



CORONER'S COURT OF NEW SOUTH WALES

Inquest:	Inquest into the death of Andrew Keith Seton
Hearing dates:	22 July – 25 July 2024
Date of findings:	12 September 2024
Place of findings:	Coroner's Court of New South Wales
Findings of:	State Coroner, Magistrate Teresa O'Sullivan
Catchwords:	CORONIAL LAW – circumstances of accident and death – survivability – response by NSWPF to report of person missing – search and rescue – search urgency assessment forms – regulatory and advisory regime relating to backcountry skiing in Kosciusko National Park – trip intention forms
File number:	2022/0266756
Representation:	<p>Counsel Assisting the Coroner: Mr Jake Harris, instructed by Ms Clara Potocki (Crown Solicitor's Office)</p> <p>Seton Family: Mr Jonathan Wilcox, instructed by Ms Georgia Lavis (Access to Justice, The Law Society of NSW Pro Bono Scheme)</p> <p>NSW Commissioner of Police: Ms Kim Burke, instructed by Mr Stephen Davis (the Office of General Counsel NSWPF)</p> <p>NSW National Parks and Wildlife Service: Ms Jackie Sandford, instructed by Ms Sara Wallace (Makinson d'APice)</p> <p>Inspector Bradley Hughes and Senior Constable David Tickell: Mr Tony Howell, instructed by Mr Dominic Longhurst (Police Association NSW)</p>

Non publication order:	Non-publication orders made on 22 July 2024 prohibit the publication of particular evidence in the brief of evidence. The orders can be obtained on application to the Coroners Court registry.
Findings:	<p>Identity: The person who died was Andrew Keith Seton.</p> <p>Date of death: Andrew died on 3 September 2022.</p> <p>Place of death: Andrew died at Watsons Crag, in the Kosciuszko National Park NSW.</p> <p>Cause of death: The cause of Andrew's death was multiple injuries.</p> <p>Manner of death: Andrew died following an accidental fall while skiing alone in a backcountry area. He was reported missing on 3 September 2022 and located on 5 September 2022.</p>

Recommendations:	<p>To the NSW Commissioner of Police; and To the Commander of the Monaro Police District:</p> <ol style="list-style-type: none">1. I recommend that consideration be given to providing further guidance on the completion of Search Urgency Assessment forms that is relevant to operations within the Kosciuszko National Park. In particular:<ol style="list-style-type: none">a. what conditions, features or terrain are considered hazardous; andb. what equipment and supplies are considered adequate for different activities.2. I recommend that consideration be given to whether further training or instruction is required, regarding the need to advise members of the public who report a person missing that they should attend a police station to do so.3. I recommend that the Monaro Police District, the Missing Persons Registry and the National Parks and Wildlife Service, as appropriate, continue to liaise regarding efforts to further explore:<ol style="list-style-type: none">a. ways to promote the use of trip intention forms for persons entering the backcountry areas; andb. technology which could be used to record a person's entry into and progress through backcountry areas.
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The Coroners Act in section 81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Andrew Seton.

Introduction

1. On Friday, 2 September 2022, Andrew drove from his home in Downer in the Australian Capital Territory (**ACT**) to Jindabyne, planning to ski in the backcountry of Kosciuszko National Park. He spent the night in his car, and the next morning, Saturday, 3 September 2022 he set out by himself into the backcountry from Guthega. Andrew was last seen by other skiers sometime between 11 am – 1 pm that day, at which time he was heading along the Watson Crag ridgeline in a westerly direction.
2. Andrew would always contact his mother, Janice Seton, at the end of a day's skiing, and when he did not do so, she became concerned, and she contacted police in the evening. Police located Andrew's empty car at around 11 pm, in a carpark at Guthega. However, a decision was made not to commence an emergency response. Andrew was not initially recorded as missing. Police completed a 'search urgency assessment tool', which resulted in a response of "evaluate, monitor and advise". The job was passed onto the day shift police for follow up in the morning.
3. Police conducted enquiries the following day, Sunday, 4 September 2022 to try to find out where Andrew might be. It was only when Andrew failed to return on the Sunday evening that police escalated the search, including requesting a helicopter search of the area and preparing for a search the next day.
4. Search teams went out to look for Andrew on Monday, 5 September 2022 in the morning, and a police helicopter was also deployed. Shortly before 3 pm, the helicopter located Andrew's body on a rock, part way down a chute at Watsons Crag.

5. A helicopter attended the Watsons Crags area that evening, however, was unable to locate Andrew. A PolAir helicopter made its way from Sydney the next morning, 5 September 2022 although was grounded due to poor weather conditions in Jindabyne at 12.00 pm. The helicopter recommenced its flight around 2.07 pm and located Andrew's body part way down a chute near Watsons Creek at Watsons Crags at 2.58 pm.
6. Andrew's body was ultimately recovered from Watsons Crags at around 2 pm on Tuesday, 6 September 2022.
7. An autopsy was conducted by Professor Johan Duflou on 9 September 2022. He gave the cause of death as "*multiple injuries*".

The role of the Coroner

8. The primary role and function of a Coroner is to identify the circumstances of a person's death.
9. At the conclusion of an inquest the Coroner is required by section 81(1) of the *Coroners Act 2009 NSW (the Act)*, to record findings with regards to the following:
 - 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.
10. 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.

11. Pursuant to section 82 of the Act, the Coroner may make recommendations in relation to any matter connected with the death, suspected death, fire, or explosion with which an inquest or inquiry is concerned. That involves identifying any lessons that can be learned from the death, in particular, to avoid future deaths, although not limited to that purpose. The matters that can be the subject of a recommendation are those that have the capacity to improve public health and safety in the future, and/or be investigated or reviewed by a specified person or body. A recommendation can be made if it arises from the evidence adduced and tendered at the inquest or inquiry.
12. It is not the role of the Coroner and hence the purpose of an inquest to attribute blame or punish anyone for the death. In fact, section 81(3) of the Act, provides that when I deliver my findings, I must not indicate or in any way suggest that an offence has been committed by any person. It is also not the role of the Coroner to make findings about negligence or civil liability and there is no power to award compensation.

The proceedings

13. The inquest into Andrew's death was held from 22 July – 25 July 2024.
14. The Court received extensive documentary material as well as audio visual material into evidence including four volumes of material in the form of the brief of evidence. The Court also heard from many witnesses including family and friends, persons with a background in back country skiing, police officers involved in the investigation, survivability and search & rescue experts, the Manager of the NSW Police Force (**NSWPF**) Missing Persons Registry (**MPR**), the Commander of the Monaro Police District and from the Director, Policy and Engagement of the NSW National Parks and Wildlife Service (**NPWS**).
15. Andrew's family provided a moving statement to the Court about Andrew on 25 July 2024.

Background

Reflection on Andrew's life and skiing experience

16. Andrew was born to David and Janice Seton on 5 May 1998 and was the brother of his beloved sister Emma Seton.¹ He was 24 at the time of his tragic death.

17. Andrew grew up in Griffith and loved swimming and running and was also, in the words of his sister, quite an academic having gained entry into The Australian National University in Canberra after leaving school, where he studied Arts and Data Analytics.²

18. Andrew first learnt to ski on family holidays as a child and developed a passion for it during ski trips in high school.³ After leaving school, he did a couple of ski seasons, working as a lift operator in Colorado in the United States of America.⁴ He moved to Canberra for university, which gave him easy access to the Snowy Mountains during the winter.⁵ He became an experienced and proficient skier.

19. A few years prior to his death, Andrew developed an interest in backcountry skiing which involves skiing in areas outside ski resorts.⁶ He had undertaken at least 10 backcountry day trips, and a did month-long trip to Chile in July 2022. He did not have formal qualifications, although he had commenced a rescue qualification while working in Colorado, which was interrupted due to the COVID-19 pandemic, and had also undertaken avalanche training.⁷

20. Andrew loved the mountains and was excited to spend any spare money he had on buying equipment he needed, readying himself for his next snow

¹ Exhibit 1 Tab 34 Janice Seton statement at [3].

² Exhibit 1 Tab 36 Emma Seton statement at [6].

³ Exhibit 1 Tab 33 David Seton statement at [5].

⁴ Exhibit 1 Tab 33 David Seton [6].

⁵ Exhibit 1 Tab 33 David Seton statement at [7].

⁶ Exhibit 1 Tab 36 Emma Seton statement at [14].

⁷ Exhibit 1 Tab 33 David Seton statement at [8]; Exhibit 1 Tab 36 Emma Seton statement at [14]; Exhibit 1 Tab 17 Antrum statement at [18].

adventure. His mother, Janice said that he could not have been happier, setting his 'troopy' up ready for a sleep over before skiing during the day and that the mountains gave him so much pleasure and happiness.⁸

21. Andrew carried appropriate equipment when he went into the backcountry. This included a helmet, crampons, an ice axe, a saw, provisions, and clothing. His parents bought him a Personal Locator Beacon (**PLB**). That is a beacon which can broadcast the user's position via satellite in the event of distress. It must be manually activated. He also had an avalanche beacon, which is a more short-range locator, which sends a signal that allows another person with an avalanche beacon to locate you, if you are under the snow.⁹

22. Andrew's parents impressed on him the need to let them know that he had returned from the mountain at the end of each trip.¹⁰

Andrew's movements on 2 and 3 September 2022

23. On Friday, 2 September 2022, Andrew set off for the snow. He went to buy provisions at Woolworths, with his girlfriend, Stella McRobbie. She saw him pack his car, a Toyota Landcruiser Troop Carrier, or 'Troopy'. She checked Andrew had his PLB with him, which he did. They had a brief discussion about where he planned to go, although she was not familiar with the locations.¹¹

24. Andrew then drove from Downer to Jindabyne. On the way, he sent his mother Janice a message to let her know what he was doing.¹² Andrew spent the night in his car. The following morning, Saturday, 3 September 2022, he set off for the snow.

25. At 7.24 am, Andrew met Arish Mitchell (also called Mitch English) next to his car in the Guthega car park. Guthega is a small village in the Perisher snow resort, within Kosciusko National Park. It is a common location, though not the

⁸ Transcript 25 July 2024 at p.16.

⁹ Exhibit 1 Tab 33 David Seton statement at [9].

¹⁰ Exhibit 1 Tab 33 David Seton statement at [11].

¹¹ Exhibit 1 Tab 37 McRobbie statement at [7], [10].

¹² Exhibit 1 Tab 34 Janice Seton statement at [8].

only one, from which to enter the backcountry area. The two men had a conversation about their plans for the day. Mr Mitchell says that Andrew told him that he planned to set out for Watsons Crags and that he wanted to get there early.¹³

26. Andrew was next seen by David McLoskey at around 9.45 am. Mr McLoskey is a very experienced backcountry skier, with more than 35 years' experience. He was with two friends. They had been staying in an igloo at Twynam Creek. Andrew struck up a conversation with them, and he impressed Mr McLoskey as a very competent skier who was not being cocky and was appropriately equipped. They all headed in the direction of Mount Twynam. At the summit, Mr McLoskey stopped to film his friends skiing in the Watsons Creek area, and Andrew continued west along the Watsons Crags ridgeline.¹⁴

27. Andrew sent Stella a selfie at 10:03 am, saying "*windy up top*".¹⁵

28. Mr McLoskey last saw Andrew heading along the ridgeline at about 10:45 am.¹⁶ At around the same time, Timothy Bateman also observed a solo skier at Watsons Crags.¹⁷ At about 11 am, Julian Thompson, who was at a nearby peak called Tenison Woods Knoll, also saw a lone skier at Watsons Crags. These were the last times Andrew was seen alive.¹⁸

29. Set out below is a topographical map of Watsons Crags, that was attached to Mr McLoskey's statement, with some handwritten notes made by Mr McLoskey which outlines the movements of Mr McLoskey and his party, and Andrew on 3 September 2022¹⁹:

¹³ Exhibit 1 Tab 47 Mitchell statement at [7].

¹⁴ Exhibit 1 Tab 43 McLoskey statement at [15] - [19].

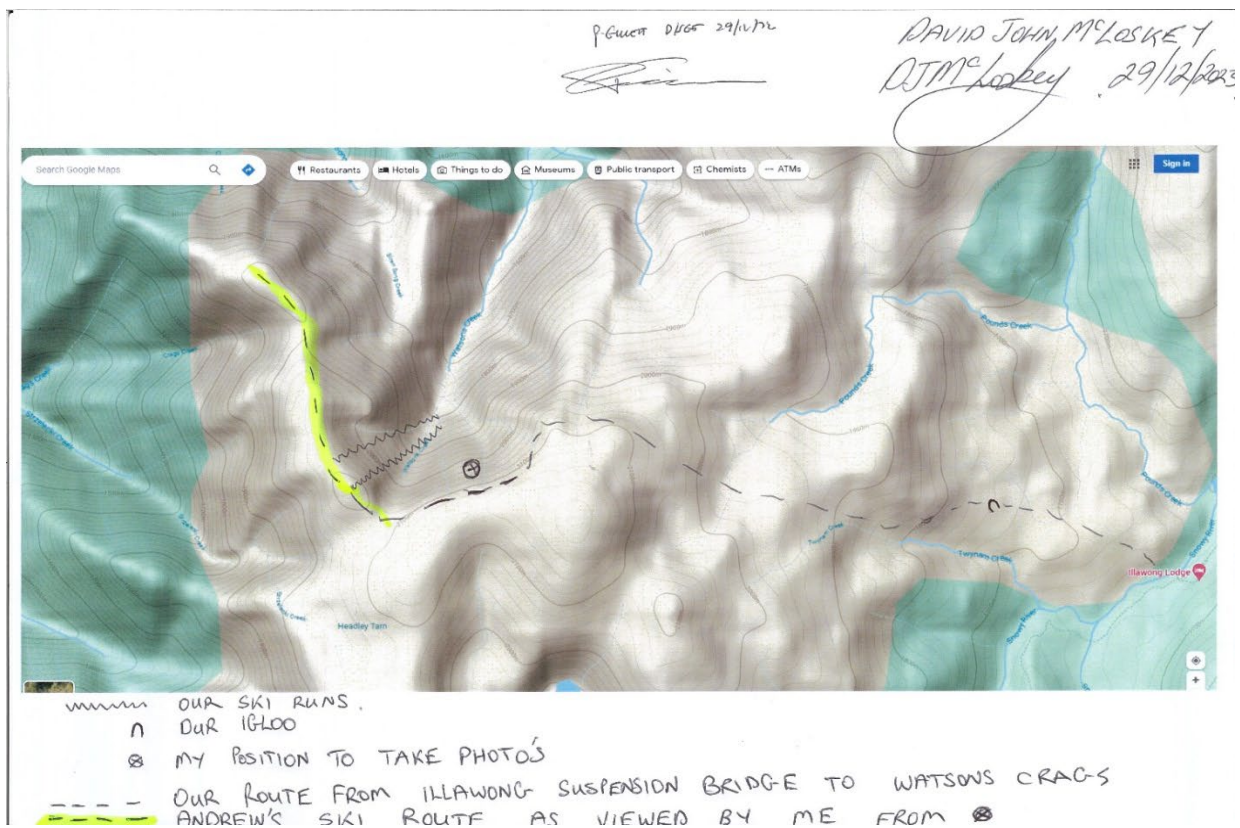
¹⁵ Exhibit 1 Tab 37 McRobbie statement at [14].

¹⁶ Exhibit 1 Tab 43 McLoskey statement at [20].

¹⁷ Exhibit 1 Tab 39 Klempfner statement at [16].

¹⁸ Exhibit 1 Tab 40 Thompson statement,

¹⁹ Exhibit 1 Tab 43 McLoskey statement at Annexure C.



30. The map was displayed in Court during the inquest and witnesses were taken to it during their evidence.

Report made to police on 3 September 2022

31. When Andrew did not contact his parents on the evening of 3 September 2022, Janice became concerned. She tried to call him, saw he had not been active online, and checked in with Stella, who also had not heard from him.²⁰

32. At around 9 pm²¹ Janice contacted Jindabyne police station. The call was diverted to Queanbeyan station and was answered by Constable Ryan Wyatt.²²

33. Janice told Constable Wyatt that she was worried because Andrew always contacted her when he came down from a day on the mountain, and he had

²⁰ Exhibit 1 Tab 34 Janice Seton statement at [10].

²¹ Exhibit 1 Tab 34 Janice says this occurred at 7pm - Janice Seton statement at [10]; Exhibit 1 Tab 31 CAD log; Exhibit 1 Tab 28 Wyatt statement at [7].

²² Exhibit 1 Tab 34 Janice Seton statement at [10].

failed to do so. She said it was out of character. She said he had a beacon with him, which had not been activated. She did not know his location.²³

34. Constable Wyatt tried to call Andrew, without success, and then created an incident on the police Computer Aided Design (**CAD**) system, which was broadcast to local police at 9 pm. It was acknowledged by police at Jindabyne, Constable Madeleine Fraser and Constable Laura May, about a minute later.²⁴

35. Constable Fraser also tried to call Andrew's mobile, and then called Janice.²⁵ Constable Fraser asked about Andrew's plans, and whether he might have gone somewhere else, including a concert which was on that night in Thredbo. Janice thought this unlikely. Janice said that Andrew did not have camping gear. She thought Andrew may have started skiing in Thredbo.²⁶

36. Constable Fraser told Janice that they would patrol the campgrounds and car parks on the way to Thredbo, which they did, with no result. Constable Fraser spoke to Janice again, and then called Stella. Stella told police that she believed Andrew had camped in his vehicle at Guthega the night before.²⁷

37. At about 11.00 pm, police located Andrew's car in the Guthega car park, secured and unattended. There was no snow gear or skis inside the vehicle. They left a note on the driver's door asking Andrew to contact his mother or police.²⁸

38. The duty officer, Acting Inspector Bradley Hughes (as he then was), had become aware of the incident. He spoke to Janice around 11.00 pm. He again asked Janice about Andrew's plans, his equipment, his access to camping gear, skill level, and general health. He confirmed Andrew had not submitted a Trip Intention Form.²⁹

²³ Exhibit 1 Tab 28 Wyatt statement at [5].

²⁴ Exhibit 1 tab 28 Wyatt statement at [15]; Exhibit 1 Tab 31 CAD log.

²⁵ Exhibit 1 Tab 16 Fraser statement at [5.]

²⁶ Exhibit 1 Tab 16 Fraser statement at [5]

²⁷ Exhibit 1 Tab 16 Fraser statement; Exhibit 1 Tab 37 McRobbie statement.

