

CITATION: *Inquest into the death of Isobel Von Jordan [2004] NTMC 094*

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO: D0197/2002

DELIVERED ON: 22 December 2004

HEARING DATE(S): 30 & 31 August 2004  
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FINDING OF: Mr Greg Cavanagh SM

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of tour guides, national  
part safety.

REPRESENTATION:

*Counsel:*

Assisting: Mr Michael Grant

Representing the Director of National  
Parks and Parks Australia: Mr Lex Silvester

Judgment category classification: B

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IN THE CORONER'S COURT  
AT DARWIN IN THE  
NORTHERN TERRITORY  
OF AUSTRALIA

No D0197/2002

In the matter of an Inquest into the death of

**ISOBEL VON JORDAN ON 22  
OCTOBER 2002 AT SANDY  
BILLABONG IN THE NORTHERN  
TERRITORY OF AUSTRALIA**

**FINDINGS**

(Delivered 22 December 2004)

Mr Greg Cavanagh SM:

**The nature and scope of the inquest**

1. Isobel Von Jordan ("the deceased") was tragically taken by a crocodile while swimming in Kakadu National Park in the late evening of 22 October 2002. The deceased was enjoying a holiday with her sister in Australia. The deceased was a German National. She was, at the time, part of a guided tour conducted by an established local tour operator.
1. Section 12(1) of the *Coroners Act* ("the Act") defines a "reportable death" as a death that:  

"appears to have been unexpected, unnatural or violent, or to have resulted directly or indirectly from an accident or injury".

For reasons that appear in the body of these findings, the death fell within the ambit of the definition and the Inquest is held as a matter of discretion pursuant to section 15(2) of the Act.

2. Section 34(1) of the *Coroner's Act* ("the Act") details the matters that an investigating coroner is required to find during the course of an inquest into a death. The section provides:

"(1) A coroner investigating –

- (a) a death shall, if possible, find –
  - (i) the identity of the deceased person;
  - (ii) the time and place of death;
  - (iii) the cause of death;
  - (iv) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*; and
  - (v) any relevant circumstances concerning the death; or
- (b) a disaster shall, if possible, find –
  - (i) the cause and origin of the disaster; and
  - (ii) the circumstances in which the disaster occurred."

3. Section 34(2) of the Act operates to extend the Coroner's function as follows:

"(2) A coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated."

4. The duties and discretions set out in subsections 34(1) and (2) are enlarged by s35 of the Act, which provides as follows:

"(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

"(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner."

5. The public Inquest in this matter was heard at the Darwin Courthouse between 30 August and 2 September 2004. Counsel assisting me over the course of the Inquest was Mr Michael Grant. At the commencement of the

inquest, Mr Lex Silvester sought leave to appear on behalf of the Director of National Parks and Parks Australia. I granted that leave pursuant to s40(3) of the Act.

## **Formal findings**

6. The mandatory findings pursuant to s34(1) of the Act are as follow.
  - (1) The identity of the deceased was Isabel von Jordan.
  - (2) The death occurred at or about 10.30 pm on 22 October 2002 in the waters of Sandy Billabong which forms part of the Nourlangie Creek complex in Kakadu National Park.
  - (3) The cause of death was drowning during the course of a crocodile attack.
  - (4) The particulars required to register the death are:
    - (i) the deceased was female;
    - (ii) the deceased was of German nationality and Caucasian ethnicity;
    - (iii) a post-mortem examination was carried out and the cause of death was as detailed above;
    - (iv) the pathologist viewed the body after death;
    - (v) the pathologist was Dr Allan David Cala, a locum pathologist in the employ of the Forensic Pathology Unit at the Royal Darwin Hospital;
    - (vi) the father of the deceased is Christian von Jordan;
    - (vii) the mother of the deceased is Elisabeth von Jordan;
    - (viii) at the time of his death the deceased was ordinarily resident in Heidelberg, Germany; and
    - (ix) the deceased's occupation at the time of her death was that of university student.

