



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Barry John Lowe
<b>Hearing dates:</b>	11-13 December 2017
<b>Date of findings:</b>	21 December 2017
<b>Place of findings:</b>	NSW State Coroners Court - Glebe
<b>Findings of:</b>	Magistrate Elizabeth Ryan, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – cause and manner of death – homicide – police investigation - identity and motive of perpetrator unable to be ascertained.
<b>File number:</b>	2012/00347982
<b>Representation:</b>	Mr A Williams, Counsel Assisting the Coroner, i/b Crown Solicitors Office. The Lowe family: Mr M Gunning i/b Gordon Garling Moffitt Lawyers.

<b>Findings:</b>	<p><b>Identity:</b> The person who died is Barry John Lowe</p> <p><b>Date of death:</b> Mr Lowe died between the night of 5 November 2012 and the morning of 6 November 2012</p> <p><b>Place of death:</b> Barry Lowe died at 47 Marsden Street, Boorowa NSW</p> <p><b>Manner of death:</b> Barry Lowe died as a result of homicide</p> <p><b>Cause of death:</b> Barry Lowe died from blunt force injuries to the head and chest. The identity of the perpetrator remains unknown.</p>
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Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Barry John Lowe.

### **Introduction**

1. On the morning of 7 November 2012 Mr Barry Lowe aged 66 years was found dead in the kitchen of his home. Mr Lowe had been severely assaulted and had died of injuries to his head and chest.
2. Mr Lowe's violent death came as a terrible shock to his family. He was a much-loved father of three daughters and grandfather to their children. He was also a well-known and generally liked member of the small farming community of Boorowa in south-western New South Wales. His death has devastated his family and saddened his local community.
3. Adding to the shock and sorrow of Mr Lowe's family is the fact that five years later and despite a thorough police investigation, no one has been identified as a suspect for his murder. The unsolved status of this terrible crime has generated ongoing unease in the community of Boorowa, and has added greatly to the distress of Mr Lowe's family.

### **The inquest**

4. An inquest is different to other types of court hearings. It is neither criminal nor civil in nature. It does not determine whether a person is guilty of an offence, and it does not make findings or orders that are binding on parties.
5. This inquest into the circumstances of Mr Lowe's death is a mandatory one. As Mr Lowe's death was a violent one it was required to be reported under section 6 of the Act. Section 23 of the Act mandates an inquest where it appears that a person has died as a result of homicide.
6. A Coroner presiding over an inquest is required to confirm that a particular death occurred and to make findings as to:
  - The identity of the person who died.
  - The date and place of the death
  - The cause and manner of the death
7. It is not always possible to definitively answer these questions.
8. There is no dispute that Mr Lowe died in his house at Boorowa sometime between the evening of 5 November 2012 and the morning of 6 November. Nor is there any doubt that his death was a homicide and that the direct cause was blunt force injuries to his head and chest.

9. This inquest has focused on determining whether the identity and motive of his killer or killers can be ascertained.

### **Mr Lowe's life**

10. Barry Lowe was a grazier from Boorowa, a small farming town in the south west slopes of NSW with a population of approximately 1,200 people. He was born on 26 August 1946. With his wife Dianne he had three daughters, Danielle born in 1974, Louise in 1976 and Tara in 1989. Tragically Dianne died in a car accident in 1994. Mr Lowe did not remarry.
11. Mr Lowe raised his three daughters at the family farm known as Willowvale which he had inherited from his father. Willowvale is located about 37 kilometres east of Boorowa, and is about 806 hectares in area. In 2012 the property ran about 1,500 sheep. The wool and meat earned from the sheep is the main source of revenue for the farm, although income is occasionally topped up by the sale of cattle from the property's small herd.
12. Although Mr Lowe lived in Boorowa he attended Willowvale regularly throughout the week, helping with odd jobs and sometimes looking after his grandchildren while Danielle and Christian were working. In Boorowa Mr Lowe spent time catching up with friends and often had a drink at one of the town's hotels. In town he was generally known as an easy-going person, although some people described him as opinionated and occasionally argumentative.
13. He was in reasonable good health, with his diabetes and cholesterol managed with medication. He had visited his GP in the week prior to his death with no other health problems identified.
14. For a number of years Mr Lowe had taken an annual camping and fishing trip to a remote region of the east Kimberley area in Western Australia. Whilst there he stayed at two particular places: Kalumburu, a predominantly Aboriginal community 300 kilometres east of Kununurra, and Honeymoon Bay on the Timor Sea, 20 kilometres north of Kalumburu. Over the years he had made a number of friends as a result of this annual holiday. In 2012 he made this trip as usual, returning to Boorowa in October.

