



CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the death of Kim Mackell
Hearing dates:	13 August 2019
Date of findings:	11 October 2019
Place of findings:	NSW Coroners Court - Lidcombe
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – disappearance and death of a person in the Blue Mountains – can cause and manner of death be established – are police procedures for follow up on iAsk requests effective - question of recommendations.
File number:	2017/122545
Representation:	Counsel Assisting the inquest: C Gardiner, Solicitor Advocate, i/b NSW Crown Solicitor's Office. NSW Commissioner of Police: E O'Brien, Office of the General Counsel, NSW Police Force. The Mackell family: K Pearce, Jamison Lawyers.

Findings:	<p>Identity The person who died is Kim Mackell.</p> <p>Date of death Kim Mackell died between 18 December 2016 and 19 April 2017</p> <p>Place of death Kim Mackell in bushland in the area of Shipley Plateau, Blackheath NSW.</p> <p>Manner of death The manner of Kim Mackell's death is unknown.</p> <p>Cause of death The cause of Kim Mackell's death is unknown.</p>
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Recommendations	<ol style="list-style-type: none"> 1. That the Commissioner of Police consider amending the Missing Persons Standard Operating Procedures, the Missing Persons Standard Operating Procedures (Blue Mountains), and the iAsk Priority Procedure, to include clarification that: <ul style="list-style-type: none"> • during business hours the Client Liaison Unit, Information Services of Intelligence Command is the appropriate point of contact for officers to follow up and progress outstanding Priority iAsk requests after they have been made and where urgent response to the request is properly justified in the circumstances • during after hours the appropriate point of contact is the State Coordinator. 2. That the Commissioner of Police consider amending the Missing Persons Standard Operating Procedures to provide that in all circumstances where an iAsk request has been made, the iAsk request reference number be included in COPS entries for the investigation, to enable timely follow up by officers other than the investigating officers.
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Section 81(1) of the Coroners Act 2009 (NSW) 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 disappearance and death of Kim Mackell.

The Inquest

An inquest is different to other types of hearings. It is neither criminal nor civil in nature. It does not determine whether a person is guilty of an offence and does not make determinations and orders that are binding on parties.

A Coroner is required to confirm that a particular death occurred and make findings as to the identity of the person who died, the date and place of death, and the cause and manner of the death. Sometimes the evidence is not sufficient to answer all these questions. In addition under section 82 of the Act a Coroner may make recommendations that are necessary or desirable in relation to any matter connected with the death, including health and safety.

Introduction

1. Kim Mackell was 64 years old when his family reported his disappearance to police on 22 December 2016. Almost four months later his remains were found in thick bushland about 300 metres from his home in NSW's Blue Mountains.
2. Kim's brother Roger Mackell and his niece Hillier Windsor attended the inquest into the circumstances of Kim's death. They were both very close to Kim and visited him often. At the close of the evidence Hillier spoke to the court on behalf of Kim's family and friends. She thanked the police officers and volunteers who had helped in the search for him. She spoke lovingly of her uncle as a talented artist and an intelligent, kind soul who lived peacefully and was much loved by his family and loyal friends. She showed those in court some fine examples of her uncle's accomplished and original artworks.
3. It was evident that Kim was much loved and missed by his close group of family and friends.

Kim Mackell's life

4. Kim Mackell was born on 2 September 1952. He had been an artist in his younger years and produced many fine works. In his later years he worked as a handyman and caretaker on the rural property where he lived in a studio flat on the outskirts of Blackheath.
5. The property, which also has a cottage residence, was fully owned by Kim after he purchased his brother's Roger's half share in it. While the area around the studio flat and cottage is cleared, much of the remainder is dense bushland including cliff lines which drop down into thickly-vegetated gorges.

6. Kim lived a simple life. He cared devotedly for a flock of geese on his property, and until developing shoulder problems he maintained a large vegetable garden. He had strong relationships with his family and friends: his brother Roger, Roger's daughter Hillier who lives in Blackheath with her family, and Roger's son Austin Mackell. A loyal supporter was his local friend Diane Artup, who accompanied Kim on his weekly shopping trips into Katoomba.
7. When Kim was a teenager he was diagnosed with depression and bipolar disorder. He was always compliant with his prescribed medication. In recent times he developed movement difficulties with his shoulder and upper arms, and it was also suspected he was developing Parkinson's Disease. This gave him symptoms of hand tremor and drooling. He had been referred to a neurologist and had an appointment booked for early January 2017.
8. Those close to Kim had become concerned in the past twelve months about a gradual decline in his physical and cognitive abilities. Kim's tremor and loss of upper body strength was making it more difficult for him to tend to his everyday needs.