²⁸ Exhibit 1 Tab 16 Fraser statement at [8]-[9].

²⁹ Exhibit 1 Tab 14A Transcription of Hughes duty book entry.

39. Acting Inspector Hughes then completed a risk assessment tool, called a Search Urgency Assessment. It is scored according to different factors relating to the person. The result for Andrew was a score of 29, which indicated that police should “*Evaluate, Monitor & Advise*”.³⁰ Acting Inspector Hughes explained, in his statement, that his rationale for arriving at this result, included: that Andrew had not contacted his mother but was in possession of a PLB; the PLB was not activated; Andrew’s experience and ability of skiing; Andrew’s knowledge of the terrain and hazards of the park’s back country; the equipment carried by experienced back country skiers; there being no medical or mental conditions, and Andrew’s fitness.³¹

40. Acting Inspector Hughes also made contact with Constable Fraser. He asked that the incident be recorded on the police computer system as an “*occurrence only*”, rather than a missing person report, and asked Constable Fraser to email the day shift to follow up enquiries, which they did.³²

Enquiries made on 4 September 2022

41. At 6.00 am on Sunday, 4 September 2022 Janice and David left Griffith to make their way to Jindabyne.³³ Stella left Canberra in the afternoon, joined by one of Andrew’s friends, John Fredericks, and all of them arrived in Jindabyne at around 4 pm.³⁴

42. Acting Inspector Hughes tasked police to make various enquiries that day, to try to establish where Andrew may have gone.³⁵ Acting Inspector Hughes was updated by police about these enquiries throughout the day.

43. At about 7 am, Senior Constable Benjamin Antrum and Constable Samuel Thickett, the oncoming shift police officers, went to Guthega to check if Andrew

³⁰ Exhibit 1 Tab 14 Hughes statement at Annexure A.

³¹ Exhibit 1 Tab 14 Hughes statement at [18]

³² Exhibit 1 Tab 16 Fraser statement at [9], [11]; Exhibit 1 Tab 66 COPS event.

³³ Exhibit 1 Tab 34 Janice Seton statement at [18].

³⁴ Exhibit 1 Tab 37 McRobbie statement; Exhibit 1 Tab 38 Fredericks statement.

³⁵ Exhibit 1 Tab 14 Hughes statement at [26].

had returned to his car. They found it in the same location, with the note still on the driver's door. A wallet was seen on the front passenger seat.³⁶

44. Senior Constable David Tickell also travelled to Guthega. He provided updates to Acting Inspector Hughes throughout the day. He spoke to several skiers who were heading into the backcountry. No one had seen Andrew. He also made inquiries of backcountry rental stores, to see if Andrew had rented any camping equipment.³⁷

45. Senior Constable Antrum spoke to Douglas Chatten. Mr Chatten is an experienced backcountry skier, who operates the Snowy Mountains Back Country business. He suggested possible locations for skiing in the area and noted that conditions were very icy.³⁸

46. Senior Constable Antrum spoke with Janice again. Janice repeated information she had provided the night before, that Andrew was fit and a competent backcountry skier, had his own equipment, had a beacon, and that he would always text when he had finished on the mountain. According to Senior Constable Antrum, Janice said Andrew would usually sleep in his car on Friday and Saturday, returning to Canberra on Sunday afternoon.³⁹

47. This information was conveyed to Acting Inspector Hughes, who decided to continue to monitor the situation until the late afternoon, when Andrew was due to return from his trip. If he had not returned by then, the response would be escalated.⁴⁰

48. Senior Constable Antrum also spoke with Stella, who was en route to Jindabyne. She said that she did not know where Andrew was skiing, or what equipment he had with him, but did not believe he would have stayed overnight

³⁶ Exhibit 1 Tab 17 Antrum statement at [8]; Exhibit 1 Tab 18 Thickett statement at [6].

³⁷ Exhibit 1 Tab 13 Tickell statement at [21] & [22]; Exhibit 1 Tab 14 Hughes statement at [32] & [34]; Exhibit 1 Tabs 41 & 42 Chatten statements.

³⁸ Exhibit 1 Tab 17 Antrum statement at [16]; Exhibit 1 Tabs 41 & 42 Chatten statements.

³⁹ Exhibit 1 Tab 17 Antrum statement at [11] & [12].

⁴⁰ Exhibit 1 Tab 17 Antrum statement at [14].

in the snow.⁴¹ Stella had made contact with one of Andrew's friends, John Fredericks, who was travelling with Stella to Jindabyne said that Andrew was intending to ski at Mount Carruthers, Watsons Crags, and the Sentinel.⁴²

49. Andrew's family were frustrated with the police response, about being asked the same questions repeatedly, and because it appeared to them that police were not taking their concerns seriously. They did not believe Andrew would have gone to a music concert or camped out on the snow. The fact that he had not made contact was out of character and extremely concerning. They did not feel their concerns were being taken seriously.⁴³

50. In the late afternoon, Senior Constable Antrum contacted John Klempfner, one of Andrew's friends. He had been on about 10 backcountry trips with Andrew. He noted that that they always did day trips.⁴⁴ Mr Klempfner also made contact with Mr Fredericks, to try to narrow down the area where Andrew could be.⁴⁵

51. At 4.20 pm, Senior Constable Antrum completed a second Search Urgency Assessment. This time it returned a result of "*measured response*".⁴⁶ Shortly after, police returned to Guthega car park. Andrew had still not returned to his car. Police gained access and located a wallet, perishable food, two maps which were not marked, and no sign of skiing equipment or Andrew's beacon.⁴⁷

52. Acting Inspector Hughes was informed and attended Jindabyne police station at 5.30 pm. He began to make arrangements for a search to be commenced. He contacted the Rescue Coordinator and asked for a helicopter to be deployed.⁴⁸ The police aviation wing, PolAir, were not available, and so a Rescue Helicopter from the ACT was organised instead. Acting Inspector Hughes also completed a further Search Urgency Assessment. He made

⁴¹ Exhibit 1 Tab 17 Hughes statement at [30]

⁴² Exhibit 1 Tab 17 Antrum statement at [14].

⁴³ Exhibit 1 Tab 33 David Seton statement; Exhibit 1 Tab 34 Janice Seton statement; Exhibit 1 Tab 36 Emma Seton statement.

⁴⁴ Exhibit 1 Tab 17 Antrum statement at [18].

⁴⁵ Exhibit 1 Tab 39 Klempfner statement.

⁴⁶ Exhibit 1 Tab 17 Antrum statement at [19] 129.

⁴⁷ Exhibit 1 Tab 19 Clarke statement at [5].

⁴⁸ Exhibit 1 Tab 14 Hughes statement at [40].

arrangements for a Land Search and Rescue Coordinator to become involved. He contacted the Alpine Operation Unit, NSW Ambulance, NPWS, and the State Emergency Service (**SES**), to arrange for a search to be commenced the following day.⁴⁹

53. Meanwhile, Mr Klempfner was making enquiries of his own. At 5.45 pm, he posted on a backcountry Facebook group about Andrew being missing.⁵⁰ There were a number of responses to the post including at about 6.30 pm from Mr Mitchell saying that Andrew “*was going to Watson’s [Watsons Crags]*”.⁵¹ Mr Klempfner relayed this information to police.⁵²

54. That evening, ACT Rescue Helicopter 209 flew over the area of Watsons Crags. Some skiing activity was identified near a chute at Watsons Crags. Andrew was not located.⁵³

The search conducted on 5 September 2022

55. The search for Andrew commenced on Monday, 5 September 2022.

56. The ground search was made up of 3 teams, comprising staff from NSWPF, NPWS, NSW Ambulance, and the SES.

57. Andrew’s friend, Mr Klempfner, formed a team with Peter Jansen and Simon Plumb, and they began their own search efforts at about 6 am. They set out from Guthega car park in the direction they believed Andrew had taken, over Illawong Bridge to Mount Twynam, Tenison Woods Knoll, and Watsons Crags trig point.⁵⁴

58. Mr Klempfner’s group reached Watsons Crags at about 9.30 am. They saw footprints heading from the trig point. They followed the footprints to the

⁴⁹ Exhibit 1 Tab 14 Hughes statement at [38]-[43].

⁵⁰ Exhibit 1 Tab 39 Klempfner statement at [14].

⁵¹ Exhibit 1 Tab 39 Klempfner statement at [15].

⁵² Exhibit 1 Tab 13 Tickell statement at [25]; Exhibit 1 Tab 39 Klempfner statement at [15] & [17].

⁵³ Exhibit 1 Tab 14 Hughes statement at [38]-[43].

⁵⁴ Exhibit 1 Tab 39 Klempfner statement at [21].

entrance of Dog Leg Chute where they found an X marked in the snow, which possibly indicated a proposed entry point. There were no ski tracks indicating Andrew had gone that way.⁵⁵

59. They followed footprints to what appeared to be a “sit mark” in the snow, possibly where Andrew had eaten food. There were no further footprints beyond this point, indicating Andrew may have skied from this point. Mr Klempfner sent the GPS coordinates to be passed onto police.⁵⁶

The involvement of PolAir and the rescue operation

60. The aerial search was conducted by a PolAir helicopter, PolAir 4, which left Bankstown airport at 8.30 am. The PolAir crew were provided a description of Andrew and his clothing as well as coordinates that had been supplied by Rescue 209 the previous evening.⁵⁷

61. Unfortunately, at about midday, when PolAir 4 arrived in the area, it was required to land due to the weather conditions.⁵⁸ Acting Inspector Hughes attended the Jindabyne airfield but was advised that the helicopter was unable to operate.

62. At about 2 pm, PolAir 4 took off from Jindabyne and proceeded towards Watsons Crag.⁵⁹ At about 2.45 pm, PolAir crew spotted one of Andrew’s pink skis in the middle of the large centre chute of Watsons Crag, about 200 feet from the top of the ridge.⁶⁰ A second ski was spotted about 50 feet below the first ski.

63. Andrew’s body was located shortly afterwards on a rock in the snow with fast flowing water running nearby. Andrew’s body appeared to be wet.⁶¹ Photos

⁵⁵ Exhibit 1 Tab 39 Klempfner statement at [21].

⁵⁶ Exhibit 1 Tab 39 Klempfner statement at [23].

⁵⁷ Exhibit 1 Tab 14 Hughes statement at [53] & [63].

⁵⁸ Exhibit 1 Tab 14 Hughes statement at [80]; Exhibit 1 Tab 23 Mungovan statement at [6].

⁵⁹ Exhibit 1 Tab 24 White statement at [8]; Exhibit 1 Tab 23 Mungovan statement at [7].

⁶⁰ Exhibit 1 Tab 24 White statement at [8].

⁶¹ Exhibit 1 Tab 24 White statement at [11].

were taken, and Acting Inspector Hughes was informed at 2.58 pm.⁶² Andrew's family was informed that Andrew had been located about an hour later.

64. The photos that were taken were provided to Dr Paul Luckin, a survivability expert and medical adviser to the Australian Maritime Safety Authority, by Sergeant Gary Mutton, a rescue specialist. Dr Luckin provided advice by telephone at 5.10 pm and sent an email that evening. He advised that he did not believe there was any possibility that Andrew was alive. He believed Andrew had been involved in a significant fall and had died at the time of or shortly after the fall.⁶³

65. Rescue operatives arrived that afternoon, but they were not trained or equipped for alpine operations, and in any event the helicopter did not have capacity to recover Andrew's body.⁶⁴ As a result, alpine trained operatives were deployed, who would attend the following day.⁶⁵ At 8.00 pm, Acting Inspector Hughes and Sergeant Mutton spoke with Andrew's family and informed them of the opinion that there was no chance that Andrew was alive.⁶⁶

66. The next day, 6 September 2022, a separate helicopter, PolAir 5, made its way to Jindabyne.⁶⁷ The retrieval operation was technically difficult and dangerous because operatives had to be left on the steep mountainside, in a precarious position, before the helicopter was able to retrieve Andrew's body. At around 2.00 pm, Andrew's body was recovered and conveyed by helicopter to Perisher Valley landing pad.⁶⁸ Andrew's skis, ski poles and personal locator beacon were located at Watsons Crags in the following weeks.

⁶² Exhibit 1 Tab 24 White statement at [10]; Exhibit 1 Tab 14 Hughes statement at [96]; Exhibit 1 Tab 23 Mungovan statement at [9].

⁶³ Exhibit 1 Tabs 48 & 49 Luckin statement and report.

⁶⁴ Exhibit 1 Tab 24 White statement at [13]; Exhibit 1 Tab 21 Mutton statement at [11].

⁶⁵ Exhibit 1 Tab 24 White statement at [13] 181-182, Exhibit 1 Tab 14 Hughes statement at [100]; Exhibit 1 Tab 23 Mungovan statement at [11].

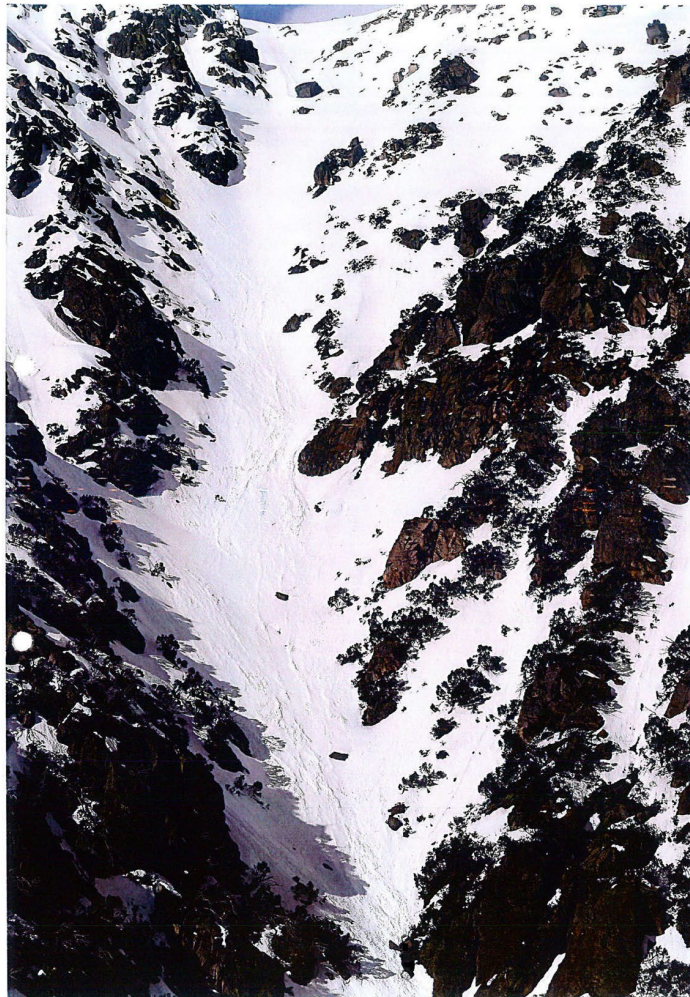
⁶⁶ Exhibit 1 Tab 21 Mutton statement at [13] and [19].

⁶⁷ The crew was comprised of Pilot David Link, Tactical Flight Officer Patakey, and rescue operatives Senior Constable Bakey and Mayfield.

⁶⁸ Exhibit 1 Tab 14 Hughes statement at [120].

67. I pause here to acknowledge and commend the work of the search and rescue officers involved in the operation to retrieve Andrew from Watsons Crag on 6 September 2022. I have viewed the footage and photographs collated as part of the coronial investigation that were tendered and it is evident that the officers went to great lengths and put themselves in great personal danger to retrieve Andrew and return him to his loved ones. Those officers demonstrated immense skill, bravery, and expertise and I commend them.

68. To provide some context to the location where Andrew was discovered, set out below is a photograph which was attached to the statement of one of the investigating police officers⁶⁹:



⁶⁹ Exhibit 1 Tab 24 White statement at Annexure A.

69. The photograph illustrates the rugged terrain and the very steep slopes and mountainside which is often subject to icy conditions. This photograph was displayed in Court during the inquest and witnesses were taken to it during their evidence. Hugh Newall, in particular, confirmed when shown this photograph during his oral evidence that the photograph is of Craggs Creek which Mr Newall marked up in an annotated drone image that he took of Watsons Craggs (see [83]) which was attached to his statement.⁷⁰

Autopsy

70. An autopsy was performed by Professor Johan Duflou on 9 September 2022. Professor Duflou concluded that the cause of death was “*multiple injuries*”, including a severe closed head injury and other extensive injuries consistent with a fall from height.⁷¹ Toxicology was negative for drugs, alcohol, or poisons.⁷²

71. Professor Duflou opined that the injuries were not survivable. Although he could not estimate the time of death, his view was that death would have been near instantaneous.⁷³

The Issues

72. The Court heard evidence in these proceedings in relation to the following issues relating to Andrew’s death:

- 1) What were the circumstances of Andrew’s accident?
- 2) Did Andrew survive for any appreciable period after he sustained injuries?
- 3) When did Andrew’s death occur?

⁷⁰ Exhibit 1 Tab 44 Newall statement Annexure at B.

⁷¹ Exhibit 1 Tabs 7 & 8 Duflou reports.

⁷² Exhibit 1 Tabs 7 & 8 Duflou reports.

⁷³ Exhibit 1 Tabs 7 & 8 Duflou reports.

- 4) Was the response by NSWPF to the report that Andrew was missing adequate, and was it in accordance with the relevant policy? In particular:
 - a) Should Andrew have been recorded as a missing person at the time of the initial report from his mother on 3 September 2022?
 - b) Were the risk assessments appropriate, and did they result in an appropriate risk rating?
 - c) Was the initial police response to the report adequate?
 - d) Were appropriate inquiries conducted by police in a timely manner?
- 5) Was the search and rescue operation appropriate, timely and conducted with sufficient resources? In particular:
 - a) When was the search and rescue operation commenced?
 - b) Should it have been commenced earlier?
 - c) Were the appropriate resources allocated to the search?
 - d) Should alpine specialist rescue personnel have been identified and deployed to the incident at an earlier stage? What factors influenced the timing of their deployment?
 - e) Was there a delay in locating Andrew and recovering his body? If so, what were the reasons for this?
- 6) Is the regulatory and advisory regime relating to backcountry skiing adequate? In particular:
 - a) How are backcountry skiing areas accessed?
 - b) How are trip advisory forms completed and used?

c) What guidance is available for backcountry skiers, including on the topics of equipment, risks, and the use of beacons?

7) What are the statutory findings pursuant to section 81 of the Act?

8) Is it necessary or desirable to make any recommendations in relation to any matter connected with Andrew's death?