### **Events of 4-6 November 2012**

15. Each year around the end of October the Lowe family becomes very busy with the annual shear of the Willowvale sheep. This is an important time for the family, as a significant portion of the property's revenue derives from the wool clip. Two to three weeks' preparation at Willowvale are usually required for the fourth week in which the actual shearing takes place.

16. In November 2012 in accordance with their usual custom, all adult family members including Mr Lowe, Louise and Tara assisted at shearing time. Three other workers were contracted to help with the shearing. Louise and Tara stayed overnight at Willowvale, while Mr Lowe attended Willowvale during the day and returned alone to Boorowa at night.
17. Shearing commenced on Sunday 4 November. Mr Lowe attended Willowvale that day and the following day. He left Willowvale to go home sometime between 2pm and 3pm on 5 November, driving off in his white utility. This was the last time any family member is known to have seen him alive.
18. Later on the afternoon of 5 November a towns person Frank Kelly noticed Mr Lowe walking down the main road of Boorowa towards the shops. Mr Kelly thought this was sometime between 4pm and 5pm.
19. No one is known to have seen Mr Lowe on Tuesday 6 November. The family at Willowvale had been expecting he would come to the farm that day. However as it was Melbourne Cup Day they thought it possible he had decided to stay in town to go to the hotel and put on some bets. During the day Louise tried to call him on his mobile phone but she reported that the calls went through to his message bank.
20. In the evening of 6 November the family decided to ring Mr Lowe's neighbours at 45 Marsden Street and ask them to check on him. Noel and Kath Tilden had lived at this address for many years. Mr Tilden knocked on Mr Lowe's door a few times that night but there was no answer. He noticed that Mr Lowe's car was parked in the backyard and that the light inside the front hallway was on.

#### **How Mr Lowe's body was found**

21. On the morning of 7 November the family became increasingly concerned at the lack of contact with Mr Lowe. At their request Mr Tilden again tried without success to raise him by knocking at the door. Also at their request Mrs Tilden put a note on the back door of 47 Marsden Street asking Mr Lowe to bring some milk out when he came to the farm.
22. At around 9am it was decided that Christian Wythes should drive into Boorowa to check on Mr Lowe. It was thought he could drive more quickly on the dirt road section than the other family members and hence not disrupt the shearing activities too much by his absence. He left Willowvale at about 9.20am, having borrowed Tara's key to the Marsden Street house.

23. The only persons who had keys to 47 Marsden Street were Mr Lowe, Louise and Tara. However the previous Friday Louise had been unable to find her house key, which was missing from her key ring. It has not been seen since.
24. Once at the Marsden Street house Mr Wythes parked in the rear yard and noticed Mr Lowe's car was still there. He also noticed that one of the side windows to the house which he had previously thought to be jammed shut looked open a bit more than usual.
25. When no one answered his knock on the back door Mr Wythes unlocked the door and walked to the kitchen area. He saw Mr Lowe's body lying on the kitchen floor. He leaned down and found the body to be cold to his touch. He then noticed blood on the floor and backed out of the kitchen in a state of shock.
26. The Boorowa police station is located across the road from 47 Marsden Street. Mr Wythes ran over and summoned Senior Constable Randall O'Brien. When SC O'Brien accompanied Mr Wythes into the kitchen of the house he saw Mr Lowe had significant injuries to his head and there was a pool of blood under and around his body. SC O'Brien immediately called an ambulance, but it was evident that Mr Lowe had already died and no treatment was provided.
27. On 23 November 2012 Mr Wythes agreed to participate in a video walk-through of the house with the Officer in Charge, Detective Inspector Tim Attwood. Mr Wythes recreated his movements into and out of the house on 7 November, and described his thought processes. What he described in the recording was generally consistent with what he had told police on 7 November.

