



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2018 0090

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Findings of:	Caitlin English, Deputy State Coroner
Deceased:	Xuan Truong Ha
Date of birth:	1 January 1977
Date of death:	6 January 2018
Cause of death:	1(a) Drowning
Place of death:	Williamstown Beach, Battery Road, Williamstown, Victoria

INTRODUCTION

1. Xuan Truong Ha was a 41-year-old man who lived in Footscray West at the time of his death.
2. Mr Ha was born in Vietnam and migrated to Australia in 2010, where he met his wife, Lien Thi Huynh.
3. Although Mr Ha knew how to swim, he was not described as a strong swimmer. He enjoyed fishing from time to time.
4. Mr Ha drowned on 6 January 2018 while abalone fishing at Williamstown Beach.

THE PURPOSE OF A CORONIAL INVESTIGATION

5. Mr Ha's death was reported to the Coroner as it appeared to have resulted, directly or indirectly, from an accident or injury, and so fell within the definition of a reportable death in the *Coroners Act 2008*.
6. 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.
7. The Coroner's Investigator prepared a coronial brief in this matter. The brief includes statements from witnesses, including family, the forensic pathologist, treating clinicians and investigating officers. The Court also obtained expert advice from Life Saving Victoria regarding how similar deaths can be prevented.
8. I have based this finding on the evidence contained in the coronial brief. In the coronial jurisdiction facts must be established on the balance of probabilities.¹

IDENTITY

9. On 6 January 2018, Dat Tien Luong visually identified his friend, Xuan Truong Ha, born 1 January 1977.

¹ This is 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.

10. Identity is not in dispute and requires no further investigation.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED

11. On 6 January 2018, the weather was forecast to reach a maximum of 42 degrees Celsius with a cool change predicted in the late afternoon or evening, bringing with it strong to extreme winds.
12. At 3.53pm, the Bureau of Meteorology issued a severe weather warning to Victoria, which warned of damaging winds moving across the central and western districts. Damaging winds averaging 60 to 70 kilometres per hour with peak gusts of 90 kilometres per hour were expected to ease within an hour of the wind change.
13. At approximately 4.30pm, Mr Ha and his friend, Dat Luong, arrived at Williamstown Beach, parking their vehicles near the Timeball Tower at the end of Battery Road.
14. According to the police summary prepared by Leading Senior Constable Julie Mills, Coroner's Investigator, this area of Williamstown Beach is renowned for fishermen to poach abalone at all times of the day and night, depending on the weather conditions and low tides. The area is rocky with numerous rocks along the foreshore and approximately 150 metres out to sea.
15. The two men sat on the beach and consumed one beer each before they entered the water at approximately 5.00pm. They spent the next hour or so swimming around the water's edge and fishing for abalone.
16. At approximately 6.00pm, the cool change moved across Melbourne. There was a rapid drop in temperature and a sudden increase in wind. The water subsequently became rough.
17. Mr Ha was caught in a current and pulled approximately 100 metres out to sea and away from Mr Luong.
18. Mr Luong stated he could see Mr Ha was struggling to stand on the sea floor and he heard Mr Ha call out for help. Mr Luong tried to swim over to Mr Ha, coming to within 10 metres of him. At this time, they were approximately 200 metres from the shore.
19. Mr Ha began struggling to keep his head above water. Mr Luong attempted to pull Mr Ha back into the shallows, but he was pulled back out to deeper water.

20. By this point, Mr Luong was fatigued and trying to catch his breath. He saw Mr Ha trying to stay afloat but then saw Mr Ha stop moving.
21. Mr Luong swam back out to Mr Ha, only to find him face down and unresponsive. He flipped Mr Ha over and saw water come out of his mouth.
22. Mr Luong subsequently signalled for help from two passers-by, Mark Ferrari and Christopher King, who entered the water and managed to pull Mr Ha out of the water and onto the shore.
23. Mr Ha was pulled to the shore at approximately 6.15pm in a non-responsive state. He was immediately placed into the recovery position at which time a significant amount of water came out of his mouth and nose. Further bystanders rendered assistance and administered cardiopulmonary resuscitation (**CPR**) while awaiting the arrival of emergency services.
24. At approximately 6.16pm, two Protective Services Officers arrived at the scene and took over CPR. Shortly thereafter, Victoria Police members, Ambulance Victoria paramedics, and the Metropolitan Fire Brigade arrived and continued the efforts to revive Mr Ha.
25. Sadly, Mr Ha could not be revived and was pronounced deceased at 6.50pm

