

THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2009 5175

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: **CHRISTIAN JAY SHERWOOD PECK**

Delivered On: 30 October 2015

Delivered At: 65 Kavanagh Street, Southbank 3006

Hearing Dates: 20, 21 and 22 August 2012 and 25 and 26 March 2013

Findings of: PETER WHITE

Representation: Ms Brenda Bott and Christopher Peck, in person.
The Department of Education and Early Childhood Development
represented by Peter Matthews of counsel
The Secretary to the Department of Health and Human Services¹
represented by Erin Gardner of counsel (submissions only).
The Victorian Equal Opportunity and Human Rights Commission
represented by Ms Kerin Leonard (submissions only).

Counsel Assisting the Coroner Sebastian Reid, barrister, instructed by Jodie Burns, Senior Legal
Counsel.

¹ At the time of the inquest the Department was known as the Department of Human Services. On 1 January 2015, the Department of Health and the Department of Human Services joined to form the Department of Health and Human Services. To avoid confusion in this finding I will refer to the Department of Human Services for all matters prior to 1 January 2015 and the Department of Health and Human Services for interactions after 1 January 2015 and the purposes of making recommendations.

I, PETER WHITE, Coroner having investigated the death of CHRISTIAN JAY SHERWOOD PECK

AND having held an inquest in relation to this death on 20, 21 and 22 August 2012 and 25 and 26 March 2013 at Melbourne

find that the identity of the deceased was CHRISTIAN JAY SHERWOOD PECK

born on 24 November 2005

and the death occurred on, or about, 31 October 2009

in the Yarra River

from:

1(a) CONSISTENT WITH DROWNING IN A BOY WITH AUTISM (ON HISTORICAL GROUNDS)

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. On 31 October 2009, Christian Jay Sherwood Peck (**Christian**), aged 3 years and 11 months, was found deceased in the Yarra River, approximately 24 hours after he went missing from his father's home at 15 Vine Street Heidelberg (**the Property**).

BACKGROUND CIRCUMSTANCES

2. Christian was born on 24 November 2005 to Brenda Louise Bott (**Brenda**) and Christopher Graham Peck (**Christopher**).² Christian was their youngest child, the oldest being Tahlia. Brenda also had another child, Courtney, from a former relationship.

Christian's living and family arrangements

3. Brenda and Christopher had a difficult relationship and at the time of Christian's death had been living separately for approximately 12 months. The main reason for this was Christopher's substance abuse issues with heroin, cannabis, prescription medications and alcohol. Despite their relationship issues, Brenda and Christopher had regular contact and were making plans to reunite and move to the country together to live as a family.
4. In the months prior to his death, Christian was living at 35 Tassal Street Hadfield with his mother, Tahlia and Courtney.

² Christopher died on 11 August 2014 from hanging COR 2014 4076

The Property where Christian was last seen

5. Christopher lived with his father at the Property, which was in close proximity to the Yarra River and the Salt Creek storm water channel. The perimeter fence around the Property could be easily climbed and the gates were in a state of disrepair allowing easy access to the surrounding parkland and river areas.³

The Department of Education and Early Childhood Development - Northern Early Childhood Intervention Services

6. In 2008, due to concerns with Christian's delayed and unusual language usage, rigid and repetitive play, difficulties with socialisation and self-stimulating behaviour he was referred to the Royal Children's Hospital. In addition to Christian's developmental concerns he was also a poor sleeper, displayed little or no concept of fear, was constantly climbing shelves and bookcases, had a fascination with water and had a propensity to abscond⁴ from whatever location he was in. Christian had also demonstrated an ability to operate the opening mechanism on windows and doors.
7. Jennifer Buckland (**Ms Buckland**), speech pathologist, saw Christian for thirteen sessions over 2009, with the first session being on 30 January 2009 and the last on 19 October 2009. It was Ms Buckland's *opinion* that Christian was suffering from global development delay and classic autism. Ms Buckland observed that Christian displayed little interest or awareness of other people except to use them to get his needs met. Ms Buckland, during consultations with Christian, witnessed first-hand his propensity to abscond, which Brenda reported was problematic. Ms Buckland noted:

Christian's protesting was very extreme – he would scream 'no', kick, hit, bang his head or try to escape the clinic room. As a result of Christian's skill in problem solving how to escape from the room, I asked for extra bolts to be placed on my office door (the one which opens directly onto the car park) to minimise the risk of Christian placing himself in danger.⁵

8. Ms Buckland contacted Early Childhood Intake to express her concerns about Christian's challenging behaviours and the need for Brenda to have specific input about Christian's behaviour management.⁶

³ Transcript, pages 53-55.

⁴ Elopement, sometimes referred to as absconding, is defined as leaving an area without supervision or caregiver permission. Throughout this finding reference will be made to 'abscond' and 'elopement' interchangeably.

⁵ Coronial brief pages 229-230. Transcript page 314.

⁶ Transcript, pages 319-320.