### **The autopsy**

28. An autopsy examination of Mr Lowe's body was performed by forensic pathologist Dr Rebecca Irvine on 8 and 9 November 2012. Dr Irvine found Mr Lowe had died of blunt force injuries to the head and chest.
29. Dr Irvine found Mr Lowe had extensive fractures of the skull and extensive bleeding under the scalp. She noted four deep scalp lacerations which she described as 'chop wounds'. She also found band-like bruising on the right side of Mr Lowe's head which might have represented 'tram-track' bruising obscured by post mortem change.
30. Tram track pattern injuries describe parallel linear bruises that occur when a rod-like instrument strikes the body. Each impact causes two parallel linear bruises. This is because the area of impact with the stick is dented inward,

causing blood to displace sideways. The gap between the two bruised lines corresponds to the width of the weapon.

31. Dr Irvine found three further such injuries on Mr Lowe's upper left back and right lateral chest. She also noted band-like bruising on the lower edge of his chest, as well as multiple right-side rib fractures.
32. Dr Irvine did not find any obvious 'defence' type injuries.
33. An examination of Mr Lowe's brain by neuropathologist Dr M Rodriguez found evidence suggesting there had been a period of survival following the assault upon him.
34. On 23 November 2016 Dr Irvine produced a further report in response to questions as to whether the patterns of Mr Lowe's injuries might help identify the type of weapon that had been used. In this report Dr Irvine commented as follows:
  - To cause the type of tram track injuries which Mr Lowe's body showed, the weapon would have to be a stick or rod, probably round but possibly square. It must have been relatively rigid.
  - It was not possible to determine what his period of survival was.
  - The time of death could not be ascertained, beyond the circumstantial evidence that Mr Lowe was last seen alive on the afternoon of 5 November and was found dead at 10am on 7 November. There was no scientifically valid and accurate method to narrow down that interval.

### **The police investigation**

35. The Officer in Charge of this investigation is Detective Inspector (then Detective Sergeant) Tim Attwood, who was at that time deployed with the NSW Police's Homicide Squad. His investigation was conducted over a period of eighteen months, and identified and pursued a number of possibilities. It was acknowledged to be a most thorough, well-resourced and careful investigation.
36. The conclusion reached by Inspector Attwood is that Mr Lowe was killed during the night of 5 November as a result of a severe assault by an iron bar or a similar instrument.
37. Inspector Attwood's conclusion as to the likely time of Mr Lowe's death was based on the evidence that he did not attend Willowvale or communicate with any members of his family on 6 November, and that in fact no one saw him on 6 November. The last person known to have spoken to him was a friend who had an unremarkable telephone conversation with him at 3.46pm on 5 November. Inspector Attwood noted further that in the opinion of paramedics

who attended the scene on 7 November, Mr Lowe had been dead for some time.

38. Despite the thoroughness of the police investigation however, it did not establish the identity of the person who killed Mr Lowe.
39. Developing lines of inquiry in the investigation was acknowledged to have been very difficult due to the absence of any known witnesses and the limited nature of the forensic evidence, which may be summarised as follows:
- In the opinion of crime scene officers, it was unlikely anyone had entered the house through the side window noted by Mr Wythes to have been left ajar. There was no sign of recent disturbance of any of the objects in the very small room, including objects directly below the window.
  - The weapon used to kill Mr Lowe is thought to be a metal or heavy wooden rod such as a pole or thin baseball bat. It has never been found despite an extensive search of the property and surrounding areas, including a creek.
  - There were blood droplets leading from the kitchen to the rear door. The profile from this blood matched that of Mr Lowe. It is thought likely the droplets came from blood dropping from the weapon used to kill him
  - Mr Lowe's bedroom which is located only a few paces from the kitchen showed disturbance with drawers pulled out and their contents on the floor, and a television knocked over. However the only items missing were Mr Lowe's mobile phone and his wallet, which have never been recovered.
  - The external side of the window of Louise Lowe's room showed marks of fingerprints in dust above the flyscreen. Police were not able to develop fingerprint impressions from the marks.
  - Thirty-five fingerprint impressions were able to be developed from other parts of the house. Most have been matched to Mr Lowe, Louise and Tara, and attending police officers. The remaining ten fingerprints have not been identified to any known person. They have been uploaded onto the National Automated Fingerprint Identification System and stored there.
  - Numerous DNA swabs were collected from the scene and from objects. Most matched the DNA of Mr Lowe, Louise and Tara, as would be expected as they were the occupants of the house.
  - DNA recovered from a swab of a ring on Mr Lowe's finger originates from three individuals. One is Mr Lowe, the content of another is too low to determine a profile, and the third originates from an unknown male.
  - DNA samples have since been taken from scores of people in an effort to identify the person to whom the DNA profile from the ring belongs, but no matches have resulted. The profile has been uploaded onto the National Criminal Investigation DNA database for future reference, and is continuously being searched against new profiles on the database.