Events of 18 December 2016

9. On Sunday 18 December Kim travelled to Sydney with his niece Hillier and her family to attend a family get together. His behaviour at the gathering was not unusual. Towards evening he decided to return to Blackheath by train, and was taken to Central Rail Station by his brother Roger.
10. During the week Kim's friend Diane Artup made a number of calls to his phone which were unanswered. This was apparently not uncommon. Ms Artup also visited at Kim's property a couple of times but did not see him.
11. On 22 December Ms Artup contacted Roger Mackell, who asked Hillier to check the property. She did so and could find Kim nowhere. After a discussion with her father Hillier reported Kim missing to police.

The search operation

12. On 23 December Blue Mountains police carried out a comprehensive canvass of the Blackheath town area. It did not yield any useful information. Other enquiries were made which are described below. These led to information received on the morning of 25 December which confirmed that Kim had arrived at Blackheath by train on the night of 18 December.
13. On the afternoon of 25 December Sergeant Dallas Atkinson commenced and coordinated a large scale land and air search. Sgt Atkinson has been the supervising sergeant for Blue Mountains Police Rescue Squad since 2014. Over the past eleven years he has led and participated in hundreds of search operations.

14. The search operation concentrated on Kim's property on Shipley Road, the surrounding properties, and the cliffs and cliff bases in nearby areas. No trace of him was found, and the search was concluded on 30 December.
15. On 28 December and 11 January 2017 police rescue officers and cadaver dogs searched the property and its surrounds, with no result. A drone was deployed on 5 and 20 January 2017 to capture aerial photographs of possible sites, again without result.
16. Kim's family and friends were very distressed by his disappearance and devoted much time to searching for him. Their efforts included producing flyers and posters, following up leads, and searching areas after reported sightings. For many months they continued to hope that he would be found safe and well.

The discovery of Kim's body

17. On the afternoon of 19 April 2017 a 'bush basher' Fletcher Field was working his way through thick bushland in a gorge at the base of cliffs below Shipley Plateau. He noticed a red hoodie and a checked shirt on the ground to the side of a large rock. There were decomposed remains nearby. Mr Field contacted police, but as it was already dark they deferred their search until the following morning.
18. On 20 April police found Kim's body in the location Mr Field had described, lying in dense bushland against the side of a rock. The gorge in which he was found was surrounded by cliffs about thirty metres in height. Kim's body was positioned on a steep decline some metres from the base of the gorge's western cliff face. This cliff is located to the south of Kim's property.
19. Although much of the body was skeletonised and decomposed it was identified as Kim's body due to the correspondence of the clothing with that which Kim had been wearing when his family last saw him, on the evening of 18 December.

The post mortem report

20. An autopsy was conducted on 26 April 2017 by forensic pathologist Dr Kendall Bailey. Dr Bailey noted that the body was affected by advanced decompositional change and skeletonisation of the limbs, torso and head. There were numerous left and right rib fractures.
21. Due to decomposition and skeletonisation Dr Bailey could not ascertain a cause of death. She thought it was possible Kim's fractures had resulted from a fall, but she was unable to conclude what had caused the fall or whether the subsequent injuries were the direct cause of Kim's death. The possibility could not be excluded that Kim's fall had been preceded by a fatal event, whether natural or unnatural.

22. For much the same reasons Dr Bailey could not provide an opinion as to whether Kim had survived for any period of time after falling from the cliff top. This issue is further addressed later in these findings.

How did Kim's body come to be at its resting place?

23. If it is not possible to determine the cause of Kim's death, can the evidence indicate how his body came to be at the location it was found? In my view it can.
24. Opinions on this issue were provided by Sgt Atkinson, by the Officer in Charge Detective Sergeant Scott Burton, and by the crime scene investigator Detective Sergeant Susan Guillaumier. Each was of the view that at some point after 18 December Kim fell or jumped from the cliff top near to where his body was found.
25. This opinion was based not only on the nature of Kim's injuries identified at inquest, but also on the evidence about the terrain in which his body was found. Detective Burton and Sergeant Atkinson found the bushland surrounding the site to be steep, dense and slippery. DS Guillaumier described it as '*significantly steep and difficult to traverse safely*'. In Sergeant Atkinson's view, it was highly unlikely Kim would have been able to access that location on foot given his physical limitations. I accept on the balance of probabilities that Kim fell to his discovered location, or to a point close to it.
26. It was noted that Kim's body was not located directly at the cliff's base, but at a short distance downhill from it. For this reason DS Guillaumier and Sgt Atkinson thought it possible he may have survived the fall for a period of time, during which he made his own way to his final resting place.
27. Both however thought it also possible that his body had been moved downhill from the cliff base by short-term fast flowing water. Detective Burton noted that the route leading down to the site seemed to follow a natural waterway that would flow during heavy rainfall. A large amount of debris in the gorge indicated to him that there had been a recent flow of water. Evidence of rainfall was tendered to the court showing heavy falls over the Blackheath/Katoomba area on 9 and 10 January 2017. Similarly in his evidence Sgt Atkinson observed that on the afternoon of 24 December 2016 parts of the Upper Blue Mountains experienced torrential localised rainfall and severe thunderstorms.
28. The above evidence supports the conclusion that at some point after 18 December Kim fell from the cliff top to a point near to where his body was found. I note that the nature of Kim's injuries, being fractures, is not inconsistent with this conclusion.
29. As to whether Kim's death occurred as a result of any action he may have taken with the intention to end his life, there is insufficient evidence to conclude this. The recent decline in some of Kim's physical and cognitive abilities was evidently making life more difficult for him. He was most unlikely