9. During the same period, on 6 January 2009, Christian was referred to the Department of Education and Early Childhood Development's (**the DEECD**) Northern Early Childhood Intervention Services (**the ECIS**). At that time, the ECIS provided services to children with a disability or developmental delay from birth to school entry and their families, with the aims to optimise a child's development and ability to participate in family and community life.⁷ At that time, the ECIS services included education, therapy, counselling, service planning and coordination, assistance and support to access services such as kindergarten and childcare.
10. On 30 January 2009, Brenda returned a completed 'Child and Family Profile' questionnaire to ECIS. Her answers detailed Christian's history, a profile of his current developmental status, the family's concerns and the services involved with him. Brenda, in completing the questionnaire, indicated that she felt she had sufficient support and help in caring for Christian. Specifically, she advised that when things became difficult, she had regular organised care to give her a break provided by childcare, her parents and Christian's father. Brenda also advised that Christian's family had some knowledge of Autism Spectrum Disorders through experiences with other family members with such disorders.
11. I note that family participation in relevant ECIS support services is voluntary⁸ and that the views of the family as to the services they require are fundamental, over and above the views of professionals who may have referred the family. The ECIS works with families to support them in what they are doing and does not impose on them what professionals may believe they should be doing.⁹ While ECIS is involved with many vulnerable families and provides early intervention and capacity building, it is not a child protection agency.¹⁰
12. The ECIS waiting list, as at September 2009, included 317 children on the referral list, of which 84 were prioritised children. At this time, it was common for children to be on the ECIS referral list for 12 to 18 months before a place became available.
13. The eligibility criteria, at the time Christian was referred to ECIS, in no specified order of priority, were:
 - a. Infants or children that display any of the following high/complex needs:
 - i. High medical needs that need to be supported locally in the community.
 - ii. Failure to thrive.
 - iii. Prematurity with additional concern e.g.: neurological, sensory, and feeding.

⁷ Statement of Simon Milligan.

⁸ Evidence of Simon Milligan at 249

⁹ Evidence of Robert Thompson at 273-4.

¹⁰ Evidence of Simon Milligan, pages 249-250, 252-253.

- iv. Children who had difficulty eating, drinking or swallowing and were at risk of aspiration or malnutrition.
 - v. Babies.
 - b. Children of Aboriginal or Torres Strait Islander descent.
 - c. Children who had moved from overseas, interstate or from another region and had previously been receiving ECIS services.
 - d. Families for whom it was no longer possible to receive a service from their existing service provider.
 - e. Siblings of children who were receiving an ECIS service.
 - f. Children who were to attend school the following year.
 - g. Children entering out-of-home care.
 - h. Children who had safety issues related to their behaviour; namely children whose behaviour (due to developmental delay) affected the capacity of parents and associated professionals to continue to care for the child and to ensure the safety of the child and those around them.
14. Following Christian's death, the ECIS' priority guidelines were amended to include further specific guidelines around when children should be prioritised for safety /behavioural reasons.
15. On 24 April 2009 Associate Professor Jill Sewell¹¹ (**Associate Professor Sewell**) specialist consultant paediatrician, at the Royal Children's Hospital had a consultation with Brenda and Christian and formed the clinical opinion that Christian was on the autism spectrum, he had poor language development and was toward the more severe end of the spectrum.¹²
16. Associate Professor Sewell's evidence in regard to Christian's absconding was that it was not clear whether it was part of his autism spectrum or some other and overlapping diagnosis, such as attention deficit hyperactivity disorder.¹³ The triggers for Christian's absconding behaviour were not well understood. The evidence was that he had tried to abscond from almost every location he was or had been present in and all persons involved in the provision of his care were required to maintain heightened levels of vigilance.¹⁴
17. On 11 May 2009, an intake worker made telephone contact with Brenda and completed a Family Services and Support Plan, which included a referral for short-term support with the Northern Autism Outreach Service (NAOS), a support service offering information

¹¹ Associate Professor Sewell practised in the area of developmental and behavioural and community paediatrics for 30 years.

¹² Statement of Associate Professor Sewell and transcript at pages 183 following and 193.

¹³ Transcript, page 190.

¹⁴ Statements of Tamar Rosenwax, Liana Kostidis, Jennifer Bott and Jennifer Buckland.

provision and advice addressing behaviour, safety, eating, sleeping, toileting, communication and development. Brenda advised the intake worker that she felt quite supported in that she is one of nine children herself.

18. NAOS made attempts in July, August, September and October 2009 to contact Brenda to offer Christian their services. Ultimately, contact was made and the offer was not taken up.
19. On 22 September 2009, Megan Johnson, Family Services Team Leader at Hume Moreland Child First, performed a home visit for Christian and took a detailed account of the day to day family needs. Robert Thompson, Acting Program Manager at Hume Moreland Child First, agreed in his inquest evidence that a difficulty a family may be experiencing with a child absconding with a consequent risk regarding nearby roads or water would 'potentially' be a child protection concern. In Christian's case, he agreed that had there been a concern about Christian's parents' capacity to deal with such a risk, Child Protection would typically have become involved. As this had not occurred he agreed it was a fair inference that this was because Ms Johnson did not have a child protection concern for Christian. Similarly, Ms Buckland's inquest evidence explained that the reason why she did not make a report to the Department of Human Services, (DHS) Child Protection¹⁵ with regards to Christian was because she did not have child protection concerns in relation to him.
20. On 7 October 2009, Christian was offered a place at Broad Insight Group (BIG), a multidisciplinary agency providing early intervention expertise in disciplines including special education, occupational therapy, psychology and physiotherapy. Brenda advised this organisation that Christian's behaviour was difficult, he was escaping a lot, but she was coping and spending a lot of time at her father's house.
21. At the time of Christian's death, the following services, in addition to ECIS, were also available for children with Autism Spectrum Disorders and their families:
 - a. The Royal Children's Hospital.
 - b. The DHS Child First.
 - c. The DHS Child Protection.
 - d. Amaze.
 - e. Private medical and allied health practitioners.

¹⁵ At the time of the inquest the Department was known as the Department of Human Services. On 1 January 2015, the Department of Health and the Department of Human Services joined to form the Department of Health and Human Services. To avoid confusion this finding I will refer to the Department of Human Services and where relevant Child Protection.