## **Relevant circumstances concerning the death**

7. The facts of the matter were the subject of some publicity and notoriety prior to the convening of the Inquest. They are, briefly, that on the morning of 20 October 2002 the deceased and her sister departed for Kakadu National Park as part of an adventure tour conducted through Gondwana Adventure Tours and Expeditions. The group consisted of nine clients and was led by tour guide Glenn Robless. The group swam at various locations over the following two days, including Moline Rock Hole and Jim Jim Falls.
8. On the evening of 22 October, the group camped in the designated camping ground at Sandy Billabong. They had dinner at about 9 pm. At about 10.30 pm on that night, Mr Robless suggested they could swim off a sandbar situated on Nourlangie Creek approximately 1.5 kilometres from the camp site. He led the group to the location and seven members of the group commenced to swim in the Creek, whilst two remained on the bank. After the group had been swimming for a short time, Mr Robless left them there in order to make contact with a guide from Gondwana who was leading another tour group in the area.
9. In Mr Robless's absence, a large saltwater crocodile swam amongst the group and dragged the deceased below the water. She was not immediately seen to be missing. It took some time for the remaining members of the group to realise something was amiss. Certain members of the group have a recollection of the deceased giving a shout or yelp. Those who heard that sound initially thought it was part of the general "skylarking". Another member of the group had felt something brush against her legs at about the time the deceased disappeared. Yet another member of the group thought he had seen something large swimming from the area. The realisation dawned that the deceased had likely been taken by a crocodile.

10. A member of the group was despatched to find Mr Robless. He was found on the road back to the Creek in company with the other guide. He returned to the scene and police and the Park rangers were called. Rangers Lindner, Salau and Wellings took to the Creek in a relatively small dinghy, located the animal in question and destroyed it at about 4 am. The animal was approximately 4.2 metres in length and, although in relatively poor condition, weighed in the order of 400 kg. The rangers returned to the location where they had found the animal and recovered the body of the deceased shortly after dawn on that morning.
  
11. The conduct of the Rangers and other Parks Australia employees involved in the circumstances of the death was exemplary. Police were notified in timely fashion. All dealings with the surviving members of the tour party were sensitive and appropriate. The animal was located and destroyed in quick time and in circumstances where the Rangers were exposed to some significant danger from the animal in question and other animals in the vicinity. The body of the deceased was recovered due to the significant skill and knowledge of the Rangers involved, and principally that of Mr Lindner in terms of identifying the location in which the crocodile was first harpooned and had probably released the body. But for Mr Lindner's skills, a dragging process would have been necessary and the body of the deceased may possibly not have been recovered. That would no doubt have compounded the family's grief.
  
12. Why the group should be led to swim in that location in the first place is perplexing. Mr Robless contended during the course of his evidence that members of the group had asked whether there was anywhere for them to wash and he had suggested they could have a "wash" off the sandbar. Mr Robless also gave evidence to the effect that he had previously seen Aboriginal people swimming in the vicinity, and that he saw a pile of

recently opened freshwater mussels on the sandbar that night, leading him to the conclusion that Aboriginal people had been in the water that day.

13. I am unable to find those matters to be so. I consider that evidence to be an exercise in reconstruction on the part of Mr Robless in order to explain why it was that he allowed a tour group under his care and guidance to swim at a location in which it should have been obvious to any person with even a passing familiarity with the Top End that saltwater crocodiles would reside.
14. I find that it was Mr Robless who suggested the party go to the sandbar that night and that it was he who induced them to do so. This is consistent with the evidence given by the sister of the deceased and Mr Waters, another member of the tour group who gave evidence during the course of the Inquest. It is also consistent with the statements given by the other members of the tour party contained in the investigation file at exhibit 3.
15. I consider that it is likely that Mr Robless had never seen Aboriginal people swimming off the sandbar in question. I received evidence during the course of the Inquest from Mrs Alderson, a traditional owner of the region. I also received evidence from a number of tour guides and Park Rangers. Their evidence was consistent on the issue. Not one of those witnesses had seen any person, Aboriginal or otherwise, swimming in that location specifically or in Nourlangie Creek generally, nor would they have expected any person to do so. At most, Mrs Alderson gave evidence to the effect that the Aboriginal occupants of the area occasionally waded in the very narrow, clear and shallow streams that feed the larger Creek complex.
16. I also consider that it is likely that Mr Robless did not see freshwater mussels on the sandbar that night. That account given by him during the