to have fallen from the cliff top as a result of having become lost or disoriented, as he knew the local bush areas well. These factors suggest the fall may have been a deliberate act. On the other hand none of his family or friends referred to him expressing any thoughts of ending his life or of harming himself. On balance therefore, it cannot be concluded that he acted with the intention to take his own life.

30. I should note there is no evidence that anyone else was involved in Kim's death, or wished him harm.

Was there a survival period?

31. The inquest considered whether the physical evidence at the site including Kim's clothing might shed any light on when he died, and whether he may have survived in the bushland for a period of time.

32. As noted, a hoodie and shirt identified as having been worn by Kim on 18 December were found a short distance from his body. These were examined by crime scene investigator DS Susan Guillaumier. She noted the hoodie was covered with leaf litter and vegetation debris and had a number of tears in its fabric. She did not observe obvious damage to the shirt, which was found inside out with its buttons done up.

33. In her statement DS Guillaumier expressed the opinion that it was likely the hoodie and shirt were removed by Kim before his death. This was because *'it would be impossible for both clothing items to come away from the deceased in such a way as to be separated and undamaged through natural causes, and come to rest in the positions they were located'*. If this is correct, it must follow that Kim survived for a period of time while down in the gorge.

34. However Detective Burton disagreed with this opinion, noting that it was incorrect in the case of the hoodie to describe it as *'undamaged'*. In his view, in a situation of misadventure it was not possible to be definitive about the circumstances in which clothing might become dislodged from a body. I accept this evidence. Notwithstanding DS Guillaumier's forensic expertise, the evidence is not sufficient to find that Kim himself removed his hoodie and shirt, and to infer from this that he survived in the bushland for a period of time.

35. Nor however can the possibility of a survival period be excluded. I note that Detective Burton expressed the view that Kim could not have survived the injuries he would have sustained by falling from the cliff top. However the Court must prefer the expert opinion of Dr Bailey referred to at paragraph 22 above, that it cannot be established whether Kim survived for any period of time after falling from the cliff top.

36. It must be very distressing to Kim's family to think that he may have remained alive for a period of time after going into the bushland. It is to be inferred from the medical evidence about Kim's body that when it was discovered he had been dead for some period of time. It may also be inferred, as a matter of

commonsense, that he could not have survived in the bush for a long period. These features indicate that if there was a survival period, it was not lengthy. Nevertheless the uncertainty surrounding this issue can only add to the distress of his loved ones.

The iAsk enquiries

37. In addition to attempting to establish the cause and manner of Kim's death, the inquest focused on whether a particular aspect of the police investigation was conducted to an appropriate standard. This was the timeliness of police enquiries about Kim's movements on the night of 18 December. Establishing the last known location of a missing person enables police to commence a targeted land search. For some days however, the only confirmed information about Kim's last whereabouts was that his brother Roger had dropped him off at Central Rail Station on the evening of 18 December.
38. For the period 22 to 24 December 2016 Senior Constable Kane Jamieson was the officer in charge of the search investigation. On the evening of 22 December he completed three 'iAsk' requests, with the aim of discovering where Kim had gone after being dropped off at Central Rail Station. 'iAsk' is a records management system for the exchange of information with and between agencies. It is heavily relied upon by police to request information from third party agencies for investigatory purposes. Within NSW Police's State Intelligence Command, there is a Client Liaison Information Services Unit [ISU] which is responsible for assisting police who use the iAsk system.
39. The requests SC Jamieson made were as follows:
- to Sydney Trains, for CCTV footage of Central Rail Station on the night of 18 December
 - to Transport NSW, for Kim's recent Opal Card travel history (Kim held a registered Opal Card)
 - to the Commonwealth Bank, for Kim's recent transaction history.
40. In accordance with procedure SC Jamieson forwarded the three requests to the ISU. This unit channeled the requests to the respective agencies at 6.30am the following morning, which was 23 December. At about 8.55am SC Jamieson through his Inspector requested that the ISU ask the respective agencies to deal with the three requests on a priority basis.
41. At 10.47am that day Opal Card responded to the ISU that they had received the priority request, but that their office was due to close at 11am and would not reopen until 9 January. They advised that '*any urgent requests will need to follow the urgent, out of hours process*'. No details were given of this process.
42. On the evening of 24 December SC Jamieson handed over duties to SC Mikayla Weston. He had not received a response to the three iAsk requests. SC Weston's supervisor tasked her with following up on the request for CCTV from Sydney Trains. Throughout the night she had frequent discussions with