Evaluation of Evidence

73. While it is not possible to refer to all of the evidence in detail in these findings, I have considered, assessed, and taken into account all of the documentary and audio-visual material that has been tendered, and the oral evidence given by the witnesses. I have set out the evidence which has assisted me to not only determine the formal findings that I am required to make and findings on the issues that were examined at inquest, but which also assist to promote public safety and awareness of the risks associated with backcountry skiing and to highlight what information and guidance is available to the public at large.

74. In canvassing the evidence and addressing the issues examined at inquest, I have been assisted by the comprehensive opening address and oral submissions of Counsel Assisting which summarised much of the tendered material and the oral evidence, and I have adopted, in large part, the same structure, and factual chronologies. Where appropriate, I have also taken into account the submissions made by each of the interested parties.

Backcountry skiers

75. Hugh Newall is an experienced backcountry skier, alpine ski racer, and alpine climber. He has skied the area known as Watsons Crags regularly since 2017 and has documented the area by drone. Mr Newall gave oral evidence during the inquest and provided a written statement to assist the Court. His statement of 8 January 2024, outlined how, on 3 October 2022, while skiing in the area of Watsons Crags, Mr Newall found a PLB. Mr Newall suspected the PLB may have been related to Andrew's death several weeks prior. Soon after, Mr Newall

posted to the 'Australian Backcountry' Facebook page, sharing that he had located a PLB "*near the main range*". After subsequent contact from John Fredericks, Mr Newall provided the PLB to police at Jindabyne Police Station.⁷⁴

76. Mr Newall gave evidence that Watsons Craggs present some of the most "*complex and technical skiing*" in NSW. There are several factors, according to Mr Newall's evidence, that contribute to this assessment. He stated that the conditions at Watsons Craggs are particularly variable, on some days they are able to be skied, and on others, they are not.⁷⁵

77. He also drew attention to the fact that the conditions can vary at different heights on the slopes: while the top may be softer, the lower and more shadowed areas can become progressively icier. He highlighted that because a skier enters Watsons Craggs from the top, they are unable to assess the conditions on the way up, and therefore cannot be fully appraised as to the risk of skiing on a particular day.⁷⁶

78. Finally, he stated that he considers much of the area at Watsons Craggs to be "*no-fall zones*". By this, Mr Newall meant that a fall in these areas, even in ideal conditions, may lead to serious injury or death.⁷⁷

79. Mr Newall attached a letter addressed to me dated 12 January 2024 to his statement which was included in the brief of evidence that was tendered.⁷⁸ In the letter Mr Newall shared insights regarding the safety challenges facing backcountry skiing in the area, and several recommendations that could alleviate the risk. In particular, he identified delayed response time and limits to search and rescue capabilities as challenges to search and rescue responses.⁷⁹

⁷⁴ Exhibit 1 Tab 44 Newall statement.

⁷⁵ Transcript 23 July 2024 at p.4.

⁷⁶ Transcript 23 July 2024 at p.4.

⁷⁷ Transcript 23 July 2024 at p.4.

⁷⁸ Exhibit 1 Tab 44 Newall statement at Annexure C.

⁷⁹ Exhibit 1 Tab 44 Newall statement at Annexure C.

80. Mr Newall identified that there is a public overestimation of the capability and swiftness of search and rescue efforts, which may lead to people exposing themselves to greater levels of risk than they might if they properly understood the limitations placed on search and rescue efforts in such inaccessible areas. These limitations include a dependence on helicopters for search and rescue, due to the area's remoteness and inaccessibility, which in turn gives rise to limitations related to weather conditions and time of day.⁸⁰

81. Mr Newall recommended that public education is needed to increase awareness of the limitations to search and rescue in backcountry skiing and to better inform risk planning and management. In terms of search and rescue response time, he recommended that procedural change take place, that allowances be made for a locally located search and rescue helicopter, and that police and SES personnel be provided technical alpine (mountaineering) training.⁸¹

82. In order to increase the capability of searching in alpine terrain, Mr Newall reiterated the need for training police and SES personnel in mountaineering, while also recommending that third-party provider and local commercial guiding companies be leveraged for specialised capabilities and on-standby services.⁸²

83. Set out below is a photograph that was attached to Mr Newall's statement. It is a drone image that he took which marks the various ski chutes in Watsons Crags and highlights where Andrew's PLB was located⁸³:

⁸⁰ Exhibit 1 Tab 44 Newall statement at Annexure C.

⁸¹ Exhibit 1 Tab 44 Newall statement at Annexure C.

⁸² Exhibit 1 Tab 44 Newall statement at Annexure C.

⁸³ Exhibit 1 Tab 44 Newall statement Annexure at B.



84. The drone image was displayed in Court during the inquest and witnesses were taken to it during their evidence. It provides an exceptional visual aid which assisted the Court and the witnesses to comprehend the vastness and gnarly nature of the slopes, cliffs, mountainside, and chutes of Watsons Crag. As referred to earlier in these findings, the photograph set out at [68] was shown to Mr Newall during his evidence and he confirmed that it is Crag Creek which he marked in the annotated drone image he took of Watsons Crag.

85. Douglas Chatten is a backcountry skier with considerable experience and knowledge of the backcountry of the main ranges of Kosciuszko National Park, in which he has been skiing for more than thirty years. Mr Chatten has been the owner and operator of Snowy Mountains Backcountry since 2018. He worked as a ski patroller at Perisher Ski Resort and as a field officer and Search and Rescue member with the NPWS for fifteen years. According to his evidence, Mr Chatten has an intimate knowledge of the Watsons Crag area. Mr Chatten gave oral evidence during the inquest and provided two written statements to assist the Court.⁸⁴

⁸⁴ Exhibit 1 Tabs 41 and 42 Chatten statements; Transcript 23 July 2024.

86. Mr Chatten described Watsons Crag as an area that “*demands an extremely experienced and well-developed set of skills to negotiate it safely*”.⁸⁵ He identified the particular challenges and risks including its extreme steepness, variable conditions, and its south-facing aspect, which increases its shade and therefore causes the snow to remain firm and icy. On 3 September 2022, Mr Chatten was leading a tour group at the Mount Tate area, also part of the main ranges. He described the conditions that day as particularly icy. From his own experience of the conditions at Watsons Crag, he expressed that he would not have skied there that day.⁸⁶

87. Mr Chatten provided the Court with some insights into the hazards of backcountry skiing that are particular to the Australian context, as opposed to, for example, that in North America. In Australia, there is what Mr Chatten described as a maritime, as opposed to continental, snowpack. This has the effect that the snow is quite stable, relative to many other places in the world. He is of the view that education regarding hazards associated with backcountry skiing in Australia places too much focus on avalanche risk, and not enough on steep, icy slopes.⁸⁷

88. Although he acknowledged that avalanche is a real and appreciable risk in any alpine context, he is of the view that when describing the risks associated with backcountry skiing in Australia, greater emphasis should be placed on icy conditions, and lesser emphasis on a risk of avalanche. This will allow for a more comprehensive and accurate appraisal of the hazards, and level of risk, present at any given time.⁸⁸

89. Mr Chatten expressed the view that he does not think that backcountry skiing needs to be subject to greater regulation, or safety measures such as gates. He did emphasise the importance of raising awareness of the hazards associated with the sport, and in particular raising awareness of the relative risk of different

⁸⁵ Transcript 23 July 2024.

⁸⁶ Exhibit 1 Tab 41 Chatten statement at [6]-[9].

⁸⁷ Exhibit 1 Tab 42 Chatten statement; Transcript 23 July 2024.

⁸⁸ Exhibit 1 Tab 42 Chatten statement; Transcript 23 July 2024.

hazards. He also stated that while he does not use the Trip Intention Form, he ensures that a loved one is aware of his location and other information when he is going skiing in the backcountry. He is of the view that the Trip Intention Form is a useful tool to provide relevant information to Search and Rescue.⁸⁹

90. David McLoskey has skied the Australian backcountry for some thirty-five years. He is particularly familiar with the Watsons Crags area. Mr McLoskey's interactions with Andrew on 3 September 2022 are outlined above at [26] to [30]. Mr McLoskey gave oral evidence during the inquest and provided a written statement to assist the Court.⁹⁰

91. Mr McLoskey gave evidence that he has not used the Trip Intention Form when backcountry skiing in the Kosciuszko National Park. This is to afford him greater flexibility to decide on a route or a destination each day that he is in the backcountry, rather than planning the entire route in advance and recording his intentions in a Trip Intention Form.⁹¹

92. Although he does not use the Trip Intention Form, Mr McLoskey informed the Court that it is very rare that he skis on his own, and if he does, he is very cautious. In the context of social media coverage of adventure sports becoming "*bigger and faster and higher and longer*", Mr McLoskey suggested skiing in company when one is going to "*take on the big stuff*". He also urged those who are skiing alone to exercise a greater level of caution, and to "*back off 20%*".⁹²

93. David Herring is the owner and lead guide of Alpine Access Australia, a business which is a source of education for people going into the backcountry, and a provider of guided day and overnight trips into the backcountry. Mr Herring has completed professional qualifications with the Canadian Avalanche Association. Mr Herring provided a written statement to the Court and gave oral evidence during the inquest.⁹³

⁸⁹ Exhibit 1 Tab 42 Chatten statement; Transcript 23 July 2024.

⁹⁰ Exhibit 1 Tab 43 McLoskey statement; Transcript 22 July 2024.

⁹¹ Transcript 22 July 2024.

⁹² Transcript 22 July 2024.

⁹³ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

94. Mr Herring spoke with police at Guthega car park, early on the morning of Sunday, 4 September 2022. On that morning, at some time after 7 am, two police officers informed Mr Herring and his companions that a skier had not come home last night and asked that if they were to meet a lone skier, to ask that they contact their mother. Mr Herring and his companions were concerned for the skier described by the police, as there was an ice-covered car in the day car park that had clearly been there overnight.⁹⁴

95. According to Mr Herring, the Mountain Safety Collective, which provides condition reports in the area, reported that due to a “*melt free cycle*”, the snow was to be very firm underfoot on Saturday, 3 September 2022. He acknowledged that incidents involving skiing on ice are of the highest concern in terms of hazards in the Australian skiing context and present a much higher risk than avalanche.⁹⁵

96. He drew the Court’s attention to the risk involved with skiing the southern aspect of Watsons Crag in icy conditions, where Andrew’s body was found, because the sun does not soften the ice on the south-facing aspect. He further described Watsons Crag as by “*far and away the most difficult ... terrain*” in Australian backcountry skiing, requiring a high level of skill in skiing, interpreting conditions and ski mountaineering (including the use of ski crampons and ice axes).⁹⁶

97. Mr Herring does not believe that there is currently a need for greater regulation of backcountry skiing, stating that this would be unpopular and may not achieve anything at this point in time. He is of the view that the large number of inexperienced skiers who are taking to the backcountry must have a good understanding of what the sport involves.⁹⁷

98. In his professional capacity, Mr Herring gave evidence that he advises clients to use the Trip Intention Form and views this form as forming a part of the “*right*

⁹⁴ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

⁹⁵ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

⁹⁶ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

⁹⁷ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

procedures” for going into the back country. Although Mr Herring does not always use Trip Intention Forms in a personal capacity, he views it as integral that skiers in the backcountry inform people of their plans, including their points of departure and return, their route, and their time of return.⁹⁸

99. Mr Herring also gave evidence of the device which he uses in place of a PLB. This device does not only send a single signal when deliberately activated. Rather, it provides constant feedback as to the coordinates of his location, such that a concern may be raised if he appears not to have moved in some time. The device also features a two-way messaging capability, which allows changes in plans to be communicated without causing concern. The device used by Mr Herring is sold by SPOT⁹⁹. He also gave evidence that a Garmin inReach has the same capabilities. His evidence is that these devices are easy to purchase, and not prohibitively expensive.¹⁰⁰

100. I thank Mr Newall, Mr Chatten, Mr McLoskey, and Mr Herring for their evidence. They clearly have a wealth of knowledge, experience, and expertise in backcountry skiing and the Watsons Crag area, and I am grateful that they shared this with the Court.

Survivability expert

101. Dr Paul Luckin¹⁰¹ provided an expert statement and report which were included in the brief of evidence that was tendered and gave oral evidence at the inquest.

102. Dr Luckin does not believe it possible that Andrew survived for any significant time and was of the view that he died at the time of his fall and was

⁹⁸ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

⁹⁹ <https://www.findmespot.com/en-au/about-spot/company-info> .

¹⁰⁰ Exhibit 1 Tab 46 Herring statement; Transcript 23 July 2024.

¹⁰¹ specialist anaesthetist, who has been asked for advice on survivability during SAR operations by AMSA (Australian Maritime Safety Authority, responsible for conduct of SAR operations in the Australian SAR region). He has been consulted frequently by Police SAR teams around the nation, and Australian Federal Police in PNG, Solomons and Australian waters.

not conscious at any time after his fall. Dr Luckin formed this view based on the following.

Position

103. Andrew was found lying face-down, with his head hanging low. His backpack was lying over the back of his head and the fact that Andrew remained in this position suggests that he was either unconscious or dead, and severely or fatally injured.¹⁰²

Airway obstruction

104. The position that Andrew was found in would almost certainly obstruct his airway, limiting his ability to breathe. This alone would be sufficient to cause death.¹⁰³

Loss of consciousness

105. The fact that Andrew remained in the position he was found in suggested that he was at the very least unconscious, which would render him unable to clear his airway. If he was still alive at this stage, being unconscious would also render him unable to remove himself from the position he was in. This alone would be sufficient to cause death.¹⁰⁴

Extreme temperature

106. A person who is immobile, lying on wet, very cold rock, exposed to night-time temperatures of minus 7 degree Celsius, would very rapidly become severely hypothermic.¹⁰⁵

Hypothermia

107. Hypothermia is a lowering of the body core temperature which causes progressive diminution of cerebral function, progressive decreased level of

¹⁰² Exhibit 1 Tabs 48 and 49 Luckin expert statement and report.

¹⁰³ Exhibit 1 Tabs 48 and 49 Luckin expert statement and report.

¹⁰⁴ Exhibit 1 Tabs 48 and 49 Luckin expert statement and report.

¹⁰⁵ Exhibit 1 Tabs 48 and 49 Luckin expert statement and report.

consciousness, decreased rate and depth of breathing, decreased heart rate and cardiac output until breathing and circulation stop. Andrew appeared in the photographs provided (which were included in the brief of evidence that was tendered) to be wet. Wet clothing greatly increases the rate of heat loss, accelerating hypothermia. Given Andrew's location, and the fact that the stream is running through a snowfield, the water would be slightly above freezing temperature; the rock would thus be very cold. Hypothermia alone was sufficient to cause death within a short time.¹⁰⁶

108. Dr Luckin concluded his oral evidence with some helpful insights and learnings about survival and search and rescue operations and on the use of Trip Intention Forms and/or registers which I will repeat below¹⁰⁷:

"The three golden rules of survival are, number 1, not to be alone because if you are injured or lost and you are alone there is nobody to assist you, particularly if you're injured. The second important, the golden rule is to ensure that your location is known very precisely and that it does not necessarily matter who knows but that somebody knows exactly where, exactly where you are, not may be general area but exactly where you are going... The third golden rule is to have the appropriate equipment and, in this circumstance, that specifically would be a personal locator beacon and the appropriate clothing and, and those two [Andrew] had. But the intention register is absolutely essential by whatever name or whatever form it is so that people know where you are, precisely where you are going to be and that you've let them know when you come out again.

Search and rescue is inherently not only difficult but it is an inherently high-risk occupation, particularly when people are working with helicopters. Rescue facilities are also a limited resource. The number of trained people that one can turn out on a rescue, particularly in a, in an alpine environment, is limited and helicopters are also a limited resourced. Members of the public quite often think that the police can whistle up a helicopter and have a helicopter at their disposal at a moment's notice. That is not case, unfortunately. For anybody who requires

¹⁰⁶ Exhibit 1 Tabs 48 and 49 Luckin expert statement and report.

¹⁰⁷ Transcript 23 July 2024 at p.31.

a helicopter, you firstly have to find a helicopter that's sitting on the ground. You then have to mobilise a crew. The helicopter then has to be prepared and then become airborne, and that is assuming that the helicopter is not otherwise tasked at the time."

109. I accept the evidence Dr Luckin gave as an expert witness and note the insights cited above that he has gained from his experience.

New South Wales Police Force (NSWPF) and Search and Rescue Experts

110. Dr James (Jim) Whitehead was the Queensland Police Service State Search and Rescue Coordinator & Training Officer for 17 years, was a Search and Rescue coordinator & manager for 35 years and is the author of current National Search and Rescue Manual. He has completed a PhD in search and rescue processes. Dr Whitehead provided a report which was included in the brief of evidence that was tendered and gave oral evidence at the inquest.

111. Detective Inspector Ritchie Sim has been the Manager of the Missing Persons Registry (**MPR**), State Crime Command since 20 November 2022. Detective Sim provided a statement which was included in the brief of evidence that was tendered and gave oral evidence at the inquest.

112. Sergeant Richard Walsh is the Team Leader of the Illawarra Police Rescue Squad of the Rescue and Bomb Disposal Unit, NSWPF and is a NSW Police Search and Rescue Coordinator, both on land and in marine environments. He has 19 years of experience in the Illawarra Police Rescue Squad, which has involved searches in alpine areas, including in Kosciuszko National Park. Sergeant Walsh provided a statement and adopted the contents of a statement that was made Senior Sergeant Michael Smith which were included in the brief of evidence that was tendered and gave oral evidence at the inquest.

113. Dr Whitehead, Detective Inspector Sim, and Sergeant Walsh gave oral evidence at the inquest at the same time in conclave.

Should Andrew initially have been recorded as a missing person?

114. Dr Whitehead gave evidence that Andrew ought to have been reported as a missing person at the family's first contact with police. His evidence is that in considering the question, one must have regard to the views of the family of the person being reported missing. Relevantly, Andrew's family raised concerns with police that Andrew had stayed out overnight and had not contacted anyone, which they reported was his usual practice. This, according to Dr Whitehead, suggested that something may have happened to him to prevent him from doing so.

