



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 42/19

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **Charles Donald BATES** with an inquest held at the **Coroner's Court, Court 83, Central Law Courts, 501 Hay Street, Perth, on 29 August 2019, find the death of Charles Donald BATES** has been established beyond all reasonable doubt, and the identity of the deceased person was **Charles Donald BATES** and that death occurred on **28 July 1977** at sea in the vicinity of **False Passage, Ningaloo Reef off Coral Bay**, in the following circumstances:*

Counsel Appearing:

Senior Constable Craig Robertson assisting the Coroner.

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INTRODUCTION

On 28 July 1977 Charles Donald Bates (Mr Bates) was fishing off Ningaloo Reef at False Passage, Coral Bay, with a friend, Charles Bennett Parker (Mr Parker), when their boat was swamped and capsized by a freak wave. Both men were tipped out of the boat which then caught on the reef. Mr Bates was last seen making his way towards where the boat was bumping over the reef. He then disappeared underwater by the edge of the reef and was never seen again.

The inquest into this matter was held in Perth as the only available witnesses were in the Perth area. The documentary evidence comprised of the brief of evidence, Exhibit 1, attachments 1-9, and Exhibit 2, Public Notice of Inquest dated 16 August 2019. Oral evidence was taken from First Class Constable Michael Purver, the report writer for the purposes of the inquest, and retired First Class Sergeant Alexander Timms, then Constable Timms, who assisted in the original search and provided the original Missing Person Report (MPR).¹

Long Term Missing Persons Project (LTMP)

In 2017 it was established there were a number of files relating to the long term disappearance 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 limited or 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*.

¹ Exhibit 1 Tab 4

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 proposed for a project to clear the backlog of LTMP files once it had been determined the matters fitted the circumstances set out in 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 approval was given 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 of 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 related to outside the Perth 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.

In the case of Mr Bates there were no available witnesses in the place of disappearance and by the time of the inquest, unfortunately, those from his family who had been in contact with the court were deceased.

Advice from Mr Bates' son-in-law, Mr Hawley, prior to his death, indicated the Supreme Court had dealt with the disappearance of Mr Bates by a Grant of Probate.² Enquiries with Births, Deaths and Marriages revealed the Registrar General had no record of the death and no death certificate had been issued. It

² Order by Supreme Court Master No. 2180 of 1477, on 5 April 1978, allowing executrix to swear as to the death of Mr Bates

was decided the issue would be resolved by a brief hearing on the papers to allow the coroner to provide the Registrar General with the particulars needed to register the death as a matter of public interest (s 25(1)(d)).

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

THE DECEASED

Mr Bates was born on 4 April 1912 in Perth, Western Australia. This meant he was 65 years of age at the time of his disappearance. Mr Bates was married and had a daughter, Betty Hawley, who unfortunately died before the holding of the inquest.

Mr Bates had been employed as an engineer.

Mr Bates lived in Riverton with his wife and had a good friend, Charles Parker (Mr Parker), who lived in Quairading. Mr Parker was 74 years old in July 1977 and he and Mr Bates had been fishing together for a number of years in Mr Parker's 18 foot boat powered by a 40 hp Evinrude outboard motor. The two men had known each other for about 20 years and had been fishing together for approximately 5 years.

Mr Parker had experience with Coral Bay and had been fishing off the reef at Coral Bay a number of times over the prior 6 years. The two men travelled to Coral Bay together and stayed at the caravan park for their fishing trips.³

DISAPPEARANCE

Mr Parker provided a statement to police in December 1977, once he had recovered from the ordeal at Coral Bay. He was deceased by the time of the inquest.

