation and the hearing of the inquest was affected by the COVID-19 pandemic. It was, however, important to have Theo's family be able to travel to Australia and participate in the inquest in person. I was very grateful that Theo's family were able to be present in Byron Bay for the inquest.
16. At the inquest, a 12-volume brief of evidence was tendered and oral evidence was given by a large number of witnesses comprising family members, friends and fellow travellers, police officers, and a telecommunications expert.
17. Theo's family including his mother Vincianne, father Laurent, brother Lucas and grandmother Jacqueline attended the December sittings from Belgium and were

assisted by two French interpreters. They were supported by Theo's godfather JP and his wife, Theo's cousin Lisa Hayez and Michael Dorkhom and several community members. Powerfully moving statements from the family were made on 10 December 2021.

Focus of the inquest

18. Prior to the commencement of the inquest a list of issues was circulated amongst the sufficiently interested parties, identifying the scope of the inquest and the matters to be considered.
19. The list identified the following questions for consideration pursuant to the findings and recommendations functions of the Act:
 - (a) Is Theo Hayez deceased, and if so:
 - (i) approximately when and where did he die;
 - (ii) what was the manner and cause of his death; or
 - (iii) if there is insufficient evidence to say, can any potential cause of death be excluded on the balance of probabilities (for example suicide)?
 - (b) Should there be a protocol or memorandum of understanding guiding accommodation providers in Byron Bay as to when they should report missing guests, particularly overseas travellers, to the NSW Police Force? If so, what terms should it include?
 - (c) Is the ability of the NSW Police to effectively investigate (and potentially locate) missing persons:
 - (i) being compromised by legislative and policy gaps, particularly in the ability to obtain data from multinational companies like Google, Apple and Facebook; and
 - (ii) can the mechanisms to obtain this data on behalf of the Coroner be streamlined or otherwise improved to ensure faster and easier access to relevant information?

The facts

Theo as a person

20. The evidence presents a picture of Theo as a young man who was universally loved and had a bright future ahead of him.
21. He was born in Belgium in 2000 to mother Vincianne Delforge and father Laurent Hayez. He has a younger brother Lucas and a step-sister Emma and was very close to both. His cousin Lisa Hayez grew up nearby and they spent a lot of time together as children. Some of Theo's time travelling in Australia was spent with Lisa who came here a couple of months before him and remains here now.
22. Theo was very close to his family and had strong friendships going back to childhood. He stayed in regular contact with his family and friends back in Belgium while he was travelling in Australia. Indeed, his mother Vincianne was immediately concerned when she had not heard from him in a couple of days in early June 2019 as he was usually in contact on a daily basis, mostly through Facebook messenger.
23. Theo has been consistently described by those who knew him well and those he met during his travels as friendly, funny and sociable but not especially loud or outgoing. He has also been described as intelligent and studious from a young age. His cousin Lisa, who went to school with him in the final year, said that he was hard working and never missed a day unless he was really sick. His plan on returning to Belgium in June 2019 was to study for exams to be admitted to an engineering degree.
24. Theo was fit and healthy and is said to have loved the outdoors and been passionate about protecting the environment. The evidence is that he drank alcohol occasionally and almost never excess, having a strong preference for remaining in control. He had no history of drug abuse or mental health issues.
25. Theo's family have all emphasised that whilst he was fit, confident and sometimes adventurous, he was also cautious and responsible by nature. He liked to plan ahead and did not engage in risky or dangerous behaviour or do things on a whim. This is of particular significance in the inquest as his family find it inconceivable that he would walk alone through bushland in the middle of the night to Cosy

Corner and do something as dangerous as climbing the cliff face towards the lighthouse.

Theo's time in Australia

26. Theo arrived in Australia in November 2018 on a working holiday visa. He came alone but spent time with family and joined other backpackers that he had met throughout his travels for portions of his trip.
27. Theo started his trip in the Otways, Victoria where he stayed in the family home of his godfather Jean-Philippe Pector (known as "JP") for a little over a month. He travelled to Sydney to spend New Year's Eve with his cousin Lisa, who had arrived in Australia a couple of months before him. From Sydney, Theo and Lisa went to Melbourne where they spent about a month living together and where Theo got a job working at the Australian Open. Theo and Lisa then went on to Shepparton, Victoria to do some farm work. After that, they parted ways and did not meet again until 25 May 2019 in Brisbane. In the intervening months, Theo spent time in Tasmania, the Whitsundays, Fraser Island, Noosa, Townsville, Cairns, Alice Springs, Uluru, Darwin, Kakadu and Litchfield National Park. Theo described the trip to a friend as having "...some of the best moments of [his] life".
28. On 25 May 2019, Theo travelled from Cairns to Brisbane where he met up again with Lisa and stayed overnight with her at her half-brother, Michael Dorkhom's place. Michael had moved to Australia prior to Lisa and had not seen Theo for about 10 years. Michael and Lisa both described the evening as very special, spent chatting and reconnecting. The next morning, Lisa dropped Theo at the bus station for him to travel onwards to the Gold Coast and then Byron Bay. According to Lisa, the focus of discussion that night was more on Theo's plans for the future in Belgium than on his time in Australia. Her impression was that Theo had really enjoyed his trip but was ready to go back to Belgium and start the next phase of his life. Lisa recalled Theo telling her that he was excited to go back home and see his family and "...sleep in a good bed in his bedroom...".

Theo arrives in Byron Bay 29 May 2019

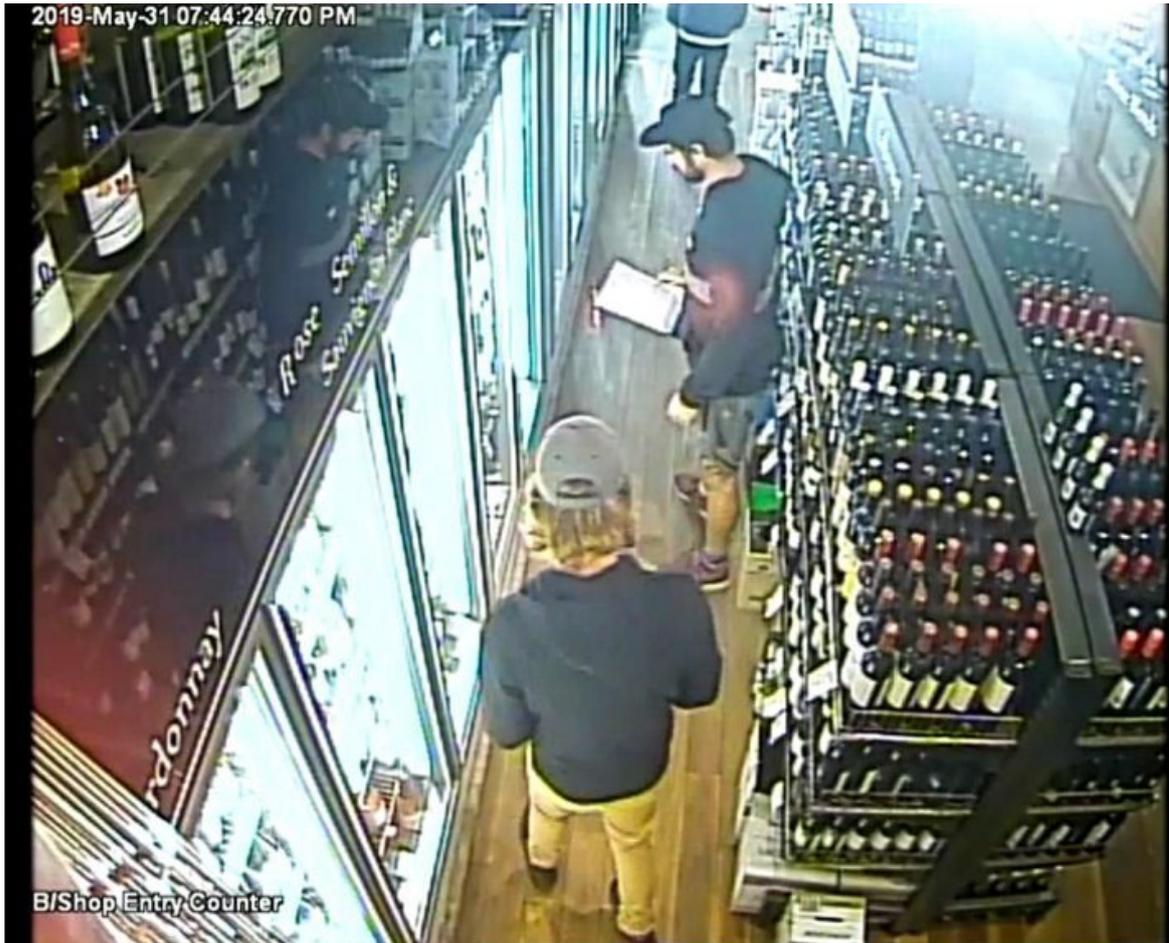
29. On Wednesday 29 May 2019, Theo travelled from the Gold Coast to Bryon Bay on a greyhound bus. He arrived at about 2:00pm and checked into the Wake Up! hostel until Monday 3 June 2019, paying upfront. Theo's accommodation was a

cottage style house housing 8 people. He slept on a top bunk and did not know any of his dorm mates.

30. The evidence suggests that Theo had a quiet couple of days in Byron and did not have much interaction with others before the Friday night. Although some tourist brochures were found in his luggage, there is no evidence of him visiting any of the sights or engaging in other typical tourist activity such as surfing. His dorm mates remember him lying on his bunk and watching movies on his phone a lot but said he was friendly. The only evidence of Theo sightseeing in Byron is a photo he sent to Emma on 30 May 2019, which appears to depict the stretch of beach known as “the Pass” just to the west of the lighthouse. The accompanying message said (in French) that the photo was taken during a walk that day.
31. As outlined above, Theo paid up-front for accommodation until 3 June 2019 and then had a bus ticket booked to Sydney for 3 June, and on to Melbourne on 4 June.

Theo attends a BBQ at Wake Up! on the night of 31 May 2019

32. On Friday 31 May 2019 at about 6.00pm, Theo went to a BBQ at the Wake Up! hostel being held outside on the back terrace. There was evidence from travellers and local police that it was an unusually cold night for Byron Bay.
33. Theo met a fellow Belgian, Antoine Van Laetham, at the BBQ. They struck up conversation and immediately connected. Antoine gave evidence at the inquest that they spoke a lot about Brussels and that Theo said he was excited to go back home soon. Sometime around 7.30pm, Theo and Antoine took the shuttle bus from the hostel into town and bought a two-litre cask of rosé wine from the Great Northern Hotel. There is CCTV from the Great Northern, taken at 7.44pm, showing Theo wearing a grey cap, black hoodie, tan pants and black shoes.



34. Theo and Antoine returned to the hostel in an Uber. Theo's Uber records show that they arrived back at the hostel just after 8:00pm and that Theo paid the fare. At 8.00pm, possibly while he was still in the Uber, Theo sent a text to Emma in French stating, in effect, that he was definitely going out that night and apologising if he was slow to respond later.
35. When they returned, Theo and Antoine went back to the outside terrace and sat around a table with a group of other backpackers. There were two guests that Antoine already knew from the hostel, called Sacha and Michael; two German women called Marlen Ilsman and Annika Wachter; and two British women called Eden Parsons and Elen Lloyd; and a backpacker staying at a different hostel who Antoine had met earlier on his travels, called Alexander Stadegaard (known as "Sander").
36. There is very little known about how much, if any, of the cask wine Theo drank back at the hostel. It is also not known whether Theo had anything to drink earlier that evening. Although the hostel did provide free alcohol at some of their evening

events, the General Manager at the time, Mr Phillips, gave evidence that there was no alcohol provided at the barbeque nights held on Fridays. There was a hut on the back terrace of the hostel where alcohol could be purchased using cash or cards. There is no evidence on Theo's bank statements of him purchasing anything from the Wake Up! hostel that evening although it is still possible that he did so using cash. What is clear is that Theo was not noticeably drunk or even noticeably tipsy. Each of the people that Theo spent time with that night have given evidence and none of them remember him drinking a lot or being affected by alcohol.