THE CIRCUMSTANCES IN WHICH THE DEATH OCCURRED

29 October 2009

22. On 29 October 2009, Christopher rang Brenda a number of times requesting that she, Christian and Tahlia sleep the night at the Property. Christopher was insistent that they sleep the night as he was considering purchasing a property in Murchison for all of them to live with him, and he wanted them leave early the next day to inspect the property.
23. Brenda, while reluctant to move to Murchison primarily because of Christian's condition and concerned there would not be services available to him, went to the Property with Christian and Tahlia to spend the night with Christopher.
24. Brenda arrived at approximately 11.30pm whereupon they all went to Christopher's bedroom. Brenda had arrived at this time because Christopher's father did not approve of their relationship and would have been upset by her presence at the Property. Such was the concern about Christopher's father's attitude to their relationship that Christopher placed a butter knife at the top of his bedroom door to jam it shut and prevent the door from being opened from either side. Christopher's evidence was that this was also done to prevent both Christian getting out of his room and his father getting in.¹⁶
25. It was only the second time Christian had stayed the night at the Property. Christopher's room was untidy and unkempt. It was littered with prescription medication, a number of knives, alcohol cans, personal items, clothing and general rubbish.
26. The window in the room had a flyscreen on the inside and was not fixed in place. The window had a winding mechanism and was not lockable.¹⁷ Christopher had not thought to attend to securing either the window or the fly screens in his room prior to the arrival of his children.¹⁸
27. After arriving at the Property, Brenda and Christopher permitted the children to watch a movie on a laptop. Christopher also left the Property in order to purchase cannabis.
28. The sleeping arrangements involved Christian sleeping on a beanbag and Tahlia on a fold out bed. Christian and Tahlia were excited about being at their father's house and were not asleep when he returned from purchasing the cannabis.
29. Christopher and Brenda smoked the cannabis using 'a bong'. A number of bongs were consumed and in order to clear the smoke from the bedroom Brenda opened the window to

¹⁶ Transcript at page 43.

¹⁷ Transcript at page 42.

¹⁸ Transcript at page 45.

blow out the cannabis smoke and to air the room.¹⁹ Once they had finished smoking Christopher's evidence was that he wound the window shut.²⁰

30. In addition to the cannabis, Christopher also consumed pre mixed alcohol cans, of which Brenda also had a few sips.²¹ During this time Tahlia fell asleep and eventually so did Christian.

30 October 2009

31. On 30 October 2009 between 3.00 am and 4.00 am Christopher and Brenda remained awake talking and eventually fell asleep.
32. At approximately 10.00 am, Christopher, Brenda and Tahlia were woken by Christopher's father banging on the bedroom door stating that it was the third time he had tried to wake Christopher.²²
33. Brenda noticed that Christian was missing from the beanbag, the window was open and the flywire screen pushed out from its placement. Brenda took the knife from the door and ran outside the house calling for Christian.
34. At about 10.50 am Christopher contacted the police to report Christian as a missing person. Victoria Police immediately commenced searching for Christian and by approximately 11.50am a large-scale search, which included the police air-wing and the K9 unit, was deployed. Despite extensive search efforts Christian was not located on this day.

31 October 2009

35. The search for Christian resumed on 31 October 2009 and at approximately 11.00 am his body was located on the western bank side of the Yarra River snagged under the front upstream edge of a fallen tree. Christian was in approximately one foot of water covered with other debris. The location his body was approximately forty metres east of Vine Street where it turns from sealed road to unsealed road.²³
36. The Victoria Police crime scene and fingerprint experts examined the bedroom window and found that the winding mechanism was easily turned. A child's fingerprints were also developed on the left side architrave and right side windowsill. The fingerprints on the sill suggested that Christian was likely facing inwards while lowering himself down. Dust on

¹⁹ Transcript, page 17.

²⁰ Transcript, page 40.

²¹ Statement of Brenda dated 2 November 2009.

²² Transcript, page. 51.

²³ Statements of D/S Dawson and LSC Barton.

the windowsill had also been disturbed suggesting recent movement across it. Of the four palm and finger impressions found one, being across the bottom architrave facing from the outside in, was indentified as belonging to Christian.²⁴

JURISDICTION

37. At the time of Christian's death the *Coroners Act 1985* (Vic) applied. From 1 November 2009, the *Coroners Act 2008* (**the Act**) has applied to the finalisation of investigations into deaths that occurred prior to the commencement of the Act.²⁵
38. Christian's death was a reportable death under section 3 of the *Coroners Act 1985* because his body was located in Victoria, the death occurred in Victoria and it was unexpected.

PURPOSE OF A CORONIAL INVESTIGATION

39. The purpose of a coronial investigation is to investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred. The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.²⁶
40. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by coroners, generally referred to as the 'prevention' role.²⁷ Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice. These are effectively the vehicles by which the prevention role may be advanced.
41. It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation. Nor is it the Coroner's role to determine disciplinary matters.

²⁴ Statement of David Gordon.

²⁵ Coroners Act, section 119 and Schedule 1.

²⁶ This is the effect of the authorities- see for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

²⁷ The "prevention" role is now explicitly articulated in the Preamble and purposes of the Act of the Coroners Act 1985 where this role was generally accepted as "implicit".