Mr Parker advised police that at about 8.30 am on 28 July 1977 he and Mr Bates had left the Coral Bay car park in his boat, and had gone out through the reef,

³ Exhibit 1, tab 7

about 4 km south of the caravan park to start fishing about 150 yards out from the reef in an area known as the 'False Passage'. Due to their experience with the area the boat was permitted to drift with the light easterly breeze and the current. The weather conditions were described as very good for boating.⁴

Mr Parker believed they had been fishing for approximately 3-4 hours and had caught a good number of fish. However, at about 1.00 pm a freak wave came in from the sea and caught the boat broadside, which tipped it over into the sea with all the equipment on board. Mr Parker recalled going down a long way and by the time he came to the surface he noticed the sea was calm again, with the boat about a chain away towards the reef with Mr Bates clinging to it. The boat was still upside down.

Mr Parker began to swim in to the reef as the boat drifted towards the reef with Mr Bates alongside it. When Mr Parker got to the reef the boat was upside down, with the cabin caught on the edge of the reef, but Mr Bates was no longer with the boat. He was approximately 60 yards south of the boat with Mr Parker between Mr Bates and the boat.

The two men communicated by signs and Mr Bates pointed towards the boat which had now right itself and was bumping over the reef. Both Mr Parker and Mr Bates headed towards the boat, with Mr Parker both walking along the reef and swimming, once the boat had cleared the reef and was in deep water inside the reef.

Mr Parker reached the boat and when he looked around he could see Mr Bates still swimming towards the boat along the reef, but the water around him was very turbulent. Mr Parker managed to climb into the boat and once he did so he looked around for Mr Bates, but could no longer see him.

Although the boat was right side up by this time, the motor, ores, ropes, anchors and everything else had been lost when it capsized. Mr Parker was unable to direct

⁴ Exhibit 1, tab 5

the boat and it drifted northeast for approximately an hour before he was picked up by another boat. He did not see Mr Bates again.

When Mr Parker was rescued, the two fishermen looked briefly for Mr Bates but took Mr Parker back to Coral Bay before looking thoroughly for Mr Bates, to ensure the alarm was raised. The police were notified and several boats returned to the area to assist in the search.

Mr Parker did not think Mr Bates appeared to be injured immediately after the boat capsized and when he saw him on the reef he believed Mr Bates would be alright. He did, however, describe the water where Mr Bates was moving towards the boat, as appearing to be “boiling” as a result of the waves breaking over the reef and making visibility very poor.⁵

Mr Parker explained the two rescuers who had originally picked him up looked around for Mr Bates, but were unable to see him. They attempted to tow Mr Parker’s boat back to Coral Bay, however, were unable to do so due to water logging. They abandoned the boat and took Mr Parker to Coral Bay where the police were notified and Mr Parker was seen by a doctor.

Unfortunately photographs taken of Mr Bates during the holiday, provided by Mr Parker, and the statements of the two rescuers, are no longer available.⁶

Mr Parker was treated by Dr Brinsden for the injuries he suffered as a result of the incident and he then went to the caravan park to rest while a search was instigated by the two original rescuers, locals and visitors.

The owner of the Coral Bay Motel contacted the Royal Flying Doctor Service (RFDS) by radio who alerted the police. The RFDS came to assist as did the local station owner, Mr James Robinson of Cardabia Station.

⁵ Exhibit 1, tab 4

⁶ Exhibit 1, tab 4

INVESTIGATION

The initial MPR was filed on 9 August 1977 at Exmouth Police Station for the Karratha District Office.⁷ That report indicated that Charles Donald Bates, known as Charlie, born on 4 April 1912 of Riverton, had gone missing from the seas off Coral Bay while staying in the Coral Bay Caravan Park. He was recorded as leaving the caravan park at 8.30 am on 28 July 1977 in good health and reported as missing at 3.30 pm on the same date when Mr Parker, his friend, had managed to report him missing.

