



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 34/19

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **David CULLEN** with an inquest held at the **Coroner's Court, Court 83 Central Law Courts, 501 Hay Street, Perth, on 6 August 2019** find the death of **David CULLEN** has been established beyond all reasonable doubt, and that the identity of the deceased person was **David CULLEN** and that death occurred on or about **14 January 1972** at or in the vicinity of **a watering hole on the Fortescue River near the North West Coast Highway/Fortescue River Crossing, Mardi**, in the following circumstances:*

Counsel Appearing:

Senior Constable Craig Robertson assisting the Coroner.

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INTRODUCTION

In January 1972 David Cullen (Mr Cullen) was travelling from Dampier towards Geraldton with his daughter, son-in-law and grandson when they stopped at the Fortescue River/North West Coast Highway Crossing, approximately 140 kilometres south south west (SSW) of Roebourne. Mr Cullen walked from the crossing upstream towards a watering hole a few hundred metres from the road. Mr Cullen was intending to go for a swim and he was last seen walking towards the watering hole, but never returned.

The matter was reported by the Roebourne Police to the District Office on 22 February 1972¹ when a missing person report (MPR) was compiled by the Roebourne Police from the report of Mr Cullen's daughter, Mrs Joan Sinclair.

The inquest into the disappearance of Mr Cullen was held in Perth. The documentary evidence comprised the brief of evidence, exhibit 1, attachments 1-17; exhibit 2, the Public Notice advertisement dated 17 July 2019 and exhibit 3, memorandum of a conversation between Senior Constable Craig Robertson and Raymond Sinclair, the deceased's grandson dated 5 August 2019. Oral evidence was heard from Senior Constable Smith and Mr John Doyle, a retired police officer who had assisted with the search for Mr Cullen when his disappearance was reported to the police.

Following the inquest Senior Constable Robertson made telephone contact with Mr Ben Sharpe, ex Mardi Station, and a memorandum of that conversation with respect to the disappearance of Mr Cullen, dated 21 August 2019, became exhibit 4.

Long Term Missing Person's Project (LTMP)

In 2017 it was confirmed there were a number of files relating to the long term disappearance of a number of people who had been in Western Australia at the time of their reported disappearance. Some of the disappearances occurred at a time when there was no jurisdiction for a coroner to examine the circumstances of a suspected death.

Section 23(1) of the Coroners Act 1996 WA (the Act) allows the State Coroner to direct an investigation into a suspected death in certain circumstances without a body, for the purposes of allowing a coroner, under s 23(2), to establish beyond all reasonable doubt that death has occurred. The investigation must be done by way of inquest and will attempt to clarify how the death occurred and the cause of the death. This effectively brings the suspected death into the ambit of s 25 of the Act and allows registration of the death under the Births, Deaths and Marriages Registration Act 1998.

The reported number of LTMP made it unrealistic for the Office of the State Coroner (OSC) to absorb those matters into the already long outstanding inquest list in a timely manner. A plan was purposed for a project to clear the backlog of LTMP files once it had been determined the matters fitted the circumstances set out in

¹ Exhibit 1, tab 4

s 23(1) of the Act. That is, the State Coroner or delegate had reasonable cause to suspect the person had died and the death was a reportable death (s 3 of the Act).

In 2018 there was approval for a coroner to work exclusively on the LTMP cases, on a part-time basis for twelve months, as a separate listing from the OSC general inquest list. This followed a pilot project of four inquests conducted in 2018.

In 2019 a coroner was appointed for that project with the support of an in-house Coronial Investigation Squad (CIS) police officer as Counsel Assisting (CA).

Work on the files indicated a number of disappearances related to specific areas for Western Australia such as the Kimberley, around Kununurra or Broome, and Albany. For these matters it was decided that, while there is always a preference for inquests to be held in the communities to which they relate, especially for indigenous communities where there is an emphasis on oral history, resources would not be effectively utilised for all matters to be heard in the place of disappearance. Instead matters where the disappearance occurred in places out of the metropolitan area were considered from the perspective of the best availability for relevant witnesses. Where there were no witnesses available in the relevant area of disappearance the matter would be heard in Perth for the purposes of hearing the relevant evidence and then adjourned sine die, pending the hearing of any matters where there were available or related witnesses, in the place of disappearance.