42. Detective Acting Sgt Victor Scherini was the nominated coroner's investigator²⁸ and he prepared the Inquest brief.
43. Section 52(2) of the Act provides that it is mandatory for a coroner to hold an inquest into a death if the death or cause of death occurred in Victoria and a coroner suspects the death was as a result of homicide, or the deceased was, immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.
44. Christian's identity was not in dispute, he was not a person placed in "custody or care" as defined by section 3 of the Act and his death was not the result of a homicide. Therefore, it was not mandatory to conduct an inquest into the circumstances of his death. However, I exercised my discretion, pursuant to section 52(1) of the Act, to hold an inquest because I had identified matters of public health and safety that required further investigation.
45. This finding draws on the totality of the material, the product of the coronial investigation of Christian's death. That is, the court records maintained during the coronial investigation, the inquest brief and the evidence obtained at the Inquest.
46. In writing this finding, I do not purport to summarise all of the evidence, but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity.

INVESTIGATIONS

Identity of the deceased

47. The Deceased's identity was not in dispute and required no further investigation.²⁹ Therefore, I formally find that the deceased was Christian Jay Sherwood Peck, born 24 November 2005.

Medical Cause of Death

48. On 4 November 2009 Dr Professor Stephen Cordner, Director, the Victorian Institute of Forensic Medicine, performed an autopsy on Christian's body, which found the cause of death to be 'consistent with drowning in a boy with autism (historical grounds).'
49. A radiological skeletal survey revealed no fractures or metaphyseal lesions. There were no signs of assault, the only injuries present being consistent with activity of a child of Christian's age. Toxicology testing showed no drugs or alcohol to be present.

²⁸ A coroner's investigator is a member of the police force nominated by the Chief Commissioner of Police or any other person nominated by the coroner to assist the coroner with his/her investigation into a reportable death. The coroner's investigator takes instructions directly from a coroner and carries out the role subject to the direction of a coroner.

²⁹ 'Coroners Release Authority and Confirmation of Name' signed by Brenda Bott.

Directions hearing and the Inquest

50. On 2 July 2012, I conducted a Directions Hearings where I directed the scope of the Inquest and witnesses to be called. I also granted leave for the following organisations to be represented at the Inquest:
- a. Brenda Bott and Christopher Peck (interested parties), in person.
 - b. The DEECD (interested party).
 - c. The Victorian Equal Opportunity and Human Rights Commission (for submissions only).
 - d. The Secretary to the DHS (for submissions only).

Suppression Order

51. On 2 July 2012, I ordered, pursuant to section 73(2) of the Act, that Christian's name not be published as I considered doing so would be contrary to the public interest.
52. On the first day of the inquest, 20 August 2012, I revoked that order on application from Christian's parents, Brenda and Christopher.³⁰

Issues investigated at Inquest

53. The main issues for examination at the Inquest concerned the circumstances in which Christian's death occurred and whether it could have been prevented. The areas of inquiry included:
- a. The circumstances surrounding the disappearance and death of Christian.
 - b. Previous escape attempts of Christian.
 - c. The availability and access to resources for autism for Christian's family.
 - d. How families who had a child that was a regularly absconding were assisted.
 - e. Funding assistance for such families.
 - f. Whether and how Christian's absconding could have been prevented.
 - g. How to assist those seeking to locate such a child once he or she had absconded.

***Viva voce* evidence at the Inquest**

54. A five-day inquest was held on 20, 21 and 22 August 2012 and 25 and 26 March 2013. Mr Sebastian Reid, barrister, was counsel assisting me.
55. *Viva voce* evidence was obtained from the following witnesses at the Inquest:

³⁰ Transcript, pages 5-6.

- a. Brenda Louise Bott.
 - b. Christopher Graham Peck.
 - c. Senior Constable Joshua Paul Vanderstadt.
 - d. Acting Senior Sergeant Brett Andrew Dawson.
 - e. Anne Elizabeth Rouge.
 - f. Jennifer Anne Bott.
 - g. Tamar Peta Rosenwax.
 - h. Craig William Bott.
 - i. Liana Kostidis.
 - j. Lynn Nicole Ruschmeyer.
 - k. Murray Dawson-Smith.
 - l. Associate Professor Jillian Ruth Sewell.
 - m. Simon Farley Milligan.
 - n. Robert Grant Thompson.
 - o. Victor Lawrence Scherini.
 - p. Jennifer Buckland.
56. At the conclusion of the evidence, I received a written outline of submissions from counsel assisting and counsel on behalf of all represented parties. I thank them for their valuable contribution and submissions.

Strategies to assist families

57. Associate Professor Sewell's inquest evidence was that she did not consider that absconding is an absolute part of the diagnosis of autism and not even a typical part of the diagnosis of autism. She estimated that serious absconding would be present in a very small proportion of autistic children, perhaps 5 per cent overall.
58. During the Inquest a number of suggestions were made as to how families might be assisted in preventing children like Christian from absconding. They included:
- a. Education.
 - b. Securing the child's environment.
 - c. GPS tracking devices.

Education

59. Evidence revealed there is difficulty in obtaining information about the services available for children such as Christian and confusion about what each of these services can offer.
60. The evidence demonstrated that improvements are required with respect to information about the services available, and what each service can provide, to ensure children with Autism Spectrum Disorders and their families are able to access them.
61. Mr Simon Milligan³¹ (**Mr Milligan**), Psychologist, Deputy Director for Child Learning and Family Services, agreed in evidence that families may have difficulty in understanding the various sources of funding and how to access them. He identified the existence of the publication, entitled '*Through the Maze: An overview of services and support for parents of children with a disability in Victoria?*'³² published by the Association for Children with a Disability, directed at assisting persons to understand the disability and support services environment.
62. Despite this, the DEECD agreed with me that further assistance for families in this regard would be desirable.