Mr Parker reported he had last seen Mr Bates at approximately at 1.00 pm on the coral reef approximately 2 km southwest of Coral Bay. A photograph taken approximately two weeks prior to Mr Bates' disappearance was attached to the MPR in case he was located. Other details provided were those of his wife, his address and his doctor. Unfortunately all photographs and medical records appear to now be missing. Mr Bates was reported to be on a fishing holiday with Mr Parker and camping at the caravan park in a caravan.⁸

The full police report in relation to the disappearance of Mr Bates was provided by Constable Timms and completed by him on 26 October 1977 for the Karratha District Office.⁹ In that report Constable Timms reported he had been on leave from his position at Exmouth when he was recalled to work on 28 July 1977 to assist with the search for Mr Bates. Constable Timms reported that he and Constable Nikkula attended at the scene of the boating accident as reported by Mr Parker, and relayed to the police by a station owner and the RFDS.

They arrived at the Coral Bay light aircraft landing strip at approximately 6.10 pm that evening. They joined Constables Mills and Davies from Carnarvon who had flown in with the RFDS aircraft which had already flown to Coral Bay and had made numerous passes over the area where Mr Bates had been reported to have gone missing. They reported they had not seen a person, but had seen a quantity of debris.

⁷ Exhibit 1 Tab 3

⁸ Exhibit 1, tab 3

⁹ Exhibit 1, tab 4

Prior to the RFDS flights, Mr J R Robinson of Cardabia Station, north of Coral Bay, had already flown his aircraft through the area searching for Mr Bates. Mr Robinson was the owner of his aircraft and this was a flight of his own accord to assist in the search for Mr Bates. At the time the police attended there was also an Army helicopter operating out of Learmonth making a final sweep of the area before dark forced the search to end for that day. Again this was an unauthorised (by police) aircraft, but attended to assist with searching for Mr Bates before the police had been fully deployed.

The RFDS aircraft was asked to return to Carnarvon by the Karratha District Office which it did after the Army Helicopter had left.

All those to be involved in the search from the police perspective then attended the Coral Bay Hotel Motel and spoke with Mr Monck who had radioed the information to RFDS. Mr Monck advised the police that Mr Parker was being treated by Dr Brinsden and had returned to his camp to rest. Mr Parker was then interviewed and gave his account of the incident which is largely as listed above.

Mr Parker confirmed that after being originally submerged both he and Mr Bates surfaced and at that stage both men were communicating with each other and decided to make their way back to the boat which could be seen further along inside the reef.

Mr Parker managed to reach his boat and found the cable torn from the outboard motor when it had come away from the over turned boat. He then turned to see if he could see Mr Bates, but unfortunately "*Parker could only see his head in which he called boiling water*",¹⁰ but could not tell if Mr Bates was still swimming. Mr Parker managed to pull himself up the cable, over the stern and into his boat. When he looked for Mr Bates again he could not see him, and because there was no means to control his boat, he had to let it drift without oars, anchors or fuel. The boat drifted towards shore and it was at that point Mr Parker was rescued by the two other fishermen. After scanning the area briefly for Mr Bates it was decided

¹⁰ t. 29.8.19, p.7

it was preferable to return to shore and raise the alarm for Mr Bates. This was done.

Unfortunately, the two statements Constable Timms took from the two rescuers, Mr Brian Littleton and Mr Kenneth Wiggins, have been lost along with the photographs.

After speaking with Mr Parker, the police attended at Cardabia Station at 8.30 pm to talk by radio to Sergeant Reid at Exmouth, for the information to be passed onto the District Office. The police then made arrangements for a search on 29 July 1977. Local boats had already been arranged for the sea search and a number of the holiday makers in the area agreed to assist in a land search along the coast.

On the morning of 29 July 1977 a number of boats left Coral Bay to assist in a sea search. This started at 6.40 am as organised the previous evening with the police. The search was to be consistent with the prevailing north-easterly current running inside the reef where the boat had drifted when Mr Parker had reboarded. There were no craft suitable for searching the outside of the reef which broaches deep water.¹¹

The land search was conducted by a number of visitors including Mr Parker. They travelled south from Coral Bay Caravan Park towards Mr Parker's beached boat and beyond that for approximately 2 km south.