## Investigation of neighbours and townspeople

40. Police investigators first spoke to Mr Lowe's immediate neighbours. Mr and Mrs Tilden had not seen Mr Lowe since the afternoon of 4 November, when Mr Lowe was in the backyard of his house. The note which Mrs Tilden had put on the back door was still there when crime scene officers examined the scene.
41. Neighbours who lived in the duplex next door at 45 Marsden Street had not seen or heard anything unusual in the days leading up to Mr Lowe's death. It was known that Mr Lowe was not happy with a lawn-mowing job which his neighbour at 45A had recently performed at Mr Lowe's house, but this was not considered to be a significant dispute.
42. A neighbour living diagonally behind Mr Lowe's house, Mr Geoffrey Minchin, reported that at about 6pm on the evening of 5 November he heard a sound like a glass door slamming or something hitting the panel of a vehicle. He went out to have a look but saw nothing unusual.
43. Another neighbour Mr Rohan Vernon reported that between 11pm and midnight on the night of 5 November, dogs in the neighbourhood were barking in an unusually aggressive manner. Mr Vernon did not notice anything else unusual.
44. Due to the absence of witnesses and the limited nature of the forensic evidence, Inspector Attwood resolved to conduct a canvass of every household in the Boorowa township. This involved approximately 600 households and took two months to complete.
45. Although the information resulting from this extensive operation was investigated to a high degree, unfortunately it was of little use as most of it was based on rumour and speculation. None of the people named was elevated to the status of suspect. The canvass did not uncover any eye witness accounts of what happened, nor any persons or vehicles involved, nor any credible motives for the murder.
46. Some of the persons named and further investigated were as follows:
  - T (for whom I use an acronym due to the fact he was a minor at the time of the investigation). In 2012 T was a 16 year old person with a minor criminal record. His father had made some remarks to investigating police which suggested he thought it possible that T had been involved in the murder. He remarked further that he and T had been out of town at the time, but he subsequently disclosed that they had been in Boorowa after all. T's father was not able to explain why he thought T might have been involved, nor have police uncovered any evidence of his involvement or motive for it.
  - Gary Whyborn. Mr Whyborn came to police attention because a second person was said to have told others that in November 2012 that Mr Whyborn

told him he might have killed someone. However Mr Whyborn and the second person denied any such conversation, and Mr Whyborn's DNA sample did not match the profile lifted from Mr Lowe's ring. There is no other credible evidence of his involvement.

- Cecil Lang. Mr Lang and his elderly father John Lang were named as possible suspects in an anonymous letter sent to Boorowa police in December 2014. Both were interviewed, as a result of which police could find no credible evidence linking them to the murder. Cecil Lang was of the view that the letter had been authored by his ex-wife with whom he had been on acrimonious terms.

47. Many other people named as a result of the canvass were interviewed and voluntary DNA samples provided. No credible evidence was uncovered implicating any of them; further none of the DNA samples provided a match to the profile lifted from Mr Lowe's ring

48. Police also followed up suggestions that members of Outlaw Motorcycle Groups may have been involved in Mr Lowe's death; and also that Mr Lowe may have had a dispute with a truck driver who parked his vehicle outside Mr Lowe's house. None of these inquiries yielded any useful information.