Securing the child's environment

63. Appropriately securing the home of a child with a tendency to abscond is of paramount importance. Evidence was given concerning a number of cost-effective devices on the market specifically designed to secure doors and windows. Mr Murray Dawson-Smith's, CEO, Amaze Autism Victoria, inquest evidence was that families in rental properties encounter difficulties in being able to arrange with their landlord the securing of that property.
64. While this was not such a case, as Christian was visiting the Property for one night only, Mr Dawson-Smith raised the possibility of Amaze preparing a simple auditing document for parents specifying risks to be evaluated in every environment entered by a child with a tendency to abscond. The DEECD agreed that such a document may be of real assistance to families with a child who absconds.
65. The coroner's investigator, Detective Acting Sgt Victor Scherini, comprehensively investigated whether there were cost effective after market safety products available for securing a wind-out window that did not involve drilling into the window and found that none existed.

³¹ Mr Simon Milligan, Psychologist, Deputy Director for Child Learning and Family Services.

³² First published September 2010 and reprinted in March 2011, December 2012 and April 2014. The current version is Edition 8 (2014-2015) printed in April 2014.

66. Despite this Det. Acting Sgt Victor Scherini's enquiries did identify a number of safety products available for securing windows and doors. In particular, he obtained a number of sample products for locking windows and doors, but none applied to wind-out windows. All of the products, while simple to install, would not have assisted Christian's parents on the night/morning he wandered away from their bedroom because they were still required to be fixed with screws.
67. This evidence demonstrates a clear gap in the market for such safety products and limits parents and carers who are renting or may need to take a child with elopement tendencies temporarily out of the home.
68. In the circumstances, I intend to recommend that further research be conducted to ensure that cost effective products are identified if they exist, and researched as to their effectiveness.

GPS Tracking devices

69. Mr Murray Dawson-Smith's inquest evidence was that GPS tracking devices should be made available to families with children who have been diagnosed with autism and have a propensity to abscond/elope.³³ While no legal impediment exists for families who consent and fund such a device, an issue remains as to who should or could fund the use of a GPS device if a family or a carer was unable to afford such a device and whether it would come within the ambit of government funded disability aids and services in Victoria.
70. A number of communications have been made to the DHS regarding its views on the use of GPS tracking devices as a preventative measure to serious injury or death of a child with elopement tendencies. In its paper *Absconding individuals- Strategies and Resources* (March 2012), Amaze suggests that families can investigate the use of GPS style technology to track and locate the individual should they go missing. While, I agree with Amaze's approach I consider that such a step should only be taken after a careful consideration.
71. The DHS submitted that there is the potential for it to provide funding for a GPS device via an Individual Support Package (ISP), in appropriate cases where absconding behaviour presents a real risk of injury to a child, however, there is a threshold matter for determination, namely whether the use of a GPS device is appropriate and desirable.
72. I agree with the DEECD and the DHS' submissions that more research is required into the use of GPS tracking devices for children with elopement tendencies and until that time, a recommendation mandating their use would be premature.

³³ Transcript, pages 125-129.

73. In particular, the DHS informed me that the Senior Practitioner for Disability was working with AMAZE to investigate the evidence and produce a paper on the use of tracking devices to manage elopement in people with disabilities. I have held back on releasing my findings in this matter pending the DHS providing me with a copy of this paper. In May this year I received from the DHHS (as it is now known) a draft paper developed by Hayward, Ransley and Memery (in submission) on the use of GPS devices for elopement of people with autism³⁴ (**the Draft Paper**). While the Draft Paper is not finalised I have been advised that the underpinning draft conclusions and recommendations will not change.
74. The Draft Paper provides a summary of the contemporary thinking and evidence in relation to the use of GPS devices for the tracking of people with developmental disabilities who elope through analysis of the wider available literature, which primarily concerns people with dementia.
75. The overall conclusion of the Draft Paper is that there is little evidence to support the widespread recommendation that GPS devices are an effective intervention to prevent risk associated with elopement and in fact, other more robust interventions exist.³⁵
76. The Draft Paper recognises that the development of electronic surveillance systems has flourished in recent years and along with this, there is a growing awareness and interest in the availability of using a GPS to locate people who have eloped. However, the Draft Paper cautions that there is a distinct lack of research, which examines the impact of such devices on people who elope and their caregivers. In particular, that careful consideration must be given to avoid the investment in an intervention which may prove ineffective and potentially lead to greater risk for the very people it is designed to protect³⁶
77. The Draft Paper concluded that:
- a. Elopement occurs in a proportion of those with developmental disabilities and appears to be more common in those of younger age and with Autism Spectrum Disorder;
 - b. There is a need to understand the underlying reason why a person (child) is eloping;
 - c. GPS devices have limitations such as the functionality of a range of devices have highlighted coverage (especially in rural areas), portability, reliability, range, size, ease of use, reliability of electronic networks, the need for multiple pieces of equipment, electronic interference, the need for regular testing, battery replacement,

³⁴Hayward, B.A., Ransley, F.R., and Memery, R. (in submission). GPS devices for elopement of people with autism and other developmental disabilities: A review and exploratory study (draft).

³⁵ The Draft Paper, page 2.

³⁶ The Draft Paper, page 3.

the involvement of a service centre and the need to recognise that a person has in fact eloped.

- d. There is no 'average' user of tracking technology and therefore assessment of safety, the individual factors of the person being monitored, and the relationship between the person being monitored and the carer are necessary considerations.
- e. The concern that an electronic tracking device should not replace the need for appropriate and necessary supervision and reduce human care giving.