Theo goes to Cheeky Monkey's and is later asked to leave

37. Sometime after 9.00pm, a group from the hostel decided to go into town to a famous backpacker bar called Cheeky Monkeys, located at 115 Jonson Street near the corner of Kingsley Street. The group travelled into town on two shuttle buses. Theo was on the bus with Antoine, Sander, Marlen, Annika, Eden and Ellen.
38. CCTV footage shows Theo entering the Cheeky Monkeys with that smaller group at approximately 9.35pm. He is wearing the same clothes he had on earlier that night at the Great Northern Hotel bottleshop.



39. Theo appears to stumble slightly at the entry to the bar and almost collides with Annika but no one from the group, even looking back at that footage, remembers him as being unsteady on his feet at that, or any other point, of the evening.
40. Inside the bar, the group of six sat down around a table. The CCTV footage shows Theo seated next to Elen and Sander and engaging in quite an in-depth discussion with Sander, which Sander has said was a serious discussion about European politics. Theo's bank records confirm that he bought two schooners of Carlton Draught at Cheeky Monkeys. The first was at 9:51pm and the second at 10:14pm. CCTV footage shows Theo draining his first beer before the group moved to another area of the bar and holding his second beer while dancing.
41. As the bar got busier, the group of six moved away from that table and dispersed into a larger area where people started dancing. There is no evidence of anybody speaking to Theo after that point in the evening. There is footage of him dancing rather unsteadily on the tables at about 10:44pm - 10:49pm and then walking to the toilets at 10:55pm. He spent about five minutes in the toilet. As Theo was leaving to go back to the dance area he was stopped by a security guard who suspected him to be intoxicated. The security guard asked him to step outside. Once outside, Theo's photograph was taken and he was told that he had to leave the bar and couldn't come back.
42. In the CCTV footage of the events outside the bar, Theo appears calm and cooperative. He has a brief interaction with another man standing outside and makes a gesture with his hands as if to say that he does not understand what is happening. The man that he spoke to was identified and contacted during the investigation but did not have anything of value to add.
43. Mr Mackie, the security guard on duty that night who made the decision to remove Theo confirmed that Theo was "*compliant, quiet and showing no signs of aggression*". He also could not recall anything about Theo's behaviour or demeanour which indicated that he was, in fact, intoxicated. However, he said that Theo "*seemed like he was losing his coordination and balance because he was swaying a little bit*" and formed the view that he was approaching intoxication and should be removed. Mr Hill, the head of security, said that it was policy to err

on the side of caution and remove persons thought to be approaching intoxication even if that sometimes led to mistakes being made.

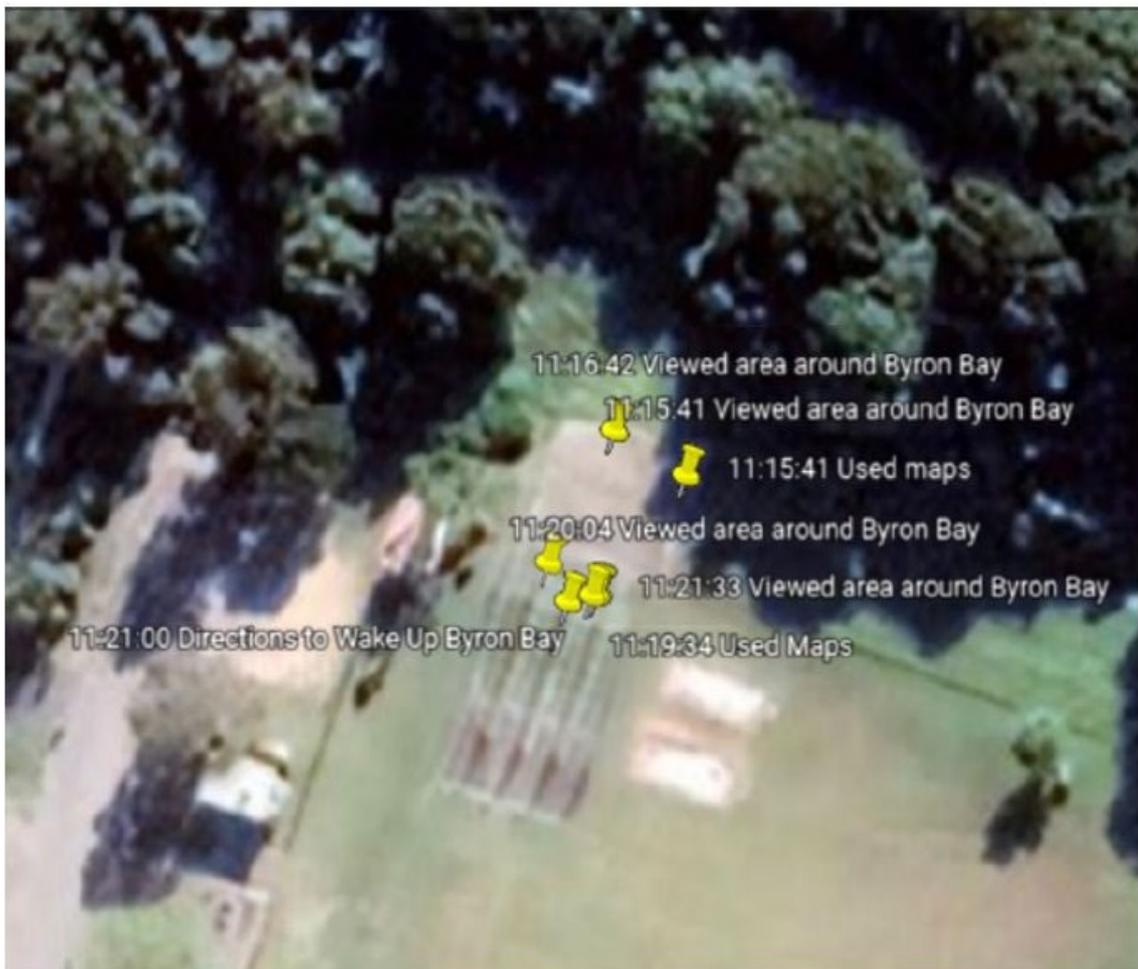
44. The fact that Theo was ejected from the bar like this and without being given the opportunity to go back in to let any of the group know has, understandably, caused the family a great deal of distress. However, it is important to view the actions of the security staff in the context of the NSW liquor licensing laws which are very strict and impose large fines on venues for supplying alcohol to intoxicated persons. Considering all the circumstances, I do not find that there is a basis for any criticism of the Cheeky Monkeys' policy and procedures with respect to their liquor licencing obligations. There is also no basis for criticism of the individual actions taken by Mr Mackie and Mr Hill that night in ejecting Theo from Cheeky Monkeys.

Theo's strange route to Cosy Corner

45. The last available CCTV footage of Theo is at approximately 11.03pm as he is leaving the bar. He is walking in the direction of Kingsley Street and looking at his phone. He nearly walks into a pole but avoids it just in time.
46. There are no confirmed sightings of Theo after that point. However, records linking to his mobile phone provide a digital data trail showing where he went next and some of his phone activity. There is no reason to doubt the reliability of this data. The GPS location data, which is available up to 12.05am on 1 June 2019, is said by Google to be accurate to within 3 metres. An independent expert has reviewed the data and agrees with this assessment, noting that a GPS signal is received from the sky downwards (from a satellite) and is not affected by the topography of the surrounding area. It can also be inferred, from the nature of the activity engaged in and content of the messages sent, that until at least 12.56am Theo was himself in possession of his phone did not feel scared or in danger.
47. The data reveal that just after leaving Cheeky Monkeys, Theo searched Google maps for directions back to the Wake Up! hostel. However, he did not follow those directions. Instead of walking back up Jonson Street towards main beach, he turned into Kingsley Street and walked east towards a more dimly lit residential area, in the opposite direction to the hostel. He then turned into Tennyson Street and walked to the cricket nets in the Recreational Grounds where he paused from

about 11.14pm to 11.21pm. As noted by counsel assisting in her opening, it is easy to cut through the bush here to Main Beach. The ocean is often audible at this location, although the path to the beach is not clearly visible (particularly at night).

48. During this period, the data shows that Theo viewed Google maps on his phone, zooming in and out of the surrounding area, but did not search for any particular locations.



49. I pause to note here that one important limitation of the available Google Takeout data is that it does not show the precise user generated activity within the read-outs or how the user was interacting with the phone. As such, while it appears that Theo was using the maps function in Google for at least some of his seven minute time at the crickets, it cannot be said how frequently Theo was using or attending to his phone during this period. Reports in the media stating confidently that Theo was, or was not, using his phone during this time are not accurate for this reason, as the limitations of the data mean that we simply do not know.

50. Theo's family gave evidence at the inquest about their firmly held belief that Theo would not have taken the route that Theo took from the cricket nets to Tallow Beach, as evidenced by the Google timeline data, on his own. Theo's family believe it likely that Theo met a person or persons unknown at the cricket nets and was thereafter guided to Tallow Beach. Whilst I can understand the assertion that Theo was unlikely to have travelled alone at night in an unknown bush environment, unfortunately there is no evidence available to me in support the supposition that Theo was in the company of others during this time.
51. After the cricket nets Theo walked through dark residential streets to a bush track called the Milne Track which led to Tallow Beach through Arakwal National Park. He followed the Milne Track for part of the way through the park but then deviated off the track, first onto a fire trail and then through dense bush. This is the part of bush where Theo's cap was subsequently located. Along his walk, Theo appears to have used his camera (at 23:38pm) and viewed Google Maps a number of times. It is difficult to understand why Theo took this complex route to Tallow Beach rather than the road. Further, it is hard to understand how Theo found the start of the track without assistance. I note that Theo's family consider that he may have been in the company of a person or persons familiar with the area.
52. Theo came out of the bush onto Tallow Beach at approximately 11:48pm and walked at a brisk pace to the northern end near the Cape Byron cliffs, known as Cosy Corner. Just before midnight, at 11:56pm, he left the beach and walked up a steep incline towards Lighthouse Road before returning to the beach. That area starts out sparse but rapidly becomes very rugged dense bushland. The deviation inland from start to finish took about eight minutes. The phone logs show that Theo again viewed Google maps while he was in the bushland.
53. Just after he returned to the beach, Theo's phone ceased to record GPS-derived data. The last GPS data point is at 12:05pm on 1 June 2019 and places Theo's phone at Cosy Corner. It was thought that Theo may have intentionally turned off the location services, possibly to save battery life on his phone. However, a telecommunications expert who has analysed all of the phone data, gave evidence that the GPS location tracking could have been lost due to low internet connectivity or the application crashing.

54. Theo's phone continued to be in use and connected to the internet for nearly an hour after the GPS-derived location data ceased to be recorded. The available records reveal as follows:

- (a) at 12.20am Theo sent a message on Facebook messenger to Lou Gyomorey, a close friend of his in Belgium. The message was in French and continued a discussion thread from the previous day relating to a U2 concert coming to Australia in September. In her evidence, Lou said that there was nothing strange or unusual about that message. She noted, in fact, that Theo used the word "*ba*" at the start of the message which she said is an expression that young French speakers commonly say but do not usually write. She felt that it was quite unique to Theo to use that word in a message;
- (b) at 12.23am, Theo accessed YouTube and viewed a clip from a Belgian TV comedy show called Burger Quiz. Theo is known to have liked this show and to watch it on YouTube;
- (c) at 12.50 am, Theo searched for directions to the Wake Up! Hostel. From the analysis available, it is unclear if Theo entered a new search for Wake Up! or accessed a prior search made that night;
- (d) at 12.55am, Theo sent a brief message on WhatsApp to Emma. The message was in French ("*merci*") and continued a discussion thread from earlier that evening;
- (e) at 12.56am, Theo sent a message on WhatsApp to Loic Speiss a German backpacker Theo had met in January 2019 in Melbourne and travelled with for about a month. The message was in French and responded to a message from Loic sent earlier that night, at about 10.30pm, asking Theo if Byron Bay was a "surfers paradise". In his response Theo used a slang expression meaning something along the lines of "*yes, totally!*". Loic gave evidence that there was nothing unusual about the language, or spelling or grammar in that last message and said that Theo commonly used French slang and colloquial expressions in messages. He agreed Theo would use the slang "*ba*" in his text messages.

