



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2019 2848

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Findings of:	Coroner Leveasque Peterson
Deceased:	Ehren Clement Hyde
Date of birth:	6 December 1994
Date of death:	Between 2 June 2019 and 4 June 2019
Cause of death:	1(a) Drowning
Place of death:	Jawbone Marine Sanctuary, Williamstown, Victoria

INTRODUCTION

1. Ehren Clement Hyde (**Ehren**) was 24 years old at the time of his death. He lived in a sharehouse with friends in Prahran and was employed as a technology consultant. He had a medical history of childhood asthma for which he carried Ventolin but was otherwise in good health.
2. Ehren was an avid sailor, having sailed since he was 15 and had competed in national championships. He held a current recreational boat licence and owned a Laser dinghy¹ (**Laser**) named 'Big Bits' which he stored at the Albert Park Yacht Club. He was a member of the Albert Park Sailing Club and sailed most weekends on Port Phillip Bay or Albert Park Lake, often by himself. He was described as a very competent sailor who was safety conscious and would always wear a wetsuit, helmet and personal floatation device (**PFD**).
3. Ehren was found deceased in water at Jawbone Marine Sanctuary, Williamstown, on 4 June 2019, two days after setting out to sail his Laser on Port Phillip Bay.

THE CORONIAL INVESTIGATION

4. Ehren's death was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (the Act). Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.
5. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
6. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
7. The Victoria Police assigned an officer to be the Coroner's Investigator for the investigation of Ehren's death. The Coroner's Investigator conducted inquiries on my behalf, including

¹ The Laser is a highly popular sailing dinghy designed to be sailed single-handed. It is robust and simple to rig and sail.

taking statements from witnesses – such as family, friends, the forensic pathologist, and investigating officers – and submitted a coronial brief of evidence.

8. This finding draws on the totality of the coronial investigation into the death of Ehren, including evidence contained in the coronial brief. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.²

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Circumstances in which the death occurred

9. On Sunday 2 June 2019, at 10.40am, Ehren entered the Albert Yacht Club and retrieved his Laser. He left the yacht club at 10.47am.³ It appears that Ehren then walked the Laser, on the trailer, to Beach Road, near Kerferd Road in Albert Park, a distance of approximately 2 km.
10. Ehren spoke with his mother, Laura, by telephone at about 11.00am for approximately ten minutes. During the conversation, Ehren said he was drinking water because he did not want to get dehydrated while sailing. He told her he was alone and had pulled his Laser to the bay from Albert Park Yacht Club by hand. He was happy, in good spirits and was keen to get out on to the water.
11. It appears that shortly after speaking with his mother, Ehren entered the water with the Laser, leaving the trailer, black jacket and a backpack containing his wallet and mobile phone, on the sand near a retaining wall.
12. Ehren's friend and Commodore of the Albert Park Yacht Club, Hedley Haggett, stated that he believed the weather conditions on the day were within Ehren's abilities, but noted that it was cold and the weather changed. Bureau of Meteorology data indicates that on 2 June 2019 there were winds of 4 knots at 11.00am, increasing to 6 knots with gusts of up to 21 knots at 12.30pm. Later that afternoon, there were area winds of north westerly to westerly

² Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

³ Ehren's attendance at Albert Yacht Club was captured on CCTV and in swipe access records. There was some inconsistency between the timestamp of the CCTV footage and swipe access records. However, investigations indicated that the timings indicated in the swipe access records were correct and have been adopted in this Finding.

ranging from 3 to 8 knots with gusts of up to 21 knots. The average sea temperature was 15°C.

13. Ehren did not attend work on Monday 3 June 2019 or Tuesday 4 June 2019. As it was out of character for Ehren not to attend work, his employer contacted Ehren's father, Nicholas, to enquire as to his whereabouts. Nicholas immediately telephoned Laura to ask if she had heard from Ehren. Laura informed him that she had last spoken to Ehren on the morning of 2 June 2019 and had told her he was about to go sailing.
14. On 4 June 2019, at about 1.30pm, Nicholas contacted Victoria Police and reported that Ehren was missing. He provided photographs and details of Ehren's last known contact. Police members at the Prahran Police station subsequently reported the incident to Water Police via the Rescue Coordination Centre (RCC) at about 5.00pm. However, as details were being taken of the circumstances, Police Communications notified RCC that a body had been located off Jawbone Marine Sanctuary in Williamstown.
15. At approximately 4.40pm that day, a passer-by found Ehren's body face down in the water floating against rocks off Jawbone Marine sanctuary near Mullins Court and Rifle Range Drive, Williamstown, and contacted emergency services. Ambulance Paramedics attended and confirmed that Ehren was deceased. Later that afternoon, Ehren's trailer and personal belongings were located near Beach Road and Kerferd Road.
16. On 5 June 2019, at approximately 8.00am, Ehren's Laser was located drifting off St Kilda Marina by a local fisherman. The Laser had no person with it or around it and there were no sails visible. The fisherman secured the Laser by means of a line and reported the vessel to Water Police⁴ who attended, recovered the dinghy and conveyed it to the Water Police Office for examination.

