



**CORONER'S COURT
OF NEW SOUTH WALES**

Inquest: Inquest into the suspected death of missing person Max Day

Hearing dates: 17 July 2020

Date of findings: 17 July 2020

Place of findings: Coroner's Court of New South Wales at Lidcombe

Findings of: Magistrate Derek Lee, Deputy State Coroner

Catchwords: CORONIAL LAW – whether missing person now deceased, date and place of death, cause and manner of death

File number: 2019/00108661

Representation: Ms S Kelly, Coronial Advocate Assisting the Coroner

Findings: On the available evidence, I find that Max Day is now deceased. Max died on a date unknown sometime after 25 January 2017. However, the available evidence and the absence of any postmortem examination does not allow for any finding to be made as to the place of Max's death, or as to the cause and manner of his death.

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1. Introduction

- 1.1 Max Day was last seen alive by his wife in the early hours of the morning on 7 January 2017. The previous day Max had been involved in an alleged domestic violence incident at his home which resulted in the attendance of police officers. After orders were made preventing Max from returning to live at home, he was last seen by police officers on the afternoon of 7 January 2017 when he indicated that he had limited financial means and no permanent place to live. Following a report by a member of the public who knew Max, he was last confirmed as having been seen alive on 25 January 2017.
- 1.2 After Max was reported as a missing person, police officers conducted extensive searches and enquiries in an attempt to gather any information in relation to Max and his whereabouts. Regrettably, despite these attempts, no evidence has been identified to date in relation to what happened to Max after 25 January 2017.

2. Why was an inquest held?

- 2.1 In April 2019, after all lines of enquiry to locate Max had been exhausted, the NSW Police Force (**NSWPF**) notified the Coroner's Court that Max was suspected of being deceased. When the case of a missing person, who is suspected to have died, is reported to a coroner, the coroner must determine from the available evidence whether that person has in fact died. In such cases there will often be very little information, despite extensive enquiries, about what happened to the person after they were last seen alive.
- 2.2 If the coroner forms the view that a missing person has died then the coroner has an obligation to make findings in order to answer questions about the identity of the person who died, when and where they died, and what the cause and the manner of their death was. The manner of a person's death means the circumstances in which that person died. If the coroner is unable to answer these questions then an inquest must be held.¹
- 2.3 In Max's case, extensive investigation was conducted by the police concerning the circumstances surrounding the period both before and after when he was last seen alive. However, this investigation was unable to reveal exactly what happened to Max after 25 January 2017. As it has not been possible to answer the questions that a coroner is required to answer, it became mandatory for an inquest to be held.
- 2.4 In this context it should be recognised at the outset that the operation of the *Coroners Act 2009* (**the Act**), and the coronial process in general, represents an intrusion by the State into what is usually one of the most traumatic events in the lives of family members who have reported a loved one as missing. At such times, it is reasonably expected that families will wish to attempt to cope with the consequences of such a traumatic event in private. The sense of loss experienced by family members does not diminish significantly over time. Therefore, it should be acknowledged that both the coronial process and an inquest by their very nature unfortunately compel a family to re-live distressing memories and to do so in a public forum.

¹ *Coroners Act 2009*, section 27.