115. When asked how to address a discrepancy between what was reported as someone's usual practice, and what was in fact their usual practice, Dr Whitehead gave evidence that police officers should have regard to their rapport with the informant. In Andrew's case, Dr Whitehead said that the concern registered by Andrew's mother, father and girlfriend ought to have been considered. According to Dr Whitehead, the fact that Andrew had messaged his girlfriend on the way to Watsons Crag during the morning of the day that he went missing indicates that he is reliable. Dr Whitehead said that officers should err on the side of caution in these circumstances.¹⁰⁸

116. According to Detective Inspector Sim, the definition of a missing person in the NSWPF Standard Operating Procedures, reflects that of the Australian and New Zealand Policing Advisory Agency. According to the definition, a missing person is any person reported missing to police, whose whereabouts are unknown, and where there is a genuine fear for the safety, or concern for the welfare of that person.¹⁰⁹

117. Detective Inspector Sim's evidence is that the most pertinent point in relation to whether Andrew ought to have initially been recorded as a missing person, is that reports of missing persons must be taken in person, whether at a police station, or by police attending at the address of the informant.

¹⁰⁸ Transcript 24 July 2024 at p.36.

¹⁰⁹ Transcript 24 July 2024 at p.37.

Dr Whitehead reiterated this evidence, stating that this requirement is the same throughout Australia.¹¹⁰

118. Detective Inspector Sim gave evidence as to why the requirement to report in person exists, which is primarily to protect the person who is being reported missing. He gave the example of circumstances in which a perpetrator of domestic and family violence may report their partner missing to police, in order to locate them. According to Detective Inspector Sim, the police take this evidence in person in order to be able to communicate effectively, assess body language, and the authenticity of the report.¹¹¹

119. According to Detective Inspector Sim, reporting in-person also facilitates some of the practical requirements of reporting a missing person. These include confirming the identity of the person being reported missing, obtaining DNA if necessary, and obtaining the authority of the next of kin to publish details about the person being reported missing.¹¹²

120. Detective Inspector Sim gave evidence that on the basis of Janice's report to police, he is of the view that she ought to have been directed to her local police station to make a report, and that Andrew ought to have been recorded as a missing person.¹¹³

How would the approach have been affected at the outset had Andrew been recorded as a missing person?

121. Detective Inspector Sim gave evidence that had Andrew been reported as a missing person the NSW State Crime Command Standard Operating Procedures: Missing Persons, Unidentified Bodies and Human Remains (**Missing Persons SOPs**) for a missing person would have been engaged. The creation of 'missing person' incident in the COPS system automatically generates a risk assessment.

¹¹⁰ Transcript 24 July 2024 at p.37.

¹¹¹ Transcript 24 July 2024 at p.38.

¹¹² Transcript 24 July 2024 at p.38.

¹¹³ Transcript 24 July 2024 at pp.38-39.

122. Detective Inspector Sim is of the view that regardless of the completion of a formal risk assessment, that police are considering risk all the time in their daily duties, and that even in hearing the report from the informant, an officer would be considering the risks involved.

123. However, he provided evidence that the Missing Persons SOPs contain various questions relating to risk assessment, including 'red flag' questions, which are questions relating to vulnerability, context, and situation. Red flags in the context of a missing person include if the person is missing in weather conditions that seriously increase risk to their health and safety, which includes snowy conditions. According to Detective Inspector Sim, Andrew would have been identified as a high-risk missing person.

124. In the circumstances of a high-risk missing person, an immediate search and rescue is required. Therefore, had Andrew been recorded as a missing person, the incident would have been directed through a risk assessment and an immediate search and rescue would have been considered. Notwithstanding this, Detective Inspector Sim gave evidence that although there was no formal report of Andrew as a missing person, that the response of police in this instance reflected a response to a high-risk missing person.¹¹⁴

125. Another consequence of recording an incident as a missing person, according to Detective Inspector Sim, is that the MPR is made aware of the report. At 5am daily, the COPS system automatically downloads to the missing persons database all missing persons and unidentified body/human remains incidents. The MPR then reviews each of those incidents. The MPR can then provide advice and guidance to the Local Area Command about steps to take.¹¹⁵

126. Dr Whitehead gave evidence that had Andrew been recorded as a missing person, someone in the Search and Rescue field may have been

¹¹⁴ Transcript 24 July 2024 at pp.40-41.

¹¹⁵ Transcript 24 July 2024 at p.41.

prompted to consider the incident, given that Andrew was not in an urban area and was undertaking an adventure activity. This, on his evidence, may have elicited a different train of enquiries earlier, that were more specifically relevant to search and rescue. Dr Whitehead gave evidence that he does not have a view as to whether it would have made a significant difference in the circumstances.¹¹⁶

Search Urgency Assessment Tool

127. The Search Urgency Assessment Tool (**SUAT**), according to Dr Whitehead, is an aspect of the National Search and Rescue Manual. The use of the SUAT is triggered when a Search Coordinator is asked to look at a missing person incident. The SUAT is undertaken to provide initial guidance as to whether an immediate or measured response is needed, or whether several further inquiries are required.

128. In Andrew's case, the SUAT score was 29, which indicates that police should "*Evaluate, Monitor & advise*". Dr Whitehead is of the view that the score was appropriate. However, Dr Whitehead also gave evidence that if one of several criteria applies, an urgent response must be considered. According to Dr Whitehead, the fact that Andrew was alone would have met one such criteria and should have been a trigger for "*a search and rescue person to do something*".¹¹⁷

129. The SUAT undertaken in relation to Andrew found that he was adequately prepared and had the appropriate equipment for a day trip. Dr Whitehead stated that as inquiries were made as to whether Andrew might have decided to camp out overnight, the SUAT should have been revisited to consider whether he had appropriate equipment for that activity. Dr Whitehead was of the view that had this been done, it would have been concluded that he did not.¹¹⁸

¹¹⁶ Transcript 24 July 2024 at p.42.

¹¹⁷ Transcript 24 July 2024 at pp.42-43.

¹¹⁸ Transcript 24 July 2024 at p.43.

130. Dr Whitehead's evidence is that this would not necessarily lead to a search coordinator instigating an emergency response, but that the possibility of an urgent search would be considered, taking into account the circumstances of the incident as a whole.¹¹⁹

131. Sergeant Walsh's view aligned with Dr Whitehead's in that the fact of Andrew being alone met one of the criteria that required an urgent search and rescue to be considered. He also gave evidence that despite there being subjectivity in what might constitute a hazardous weather or terrain profile, that the area and conditions in which Andrew was missing certainly met that description. Sergeant Walsh was of the view that an urgent response, or "*at the very least*", a measured response, would have been the appropriate decision in the circumstances.¹²⁰

Reflex Search

132. Sergeant Walsh gave evidence that the appropriate action to take in circumstances where a SUAT, prepared late in the evening, had indicated an urgent search and rescue be considered, would have been to plan a "*reflex tasking*" for the next morning, weather permitting.

133. A reflex tasking, or reflex search is a timely search of the most likely pathways that the missing person may have taken, and "*the most probable areas that they would have gone to*" according to information available at the time. For example, given that Andrew was known to have been backcountry skiing, the reflex search may have involved a large-scale search of the main ranges, according to Sergeant Walsh's evidence.

134. Given the vast area and the difficult terrain, Sergeant Walsh stated that a search using an air asset, such as a helicopter, would have been appropriate as a "*broad-spectrum approach*."¹²¹

¹¹⁹ Transcript 24 July 2024 at pp.42-43.

¹²⁰ Transcript 24 July 2024 at p.44.

¹²¹ Transcript 24 July 2024 at p.44-45.

135. Dr Whitehead agreed with Sergeant Walsh in this respect. He added that a reflex search is an immediate deployment of resources, mostly to elicit a response. That is to say that if Andrew had become stuck overnight, seeing a helicopter fly overhead might prompt him to activate his PLB.

136. Dr Whitehead gave further evidence that there is no problem with conducting a reflex search in one area and continuing to make further inquiries separately from the search. His evidence is that information-gathering, in a search and rescue context, does not stop until the missing person is found.

137. On Dr Whitehead's evidence, resources are harder to deploy than to call back, so there is no problem if more information is discovered as a result of investigation and the location of a reflex search needs to change. Dr Whitehead gave the example that Guthega car park was the first point of reference the morning the search for Andrew commenced, but that search location was refined as further information was received, which identified Mount Carruthers, Watsons Crags, and the Sentinel as possible search locations.¹²²

Considerations about deploying resources too early

138. Dr Whitehead gave evidence that every search and rescue coordinator must consider when and where to deploy resources, due to a concern that if resources are initially deployed to the incorrect location, they will not be easily redeployed when the correct location is identified. .¹²³ Sergeant Walsh stated that this concern is more relevant to foot searches, rather than searches involving air assets.¹²⁴

139. Dr Whitehead stated that this concern is more relevant to foot searches, rather than searches involving air assets. He also gave evidence that the location in this matter is one where there are adequate resources to undertake a reflex search without such concern. In more remote contexts, where there are fewer search and rescue personnel available, a search and rescue coordinator

¹²² Transcript 24 July 2024 at pp.45-46.

¹²³ Transcript 24 July 2024 at p.46.

¹²⁴ Transcript 24 July 2024 at p.47.

might “*avoid throwing assets too early, and instead husband assets and confirm information*”. However, Dr Whitehead stated that the Search and Rescue Manual states “*never not do a search because you’re waiting on that little bit of extra information*”.¹²⁵

140. Sergeant Walsh agreed with Dr Whitehead in respect of this concern. He also gave evidence that in mountainous or snowy terrain, air assets are the most appropriate to deploy as a broad-spectrum response, given that a search and rescue conducted on foot in such terrain would be significantly slower than in normal conditions.¹²⁶

Adequacy of initial response of police

141. Detective Inspector Sim gave evidence that he was of the view that the initial police response was appropriate. In support of his view, he cited the focus of police on information-gathering and corroboration of information, which allowed the Search Controller, in consultation with the Search Coordinator, to make sound decisions, based on reliable information, regarding the use of resources.¹²⁷

142. According to Detective Inspector Sim, information-gathering involves witness canvassing and CCTV canvassing. Where there is not a lot of CCTV footage, such as in the National Park, canvassing predominantly involves speaking to people. His evidence is that the goal is to find the last known position. This can also allow police to gain knowledge about a missing person’s “*state of mind, their condition, equipment*”, which is information the “*search experts need*”.¹²⁸

143. Detective Inspector Sim gave evidence that the search then focussed on information sharing within the investigative team. He stated that the current Missing Persons SOPs require a minimum of one briefing each day between

¹²⁵ Transcript 24 July 2024 at p.46.

¹²⁶ Transcript 24 July 2024 at pp.46-47.

¹²⁷ Transcript 24 July 2024 at pp.47-48.

¹²⁸ Transcript 24 July 2024 at p.48.

the search coordinator and investigators. He gave evidence that an officer in charge is a single point of contact for the family, as well as the central point of information, someone who understands the investigation's current status, where it is going, and investigative strategies to consider moving forward.¹²⁹

144. Detective Inspector Sim gave evidence that it is at the discretion of an individual police officer as to how they take notes and manage information. On his evidence, police officers are initially trained to write contemporaneous notes in their police notebook, but that some officers are more inclined to rely on memory. He said that "*the ultimate recording of information is through the OIC, then through the supervisors, duty officers, district inspectors as they become involved and see fit*". The intention in record keeping is to provide detailed, accurate and reliable information, and to maintain transparency in the investigation.¹³⁰

145. He also gave evidence that the Missing Person SOPs now include an investigation log, which encourages police to manage and record relevant information.¹³¹

146. Dr Whitehead gave evidence that one of the roles of a Search and Rescue (**SAR**) coordinator is to collect, collate, evaluate, and disseminate all the information received, thereby creating a single point of contact for receiving information. On his evidence, the SAR log assists in maintaining information received, but often information is recorded and managed in a more informal manner, "*because information comes in in all different fashions*".¹³²

147. Dr Whitehead's evidence is that in this case, someone should have been given the task of evaluating the information received and converting it into intelligence to be used as a base for the search. While, on his evidence, the

¹²⁹ Transcript 24 July 2024 at p.48.

¹³⁰ Transcript 24 July 2024 at p.48.

¹³¹ Transcript 24 July 2024 at pp.48-49.

¹³² Transcript 24 July 2024 at p.49.

police did gather all necessary information, the information was “*all over the place*”.¹³³

148. According to Dr Whitehead, from a SAR perspective, as opposed to a missing persons perspective, the SAR coordinator would have a system in place to evaluate and organise this information. His evidence is that there are forms in the National Search and Rescue Manual, including checklists, which assist the SAR coordinator to ask the appropriate questions, from a SAR perspective. This includes the ‘missing person questionnaire’.¹³⁴

149. When asked whether the police officers’ inquiries as to whether Andrew may have camped out overnight were appropriate, Detective Inspector Sim stated that they were valuable and important inquiries to make, despite not being consistent with the families’ information regarding Andrew’s usual practice. This is because while confirming information is one aspect of investigation, eliminating possibilities is another. This is imperative because it permits police to be able to place weight on information when making.¹³⁵

150. Both Dr Whitehead and Sergeant Walsh were also of the view that this was a valid line of inquiry, with Sergeant Walsh adding that this inquiry should have been made concurrently with a search taking place.¹³⁶

Use of social media in missing persons investigations

151. Detective Inspector Sim gave evidence that police use Facebook for general posts regarding missing persons. Since 2022, the police have been using location alerts, which can be targeted towards people located in particular Local Government Areas and suburbs. All people within those targeted areas who follow the NSWPF Facebook page will receive and alert. He gave evidence that there is a need to encourage more people to look at the NSWPF Facebook page.

¹³³ Transcript 24 July 2024 at p.49.

¹³⁴ Transcript 24 July 2024 at p.50.

¹³⁵ Transcript 24 July 2024 at p.51.

¹³⁶ Transcript 24 July 2024 at p.53.

152. Specifically in relation to backcountry skiing, Detective Inspector Sim stated that the police have been promoting their page through backcountry ski clubs and organisations. His evidence is that if the organisations' Facebook pages follow that of the NSWPF, then their followers will see reposts of any missing persons reports published on the police Facebook page. He further provided evidence that people often look at or post on social media when they regain telephone service in the mountains. He compares the release of this information to "*electronic canvassing*", which provides police with real-time, reliable information.¹³⁷

153. Detective Inspector Sim also gave evidence that in Andrew's case, involving the MPR may have resulted in Facebook being used as one possible investigative strategy which may have been suggested. However, he stated that there are also missing person coordinators who are the MPR representatives at each Police Area Command, or district. They are trained annually in relation to the Missing Persons SOPs and, new capabilities, strategies, and technologies. These coordinators provide advice if people in the command need assistance.¹³⁸

Geo-targeted SMS

154. According to Detective Inspector Sim's evidence, a geo-targeted SMS is a message sent to a particular geographical location in relation to a missing person. He gave evidence that this capability is one potential benefit of getting the MPR involved.

155. However, he was not of the view that a geo-targeted SMS would have made a difference in this case, due to the limited mobile coverage and the limited number of subscribers to the SMS messages, which is why alerts published on Facebook would work well, when deployed in conjunction with a geo-targeted SMS.¹³⁹ He did acknowledge that a geo-targeted SMS sent to the

¹³⁷ Transcript 24 July 2024 at pp.53-54.

¹³⁸ Transcript 24 July 2024 at p.54.

¹³⁹ Transcript 24 July 2024 at pp.55-56.

Jindabyne area would have been a possibility and would not have been affected by concerns surrounding mobile coverage.¹⁴⁰

156. Dr Whitehead expressed that both means would have been appropriate to consider in Andrew's case and that while it may not be a viable option in all circumstances, the question of mobile coverage may be a matter for expert consideration.¹⁴¹

Establishing a last known point

157. Sergeant Walsh gave evidence that the significant efforts made on Sunday, 4 September 2022, to establish Andrew's departure point and intended direction, were appropriate inquiries to make. His evidence is that the last known point assists in calculating distances, times, and decision points. This can occur concurrently to a reflex search. His is of the view that Trip Intention Forms, as well as the provision of information to next of kin ought to be actively promoted.¹⁴²

158. Dr Whitehead gave evidence that although someone's last known position cannot always be definitively ascertained, there may be a place last seen, or an initial planning point, which can also be used as a starting point by a SAR coordinator. For example, although there was no last known point for Andrew, his car in the car park constituted a good initial planning point. These different locations influence how a search will be conducted.¹⁴³

159. Detective Inspector Sim gave evidence that he was in favour of using the last known point to influence search and rescue response efforts. However, he tempered this by saying that a decision whether or not to deploy resources to a particular location, particularly one involving risk, must be intelligent and

¹⁴⁰ Transcript 24 July 2024 at p.70.

¹⁴¹ Transcript 24 July 2024 at p.55.

¹⁴² Transcript 24 July 2024 at pp.56-57.

¹⁴³ Transcript 24 July 2024 at p.57.

information based. He agreed with Sergeant Walsh that any attempt to identify a last known point should not delay the commencement of a reflex search.¹⁴⁴

Single Point of Contact

160. Detective Inspector Sim gave evidence that at the time that Andrew went missing, there was not a single point of contact provided for in the Missing Persons SOPs. According to his evidence, it is a general rule of policing to have a single conduit of information in respect of a matter. He also stated that there is a balance to strike, between ensuring best practices are followed and maintaining flexibility in investigations.

161. Detective Inspector Sim stated that since 2022, the Missing Persons SOPs have been amended to require that during the commencement, and for the first five days of an investigation, the family are provided a single point of contact, including the name and telephone number of the officer in charge. His evidence is that this reduces the emotional load on family members and reduces the number of questions being asked repeatedly.¹⁴⁵

162. However, he also gave evidence that in this situation, the fact that several police asked the same questions of the family shows that there were multiple police thinking the same way about the investigation. He is of the view that the key is that the police are asking the right questions.¹⁴⁶

163. Sergeant Walsh gave evidence that the family liaison is someone with whom the family can build rapport and to whom they can provide information.¹⁴⁷

164. Dr Whitehead's evidence in relation to this matter was that from a SAR perspective, there is a distinction between preliminary communications and extended communications. This is to say that the same questions are intentionally asked of the same people each day. He gave evidence that

¹⁴⁴ Transcript 24 July 2024 at pp.57-58.

¹⁴⁵ Transcript 24 July 2024 at p.58.

¹⁴⁶ Transcript 24 July 2024 at p.51.