78. The Draft Paper detailed one study that focused on mothers who had a child with Autism Spectrum Disorder and a tendency to elope and recognised that the elopement of the child was a highly traumatic event that warranted an immediate emergency response. The Draft Paper cautioned that the interest in GPS devices should not be driven by the emotional need for a device to alert carers and/or emergency services rather than behavioural intervention which first requires assessment and then sustained intervention.

79. Ultimately, the Draft Paper acknowledges that *“There is a need for comprehensive and rigorous empirical research, theoretical discussion and public policy scrutiny, particularly as GPS devices “manufactured for one market being migrated to another, in this case a human market without sufficient evidence”³⁷*

80. Noting that the Draft Paper does not directly consider the Charter, it makes the following preliminary recommendations:

- a. Robust studies of the effectiveness of GPS devices in reducing the risks associated with elopement of people with Autism Spectrum Disorders;
- b. Further debate to provide direction in regards to what constitutes acceptable risk-taking by people with disabilities when they elope;
- c. Further delineations of the potential hazards associated with risk compensation by caregivers with the use of the GPS devices;
- d. The establishment of practical ethical guidelines which are not entirely dependent upon the person with the disability to engage in the discourse
- e. Studies of the first-person/consumer experience of being monitored with GPS devices;
- f. Improved awareness and strategies for the implementation of existing evidence-based interventions for elopement including functional analysis and functional behaviour assessment.

³⁷ The Draft Paper, pages 21-22.

81. Associate Professor Sewell's further evidence was that not all autistic children elope and that the benefit of a GPS device would depend on the family's individual circumstances and whether that was something that the family could handle well or whether in some circumstances that it might add extra stress, which would be unacceptable to the family. Associate Professor Sewell emphasised that she would certainly want to make sure that the device was appropriate and that it did the job it was supposed to do and did not have any adverse effects. Associate Professor Sewell cautioned that she "*would be really distressed if a technical device took the place of appropriate human early intervention ... I think technical devices sometimes run that risk.*"³⁸ The Professor agreed that GPS or other monitoring devices may have application where a child absconds and has another fascination, such as water. However, she advocated for an individual assessment, taking into account:

... how difficult the absconding situation was, very much on how the family manages, and what extra support the family wanted in order to help the situation, whether the tracking device would be a suitable device for that particular family to manage and to cope and to take responsibility for.³⁹

82. Mr Milligan was questioned about legal or other obstacles concerning the use of GPS and other technologies. Mr Milligan emphasised that the direction for Early Childhood Intervention in Victoria is focused on "*evidence based practice*" and that funding applications are scrutinised "*in terms of what's been recommended and evidence based intervention for this child given their presentation.*"⁴⁰

83. Furthermore, Mr Milligan's evidence was that his organisation would be "*looking for ... research to support the effectiveness of any device, often they're researched by academic institutions to see if they have a clinical benefit for the children.*"⁴¹

84. I agree with Mr Milligan that before using technical measures, it is preferable, from a prevention perspective, to inhibit a child's movement away from a safe location such as containment around doors, windows, latches, local environment, fences etc. That is to implement a strategy of managing and stopping an eloping child from escaping rather than relying on a device to indicate escape. I note Mr Milligan's evidence that there may be challenges with maintaining any type of device on children with autism because they may experience sensory issues whereby they don't experience pain and thus they may actually harm themselves to remove a device. There will also be issues with GPS devices where a

³⁸ Transcript, p 201.

³⁹ Transcript, p 201.

⁴⁰ Transcript, page 224-225.

⁴¹ Transcript, pages 224-225.

parent / carer does not own their own homes to which the necessary alterations need to be made.

85. The DHHS advised that the Draft Paper will be utilised to inform best practice and policy concerning the use of GPS devices across all areas of the DHHS, including child protection and disability services.
86. The DEECD agreed with the DHHS that more research is required into the use of tracking devices for children like Christian and that any recommendation that their use be mandated was premature.
87. I agree, in the absence of validated empirical research as to the risks associated with the use of GPS tracking devices it is difficult to establish safe policies as to the appropriate boundaries on their use.
88. At the time of finalising this finding it appears that tracking devices are not being used for children like Christian. This is based on the principle that those working with such children should emphasise the need for measures to prevent a child absconding in the first place, such as securing the home and providing vigilant supervision.

Assistance to emergency services

89. Mr Dawson-Smith also raised the need for families of children with Autism Spectrum Disorder and a tendency to abscond, to have the option of having relevant details of their child entered on the Victoria Police LEAP⁴² database to assist in the prompt location of an absconding child.⁴³ It must be recognised that including a child's details on LEAP will not prevent absconding. However, it may assist emergency service personnel to locate a child quickly once they have been reported as missing. I must make it clear that I do not in any way criticise the actions and response by the emergency services to Christian's disappearance. Rather the opposite is true.

Funding to assist families with children on the autism spectrum

90. The Secretary to the DHHS has the responsibility for services in Victoria pursuant to the *Disability Act 2006 (Vic) (the DA)*. Section 3 of the DA defines disability as a sensory, physical or neurological impairment or and acquired brain injury which results in substantially reduced capacity in self-care, self-management, mobility or communication and requires

⁴² On 1 March 1993, Victoria Police implemented the Law Enforcement Assistance Program (LEAP) state-wide. The LEAP database is relational and stores particulars of all crimes brought to the notice of police as well as family incidents and missing persons. The database is accessible by Police online and updated constantly, 24 hours a day.