3. Max's life

- 3.1 As will be discussed later in these findings, all of the evidence gathered to date suggests, tragically, that Max is now deceased. Inquests into the deaths of persons, even those persons who are missing and suspected of being deceased, by their very nature only tend focus on the last moments of a person's life, or the last moments when they were seen alive. These moments are sometimes measured in weeks or months, but more often they are measured in hours and days. As a consequence, often there is very little known about the (usually) years of life that preceded these final moments. Therefore, it is appropriate at this stage to recognise Max's life in a brief, but hopefully meaningful, way.
- 3.2 Max was born on 28 October 1963. He had a sister, Leanne, and was the youngest child of Ann Maree Swan and William Day. Max's father left home about 10 months after Max was born and had no further involvement in Max's life. Ms Swan later formed another relationship with Stan Honan, and they had a daughter, Tracey, together. When Max was about seven years old his mother moved to Warrawong and Max remained in the care of his maternal grandmother and step-grandfather. Ms Swan later moved back from Warrawong however Max continued to live with his grandparents, only spending time with his mother on weekends.
- 3.3 The available information indicates that when Max was 18 or 19 years old he experienced a relationship breakdown of his own, that appears to have resulted in a deterioration in Max's mental health. This deterioration resulted in an admission to hospital followed by a period where Max was under the care of a psychologist.
- 3.4 Max met his eventual wife, Eileen, when she was 16 years old and they were both living in Dapto. They both had an interest in taking their dogs to shows, and would see each other at these events. Some years later Max contacted Eileen and they later formed a relationship. They became engaged and later married in November 1993. At the time Max was working as a truck driver. Their first daughter, Caley-Ann, was born in December 1994.
- 3.5 The family later moved from Dapto to Wingello, and Max found new employment with Australia Post as a postal transport coordinator. Whilst living in Wingello, Max and Eileen had their second daughter, Ashleigh, in January 1998, followed by a son, Danial, in April 2001. The family later moved to Greenwich Park, then Merriganowry, and finally to Gooloogong where they bought a 330 acre property named "Tower Hill".
- 3.6 During this time Max continued to work for Australia Post, but was commuting back and forth to Sydney, and would often only be home every second night. Whilst living at Gooloogong Max and Eileen decided that he would stay at home with the children to assist with their care and the distance education they were receiving at the time. Eileen later found employment as the Assistant Principal at Cowra Public School, before later being offered the position of Principal at Dubbo West Public School. The family later moved to Peak Hill.
- 3.7 In the years that have passed since 2017 it is evident that Max is greatly missed by those closest to him. It is most distressing to know that the uncertainty that has surrounded the events on and after 6 January 2017 has only added to the tremendous sense of loss and uncertainty experienced by Max's family.

4. Events leading up to January 2017

- 4.1 In the six months leading up to January 2017, Eileen observed a change in Max's demeanour. He was noted to be increasingly argumentative and short tempered, resulting in him sleeping in a spare room for several nights. Max was also observed to demonstrate unusual behaviour such as wearing a large hunting knife in a sheath on his belt, and was often heard to be talking to himself.
- 4.2 It was also noted that during this period Max increased his alcohol consumption, regularly drinking either homebrewed beer or store bought wine. Eileen reported several instances of returning home from work to find Max intoxicated and having difficulty walking. Max's change in behaviour concerned Eileen to the extent that she raised with him the possibility of there being an underlying and emergent mental health condition that was affecting his behaviour. However, Max was resistant to the suggestion of seeking medical advice to investigate this possibility further.

5. The events of 6 and 7 January 2017

- 5.1 At around 4:40pm on 6 January 2017 Max became involved in a verbal argument with Danial in the dining room at home. Max was wearing his hunting knife on his belt at the time and reportedly approached Danial with one hand on the knife. Max came within a metre of Danial before Eileen, who was also in the room at the time, intervened and stood between them. The incident was reported to police, who attended the house later that evening.
- 5.2 On arrival Max was found standing near a vegetable patch using a large knife to cut corn kernels. The police officers told Max to put the knife down and he complied. One of the officers observed what he described as a "*strange distant look*" on Max's face and formed the opinion that Max may have been experiencing a mental health episode.² It was noted that Max was speaking slowly and providing vague answers in relation to questions being asked by the police officers. As a result, the police officers formed the view that Max ought to be detained under section 22 of the *Mental Health Act 2007*, and he was taken to Peak Hill Hospital for assessment.
- 5.3 During the assessment Max indicated that he had no thoughts of self-harm. Shortly after midnight on 7 January 2017 Max was returned to police custody and taken to Peak Hill police station. There he was charged with one count of common assault and scheduled to appear at Peak Hill Local Court on 13 January 2017. Max was also served with a provisional apprehended domestic violence order, some of the conditions of which prevented him from entering the family home, and from threatening or intimidating Danial and Eileen.
- 5.4 At around 2:30am on 7 January 2017, Max was escorted home by police officers so that he could gather some of his belongings. Max collected some clothes (possibly some pairs of jeans and T-shirts), and his diary. Eileen noted that Max simply smiled and collected his belongings without speaking to her. The police officers indicated to Max that Eileen was offering him \$50 and some bedding material, but he informed the officers that his family should keep the items and that they would need them more than he would. The police officers assisted Max to load his belongings into his car, a green Ford Falcon sedan (**the green Falcon**).