55. At 1.02am, Theo's phone stopped transmitting data. It reconnected to the network at 6.17am but there was no further user activity. A message from Lou at 2.33am and a message from Loic at 3:23pm on 1 June 2019 were not delivered. The telecommunications expert concludes that there is no way to know exactly why the phone disconnected from the network between 1.02am and 6.17am. It could be related to a change (even a slight one) in the orientation or height of the phone or a change of weather conditions, such as dampness evaporating.
56. At 1.47pm on 1 June 2019 the phone disconnects from the network for good. At that last point, the phone was connecting (or "pinging") to the Telstra tower at the corner of Massinger and Patterson Streets.
57. Based on an analysis of timing advance data in the cellular records, the expert infers that the location of the phone after it ceased to record GPS-derived location data (i.e. from 12:05am to 1:47pm on 1 June 2019) was in the headland area to the north of Cosy Corner.

The police investigation

Theo is reported missing: 6 June 2019

58. Theo's mother became concerned about Theo almost immediately when she did not hear from him as it was usual for them to have daily contact. He was not responding to messages and she was able to see that he had no activity on Facebook after 1 June 2019. Initially she thought that perhaps he was in an area out of internet coverage but after a few days she contacted Lisa who also became concerned when she couldn't reach Theo. JP, whom Theo was planning to meet in Melbourne and spend the last few days with before he left for Belgium, was then contacted.
59. On Thursday 6 June 2019, after Theo failed to arrive in Melbourne as planned, both Lisa and Michael filed missing persons reports. Lisa made the report to the police in Gatton, Queensland where she was living at the time and Michael reported it to the Byron Bay Police.
60. A missing person report was also made to the Byron Bay police on 6 June 2019 by staff from the Wake Up! hostel. They had been trying to contact Theo since 3 June when he failed to check out as planned. On 6 June 2019 they searched

the belongings he left behind and found his passport, causing them to be concerned for his welfare.

Overview of ensuing police investigation

61. By the time Theo was reported missing, he had not been seen or heard from for over five days. The police designated Theo's disappearance as "high risk". Detective Senior Constable Philip Parker began working on the case on 7 June 2019. He was assigned as the Officer in Charge on 9 June 2019, with assistance and advice provided throughout the course of the investigation by the homicide squad.
62. The investigation led by Detective Parker was one of the largest missing persons investigations in the Northern Rivers region. As noted earlier, the brief of evidence in this matter comprised 12 volumes of material. The investigation was multi-dimensional including:
 - (a) obtaining and analysing mobile phone and internet data;
 - (b) obtaining and viewing CCTV footage from the Byron Bay area;
 - (c) conducting land and sea searches;
 - (d) canvassing the community, local business, hostels and hospitals for any information about Theo;
 - (e) interviewing backpackers and contacting past guests from Wake-Up hostel who had dispersed all over the world;
 - (f) taking, reviewing and investigating Crimestoppers reports from the public including numerous suspected sightings of Theo;
 - (g) liaising with Belgian authorities who were conducting their own investigation; and
 - (h) organising media and social media campaigns.
63. The sheer scale of the investigation makes it impossible to set out each step taken in chronological order. The following sections provide a summary of the key investigative tasks and major developments that shaped the investigation.

Role of the family and community volunteers

64. It is also important to acknowledge at this point the unique and extraordinary role played by family members and community volunteers in searching for Theo. It is impossible to overstate the importance of their efforts and level of assistance they provided to the police.
65. Lisa, Michael and JP, the family members present in Australia, have been a driving force throughout the investigation. As soon as it became clear that Theo was missing, they travelled to Byron Bay and pursued every angle they could to find him: from community canvassing and organising volunteers in the local area to uncovering a treasure trove of electronic data in Theo's online accounts.
66. The Byron Bay local community provided an overwhelming level of support to the family from the very start and it continues to this day. They blanketed trees and poles with posters of Theo, assisted in Facebook and advertising campaigns, and tirelessly scoured beaches and bushland, leading to the successful location of Theo's cap on 7 July 2019.
67. Their compassion has profoundly moved the family and has provided a measure of comfort in their time of deep distress and uncertainty. The community involvement was described beautifully by JP at the inquest as an "*immense movement of humanity and support and love*". Without that community involvement, he stated, "*I don't think we would have been able to cope*".

The digital trail

Police request assistance from Telstra (7 June 2019)

68. One of the priority tasks for the police from the outset was to obtain records of Theo's mobile phone usage. Call charge records (CCRs) and reverse call charge records (RCCRs) record outgoing and incoming calls and SMS as well as data usage. They can also be used for location tracking as they show which tower or towers the phone was connecting (or "pinging") to at any time. Although this is not a precise guide, it does give an indication of the vicinity in which the phone was located.
69. On 7 June 2019, the police submitted a request for a subscribers check through iAsk to determine the telecommunications provider associated with Theo's

number. iAsk is a system used by NSW Police to log requests with certain external organisations for information. Once it was established that Telstra provided the service, the police requested Telstra to provide Theo's CCRs and RCCRs.

The family provide Theo's Hotmail and Facebook account credentials (7– 8 June 2019)

70. Simultaneously, the family was urgently searching for ways to access any information on Theo's online accounts. On 7 June 2019, Theo's mother managed to access Theo's Hotmail account using a password that she was aware of. She shared the Hotmail account information with Lisa who was then able to use it to log in to Theo's Facebook account. Lisa immediately called the police and provided them with Theo's Facebook credentials, thinking that it could be critically important for them to be able to see his last activity, particularly any messages he sent or received on Facebook Messenger. Lisa also discussed the Facebook account with Michael and together they decided not to open any of the messages even though they could see that some were unread. They thought it better not to interfere with the account and to leave it to the police to go through it.
71. The next day, 8 June 2019, Lisa and Michael travelled to Byron Bay and met with the police. They raised again the social media accounts in the expectation at the police would follow up and access the accounts using the credentials they had provided. For reasons which I return to later, and unbeknownst to the family, the police believed they were not lawfully entitled to do that.

Early attempts to obtain information from Google (8-9 June 2019)

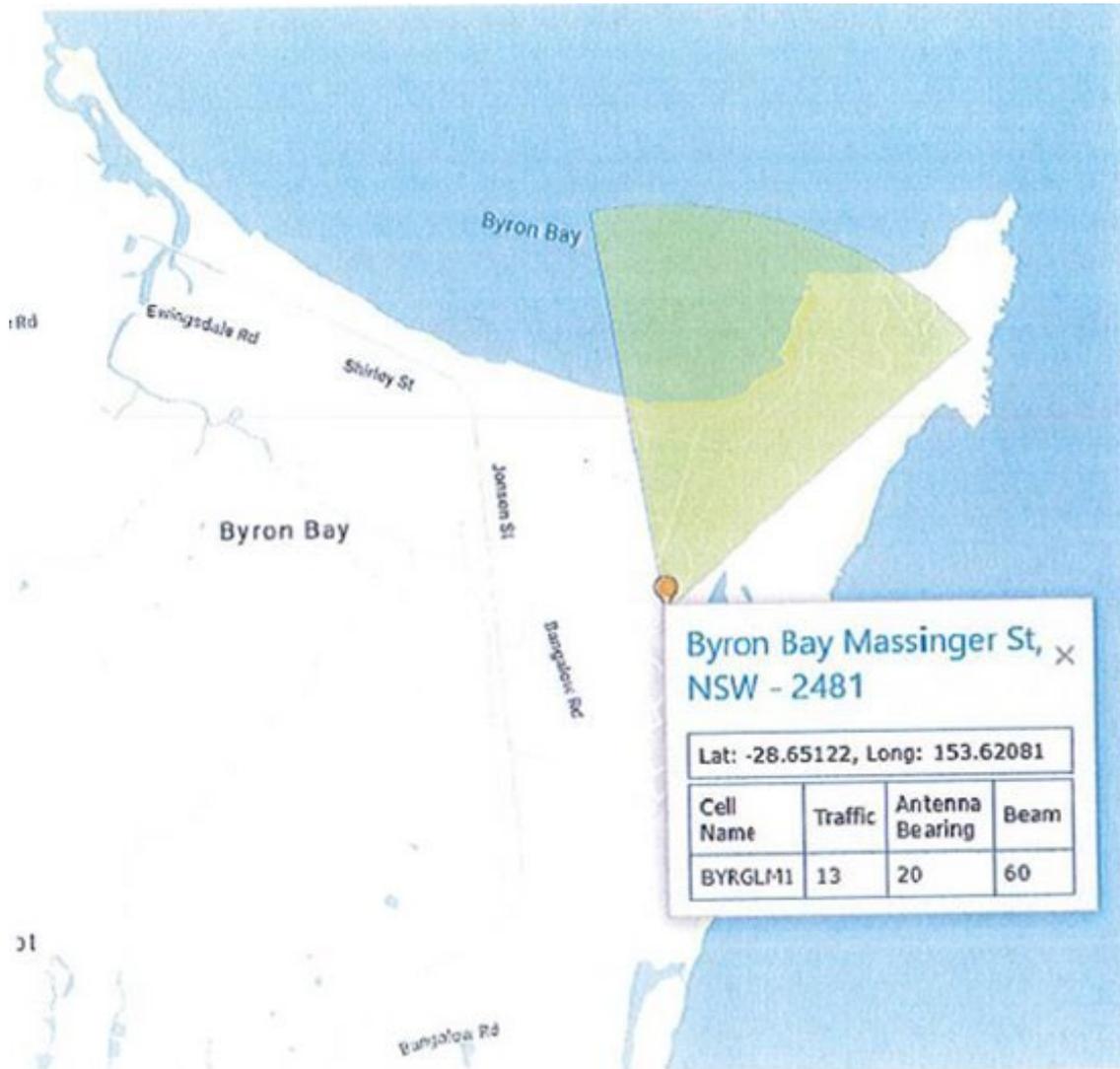
72. JP also travelled to Bryon Bay and met with the police that first weekend after Theo was discovered missing. JP provided the police with Theo's Gmail address and suggested that they contact Google to obtain a Google map "timeline" which would show Theo's last movements. On 8 June 2019, two officers searched for an applicable application on iAsk to make the request but were unable to locate one. Further steps were taken by police officers on 9 June 2019 to find a way to obtain Theo's Google data but they too were without success. The information received suggested that police have no direct access to Google and that a court order using the *MLAT* (Mutual Legal Assistance Treaty) process was likely to be

necessary and could take weeks or, more likely, months. Despite these early obstacles, as outlined below, NSW Police actively engaged with both Google and the Belgian authorities to obtain as much data as was available.

73. As it happened, Google did have a 24/7 emergency disclosure request (**EDR**) service operating at the time which could have been used by the police. The EDR service involves Google voluntarily (*i.e.* without a court order) disclosing information to a government agency where it reasonably believes that it may prevent somebody dying or suffering serious physical harm. The police awareness of the EDR process was a topic of consideration at the inquest. As discussed later in this report, changes have been made internally to ensure this capability better known and used by police officers in missing persons investigations.
74. The Belgian police, on the other hand, were aware of the EDR service and had a single point of contact at Google for making these kinds of requests. They submitted an EDR on 9 June 2019. However, it appears that they provided Google with Theo's Gmail address because at the time it was believed that his Google account was linked to that address. Google undertook the EDR process using Theo's Gmail address but found no relevant information. It was subsequently discovered, by Michael that Theo's Google account was linked to his Hotmail address. This discovery was also made at Google on 19 June and led to a large amount of information being provided to NSW Police.

