IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2014 006219

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)
Section 67 of the Coroners Act 2008 (Vic)

I, John Olle, Coroner having investigated the death of SEAN ANDREW CONWAY without holding an inquest:
find that the identity of the deceased was SEAN ANDREW CONWAY
born on 19 April 1990
and the death occurred on 6 December 2014
at Taylors Creek Weir, Gunbower, Victoria 3566

from:
1(a) DROWNING

Pursuant to section 67(1) of the *Coroners Act 2008* (Vic) there is a public interest to be served in making findings with respect to the following circumstances:

1. Sean Andrew Conway was aged 24 years at the time of his death. He was a roller door installer and resided at Echuca. Sean is survived by his siblings Matthew and Alisha, with whom he shared close and loving relationships. Sean was a keen sportsman and a strong swimmer, having grown up swimming and surfing.
2. A coronial brief was provided by Victoria Police to this Court, comprising statements obtained from family, witnesses, and investigating officers. I have drawn on all of this material as to the factual matters in this finding.

BACKGROUND AND CIRCUMSTANCES

3. On 5 December 2014, Matthew was camping with friends Cody and Keighan on private property at Hancocks Road, Leitchville, near Taylors Creek Weir ("the weir"). The following day, Matthew collected Sean from Echuca to join them. There was a kayak at the campsite and in order to highlight the inherent danger of paddling near the weir, Matthew related to Sean a recent near drowning incident at the site, when a friend of Keighan almost drowned, having fallen from his kayak. Sean drank beer en route to the campsite.

The Weir

4. The weir is a design, commonly used across the Goulburn-Murray Water delivery network. On 6 December 2014, it was operating at approximately half capacity - an estimated 1000 mega litres per day passing through, with a water drop of approximately 1.8 metres. The turbulence created by the water is controlled by a number of concrete "dissipater blocks" designed to slow the rate of water flow and reduce erosion of earthen embankments. Goulburn-Murray Water have erected fences and warning signs at the weir, and run an annual public awareness campaign in relation to water safety and the dangers of swimming in irrigation channels and near weirs.[1]

5. Sean and Matthew arrived at the campsite at 12:30p.m. Throughout the afternoon the group kicked a football, fished from the riverbanks, drank alcohol, and shared a cannabis joint. They consumed a similar quantity of beer, estimated at 4 – 5 stubbies. Matthew noted in addition to beer, Sean consumed vodka.

6. During the afternoon, Keighan and Matthew took the kayak out. Matthew and Sean had limited experience with kayaking, and had only previously used "sit in" kayaks, as opposed to the "sit on top" kayak at the campsite. Matthew considered the "sit on top" kayak was reasonably stable in calm conditions.

7. Shortly before 4:00p.m., Sean went for a paddle, falling off several times. Matthew did not consider Sean was too affected by alcohol to paddle the kayak. However, Sean was not wearing the personal flotation device, available at the campsite. As Sean paddled, Matthew and Keighan reminded him not to go near the weir.

---

[1] Coronial brief, statement of Dale McGraw, dated 28 April 2015, 26-27.

8. After a short time, Matthew lost sight of Sean. Approaching the edge of the creek trying to spot him, he saw Sean fall from the kayak in the middle of the weir. He reappeared briefly, before Matthew lost sight of him. The group ran to the weir and witnessed Sean's passage through the weir gates. They each entered the water upstream in search of Sean, but were not able to find him.

9. An approaching boat operator called emergency services. At approximately 5:00p.m. police officers arrived at the scene. Leading Senior Constable Barry Gray observed a kayak rolling in the turbulent water at the base of the weir. A short time after police arrived at the scene, members of the State Emergency Service (SES) attended and a search for Sean took place.[2] Staff of Goulburn-Murray Water were notified of the incident at the weir by email at approximately 6:00p.m. Between 6:30p.m. and 7:00p.m., Dale McGraw of Goulburn-Murray Water attended the scene, and noted that the police and the SES had already arranged to have the regulator closed to assist with their search for Sean.[3]

10. On 7 December 2014 at approximately 12:15p.m., members of the Victoria Police Search and Rescue Squad located Sean deceased, submerged approximately 80 metres downstream.

POST-MORTEM EXAMINATION AND REPORT

11. A post-mortem examination and report was undertaken by Dr Michael Burke, Senior Forensic Pathologist at the Victorian Institute of Forensic Medicine. Dr Burke reported that the post-mortem examination revealed no evidence of any injury that would have contributed to or led to death.