² Exhibit 1, Tab 5 at [7].

5.5 At around 5:00pm later that day, the police officers who had dealt with Max the previous day saw the green Falcon parked in the truck rest bay on the Newell Highway, approximately two kilometres from Parkes township. The police officers spoke to Max who indicated that he was attempting to obtain some emergency money from Centrelink. The police officers observed that Max was again behaving unusually and that his mood was “*extremely level*” given that he had no place to reside.³ Max indicated that he was going to sleep at the truck stop for a couple of days and work out what he was going to do next.

6. The events between 7 and 25 January 2017

6.1 At around 10:06am on 8 January 2017 Max attended Parkes Hospital emergency department, complaining of abdominal pain and a severe headache. According to available records, Max was given medication for symptomatic relief and later left the hospital. Subsequently obtained CCTV footage showed Max leaving the hospital in the green Falcon at around 2:26pm and heading along the Newell Highway towards Forbes.

6.2 Shortly before 6:00am on 9 January 2017 Kim Bokeyar, an employee of the Woolworths in Forbes, arrived at work and saw that the green Falcon was parked in her usual parking spot. Ms Bokeyar saw that the green Falcon remained in the same location each time she went to work between 9 and 18 January 2017. When Ms Bokeyar returned to work on 23 January 2017 the green Falcon was still in the same location. On 25 January 2017 Ms Bokeyar reported to police that the green Falcon appeared to have remained in the same position for the previous 16 days.

6.3 Max subsequently failed to attend court on 13 January 2017 as required and was convicted in his absence. He was fined, and final orders were made in relation to an apprehended domestic violence order for a period of 12 months.

6.4 On 20 January 2017 Eileen contacted Peak Hill police station to advise that she had received a letter from Peak Hill Local Court, which appeared to relate to Max’s scheduled appearance seven days earlier. Eileen was advised that Max had not appeared at court and the matter was dealt with in his absence. Eileen said that she believed that Max would be able to return home after his court matter was finalised. She expressed concern that she had been unable to contact Max, as he had not taken his phone with him on 7 January 2017, and had assumed that Max had not contacted her in the interim because he was still angry. Eileen told police that the only place that she could think of that Max would go would be the Tower Hill property. A formal report was made of Max being missing.

6.5 Arrangements were subsequently made for local police to attend Tower Hill to see whether Max was there. It was later reported that no persons were seen at the house, and that the premises did not appear to have been visited recently. Further, although livestock were seen at the house, it appeared that they had not recently been cared for.

6.6 Following the report made by Ms Bokeyar, Police attended the Woolworths in Forbes and searched the green Falcon. No clothing or personal property was found within the vehicle, although paperwork in relation to Max’s scheduled court appearance on 13 January 2017 was located in the glove box. Further, police found the vehicle’s keys, which appeared to have been deliberately placed under a mat on the driver side foot well. Although the vehicle was parked under a light post with a CCTV

³ Exhibit 1, Tab 5 at [13].

camera, subsequent police enquiries revealed that the cameras had not been operational for some time. However, CCTV footage was obtained from a nearby business which recorded a vehicle matching the description of the green Falcon entering the Woolworths car park at 2:46pm on 8 January 2017. According to police, this is consistent with Max leaving Parkes Hospital on the afternoon of 8 January 2017 at 2:26pm as the distance between the hospital and the Woolworths in Forbes is approximately 20 minutes.