Telstra provides location data (9-16 June 2019)

75. On 9 June 2019, Telstra provided information showing that when Theo's phone last connected to the network, at 1:47pm on 1 June 2019, it was pinging to the Telstra tower at the corner of Massinger Street and Patterson Street. Based on this information, Telstra created a map with a shaded wedge-shaped area emanating from the tower depicting the possible location of the phone. The wedge captured an area to the west of the lighthouse, taking in the cliffs on the Wategos side of the headland but leaving out the Cosy Corner side.



76. This map was then used to guide the land searches which began on that day (discussed further below).
77. Between 11 and 15 June 2019, police liaised with Telstra engineers to interpret the cellular data and try and pin down the last identifiable location of the phone. Sergeant Louise Hawkes from the homicide squad provided analytical support to the investigative team and was primarily responsible for engaging with the Telstra engineers. There were some indications of phone activity around the Tallows Beach side. Specifically, police were told by Telstra that it appeared the phone may have been at Cosy Corner in the period before it stopped receiving data at 1.02am. Telstra prepared updated maps depicting broader areas of interest and provided them to police. However, Telstra noted that the location data were difficult to interpret and may not be reliable because of the topography of the area.

Consequently, the main focus was still around Wategos and The Pass side of the Cape.

78. On 16 June 2019 Sergeant Hawkes and another detective from the homicide squad, Detective Sergeant Rudens conducted an experiment to try and replicate the activity showing on Theo's phone records. They took a Telstra connected phone and walked around areas on the Wategos while a Telstra engineer analysed the phone activity, finding it to be consistent with Theo's records. Significantly, the phone was showing as also pinging on the Tallow Beach side even though the detectives never went to that area. This fortified the theory that Theo's last location was on the Wategos side and the pings on the Tallows side were "spurious pings" caused by the topography.

Accessing and interpreting Theo's Google data (16 – 20 June 2019)

79. On the evening of 16 June 2019, Michael Dorkhom was able to access Theo's Google account. He had discovered a couple of days prior, through his own ingenuity, that Theo's Google account was linked to his Hotmail email address rather than the Gmail address. He then went through a series of steps to request the password to be reset. The request was approved by Google on 16 June which allowed Michael to access the account. This was a major development and a pivotal factor in altering the course of the investigation and the focal point of the search over the coming weeks.
80. The first thing that Michael did was to go to a function called Google Timeline and to obtain a map of Theo's movements on 31 May 2019.



81. This showed that after Theo left Cheeky Monkeys he had not walked in the direction of the hostel but, rather, walked in the opposite direction ultimately ending up at Cosy Corner at 12.05am. Michael immediately informed Theo's family and the police. He spoke to Detective Rudens who asked him to take screenshots of the timeline and to send it to him by email.
82. Michael also accessed the "My Activity" and "Takeout" functions. My Activity allows a user to view all their online activities using Google applications, such as Google searches, using Maps, viewing YouTube. Takeout allows a user to export all data stored in their Google account providing a complete history of online activity and location data. However, it is worth noting again that whilst the Takeout data captures a range of activities undertaken on an account, it is not possible to understand whether all the activities listed are *user based*. For example, it cannot be ascertained whether an activity recorded as a "search" is indeed a fresh search typed in by the user, or simply viewing the results of a previous search or clicking on a hyperlink or auto-complete.
83. From this additional data, Michael was able to see that Theo had looked at directions to Wake Up! several times in Google maps between 11pm and midnight on 31 May 2019 and had watched a clip of Burger Quiz on YouTube at 12:23am on 1 June 2019. Michael continued to interrogate the location data the next day and saw that there was a record for 12.56am on 1 June 2019 which

appeared to place the phone at the corner of Lawson Street and Patterson Street (on the Wategos side). He subsequently determined, however, from the attributes in the Google Takeout file that this location point was derived from cellular data, as opposed to a GPS signal, and had an accuracy of only within 2,000 metres.

84. On 18 June 2019, Lisa attended the Byron Bay station to go through the new data from Theo's Google account. The police had asked her to attend with her computer and told her that they were not permitted to access Theo's account themselves. Lisa showed the police the Google timeline and My Activity log while they took notes and pictures.
85. Also on 18 June 2019, while processing a second order from a Belgian court, an employee at Google discovered Theo's account linked to his Hotmail address. The following day Google provided large amount of information to police via the Belgian embassy in Canberra.
86. The GPS based data from Google was a much more precise record of the phone's location than the data from Telstra based on cell tower connections. Initially, however, there was some uncertainty about the reliability of the new Google location data and police could not differentiate between the two conflicting location points from Telstra and Google. Telstra engineers queried if a northern hemisphere mapping projection used by Google could be the cause of the discrepancy or if accuracy of the Google data was affected by the topography of the area.
87. On 19 June 2019 Detective Rudens contacted Google requesting assistance in clarifying these issues. On 20 June 2019, Google responded confirming that the GPS references, available until 12.05am, were accurate to within 3 metres and providing other voluntary assistance to assist police in understanding the location and map data.

Police experiments with Telstra phones (August 2019)

88. The Google data has been critical to understanding Theo's activity and movements after he left the Cheeky Monkeys on the night of 31 May 2019. An independent expert has analysed the data and agrees that the GPS based location points are very accurate. However, the GPS data is only available until 12:05am and thus the Telstra data remains of significance in trying to determine

Theo's location between 12:05am and 1:47pm when the phone disconnected. Over the course of July and August 2019, the police with the assistance of Telstra, continued to try and ascertain Theo's movements after 12:05am.

89. On 15 August 2019, there were two different experiments conducted using three Oppo R17 phones, being the brand of phone that Theo had, containing Telstra SIM cards. The purpose of the experiments was to try to replicate the data obtained from Telstra for Theo's phone on the night he disappeared and understand the significance of the towers that it did and did not connect to. For most of the relevant period, and at the time of its last connection to the network, Theo's phone was pinging to the Massinger Street tower. However, at three points between midnight and just after 1:00am, the phone had also connected to the Ballina tower, some 25km to the south. The phone did not connect at any point to the Wategos Beach tower which raised some doubt, particularly in the minds of family and some community members, about the police theory that Theo had attempted to scale the headland in that direction.
90. In the first experiment, Detective Parker walked, carrying the three phones, from Cheeky Monkeys to Cosy Corner retracing the route that Theo was known to have taken. Once he reached Cosy Corner he spent approximately three minutes there and then proceeded to scale the headland towards the lighthouse. Throughout the experiment, Detective Parker stopped at points and sent and received texts and WhatsApp messages. Once he reached the top of the headland, Detective Parker climbed over the fence onto Lighthouse Road and walked to the cottages next to the lighthouse. He then handed over the phones, to other police officers to conduct the second experiment.
91. The second experiment involved four police officers abseiling down the side of the cliff face off the lighthouse:



92. The four officers each made a descent down the cliff at separate times carrying all three of the phones and a GPS tracker. During their descents, Detective Parker sent text messages and WhatsApp messages to the phones at approximately 20 metre intervals.
93. The data recorded during those experiments showed that the phones:
- (a) did not connect to the Ballina tower or the lighthouse tower at any point during Detective Parker’s walk from Tallows Beach to Cosy Corner and up the headland to Lighthouse Road;
 - (b) did connect to the lighthouse tower (in addition to the Massinger Street tower; Cudgera Creek Road tower; Billinudgel tower; Byron Bay Acacia Street tower and Byron Bay exchange tower) when Detective Parker was in the area around the lighthouse cottages; and
 - (c) did connect to the Ballina tower during three of the abseilers (green, blue and red) descents but not the fourth (purple) descent;
 - (d) did connect to the lighthouse tower during the abseil experiment.

Google geofencing task: September 2020

94. Google has the technology to conduct an activity known as “geo-fencing” which can detect phones, or at least Android phones, in the vicinity of a specific location at a specific time. Google will provide the service voluntarily to law enforcement agencies but this requires a Mutual Assistance Request (**MAR**) being submitted

pursuant to the MLAT process. This process is not available in Australia to investigations of missing persons cases unconnected to a “criminal matter”. The Attorney General’s department has noted that, in any event, even if a MAR were available, the process could take 12-18 months.

95. However, the Belgian authorities, acting in cooperation with a US prosecutor, were able to access geo-fencing technology from Google in September 2020. On 25 September 2020 the Belgian authorities informed Detective Parker that geofencing had been conducted around the cricket nets, Tallow Beach, Cosy Corner and the Tallow Beach parking lot and that no Android phones were detected within 100 to 150 metres of those locations. Permission was obtained to disclose this information to the inquest.
96. There is still some uncertainty as to what conclusions can be drawn from that exercise. Crucially, it is not known whether geo-fencing can detect all phones, or all phones with apps connected to a Google account, and it is also unclear if phones on the Apple network (i.e. including iPhones) are captured. It is also not known what precise geographic areas were included within the search.
97. Despite the limitations experienced in this coronial investigation, it is clear that geo-fence technology could offer great value to missing persons investigations. As such, I have made a recommendation (outlined below) aimed to consider the limitations of the Mutual Legal Assistance Treaty in this respect.

The independent expert’s analysis of the digital data

98. An independent telecommunications expert, Professor Aruna Seneviratne, was engaged to analyse the digital data gathered during the investigation, with a particular focus on the Telstra records available for the period after midnight on 1 June 2019. Professor Seneviratne is an electronic engineer, who is currently the Chair of Telecommunications and Deputy Head of School (Industry Research) at the School of Electrical Engineering and Telecommunications at the University of New South Wales. He holds several fellowships, including relevantly with Telstra and British Telecom. Professor Seneviratne also holds visiting scientist and visit professorships with several foreign universities and research facilities. Professor Seneviratne gave evidence at the inquest on 6 December

2021 and 24 February 2022. The following is a summary of the most pertinent points from his evidence.

Strength and quality of signal

99. The strength and quality of the signal being received by the phone from the period after midnight (to 1.02am) was very poor and could lead to a patchy connection with drop-outs and disconnections.
100. The phone started shifting from the 4G network to the 3G network after midnight which is consistent with the phone being in an area of poor reception.
101. Although there was sufficient signal strength to sustain an internet connection (allowing Theo to use Facebook Messenger, WhatsApp, Google Maps and YouTube) the connection may have been at a very low speed and intermittent. The poor signal strength and quality could be a reason why Google was not able to record location data based on a GPS signal.
102. The strength and quality of the signal for the period after 6.17am is even poorer than it was earlier. This may have been due to the orientation of the phone, it being covered by something, the level of battery, the humidity in the air, or the surrounding terrain.

Disconnection between 1.02am and 6.17am

103. There is no way to know exactly why the phone disconnected from the network between 1.02am and 6.17am. It could be related to the orientation and height of the phone at the time. Given the phone was in a very poor reception area, the slightest change in orientation and height could have a significant impact on its ability to connect. It could also have been caused by a change in the environmental conditions around the phone, such as dampness evaporating. There was nothing about the weather conditions that night that could be expected to have a significant impact on ability to connect. There is no technical indication that the phone was turned off or put into flight mode during the period of disconnection.

Connection to Massinger Street and Ballina towers

104. The phone connected to the Massinger Street tower for most of the period. On three occasions, at 12.29am, 12:58am and 1.02am, the records show an almost simultaneous connection (i.e. within the same minute) to the Ballina Reservoir

tower. This suggests that the signal that was being received from the Massinger Street tower deteriorated or disconnected and the phone scanned for other towers in the vicinity. It also suggests that the signal strength and quality being received from the Ballina tower was higher than the lighthouse tower even though it was much further away. One reason for this could be that the phone was in direct line of sight of the Ballina tower antenna(e).