The search of the beach revealed a lot of wreckage from the boat including the auxiliary motor, life jackets and other items of value. Constable Timms accompanied Mr Parker with Mr Monck to his boat site to help salvage the parts. The registration number was located confirming it was Mr Parker's vessel and it was without its cabin following the capsizing. Constable Timms noted it had been holed by rocks probably when it was washed onto the reef and later onto the shore. Constable Timms noted it looked well-constructed with a strong hold. The steering cable was still attached which verified Mr Parker's outline of what had happened.¹²

¹¹ t 29.08.19, p15

¹² Exhibit 1, tab 4

A further air search was conducted by Exmouth Charter Service following arrival of the aircraft at 10.50 am. The pilot was shown an aerial photograph of the Coral Bay area and, in conjunction with local knowledge, had been given an indication of the area to be searched. Three police spotters accompanied him in the aircraft which covered the area of the accident, the outward side of the reef and the coastline both north and south of the accident site. That air search was concluded at 12.15 pm without any success. Constables Timms and Nikkula left the Coral Bay site to attend campsites to the north and to advise campers and fishermen to keep a look out for Mr Bates. This was concluded at a distance of approximately 30 km north before they returned to Coral Bay at 4.15 pm.

At 5.00 pm the police conducted another patrol of the coast to the north with Mr Monck for approximately 12 km.

The search on 29 July 1977 was concluded at 6.30 pm due to the failing light and a low tide which made the area inside the reef shallow and dangerous to boats. Everybody involved in the search agreed to meet again for the following day and a briefing was given to extend the search area for 30 July 1977.

At 6.30 pm Constable Cole arrived at Coral Bay with Mr Bates' son-in-law, Mr Geoffrey Hawley. He met with Mr Parker and with the police who advised him of the state of the search.

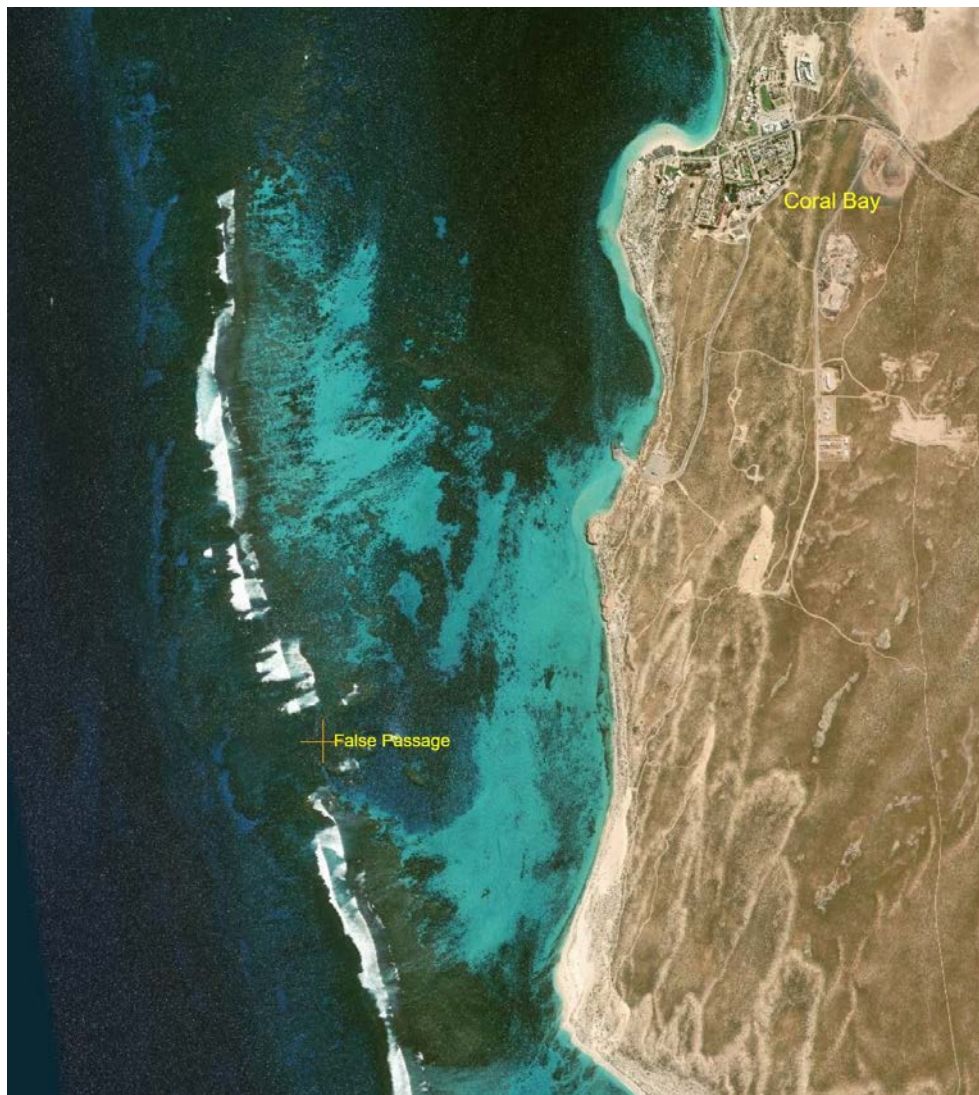
Constables Timms and Cole returned to Exmouth that night to report to their Sergeant while Constable Nikkula remained at Coral Bay to continue coordination of the search for the next day.