### **Investigation of Kimberley associates**

49. In July 2014 Inspector Attwood and a colleague travelled to the remote Kimberley area which Mr Lowe visited on an annual basis. There they spoke to numerous people who had been associated with his trips. In some cases DNA samples were requested and provided, none of which provided a match to the profile from Mr Lowe's ring.

50. Inspector Attwood concluded there was no evidence to suggest that Mr Lowe had been involved in any criminal activity, or that people with whom he had associated on his trips had anything to do with his murder. Most regarded him as a good-natured person who to their knowledge had never been in conflict with anyone. Any disagreements that were identified were minor and not considered significant enough to provide sufficient motive for such a violent assault.

### **Investigation of family members**

51. Due to information given to police, Christian Wythes' possible involvement in Mr Lowe's murder was pursued as a line of inquiry. This consisted of evidence that the Wythes were experiencing financial hardship at the time of Mr Lowe's death; that Mr Lowe's lifestyle might have created resentment due to the financial burden it imposed; that Christian Wythes argued with his father-in-law on occasions and according to some people, did not like him;

and that Christian Wythes lost a very significant amount of weight after Mr Lowe's death.

52. As part of their investigation police interviewed Danielle and Christian Wythes separately and under caution, and with their consent. In addition Danielle and Christian Wythes gave oral evidence at the inquest in relation to the above matters.
53. Each was adamant that on the night of 5 and 6 November no one had left the Willowvale farm. If anyone had done so it would have been known, as the family's vehicles were always parked close to the homestead. The property's remote location and the extremely quiet conditions at night would ensure that anyone starting up a vehicle would be heard.
54. As for their own movements over those two nights, each stated they were anxious about the sheep which had been herded into a shed overnight due to the risk of rain, which would have made shearing their wet fleeces difficult. Conditions in the shed were crowded and they needed to check that the sheep were not trampling each other. The shed is situated about 200 metres from the house. Both said that on each occasion on those nights when Christian walked over to the shed, Danielle accompanied him.
55. Both were questioned about the family's financial affairs and whether Mr Lowe's lifestyle was resented because it placed additional financial strain on the family. Each denied that this was a source of tension and asserted that they had no significant problems with funding Mr Lowe's annual Kimberley trips or any other aspect of his lifestyle. As regards financial hardship, a degree of this was expected from a farm life and the family was used to it.
56. Contrary to what had been said to police by two people closely associated with the family, Danielle Wythes stated that her father had never treated herself, her sisters or her mother poorly. While he could get cranky at times he was a loving father and grandfather. Similar comments were made by Louise Lowe in her statements provided to police.
57. As regards the relationship between her husband and her father, Danielle described this as 'very good'. However Christian Wythes acknowledged some areas of disagreement, most of which he said related to differences of opinion about methods of farm management. He gave as an example generational disagreements about the environmental appropriateness of certain chemicals. He asserted however that when he and Mr Lowe disagreed they were able to discuss matters, and that there were no recurring issues of unhappiness.
58. Mr Wythes attributed his weight loss since Mr Lowe's death to the physical work he had done on the farm. He also spoke of the ongoing impacts on himself and his family of Mr Lowe's unsolved murder. He had been unable to make sense of it, and had struggled to cope with managing the farm while trying to deal with his own emotions and those of his wife, children and sisters-in-law. His children, he said, had been deeply affected by the loss of their grandfather and the distressing circumstances of his death.

59. The court heard similar comments at the close of evidence when a close family friend, Ms Vanessa Ross, spoke to the court on behalf of the family. Ms Ross described them as a very close-knit family who had struggled greatly with their feelings of grief and uncertainty since Mr Lowe's death.

### **Evidence of the Officer in Charge**

60. In his evidence to the inquest Inspector Attwood reaffirmed the conclusion he had reached in his statement: namely that no person has been able to be identified as a suspect for the murder of Mr Lowe. This was despite a comprehensive investigation which had received sufficient staff, time and technological and forensic resources.