¹⁴⁷ Transcript 24 July 2024 at p.58.

sometimes new information comes to light in response to the same question as time progresses and people come to realise the seriousness of the event. This is particularly true in relation to medical conditions and an individual's particular capabilities. In relation to this evidence, Dr Whitehead said that "*the more we ask questions, the more we actually get to the truth*".¹⁴⁸

Whether the search was adequate

165. Sergeant Walsh gave evidence that the search was adequate. He highlighted that the intelligence gathered indicated that Watsons Crags was likely to be Andrew's location and that the taskings were appropriate in the circumstances.¹⁴⁹

166. In relation to the fact that the helicopter which came from Bankstown had difficulties was, in his view, unsurprising. His evidence is that the climatic conditions in the main range are very dangerous, and the conditions must be correct for them to be able to fly properly.¹⁵⁰

167. He gave evidence that drones are used in search and rescue but would not be an appropriate resource in the relevant location due to considerations such as temperature, battery life, distance, and range. He gave further evidence that in using drones, the operator relies on maintaining line-of-sight.¹⁵¹

168. Dr Whitehead agreed that the search was adequate. He considered that the search was well-organised and that all those individuals who had something to contribute were consulted.¹⁵²

¹⁴⁸ Transcript 24 July 2024 at p. 9.

¹⁴⁹ Transcript 24 July 2024 at p.59.

¹⁵⁰ Transcript 24 July 2024 at p.60.

¹⁵¹ Transcript 24 July 2024 at p.60.

¹⁵² Transcript 24 July 2024 at p.60.

Prospective changes

Search Urgency Assessment forms

169. Dr Whitehead gave evidence that there would be some value amending the Search Urgency Assessment form to include guidance as to differences in response that may be required in various situations. He stated that although local SAR coordinators have local knowledge about hazards and equipment needed in a particular locale, such guidance would be valuable in directing their minds to possible local occurrences that might result in hazards.¹⁵³
170. Sergeant Walsh agreed with Dr Whitehead that local guidance regarding local hazards, terrain and equipment is invaluable.¹⁵⁴

Trip Intention Forms

171. Dr Whitehead's evidence was that if well set-up and widely used, Trip Intention Forms would be beneficial in terms of determining an individuals' intended destinations. However, he highlighted a concern regarding the question of what organisation manages and monitors the Trip Intention Forms.¹⁵⁵
172. This problem may be overcome to some extent by the having Trip Intention Forms electronically recorded, so that they could be searched by police as needed. Dr Whitehead gave evidence that in the Marine Rescue context, an electronic system is used, which automatically provides an alert an hour before and after the projected return time. However, he stated that the question would still remain as to what organisation might control this system? According to Dr Whitehead, "*nothing beats telling a responsible person where I'm going, when I'm due back, so that someone will raise the alarm*".¹⁵⁶

¹⁵³ Transcript 24 July 2024 at p.61.

¹⁵⁴ Transcript 24 July 2024 at p.61.

¹⁵⁵ Transcript 24 July 2024 at p.62.

¹⁵⁶ Transcript 24 July 2024 at p.62.

173. Detective Inspector Sim gave evidence that the MPR is currently considering various way to promote Trip Intention Forms. He gave evidence that the Forms are promoted on the National Parks App, but that police would also like to promote them through media, business, local environments, clubs, and social media. He agreed that the monitoring of Trip Intention Forms presents a difficulty, in that policing is reactionary. The Trip Intention Form is used by police in the worst-case scenario, in order to commence an investigation. He gave evidence that there are inherent differences in the Marine Rescue context, in that there are fewer boats on the water than there are people in the NPWS.¹⁵⁷

174. His evidence did, however, highlight that the Trip Intention Form has “*hidden benefits*”, in that it is a checklist that informs searchers in terms of whether someone is carrying a PLB and whether they have packed the appropriate equipment and clothing.¹⁵⁸

175. He also provided evidence agreeing with Dr Whitehead, that telling someone where you are is of utmost importance. He is of the view that a combination of using a Trip Intention Form, and informing someone of your plans allows for a strong response in the event that things go wrong.¹⁵⁹

176. Detective Inspector Sim also stated that the police are concerned with the protection of life and property and that the purpose of the Trip Intention Form is not to invade an individuals’ privacy. On his evidence, if police are charged with the responsibility of saving someone or looking for them, they need as much information as possible.¹⁶⁰

Further use of technology

177. Detective Inspector Sim gave evidence that there has been some discussion within the NSWPF regarding the use of checkpoints in the

¹⁵⁷ Transcript 24 July 2024 at p.63.

¹⁵⁸ Transcript 24 July 2024 at p 64.

¹⁵⁹ Transcript 24 July 2024 at p.63.

¹⁶⁰ Transcript 24 July 2024 at p.64.

backcountry. These checkpoints would present users with the opportunity to use a QR code, or some other technology, to log their presence at that location. He gave evidence that if there were a pre-completed Trip Intention Form, the check-in could be linked to that particular form. He drew a comparison with the Marine Rescue context, where it is possible to use an online App or radio to log when someone is going to sea.¹⁶¹

178. Dr Whitehead gave evidence regarding different types of trackers, including ones which are able to send periodic updates as to a person's location. One such example is the Garmin InReach and SPOT satellite safety devices to which Mr Herring also gave evidence about. Mr Whitehead stated that the devices would be of particular value where a person is incapacitated.

179. Dr Whitehead drew attention to some limitations to the devices. For example, the devices are by subscription and may not be affordable for all people. Some are also monitored outside of Australia, which can present barriers. For example, SPOT is monitored from Texas, and a memorandum of understanding was required to be established in the case that an emergency was activated by a SPOT device in Australia, which allows the data to then be transferred to the Joint Rescue Coordination Centre in Canberra for response.

180. Privacy is also an issue with SPOT devices, according to Dr Whitehead. It is very difficult for SAR to get data on a particular individual with a SPOT device, due to their protections. Even if SAR only want to ascertain if someone is alive, messages do not always reach the person through the overseas intermediaries.¹⁶²

181. I am grateful for the expert evidence given by Dr Whitehead, Detective Inspector Sim, and Sergeant Walsh and I make findings with regards to their evidence in respect of the issues pertaining to the response of the NSWPF and the search and rescue operation which are addressed later in these findings.

¹⁶¹ Transcript 24 July 2024 at p 64.

¹⁶² Transcript 24 July 2024 at p.66.

Commander of the Monaro Police District

182. Superintendent John Klepczarek is the Commander of the Monaro Police District and has been since 17 March 2021. He attended every day of the inquest and provided a statement which was included in the brief of evidence that was tendered and gave oral evidence.

183. Superintendent Klepczarek gave evidence that he estimates that in any given year the Monaro Police District responds to approximately 130 calls relating to either missing persons or concerns for welfare, and of these approximately 20 will require a coordinated Police response.¹⁶³ In his statement, he set out that over time the Monaro Police District has developed a training course delivered as the Alpine Operations Course to prepare police officers to work safely within an alpine environment, with a focus on search and rescue capabilities.¹⁶⁴ This was considered necessary as police officers who are initially recruited to the Jindabyne area are general duties police who have no specialist knowledge or training in snow-related events.¹⁶⁵

184. Superintendent Klepczarek emphasised that police officers who undertake this course work in collaboration with other agencies, such as the SES, when undertaking search and rescue operations¹⁶⁶, and that this cross-agency collaboration is especially pertinent as the Alpine Operators Unit is not an accredited rescue organisation and its focus is to support and supplement the SES (and other partners such as NSW Ambulance and NPWS).¹⁶⁷

185. Despite the above, concerns were raised during the inquest with respect to the NSWPF's response to the initial report and subsequent communication with Andrew's family.

¹⁶³ Transcript 24 July 2024 at p.90.

¹⁶⁴ Exhibit 1 Tab 61 Klepczarek statement at [9]-[10].

¹⁶⁵ Exhibit 1 Tab 61 Klepczarek statement at [8].

¹⁶⁶ Exhibit 1 Tab 61 Klepczarek statement at [8]-[18]; Transcript 24 July 2024 at p.89.

¹⁶⁷ Exhibit 1 Tab 61 Klepczarek statement at [8]-[18].

186. Superintendent Klepczarek acknowledged that victim and family support could have been more appropriately managed at that time¹⁶⁸ and conceded that the inclusion of Andrew's family could have been better.¹⁶⁹ He also acknowledged that the absence of an appropriate location for the family to liaise with police may have contributed to the family's concerns that the NSWPF's response appeared to lack empathy.¹⁷⁰

187. Superintendent Klepczarek advised that the Monaro Police District now have appointed a family liaison officer to assist with victim support and to be a point of contact for families which was not available in 2022.¹⁷¹

188. Superintendent Klepczarek informed the Court that a local service agreement has also been implemented with the Rescue and Bomb Disposal Unit (**RBDU**). The RBDU is a specialist unit who are equipped with the necessary skills, by virtue of their specialist training, to undertake search and rescue operations.¹⁷² This service agreement provides that police from Monaro Police District will contact RBDU in the first instance in circumstances where a coordinated police response is required for a missing person. RBDU will then advise police and provide guidance on how best to proceed.¹⁷³ Superintendent Klepczarek informed the Court that it is his hope, as time progresses, that if a major event occurs within the Monaro Police District's region, then the RBDU will be able to identify if it is beyond their capacity and send personnel with specialised training to assist with the operation.¹⁷⁴

189. Counsel Assisting raised with Superintendent Klepczarek the circumstances surrounding the initial report made by Janice and how it did not appear, based on the available evidence, that any inquiry or suggestion was made to Janice that if she wanted to report a person as missing that she needed to do that in person at a police station, and neither did it appear that such advice

¹⁶⁸ Transcript 24 July 2024 at p.91.

¹⁶⁹ Transcript 24 July 2024 at p.91.

¹⁷⁰ Transcript 24 July 2024 at p.91.

¹⁷¹ Transcript 24 July 2024 at pp.92-93.

¹⁷² Transcript 24 July 2024 at p.97.

¹⁷³ Transcript 24 July 2024 at p.96.

¹⁷⁴ Transcript 24 July 2024 at p 97.

was given by police officers, who later had contact with Janice.¹⁷⁵ Superintendent Klepczarek was somewhat dismayed and expressed surprise that any police officer of his did not know about the requirement for a member of the public to report a person missing at a police station.¹⁷⁶ He did, however, acknowledge that police officers ought to be aware that a missing person report cannot be made over the telephone and that this is something that he would discuss with the senior leadership after the inquest.¹⁷⁷

190. I acknowledge that Superintendent Klepczarek attended each day of the inquest and was very responsive. I am grateful for his evidence and commend the reflection undertaken on the lessons that can be learned and on the improvements that are underway.

NSW National Parks and Wildlife Service (NPWS)

191. Claire Allen is the Director of Policy and Engagement at NPWS. Ms Allen provided a statement which was included in the brief of evidence that was tendered and gave oral evidence at the inquest.

192. Chris Darlington is the Acting Area Manager Alpine Queanbeyan at NPWS and provided two statements which were included in the brief of evidence that tendered.

193. Both Ms Allen and Mr Darlington provided very comprehensive and valuable evidence to the Court which I accept. I do not propose to set out their evidence in full, however, I have extracted the key points which address the regulatory and advisory regime in place, and the guidance and information that is available to the public on backcountry skiing.

¹⁷⁵ Transcript 24 July 2024 at p.94.

¹⁷⁶ Transcript 24 July 2024 at p.95.

¹⁷⁷ Transcript 24 July 2024 at p.95.

194. Ms Allen outlined in her statement how backcountry skiing is reasonably unregulated and occurs in a natural setting as opposed to other types of skiing that occur on groomed trails for example at ski resorts.¹⁷⁸

195. Ms Allen set out in her statement that:

*“NPWS provides extensive guidance and advice to the public in relation to backcountry skiing through its website, affiliate websites, social media, public notices throughout the alpine regions (including ski resorts) and its Visitor Centres. Signs including safety advice and QR-code links to trip intention forms and alpine hazard reports have been installed in some the most popular backcountry areas such as Dead Horse Gap, Guthega, Thredbo, and Perisher.”*¹⁷⁹

196. Ms Allen drew the Court’s attention to the fact that NPWS has a section of its website dedicated to providing guidance, advice, and education to the public in relation to Alpine Safety (“the website”).¹⁸⁰

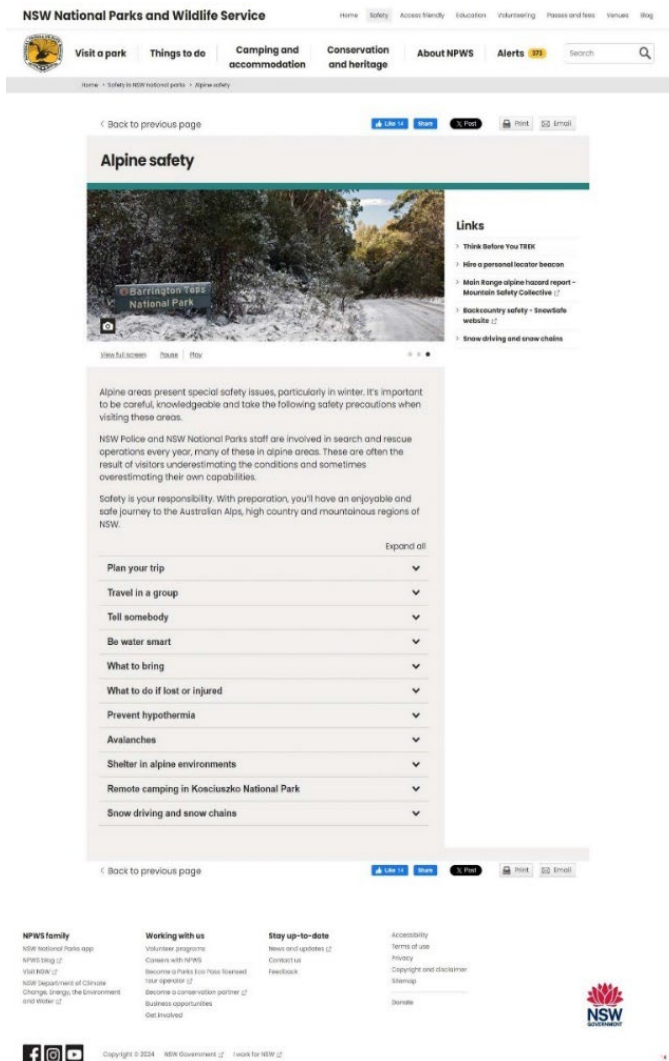
197. Set out below is a screenshot of the main page of the website that was attached to Ms Allen’s statement¹⁸¹:

¹⁷⁸ Exhibit 1 Tab 60 Allen statement at [8].

¹⁷⁹ Exhibit 1 Tab 60 Allen statement at [10].

¹⁸⁰ Exhibit 1 Tab 60 Allen statement at [11].

¹⁸¹ Exhibit 1 Tab 60 Allen statement at Annexure A.



198. The website provides a number of drop-down menus to assist the public with specific advice and guidance with respect to any proposed trip to the alpine areas of NSW (including those intending to partake in backcountry skiing) which includes but is not limited to: Completing a Trip Intention Form; Encouragement to travel in a group; To tell somebody of your plans; What to bring, What to do if lost or injured; Hiring a Personal Locator Beacon; and Preventing hypothermia.¹⁸²

199. Ms Allen gave the following evidence about the lodgement of a Trip Intention Form which become a significant focus of the evidence at the inquest:

“The trip intention form is web based, easily accessible and provides general information on trip planning and trip safety. The trip intention form is completed

¹⁸² Exhibit 1 Tab 60 Allen statement at [14]-[15].

*online within minutes and can be used for any type of activity in NSW National Parks. To complete the form, a person registering the trip needs the name, email address and phone number of the nominated contact person, start and finish times, dates and locations, vehicle details and registrations and the route the trip will take. The UIN number of a Personal Locator Beacon can also be registered. Once the trip intention form has been completed the travellers contact person is sent an email with trip details and the person completing the form is also emailed a copy of the completed form.”*¹⁸³

*“NPWS considers that continued enhancement of the trip intention form system, supported by ongoing educational and awareness raising initiatives (such as targeted campaigns for the snow season and at peak visitor periods across the year) remains the optimal approach to improving voluntary uptake of the trip intention form, alongside measures such as increased use of free emergency response beacons.”*¹⁸⁴

*“NPWS recognises there is further opportunity to work with NSW Police to improve systems for Trip Intention Form information sharing and to collaborate on existing and emerging social media and online tools to improve public visibility of safety information, emergency messaging and incidents underway (including search and rescue operations).”*¹⁸⁵

200. Ms Allen also gave the following oral evidence with regards to the Trip Intention Form code:

“The Trip Intention Form code takes you to where you can, on your phone, access the Trip Intention Form which is a system hosted by National Parks that allows you to fill in the details, who you are, your contact number. You nominate an emergency contact, and you put in the details about where you're headed, where you're planning to go, and the equipment that you have with you, anyone else travelling with you. And you submit that and the, the, the nominated emergency contact then gets an SMS to let them know that they are a nominated contact. It includes the time that you're expected to return. And so the idea there is it facilitates, if there, if

¹⁸³ Exhibit 1 Tab 60 Allen statement at [32].

¹⁸⁴ Exhibit 1 Tab 60 Allen statement at [38].

¹⁸⁵ Exhibit 1 Tab 60 Allen statement at [39].

something goes wrong and that person doesn't return, there's then a process where the emergency, the, the nominated contact can alert police.”¹⁸⁶

...

“there's sort of two main points that we try to deliver our safety messages, one is before somebody leaves home when they're actually planning their trip cause that's, and that is an important point of influence; secondly, at the site which is the signs we've just talked about. So we have a dedicated alpine safety webpage which in my statement I've, I've, I've included some advice on, it includes advice on how to plan your trip, what you should take with you, encourages people to complete the Trip Intention Form, to check the weather forecast, advice on travelling in a group, we advise three people minimum, generally telling people where they're going, and making sure they bring the right equipment to suit the risks.”¹⁸⁷

201. Set out below are screenshots of an example Trip Intention Form that was attached to Ms Allen's statement:¹⁸⁸

¹⁸⁶ Transcript 25 July 2024 at p.5.

¹⁸⁷ Transcript 25 July 2024 at p.5.

¹⁸⁸ Exhibit 1 Tab 60 Allen statement at Annexure H.

27092024 11:23 NSW National Parks and Wildlife Service

Home Site Accessibility Enquiries Visit a park Things to do Camping and accommodation Conservation and heritage Search

Trip Intention Form

Trip details

Park name*

Specific location (if any, with an 'enquire' link)

Start date*

Start time*
 : AM

End date*

End time*
 : AM

Details of the route*

Start point*

Will you have a vehicle parked at the starting point?*
 Yes No

Group info

Is anyone else joining you on this trip?*
 Yes No

Have you completed this trip before?*
 Yes No

Do you have any known medical conditions?*
 Yes No

[Cancel](#) [Next](#)

<https://parks.nsw.gov.au/visit-a-park/visit-a-park> 25

27092024 11:23 NSW National Parks and Wildlife Service

Home Site Accessibility Enquiries Visit a park Things to do Camping and accommodation Conservation and heritage Search

Trip Intention Form

Equipment

We strongly recommend that you use a Personal Locator Beacon (PLB) when you can bring your own PLB or PLB of an RE or RE of those locations.