CAUSE OF DEATH

26. On 7 January 2018, Dr Michael Burke, a Senior Forensic Pathologist practising at the Victorian Institute of Forensic Medicine, conducted an inspection and provided a written report, dated 9 January 2018. In that report, Dr Burke concluded that a reasonable cause of death was '*Drowning*'.
27. I accept Dr Burke's opinion as to cause of death.

FINDINGS AND CONCLUSION

28. Having investigated the death, without holding an inquest, I find pursuant to section 67(1) of the *Coroners Act 2008* that Xuan Truong Ha, born 1 January 1977, died on 6 January 2018 at Williamstown Beach, Battery Road, Williamstown, Victoria, from drowning in the circumstances described above.

COMMENTS

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

1. Sadly, Mr Ha is not the only abalone fisher who has died in such circumstances. In the period from 1 January 2009 to 12 April 2019, 14 people, including Mr Ha, have died while diving for abalone. The most common age bracket was 40 to 59 years, followed by 26 to 39 years.²
2. In fact, on the same day as Mr Ha's death, at a nearby Melbourne beach, another man, who was born in China, drowned in similar circumstances whilst fishing for abalone.
3. At least six of the 14 deaths were individuals born overseas. Coincidentally, they were all from either Vietnam or China. Another three individuals appeared to be of Asian descent, but it is not apparent whether they were born overseas.
4. It therefore appears that between 50 and 70 percent of the identified abalone diving deaths involved individuals known or considered to have been born overseas and/or to be of Asian descent.
5. I am concerned that persons of Asian background appear to be over-represented in these statistics. My concern is shared by Life Saving Victoria who, in their Victorian Drowning Report for 2018/2019, made reference to culturally and linguistically diverse communities as follows:

This year 10 (18%) individuals that drowned were reported as being from culturally and linguistically diverse (CALD) communities. This is one more than the 10-year average of nine.

Due to limitations with country of birth data collected, data has also been analysed over the previous 10-year period from 2008/09-2017/18. On average, 23% of drowning deaths were of individuals known to have been born overseas (with 57% unknown country of birth).

Of those individuals where country of birth was recorded, the majority (86%) were Victorian residents. The median length of time living in Australia was six years.

The majority were males (86%), and the most common age groups were 25-44 years (46%) followed by 15-24 years (21%); the median age was 31 years. Incidents typically occurred in open waterways; with 44% at beaches and 21% in rivers/creeks/streams.

² Data retrieved from the National Coronial Information System (NCIS).

*The most common activity prior to coastal drowning incidents was swimming (46%), followed by fishing (35%). Of those fishing this included fishing for abalone (typically snorkelling/ diving), rock fishing, or fishing from a boat. Deaths whilst fishing for abalone have increased since 2015.*³

6. In an attempt to mitigate the drowning risk for members of immigrant communities, Life Saving Victoria runs a number of water safety education programs, which are delivered to a wide variety of groups, including newly arrived refugees, asylum seekers, migrants, and international students.⁴ I therefore requested a submission from Life Saving Victoria outlining the education they provide to culturally and linguistically diverse communities, including specific education targeted to abalone divers.
7. In May 2020, Dr Bernadette Matthews, Principal Research Associate and General Manager at Life Saving Victoria, provided a very detailed response. The submission relevantly provided the following information about the organisation's educational campaigns:
 - (a) Life Saving Victoria has been working with Victoria's various multicultural communities for than 10 years, delivering water safety messaging to over 20,000 multicultural Victorians annually;
 - (b) broad community water safety messaging for multicultural Victorians is provided via the Victorian Government's *Play it Safe by the Water* public safety campaign, which is disseminated through social media and other websites;
 - (c) a recent increase in the number of drownings related to abalone fishing,⁵ has prompted the organisation to target this particular cohort of water users. Current messaging relates to fishing and diving activities. These messages are being updated to reflect abalone fishing and will include information on being adequately prepared and ensuring fishers have the necessary equipment to fish safely; and
 - (d) in a pilot project, Life Saving Victoria has developed a Virtual Reality Google Expedition for culturally and linguistically diverse communities, with one scene specifically focussed on abalone fishing. This project creates an immersive experience that is appropriate for all students and that is linguistically and culturally

³ Life Saving Victoria, *Victorian Drowning report 2018/2019*, page 14.