Identity of the deceased

17. On 6 June 2019, Ehren Clement Hyde, born 6 December 1994, was visually identified by his friend Hedley Haggett. Identity is not in dispute and requires no further investigation.

Medical cause of death

18. Forensic Pathologist Dr Joanna Glengarry from the Victorian Institute of Forensic Medicine (VIFM), reviewed the Police Form 83, post-mortem CT scan and scene photographs, and

⁴ The Water Police Squad within Victoria Police provides specialist support by coordinating all marine search and rescue incidents and law enforcement of the marine environment.

conducted an autopsy on the body of Ehren Hyde on 7 June 2019 Dr Glengarry provided a written report of her findings dated 2 October 2019.

19. The post-mortem examination revealed frothy fluid within the mouth and airways, pulmonary hyperinflation and oedema with increased lung weights and watery fluid within the stomach. There were minor bruises and abrasions of the torso and limbs, but no radiologic or post-mortem evidence of violence or injury causing or contributing to death.
20. Toxicological analysis of post-mortem samples did not identify the presence of any alcohol or any common drugs or poisons. Biochemical assessment revealed the presence of elevated sodium and chloride within the vitreous humour, which may be seen in drowning deaths in saltwater.
21. Dr Glengarry provided an opinion that the medical cause of death was '*1(a) Drowning*'. I accept Dr Glengarry's opinion.

CORONIAL INVESTIGATION

22. Victoria Police attended the scene of the incident and immediately commenced a coronial investigation. Investigators identified that Ehren was wearing a Type 2 PFD as required by Victorian Law,⁵ a full-length wetsuit and helmet. He was not carrying an Emergency Position Indicating Radio Beacon (**EPIRB**) or Personal Locator Beacon (**PLB**). His mobile phone was located with his property left on the beach at Albert Park, and he had made no distress calls.
23. The Water Police Squad assessed Ehren's Laser, which was identified as a Laser International Class sailboat known as a Laser Standard or Laser One. It was 4.2 m, with a waterline length of 3.81 m, a hull weight of 56.7 kg and a main sail area of 7.06 m². The Laser carried all the required safety equipment for 'off-the-beach sailing'. No major damage or issues with the vessel had been reported prior to this incident. On examination, the Laser was found to have visible signs of wear and tear and the mast and boom were broken and no longer upright. However, investigators concluded that it was in a fair usable condition, and a stability test showed no ingress of water into the vessel.

⁵ There are three types of recreational PFDs. Off-the-beach sailing requires the wearing of a Type 1 or Type 2 PFD. A Type 1 PFD (otherwise known as a 'lifejacket') is indented to maintain the wearer in a safe floating 'face up' position whether conscious or unconscious, with sufficient floatation to support the body and head. Design features include a floatation collar to keep the head above water, high visibility colours and retro-reflective patches. A Type 2 PFD (otherwise known as a 'buoyancy vest') provides less buoyancy than a Type 1 PFD but is sufficient to support the body. It is manufactured in high visibility collars but does not have a collar to keep the head above water. It is suitable for use in smooth and partially smooth waters and is suitable for sailing boats and dinghies.

24. Investigators concluded that sometime during his journey, Ehren fell into the bay and separated from his Laser and was unable to retrieve it. Weather conditions pushed Ehren to Jawbone Marine Park where he was subsequently found. A search and rescue map was completed back tracking from Jawbone Marine Sanctuary in order to predict where Ehren may have become separated from his yacht. It was predicted Ehren separated from his vessel at 37 59.47S 144.52.12E. In the absence of any eyewitnesses, investigators were unable to ascertain the exact events which led to Ehren's death.

