



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref 60 /19

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **Derrick Charles Walter NUNN** with an inquest held at the **Coroner's Court, Court 83, Central Law Courts, 501 Hay Street, Perth, on 16 October 2019 and Albany Court House, Stirling Terrace, Albany, on 11 December 2019, find the death of **Derrick Charles Walter NUNN** has been established beyond all reasonable doubt, and the identity of the deceased person was **Derrick Charles Walter NUNN** and that death occurred on **23 December 1973 at sea in the vicinity of Cape Vancouver, Two Peoples Bay Nature Reserve, Nannerup, near Albany, in the following circumstances:*****

Counsel Appearing:

Senior Constable Craig Robertson assisting the Coroner.

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INTRODUCTION

On the 23 December 1973 Derrick Charles Walter Nunn (Mr Nunn) was fishing from rocks at Cape Vancouver in the Two Peoples Bay Nature Reserve at Nannerup with his son, Kevin, and friend, Walter Loxton (Mr Loxton). He was on a rock ledge when a wave swept over the rock face and knocked Mr Nunn into the water. Mr Nunn was seen to be initially treading water, however, was not able to swim further out. He attempted to climb onto a sloping rock, but was unsuccessful. By the time Mr Loxton and Kevin reached the point where they had last seen him he was nowhere to be found and was never seen again.

The inquest into the disappearance of Mr Nunn was held in Perth initially and the evidence comprised of the documentary papers in the brief of evidence, Exhibit 1 Tabs 1 to 23, and the Public Notice of Advertisement of Inquest dated 20 September 2019, Exhibit 2. Oral evidence was heard from Senior Constable Peter Smith, the report writer for the purposes of the inquest. When it became clear one of Mr Nunn's children was able to provide additional background, the decision was made to add this matter to the Albany hearings in order for Ms Del'Anna to give evidence in person.

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 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 or limited 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 section 23(2), to establish beyond all reasonable doubt that death has occurred. The investigation must be 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 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 (s3 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 area 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 where the disappearance occurred in places other than the Perth metropolitan area were considered from the perspective of the best availability for relevant witnesses.

In the case of Mr Nunn, while there were relevant witnesses in the Albany region, there were none who wished to participate in the inquest process, although they were supportive of the fact of an inquest. Mr Nunn's son, Kevin, is still very distressed by the events of 23 December 1973, and Mr Loxton is of an age where, in the circumstances of this case it was not considered necessary he attend court to give evidence about such a traumatic matter. After the initial hearing in Perth and with Ms Del'Anna's co-operation, evidence was heard from her, in person, in Albany, on behalf of Mr Nunn's family.

Mr Nunn's death was dealt with by the Supreme Court in 1974. Enquiries with the Registrar General of Births, Deaths and Marriages revealed there was no record of Mr Nunn's death and no death certificate had been issued. It was therefore necessary for an inquest to be held to allow a coroner to provide the Registrar General the particulars needed to register the death as a matter of public interest (section 25(1)(d).)

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

THE DECEASED

Mr Nunn was born on 16 June 1929 which made him 44 years of age at the time he was swept from the rocks at Cape Vancouver. He was recorded as working as a plumber, was married and had four natural children, as well as two adopted children. He was clearly a strong family man and all his surviving children are still in touch with one another.

Mr Nunn's wife later remarried and died in April 2018. Mr Loxton was at her funeral and is still considered a close family friend, although now very frail.¹

Medical information provided in 1973-74 for the purposes of future identification indicated Mr Nunn had no natural teeth left, but had dentures. He was generally considered to be a strong swimmer and in good health without illness or injury. X-rays taken 14 years before his death relating to a shoulder complaint were the only medical identifying features available should any remains be located at a future date.²

¹ Personal communication between CA Senior Constable Robertson and Mr Nunn's daughter, Julie Del'Anna on 17.10.2019; t.11.12.2019

² Exhibit 1 Tab 20

DISAPPEARANCE

At 6.30 am on the 23 December 1973 Mr Nunn left his home in Mt Barker with his 13 year old son, Kevin, and a friend, Mr Loxton, with the intention of going fishing at Cape Vancouver near Two Peoples Bay east of Albany. They left in Mr Nunn's car and arrived at Cape Vancouver at approximately 7.30 am before leaving the car and walking two miles to a fishing spot. Both Mr Nunn and Mr Loxton were experienced fishermen, but it is not clear how familiar they were with Cape Vancouver, although Mr Loxton had been there before.

Mr Loxton stated they selected a fishing spot on the south side of Coffin Island off Cape Vancouver and were fishing from a vertical rock face approximately 20 feet from the water. Mr Loxton and Kevin were further up the rock face than Mr Nunn who was fishing from a ledge.

Mr Loxton described the sea as moderate and he believed the tide was on the way in.³

At approximately 11.00 am Mr Loxton was with Kevin, and Mr Nunn fishing below them, when Mr Loxton was concentrating on rebaiting a fishing line he was using. As he did so a wave hit him unexpectedly and he found himself washed backwards along the rock. He managed to grip onto the rock face and hold on and when the wave retreated he was still in place, but he noted that Mr Nunn had been swept off the rock face. Kevin was near to Mr Loxton and safe.