- 6.7 At around 7:00am on 25 January 2017, Brian Miller was driving to work at a farm between Eugowra and Gooloogong. Shortly after passing a bridge just beyond Forbes township Mr Miller came across a man hitchhiking by the side of the road and carrying a backpack. Mr Miller stopped his vehicle and enquired where the man was going. The man indicated that he was headed to Gooloogong, and Mr Miller offered to give him a lift.
- 6.8 Once the man got into the vehicle and took his hat off Mr Miller recognised him as Max. Mr Miller had previously met Max and his family when they had attended his farm in order to buy livestock feed. During the drive to Gooloogong Max informed Mr Miller that his car had just broken down and that he had separated from Eileen. Max indicated that he was returning to his former property (Tower Hill) in Gooloogong, and asked Mr Miller if there were any employment opportunities available at the farm where Mr Miller worked. Mr Miller told Max that there was no work currently available but suggested another farm which might be able to offer employment. Max indicated that he would enquire at that farm, and others, regarding the possibility of work. Mr Miller subsequently dropped Max off at the caravan park in Gooloogong. This is the last confirmed sighting of Max being alive.
- 6.9 Mr Miller subsequently became aware that Max had been reported as a missing person, and notified police of his encounter with Max on 25 January 2017. Mr Miller informed the police that, in speaking to Max, he did not form the impression that Max was unwell or experiencing low mood. Mr Miller noted that Max appeared to be clean and well groomed.

7. Initial stages of the missing person investigation

- 7.1 During the initial stages of the missing person investigation, a number of steps were taken in an attempt to locate Max and identify any evidence as to his whereabouts. The steps are summarised below:
 - (a) An alert was placed on the database used by the NSWPF in the event that Max was stopped whilst driving his vehicle. After checking numberplate recognition and speed camera records it was determined that Max's vehicle had not been recorded travelling north towards Dubbo or south towards West Wyalong in the period immediately following the report of him being missing.
 - (b) A state-wide email regarding the report of Max as a missing person was disseminated to all police officers via an internal police notification system.
 - (c) Max's driver's licence photograph was obtained from Roads and Maritime Services so that it could be used in media releases.

- (d) A search was conducted by police of the area in and around Goobang National Park near Parkes.
- (e) Further searches were conducted by police at the Parkes Highway caravan park, the Parkes truck stop area, the North Park mines and surrounds, and Alectown.
- (f) Following the discovery of the green Falcon in the Forbes Woolworths car park, a number of enquiries were made with welfare organisations in the Forbes area.
- (g) Further patrols were conducted by police in the central business district of Forbes, and the township generally, together with another patrol of the Tower Hill property.
- (h) On 26 January 2017 some personal belongings of Max were collected from his home for the purposes of forensic examination. Subsequent forensic examination of a sample taken from the driver's seat headrest of the green Falcon identified a DNA profile consistent with belonging to Max.
- (i) On 27 January 2017 police conducted a further, comprehensive search of the property at Tower Hill, and found no evidence that Max had recently been inside the living premises.
- (j) With the assistance of the Forbes State Emergency Service (**SES**), police conducted a search of the Forbes lake and ski dam area.
- (k) Enquiries with Country Link revealed that Max had not made a reservation to travel in his own name from Forbes on any NSW TrainLink rail coach services.
- (l) Enquiries were also made with a grocery store and hotel in Forbes as to whether Max had attended either location to purchase alcohol. Employees at both locations had no recollection of seeing Max between 8 and 10 January 2017 and there was no evidence of him on available CCTV records.
- (m) On 3 February 2017, following the report made by Mr Miller that he had given Max a lift on 25 January 2017, police attended the township of Gooloogong and made a number of enquiries with local businesses and residents who knew Max. These enquiries did not produce any information as to Max's whereabouts.
- (n) A further coordinated search of Tower Hill was conducted on 2 March 2017 utilising four wheel drive vehicles, trail bikes and all-terrain vehicles. A large number of police and SES personnel were involved in the search, with media invited to attend in order to generate publicity amongst the local community. No evidence was found that Max had been at the property. Police subsequently set up two cameras at the property as it was thought that Max may have been coming and going from the property, but did not want to be found due to his non-appearance at court on 13 January 2017 and the belief that warrants may have been issued for his arrest. These cameras were subsequently checked on 15 March 2017 and did not show anyone attending the property. Further, Caley-Ann made arrangements for a drone search over a period of some hours to be conducted over the Tower Hill property on 29 April 2017. Although the bushland within the search area is dense, the footage obtained by the drone did not produce any evidence useful to the missing person investigation.