105. Once the phone reconnects at 6.17am, and until its final disconnection, it registers a connection to the Massinger Street tower only. That does not indicate necessarily that the connection had improved since the period between midnight and 1:02am. There is an element of randomness when choosing between two very poor sets of conditions.

Estimating location based on timing advance measurements

106. Timing advance data measure how long it takes the signal to reach the mobile phone from the tower. From this measurement, it is possible to calculate the distance of the phone, within a radius or arc, from the tower but not its exact location. In other words, it provides a distance but not a bearing. If the signal is travelling in a straight line, the distance will be accurate to within 78 metres.

107. The timing advance distances for the period prior to 12:05am correlate closely with the distances between the Massinger Street tower and the known GPS location points for Theo's phone. This suggests that the timing advance measurements for this period are a reliable indicator of distance from the phone to the tower at that time.

108. Considering that there is not a huge variation in signal strength after the GPS signal is lost at 12.05am, the timing advance data can be considered equally reliable up until 1.02am.

109. Whereas timing advance measurements generally do not provide a direction or bearing, the fact that there were simultaneous connections to two different towers (the Massinger Street and Ballina towers) at 12:29am, 12:58am, and 1:02am allow for triangulation of the phone's location. Assuming the timing advance data is accurate, and in this case it is considered to be, the location of the phone can be determined as the point at which the distance lines between the two towers intersect.

110. A (form of) triangulation exercise was conducted by Professor Seneviratne of the distances shown from the Ballina tower and Massinger Street towers between midnight and 1.02am. The point of intersection was plotted on Google maps as falling in the headland area north of Cosy Corner. The exercise was undertaken ten times to ensure the integrity of the results. It can be inferred with a high degree of confidence that Theo's phone was in the area at the point of intersection, that is on the headland as opposed to the beach at Cosy Corner.



111. Once the phone reconnects to the Massinger tower at 6:17am the timing advance distances from the Massinger Street tower increase but it cannot be inferred with any degree of certainty that the phone has moved further away from the tower than where it was at 1:02am.

112. The timing advanced figures for Detective Parker's walk from the beach towards the lighthouse are very similar to those recorded for Theo's phone between 12:05am and 1.02am. The signal strength was also similar.

113. Accordingly, it can be inferred with some confidence that Theo's timing advanced measurements between 12:05am and 1.02am reflect a similar trajectory of movement away from Cosy Corner beach and onto the headland. However, it is not possible to say with certainty that the movement is towards the lighthouse.

114. Given that Theo's phone did not connect with any of the same towers as Detective Parker once he reached the buildings near the lighthouse, it can be said with a high degree of confidence that Theo's phone did not go into that area.

CCTV footage

115. In the early days of the investigation police sought CCTV footage of Theo that might show where he had been and what he had done that night. As I have observed in a number of recent inquests, making timely requests for CCTV can be crucial as CCTV is routinely overwritten, often within seven days. Police do not, however, have the legal power to compel production of CCTV in missing persons cases, a topic which was the focus of some evidence at the inquest and which is addressed later in this finding.

116. On the first day of the investigation, police attended Cheeky Monkeys and requested any CCTV footage from the night of 31 May 2019. By that stage Theo's bank records had already been obtained showing that his last transaction was in that venue. In the CCTV footage that was ultimately obtained from Cheeky Monkeys, there is footage which includes Theo arriving at the bar, sitting around the table, dancing, exiting the toilet area, being ejected and walking away from the bar in the direction of Kingsley street.

117. Although the police also attended the Wake Up! hostel on 6 June 2019 and took away Theo's belongings, there does not appear to have been a request for CCTV footage until the following day. On 7 June 2019, police contacted the then-General Manager, Mr Phillips, by phone and asked him to look at the hostel's footage from 31 May – 1 June 2019 to see if there were any images of Theo. Mr Phillips was given a description, but not a photograph, of Theo to assist him. Mr Phillips viewed the footage of the hostel from 11pm on 31 May 2019 until 9am the following morning and did not see anybody matching Theo's description. Later that same day, at 4.41pm, the police sent an official email to the hostel asking for the CCTV footage to be retrieved. By this time, however, all of the footage from 31 May 2019 had been overwritten and it was only possible to retrieve footage from midnight on 1 June 2019.

118. The family and community volunteers were actively involved in the location of CCTV cameras. From the time Lisa and Michael first arrived in Byron Bay, they

started conducting door-knocking and canvasses for CCTV and then let the police know as and when they found any cameras. The posters and flyers created by community volunteers also asked people if they had CCTV footage. In his evidence, Detective Parker noted that this was of assistance to the police investigation because locating CCTV can, in itself, be a time-consuming and resource-intensive task. Apart from CCTV maintained by the Byron Bay council, there is no centralised registry of the locations of CCTV cameras.

119. During their oral evidence, both Detective Senior Constable Parker and Detective Inspector Browne indicated their (qualified) support for such a centralised register of CCTV cameras in Byron Bay. As such, I have made a recommendation directed to the Commissioner of NSW Police to this effect.
120. The focus of the CCTV canvass was initially on the area from Cheeky Monkeys back to the Wake Up! hostel. On or around 10 June 2019 some footage was identified of a man walking on Shirley Street at various points on 31 May and 1 June 2019, including near the Byron Bay police station. The police showed the footage to Lisa, Michael and JP who thought it could possibly be Theo. However, the footage was then sent to Theo's mother and she confirmed that it was not, in fact, Theo. In the intervening period some the land searching focussed on the route from Cheeky Monkeys and near and around the Hostel.
121. After a few days, and guided by the location data provided by Telstra, the canvass for CCTV was expanded to cover the area around the headland and lighthouse. Once the Google location data became available to NSW Police on 18 June, the emphasis shifted again to Theo's now known route from Cheeky Monkeys to Tallow Beach.
122. Over the course of the investigation, a considerable amount of CCTV footage was gathered and viewed but other than the footage from Cheeky Monkeys and the Great Northern, referred to above, no footage has been identified.

Searches by Theo's family and supporters

123. Lisa and Michael began physically searching for Theo as soon as they arrived in Byron Bay on 8 June 2019. They were assisted by members of the community who had seen a notice that Lisa had posted on social media the previous night asking for any information. In the early days the search focused on the swamp

area around the Wake Up! hostel as they thought that perhaps something happened to Theo on his way back from the bar. Over time, and as with the police searches, the focus shifted to the areas on the other side Byron Bay where Theo was known to have been.

LANDSAR operation commences: 9 – 10 June 2019

124. On 9 June 2019 the official police LANDSAR (Land Search and Rescue) search for Theo began, with the assistance of the SES unit based in Mullumbimby. Every LANDSAR operation has an assigned search coordinator and search controller. The coordinator requests and coordinates resources and determines the types and locations of the searches. The controller is usually a duty officer or inspector appointed by the district commander to oversee the search and ensure that the search controller has the resources they require.
125. The land search coordinator for the first two days was Senior Constable Louis Papworth, acting under the supervision of land search controller Acting Inspector Hamilton. At other times during the operation, Senior Constable John Stirling and Senior Constable (now Sergeant) Amanda Vidler were assigned as the search coordinator and Chief Inspector Matt Kehoe was assigned as search controller.
126. By the time the search commenced Theo had been missing for 9 days and there was an acute level of concern for his welfare. Senior Constable Papworth gave evidence that he was concerned Theo may be injured in a remote location and desperately in need of medical attention. This caused him to focus the search on secluded and bushland areas rather than the more built-up locations.
127. The search over the first two days focused heavily on the beach and bushland at Wategos and the Pass (to the west of the lighthouse), guided to a large extent by the wedge map provided by Telstra. However, there was also some coverage of the areas where Theo was subsequently discovered to have been, including Cosy Corner, the bushland near the Recreational Grounds, and Arakwal National Park. In this respect, Senior Constable Papworth said that he also factored into his decision making the fact that Theo's last known direction was east bound on Kingsley Street, in the opposite direction of his hostel.
128. The searches of those areas were general in nature. In his evidence, Senior Constable Papworth said that if he had had access at that time to the Google

location data, he would have approached the search with a lot more intensity and ordered “contact forensic” searches (shoulder to shoulder, on hands and knees) of areas where it was known that Theo spent some time, such as the cricket nets and Cosy Corner, to look for any trace of evidence. He also said that, in hindsight, he would have sent officers down to the search areas where there were reports of homeless persons camping (including near the cricket nets to speak to those persons and try and locate witnesses.

129. The evidence suggests that a more thorough briefing and better equipment could have been given to the search team, particularly on the first day. Senior Constable Papworth only had one photograph of Theo, which he showed to the search team but did not have copies to hand out. Theo’s phone was not mentioned as an item of significance and Senior Constable Papworth did not himself have a description of it. Senior Constable Papworth was also not aware at the time, and did not mention in the briefing, that Theo may have had a lanyard carrying a credit card style key to the hostel. The searchers were not given GPS devices to record the search areas. In addition, although Senior Constable (now Sergeant) Vidler, who was a more experienced search coordinator but not on duty on 9 or 10 June, had recommended via text message to use a Queensland PolAir helicopter with thermal imaging technology, this was not done. This technology identifies heat signatures and can outline a human person in bushland. Senior Constable Papworth gave evidence that he could not recall receiving that message but that, in hindsight, it would have been worthwhile to request the assistance of Queensland PolAir.

Continued land searches and drone searches: 11 - 12 June 2019

130. On 11 June 2019, Senior Constable Stirling took over as search coordinator. The focus of the land search that day was on the areas around Belongil Beach and the swamp near the Wake Up! hostel. In addition to the Telstra data and the belief that Theo had probably walked back to the hostel after Cheeky Monkeys, the search was being guided by the CCTV footage of the man on Shirley Street who it was still believed may be Theo.

131. On 12 June 2019 drone searches were conducted, with Senior Constable Stirling operating the drone and Senior Constable Papworth assisting. The particular

drone used did not have thermal imaging capability. There is some suggestion in the evidence that Senior Constable Stirling made enquiries about the availability of a drone with that technology, but he could not recall why it was not ultimately used. The drone also did not have a zoom feature meaning that if something of interest was spotted the drone had to fly closer to get a better look.

132. The drone path that morning went from the lookout point north of the lighthouse and went backwards and forwards over the entire cliff face from the Wategos side to Cosy Corner. Senior Constable Stirling said that it would be difficult to detect a small item such a phone in the cliffs with that particular phone because it could easily be in a crevice or covered by a piece of foliage. However, he said it could depend on the colour. He did not recall whether he knew at that time what colour the phone was. In the afternoon, the drone was launched from the hang-gliding lookout near Cosy Corner. Officer Stirling described that area as incredibly thick scrub in which it would have been difficult to detect anything, even a person lying down.

133. It appears that a decision was taken to scale back the police land searches over the subsequent days. The officers who gave evidence were unable to shed any light on the reasoning behind that decision. There is no real evidence about the reasoning behind decision.

Senior Constable Vidler's first search: 17 June 2019

134. Senior Constable Vidler's first substantive involvement in the search, as coordinator, was on 17 June 2019. She was asked to arrange another coordinated search based on new information from Theo's phone. In the briefing that morning, Detective Rudens told her about the conflicting data from Telstra and Google and said that it was not yet clear how to differentiate between the two. She was provided with the different maps based on the Telstra and Google data.

135. Senior Constable Vidler's search team was made up of 17 SES volunteers and 10 police operational support operatives. In general, SES volunteers are trained in searching although she could not say whether all of those present on the day were in fact trained. There were given a description and photograph of Theo and

the clothes he was wearing on the night he disappeared, including his hat. There was not a focus on the phone.