FINDINGS AND CONCLUSION

25. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:
- (a) the identity of the deceased was Ehren Clement Hyde, born 6 December 1994;
 - (b) the death occurred between 2 June 2019 and 4 June 2019 at Jawbone Marine Sanctuary, Williamstown, Victoria from drowning; and
 - (c) the death occurred in the circumstances described above.
26. Having considered all of the circumstances, I am satisfied that Ehren's death was likely the result of a sailing accident.

COMMENTS

Pursuant to section 67(3) of the Act, I make the following comments connected with the death.

27. Ending up in the water is one of the greatest risks to the safety of boaters and paddlers in cool Victorian waters. In the event of an emergency on water, EPIRBs and PLBs⁶ may be activated to alert search and rescue services. They are a vital search and rescue tool which can make the difference between a successful outcome and failure. At present, maritime regulations in Victoria only require that EPIRBs be carried on sail powered recreational vessels if more than two nautical miles offshore in coastal waters.⁷ They are not mandated

⁶ Once activated, an EPIRB transmits a distress signal for at least 48 hours that can be detected by satellite and overflying aircraft. They are waterproof and will float upright for best signal transmission and have a lanyard which can be attached to a person or a floating object. EPIRB alerts detected off Victoria are received by the Australian Maritime Safety Authority in Canberra and relayed to the local rescue coordination centre. A PLB is smaller and more convenient to carry than an EPIRB.

⁷ *Maritime Safety Regulations 2012* (Vic), s 96(2). These regulations also apply to mechanically powered vessels.

for use on enclosed waters such as Port Phillip Bay. However, it is recommended that a PLB be worn by all boaters who are boating alone.⁸

28. Fatalities associated with recreational boating activities have long been of concern to Coroners in Victoria. In recent years, Coroners have made a number of recommendations to relevant agencies to consider the need for, and to implement, legislation to mandate that an EPIRB or PLB (preferably with GPS capability) be carried in all human powered vessel activities, regardless of the classification of waterway or distance off shore.⁹
29. In September 2018, Transport Safety Victoria (TSV) informed the Coroners Court that they supported this recommendation in part, but considered that any legislative amendment requiring operators to carry an EPIRB or PLB should only apply to persons operating vessels in high risk situations, for example when operating alone, and not to persons engaged in low risk activities being conducted in sight of the shore. TSV also considered that this issue is not confined to human powered vessels but applies to all vessel operators in Victorian waters. TSV intended to utilise safety education campaigns targeted at changing boater behaviour, prior to exploring the possibility of legislative change to mandate the carriage of EPIRBs or PLBs for the operators of all vessels in high risk situations, including when operating alone.¹⁰
30. In December 2018, Maritime Safety Victoria (MSV), a branch of TSV, launched a new boating safety campaign ‘Prepare to Survive: Know The Five’ in conjunction with the Bureau of Meteorology, Life Saving Victoria, Australian Maritime Safety Authority, Emergency Management Victoria and Parks Victoria.¹¹ The campaign is ongoing and is supported by case studies, videos, guides and flyers accessible through the TSV website. It encourages people heading out on to the water to prepare by following five fundamental steps: know the weather; practise getting back on; carry a distress beacon; lock in a buddy plan; and wear a lifejacket (**the Five Steps**).¹² The Five Steps provides clear guidance to boaters to enhance their safety and increase their chances of survival if they end up in the water.

⁸ Victorian Recreational Boating Safety Handbook dated July 2020, p 25.

⁹ See for example: Finding into Death without Inquest of James Mifsud dated 25 August 2009, COR 2007 4693; Finding into Death without Inquest of Georgios Emmanouel dated 1 November 2013, COR 2009 4831; Finding into Death without Inquest of Ashton Prentice Victor Meadows dated 25 May 2016, COR 2014 2978; Finding into Death with Inquest of Nicholas James Smith dated 22 December 2016, COR 2016 1799; Finding into Death without Inquest of Junichi Yoshimura dated 5 April 2018, COR 2017 4024.

¹⁰ Response by Transport Safety Victoria dated 10 September 2018 to Recommendation made in the Finding into Death without Inquest of Junichi Yoshimura dated 5 April 2018, COR 207 4024.