In the case of Mr Cullen it was clear no relevant further information would become available and the matter was finalised in the normal manner.

The anticipated outcome was that by June 2020 the majority of LTMP matters would be resolved, and future missing person files would be dealt with in the normal course of the OSC business.

THE DECEASED

The Missing Person Report (MPR) to the police District Office at Roebourne, gave Mr Cullen's age as 69 years old in February 1972. This would imply he was born in either 1902 or 1903. He was said to be Australian, but born in England. Mr Cullen was described as being about 5 foot 7 ½ inches tall with grey hair, bluey grey eyes, with a dark complexion and of a heavy build. His daughter reported him as a labourer.

The MPR stated that Mr Cullen had been previously employed by Dampier District Hospital, "before leaving there and heading for Perth with his daughter and son-in-law".² He is further described as wearing only khaki shorts when last seen heading towards the watering hole, and that his identifying features were that he had both upper and lower dentures with a horizontal scar on his stomach. There was no photograph available, but he was described by his daughter as being mentally and physically sound.

Information provided by Mr Cullen's grandson, Raymond Sinclair, indicated that Mr Cullen had retired from his work at the hospital and was travelling to Perth with

² Exhibit 1, tab 4

his daughter and son-in-law because his son-in-law had obtained employment in Queensland and it was Mr Cullen's intention to travel with his daughter's family interstate.³

DISAPPEARANCE

Mr Sinclair, Mr Cullen's grandson, stated he was approximately 13 years of age at the time his family were travelling towards Perth to enable the family to relocate to Queensland. His recollection of the 14 January 1972 is not detailed. He believed he was 13, though it is likely he was closer to 11 years of age, and he believed his grandfather disappeared on the Murchison River although it is clear it was near the Fortescue River Crossing. He stated his grandfather had been a happy person and appeared well to him, although he had no recollection of his grandmother and does not believe she was part of the group. This is consistent with the information provided by Mr Cullen's daughter.

Mr Sinclair recalled the family stopped for a break on the Murchison River (Fortescue) and that 'they were parked near a waterhole and his grandfather went for a walk with their two dogs. Sometime later the dogs returned alone'. The family searched for him with no outcome. Mr Sinclair did not know how the disappearance was reported to the police, but did recall two Aboriginal trackers coming to the scene sometime later. According to Mr Sinclair they located two footprints and some cigarette papers which were thought to belong to his grandfather. The family remained at that location for a further two days and then continued on their journey to Queensland.⁴

The MPR, filed by Roebourne Police Station dated 22 February 1972, is signed by the then Constable Doyle. It appears the MPR was actually formalised for the purposes of distribution through the District Office to the surrounding areas.⁵ It was Mr Doyle's recollection that on Mr Cullen's daughter reporting her father missing he was sent by the officer in command (OIC) of the Roebourne Police Station down to the Fortescue River Crossing with a Senior Constable Higgins for them to assist in the search. Mr Doyle gave evidence of the difficulty of communication in remote areas and commented the closest station was Mardi and they usually used radios.⁶

In the MPR, Mr Cullen's daughter advised that at approximately 7pm on the 14 January 1972 Mr Cullen was last sighted at a water hole a quarter of a mile on the upstream side of the North West Coastal Highway Crossing on the Fortescue River.⁷ The deceased was wearing only a pair of khaki shorts.

Mr Doyle recalled travelling to Mardi Station which was run by a Mr Sharpe senior's son, Ben Sharpe. They collected an Aboriginal tracker, Mr Doyle only recalled one,⁸ and travelled to the crossing and then to the water hole in search of any tracks for Mr Cullen. Mr Doyle's recollection was that they did not find anything, however, it

³ Exhibit 3

⁴ Exhibit 3

⁵ Exhibit 1, tab 4

⁶ t 06.08.19, p10

⁷ Exhibit 1, tab 4

⁸ t 06.08.19, p7

is a long time ago.⁹ Failing the location of any trace of Mr Cullen at the water hole, Mr Doyle recalled the police continued the search by using a commercial pilot in a small plane to fly over the terrain around the area of the water hole.