(o) Initial enquiries with Max's bank (Westpac) on 23 January 2017 revealed that he had last accessed his account on 20 December 2016 by withdrawing \$20.00 from an automatic teller machine in Parkes, leaving a balance of \$10.00. Inquiries also revealed that Max had not applied for any benefits from Centrelink after a January 2017.

7.2 Despite the above extensive enquiries being made, no evidence was found as to Max's whereabouts, or as to what occurred after he was last seen by Mr Miller on 25 January 2017.

8. Reported sightings of Max

8.1 As noted above, investigating police used both traditional media and also social media in order to seek information from the public in order to locate Max. In response to these publicity campaigns, a number of reported sightings of Max were made to police. These are summarised, relevantly, below:

(a) On 4 February 2017, Caley- Ann reported to police that her friend reported seeing Max in Cowra the previous day. This reported sighting was shared on the NSWPF Facebook page which elicited a comment from a person known as "Davies Deb", who also commented that she saw Max near Cowra standing near a dark green coloured vehicle. Police attempted to identify "Davies Deb" without success, and sent her a message on Facebook inviting her to contact police, which was not responded to. Cowra police were advised of the reported sighting and provided with a copy of the media release with instructions to keep a look out for Max during their routine patrols.

(b) On 4 February 2017 an anonymous caller reported seeing a man matching Max's description standing with a number of other persons, near a green Ford Falcon sedan at a location along Lachlan Valley Way towards Cowra. Police believe the anonymous caller to be "Davies Deb" (as the report was consistent with the Facebook comment described above) and attempts were made again to identify the caller or have the caller contact police to confirm the time and date of the alleged sighting. The police did not receive a response to their enquiries. However, it was noted by police that the description given in the anonymous call of the condition of the green Ford Falcon did not match the condition of Max's vehicle.

(c) Two anonymous calls were received by police on 6 February 2017 indicating that a man matching Max's description was seen on 26 or 28 January 2017 signalling cars by the side of the road near Cowra. However subsequent police enquiries confirmed that the male person in this report had been spoken to by police and was not Max.

(d) Max was also reportedly seen at the Woolworths in Cowra at around 7:38pm on 3 February 2017. CCTV footage was subsequently reviewed by police who formed the view that this was an incorrect sighting.

(e) A member of the public reported seeing a male person matching Max's description on the morning of 9 January 2017 along Kangaroooby Road near Gooloogong, walking towards Cowra. Further, there was a second reported sighting of a male person matching Max's description at around 12:00pm on 10 January 2017 along Kangaroooby Road, about five kilometres from Gooloogong. Although police considered these to be possible sightings of Max, it is noted that the alleged sightings of Max at these locations is inconsistent with him hitchhiking from Forbes to Gooloogong on 25 January 2017.

- (f) On 25 April 2017 police received a report that a male person matching Max's description had been seen at a cafe in Parkes on 24 April 2017. Cafe employees were shown a photo of Max and indicated that they had not seen him. Subsequent police enquiries indicated that it was likely the reported sighting was of a regular cafe patron. Further enquiries revealed that this patron had indeed attended the cafe on 24 April 2017.
- (g) On 11 June 2017 a report was made to Crimestoppers by a person (Betty Zdan) who reported seeing a male person resembling Max hitchhiking at the truck stop on the Newell Highway north of Parkes. Ms Zdan was a real estate agent who had sold Max and Eileen their house in Peak Hill. When this information was conveyed to Eileen she confirmed that Ms Zdan had indeed sold them their home, but expressed disbelief that the real estate agent would have been able to recognise Max as she had only met him once.
- (h) On 12 December 2017 a further report was made that a person resembling Max had been seen that day at the Woolworths in Forbes speaking to a Woolworths employee. Subsequent enquiries made by police revealed that the person who reported the sighting had never met Max and had only seen photos of him from the media releases. Further, after the Woolworths employee was shown photos of Max the employee confirmed that the person he was speaking to was not Max.
- (i) A member of the community who had seen the Facebook posts in relation to Max reported seeing someone matching that description on 21 December 2017 along Clarinda Street in Parkes, heading towards Orange. Subsequent enquiries by police revealed that the person who reported the sighting had never met Max, and that he had only recognised a hat that Max was wearing in a photograph on Facebook. Given this background, and the fact that the reported sighting occurred over a matter of seconds, police considered it unlikely that this was an actual sighting of Max.
- (j) On 16 April 2018 an anonymous report was made to Crimestoppers in relation to an alleged sighting of Max between 14 and 15 May 2017 at a camping area called Sandy Beach Reserve near Hay. Police were unable to obtain further information regarding the reported sighting other than identifying that there is no CCTV footage available at the location.