¹¹ See <https://transportsafety.vic.gov.au/maritime-safety/newsroom/prepare-to-survive-know-the-five>

¹² See <https://transportsafety.vic.gov.au/maritime-safety/recreational-vessel-operators/campaigns/prepare>

31. Specifically, boaters are advised to establish a buddy plan when heading out on the water and agree a trigger time for the buddy to contact emergency services if the boater is uncontactable and has not returned by an agreed time. MSV has produced a reusable 'I've gone boating / paddling' flyer for boaters to complete each time they head out on the water which includes details of the trip, latest return time, details of the vessel taken and relevant contact information.¹³ In addition, the campaign encourages boaters to carry a distress beacon (EPIRB or PLB) when boating alone to enable boaters to notify rescuers when in distress and allow them to pinpoint their location.¹⁴
32. The campaign commenced over six months prior to Ehren's death. Ehren was known to be safety conscious on the water and wore all the required safety equipment, including a Type 2 PFD, wetsuit and helmet. However, I have been unable to ascertain whether Ehren was aware of the Five Steps at the time of this incident. Although he informed Laura on the morning of 2 June 2019 that he was intending to sail, there is no evidence before me to indicate that Ehren had implemented a buddy plan such that emergency services were to be contacted if he did not return by a nominated time. Further, as previously noted, Ehren was not carrying an EPIRB or PLB, and his mobile phone was left with his personal belongings on the beach. This meant that Ehren had no means to alert other persons or rescue services if he was in distress.
33. In the absence of any evidence as to the specific events that led to Ehren's death, I am unable to determine whether the carrying of a distress beacon or implementation of a buddy plan would have prevented his death. I am also unable to say whether Ehren would have had the opportunity to activate a distress beacon if he carried one, or if earlier notification to rescue services would have altered the tragic outcome. However, there is a clear public health and safety benefit in implementing the five steps, which enhance safety and may increase the chance of survival when a boater or paddler ends up in the water.
34. I acknowledge and commend the efforts of TSV and MSV to promote safer behaviour among boaters and paddlers through the five steps campaign. However, it appears that further education is warranted to support behavioural change and to ensure boaters and paddlers are made aware of this advice. I consider that a more targeted public awareness campaign directed towards solo boaters and paddlers through sailing and yacht clubs would assist in ensuring boaters and paddlers are aware of, and encouraged to adopt, the Five Steps. Consequently, I have made a recommendation consistent with this.

¹³ <https://transportsafety.vic.gov.au/maritime-safety/recreational-boating/campaigns/prepare/buddy>

¹⁴ <https://transportsafety.vic.gov.au/maritime-safety/recreational-boating/campaigns/prepare/beacon>

35. Finally, I support the previous coronial recommendations directed towards exploring legislative amendment to mandate that EPIRBs or PLBs be carried in human powered vessel activities, regardless of the classification of waterway or distance offshore. I accept that this issue is not confined to human powered vessels and applies to all vessel operators. I further acknowledge that this is a complex issue and may more appropriately be limited to persons operating vessels in high risk situations such as when operating alone, and not to persons engaged in low risk activities being conducted in sight of shore. However, I consider that TSV should continue to explore the feasibility of mandating the use of EPIRBs or PLBs by recreational vessel operators in high risk situations, particularly when operating alone. Accordingly, I have made a recommendation in line with this.

RECOMMENDATIONS

Pursuant to section 72(2) of the Act, I make the following recommendations:

1. I recommend that Transport Safety Victoria engage with Victorian sailing and yacht clubs to promote the ‘Prepare to Survive: Know The Five’ campaign, and encourage boaters or paddlers to enact the five steps, particularly when boating or paddling alone. Such a campaign may be multimodal, utilising where possible, social media, flyers or posters at sailing or yacht clubs, and articles or advertisements in sailing club newsletters.
2. I recommend that Transport Safety Victoria liaise with the Department of Economic Development, Jobs, Transport and Resources to explore the possibility and feasibility of legislative amendment to require EPIRBs or PLBs to be carried by the operators of recreational vessels (regardless of the classification of waterway or distance offshore) in high risk situations, including when operating alone.

I convey my sincere condolences to Ehren’s family. I acknowledge the grief and devastation that you have endured as a result of your loss.

Pursuant to section 73(1A) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

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

Mr Nicholas Hyde and Ms Laura Hyners, Senior Next of Kin
Transport Safety Victoria
Australian Sailing
Senior Constable Lauren Foley, Coroner's Investigator

Signature:



LEVEASQUE PETERSON

CORONER

Date: 29 March 2021

NOTE: Under section 83 of the *Coroners Act 2008* ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.