Mr Doyle recalled there was a prominent hill observable from both the water hole and the road which would have provided a good landmark in the event someone was lost. There was also a group of four hills, but otherwise the terrain was open and it was unlikely a person would become lost in the bush. Mr Doyle recalled it was extremely hot and that it would be possible to become dehydrated and disorientated. He and Senior Constable Higgins rode in the small plane with the pilot as spotters and flew over the area without success in either observing a person or any remains. Mr Doyle agreed the country made it very difficult to observe a person wearing only khaki shorts on the ground, unless they were upright and attempting to attract attention.¹⁰

Information provided to the court through Senior Constable Robertson on 21 August 2019, from Ben Sharpe, ex Mardi Station, was that the pilot used in the search for Mr Cullen was inexperienced in searches, and may have flown too high to see a person on the ground. He considered it likely the Fortescue River was in flood at the time and that many people had drowned at the water hole over the years.¹¹

Mr Doyle's recall was that the flight was hot and rough because the pilot flew low, up and down the river bed and also around the surrounding terrain.¹²

The police search, both by air and with the trackers, failed to find any trace of Mr Cullen and Mr Doyle recalled the OIC of Roebourne Police Station attempting to contact Mr Cullen's family, who by then had moved on. He understood they were at an address in Geraldton and Mr Doyle does not know whether they were successfully contacted.

Mr Doyle went on to say that in 1972 there was no Missing Person's Unit with the police and Missing Persons' files were held in the Police District Office of the area in which the disappearance occurred. He believed there would have been an entry in the Station Occurrence Books as well.

Mr Sinclair's recall was that Mr Cullen had left to go the water hole with the family's two dogs, however, the dogs returned and Mr Cullen did not reappear and could not be found when the family searched for him over the remaining days before moving on.

Mr Doyle also outlined that in 1972 the station owners or managers knew a great deal about their stations and that the station hands and jackeroos would be constantly moving over the area with cattle who would have used the watering hole.

Inquiries with the Heritage Council website about Mardi Station indicate Mardi Station abandoned sheep for cattle in 2000. However, enquiries with Mr Sharpe

⁹ t 06.08.19, p6

¹⁰ t 06.08.19, p12

¹¹ Exhibit 4

¹² t 06.08.19, p10-11

junior confirm that in 1972 Mardi Station comprised mostly sheep, but did have some cattle.¹³

Mr Doyle believed the water at the watering hole remained good over the time Mr Cullen went missing, but advised it was too large a body of water to be affected by decomposition.¹⁴ He believed the most likely reason for the disappearance of Mr Cullen without trace, was that he had died in the water and remained submerged. There were no predators which could have consumed any remains.¹⁵

INVESTIGATION

The only documentary evidence of the disappearance of Mr Cullen is the MPR filed at Roebourne Police Station on the 22 February 1972. No statements were taken nor a detailed report of the search undertaken. Mr Doyle stated little was recorded other than in the Police Station Occurrence Books¹⁶ at that time. Mr Doyle indicated Mardi Station managers were well aware of the disappearance of Mr Cullen, having provided trackers and advised of the availability of a pilot. He believed that had any remains been located on the station they would have reported them.

In addition, it is clear the Broome District Office had knowledge of Mr Cullen's disappearance because the report of Senior Constable Smith,¹⁷ CIS, identified copies of communications between police officers relating to missing persons in the area in the 1970s. A skeleton was located and the details from Mr Cullen and three other MPRs were provided to forensic pathologists in 1978 to allow a comparison with some remains which were located in the area. These did not prove to be those of Mr Cullen, however, do indicate an awareness of the possibility of unidentified remains being found.¹⁸

The Missing Persons Bureau was established in 1976 and from that time attempts made to centralise missing persons information. An enquiry of Centrelink in August 1999 with respect to any information related to Mr Cullen did not provide any further information. A synopsis of all available information with respect to Mr Cullen as a missing person was recorded by the Missing Persons Unit on the 28 August 1999 with no further information.¹⁹

Enquiries of relevant Commonwealth and State organisations in February and March 2015 failed to identify records for Mr Cullen.²⁰

HAS DEATH BEEN ESTABLISHED?