Will you be taking a Personal Locator Beacon (PLB), satellite phone or tracking device?*
 Yes No

Tick all the items that your group will be carrying. Make sure your equipment is suitable for the conditions.

Compass
 First aid kit
 Food for all days of trip, plus spare food
 Sleeping bag
 Spare/warm clothing
 Sufficient water or purification equipment
 Tent/shelter
 Topographic map(s)
 Torch/headlight
 Wet weather gear

Other equipment (mobile, radio etc)

[Cancel](#) [Next](#)

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<https://parks.nsw.gov.au/visit-a-park/visit-a-park> 26

27092024 11:24 NSW National Parks and Wildlife Service

Home Site Accessibility Enquiries Visit a park Things to do Camping and accommodation Conservation and heritage Search

Trip Intention Form

Your privacy

By completing this form you agree to the sharing of your personal data as outlined in the NSW Privacy Policy section on the NSW Police.

Terms and conditions

When you submit this form, we will send you a confirmation email with all the information you have provided. An email and SMS will also be sent to your emergency contact(s), with instructions on how to contact NSW Police if you don't return on time. The email will also include a link to cancel your trip if your plans change. Please confirm that you have read, understood and agree to the following:

Responsibility to provide accurate, up-to-date information

I confirm that the information that I have provided in this form is complete and accurate. If my trip intentions change in any way after submitting this form, I agree to cancel or update my trip details before setting out.

I confirm that I have read and understood the NSW National Parks and Wildlife Service (NPWS) [Privacy Policy](#) and agree to my personal and health information being collected and managed in accordance with this policy. I also confirm that my emergency contact(s) have given me permission to share their personal information with NPWS.

I understand that the information in this form will be sent to my emergency contact(s).

I understand that the information in this form may be shared with NSW Police to help facilitate an emergency response, if required.

Responsibility for your own safety

I understand that this form does not constitute approval by NSW Police or NPWS to undertake my trip. I understand and agree that I am responsible for the necessary trip planning and preparation.

I understand that it's my responsibility to ensure that my emergency contact(s) can notify NSW Police if I am missing, using the details from this form.

I understand that if I submit this form, it does not under any circumstances guarantee that NSW Police or NPWS will start a search and rescue operation if I do not return from my trip, even if my emergency contact(s) notify NSW Police that I am missing.

[Cancel](#) [Submit](#)

<https://parks.nsw.gov.au/visit-a-park/visit-a-park> 27

202. Mr Darlington set out in his statement the following information about the backcountry skiing areas along with the guidance and advice that is available to members of the public:

“Visitors access backcountry ski areas from a range of different locations... There are some backcountry areas and informal routes that visitors regularly follow. Many of the access points are wide (several hundred metres or more) and undefined. Often, while backcountry skiing, a visitor may have a general plan for where they will travel. However, they will often adapt during their trip depending on weather, snow conditions, energy levels or any other relevant factors. The snow is often multiple metres deep, so it enables skiers to go where they choose and requires no man built assets.”¹⁸⁹

“NPWS provides marked and groomed cross-country ski trails at Perisher Valley which not only provides for cross-country ski enthusiasts, it also enables people that are learning backcountry skiing skills to do so in a relatively controlled environment. NPWS has also installed snow poles to mark some of the most popular backcountry routes such as from Thredbo and Charlotte Pass to Rawson Pass, which is located at the base of Mt Kosciuszko. These poles stand about 3m high and can assist with navigation during poor visibility, especially if the skier is not equipped or knowledgeable in the use of devices such as a GPS. Although these pole lines are provided, many backcountry skiers will select their own unique Route.”¹⁹⁰

“At the NPWS alpine based visitor centres, we have signage to encourage backcountry safety such as being prepared and appropriately equipped, links to weather forecasts, promotion to rent at no cost a Personal Locator Beacon (“PLB”) and links to submit a trip intention form.”¹⁹¹

“The staff will often direct visitors to the relevant alpine safety section of the NPWS website, they promote and can assist visitors to lodge a trip intention form and they can provide details for Park Eco Pass Operators, which are commercial operators licensed by NPWS to guide or instruct visitors to undertake activities such as backcountry skiing.”¹⁹²

¹⁸⁹ Exhibit 1 Tabs 59 Darlington statement at [8].

¹⁹⁰ Exhibit 1 Tabs 59 Darlington statement at [9].

¹⁹¹ Exhibit 1 Tabs 59 Darlington statement at [11].

¹⁹² Exhibit 1 Tabs 59 Darlington statement at [13].

*“In the financial year ending June 2022, NPWS provided seed funding for Mountain Safety Collective (“MSC”) for their education programs and alpine hazard reporting. MSC are a not for-profit association that support winter backcountry recreation in NSW and Victoria. Links to the Mountain Safety Collective website can be found on the NPWS website to provide the public with education in relation to backcountry activities and up to date hazard reports for backcountry areas. The daily hazard reports on the MSC website detail snowpack stability, ice slide danger, weather and general alpine hazards. In addition to the MSC being featured as a resource on the NPWS website, links to the MSC hazard reports can now be found on signage throughout the backcountry.”*¹⁹³

*“In 2023, as part of continuous improvements made by NPWS, stickers including a QR code link to the MSC website have been added to the signage throughout the backcountry. This QR code takes visitors to the MSC daily forecast for alpine hazards such as weather, ice and avalanche risk.”*¹⁹⁴

203. Mr Darlington also gave evidence that extensive signage is displayed throughout the backcountry areas or access points in the main range of the Kosciusko National Park that are often frequented by skiers which highlights the risks associated with activities in the backcountry area and provides advice and guidance.¹⁹⁵

204. Set out below is a copy of a map and photographs demonstrating the specific locations of the signage displayed throughout the backcountry areas or access points in the main range of the Kosciusko National Park that was attached to Mr Darlington’s supplementary statement¹⁹⁶:

¹⁹³ Exhibit 1 Tabs 59 Darlington statement at [16].

¹⁹⁴ Exhibit 1 Tabs 59 Darlington statement at [20].

¹⁹⁵ Exhibit 1 Tabs 59 Darlington statement at [19], Tab 59A Darlington statement at [3].

¹⁹⁶ Exhibit 1 Tab 59A Darlington statement at Annexure A.



KEY

1. Top of Thredbo at edge of lease area
2. Dead Horse Gap
3. Cascades Trail
4. Farm Creek Bridge
5. Guthega Dam Wall Access Trail (beside Guthega Carpark)
6. Guthega Dam Wall
7. Illawong Track Head Guthega
8. Munyang Power station

Reference 1 on Map - Top of Thredbo lease area



Reference 1 on Map - Top of Thredbo lease area



Reference 2 on Map - Dead Horse Gap



Reference 3 on Map - Coaxie Trail



Reference 4 on Map - Farm Creek bridge on Hawong Trail near Guthega



Reference 5 on Map - Guthega dam wall access trail beside Guthega carpark



Reference 6 on Map - Guthega cam wall



Reference 7 on Map - Hawong track head Guthega



Reference 8 on Map - Murrumbidgee Power Station



205. Further, the Alpine Safety section of the NPWS now relevantly includes the following information under ‘snow safety’:

“Snow conditions can vary greatly and certain conditions present significant risks, particularly on steep slopes. Always consider snow conditions as part of your overall assessment and planning for your trip. Always consider ice risk. Avoid trips when conditions are extremely icy unless you are equipped and experienced for these conditions...”¹⁹⁷

¹⁹⁷ Exhibit 5 which is print out of the Alpine Safety section of the NPWS website.

Circumstances of Andrew's accident

206. Counsel Assisting submitted that although we do not know the exact circumstances of the accident because it was not witnessed, there seems very little controversy that Andrew attempted to ski down a run, probably the Dog Leg Chute, at Watsons Crags, at a stage where it was, at parts, icy.¹⁹⁸

207. Counsel Assisting submitted there is ample evidence to suggest that Andrew was in the Dog Leg Chute at one stage, including that one of his ski poles was later discovered there.¹⁹⁹ Counsel Assisting further submitted it is open to me to find, on the available evidence, that it would appear most likely that Andrew simply lost control, probably due to the snow conditions, and after falling uncontrolled for some distance, struck, or landed on a rock in the area called Crags Creek.²⁰⁰

208. I agree with Counsel Assisting and find that Andrew attempted to ski down a run, probably the Dog Leg Chute, at Watsons Crags and lost control probably due to the snow conditions, and after falling uncontrolled for some distance, struck, or landed on a rock in the area called Crags Creek.

Whether Andrew survived for any appreciable period of time after he sustained his injuries

209. Counsel Assisting submitted that there seems very little controversy that Andrew did not survive for any appreciable amount of time and that this finding is supported by Professor Duflou's opinion that the injuries Andrew sustained would have been rapidly and possibly near instantaneously fatal. There were un-survivable head and chest injuries and no obvious reaction to the trauma which would indicate survival for any period. It was probable, in Professor Duflou's opinion, that Andrew was unconscious from the moment he sustained the fall and therefore did not suffer. Counsel Assisting submitted that this finding is also supported by Dr Luckin's opinion, that based on the photographs he

¹⁹⁸ Transcript 25 July 2024 at p.17.

¹⁹⁹ Exhibit 1 Tab 13 Tickell statement at Annexure C.

²⁰⁰ Transcript 25 July 2024 at p.17.

reviewed,²⁰¹ it does not appear that Andrew moved, which supports the conclusion that Andrew was rapidly unconscious, and that his death was nearly instantaneous.²⁰²

210. I agree with Counsel Assisting and find that Andrew did not survive for any appreciable amount of time and that the injuries he sustained would have been rapidly and possibly near instantaneously fatal.

When did Andrew's death occur?

211. Counsel Assisting submitted that it is open for me to make a finding that Andrew was last seen on 3 September 2022, that the date alone is sufficient for me to make a finding on when Andrew's death occurred, and that it is not essential for me to make a finding on the time of death.

212. Counsel Assisting submitted that I can arrive at this finding, to which there seems very little controversy, by a process of deduction. Counsel Assisting submitted that what is known from the evidence of the witnesses is that Andrew was last seen at a location at the top of the Watsons Crags ridge close to the location where he was found. The timings of those last sightings vary. The earliest puts the sighting at some time after 11 am, the latest at some time after 12.30 pm. Counsel Assisting submitted that it is difficult to say with certainty when Andrew's death occurred although it seems likely to have occurred around the middle of the day. However, Counsel Assisting submitted that a finding on the date that Andrew's death occurred, is sufficient for the findings that I am required to make.²⁰³

213. I agree with Counsel Assisting and find that Andrew died on 3 September 2022.

²⁰¹ Exhibit 2.

²⁰² Transcript 25 July 2024 at p.17.

²⁰³ Transcript 25 July 2024 at p.1.

NSW Police Force response to the report that Andrew was missing

Whether Andrew should have been recorded as a missing person at the time of the initial report his mother on 3 September 2022?

214. Counsel Assisting submitted that is open for me to make a finding that Andrew should have been recorded as a missing person at the time of the initial report made by his mother, Janice on 3 September 2022 for the following reasons.²⁰⁴

215. Andrew clearly met the definition of a missing person as set out in the Missing Persons SOPs that were then in force in 2022.²⁰⁵ A missing person is anyone who is reported missing to police whose whereabouts are unknown and there are fears for the safety or concern of the welfare of that person. Detective Inspector Sim gave evidence that there were strong arguments either way in terms of whether that was the case, although, he concluded ultimately that Andrew ought to have been identified as a missing person. Further, Janice expressed concern for Andrew and clearly his whereabouts were unknown to her.²⁰⁶ I agree with Counsel Assisting's submission.

216. Counsel Assisting submitted that the next aspect of the question of whether Andrew should have been reported as a missing person is the need for a report to have been made in person at the police station. It is uncontroversial that it is a requirement, as it is set out in the Missing Persons SOPs²⁰⁷ and is also set out in the information sheet that is handed out to members of the public.²⁰⁸ Counsel Assisting submitted that it is unclear, on the evidence, if that was a reason or informed the reason for recording Janice's initial report about Andrew as an 'occurrence only'. Counsel Assisting highlighted that what is most pertinent to point out is that it appears that Janice was not advised at any stage that she needed to make the report at a police station, and she ought to have been advised so. If that was the case, and if that

²⁰⁴ Transcript 25 July 2024 at p.18.

²⁰⁵ Exhibit 1 Tab 51 at p.11.

²⁰⁶ Transcript 25 July 2024 at p.18.

²⁰⁷ Exhibit 1 Tab 51 at p.14 [6.0].

²⁰⁸ Exhibit 1 Tab 51 at p.107.

was any barrier to the police response, Counsel Assisting submitted that I would have little difficulty, to which I agree, in concluding that Janice, given what she did the next day, driving straight from Griffith to Jindabyne, would have been the sort of person who would have gone to a police station immediately at the first opportunity to make a relevant report. Counsel Assisting submitted that the real issue in this aspect, is that Janice was not advised of that need at any stage.²⁰⁹

217. Counsel Assisting, having submitted that Andrew should have been recorded as a missing person, acknowledged that the following question arises which is, what difference would it have made? Detective Inspector Sim in his evidence considered that it would not have made a difference. In summary, his evidence was that police conducted themselves in accordance or in a manner consistent with the way that a high-risk missing person would be investigated.²¹⁰ Counsel Assisting submitted that there are differences and suggested that there are in essence three of them which are set out below.

218. Firstly, if it had been treated as a missing person's report, it would have required, under the Missing Persons SOPS, the COPS event for a missing person to be used, a missing persons checklist engaged, and by reason of those matters certain facts that police have their attention directed to.²¹¹ I accept the submissions of Counsel Assisting.

219. Secondly, is that police would have had to perform a risk assessment.²¹² As was addressed in the evidence, a consequence of having gone through that risk assessment is that Andrew would have been identified as a person meeting one of the high-risk red flag questions. Relevantly: "*Is the missing person missing in weather conditions or in a geographical area that would seriously increase risk to health and/or safety?*"²¹³ One of the examples is missing in snow. Counsel Assisting submitted that had Andrew been identified as a

²⁰⁹ Transcript 25 July 2024 at p.19.

²¹⁰ Transcript 25 July 2024 at p.19.

²¹¹ Transcript 25 July 2024 at p.19.

²¹² Exhibit 1 Tab 51 Risk assessment Procedures pp.54-58 at [11.0]-[11.3].

²¹³ Exhibit 1 Tab 51 Annexure A – Initial Response Missing Persons Checklist at p.102.

missing person and a risk assessment been conducted, he would have been identified as a high-risk missing person. A consequence is that an immediate search and rescue response would have been required. I accept the submissions of Counsel Assisting.

220. Thirdly, is that the MPR would have been involved who bring a particular skillset to these sorts of matters. Detective Inspector Sim and his colleagues would have been notified the morning after a report is made, at 5 am, would have been able to provide expert assistance and advice to the local command. Relevantly, in Andrew's case that might have included advice about Facebook, about promulgating information about him through that method, which as we know was ultimately very successful. This would now include the use of geotargeted SMS messages which could potentially have great use in identifying somebody lost on the snow, certainly from the perspective of those who are in and around resorts.²¹⁴ I accept the submissions of Counsel Assisting.

221. I pause here to reflect on some evidence that Counsel Assisting drew my attention to in submissions, which is that there was some initial uncertainty on the part of police about whether Andrew was always or usually of the habit of contacting his mother after skiing. Counsel Assisting submitted that it is an unfortunate dichotomy that arose. Constable Ryan Wyatt in his statement makes clear that this was the information reported from Janice: "*Andrew always contacts me when he comes down from a day on the mountain.*"²¹⁵ That is a statement completed long after the events. Counsel Assisting submitted, and I agree, that it is unfortunate that that information was not translated into a CAD message or captured by police, and that it was not quite the way that either Constable Fraser or Constable May understood the situation. I agree with Counsel Assisting that it certainly was apparent throughout the inquest that Janice had been adamant as to Andrew's invariable practice to contact her, and

²¹⁴ Transcript 25 July 2024 at pp.18-20.

²¹⁵ Exhibit 1 Tab 28 Wyatt statement at [9].

that is what was mainly driving her concern in contacting the police in the first place.²¹⁶

222. It was submitted on behalf of the Family that the matter should have been dealt with as a missing person case at the outset, consistent with Counsel Assisting's submissions, which would have triggered some consequences, including that Janice would have been directed to attend in person to report Andrew missing, and that he would have been flagged as a high risk missing person on the COPS system under the automatic risk assessment. Counsel for the Family submitted that it is important to reflect that if Janice had gone to Griffith Police Station the information might have been recorded differently and communicated to Jindabyne police differently, and it would have reduced the number of people she was talking to, and the risk of any information not being clearly conveyed. The Family acknowledged that Senior Constable Tickell was frank in his evidence and upfront that there was miscommunication in this case.²¹⁷

223. It was submitted on behalf of Senior Constable Tickell that there ought to be no adverse finding made against him on the basis that Senior Constable Tickell played no role in the decision to record the initial report as an "occurrence", and that his primary role was to relay information regarding the enquiries made by himself and Senior Constable Antrum to Acting Inspector Hughes.²¹⁸

224. It was submitted on behalf of Acting Inspector Hughes that the evidence makes plain that Acting Inspector Hughes gave advice to Constable Fraser to enter the initial report provided by Janice into COPS as an incident type rather than as a missing person.²¹⁹ It was submitted that it is regrettable that Acting Inspector Hughes has not provided an explanation as to why this decision was made.²²⁰ It was further submitted that Detective Inspector Sim, in his evidence,

²¹⁶ Transcript 25 July 2024 at p.18.

²¹⁷ Transcript 25 July 2024 at p.27.

²¹⁸ Transcript 25 July 2024 at p.32.

²¹⁹ Transcript 25 July 2024 at p.33.