8.2 It is clear from the above that some reported sightings of Max have been able to be discounted by investigating police. Others, such as the reported sightings of Max on Kangaroooby Road near Gooloogong on 9 and 10 January 2017, have been unable to be confirmed. Despite an extensive traditional and social media campaign, no evidence has been gathered to suggest that there has been any confirmed sighting of Max after 25 January 2017.

9. Other steps taken to locate Max

9.1 Since 20 January 2017 the police officer-in-charge of the investigation, Detective Senior Constable Filiz Kucukakyuz, together with other police officers, has made a number of enquiries which, in the context of a missing person investigation, are referred to as "signs of life checks". These checks involve enquiries being made with financial institutions, government organisations such as Medicare, and interstate law enforcement agencies to identify whether there are any records indicating that a missing person has had some interaction with these organisations and institutions. These checks include:

- (a) Checks made with Births, Deaths and Marriages registries in New South Wales and interstate, which did not identify any records relating to Max after 8 January 2017;
- (b) Checks conducted with interstate, Federal and territorial law enforcement databases and missing persons units which produced no records or information relating to Max after 8 January 2017;
- (c) Checks made with Max's superannuation provider which revealed no activity on his account after 8 January 2017 in circumstances where Max was known to be greatly interested in his superannuation and would check on his account at regular intervals;
- (d) No reported sightings or information forthcoming following media attention generated during National Missing Persons Week in July/August 2017. Max's profile was again published during National Missing Persons Week in 2018 and 2019, with no further information forthcoming;
- (e) Checks made with the Department of Foreign Affairs and Trade which confirmed that Max had not applied for a passport;
- (f) Enquiries made with a number of financial institutions which confirmed that there had been no activity on Max's Westpac account since 20 December 2016, and no evidence of any other accounts being opened in his name and/or being operated by him since this date;
- (g) No evidence from Medicare or the Pharmaceutical Benefits Scheme (**PBS**) records indicating that Max had made any Medicare or PBS claims after 8 January 2017; and
- (h) Police made a number of enquiries with Max's immediate and extended family members who reported that they had not been contacted by Max, and had no information as to his whereabouts.

10. Is Max now deceased?

10.1 A finding that a person is deceased is a finding of great significance and gravity, not only for the family members of that person and the emotional toll that such a finding will invariably bring, but also because such a finding carries with it important legal and administrative consequences. Such a finding is made on the balance of probabilities, but there must be clear, cogent and exact evidence that a person has died before it can be made.⁴

10.2 Having regard to the evidence that has been gathered throughout the course of the missing person and coronial investigation, the following matters are of significance:

- (a) Despite extensive and comprehensive physical, documentary and electronic searches no evidence has been uncovered as to either Max's whereabouts or him being alive after 25 January 2017.
- (b) The evidence indicates that in the six months preceding January 2017, and in particular in the weeks leading up to that date, Max was displaying behaviour that was out of character. This

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

behaviour concerned Eileen and raised in her mind the possibility that Max was experiencing an emerging and undiagnosed mental health condition. Indeed, the events of 6 January 2017 tend to suggest a causal connection between those events and observations of Max's behaviour in the preceding weeks and months. Having regard to the suddenness of Max apparently severing contact with his family members after 7 January 2017, it appears likely that any underlying physical or mental health condition that may have been present at the time contributed to this subsequent course of events.

