



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref 83/19

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **Malcolm Andrew CARPENTER** with an inquest held at the **Coroner's Court, Albany Court House, Stirling Terrace, Albany, on 11 December 2019**, find the death of **Malcolm Andrew CARPENTER** has been established beyond all reasonable doubt, and the identity of the deceased person was **Malcolm Andrew CARPENTER** and that death occurred on **25 May 1975, at sea off Mutton Bird Beach, Albany**, in the following circumstances:*

Counsel Appearing:

Senior Constable Craig Robertson assisting the Coroner.

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INTRODUCTION

On 25 May 1975 Malcolm Andrew Carpenter (Malcolm) was fishing off rocks at Mutton Bird Beach in the vicinity of Shelter Island (commonly referred to as Mutton Bird Island) with his father Andrew Norman Carpenter (Mr Carpenter), while his brother, Noel, was above them on the rocks. Shortly after commencing to fish Malcolm slipped from the rocks into the sea, where Mr Carpenter could see him attempting to swim before he disappeared under the water. Malcolm was never seen again.

The inquest was held in Albany where Noel was able to provide an oral account of the incident. Their sister, Sheryl Carpenter (Ms Carpenter) also attended at the Albany Court House and provided additional background information about the family dynamic. No witness statements had been taken at the time of Malcolm's disappearance. The documentary evidence comprised the brief of evidence, exhibit 1, tabs 1-11 and the Public Notice of Inquest dated 12 November 2019 as exhibit 2.

Long Term Missing Persons 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 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 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 Malcolm, his brother Noel was an extremely important witness and it was easier to hear his evidence in Albany. Mr Carpenter is now deceased, but Malcolm's sister, Ms Carpenter was anxious to provide background information with respect to the family dynamic in 1975.

The anticipated outcome of the LTMP 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

Malcolm was born on 9 June 1947 to Andrew and Ruby Carpenter. He was one of five siblings, with three brothers and one sister, and was almost 28 years of age when he disappeared on 25 May 1975. Malcolm was single and lived at home with his parents and brothers in Cranbrook in May 1975. Ms Carpenter was living in Esperance with relatives due to a difficult relationship with her family of origin.¹ Noel was a younger brother and in 1975 was approximately 22 years of age.

Both Noel and Ms Carpenter confirmed they all had a difficult relationship with their father and the whole family drank to excess resulting in frequent incidents of domestic violence of different types.

Noel stated in evidence Malcolm had a disfigured finger on his right hand which likely resulted in skeletal trauma, but otherwise had no medical identifiers which would assist with the later identification of any remains.² Neither of the brothers could swim, but Noel stated that Malcolm loved fishing.³ They usually fished from the beach or at Cosy Corner and had not been to the rocks near Mutton Bird Island before.⁴

Noel described Malcolm as about 6 foot one or two, and fit and strong. It would seem both Malcolm and his father could be quite physical and Ms Carpenter explained that when she had been in the family home, pre 1969, she had rarely seen a day go by without an argument between her brothers and father.⁵ She was sceptical as to the apparently accidental nature of Malcolm's death.

Mutton Bird Island (Shelter Island)

It was difficult to determine from the evidence given in Court as to where exactly the three men chose to fish on the 25 May 1975. Noel repeatedly referred to Mutton Bird Island, while the police referred to "*off rocks at Mutton Bird Island*", however, there is some confusion geographically as to the correct naming of Shelter Island,

¹ Exhibit 1, tab 11; t. 11.12.2019, p.9

² t. 11.12.2019, p.27

³ t. 11.12.2019, p.17

⁴ t. 11.12.2019, p.7, 13, 14

⁵ t. 11.12.2019, p.18, 20

approximately 130 metres off shore from Mutton Bird Beach and frequently referred to as Mutton Bird Island. In view of the fact there is no reference by Noel or in any of the papers as to the three men using a boat to reach their fishing spot I have to presume the rocks from which they were fishing were actually rocks on Mutton Bird Beach, opposite Shelter Island, which is separated from Mutton Bird Beach by a channel with an average depth of 8 metres.⁶ From the description given by Noel it would seem the ledge and rocks from which the three men were fishing were opposite the island and the channel between the rocks and the island is the area into which Malcolm disappeared.



⁶ Exhibit 1, tab 9

DISAPPEARANCE

On 24 May 1975 Noel stated their father asked the two brothers if they would like to go fishing. This was an unusual occurrence as the sons did not often spend recreational time with their father without alcohol. On this occasion Mr Carpenter wanted to go to Albany to buy a ute, which they did.⁷

Once Mr Carpenter had bought the ute the three men went to buy some drinks and then onto Cosy Corner. They stayed at Mutton Bird Beach overnight. Noel stated they did not argue or drink alcohol which was unusual. He recalled the day especially well because, apart from Malcolm's disappearance, they all had a very good time together, with no alcohol and no arguments. They enjoyed themselves and there was not a "*bad word said between the whole three of us that day*".⁸

Mr Carpenter slept in the back of the ute while Malcolm and Noel slept beside the campfire in their clothes.