⁴³ Transcript, page 130.

significant ongoing or long-term episodic support. The definition also includes an intellectual disability or developmental delay. The DHHS provides Individual Support Packages (ISPs) to meet the ongoing disability related support needs of individuals living in Victoria. ISPs are funding packages that are developed on a case-by-case basis. To be eligible for an ISP a person must be in need of ongoing disability support and meet the priority criteria. The DHHS' guidelines regarding ISPs are broad so as to ensure that they allow each package to be tailored to each individual. Funding is approved where it relates to the individual's disability needs and to achieve the goals that are identified in an individual's support plan. An individual who does not seek or require ongoing assistance from the department would not be eligible to seek funding, through an ISP for a GPS tracking device. Limitations on ISP funding include that:

- a. It is not available to all children with autism in Victoria;⁴⁴
 - b. They are usually only available to children over the age of 5 years;
 - c. It would not be available to children with elopement tendencies who do not have a diagnosed disability;⁴⁵
 - d. There may be other funding streams that would provide a more appropriate and consistent provision of funding to parents of autistic children.
91. The DHHS' Aids and Equipment Program provides subsidies for a range of equipment categories such as wheelchairs, walking frames, beds and hoists. GPS tracking devices are not one of the equipment categories funded by this program.
92. ECIS places are funded by the Victorian State Government. Despite additional funding having been provided to ECIS prior to Christian's death, this did not cause a significant difference in the ECIS waiting list. The demand for ECIS places remains greater than the services that can be provided. I note that in November 2012 an additional 500 ECIS places were announced by the Victorian Government and a further 500 ECIS places announced on 7 May 2013.
93. In addition the DEECD offers Flexible Support Packages. These may be used to fund supports including respite, access to transport, therapy (complementary to ECIS), equipment, supports for children to participate in playgroups or childcare and other supports for the family in relation to caring for their child. Typically, this funding is for items costing \$1000 or less.
94. A summary of the potential sources of funding available for Christian were as follows:
- a. ISPs;

⁴⁴ Associate Professor Sewell observed not all children with autism in Victoria are referred to DHS. Transcript at 203.

⁴⁵ The definition of disability pursuant to the DA does not capture all children with autism.

- b. Medicare funded (up to 20) sessions with an allied health provider such as a speech therapist;
- c. The Helping Children With Autism (Commonwealth) program, which has flexible funding that parents are able to utilise to support their children. This funding is not allocated for equipment, but rather for therapy directed at a child's specific needs;
- d. Local government for financial assistance to secure a home;
- e. Disability Care Australia ((formerly known as the National Disability Insurance Scheme) a Commonwealth initiative may provide a valuable opportunity to review how the funding of and delivery of services can be best directed. I note the submissions of the DEECD that funding/service delivery under the new scheme should be directed to supporting evidence based best practices.

COMMENTS

- 95. Pursuant to section 67(3) of the *Coroners Act 2008*, I make the following comments connected with Christian's death:
- 96. I make no adverse comments about any individuals involved in Christian's care prior to his death.
- 97. Where a child by his or her absconding places him or herself in danger of death or injury, the best interest principles demand consideration of the use of GPS systems.
- 98. The current communications from the DHHS are that would not consider a GPS device as an 'aide' under their current ISP program and that the use of such a device should not be mandatory but rather available as part of a suite of strategies to assist in the protection of children with absconding forming part of their clinical presentation. I agree with this approach. I also add that this should be a decision made by the child's parents.

The Charter of Human Rights and Responsibilities 2006

- 99. The Victorian *Charter of Human Rights and Responsibilities Act 2006* (**the Charter**) became law on 25 July 2006. The preamble to the Charter Act outlines its founding principles, recognising that all people are born free and equal in dignity and rights. The Charter aims to ensure human rights are valued and protected within government and the community.

100. Under the Charter, public authorities⁴⁶ must consider human rights protected in the Charter when creating legislation, implementing policies or delivering services. It should be noted that the Charter does not apply to the activities of individuals.
101. There are 20 fundamental human rights protected by the Charter. The most relevant rights to Christian's circumstances are:
- a. Recognition and equality before the law (section 8);
 - b. The right to life, providing: "*Every person has the right to life and has the right not to be arbitrarily deprived of life.*" The right to life places negative and positive obligations on the State: a negative obligation to refrain from conduct that will result in the arbitrary deprivation of life and a positive obligation to take measures to prevent and protect against the arbitrary deprivation of life. (Section 9);
 - c. Freedom of movement (section 12) – People can stay in or leave Victoria whenever they want to as long as they are here lawfully. They can move around freely within Victoria and choose where they live;
 - d. Privacy and reputation (section 13);
 - e. Protection of families and children (section 17) – Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests;
 - f. Right to liberty and security of person (section 21) - Everyone has the right to freedom and safety. The right to liberty includes the right to not be arrested or detained except in accordance with the law. The right to security means that reasonable steps must be taken to ensure the physical safety of people who are in danger of physical harm.
102. Section 7(2) of the Charter provides that a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
- a. The nature of the right; and
 - b. The importance of the purpose of the limitation; and
 - c. The nature and extent of the limitation; and
 - d. The relationship between the limitation and its purpose; and
 - e. Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

⁴⁶ Public Authority is defined by the Charter at section 4.