Mr Sinclair stated there had been a family belief that his grandfather had survived and somehow returned to the road and been picked up and taken to the metropolitan area from where he had travelled to Scotland. He also advised that his mother, who is now deceased, made enquiries of family in Scotland and there

¹³ Exhibit 4

¹⁴ t 06.08.19, p14

¹⁵ t 06.08.19, p14-15

¹⁶ Exhibit 1, tab 3

¹⁷ Exhibit 1, tab 2

¹⁸ Exhibit 1, tabs 5, 6 (both dated 1973); Exhibit 1, tabs 7, 8, 9 (all dated 1984)

¹⁹ Exhibit 1, tab 12

²⁰ Exhibit 1, tab 14

was no trace of Mr Cullen. Enquiries with the Immigration Department who used a card system for movement through borders in 1972 indicate they have no record of Mr Cullen leaving Australia for any destination in 1972 and thereafter.

The fact Mr Cullen was travelling with his family and apparently happy to retire and relocate with his family would indicate there was no difficulty with the family and consequently no reason for Mr Cullen to disappear voluntarily.

I am satisfied that had Mr Cullen survived any length of time he would have contacted his family. Mr Sinclair's recollection of his grandfather is such that I can see no reason why Mr Cullen would not contact family were he in a position to do so.

I note that were Mr Cullen alive today, he would be 106 years of age. I am satisfied that Mr Cullen is deceased. He is certainly deceased as of 2019, however, I am satisfied Mr Cullen not only disappeared on or about 14 January 1972 but also died in that timeframe. There is no evidence he would not have contacted his family had he been in a position to do so.

I am unable to speculate as to what exactly happened, however, the lack of sighting or contact with Mr Cullen, the circumstances in which he disappeared, and the fact there would appear to be no motive to disappear all satisfy me Mr Cullen is deceased.

In all the circumstances I am satisfied beyond a reasonable doubt Mr Cullen is no longer alive and that death has been established.

MANNER AND CAUSE

Mr Doyle stated the terrain around the watering hole was not of such a nature as to allow a person to become easily lost, were they in a fit state of mind. He believed it was far more likely there was some sort of event which caused Mr Cullen to collapse, possibly become disorientated, dehydrated and die. In the temperatures at that time a person would not last very long without food or water. He thought it most likely Mr Cullen's remains were in the water.

I am unable to determine either the manner or cause of Mr Cullen's death on the available evidence. While I am of the view it is extremely likely he died on or about the 14 January 1972, I am unable to say as to whether it was as a result of a fatal medical event or an accidental event which culminated in his death.

I am satisfied he died in that location and around about that time. Mr Doyle thought it was extremely unlikely a stranger would have picked someone up in the area in 1972 without it being noticed or commented upon by locals.²¹

CONCLUSION

I am satisfied Mr Cullen died on or about 14 January 1972 in the vicinity of the water hole on the Fortescue River upstream from the road crossing. Had that not been the case I am sure those searching for him in the area would have located his

²¹ t 06.08.19, p15

remains or some evidence he had moved out of the area. Local station people were aware of the fact they had a missing person in the area. There is absolutely no suggestion in the papers available there was any reason for Mr Cullen to disappear intentionally, and his grandson Mr Sinclair, has nothing but fond memories of his grandfather.

As a result I am satisfied beyond a reasonable doubt that Mr Cullen died on or about 14 January 1972 in the vicinity of the Fortescue River water hole just upstream from the North West Coastal Highway. I am unable to determine whether death was by natural causes, accident or misadventure.

Consequently, I make an Open Finding into the manner of death for Mr Cullen.

E F Vicker
Coroner
6 September 2019