At about 7.00 am on 25 May 1975 the three men walked to where they had decided to fish from the rock face together. Noel described this as being on Mutton Bird Island, but there is no evidence they crossed the channel between the coast and Shelter Island. Noel said they had not fished at that particular place before and that usually they would fish from the beach.⁹ Noel described Malcolm choosing a spot very close to the water and that was his preference.¹⁰

Malcolm was wearing thongs, blue jeans with a shirt with overalls over the top. These were his usual clothes when fishing. Noel described Malcolm as on a bit of ledge beside the water with Mr Carpenter about six to eight feet away and slightly higher. Noel was a long way above them both and told them they were fools to fish "*down there*".¹¹ While Noel described he had been to the area before, he had not fished where they ended up fishing that day, and that Malcolm chose where he wished to fish, although their father chose the location.¹²

⁷ t 11.12.19, p3-4

⁸ t 11.12.2019, p.5, 13

⁹ t 11.12.19, p7

¹⁰ t 11.12.19, p9, 17

¹¹ t 11.12.19, p10-11

¹² t 11.12.19, p7

Noel described the sea as very calm at the time Malcolm and Mr Carpenter commenced fishing. They had not been fishing for very long, and Noel stated he was turned away from the water dealing with his fishing rod further up the rock face, when his father called out, “*he’s gone, he’s gone*” and Noel turned around to realise his brother was in the water which was now rough, “*it sort of changed*”.¹³

Noel stated that he did not actually see Malcolm in the water. When he realised what had happened he went back to the ute and stayed there. Noel explained Mr Carpenter told Noel they needed to get Malcolm out of the water, but Noel pointed out they had no ropes and nothing to help Malcolm with; although in hindsight he believed they could have gone to a farm house further down the road,¹⁴ rather than all the way into the police in Albany. Noel stated that when he had turned around he noticed Malcolm’s thongs further up the rock face and his father later told him that Malcolm left them there after removing them before he returned to the rock ledge near the water. Noel noticed the thongs beside a white bucket.¹⁵

When Mr Carpenter decided they needed to go for help he wanted Noel to stay in position and watch out for Malcolm, but Noel was determined to go with Mr Carpenter and did not wish to be left behind. They both went to raise the alarm and get help. Noel described himself as “frozen”.¹⁶

INVESTIGATION

The police missing person report (MPR) stated;

“at about 7.00 am on 25 May 1975 the group attended on rocks at the island with Malcolm Andrew Carpenter being first, after about 30 minutes Malcolm slipped from the rocks and fell into the water.

The father called to him to try to shed his heavy overalls in an attempt to make it easier to swim.

Malcolm Andrew Carpenter attempted to swim back against the current towards the rocks from which he fell, but could not make any headway. He

¹³ t 11.12.189, p7, 9

¹⁴ t 11.12.19, p11, 12

¹⁵ t 11.12.19, p10

¹⁶ t 11.12.19, p11,12

drifted out to sea for about 50 yards and along the coast line. He then disappeared".¹⁷

In evidence Noel stated there were no warning signs of the dangers of fishing from the rocks at the point at which they were fishing, however, there had been some further back around on the beach. Noel did not believe his brother had surfaced once he went under and it was his view his brother had hit rocks as he slipped and gone straight down.¹⁸

Noel advised the Court that divers, as part of the search, had later recovered a fishing rod wedged in rocks below where Malcolm had been fishing and Noel identified it as being one which had belonged to Malcolm.¹⁹

No statements were taken at the time of the incident and the only information available from that time is that contained in the MPR and Noel's oral account during the inquest. Noel agreed there had been an ongoing search for Malcolm's body or remains.

The MPR compiled by Sergeant Russell of Albany Police Station on 9 August 1975 stated;

"Police were notified and an extensive ground, sea and air search was mounted though to no avail. The body was not sighted again.

A continuous search was maintained until about the 5th June 1975 by Police personnel from Albany Police Station with assistance from selected private citizens and four wheel drive vehicles. Nothing of the missing person has been sighted to this date.