103. Section 7(3) provides that nothing in the Charter gives a person, entity or public authority a right to limit (to a greater extent than is provided for in the Charter) or destroy the human rights of any person.
104. Section 10 of the *Children, Youth and Families Act 2005 (CYFA)* also requires that the “best interest principles” must always be paramount. That is, in order to determine whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her stage of development) must always be considered.
105. As a coroner, I must comply with the Charter of Human Rights and Responsibilities 2006 (**the Charter**). When considering any recommendations to a public statutory authority or entity pursuant to section 72(2) of the Act, by virtue of section 38 of the Charter, I must have consideration to human rights and not act incompatibly with human rights.
106. As part of my coronial investigation into Christian’s death, I sought submissions on potential recommendations directed to the DHHS and the Chief Commissioner of Police, including but not limited to the :
- a. Use of GPS tracking devices as a disability support for children;
 - b. Pre-emptive collection of information by the Victoria Police (voluntarily provided by the family of a child with autism who is at risk of eloping) for inclusion on the LEAP database.
107. Importantly, when considering these matters, I have considered sections 7(2)(a)-(e) of the Charter, as to whether they may limit, restrict and/or interfere with the human rights of any affected child that may not be demonstrably justified. Section 7(2) is a general limitations provision, which gives effect to the principle that human rights are not absolute and can be limited where there is a reasonable and demonstrable justification for the restriction.
108. In considering these matters, I also invited the Victorian Equal Opportunity and Human Rights Commission (**the Commission**) to make submissions on the application of the Charter.
109. I agree with the Commission’s submission that where a child has a disability, the child has equality rights to enjoy his or her human rights without discrimination.⁴⁷ The use of a tracking device for children with autism known to abscond may result in children with that disability not enjoying their human rights, on an equal basis with children who do not have a disability.

⁴⁷ Section 3 of the Charter defines ‘discrimination’ for the purposes of s 8 by reference to the *Equal Opportunity Act 2010*, which relevantly prohibits discrimination on the basis of disability.

110. I also agree with the Commission that a child has a right not to be treated in a degrading way.⁴⁸ The Commission submitted that the use of a tracking device may limit a child's autonomy and, depending on the manner of the device and the way it is used and may amount to an interference with their physical and/or psychological integrity. While I also agree with the Commission that a child has a right to move freely within Victoria, it is important that this is done in the safest manner possible.
111. Tracking devices are not a simple solution and that many children with Autism Spectrum Disorders may object to wearing a device on their body and may cause themselves injury in removing it.
112. These devices can be costly and have technical limitations. Such a device is not a replacement for adequate supervision.
113. The focus of my investigation and the Inquest into Christian's death was to ensure that children such as Christian are protected from a risk that may lead to their death. Therefore, it is critical that further research is conducted to determine whether there is assistance for parents and carers of children who are known to elope and ensure their safety.
114. I have not reviewed the potential application of the Charter to persons concerned with the use of GPS technology as this issue did not directly arise in this investigation. I would offer however that section 9 of the Charter relating to the right to life suggests that the use of GPS technology in a case like that of Christian's (and following medical assessment) is unlikely to be seen as unreasonable and disproportionate to the risk to life otherwise created for persons with the same risk factors as Christian.
115. I agree with the Commission that the human rights considerations connected to the practice of pre-emptively registering a child's personal details on Victoria Police's LEAP database requires an evidentiary basis to justify the limitations it would place on a child's rights.
116. Having so commented I do not intend to make recommendations in relation to this issue as it is clear from the evidence in this case that it would not have prevented Christian's death or resulted in him being located at an earlier point in time. Sadly, it appears that Christian had already entered the river before the emergency services were contacted.

⁴⁸ Section 10(b) of the Charter.

FINDINGS

117. Pursuant to section 67(3) of the *Coroners Act 2008*, I make the following findings connected with Christian's death:

118. I find that the identity of the deceased was Christian Jay Sherwood Peck, born on 24 November 2005 and his death occurred on 31 October 2009 having been located deceased in the Yarra River.

119. I accept and adopt the conclusions of Professor Cordner and I find that Christian Jay Sherwood Peck's death was consistent with drowning in a boy with autism (on historical grounds).

RECOMMENDATIONS

120. Pursuant to section 72(2) of the *Coroners Act 2008*, I make the following recommendations connected with the death.

Recommendation 1

I recommend that AMAZE and the Department of Education and Early Childhood Development agree which agency is the most appropriate to develop and publish a home audit information sheet to assist parents and carers with a ready reference risk assessment tool identifying risks that need to be assessed by them around the home (or temporary accommodation) for a child with absconding/elopement tendencies. This should include control measures such as the availability and effectiveness of cost-effective window and door locking devices.

Recommendation 2

I recommend that the Department of Health and Human Services finalise its Draft Paper authored by Hayward, Ransley and Memery (in submission) on the use of GPS devices for elopement of people with an Autism Spectrum Disorder and publish its findings/conclusions.

Such publication should include a clear statement as to the Department's position on:

- Whether the use of GPS tracking devices for children, who are shown to have a history of eloping together with a future potential to elope, is compatible with the *Charter of Human Rights and Responsibilities Act 2006*;
- The circumstances, if any exist, it would fund the use of GPS devices.

Recommendation 3

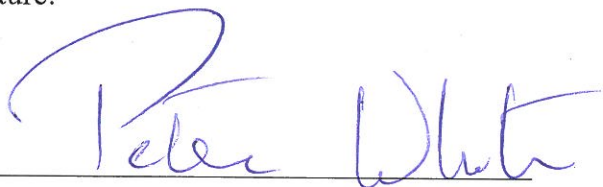
I recommend that the Department of Education and Early Childhood Development and the Department of Health and Human Services review its respective publications to ensure they contain clear, unambiguous and up to date information for families with children with Autism Spectrum Disorders as to how they can access services and funding to seek assistance.

Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

- Ms Brenda Bott.
- The Secretary to the Department of Health and Human Services.
- The Department of Education and Early Childhood Development.
- AMAZE.
- The Victorian Equal Opportunity and Human Rights Commission.
- Detective Acting Sgt Victor Scherini, coroner's investigator.

Signature:



PETER WHITE, CORONER

30 October 2015