²²⁰ Transcript 25 July 2024 at p.33.

formed the view that while strong arguments could be made both ways on how this report ought to have been categorised, ultimately his view was that it should have been recorded as a missing person.²²¹

225. It was submitted on behalf of Acting Inspector Hughes that it is open to me to find that the evidence of Detective Inspector Sim ought to be accepted, and it was acknowledged that the absence of recording the initial report as a missing person meant that that the Missing Person Registry did not have oversight of the investigation and as such could not provide any guidance in that respect.²²² Notwithstanding this, it was submitted on behalf of Acting Inspector Hughes that the practical consequences of not having the initial report entered as a missing person were quite limited.²²³

226. It was submitted on behalf of the Commissioner of Police that if Andrew had been identified on the COPs system as a missing person to which the missing person's tool would have been engaged as a guide to some extent, that it is a false hope because that tool has to be reassessed continuously as more and more information comes in.²²⁴

227. I accept Counsel Assisting's submissions and find that Andrew should have been recorded as a missing person at the time of the initial report made by Janice on 3 September 2022 and that the report being classified in COPS as a missing person would have made a difference for the reasons Counsel Assisting has provided.

Were the risk assessments appropriate, and did they result in an appropriate risk rating? Was the initial police response to the report adequate? Should a search and rescue operation have commenced earlier?

228. Counsel Assisting submitted that consideration of the above centres on the Search Urgency Assessment that Acting Inspector Hughes performed at

²²¹ Transcript 25 July 2024 at p.33.

²²² Transcript 25 July 2024 at p.34.

²²³ Transcript 25 July 2024 at p.34.

²²⁴ Transcript 25 July 2024 at p.34.

about 11.10 pm on 3 September 2022 and the actions which flowed from that assessment.²²⁵

229. Counsel Assisting submitted that it is arguable that some of the descriptors could have been scored in a different way, and that they were the following day by Senior Constable Antrum.²²⁶ However, Counsel Assisting submitted that the critical point is the fact that Andrew was alone which was scored 1, which required Acting Inspector Hughes to at least consider whether or not to engage an emergency response at the outset. The difficulty, Counsel Assisting submitted, is that there is no evidence that Acting Inspector Hughes did so. Counsel Assisting submitted that I could find that the weight of the evidence supports a conclusion that the initial report did require at least a measured response, and that in practical terms that meant consideration of a reflex search²²⁷ the following morning.²²⁸ I agree and make this finding.

230. Counsel Assisting submitted, and I agree, that the expert evidence supports a finding that the only effective search that was going to be undertaken would have been an aerial one, certainly at the outset and given the range of terrain in which Andrew might have been located and the difficulties of searching that terrain in any method other than an aerial search. I agree with Counsel Assisting's submissions that the weight of the expert evidence supports a conclusion that following the initial report a **measured response** was required, and that meant a **reflex search** at first light which would have involved consideration of a helicopter.²²⁹ (Emphasis added)

231. Counsel Assisting submitted that there are several factors which go into the deployment of a helicopter, one of which is weather and that from the available evidence, what occurred both on the evening of 4 September 2022 and the following day, are circumstances which make it very difficult for some aerial resources to deploy. Also, that a decision needs to be made by the person

²²⁵ Transcript 25 July 2024 at p.20.

²²⁶ Exhibit 1 Tab 17 Antrum statement at Annexure A.

²²⁷ Exhibit 1 Tab 56 National Search and Rescue Manual at p.187.

²²⁸ Transcript 25 July 2024 at p.20.

²²⁹ Transcript 25 July 2024 at pp.20-21.

coordinating scarce resources, and they, to some extent, need to be persuaded to deploy resources and that it is appropriate to do so. Notwithstanding this, Counsel Assisting submitted that there is just no evidence that Acting Inspector Hughes considered the deployment of a helicopter at any stage during 4 September 2022 and prior to a decision being made at around 5.30 pm that evening to seek a helicopter being deployed.²³⁰

232. Counsel Assisting accepted, as do I, that a balance needs to be struck to which reasonable minds may well differ. What is required is an evaluation of the evidence as it is coming in, the information coming in about the missing person, and then an assessment needs to be made about the need to put the reflex search into action. It is not a tick box exercise.²³¹

233. Counsel Assisting submitted that the impression one gains from the evidence is that the focus of police was on inquiries, attempting to ascertain if Andrew had hired camping equipment, or if people knew where he was. Importantly, the inquiries focussed on locating anyone who could provide information as to where he had gone. While these were all reasonable and appropriate inquiries, from the experts' points of view, critically, they were inquiries which could have been made simultaneously with a reflex search. As Counsel Assisting submitted, there is an absence of evidence that Acting Inspector Hughes had directed his mind to conducting such a search. There is also no evidence that Acting Inspector Hughes had changed his mind in terms of the urgency of the search, even at 6 pm when he completed a further Search Urgency Assessment.²³² I agree with Counsel Assisting's submissions.

234. Counsel Assisting submitted that there was a need to consider sending out a search concurrently with making inquiries and that that is where the weight of the expert evidence lies, despite any differences of opinion about exactly when that should have occurred. The information initially received was that Andrew left or at least started from the Guthega carpark. By about midmorning

²³⁰ Transcript 25 July 2024 at p.21.

²³¹ Transcript 25 July 2024 at p.21.

²³² Transcript 25 July 2024 at p.21.

on Sunday, 4 September 2022, John Fredericks had informed Janice and Stella via SMS, who in turn informed Senior Constable Antrum, that there were three locations where Andrew spoke about going: Watsons Crag, Mount Carruthers, and the Sentinel. That information was conveyed to Acting Inspector Hughes which would have narrowed down the appropriate search area and assisted with the decision to deploy a helicopter. Counsel Assisting submitted and I agree, that in drawing those strands together, there should have been consideration given to commencing a measured response at first light on the Sunday which should have resulted in a request or inquiries made by Acting Inspector Hughes' to launch a helicopter to conduct that search.²³³

235. I pause here to note that the Court did not hear oral evidence from Acting Inspector Hughes and that his evidence, by way of statement, which was included in the brief of evidence that was tendered, is that he is a qualified search coordinator, albeit his formal role in Andrew's case was initially as the duty officer, as the inspector for the local area, and then more formally as the search controller.

236. Counsel Assisting submitted that Acting Inspector Hughes should have taken different action. A search could and should have been commenced at an earlier stage and concurrent with the inquiries that were being made on Sunday, 4 September 2022. Although it would not have saved Andrew, Counsel Assisting submitted, and I agree, that it may well have discovered his location sooner, and that if a similar set of circumstances occurs in the future, it may become vital, in the difference between life and death.²³⁴

237. It was submitted on behalf of the Family that the initial response by the police was not adequate and in accordance with relevant policy.²³⁵ It was submitted on behalf of the Family that the risk assessments were not appropriate having regard to the evidence of Dr Whitehead and Sergeant Walsh (and Senior Sergeant Smith compendiously), noting that Acting Inspector

²³³ Transcript 25 July 2024 at pp.21-22.

²³⁴ Transcript 25 July 2024 at p.22.

²³⁵ Transcript 25 July 2024 at p.26.

Hughes' first Search Urgency Assessment should have at least been a measured response requiring the reflex search, resulting practically in a search at first light on Sunday. Furthermore, it was submitted that consideration of an emergency response ought to have been considered given that Andrew was alone, there were genuine concerns held for his welfare, and the hazardous terrain profile.²³⁶

238. Counsel for the Family drew my attention to the following note that Acting Inspector Hughes made in his duty book: "*Janice PLB*" and then a tick, then "*Tent?? doesn't like snow cave (knowledge of how to construct and use one?)*".²³⁷ It was submitted on behalf of the Family that this note tends to suggest that Acting Inspector Hughes at least then knew, or was informed, that Andrew did not like camping in the snow. It would have followed that it was unlikely that Andrew would have had a tent with him, or indeed that he would have intended to camp in the snow. This impacts upon the consideration of whether he had appropriate equipment in those particular circumstances, as it would have led to the conclusion that he was on the mountain overnight unplanned and without the necessary equipment.²³⁸ I accept this submission.

239. It was submitted on behalf of the Family that if Acting Inspector Hughes had engaged the Rescue and Bomb Disposal Unit earlier, it may follow that the search might have started earlier, particularly given Sergeant Walsh's evidence that Acting Inspector Hughes' first Search Urgency Assessment understated the level of urgency. It was submitted that whilst it is true that Acting Inspector Hughes himself had the qualification of search coordinator, equally Dr Whitehead gave evidence that Acting Inspector Hughes was wearing several hats that day, including being the duty officer and leader of the investigation.²³⁹ I accept this evidence and the Family's submission.

²³⁶ Transcript 25 July 2024 at p.26.

²³⁷ Exhibit 1 Tab 14A Hughes transcription of duty book.

²³⁸ Transcript 25 July 2024 at p.26.

²³⁹ Transcript 25 July 2024 at p.27-28.

240. It was further submitted on behalf of the Family that notwithstanding the fact that there was a capacity for local officers to be qualified as search coordinators, they now have the service level agreement with a Rescue and Bomb Disposal Unit. The onsite officer from that unit full-time at Jindabyne during the winter months to give that specialist expertise in cases of missing persons where needed.²⁴⁰
241. It was submitted on behalf of Acting Inspector Hughes that his assessment of the urgency of a search was based on his extensive experience with regards to searches performed in this particular location.²⁴¹
242. Those representing the Commissioner of Police submitted that Detective Inspector Sim referred in his statement²⁴² to the Search Urgency Assessment tool and emphasised the significance of the fact that the reliability of the tool decreases the earlier it is used, as more information comes in, and that the tool needs to be continually upgraded and reassessed as further information comes in.²⁴³
243. I accept Counsel Assisting's submissions on what the police should have done with regard to the above issues, and with the reasons he has given. I find with regard to whether the risk assessments were appropriate and resulted in an appropriate risk rating, that the first risk assessment made by Acting Inspector Hughes was not appropriate, and that the subsequent risk assessment made by Senior Constable Antrum was appropriate.
244. I accept the evidence of the experts that the initial report required at least a measured response which would have meant consideration of a reflex search and a request or inquiries to be made by Acting Inspector Hughes' to launch a helicopter to conduct a search at first light on Sunday, 4 September 2022.

²⁴⁰ Transcript 25 July 2024 at p.28

²⁴¹ Transcript 25 July 2024, at pp.34-35.

²⁴² Exhibit 1 Tab 57 Sim statement.

²⁴³ Transcript 25 July 2024 at p.34.

245. I find that that initial police response to the report was not adequate and further find that a search and rescue operation should have commenced earlier for the reasons Counsel Assisting has provided.

Whether appropriate inquiries were conducted by police in a timely manner

246. Counsel Assisting submitted that no criticism, and I agree, should be made of the inquiries that were made on Sunday, 4 September 2024 as both Dr Whitehead and Detective Inspector Sim are supportive of the inquiries. They felt they were all entirely reasonable and appropriate, in fact necessary, to close off certain lines of inquiry. Even though the possibility that Andrew had camped out on the snow was not consistent with his previous behaviour, they opined that it was appropriate to investigate that. Equally, they were of the view that the contact with backcountry specialists about conditions and hazards, and even the multiple contacts with the family were appropriate in the circumstances.²⁴⁴ It is part of a police role, and I accept the evidence of Dr Whitehead and Detective Sim to this effect, to ask questions and to confirm information and to reconfirm it for the simple reason that more information might come out. It was just unfortunate that it came from multiple officers²⁴⁵ and appears to have led to the family's frustration, in some part.²⁴⁶

247. Counsel Assisting submitted that there is now, in the 2023 version of the Missing Persons SOPs a single point of contact whereby the investigating officer provides the family with a reliable phone number and their name, and that person remains the point of contact.²⁴⁷ I commend the NSWPF for the making these changes.

248. Counsel Assisting submitted, and I agree, that there were other lines of inquiry that could have been taken up, including the use of the police Facebook page which the evidence demonstrated was ultimately very valuable in locating Andrew. Mr Klempfner posted on a backcountry Facebook group about Andrew

²⁴⁴ Transcript 25 July 2024 at pp.22-23

²⁴⁵ Transcript 25 July 2024 at pp.22-23.

²⁴⁶ Transcript 25 July 2024 at pp.22-23.

²⁴⁷ Exhibit 1 Tab 52 Missing Persons SOPs p. 25 at [8.7].

being missing and information was provided in response to that post which assisted in locating Andrew.²⁴⁸

249. Counsel Assisting highlighted the evidence given by Detective Inspector Sim, that police are and have been trying to foster links with backcountry organisations and groups, in order to ensure that missing person messages that are broadcast by police are promulgated through those groups to their own members. Counsel Assisting submitted that this could have been a further appropriate inquiry in Andrew's case, and it may speak to the fact that the MPR was not involved at an early stage, as this may have been a strategy that they would have advised.²⁴⁹ I agree with this submission.

250. The Family broadly agreed with Counsel Assisting's submissions that the investigative inquiries were relevant to prove or disprove hypotheses and follow leads and build evidence, although submitted that it did not absolve the need for a timely search response in conjunction. Relatedly, the Family agreed with Counsel Assisting's submissions that having the single police liaison with family members in these types of cases is a useful innovation, and that Janice recognised and agreed with that in her evidence. The Family drew to my attention to the evidence given that a search can be conducted at the same time as inquiries are being undertaken. Sergeant Walsh and Dr Whitehead gave evidence that it is easier to call back a helicopter rather than order one and that Police and Search and Rescue do not get in trouble for doing something, they get in trouble for not doing something in terms of search and rescue.²⁵⁰ I accept this evidence and the Family's submission.

251. It was submitted on behalf of Acting Inspector Hughes and Senior Constable Tickell that each of the experts who gave evidence, accepted that the search for Andrew, and its planning, was conducted in an appropriate and timely manner.²⁵¹ It was also submitted that the persons involved in the search

²⁴⁸ Transcript 25 July 2024 at pp.22-23.

²⁴⁹ Transcript 25 July 2024 at p.23.

²⁵⁰ Transcript 25 July 2024 at p.28.

²⁵¹ Transcript 25 July 2024, p. 35, lines 46-49.

could not have fully considered the breadth of the enquires to be made, until such a time as Andrew's car was located in the Guthega carpark.²⁵² In addition, it was submitted that, with respect to the timeliness of the search and rescue operation, it was between the period of 12 noon and 5.00 pm on the Sunday which is paramount.²⁵³

252. It was also submitted on behalf of Acting Inspector Hughes and Senior Constable Tickell that consideration ought to be had of what the officers knew at the time, what could have been done at that time, the practical realities of those tasks being performed,²⁵⁴ the fact that Andrew had not completed an intention form,²⁵⁵ that there was a lack of information available as to the location where Andrew would be skiing,²⁵⁶ and the fact this it was unknown whether Andrew intended on camping in his car or if he was spending the evening in the back country.²⁵⁷

253. It was further submitted on behalf of Acting Inspector Hughes and Senior Constable Tickell that it was apparent that police made all the necessary inquires that were available to them to assist to narrow down the search field in what is a difficult terrain which poses real risks to people deployed to engage in search and rescue operations in a large National Park.²⁵⁸ I accept this submission.

254. The Commissioner of Police submitted that each of the experts agreed that appropriate steps had been taken from the moment that the report was created on the CAD and was broadcast to local police. It was further submitted that enquiries were conducted in a timely manner with there being a response by police (Constables May and Fraser) within one minute of the broadcast to

²⁵² Transcript 25 July 2024 at pp.35-36.

²⁵³ Transcript 25 July 2024 at p.38.

²⁵⁴ Transcript 25 July 2024 at p.36.

²⁵⁵ Transcript 25 July 2024 at p.36.

²⁵⁶ Transcript 25 July 2024 at p.36.

²⁵⁷ Transcript 25 July 2024 at p.37.

²⁵⁸ Transcript 25 July 2024 at p.38.

local police, who then travelled to Thredbo and then across to Guthega.²⁵⁹ I accept this submission.

255. I find that appropriate inquiries were conducted which assisted to close off certain lines of inquiry although find that other lines of inquiry could have been taken up which Counsel Assisting outlined. I find that the inquiries were conducted by police in a timely manner and accept the evidence of each of the experts who agreed that appropriate steps had been taken from the moment that the report was created on the CAD and was broadcast to local police taking into account that there was a response by police within one minute of the broadcast to local police.

The search and rescue operation

256. Counsel Assisting submitted that there several aspects to this, with the exceptions of the timing of conducting the search and a question of delay.

257. Counsel Assisting submitted, and I agree, that there are no issues with the search and rescue operation that was conducted, and that all the experts agreed that it was conducted with appropriate resources, in an extremely difficult terrain, and at an appropriate rate. Counsel Assisting highlighted that there was some concern raised by the expert skiers about delay and the time in commencing the operation and the ability of police to enter those locations given the difficulty of the terrain. Counsel Assisting submitted that the evidence, which I accept, illustrates that it is highly technical and difficult access Andrew's location and that it is not appropriate to call on volunteers to assist in this sort of search and rescue operation, no matter how skilled they may be. Counsel Assisting submitted, and I agree, that they might be used to advise police, which seems to be an option that is available.²⁶⁰

258. As to the question of delay, Counsel Assisting submitted that it is open to me to make a finding that there was delay in launching the helicopter, which

²⁵⁹ Transcript 25 July 2024 at pp.39-40.

²⁶⁰ Transcript 25 July 2024 at pp.23-24.

seems to have been a function of the weather. Counsel Assisting submitted that the evidence supports a finding that once the helicopter was launched from the Jindabyne area and attended the Craggs, it found Andrew very quickly. Drawing on that evidence, Counsel Assisting submitted that I could infer that had similar action been taken the day prior when the reports on weather conditions were clear, it is likely that Andrew would have been located quickly as well.²⁶¹ I agree with Counsel Assisting's submissions.

259. The Family broadly agreed with Counsel Assisting's submissions. In addition, it was submitted on behalf of the Family that the search should have commenced ideally at the first light on the Sunday morning as a reflexive response, having regard to the seriousness of the circumstances, being the very unusual departure from routine from a person who reliably communicated with his mother when he was travelling. It was further submitted that on the Saturday night, the police had enough information that should have alerted them to the real possibility that Andrew had perhaps had an accident while alone on the mountain and injured himself or worse, and it was a credible worst case scenario on that information which demonstrates the time and critical nature of the search and rescue operation which was the main concern of the Family and why they advocated for an inquest to be held.²⁶² I accept this submission and acknowledge the Family's robust advocacy of these concerns.

260. It was submitted on behalf of Senior Constable Tickell that in relation to the search and rescue operation, Senior Constable Tickell did not perform the role of a decision-maker and that this responsibility ultimately fell onto Acting Inspector Hughes.²⁶³ I accept this submission.