They both looked out into the water and could see Mr Nunn swimming about 30 yards from the base of the vertical rock face. He appeared to be treading water. Mr Loxton called out to Mr Nunn to swim further away from the rock face to go to a safe spot further around the island when he called out "*I can't. Throw me a line*". It is the family's understanding Mr Nunn had injured his foot in the fall.⁴

³ Exhibit 1 Tab 6

⁴ Personal communication between CA Senior Constable Robertson and Mr Nunn's daughter, Julie Del'Anna, on 17.10.2019; t.11.12.2019

All the fishing lines had been washed into the sea by the wave and Mr Loxton could not find a spare line to throw him. He and Kevin observed Mr Nunn trying to climb onto a sloping rock about 50 yards away and they went to help him. By the time they reached the location where Mr Nunn had last been seen they could not see Mr Nunn. It had taken them approximately 3-4 minutes.

Mr Loxton and Kevin searched along the rock face for Mr Nunn and then in the immediate vicinity. They were unable to see any sign of him either in the water or close to shore. At approximately 2 pm they realised they needed help and returned to the car and drove into Albany to notify the police.⁵

Mr Loxton is still alive, but extremely elderly and in view of the Grant of Probate I could see no benefit in putting him through the difficulty of having to give evidence.⁶ Kevin remains traumatised by observing the death of his father.⁷

INVESTIGATION

Mr Loxton and Kevin arrived in Albany and notified the police at approximately 3 00 pm of the events at Cape Vancouver. Approximately 10 minutes later Sergeant McLernon, Shift Sergeant Albany Police Station, tasked Constables Penman and Whitford to go with Mr Loxton and Kevin, back to the scene of the incident whilst the police arranged search terms.⁸

The police and local authorities instituted quite extensive searches both at sea and along the coast over the remaining days, however, no trace of Mr Nunn was ever located. Those involved in the search with the police were people from the fishing fleet, Fisheries Department, members of the public and friends and family of Mr Nunn.⁹ In addition friends of the family who were divers also searched the area unsuccessfully for months after Mr Nunn's disappearance for any trace of Mr Nunn's remains.¹⁰

⁵ Exhibit 1 Tab 6

⁶ Exhibit 1 Tab 23

⁷ t. 11.12.2019

⁸ Exhibit 1, tab 5

⁹ Exhibit 1 Tabs 5 and 6

¹⁰ Personal communication between CA Senior Constable Robertson and Mr Nunn's daughter, Julie Del'Anna, on 17.10.2019



Map depicting the distance from Cape Vancouver at the bottom left of the map and Coffin Island at the top right



Google map depicting area around Albany

HAS DEATH BEEN ESTABLISHED?

The statement from Mr Loxton, not disputed by Kevin Nunn, satisfies me that Mr Nunn is dead and died on the 23 December 1973 in the seas off Cape Vancouver sometime around 11 am.

The fact he was swept into the sea would have been destabilising and the indications are he was not in a position to swim away from the rock face as evidenced by his request a line to be thrown to him. In view of the fact he was known to be a strong swimmer this would support the implication he had been injured as a result of the original fall.

While Mr Nunn seems to have been orientated and alert enough to attempt to scramble up a sloping rock face some distance from where he was originally immersed it is apparent he was unsuccessful because Mr Loxton and Kevin were unable to find him when they reached the point where they had last seen him. It is likely he was swept under the rocks and down to the sea bed and then out to sea before he surfaced.

I am satisfied by that time he was deceased.

I am satisfied beyond reasonable doubt that Mr Nunn somehow became immersed in the vicinity of a strong undertow along the rock face and was swept either into the rocks or out to deep water.

I note also that on the 19 December 1974 an order was made in the Supreme Court of Western Australia, Probate Division, that Mr Nunn died on or after the 23rd day of December 1973 at Cape Vancouver Island in the State of Western Australia by Deputy Master Morris.¹¹

As stated earlier despite such a declaration Mr Nunn's death was not recorded by the Director General for the Registration of Births Deaths and Marriages and the

¹¹ Exhibit 1 Tab 23

holding of an inquest pursuant to section 23(2) of the Act allows Mr Nunn's death to now be formally record under the *Births Deaths and Marriages Act 1998*.

MANNER AND CAUSE

I am satisfied beyond all reasonable doubt that Mr Nunn suffered at least two immersions around about 11 am on the 23 December 1973 and that he did not survive his second immersion, whether he was injured or otherwise. As the result of the second immersion I am satisfied he drowned.

The fact Mr Nunn was not found floating on the surface satisfies me that he drowned at the time of the second immersion and would have remained in the vicinity of the sea bed subject to water movement at that point. Whether he remained intact and later surfaced out to sea is unknowable, but it is equally as possible he was swept out into deeper water and his body never surfaced.

I find death occurred by way of Misadventure.

CONCLUSION

It was a tragedy for this close family their father drowned in the circumstances of a pre-Christmas recreational activity with one of his children and a good friend. It would be a tragedy whenever it occurred, leaving a family of young children without their father, but the fact that it was immediately preceding Christmas was possibly especially traumatic.

The fact it distressed the family is evident in their co-operation with this court. They were very supportive of the fact of an inquest to allow registration of the death, however, did not wish to be involved in attending the hearing. Mr Nunn's daughter provided invaluable additional information about her father to CA on the

day following the inquest when he rang to advise her the matter had been heard in Court the previous morning. At that time Ms Del'Anna indicated she would like to provide that information in person should the matter be listed for mention in Albany, which was done on 11 December 2019, prior to delivery of the finding.¹²

I thank Ms Del'Anna for her interest and contribution.

E F Vicker
Coroner

11 December 2019

¹² t. 11.12.19