course of the Inquest is inconsistent with the statement he gave to police in the days following the incident.

17. I find that Mr Robless was well aware that large saltwater crocodiles would have inhabited that stretch of water, and that his decision to allow the group to swim in the waterway was inexplicable, indefensible and grossly negligent. To his credit, Mr Robless readily conceded during the course of the Inquest that he made a horrible error of judgment allowing the tour party to swim in that location.
18. For sake of completeness, and having regard to various lines of questioning and evidence that was given during the course of the inquest, I am satisfied that there was no involvement of either alcohol or any illicit drug in the circumstances of the death. I am also satisfied that Mr Robless's interactions with the members of the group, including the deceased, was otherwise satisfactory and appropriate during the course of the tour. Indeed, every person with knowledge of or exposure to Mr Robless who gave evidence during the course of the Inquest testified to his caution and general aptitude as a guide. This only serves to render his conduct on the night in question even less comprehensible.
19. As stated at the outset, the fact and circumstance of the deceased's death was a matter of some notoriety. There was and could have been no doubt as to the immediate cause of the death. The matter has already been the subject of proceedings in the criminal context. Mr Robless pleaded guilty in the Supreme Court of the Northern Territory to doing a dangerous act in contravention of s154 of the Northern Territory Criminal Code. Whilst these matters were plain, it came to the attention of the Coroner's office that there were various issues of public safety arising in the circumstances of the death that required further scrutiny. I will deal with each of those matters below.



## **The licensing and registration of tour operators**

20. It would seem incongruent at first blush that government sees fit to regulate and license crowd controllers, bailiffs, purveyors of food and drink, sex industry workers, healthcare professionals and just about every other category of service provider, but does not implement or impose any similar regime for tourism operators. This is difficult to understand for a number of reasons. First, sad experience has shown that the Territory can be a dangerous and inhospitable environment. This is especially so for those visiting the region and perhaps less familiar with its perils. Secondly, tourism is an industry vital to the Territory's economy and development. Thirdly, if the underlying government policy is to regulate the conduct of commercial activities on the ground of protecting public health and safety, one would have thought that tourism operators would attract attention of the first order. Tourism operators guide and control visitors to the Territory, sometimes in large groups, they provide food and drink, and in the remote regions of the Territory are the first line of healthcare provision in the event of injury.
21. These manifest responsibilities notwithstanding, as matters presently stand, tour guides are able to operate generally in the Northern Territory without any minimum training requirements, without public liability insurance, and without any qualifications in first aid or resuscitation. Coroners in this jurisdiction have made this observation time and again in relation to drowning deaths in the Territory since the late 1980s.
22. Both industry and government have quite clearly considered implementing a regime for the statutory licensing or registration of tour guides. During the course of the inquest I took evidence from Mr Daryl Tutty, one of the

pioneers of large-scale tourism in the Northern Territory and an erstwhile member of the Board of the Northern Territory Tourist Commission and erstwhile President of the Darwin Regional Tourism Association. Mr Tutty's evidence was instructive. It was his central opinion that a uniform system for the accreditation or licensing of tour guides and tourism operators in the Northern Territory was very much needed. The matter was first raised with government some 20 years ago. Mr Tutty gave expert evidence to that same effect before a Coronial Inquest some 14 years ago. Mr Tutty also observed that whilst the industry was theoretically capable of implementing a system of self-regulation, various practical barriers and divergences of opinion operate such that it is unlikely to do so of its own motion in the foreseeable future.