Hillier Windsor, trying to identify Kim from CCTV captured at Central Railway Station on the night of 18 December. They were unable to identify him.

43. The next morning was Christmas Day. There had still been no response to the iAsk requests. Former Constable Byron Tyrer, who now works as an ambulance paramedic in Victoria, commenced his shift at 7am and received a phone call from Hillier Windsor asking about the status of the enquiries. He decided to try to get information by directly ringing Opal Card. This he did, using Opal Card's Customer Care contact number, which is a general number accessible to members of the public. He rang this number at 8.09am and spoke with an Opal Card operator.
44. As a result of this call, within nine minutes Constable Tyrer had received by email a copy of Kim's Opal Card statement, recording that he had tapped off at Blackheath Rail Station on the night of 18 December. The Opal account showed no activity since this entry.
45. Armed with this critical information, Mr Tyrer was able to request and view Sydney Trains CCTV footage captured from Blackheath Station on the night of 18 December. This showed a man tapping off there at 8.47pm, whom Hillier was able to identify as her uncle. By 11.20am Mr Tyrer had, with the assistance of Katoomba Taxis, spoken with the taxi driver who had driven Kim to his property that night. This provided police with the location of the last known sighting of Kim, enabling a feasible start point for the coordinated land and air search which commenced that afternoon.
46. As can be seen, the important information about Kim's movements came to police's attention on the morning of 25 December not via the iAsk process, but by means of an informal communication between Mr Tyrer and an obliging Opal Card employee. The information was not uploaded into iAsk until 28 December, six days after the request was first made. At the inquest the court heard that the turnaround time for priority iAsk requests for Opal Card data has improved since 2016, from an average of 3 days to 1.47 days. It is unknown however whether the turnaround time is greater during periods of weekends and public holidays.
47. In submissions at the close of evidence, Ms Pearce representing the Mackell family queried the adequacy of the police response in not seeking follow up of the Opal Card iAsk at an earlier stage than 25 December. Had this occurred the targeted land search might have been able to commence sooner. Given the significance of the Opal Card information, the frustrations of the Mackell family are understandable. However it cannot be said that the involved police officers were not pursuing transport-related enquiries over the period 22-25 December, albeit enquiries that were very much focused on the attempt to identify Kim at Central Rail Station rather than his likely destination of Blackheath Rail Station. I accept that trying to getting a result from the Opal Card iAsk would in hindsight have been a more productive focus for police enquiries during this period.

48. This leads to the question of what procedures were available to a police officer who wished to ask about the progress of an iAsk request that had already been made on a priority basis. The Court heard evidence on this issue from Detective Chief Inspector Claude Biason who is attached to NSW Police's State Intelligence Command.
49. DCI Biason stated that the preferred approach was for an officer in this situation to seek the assistance of the ISU, rather than directly calling the agency. This is because external agencies prefer to respond to a central contact point. He acknowledged however that the ISU only operated in business hours and was not available at night, on the weekend, or on public holidays. He said that in these circumstances the police officer should contact the afterhours State Coordinator who was available for emergency requests. This Officer has access to contact numbers for external agencies.
50. Inspector Biason considered these avenues were well known among police officers. But this perception was not borne out by the evidence heard at the inquest. SC Jamieson and SC Weston told the Court they had never sought the assistance of the ISU in following up an iAsk request, with the former stating he was unaware such an avenue existed. Detective Burton was aware that the ISU could be approached, but stated the practice was to do this only when a direct approach to the specific agency was not successful. Further, none referred to the avenue of contacting the Duty Operations Inspector when the information was sought outside business hours.