261. It was submitted on behalf of Acting Inspector Hughes that there is no doubt that he was responsible for making the decisions regarding when and how the search for Andrew would be conducted.²⁶⁴ I accept this submission.

²⁶¹ Transcript 25 July 2024 at pp.23-24.

²⁶² Transcript 25 July 2024 at p9.28-29.

²⁶³ Transcript 25 July 2024 at p.32.

²⁶⁴ Transcript 25 July 2024 at p.35.

262. It was submitted on behalf of Acting Inspector Hughes and Senior Constable Tickell that Senior Constable Tickell's understanding of what had been communicated to him reflects what Senior Constable Antrum had said he had communicated through to Senior Constable Tickell. It was further submitted that one would infer that was what was communicated through to Acting Inspector Hughes, which was that Andrew was heading to the Craggs and had considered skiing at an unknown area broadly described as the Mount Carruthers, Watsons Craggs, and the Sentinel.²⁶⁵

263. It was submitted on behalf of Acting Inspector Hughes and Senior Constable Tickell that those are two different things and that they leave a very broad area within which to conduct any form of search activity. This the first point in time at which, it was submitted, that any reasonable criticism, if criticism were to flow, that could be given about the timeliness of a decision to commence a search. It was accepted that it would be open to me to find that at that point in time consideration should have been given to the deployment of an aerial resource to search what is still nonetheless a very large area. It was submitted, however, that could not say that an aerial resource would have been available, and if available where it would start and finish and at what speed. Ultimately, it was accepted it would be open to me to find that consideration should have been given as to whether to deploy an aerial resource at that stage. However, it is otherwise clear that investigations did continue to locate Andrew.²⁶⁶ I accept this submission and acknowledge the concession made which is commendable.

264. It was submitted on behalf of the Commissioner of Police that unfortunately there is no evidence from PolAir, as to whether that was a possibility to deploy a helicopter at night and that the evidence from Superintendent Klepczarek was that they do not fly at night.²⁶⁷ It was further submitted that there is no evidence before the Court as to whether or not there could have been a response made in the morning by either PolAir or by Toll

²⁶⁵ Transcript 25 July 2024 at p.37.

²⁶⁶ Transcript 25 July 2024 at p.37.

²⁶⁷ Transcript 25 July 2022 at pp.39-40.

Helicopters. Importantly there is no evidence to say whether they would have (a) had the pilots; (b) the capability; and (c) whether there was a weather problem associated with flying out in the morning. It was further submitted that Dr Whitehead's evidence needs to be viewed with a little bit of circumspection given he did not have any alpine experience, which he accepted.²⁶⁸ I take on board on this submission.

265. I accept Counsel Assisting's submissions on what should have been done with regard to the search and rescue operation and with the reasons he has given. I find that there are no issues with the search and rescue operation that was conducted and accept the evidence of the experts that it was conducted with appropriate resources, in an extremely difficult terrain, and at an appropriate rate. I further find that there was delay in launching the helicopter and that the search should have commenced ideally at the first light on the Sunday morning as a reflexive response.

The regulatory and advisory regime in place relating to backcountry skiing

How backcountry skiing areas are accessed

266. Counsel Assisting in his submissions relied upon and reiterated the evidence of Mr Darlington²⁶⁹ that backcountry skiing is not an activity that one books into, in that one can access the backcountry from many different areas in the Kosciusko National Park, and that it is impossible to police.²⁷⁰

267. Counsel Assisting submitted that the available evidence establishes that there are wide areas of access to the backcountry and that while NPWS do mark out some routes in the Perisher and Charlottes Pass area, they do not formalise those, certainly not in the area where Andrew was skiing.²⁷¹

²⁶⁸ Transcript 25 July 2024 at p.39-40.

²⁶⁹ Exhibit 1 Tab 59 Darlington statement.

²⁷⁰ Transcript 25 July 2024 at p.24.

²⁷¹ Transcript 25 July 2024 at p.24.

268. I accept Mr Darlington's evidence and adopt the submissions of Counsel Assisting.

How trip advisory forms are completed and used

269. Counsel Assisting submitted that the evidence supports a finding that Trip Intention Advisory Forms are clearly very useful, although highlighted how striking it is that none of the expert skiers who provided evidence in the inquest used them with any regularity and had different reliable processes. Some gave evidence that they tell their loved ones where they were going, and the commercial operators gave evidence that they use their own eco pass system to notify and record where they were going.²⁷² I agree with Counsel Assisting's submissions.

270. Ultimately, Counsel Assisting submitted, and I agree, that clearly the message that is important to carry forward is that the trip advisory forms do provide a useful and appropriate method for recording plans and should be used, and that it is critical in any event to leave behind sufficient detail to identify where you have gone, what you are going to do, and when you are going to come back.²⁷³

271. I adopt the submissions of Counsel Assisting and accept the evidence set out earlier in these findings provided by Ms Allen, Mr Darlington, and the back country skiers about the use of Trip Intention Forms. I strongly encourage members of the public to complete a Trip Intention Form if planning to ski the backcountry or at the very least inform someone, in detail, where you plan to ski and when you are safe – that is have a process of informing someone where you are and when you have safely returned.

Guidance available for backcountry skiers

272. Counsel Assisting submitted that the guidance available for backcountry skiers, which is contained in the statements of Mr Darlington and Ms Allen and

²⁷² Transcript 25 July 2024 at p.24.

²⁷³ Transcript 25 July 2024 at p.24.

annexures to those statement²⁷⁴ as well as the oral evidence that Ms Allen gave at inquest, is adequate and that there is no basis to find that there is any inadequacy with the regulatory and advisory regime relating to backcountry skiing.²⁷⁵ I agree with Counsel Assisting's submission.

273. Counsel Assisting submitted that in terms of the equipment that is available for backcountry skiers, that there was evidence that NPWS provides beacons free of charge to skiers, which is commendable, and that they are taken up with enthusiasm. The evidence establishes that 120 to 170 are hired by the public on an annual basis during the snow season for free.²⁷⁶

274. During the course of the inquest, evidence was given about a different type of beacon, referred to as 'Spot Metres' (also known as a spot locator, spot device, and spot messenger) which are beacons which ping back your location on a periodic basis so you can be effectively tracked by another person or service. There are several different brands that provide them.²⁷⁷

275. When asked by Counsel Assisting whether providing those sorts of locators may be an advantage, Ms Allen gave evidence that she could "*see that there would be a benefit in an ideal world*"²⁷⁸ although believed that there are benefits with the personal locator beacons that NPWS currently offer as "*they are very simple to use and they don't require batteries*"²⁷⁹. Ms Allen gave the following evidence that:

"if you get into the more complicated equipment, it come, it carries with it a lot of demands around how it would be used and in my view crosses over into the, the, the area where that's the visitor's responsibility, if they want to go over and above what the service is providing and suggesting, then that is, that is their

²⁷⁴ Exhibit 1 Tab 60 Allen statement and Tab 59 and 59A Darlington statements.

²⁷⁵ Transcript 25 July 2024 at p.24.

²⁷⁶ Exhibit 1 Tab 59 Darlington statement at [15]; Transcript 25 July 2024 at p.24.

²⁷⁷ Transcript 22 July 2024 at p.57; Transcript 22 July 2024 at p.45; Transcript 24 July 2024 at p.66; Transcript 25 July 2024 at pp.11-13.

²⁷⁸ Transcript 25 July 2024 at p.12.

²⁷⁹ Transcript 25 July 2024 at p.12.

*choice, and we would encourage that but I don't believe National Parks needs to invest in, in those, in that equipment at the moment."*²⁸⁰

276. Counsel Assisting submitted that there may be technologically advantageous differences to Spot Meters but that they come at a cost. Counsel Assisting did not propose any recommendation in relation to that, although submitted that it may well be something for NPWS to keep in mind for the future.²⁸¹ I agree and encourage NPWS to consider whether this could be provided in the future.

277. I accept Counsel Assisting's submissions and find that the guidance available for backcountry skiers is adequate and comprehensive and that the use of Spot Meters may be something for NPWS to keep in mind for the future as to whether that facility could be provided.

Conclusion

278. As already set out, Counsel Assisting submitted that there is no basis for me to make a finding of any inadequacy with regards to the regulatory and advisory regime relating to backcountry skiing.²⁸²

279. It was submitted on behalf of NPWS that there is no basis on the evidence to find any inadequacy in the regulatory and advisory regime in place. It was submitted that the information and guidance made available by NPWS to members of the public via the website that it operates, via the signage, and relevantly in the immediate vicinity of the Guthega trail head, is comprehensive.²⁸³ I agree and commend NPWS for the comprehensive and instructive information and guidance that they have made available to members of the public.

²⁸⁰ Transcript 25 July 2024 at p.12.

²⁸¹ Transcript 25 July 2024 at p.24.

²⁸² Transcript 25 July 2024 at p.24.

²⁸³ Transcript 25 July 2024 at pp.38-39.

280. It was submitted on behalf of the Family that it is not their suggestion that backcountry skiing should be any more regulated than it is, and that they agreed broadly with Counsel Assisting's submissions.²⁸⁴

281. I find, having regard to all the available evidence, that the regulatory and advisory regime relating to backcountry skiing is adequate and accept the submissions of Counsel Assisting, NPWS and the Family in this regard.

Submissions on the statutory findings required under section 81 of the Coroners Act 2009 (NSW)

282. Counsel Assisting submitted that the evidence would amply allow me to make the following statutory findings that I am required make pursuant to section 81 of the Act²⁸⁵:

- The person who died was Andrew Keith Seton.
- Andrew died on 3 September 2022.
- Andrew died at Watsons Crags, in the Kosciuszko National Park.
- The cause of Andrew's death was multiple injuries.

283. With regards to the manner of Andrew's death, Counsel Assisting submitted that the evidence would support me making one of the following two findings set out below²⁸⁶:

- 1) An accident; or
- 2) That Andrew died following an accidental fall while skiing alone in a backcountry area and was reported missing on 3 September 2022 and located on 5 September 2022.

284. I am of the view and satisfied that the evidence supports the making of the section 81 findings that Counsel Assisting has submitted I can make.

²⁸⁴ Transcript 25 July 2024 at p.30.

²⁸⁵ Transcript 25 July 2024 at pp.25-26.

²⁸⁶ Transcript 25 July 2024 at pp.25-26.

Submissions on proposed recommendations

The need for recommendations

285. Section 82 of the Act confers on a Coroner the power to make recommendations that he or she may consider necessary or desirable in relation to any matter connected with the death with which the inquest is concerned. It is essential that a Coroner keeps in mind the limited nature of the evidence that is presented and focuses on the specific lessons that may be learnt from the circumstances of each death.

286. Counsel Assisting put forward three recommendations arising out of the evidence for the Court's consideration directed to the Commissioner of Police and the Commander of the Monaro Police District.

287. Counsel Assisting submitted that the proposed recommendations focus on three learnings and matters that can be drawn from the evidence. I will deal with each in turn.

Consider providing further guidance on the completion of Search Urgency Assessment forms that is relevant to operations within the Kosciuszko National Park, In particular: (a) what conditions, features or terrain are considered hazardous; and (b) what equipment and supplies are considered adequate for different activities.

288. Counsel Assisting submitted that this recommendation draws on the evidence, although provided the caveats that the Court did not have the benefit of hearing direct evidence from Acting Inspector Hughes. Counsel Assisting submitted that the evidence establishes how the forms were scored, however that it may be that further guidance on, for example, features of ice in certain locations, or what equipment is going to be required for certain types of camping, would be an advantage to give officers at a local level some guidance when completing those forms.²⁸⁷

²⁸⁷ Transcript 25 July 2024 at pp.24-25.

289. It was submitted on behalf of the Commissioner of Police that Detective Inspector Sim gave evidence that this is underway and that there is likely to be the inclusion of a sentence reflecting what is contained in the proposed recommendation in the next revision of the Missing Persons SOPs.²⁸⁸

290. The Family agreed with the making of this proposed recommendation.²⁸⁹

291. I agree with Counsel Assisting's submissions on the need for this recommendation and will make it. I commend the NSWPF for the work underway on the review of the Missing Persons SOPs.

Consider whether further training or instruction is required, regarding the need to advise members of the public who report a person missing that they should attend a police station to do so.

292. Counsel Assisting submitted that this recommendation draws on the facts and evidence which seem to suggest that advice was not given to Janice about the requirement for a member of the public to report a person missing, in person, at a police station, and that this may identify a training need or, failing that, a need for instruction to the local police about the need to do it.²⁹⁰

293. It was submitted on behalf of the Commissioner of Police that Detective Inspector Sim gave evidence that this is also underway and that there is likely to be an inclusion in the next revision of the Missing Persons SOPs that police are to advise members of the public who report a person missing that they should attend a police station to do so.²⁹¹

294. The Family agreed with the making of this proposed recommendation.²⁹²

²⁸⁸ Transcript 25 July 2024 at pp.40-41.

²⁸⁹ Transcript 25 July 2024 at p.30.

²⁹⁰ Transcript 25 July 2024 at pp.24-25.

²⁹¹ Transcript 25 July 2024 at pp.40-41.

²⁹² Transcript 25 July 2024 at p.30.

295. I agree with Counsel Assisting's submissions on the need for this recommendation and will make it. I commend the NSWPF for the work underway on the review of the Missing Persons SOPs.

That the Monaro Police District, the Missing Persons Registry and the National Parks and Wildlife Service, as appropriate, continue to liaise regarding efforts to further explore: (a) ways to promote the use of trip intention forms for persons entering the backcountry areas; and (b) technology which could be used to record a person's entry into and progress through backcountry areas.

296. Counsel Assisting submitted that this recommendation reflects the evidence heard about different types of technology which might be useful. Detective Inspector Sim spoke about the possibility of QR signs or a system at entry points, and then at way points in the Kosciuszko National Park, to record where people were going. There may be other methods as well. Counsel Assisting submitted that the facts of this case support such a recommendation being made and that such an improvement would be of advantage.²⁹³

297. It was submitted on behalf of the Commissioner of Police that those steps are under way and that Detective Inspector Sim and Superintendent Klepczarek gave evidence in relation to the ongoing liaison with the Monaro Police District and NPWS. With regards to the ongoing update of technology, it was submitted that Detective Inspector Sim gave evidence that the use of Facebook and the social media contact was in use with respect to missing persons now, and that was technology that they were looking at advancing, depending upon connectivity issues in terms of the alpine region as well.²⁹⁴

298. It was further submitted that the Commissioner of Police has learnt lessons from this matter, which is apparent from the evidence given by both Detective Inspector Sim and Superintendent Klepczarek, and the fact that several high ranking police and search and rescue officers either attended the inquest to listen to the evidence and/or gave evidence; and that the officers who

²⁹³ Transcript 25 July 2024 at pp.24-25.

²⁹⁴ Transcript 25 July 2024 at pp.40-41.

did give evidence, gave very frank evidence and made very appropriate concessions.²⁹⁵

299. The Family agreed with the making of this proposed recommendation.²⁹⁶

300. I agree with Counsel Assisting's submissions on the need for this recommendation and will make it and commend the NSWPF for the constructive approach they have taken during this inquest and for making appropriate concessions.

Conclusion

301. I am of the view and satisfied that the evidence supports the making of the recommendations as proposed by Counsel Assisting as they are necessary and desirable.

Findings required by section 81(1)

302. As a result of having considered all of the documentary evidence, the oral evidence given at the inquest and submissions, pursuant to section 81(1) of the Act, I make the following findings in relation to the death of Andrew Seton:

The identity of the deceased

303. The person who died was Andrew Keith Seton.

Date of death

304. Andrew died on 3 September 2022.

Place of death

305. Andrew died at Watsons Crags, in the Kosciusko National Park NSW.

²⁹⁵ Transcript 25 July 2024 at pp.40-41.

²⁹⁶ Transcript 25 July 2024 at p.30.

Cause of death

306. The cause of Andrew's death was multiple injuries.

Manner of death

307. Andrew died following an accidental fall while skiing alone in a backcountry area. He was reported missing on 3 September 2022 and located on 5 September 2022.

Recommendations

308. Pursuant to section 82 of the Act, Coroners may make recommendations connected with a death.

309. For the reasons I have stated above, I find it necessary and desirable to make the following recommendations:

To the New South Wales Commissioner of Police; and To the Commander of the Monaro Police District:

- 1) I recommend that consideration be given to providing further guidance on the completion of Search Urgency Assessment forms that is relevant to operations within the Kosciuszko National Park. In particular:
 - a) what conditions, features or terrain are considered hazardous; and
 - b) what equipment and supplies are considered adequate for different activities.
- 2) I recommend that consideration be given to whether further training or instruction is required, regarding the need to advise members of the public who report a person missing that they should attend a police station to do so.

- 3) I recommend that the Monaro Police District, the Missing Persons Registry and the National Parks and Wildlife Service, as appropriate, continue to liaise regarding efforts to further explore:
- a) ways to promote the use of trip intention forms for persons entering the backcountry areas; and
 - b) technology which could be used to record a person's entry into and progress through backcountry areas.

Acknowledgements and concluding remarks

310. I would like to acknowledge and commend Andrew's family and friends for their engagement, participation, and contribution to this inquest and throughout the coronial investigation. In particular, I commend Andrew's mother, Janice for her commitment, bravery and participation throughout the coronial proceedings including when giving oral evidence at the inquest.
311. I acknowledge the profound loss, continuing anguish, and heartbreak that Andrew's family and friends are grappling with as a result of his very tragic passing. I express my sympathy and condolences to Janice, David, Emma, and Stella; and to Andrew's friends and loved ones including his backcountry skiing companions John, Simon, and Peter.
312. I would like to acknowledge the work carried out by the officer in charge of the coronial investigation, Detective Sergeant Peter Gillett, for the thorough and professional assistance he provided.
313. I would also like to acknowledge my counsel assisting team, Jake Harris, and Clara Potocki for doing such a wonderful job. They provided enormous assistance to me and have dedicated a significant amount of time and commitment to the preparation and conduct of this inquest.

314. I also thank the legal representatives for the interested parties for their cooperation, assistance, and for the constructive approach they brought to these proceedings.

315. Finally, I would like to conclude by acknowledging and recognising the person that Andrew was to his family, friends, and loved ones. His family and friends remember and miss Andrew everyday as the beautiful, caring, adventurous and smart, son, brother, grandson, nephew, cousin, and friend he was.

316. I close this inquest.

Magistrate Teresa O'Sullivan

State Coroner, NSW State Coroner's Court, Lidcombe

12 September 2024