*An intermittent search of the coastline was made for almost six weeks though nothing has been observed which would assist in the location of the body."*²⁰

¹⁷ Exhibit 1, tab 3

¹⁸ t 11.12.2019, p.16, 29

¹⁹ t 11.12.19, p29

²⁰ Exhibit 1, tab 3

The local paper's report of the incident stated a land, sea and air search had failed to find the body of Malcolm and it was feared he had drowned after he slipped from rocks while fishing near Mutton Bird Island, Albany. It went on to say Mr Carpenter and Noel had driven 24 kilometres to the Albany Police Station to raise the alarm, but due to a heavy swell the Albany Sea Rescue Squad was unable to use small boats in the search. The Albany life boat was not called out for the search, which had been carried out by a local fisherman and a chartered light aircraft.²¹ Noel stated in evidence he had later been told the life boat had been in dry dock being painted.²²

The police concluded that Malcolm had lost his life while fishing from rocks at about 7.30 am on 25 May 1975.

There is no detail of the searches conducted and later enquiries by the District Office for information from the Albany police indicated no records had been kept.²³

Enquiries in 1984 and 1999 disclosed no records with any Government or health facility with respect to Malcolm post May 1975 to indicate he had survived. In rock fishing incidents such as this it is not uncommon for a body or remains never to be located.

HAS DEATH BEEN ESTABLISHED?

Noel stated during the inquest his father had seldom spoken of Malcolm's demise following the event. He stated the incident had taken a lot out of their father. He believed the water had actually been too rough for his father to have been able to see Malcolm swimming in the water.²⁴ Ms Carpenter said she did not hear about Malcolm's death until later and it always puzzled her as to why her brothers and father had gone fishing together. She believed that was unusual.²⁵

²¹ Exhibit 1 tab 10

²² t 11.12.19, p7

²³ Exhibit 1, tabs 4,5,6,7,8

²⁴ t 11.12.19, p13, 15

²⁵ Exhibit 1, tab 11 & t 11.12.19, p18

It is certainly accepted by the family Malcolm died on the morning of 25 May 1975 in the waters off Mutton Bird Beach/Shelter Island and there would appear to be no motive known which would suggest he voluntarily disappeared.

While Noel stated his back was turned when his brother actually slid into the water, he was quite clear that Malcolm had died and he had died as a result of slipping into the water. Malcolm had been standing in his spot a few inches from the water one moment, and when Noel looked back due to his father's exclamation Malcolm was no longer there. He believed Malcolm had injured himself when he fell, but agreed Malcolm was not a good swimmer in any event.

The conditions described by Noel following Malcolm disappearing into the water would make it extremely unlikely that a non-swimmer would survive more than a few minutes in the water. The circumstances described are entirely consistent with Malcolm's death at that point in time and the fact there has been no record of Malcolm since that time satisfies me beyond all reasonable doubt that Malcolm died, probably in the channel between Mutton Bird Beach and Shelter Island before being swept under water and out to sea.

MANNER AND CAUSE

I am satisfied beyond all reasonable doubt that Malcolm suffered an unexpected and catastrophic immersion around about 7.30 am on 25 May 1975 and did not survive for very long after falling into the water. I am unable to determine whether he was injured when he fell into the water, however, note Mr Carpenter told police he believed he observed his son attempting to swim, although Noel was quite clear that none of them were capable swimmers.

The fact Malcolm was not located floating on the surface satisfies me he drowned at the time of his immersion or very close to that time. His body 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 is equally as possible he was swept out to deeper water and his body never surfaced.

I find death occurred by way of Misadventure.

CONCLUSION

I accept the evidence of both Noel and Ms Carpenter they had a dysfunctional family, fraught with difficulties. However, I also note Noel believed the death of Malcolm had adversely affected his father. It was also clear the young Noel of May 1975 was considerably traumatised by exposure to the incident. His description of becoming frozen then running to the ute and clinging to the ute rather than being left behind whilst his father went to get help, clearly indicated this was a young man who was very confronted by the events of the morning.

The fact the three men had an unusually good time together, away from the family environment and alcohol, must have made it particularly distressing it all ended with the death of his older brother.

There was scant information in the police brief in this matter due to the lack of documentation recovered from the Albany Occurrence Books. There was no particular missing person protocol in place at that time other than the requirement for a report. Those varied and in this case was quite scant, though the evidence does disclose a significant sea, air and land search.

It was unfortunate that it was necessary for Noel to come to Court to explain what had happened as he was the only person present who remains alive. Noel's input was essential to the Court and I thank him for his cooperation. He clearly felt stressed at the commencement of proceedings. It seemed he became more comfortable because by the end of proceedings he was volunteering information to the Court about his brother.

I thank both Noel and Ms Carpenter for their contribution to my ability to determine beyond all reasonable doubt I am satisfied Malcolm died on the morning of 25 May 1975 in the waters off Mutton Bird Beach.

E F Vicker
Coroner
31 March 2020