Question of recommendations

51. The evidence at the inquest indicated that while the involved police officers knew how to make a Priority iAsk request, they did not have a good understanding of the official procedures for following up on that request. This has the potential to delay the receipt of critical information which police officers need to identify a start point for a missing person search. I should add that the lack of awareness about these processes among the operational officers at the inquest is not a reflection upon their individual competence.
52. At the inquest Ms Pearce representing the Mackell family proposed that the Commissioner consider taking steps to enhance his officers' understanding of the existing procedures for following up a priority iAsk request. All parties agreed there was merit in this proposal. This has resulted in constructive discussions between those assisting the inquest, and the Commissioner's representatives. There is agreement to the following recommendation proposed by Counsel Assisting:

That the Commissioner of Police give consideration to amending:

- *the Missing Persons Standard Operating Procedures;*
- *the Missing Persons Standard Operating Procedures (Blue Mountains);*
- *and*
- *the iAsk Priority Procedure*

to include clarification that:

- *during business hours the Client Liaison Unit, Information Services of Intelligence Command is the appropriate point of contact for officers to follow up and progress outstanding Priority iAsk requests after they have been made and where urgent response to the request is properly justified in the circumstances*
- *during after hours the appropriate point of contact is the State Coordinator.*

53. In the case of the iAsk Priority Procedure this change has already been implemented. In a supplementary statement DCI Bason advised that when a police officer makes a priority iAsk request to the ISU the officer will now receive in reply an automated email advising how he or she may follow up the request. The officer is informed that this is done by contacting the ISU in business hours; and that outside business hours the follow up request is to be made to the State Coordination Unit. This information was also disseminated to all police officers via a Statewide email on 15 August 2019. In addition DCI Bason stated that the Missing Persons Standard Operating Procedures will be amended to make this clear.

54. This prompt response on the part of the Commissioner is welcome news.

55. On behalf of the Mackell family it was also proposed that police officers who have made an iAsk request ensure that the iAsk reference number is always recorded in the COPS event for the investigation. This was in response to evidence from Mr Tyrer that when speaking to the Opal Card operator on 25 December he was unable to find the iASK reference number in any of the COPS entries.

56. Ms O'Brien advised that the Blue Mountains LAC supported this recommendation and intended to implement it. I agree there is merit in the proposal. It will assist in the event that police officers seeking follow up on an iAsk request do so by contacting the specific external agency, rather than or in addition to using the official ISU channel. The Court heard that while external agencies may prefer such enquiries to be made to a centralised point, being the ISU, the Commissioner does not prohibit his officers from using this alternative. For these reasons I consider it is desirable to make this recommendation also.

Conclusion

57. It is sometimes the case that inquests are not able to establish how a person has died. This uncertainty adds to the distress families feel at the loss of their loved one. In Kim's case it is not possible to determine the cause and manner of his death. Nor can the precise date of his death be established due to the difficulty of determining when, between the period of his last known sighting and the discovery of his body, his death actually took place. For the sake of Kim's family I regret that this inquest has not been able to answer many of their questions about what happened to him. They have lost a beloved person and will feel his loss for the rest of their lives. I hope they will accept the sincere sympathy of us all at the Coroners Court.

58. I thank those who have assisted this inquest, including Counsel Assisting Mr Gardiner, the NSW Crown Solicitor's Office, and those representing the NSW Commissioner for Police and the Mackell family. I also acknowledge the work of the Officer in Charge DSC Scott Burton in preparing the coronial brief and assisting the inquest.

Findings required by s81(1) of the Act

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.

Identity

The person who died is Kim Mackell

Date of death

Kim Mackell died between 18 December 2016 and 19 April 2017.

Place of death

Kim Mackell died in bushland in the area of Shipley Plateau, Blackheath NSW.

Manner of death

The manner of Kim Mackell's death is unknown.

Cause of death

The cause of Kim Mackell's death is unknown.

Recommendations pursuant to s82 of the Act

1. That the Commissioner of Police consider amending the Missing Persons Standard Operating Procedures, the Missing Persons Standard Operating Procedures (Blue Mountains), and the iAsk Priority Procedure, to include clarification that:

- during business hours the Client Liaison Unit, Information Services of Intelligence Command is the appropriate point of contact for officers to follow up and progress outstanding Priority iAsk requests after they have been made and where urgent response to the request is properly justified in the circumstances
- during after hours the appropriate point of contact is the State Coordinator.

2. That the Commissioner of Police consider amending the Missing Persons Standard Operating Procedures to provide that in all circumstances where an iAsk request has been made, the iAsk request reference number be included in COPS entries for the investigation, to enable timely follow up by officers other than the investigating officers.

I close this inquest.

E Ryan

Deputy State Coroner

Lidcombe

11 October 2019