23. In light of that evidence, I sought some assistance through the agencies of the Solicitor for the Northern Territory and the Northern Territory Tourist Commission as to the position of the Northern Territory government on the matter. As a consequence of those inquiries, I received into evidence a statement from Richard James Austin, the Manager of Nature Based Tourism with the Northern Territory Tourist Commission. That statement was both comprehensive and produced promptly on short notice and I thank the officers involved for their diligent attendances on the matter.
24. That statement discloses that in 1999 a Committee was formed to investigate the options of licensing, training and accreditation in the tourism industry in the Northern Territory. The Committee engaged consultants Market Equity Pty Limited to develop a draft framework for that purpose. The draft document was presented to the relevant government agencies for comment in June 2000. The project did not progress any further at that stage due to industry resistance and structural changes within the relevant organisations. The process appears to be somewhat stalled at this time.

25. The report prepared by Market Equity succinctly identifies the primary benefits of a permit system to include: (1) the ability for park and wildlife management to exercise some form of duty of care towards visitors; (2) the ability to control activities undertaken by tourism operators in parks; (3) the ability to set requisite skills and qualifications for tour guides to enhance public safety and the quality of the service provided; (4) the ability to regulate the number of operators in order to minimise the impact of visitation; and (5) the provision of equity in the treatment of operators. It would seem plain that the industry will not implement mandatory training and qualification requirements. They do not have the power to do so in any event. It is a matter uniquely within the power of government. The present situation is unsatisfactory.
26. Having said this, I am cognizant of the various difficulties in implementing such a scheme. The high turnover of guides means that a mandatory registration regime may prove disruptive in some instances. The system will not be without cost, which may impact disproportionately on small operators. There is no uniform training course or qualification. The Northern Territory government does not have responsibility for Kakadu and Uluru and probably could not purport to impose a regime in those parks without the cooperation of the Commonwealth authorities.
27. In that latter respect, certain of the evidence heard during the course of the inquest revealed that Parks Australia runs an appropriate permit system governing entry to Kakadu National Park for the purpose of undertaking commercial activity. It is a condition of permits that tour guides have appropriate first aid qualifications and that tour operators have appropriate public liability insurance. As part of the scheme, Parks Australia requires operators to advise which tour guides are to operate under the permit in order to satisfy itself that those guides have not previously comported

themselves such that it would be inappropriate to allow them to operate under the permit. The scheme is laudable but, beyond that, it is not properly within the constitutional function of the Commonwealth to implement a system for the licensing or registration of tour guides in the Northern Territory generally.

28. The circumstances of this death have also prompted Parks Australia to consider enhancements to the tour operator permit system in force in Kakadu National Park such that each tour operator would be required to educate and test their guides in relation to the Park's crocodile management strategy. This proactive approach is to be commended.
29. Mr Austin's statement queries whether a certification or accreditation scheme would have made any difference to the outcome in this particular case. That inquiry is not to the point, nor is the Coroner's recommendation and comment function limited to issues directly causative of the death in question. The query does lead me to some observations about the specific circumstances of this case.
30. The first observation I would make in that respect is that Gondwana Adventure Tours and Expeditions, through its principal Mr Michael Dunbar, ran a competent and efficient, if not exemplary, operation. The recruitment and training regime which Mr Dunbar implemented in the conduct of his operation was in advance of the general quality to be found in the industry. Secondly, whilst Mr Robless was never specifically instructed not to take clients swimming in dangerous locations, I do not consider that it was necessary for the employer to adopt an express policy directing his employees not to suffer or allow swimming on the part of clients outside the crocodile management zones within Kakadu National Park, or to give employees in the express direction in that respect. The employees were furnished with a procedures manual, which incorporated

the tour operators handbook promulgated by the Park authority. Those documents made the situation plain, even in the absence of an express injunction or direction. As has been stated on a number of occasions during the course of the inquest, the matter was so obvious as to go without saying. The fault in this case lay with the entirely unforeseeable and unilateral actions of an otherwise well qualified employee.