136. During the day, the searches were divided between the blue box area on the Telstra map and the last known point on the Google timeline provided by Michael. The searches in the Wategos area were conducted with minimal gap between searchers to increase the chances of detecting Theo. Some of the grassed bush areas were searched on hands and knees.

137. A foot search of the Cape Byron State Conservation area from Lighthouse Road towards Brooke Drive and Palm Valley Loop was also undertaken.

Intensive searches of the Cosy Corner side of the cape: 18 – 20 June 2019

138. On 18 June 2019 (day 9 of the search) Senior Constable Papworth returned as the search coordinator. At the handover briefing, he was provided with the map with blue box from Telstra. He was also given a description and photograph of Theo's phone, some stills from the CCTV footage at the Great Northern and a photograph of a lanyard from the hostel. With the benefit of hindsight, it would appear that this material could and should have been provided to the searchers from the first day of the search.

139. Later that day, Senior Constable Papworth was provided with the map showing the more accurate Google location points. It was at this point that the focus of the search operation shifted to the other side of the cape. An intensive search was commenced around the Cosy Corner area, where the last GPS location point was marked at 12:05 on 1 June. Searches continued of this area on 19 - 20 June 2019, with Senior Constable Vidler as search coordinator. 19 June 2019 was also the day that Detective Parker walked the route that Theo took from Cheeky Monkeys to Cosy Corner. In addition to human searchers, two cadaver dogs and drones were also used on 20 June 2019. As part of the drone searches, the crevices at the bottom of the lighthouse cliff area were searched to follow up on information from a psychic about a vision of Theo being there.

Divers search: 20 – 21 June 2019

140. A dive search was conducted on 20 June at Wategos Beach and on 21 June, a diver search was conducted at Tallow Beach. Police Divers reported a strong 'permanent rip' at Cosy Corner.

Review: 24 June 2019

141. On 24 June 2021 Senior Sergeant Smith, the State search coordinator of the rescue and bomb disposal unit, attended Lismore Station with Senior Constable Vidler and conducted a review of the searches that had been undertaken for Theo. This kind of a review is a regular occurrence when a missing person has not been located.

142. Senior Constable Vidler showed Senior Sergeant Smith an area north of the lighthouse towards the Wategos side, taking in some steep cliffs and residential areas, that she believed still needed to be thoroughly searched.

Abseiling: 2 – 3 July 2019, 15 August 2019, 11 March 2020

143. On 2 July 2019 Senior Constable Vidler travelled to Byron Bay to start undertaking the search of the area identified during the review. Based on some further information provided by Telstra, she also requested a team to abseil off the eastern side of the cape looking for items such as Theo's hat and phone. Further abseiling was conducted on 3 July 2019.

144. As noted earlier there was also an abseiling experiment conducted on 15 August 2019 which, in addition to testing phone data, served as a de facto search. The officers were asked to check for any items of interest such as the phone.

145. A further abseiling operation was conducted on 11 March 2020 of the cliffs to the south of the Cape Byron lookout point in an attempt to search for Theo's phone. The search operators were instructed to do a hand search of crevices and bushes to see if they could locate the phone. Senior Constable Stirling described the terrain on the walk down from the lookout to the abseiling launch point as "*horrendous*" and "*incredibly steep and incredibly slippery*".

Theo's cap is found by volunteer searchers: 7 July 2019

146. Although the police land search had ended by the end of June, community volunteers continued to search the local area. On 7 July 2019, there was a

significant development with the volunteers locating Theo's cap in Arakwal park around the point where Theo deviated off the track. The cap was upside-down on the ground when it was found. A photograph was sent to Lisa to confirm that it matched the description of Theo's hat and the police were then contacted. A GPS pin was dropped in the location. A form of DNA testing (mitochondrial DNA testing) was subsequently conducted on some hairs found in the cap which indicated a match with Theo's matrilineal line. The DNA testing of the hairs in the cap combined with its appearance and location on Theo's known route leave me in no doubt that the cap belonged to Theo.

147. The fact that the cap was found by volunteer searchers in an area that had already been searched by the police does suggest that something important was missed in the earlier police searches. There was some discussion after the cap was found of another search being conducted along Theo's known route through Arakwal but ultimately this was not done. At the inquest, Detective Parker conceded, appropriately, that in hindsight a further search should have been conducted.

28 August 2019: a purple Oppo phone is found at cosy corner

148. On 28 August 2019 a purple Oppo brand phone was located in the sand at Cosy Corner and handed into police. Whilst it matched the general description of Theo's phone, Detective Parker gave evidence at the inquest that he recalled that the phone was not a R17 model (the model of Theo's phone). In hindsight, taking a photo of the phone and a detailed description of its specifications would have been best practice. Nonetheless, after the issue was raised at the inquest by the family, appropriate inquiries were made to rule it out as Theo's phone.

149. Firstly, as the phone had an intact SIM card the police were able to identify and, eventually speak to, the registered user. There were also SIM searches conducted to confirm that Theo's SIM card was never placed into any other phone. The SIM searches showed that all of the user and network activity on Theo's SIM, up to 1.47pm on 1 June 2019, were linked to the unique identifier (IMEI number) for the R17 device.

Further search for Theo's phone: October 2021

150. As part of the coronial investigation, another police search for Theo's phone was ordered to be conducted in October 2021. The geographic focus of the search

centred around the last GPS reference for Theo's phone recorded at 12.05am on 1 June 2019, being the area around Cosy Corner. It was an intensive contact search, with searchers spaced tightly together, using metal detectors and included searches of the cliff areas. An old Nokia phone was located but not Theo's Oppo R17 phone.

Offer of reward

151. It is important to note that whilst the police investigation is no longer in an active phase, it remains open. On 22 February 2022, the NSW Government and Police Commissioner jointly announced a reward of \$500,000 for any information that leads to the discovery of Theo's whereabouts or discloses the circumstances of his disappearance.

152. It can only be hoped that this reward will provide an incentive to persons who may have important information but who have so far been reluctant to come forward, to contact the police and help solve the terrible mystery of what happened to Theo on that night.

Other issues considered at the inquest

Reporting of missing persons by accommodation providers in Byron Bay

153. One issue that was considered at the inquest related to the time it took the Wake Up! hostel to report Theo as missing to the police.

154. The hostel was aware that Theo did not check out on 3 June 2019. The evidence shows that staff attempted to phone Theo on 3 June 2019 (at 10.39am), 5 June (at 12.05pm) and 6 June (at 10.56am). A couple of minutes after the unsuccessful call on 5 June 2019, Mr Phillips, the then-General Manager sent an email to Theo's Hotmail address. The email refers to Theo's belongings being left in the room, indicating that by at least that point Mr Phillips and other staff were aware that Theo had left his belongings behind. It was not until 6 June 2019 that Theo's bags were searched, and his passport found, leading to the report to the police.

155. At the inquest Mr Phillips accepted that, in hindsight, it would have been prudent for staff to go through Theo's bags at the earliest occasion to see if he had left anything valuable behind such as a camera or passport. Although there is no way

of knowing whether this may have led to a different result in Theo's case, the 72-hour period after a person is last seen is generally regarded as critical in missing persons investigations. The earlier that a report is made to the police the better the chances of finding the person.

156. As a result of Theo's case, Wake Up! has put in place new internal procedures, across its group of hostels, for following up on guests who fail to check out. Under the new procedures, if a guest does not check out a note is placed on the door of the room and attempts are made to contact him or her. If after 48 hours from the scheduled departure date, the person still cannot be contacted, the hostel contacts the police. This initiative is to be commended.

157. Steps have also been taken towards a new industry wide practice. In the course of the coronial investigation, I proposed a new protocol to speed up missing person reports to police by hostels, particularly if the travellers disappear without contact and leave their passport or all their belongings behind. The proposal has the support of both the Wake-Up Hostel and the NSW Police and is now under consideration by the NSW Back Packers Operators Association (BOA).

Potential limitations on evidence gathering in missing persons investigations

158. A significant focus at the inquest related to potential limitations in jurisdiction and evidence gathering powers in missing persons investigations, particularly with regard to obtaining and processing electronic data (including CCTV, GPS location data and social media data) in a timely manner.

159. It is useful to set out the legal framework to understand why certain investigative steps were, and in some cases were not, taken in Theo's case.

Limits of the coronial jurisdiction

160. In NSW a Coroner has jurisdiction to hold inquests into deaths and suspected deaths. There is no specific jurisdiction for a Coroner to investigate the disappearance of a missing person until the case becomes a suspected death.

161. Usually a missing persons case is not reported to the Coroner by police until a view is formed that they are a suspected death. Often this is not a view that can be formed in the early days. This means that the report to the Coroner can often

be days or weeks after the matter is reported to the police and well after the critical 72-hour period has passed.

Police investigative powers

162. The police have a wide range of coercive powers, such as searching people, cars and houses and seizing phones and computers. Most of these powers are contained in the *Law Enforcement Power and Responsibilities Act 2002* (NSW). In general, however, all of those powers are provided for the specific purpose of investigation of suspected crime, or in some cases, suspected serious crime, and do not apply in missing persons cases.
163. What this means is that, for the most part, police depend on the cooperation of people and businesses to provide assistance and evidence. This extends to gathering evidence that is often crucial in tracing the last known steps of a missing person, such as CCTV footage, bank transactions and mobile phone records.
164. Theo's case illustrates how crucial mobile phone and other electronic data can be. Our online accounts, linked to our phones, smart watches and other devices, contain huge amounts of personal information revealing our location, transport, purchase, and search history in addition to our various types of communications. For the most part this data is held by international corporations located outside Australia, such as Google and Facebook. NSW police don't have any legislative power to compel these companies to provide evidence in missing persons information. The investigation must be connected to a suspected crime. Moreover, even in criminal cases, orders can only be directed to international corporations pursuant to the *Mutual Legal Assistance Treaty* (MLAT) process and this can be a very lengthy process, sometimes taking months, sometimes even more than a year.
165. The MLAT scheme in Australia is governed by the *Mutual Assistance in Criminal Matters Act 1987*. Section 10 of the Act provides those Australian authorities may make requests to foreign countries for the purpose of obtaining material in support of a criminal matter. The law enforcement or prosecutorial agency must be satisfied that there is a clear need to obtain evidence held in a foreign country for the purpose of furthering an Australian criminal investigation or prosecution.

166. Further, even where electronic data may be readily available, police may not be lawfully able to access it in missing persons cases. Section 308B of the *Commonwealth Criminal Code* prohibits unauthorised access to computer data. There is an exception in that provision for the preservation of evidence of a criminal offence but no exceptions relating to sourcing evidence for a missing person investigation. It was for this reason, that the police in this case felt unable to access Theo's Hotmail and Facebook accounts even after Lisa provided them with the passwords and why they asked her to attend with her own laptop to go through the Google data once the family had managed to access that account.

Coronial investigative powers

167. The *Coroners Act 2009* (NSW) provides a series of powers to require documents and things and to make coronial scene orders (ss39-45). Coronial scene orders provide a non-exhaustive list of powers to obtain evidence from a place, for example to seize evidence and to remove wall panels or ceiling linings and to conduct excavations.

168. Modern technology like mobile phones are not mentioned at all in the *Coroners Act* and it's unclear if the "The Cloud" could be considered "a place" for the purpose of those provisions. There is no express legislative basis for "number re-allocation", a process used by police in this case but not routinely.

169. When it comes to obtaining data from international corporations, the Coroner is in the same position as police and needs to invoke the MLAT process. Requests in coronial matters can only be made in limited circumstances and for investigation of criminal offences. The decision whether to issue a MAR is at the discretion of the Commonwealth Attorney-General. In this case a request for a MAR for a statement from a Belgian investigator in relation to the geo-fencing exercise was declined. Further, the Attorney-General's department advised that the process can take 12-18 months even if accepted.