At 6.30 am on 30 July 1977 police launched a sea and land search for Mr Bates accompanied by Mr Hawley, Mr Parker and a Mr Reginald Blick. Three boats continued the search around the area, but on a larger pattern than the previous day, giving emphasis to the prevailing water currents. The search that day continued for 12 hours, again being discontinued at 6.30 pm due to the light and tides.

There had been no sighting of Mr Bates.

Similar searches were conducted on 31 July 1977 by sea and land comprised of police and volunteers.

The final day of the search for both land sea commenced at 7.00 am on 1 August 1977. Police took Mr Hawley and Mr Parker out to re-attend the actual site of the accident and Mr Parker indicated where his boat had floated off the reef into deep water and on towards the shore. Constable Timms noted the deep water was about 15 metres deep and there was an undercurrent evident, sweeping from that point out through False Passage.¹³ The search was continued on the inner side of the reef to north and south of False Passage, but it was deemed too dangerous for even experienced divers to search along the outer edge of the reef.



¹³ T 29.08.19, p12

Mr Hawley was then conveyed to Cardabia Station where Mr Robinson agreed to fly Mr Hawley over the accident scene in a final attempt to locate Mr Bates. Unfortunately, that was again unsuccessful and at approximately mid-afternoon, in discussions with Mr Hawley and Mr Parker, the police search was concluded and Mr Hawley and Mr Parker advised the police they intended to leave Coral Bay on 3 August 1977.

Following the conclusion of the search police gave explicit instructions to Mr Monck and local residents as to what was to occur if there should be any indication that the body of Mr Bates had been located. Mrs Bates was notified formally that her husband had not been located.¹⁴

Since that time there has been no indication Mr Bates either survived the incident on 28 July 1977, or there would have been any motive for him to disappear.

In November 1977 the police received a request from a law firm representing Mr Bates' family for a copy of the police report for a Supreme Court Application for Probate.¹⁵

Enquiries with the Supreme Court of WA indicated an Order was made granting Mr Bates' wife leave to swear as to the death of Mr Bates for the purposes of probate.

In April 2015 the Missing Persons Unit (MPU) carried out a number of checks with various Government agencies, hospitals and banks to determine whether there was any indication Mr Bates was using any State or Commonwealth community services or banks. Responses received in April/May 2015 indicated there had been no transactions conducted by somebody using Mr Bates' name or accounts since July 1977.¹⁶

Inquiries of Mr Hawley, while he was still alive, indicated neither he nor his wife, Mr Bates' daughter, who had passed away earlier, had heard anything from Mr Bates and there was no reported difficulty with the family which would have given him cause to disappear.