⁴ Life Saving Victoria, "Educational Programs", <<https://lsv.com.au/multicultural/educational-programs/>>, accessed 29 April 2019.

⁵ Dr Matthews's submission notes that according to Life Saving Victoria's statistics, there were five drowning deaths in 2018 and 2019 that occurred while abalone fishing. In the previous 16-year period, there was only one similar death.

responsive. It is designed to integrate beach safety training into English as a second language programs.

8. While Life Saving Victoria does not have existing programs specific to abalone diving, they are working with colleagues in Western Australia to understand the success of initiatives implemented in that state. Other initiatives, such as the one focussed on rock fishing, has been seen by over 100,000 members of the culturally and linguistically diverse community from 2012/13 to 2018/19.
9. Life Saving Victoria was asked how education regarding safety for abalone diving could be improved, especially in the culturally and linguistically diverse community. Dr Matthews suggested the following:
 - (a) update public awareness messaging to include abalone fishing and promoted through targeted education, social media channels and relevant websites;
 - (b) the Victorian Recreational Fishing Guide and other Victorian Fisheries Authority resources be updated to include information on abalone fishing safety and the risk of drowning;
 - (c) programs/activities by recreational fishing organisations/agencies that promote recreational fishing should include safe fishing practices, noting that, particularly for culturally and linguistically diverse communities this should include abalone fishing and rock fishing safety.
10. I take these suggestions on board.
11. Life Saving Victoria has also applied for a grant through the Victorian Fisheries Authority's Recreational Fishing Grants Program to expand the reach of fishing safety messages (specifically abalone and rock fishing). The proposed project would support a state-wide grassroots campaign to educate the recreational fishing community on how to enjoy and participate in fishing while observing appropriate safety measures to avoid injury or loss of life. It aims to build on the previous rock fishing safety campaign through inclusion of grassroots community-based ambassadors and development of marketing collateral that can be distributed through social media channels, as well as community events and fishing forums.

12. As Dr Matthews notes, recreational fishing is an important social activity enjoyed by Australians regardless of age, finances, gender, culture, or religious background. It is important that safe practices are exercised during these times. I commend Life Saving Victoria's educational initiatives and activities targeted to the culturally and linguistically diverse communities.
13. Given the recent increase in drowning deaths occurring during abalone fishing, including one other on the day of Mr Ha's death, it appears a particular focus is required for this cohort. Similarly, given the over-representation of individuals born overseas in drowning statistics, a parallel focus is required for culturally and linguistically diverse communities.

RECOMMENDATIONS

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

1. Life Saving Victoria updates its public awareness messaging to include abalone fishing and promote this messaging through targeted education, social medial channels, and other relevant websites;
2. Life Saving Victoria work with recreational fishing organisations and agencies that promote recreational fishing to include safe practices for abalone fishing; and
3. The Victorian Fisheries Authority update the *Victorian Recreational Fishing Guide* and its other resources to include information about abalone fishing safety and the risk of drowning whilst abalone fishing.

I convey my sincere condolences to Mr Ha's family for their loss.

I commend Dat Luong, Mark Ferrari, and Christopher King for their efforts in trying to save Mr Ha.

Pursuant to section 73(1) of the Act, I direct this finding be published on the Internet.

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

Thi Huynh, senior next of kin

Life Saving Victoria

Victorian Fisheries Authority

Leading Senior Constable Julie Mills, Victoria Police, Coroner's Investigator.

Signature:



CAITLIN ENGLISH

DEPUTY STATE CORONER

Date: 23 July 2020