### **Signage and swimming in Kakadu National Park**

31. The second issue that arose for consideration during the course of the Inquest was that of signage and swimming in Kakadu National Park.
32. It is apparent from the evidence of Mr Waters and the sister of the deceased, and to a lesser degree that of Mr Hutton, a trainer in the tourism industry who gave evidence during the course of the Inquest, that signage in use in the Park may give rise to some confusion in circumstances where visitors are invited to swim freely in locations where there are warning signs which on a cursory perusal are not strikingly different to warning signs in locations where large saltwater crocodiles are known or expected to inhabit. Thus, for example, Jim Jim Falls has signage warning of the dangers of saltwater crocodiles, but visitors swim in that location with the imprimatur of Park management. Swimming is sponsored in that particular location because it is the subject of an intense crocodile management regime. Other locations bearing warning signs are not so intensively managed. One would not expect tourists to be necessarily aware of the differences.
33. This is not to say that the signage caused or in any way contributed to the death question of this night. The members of the tour party had repositied their confidence in Mr Robless. No amount or configuration of signage

would have prevented his breach of that confidence on the night in question, with the tragic consequences that ensued.

34. I do not propose making any recommendation in this context. There may be operational, linguistic or other reasons not canvassed during the course of the Inquest that would militate against any detailed recommendation in relation to the current signage regime.
35. In any event, during the course of the inquest Counsel for the Director of National Parks and Parks Australia indicated that the Park's crocodile management strategy would be enhanced by the placement of crocodile warning signs in the non-intensively managed zones which were readily distinguishable from signs in the intensively managed zones through improved colour, graphics and more explicit language. Some consideration is also to be given to the more strategic placement of signs in non-intensively managed areas, especially in camping spots close to water, in order to reduce the opportunity for unquestioning reliance or misplaced trust in what tour guides advise in relation to risk.
36. Counsel for the Director of National Parks and Parks Australia also indicated that Parks Australia would review all printed information and interpretive material to ensure a consistency of message.
37. That leaves the broader issue of closing waterways in Kakadu that obviously harbour saltwater crocodiles. The bare facts are these. The waterways of Kakadu National Park are home to saltwater crocodiles. They present danger of the highest order to people who enter into those waters. Kakadu National Park receives approximately 150,000 domestic and international visitors per annum, many of whom are unschooled in the danger. That begs the question why the management authorities do not close waterways to swimming altogether in order to avoid tragedies of this

nature. As matters presently stand, swimming is not prohibited in the legal sense. They are only dissuaded from doing so in the event that a ranger happens to observe the conduct and provides a safety direction to leave the water.

38. The question whether such intervention is warranted involves a complex balancing process wherein the public interest in protecting visitors to the Park is weighed against the need to allow those visitors to enjoy all the natural amenities which the Park has to offer without imposing rigorous restrictions on their activities. It was also a matter that was the subject of some discussion during the course of the Inquest, most notably in the evidence of Ms Georgina Fien, who is the Project Manager for Kakadu National Park employed by the Department of Environment and Heritage. Her evidence in that respect was as follows.

“Of course, there's another way that was identified by his Worship before the break, in which the danger could be addressed, another way beyond shooting or warning signs and that is prohibiting swimming, lawfully prohibiting swimming in areas where estuarine crocodiles are a significant danger, like Sandy Billabong?---Yes, that is another option.

I ask you to take off your corporate hat at this stage and put on your personal hat, if you are able to do so; do you think that would be a good idea?---I would like to give quite a long answer to that because while his Worship was talking about this earlier, I did jot down all of the considerations that I would actually think about when it came to potentially banning swimming.

....