Streamlining access to electronic data from multi-national companies

170. There is one process that can be of tremendous value to missing persons investigations and that is the Emergency Disclosure Request (EDR) process that is offered by all of the major digital content and social media platforms (e.g. Google, Facebook, Snapchat). Although each company has a slightly different

policy, in general the EDR process allows government agencies to access an account holder's data rapidly in cases of emergencies where there is an imminent threat to life.

171. To access this process, it is critical to know *first*, that it exists and, *second*, that the correct information is provided to the company and *third*, that the police officer or person engaging with the company understands the company criteria so can explain why and how the circumstances of the case fit the criteria. It's a task that can involve advocacy and building relationships. Not every case will satisfy that threshold.

172. In Theo's case, JP suggested to police that they submit an EDR to Google to access his account. Police attempted to try to find a way to do this on 8 and 9 June but were not successful consulting three different police specialist units and searching on the net. The 24/7 emergency pager service was operating at the time, and it was available to Australian police, but it was not well known to police at that time. Ultimately of course, Michael Dorkhom through his own efforts, and then the Belgian authorities liaising with Google, were able to access Theo's account. However, in another case, failure to access this information could have critical consequences.

173. At the inquest DCI Browne, head of the Missing Persons Registry, gave evidence about ongoing efforts to ensure that different EDR processes are known and used in MP investigations. The most recent version of the relevant Standard Operating Procedures, issued in January 2022, set out in considerable detail the terms of all of the main company's EDR process and relevant contact points. Despite these recent changes, it appears to me that a single point of contact system, as is available to investigating authorities in Belgium, would be desirable. Such a system would enable consistent assistance and advice to be offered across the state and provide valuable liaison with various multi-national technology corporations. As such, I have made a recommendation to the Commissioner of NSW Police to consider developing a single point of contact service.

Improving the ability to gathering CCTV

174. Apart from the lack of legal power to compel production of CCTV in missing persons cases, police can face significant practical difficulties in obtaining and viewing footage in a timely manner.
175. Firstly, in the absence of a central registry, police have to conduct canvasses of all businesses and residences in the relevant area to determine where CCTV cameras are located. The police investigation in this case was hugely assisted in this regard by the efforts of the family and community volunteers. Secondly, different types of CCTV cameras run on different proprietary software which can create difficulties for the police in downloading or viewing the footage. DCI Browne's evidence was that often even the owner does not know how to access and download the footage and need to contact the maker of the camera for assistance. Thirdly, the process of reviewing CCTV footage is still largely manual and can take countless hours depending on the volume collected. DCI Browne noted that the NSW Police have a software program, called Insights, to assist with the review but expressed the view that it was not a complete substitute for a manual review.
176. One initiative that was considered at the inquest was whether the police could develop a central CCTV register, similar to the old "keyholder register". The register could identify the location of CCTV cameras, the contact details of the owner, the type of software it runs on, and the timeframe for overwriting. Detective Parker gave evidence that this would be a useful resource and save time by allowing the police to go directly to the registry in the first instance rather than redoing canvasses and enquiries in each investigation. DCI Browne was also supportive of the idea but noted that it would take quite a lot of resourcing to keep up to date.
177. Even if it cannot be reviewed immediately, it is important that the collection of CCTV is prioritised by police in missing persons cases before it is overwritten (often within a 7 day period). In Theo's case, by the time that the formal request was received by the Wake Up! hostel, the footage for 31 May 2019 had already been overwritten. Although this was not of consequence in this case, in another case it may be. DCI Browne noted in his evidence that since 2021, the Standard Operating Procedures have placed emphasis on capturing CCTV quickly.

Findings

Is Theo deceased?

178. Given the seriousness of a finding of death, it is well established that the court should apply the Briginshaw standard and only make such a finding on the basis of clear and cogent evidence. In this case, the evidence before me is, sadly, sufficient for me to be satisfied, to the requisite standard, that Theo is deceased.
179. There have been no confirmed sightings of Theo since he left the Cheeky Monkeys bar at 11:03pm on 31 May 2019. The last messages Theo sent were to his stepsister Emma at 12.55am and his friend Loic Speiss at 12.56am on 1 June 2019. Messages sent by each of them in reply at, respectively, 2.33am and 3:23pm were not read by Theo.
180. There have been no other signs of life from Theo since the early hours of 1 June 2019. Crucially, he has had no contact with his family, with whom he was extremely close, or any of his friends. This is very much out of character for Theo. Theo maintained regular connection to family and friends throughout his travels and the evidence is that he was excited about reconnecting with them shortly back to Belgium.
181. He has not made any bank transactions and has no other known access to funds in Australia. As a non-citizen on a tourist visa he is not eligible for government benefits. He has no ability to leave the country without his passport, which was found with his other belongings in the Wake Up! hostel. There have been searches of the IMEI number assigned to the mobile phone (handset) used by Theo which show that it has not been used after 1 June 2019. Similarly, SIM subscriber checks show that his Telstra SIM card has never been used in another phone.

Manner and cause of death

182. Tragically, despite the extensive investigation and inquest, the available evidence does not enable me to make a finding as to the cause or the manner of Theo's death. While his phone data provides valuable evidence about Theo's immediate movements and activity after leaving the Cheeky Monkeys bar, it is simply

impossible to draw any firm inferences from the data about what may ultimately have happened to him.

183. Broadly speaking, there are two main competing theories. The first is that Theo met with a terrible accident while, alone, he attempted to climb from Cosy Corner towards the lighthouse and was swept out to sea. The second is that he was with one or more others when he walked from the cricket nets to Cosy Corner and that person or those persons caused his death and disposed of his body.

184. Another possibility, although not considered by anybody as a likelihood and consequently not the focus of any real investigation or submission, is that Theo took his own life.

Did Theo die by misadventure?

185. The police consider misadventure to be the most likely scenario. According to this theory, Theo fell off the cliffs while he was trying to climb up the headland from Cosy Corner to the lighthouse and his body was washed out to sea never to be recovered.

186. The ascent to the headland from Cosy Corner is very dangerous, particularly at night, with the other side of the ridge line made up of steep, slippery, and unstable shale. Theo's mobile phone records tend to support the view that he was walking in this direction when he was last heard from. The last user activity recorded on Theo's phone are the messages to Emma and Loic at, respectively 12:55am and 12:56pm. The expert's analysis of the cellular location data concludes, with a high degree of confidence, that sometime between 12:05am and 1:02am on 1 June 2019 the phone moved away from Cosy Corner beach and onto the headland and that it remained in that vicinity until it disconnected from the network at 1:47pm that day.

187. The fact that the phone continued to transmit data for nearly 13 hours after Theo's last messages could suggest that Theo became separated from his phone and went into the water without it. One possible theory is that Theo dropped his phone (in the process losing torch light) and fell while attempting to recover it, with the phone remaining on the headland where it has never been found. However, it is also possible that Theo fell and lay injured or deceased, with his phone, somewhere at the bottom of the cliffs and was not swept out to sea until some

point after 1:47pm on 1 June 2019. Ultimately, however, these possible explanations are speculative only.

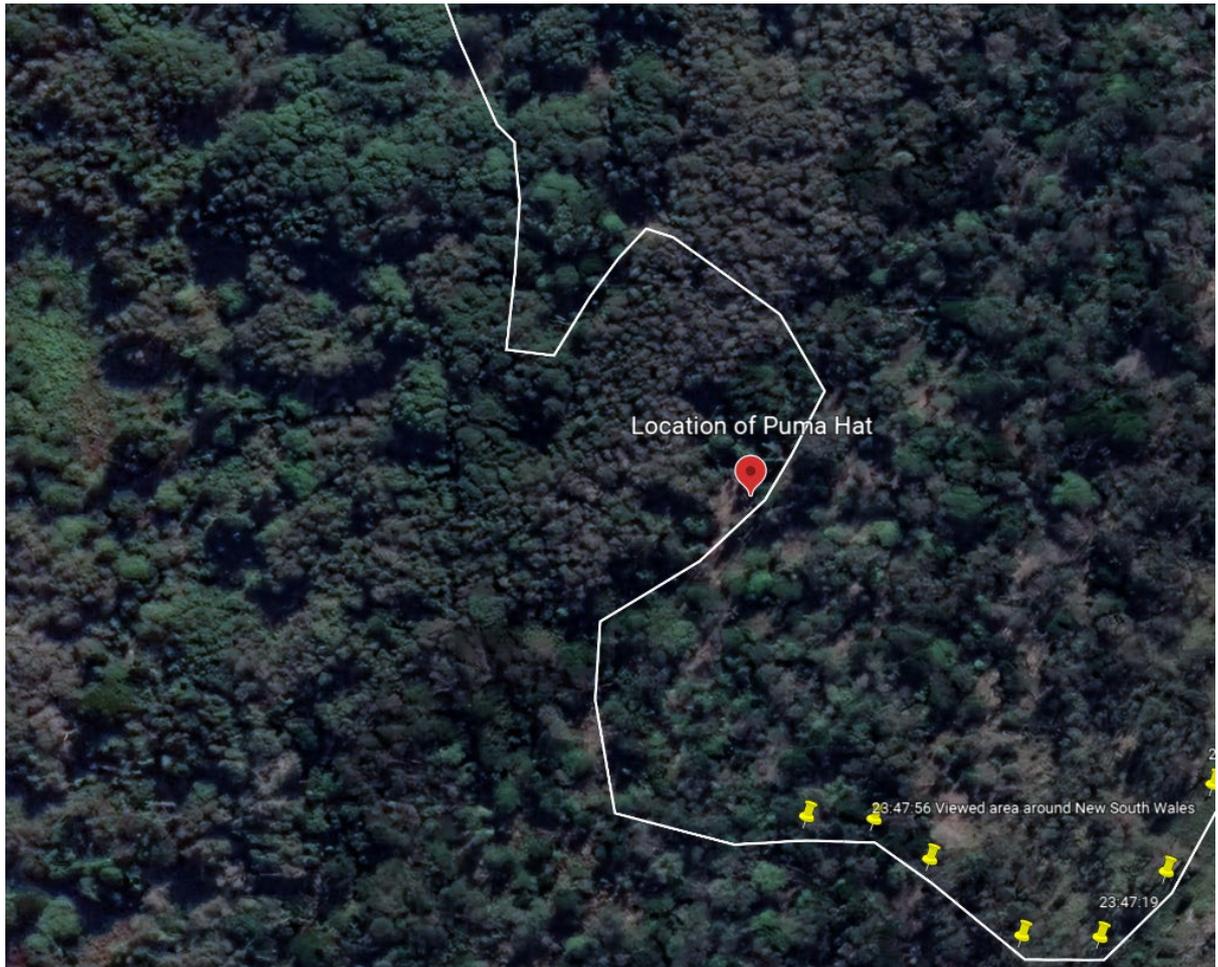
188. The fact that Theo's remains have never been located, in the sea or washed up on the coastline, does not in itself cast doubt on the misadventure theory. There are two reported cases where this has occurred in Cosy Corner. In 1989 a police officer called Andrew Murray disappeared, presumed drowned, after he attempted to rescue a swimmer in distress on his surf ski at Cosy Corner. His body was not recovered despite extensive searches. In 2014 an Irish surfer called Stuart Butler disappeared after he and two friends got caught in a rip at Cosy Corner. In that case a rescue effort was launched almost immediately which included helicopters and the use of coloured dye in the water but Mr Butler's remains have never been located.
189. The major difficulty with this theory is reconciling it with the evidence of Theo's character which shows that he was a responsible and cautious young man. It is hard to see any pathway up from Cosy Corner at night at all, it's very dark and obviously dangerous. The family submit that it would be completely inconsistent with Theo's character to attempt something so reckless, particularly alone.
190. Moreover, the theory presumes that Theo, a tourist unfamiliar with the area, had walked alone from the town along an unlit track and through dense bushland in the Arakwal National Park to reach Tallow Beach in the first place. The Milne track is extremely dark at night. Detective Senior Constable Parker told the inquest that he found undertaking the walk alone at night "scary" and "intimidating". It is also unmarked and can be difficult to find even in the daytime. Even the route that he took from the cricket nets to the start of the track was not intuitive or clearly sign-posted. The final part of his journey through the park did not follow any natural path and would have been very hard going.
191. Submissions have been made to the effect that Theo may have been lost and confused, potentially affected by alcohol or drugs. There is simply no evidence that Theo was drunk or on drugs. Although he was ejected from Cheeky Monkeys, the security guard accepted that there were no signs of actual intoxication (as opposed to a suspicion that he may be approaching intoxication). Nobody who

was with him that night observed him to be drunk or otherwise behaving strangely. Nor did they hear him, or anybody else, discussing drugs.