¹⁴ Exhibit 1, tab 4

¹⁵ Exhibit 1, tab 6

¹⁶ Exhibit 1, tab 9

HAS DEATH BEEN ESTABLISHED?

I note Mr Bates was born in 1912 and had he still been alive in 2019 he would have turned 107 years old. On the basis of age alone and the fact there has been no trace of Mr Bates I am satisfied beyond all reasonable doubt that Mr Bates is now deceased.

The evidence surrounding Mr Bates disappearance at age of 65, satisfies me that Mr Bates died on 28 July 1977 in the vicinity of False Passage in the reef off shore south of Coral Bay landing. There is no evidence there was any reason for Mr Bates to arrange a disappearance, he was with a good friend with whom he had fished a number of times, and there is no evidence of any dispute between Mr Bates and Mr Parker who was clearly distressed at the loss of his friend. He assisted in the search for Mr Bates despite his own near death experience.

Despite Mr Bates surviving the first immersion along with Mr Parker, it is clear he was susceptible to being swept under water. When they both surfaced the first time Mr Bates was seen by Mr Parker to be clinging to the boat while it was still upside down. Mr Parker observed Mr Bates to drift into the reef with Mr Bates still clinging to the boat, however, when Mr Parker reached the reef he could see his boat was caught on the reef and that Mr Bates was now a considerable distance away from the boat, even further away than Mr Parker. Mr Parker had suffered scratches and bruises and is not unreasonable to envisage that Mr Bates had also been injured as he had been with the boat at the time it had struck the reef. Both men had attempted to reach the boat as it bumped over the reef into the inward side and deep water. The same place in which there is a strong south to north current as observed by Constable Timms during the search period.

I am satisfied beyond all reasonable doubt that Mr Bates somehow became immersed for the final time in the vicinity of the strong undertow and was swept either under the reef or out through False Passage and into deep water.

MANNER AND CAUSE

I am satisfied beyond all reasonable doubt that Mr Bates suffered at least two immersions in the early afternoon of 28 July 1977 and that he did not survive the final immersion, whether he be injured or not from the first immersion. As a result of the second immersion I am satisfied he drowned.

The fact Mr Bates was not found floating on the surface satisfies me Mr Bates drowned at the time of the incident and did not remain on the sea surface. The physiology of immersion is such that a scenario as related by Mr Parker is perfectly likely to result in death.¹⁷

I find death occurred by way of Misadventure.

CONCLUSION

Mr Bates and Mr Parker were experienced fisher partners and were used to fishing together in the location in which they chose to go fishing on 28 July 1977. By all accounts the weather was beautiful, despite which freak waves are known to occur. They were not wearing any of their safety equipment, and it was noted in court that fishermen frequently did not wear life jackets when anchored and fishing.¹⁸

This was a recreational activity, the two men were fishing well, and there was no cause for alarm. Unfortunately a freak wave caught the two unawares, before there was any indication they should don their life jackets.

Mr Parker suffered cuts, grazes and bruises in his time in the water, but managed to reach the boat once it had righted itself and pull himself aboard. When he looked around he could not see Mr Bates anymore, although he had seen him previously and he was clearly orientated and alert at that time.

Mr Parker had no control over the boat and had to drift with it until he was collected by passing fishermen. Scanning the area they were unable to see any evidence of Mr Bates and they returned to Coral Bay to raise the alarm.

¹⁷ Inquest into the suspected death of Jiaolong ZHANG (Inq No.44/17)

¹⁸ t 29.08.19, 17

I am satisfied by that time Mr Bates was already deceased and either lodged under the reef or swept out to sea. This was a tragic ending to what had been a thoroughly enjoyable time for the two holiday fishermen.

E F Vicker

Coroner

31 March 2020