61. As regards the possible involvement of Christian Wythes, Inspector Attwood likewise adhered to the conclusion he had reached in his statement. This was that, while the factors mentioned above made him a person who may have been involved in Mr Lowe's murder, they were not sufficient to justify regarding him as a suspect. In addition Inspector Attwood noted the unlikelihood that Christian Wythes would have been able to leave the farm undetected on the nights of 5 and 6 November. He himself had attended Willowvale a number of times throughout the investigation, and attested to the quietness of the environment.

62. Inspector Attwood identified a few lines of inquiry which could become available in the future. There were possibilities that:

- a suspect might be identified from DNA or fingerprint impressions developed from the crime scene
- Mr Lowe's wallet and mobile phone might be located, which could open up new lines of inquiry
- a person with relevant knowledge might offer information in the hope of obtaining leniency in relation to their own offences.

63. Inspector Attwood emphasised that Mr Lowe's homicide was still a matter under investigation, and urged anyone who had any information about it to come forward and speak to police. This they could do through Crimestoppers, or personally to himself at his current command in Griffith NSW.

### **Conclusion**

64. In closing submissions, Counsel representing the interests of the family acknowledged the general thoroughness of the police investigation. However he said the family wished to request that police undertake two further investigative tasks:

- follow up information which the family would forward concerning the movements of T and his father at the time of Mr Lowe's death. This, Mr

Gunning submitted, may in the police's view warrant the making of an application for a forensic order that T supply a sample of his DNA, so it could be compared with the profile lifted from Mr Lowe's ring;

- further investigation of the matters contained in the anonymous letter referred to above.

65. These proposals were not the subject of detailed submissions by Mr Gunning, so I make no further mention of them. Nor is it intended that the family's proposals be the subject of a formal recommendation by this Court pursuant to section 82 of the Act. However I am sure that in the event the family do make the above requests they will receive proper consideration by Inspector Attwood.

66. Having carefully reviewed the evidence gathered by police, and the oral evidence given at the inquest, I regretfully conclude that it does not enable me to make any findings as to who is responsible for Mr Lowe's death. I accept the conclusion of the Officer in Charge that there is insufficient evidence to regard any person as a suspect for his murder. I base this on my consideration of the tendered brief of evidence and the oral evidence heard at the inquest. I also base it on the impressions I formed from an informal view undertaken with the coronial team and the family's representatives, consisting of a viewing of the external areas of the Boorowa house and a road trip to the property at Willowvale, which to my mind confirmed the Officer in Charge's opinion as to the unlikelihood that anyone could leave the property by car at night without being heard.

67. I reach my conclusion that the identity of Mr Lowe's killer is not able to be ascertained despite the fact that the police investigation was thorough and well resourced, and was led in a most capable manner by Inspector Attwood. I reach it also notwithstanding the demonstrated willingness of family members to assist the inquest in every way possible.

68. I am sorry that this inquest has not been able to shed any further light on the identity of Mr Lowe's killer. Mr Lowe's family have struggled greatly to come to terms with his death. They simply cannot understand who would do such a terrible thing to their father and grandfather. They have had to contend with the shock and bewilderment of this situation, on top of all the usual emotions of grief and loss we feel at the death of our loved ones.

69. I very much hope that further information will come to light which will enable Mr Lowe's killer or killers to be brought to justice. I strongly urge anyone who has any relevant information to come forward with it, for the sake of this grieving family and to advance the very strong public interest in ensuring that this terrible crime is solved.

70. In the meantime on behalf of all at the Coroner's Court, I hope the family will accept my most sincere sympathy for their loss. I also thank most sincerely everyone who has assisted this inquest, including Counsel and Lawyer assisting the Coroner, the family's legal team, all those who gave evidence at the inquest including the family members, and the investigative team led by Inspector Attwood.

### **Findings required by s81(1)**

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

#### **The identity**

The person who died is Barry John Lowe.

#### **Date of death**

Barry Lowe died sometime between the evening of 5 November 2012 and the morning of 6 November 2012.

#### **Place of death**

Barry Lowe died at 47 Marsden Street, Boorowa NSW.

#### **Cause of death**

Barry Lowe died as a result of blunt force injuries to his head and chest.

#### **Manner of death**

Barry Lowe died as a result of homicide. The identity of the perpetrator remains unknown.

I close this inquest.

**Date** 21 December 2017