192. Assuming Theo was in his right mind, it is difficult to accept that he ended up at Cosy Corner unintentionally. He was a regular and competent user of Google maps and liked to know his exact location. In fact, his phone data shows that he searched for Cheeky Monkey's on Google maps shortly after he arrived there. Once he left Cheeky Monkey's Theo searched for directions to his hostel and he viewed Google Maps a number of times along his route so it would have been readily apparent to him that he was going farther and farther in the wrong direction.
193. Having regard to all of these factors, while I consider it a possibility, I cannot conclude, on the balance of probabilities, that Theo died by misadventure.

Did Theo meet with foul play?

194. The family and some members of the community suspect that there may have been foul play involved in Theo's disappearance and presumed death. They query whether Theo met one or more persons at the cricket nets and walked with them through Arakwal National Park to Tallow Beach.
195. Theo's family have pointed out that he stopped for approximately seven minutes at the cricket nets and while he was there walked back and forth looking occasionally at Google maps. They also suggest that he may have been with somebody with local knowledge to navigate the streets until the start of Milne Track and then through the bush to the beach. They note, in particular, that there was a long-term camp in the bush at the point where Theo deviated off the path and went through dense bushland (where his hat was found). This deviation is highlighted in Theo's Google timeline route below:



196. Theo's family submit that this deviation may indicate he was walking with person with local knowledge who knew how to avoid the camp.
197. Theo's family have also observed unusual aspects of his behaviour on the beach when he was walking towards Cosy Corner, such as appearing to walk nearer the soft sand on the dunes rather than the water's edge and entering and climbing the rugged bushland for about eight minutes. They have queried if this might suggest Theo was hiding, avoiding someone or something on the beach or following some form of direction or instruction.
198. To date, while the family's observations and queries have real force, there is no concrete evidence to support this theory.
199. The area surrounding the cricket nets was searched on 9 June 2019. Police canvasses were done of the residential areas surrounding the recreational grounds and the Youth Activity Centre and no information of value gathered. Leaflets were also dropped in the area by volunteers seeking information about Theo. A person who camped in the area near the cricket nets long term was

interviewed by the police and said that he had not seen Theo and was not aware of anything occurring there on the night in question. He was not himself a person of interest. Detective Parker gave evidence that this area is not a “site of concern” for police in terms of it being a site of violent crime or drug use. The police also spoke to the person living in the camp in Arakwal Park near Tallow Beach, where Theo deviated off the path, and he did not hear or see anything. He himself was also not a person of interest.

200. No one has come forward saying that they saw Theo with a person after he left Cheeky Monkeys or that they saw anyone in the area near the cricket nets, or near Cosy Corner, on the evening of 31 May or early hours of 1 June. This is significant given that Theo’s tragic disappearance has had a media profile nationally and internationally. Searches conducted by community volunteers on social media posts for evidence of beach parties or tourists on or near the Lighthouse on 31 May and 1 June have not revealed any evidence of utility. Whilst it is possible that someone may have mentioned Cosy Corner parties to Theo, the inquest was unable to find anyone who mentioned these parties to Theo, or spoke about these parties in his presence. Further, none of the backpackers who assisted the inquest knew about Cosy Corner parties.

201. Finally, a podcast called The Lighthouse has also called for information on Theo’s activities that night without any known evidence being uncovered.

202. Theo’s online activity in the period between midnight and 1:00, which included him watching a clip of a comedy show on YouTube and sending light-hearted messages to his sister and a friend, is also inconsistent with him feeling afraid or in any kind of danger.

Did Theo die by suicide?

203. There are no indicators or risk factors pointing to suicide as a likely cause of death. All the evidence points in the opposite direction. At the time of his disappearance, Theo was in good spirits and excited about returning to Belgium. He had no known mental health issues, no history of alcohol or drug abuse, he was very closely connected to his family and had long-standing friendships, and he had no known troubles legally, personally or financially. As such, on the balance of probabilities, I am satisfied that Theo’s death was not self-inflicted.

Findings required by s. 81(1)

204. Having considered all of documentary evidence and the oral evidence heard at the inquest, I find, on the balance of probabilities, that Theo Hayez is deceased.

205. Pursuant to s81(1) of the Act, I make the following findings in relation to the death of Theo Hayez:

The identity of the deceased

206. The person who died was Theo Hayez.

Date of death

207. While I am unable to determine the exact date of death, I find that Theo is likely to have died on, or shortly after, 1 June 2019.

Place of death

208. I find that Theo is likely to have died in Byron Bay, NSW.

Cause of death

209. I am unable to determine the cause of Theo's death.

Manner of death

210. I am unable to determine the manner of Theo's death.

Recommendations

211. Pursuant to s. 82 of the *Coroners Act 2009*, Coroners may make recommendations connected with a death.

212. This inquest has shown that there are significant legislative gaps, roadblocks and inconsistencies which impede thorough and effective investigation into the disappearance of missing persons and they exist at state, national and international level. Many of these legislative barriers are inexplicable and removing them could save lives and help prevent the awful grief of ambiguous loss suffered by Theo's family and many others.

213. I make the following recommendations:

To the NSW Law Reform Commission and the Australian Law Reform Commission

- (10) That the NSW Law Reform Commission and the Australian Law Reform Commission conduct a joint reference into the available legislative powers (and absence thereof) in the investigation of missing persons cases and make any appropriate recommendation. Without limiting the scope of the inquiry, the reference should include examination of:
- (a) powers available to coronial investigators under the *Coroners Act 2009* (NSW) including but not limited to:
 - (i) the applicability and availability of existing coronial powers to obtain information from modern technology such as smart phones, computers, tablets and laptops, tele-communications data and information contained on the “The Cloud”; and
 - (ii) the absence of available powers under the *Coroners Act* where there is little or no evidence to suggest that a missing person is deceased.
 - (b) powers available to NSW Police where there is little or no evidence that a person is missing due to the commission of a crime, or a serious crime, including the availability or otherwise of powers to:
 - (i) enter property without consent;
 - (ii) search persons or property without consent;
 - (iii) access computer or social media data of the missing person;
 - (iv) compel the assistance of tele-communications carriers including accessing and interpreting telecommunications data, preserving phone numbers and conducting number re-allocation inquiries;
 - (v) compel a service provider to alert authorities when a person uses a service, for example a bank account, phone or SIM card; and
 - (vi) seize or compel the production of information, documents or things including password protected phone and computer data and CCTV footage.
 - (c) the difficulties encountered by missing persons investigators (in criminal and coronial investigations) with the Mutual Legal Assistance Treaty (MLAT) process when seeking to:
 - (i) promptly obtain relevant information from multi-national companies such as Google, Uber, Facebook and Apple (including personal data, location data and “geo-fence” information); and

- (ii) promptly obtain investigative product from investigative agencies and police forces outside Australia.

To the Commissioner of the NSW Police Force

(11) The NSW Police Force develop a pilot “CCTV Register” in the Byron Bay region (the boundary to be determined by the Crime Manager) which identifies on a map the location of all known private and public CCTV cameras and has recorded:

- (d) the contact details of the owners of the CCTV footage;
- (e) the period after which footage is stored or over-written; and
- (f) software details and any relevant details about how to easily download the footage or issues which may be encountered.

The purpose of the Register is to enable Police to identify relevant cameras and quickly obtain footage for review. The Register should be updated on a regular basis, and at least annually.

(12) NSW Police continue to investigate mechanisms, including commercial software platforms, to facilitate efficient downloading and effective viewing of CCTV footage across a variety of software and formats.

(13) NSW Police consider developing a single point of contact service available on a 24-hour, 7 days a week basis to facilitate requests for data and information from multi-national technology corporations, such as Google and Facebook, to assist missing persons investigations.

(14) That NSW Police give close and active consideration to the further development and appropriate resourcing of in-house technical expertise within the NSW Police Force so that missing persons investigations can adapt promptly to developments in modern technology.

(15) That the investigative review component of the Missing Persons Registry (“MPR”) be supported with adequate resourcing to continue their current review into the disappearance of Théo Jean Hayez and otherwise allow the MPR to continue providing their current level of assistance to the coronial system.

(16) The following amendments be considered in the next revision to the Missing Persons Standard Operating Procedures:

- (a) That the first missing person report (9.1, p23 and Annexure A, p92) include

questions as to:

- the missing person's email accounts;
 - their telephone and internet service provider;
 - any relevant social media apps with a focus on those apps known to collect location data for example Garmin, Apple watch, Uber, Tinder; and
 - any known passwords for those accounts.
- (b) The officer who takes the first report to submit an iAsk request for Mobile Internet Records [internet activity and location data] within 72 hours of the first report (and 24 hours in high risk cases).
- (c) That the references to the EDR process (p70-73) clarify that not all service providers have a time limit of 48 hours, for example Google has no time limit.
- (d) That in high-risk cases (per the risk assessment process) the MPR will assess within 24 hours if the case is suitable for requests to be made for:
- (i) number and data preservation requests to telecoms and/or multi-national data companies; and
 - (ii) location and account information through the Fast Track/Emergency Disclosure pathways.
- (17) That active consideration is given to conducting a CCTV canvas around the area of a missing person's "last ping" within 72 hours. That NSW Police consider if revisions are necessary to the Missing Persons Standard Operating Procedures and/or any applicable LANDSAR protocols and training to ensure that:
- (c) there is documentation of (at least) daily briefings between investigators and land search coordinators; and
 - (d) adequate continuity between land search coordinators and oversight of searches for missing persons.

To Youth Tourism NSW

- (18) That Youth Tourism NSW (previously the Backpacker Operators Association NSW Inc) be provided with a copy of the State Coroner's findings and implement a written policy, applicable to accommodation providers, regarding guests who

fail to check out without a reasonable explanation. Whereby:

- (c) if a guest does not check out at the expected time, attempts should be made to contact the guest by phone and email, and their room should be checked for personal belongings within 24 hours; and
- (d) inform the police if a guest who cannot be contacted leaves behind a passport (or any other valuable possession).

Concluding remarks

214. Theo's disappearance is a tragedy for those who love him and this inquest must have been an incredibly painful experience for his family. I again express my deepest sympathies to Theo's family, friends and loved ones. I hope that some small measure of comfort can be taken from the recommendations that I have made in this inquest, with a view to improving how large-scale missing persons investigations are conducted in NSW.

215. I thank the Byron Bay community and the volunteers who devoted hours of their time to searching for Theo and supporting Theo's family as they experienced a family's worst nightmare of their loved one missing in a foreign land.

216. Finally, I thank my counsel assisting team, Kirsten Edwards and her instructing solicitors, James Herrington and Ellyse McGee of the Crown Solicitor's Office for their tireless work in assisting me in this inquest. This inquest involved a tremendous amount of work in a relatively short time period, and in the context of the COVID-19 pandemic. I am grateful for all their efforts.

217. I also extend my thanks to the officer in charge of the coronial investigation, Detective Senior Constable Philip Parker, for his ongoing assistance in this matter.

218. I close this inquest.

Teresa O'Sullivan

NSW State Coroner
Byron Bay

21 October 2022