THE CORONER: In those areas specifically, not throughout the park?---Yes, in areas such as Sandy Billabong. It is something that I and other people that I work with have been thinking about for several years. We would need regulatory amendments to be able to do it neatly and I will talk about that in a moment. We would also need to develop compliance strategies in some detail and my colleague, Andrew Wellings, is the person who does that kind of work in the park and we have focussed so far on increased education

as opposed prohibiting swimming. If we were to prohibit swimming, as I said, firstly, we would need regulatory amendments - - -

I'm hearing you, I just wanted to be certain for any commentators or media here, we are not talking about prohibiting swimming throughout the park, it's in these especially dangerous areas with adjacent camping grounds where they have a permanent population of man-eating crocodiles?---Okay.

That's what you are focusing on, are you not?---Yes, I will focus on that. At the moment people are not allowed to swim in Twin Falls and that is actually I guess a regulatory prohibition but we had to do it by a very roundabout way because our regulations are not really helping us to do that. So that's the first thing.

MR GRANT: Sorry, Ms Fien, if I could interpolate there. Was that done by declaring it to be a restricted area?---It was. It was done by saying that in order to get to Twin Falls the only class of persons that can get there are those who go on the boats and stay on the marked walking track, so it was roundabout.

Thank you?---Secondly, we would need a definition of 'swimming' because swimming may be interpreted as wading into launch boats.

THE CORONER: I can see drafting problems?---Yes, that's right. We would need to think about the impact on the tourism industry because although you're saying - suggesting banning swimming only in a particular area such as Sandy Billabong - - -

These are areas where you wouldn't envisage people would swim anyway?---No, that's right. When it got banned at Twin Falls the message that was getting out to tourists in Europe was swimming had been banned in Kakadu as a whole.

Obviously you would have to manage the publicity?---That's right. We would have to think about the impact on traditional owners because as well as using water – safe areas of water for hunting and gathering - - - I had already thought, and perhaps I didn't suggest or think - I already had in my original notes that I would have thought you would exempt traditional owners with their knowledge, experience, history and culture of living, hunting and existing in that area, they would be the group that would be exempt from such a regulation, in my view.”

39. That evidence provides a convenient summary of the difficulties and considerations than present in any proposal for the banning of swimming,



even to a limited extent, in Kakadu National Park. Those difficulties and considerations can only be fully examined and resolved by the policy organs of government. As is apparent from Ms Fien's evidence, government has already given some consideration to those matters.

40. The Coronial process apparently operated to refine those considerations such that in his final submissions, counsel for the Director of National Parks and Parks Australia submitted that consideration should be given to amending the Environment Protection and Biodiversity Conservation Regulations to make disobedience to warning signs a regulatory offence, to furnish Parks Australia with broad powers to prohibit swimming and to remove persons who are swimming contrary to regulation, and to provide for the prosecution and punishment of those persons, guides and tour operators who suffer, allow or induce swimming in contravention of warning signs. It was also submitted that the need for such amendment was properly regarded as pressing.
41. Finally, I commend the Director of National Parks and Parks Australia, and their representatives, for their comprehensive assistance and the constructive approach they adopted during the course of the Inquest.

### **Recommendations**

42. As discussed herein, the reasons for the implementation of an accreditation scheme in the tourism industry are compelling, notwithstanding the various practical and legislative difficulties that arise. The benefits that would accrue from such a scheme in terms of public safety are substantial. For those reasons, I make formal recommendation to the Attorney-General for the Northern Territory that government expedite the implementation of a statutory licensing system for tour guides which would require, at the very minimum, that all tour guides have training in first aid and that all tour operators carry public liability insurance. I make this recommendation

without seeking to suggest that the death in question would have been avoided had such a system been in place.

43. Upon reflection, I agree that a blanket ban on swimming in Kakadu National Park would be a disproportionate response to these and similar deaths. I concur with the submissions made by counsel for the Director of National Parks and Parks Australia (as set out in Paragraph 41 hereof) in this respect and recommend amendments to the regulatory regime in the broad terms discussed therein.

Dated this 22<sup>nd</sup> day of December 2004

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GREG CAVANAGH  
TERRITORY CORONER