12. Toxicological analysis showed an alcohol concentration of 0.11g/100mL, and the presence of cannabis.

13. Dr Burke reported that the cause of death is drowning.

SUBMISSION OF TRANSPORT SAFETY VICTORIA

14. At my request, Transport Safety Victoria (TSV) provided a submission to assist my investigation, in particular is respect to my prevention role.

---

[2] Coronial brief, statement of Leading Senior Constable Barry Gray, dated 28 April 2015, 28.

[3] Above n 1.

TSV Review

15. TSV is undertaking an extensive review of the *Vessel Operating and Zoning Rules*, which contain state-wide and waterway-specific rules for the operation of vessels on Victorian waterways. As a part of this review, TSV will consider banning human powered vessels from operation near weirs, spillways, and irrigation outlets.

16. TSV noted that there are currently prohibitions in place at several locations around Victoria including Lake Eildon, Lake Hamilton, and Gunbower Creek, where all vessels are prohibited from operating near spillways and outlets. These prohibitions have been made by the local waterway manager under the *Marine Safety Act* 2010 (Vic), and are contained in the current *Vessel Operating and Zoning Rules.* The effectiveness of these exclusion zones is largely unknown, as the exclusion zones exist in typically remote locations and therefore rely heavily on individual willingness to comply with the rules and restrictions.

17. Education and enforcement campaigns are regularly used by TSV to improve boating safety. TSV analyses boating incident trends to inform the range of key strategic education and enforcement campaigns undertaken. On the basis of a noted rise in kayaking-related incidents, the need for a kayaking and other human powered vessel operations campaign is under consideration as there appears to be a number of contributing factors involved in these incidents.

18. Future campaigns by TSV will build on previous work undertaken as a result of incident trend analysis and coronial recommendations, which has recently included specific campaigns targeting kayak and other human powered vessel operators via communications mechanisms such as YouTube and kayak and adventurer retailer sales staff education program. For the last two boating seasons, TSV has employed a number of experienced kayakers as Boating Safety Officers in an effort to identify with and advise kayak operators.

19. TSV is continuing to consider how to improve accessibility of waterway safety information by vessel operators as a part of its ongoing commitment to the provision of safety information to boaters. An example of improved accessibility to safety information is TSV making available detailed maps to illustrate the *Operating and Zoning Rules* for a number of key waterway areas which will assist vessel operators in

understanding features of the waterway they are using, and highlighting areas where vessel operation is restricted.

FINDINGS

20. I am satisfied, having considered all of the evidence before me, that no further investigation is required.

21. I find that Sean Andrew Conway died on 6 December 2014 and that the cause of his death is drowning.

COMMENTS

Pursuant to section 67(3) of the *Coroners Act 2008* (Vic), I make the following comments connected with the death:

22. Spillways and irrigation outlets are very broadly distributed across the state of Victoria, and in remote locations they are not easily accessible. These locations tend to be used by locals opportunistically, rather than as established boating locations actively managed by waterway managers. Further, waterway managers who have actively sought to exclude vessel operators by the use of signage and fencing have advised that such measures are regularly disregarded and in some circumstances removed so vessel operators are able to reach local waterway access points. Such activity by vessel operators complicates enforcement of the rules in remote locations.

23. It is noted in the TSV Marine Enforcement Policy that the enforcement of marine safety rules is the responsibility of multiple agencies including TSV, Victoria Police, and local waterway managers. In attempting to enforce the rules in remote locations, I endorse the multi-agency approach as outlined in TSV's Marine Enforcement Policy and I would support any increase in the capacity of Victoria Police's Water Police Squad to enable Victoria Police to better contribute to the enforcement approach.

24. Sean commenced drinking alcohol in the late morning and continued all afternoon. He drank beer, vodka and smoked marijuana. His post mortem blood alcohol reading was significant. In all the circumstances, Sean was an inexperienced kayaker who should not have attempted to kayak. Sadly, though warned to avoid the weir, he fell into the water and was swept through the weir. His death is a tragedy.

25. I urge that pursuant to the Vessel Operating and Zoning Rules, consideration be given to ban the operation of human powered vessels near weirs, spillways, and irrigation outlets.

26. Finally, I urge the continuation of education, safety and enforcement campaigns in relation to the appropriate use of human powered vessels, which additionally highlights the potentially lethal consequences of combining alcohol and/or illicit drugs whilst operating human powered vessels.

I direct that a copy of this finding be provided to the following:

The family of Sean Conway;

Interested parties; and

Investigating Member, Victoria Police.

Signature:

John Olle
Coroner
Date: 30 March 2016