- (c) Since 7 January 2017 Max has inexplicably not made contact with any member of his family. It is acknowledged that the events of 6 January 2017 created a challenging situation for Max and his relationship with his family, and that the subsequent criminal and domestic violence proceedings were no doubt stressful for him. This may have led to a situation where, as Eileen initially believed, Max did not feel comfortable keeping in contact with family members. However given the length of time that has passed since these events, the possibility that any discomfort on Max's part can reasonably explain the continued absence of any contact with his family has become increasingly low. Max lived a relatively withdrawn lifestyle, had little contact with others (outside of his immediate family), was estranged from some family members and had not seen other family members for many years. Notwithstanding, the absence of any contact with any family member is difficult to explain.
- (d) The evidence establishes that when he left home in the early hours of the morning on 7 January 2017, Max had very few personal belongings and nowhere to live. Indeed, his conversations with police officers on the afternoon of 7 January 2017 indicate that, at that time, Max had not formulated any plans as to where he planned to reside. Repeated searches of the Tower Hill property, the only other known residence that Max had access to, elicited no evidence that Max had visited the property or that he had been residing there.
- (e) Enquiries made with financial institutions indicate that Max only had access to a very limited amount of funds and that since 8 January 2017 he has not sought to access any other funds, or apply for government benefits in order to support himself.
- (f) There is no evidence to indicate that Max had any ability to support himself financially after 8 January 2017. At the time that he was reported missing, Max had not been in employment for a period of about 12 years. Further, police enquiries revealed that Max's driver's licence was suspended on 20 April 2017 due to unpaid fines, without any evidence of the suspension being lifted or Max applying for a new licence. Given that much of Max's previous employment had involved driving, it appears most unlikely that he would have been able to seek employment in the same industry without a valid driver's licence.

10.3 Having regard to the matters set out above, and taking into account the absence of any reliable evidence as to Max's whereabouts or what happened to him after 25 January 2017, the conclusion that must, sadly, be reached is that, on the balance of probabilities, Max is now deceased. It is a significant feature as part of this conclusion that, to date, no confirmed evidence has been identified that Max is still alive in the three years and five months since his last confirmed sighting.

11. When and where did Max die, and what was the cause and manner of his death?

11.1 Having concluded that Max is now deceased, the questions that now arise, as part of the function of the coronial jurisdiction, is whether the available evidence allows for any finding to be made as to where and when Max died, and the cause and manner of his death.

11.2 It is well established that the last confirmed sighting of Max was by Mr Miller on 25 January 2017. As already noted above, other reported sightings of Max after this date have either been discounted by investigating police or unable to be confirmed on the limited available evidence. As no evidence has been uncovered, despite extensive enquiries, as to what happened to Max after 25 January 2017 it is not possible to reach any conclusion, even on the balance of probabilities, as to when he died. Therefore, the only conclusion that can be reached as to the date of death is that Max died sometime after 25 January 2017.

11.3 As Max has not been found, and because there is obviously limited evidence as to what occurred after 25 January 2017 the available evidence does not allow for any conclusion to be reached as to where Max died, nor as to the cause and manner of his death. Answers to these questions are typically dependent upon a person, or their remains, having been found and identified. In this case, there is no such evidence, which in turn precludes findings being made in this regard.

11.4 For example, it is not possible to make any finding as to the manner, or circumstances, of Max's death. Typically, findings are made in inquests that a person has died from natural causes, misadventure, or by reason of third party involvement or contribution. Although Max had no known relevant medical history that could have contributed to death, it is not possible on the limited evidence available to exclude, for example, natural disease process as the manner of death, or to reach a conclusion that Max died as a result of accident or misadventure.

11.5 Therefore, the available evidence only allows for open findings to be made in answer to each of the questions as to the place of Max's death, and the cause of manner of his death. In doing so it is acknowledged with sadness that the inability to reach more precise conclusions about these questions only adds to and compounds the overwhelming uncertainty and sense of loss that Max's family have experienced over a number of years.

12. Findings

12.1 Before turning to the findings that I am required to make, I would like to acknowledge and express my thanks to Ms Simone Kelly, Coronial Advocate, for her assistance both before, and during, the inquest. I also thank Detective Senior Constable Kucukakyuz for her role in conducting a comprehensive police investigation and for compiling the brief of evidence.

12.2 The findings that I make under section 81(1) of the Act are:

Identity

The person who died was Max Day.

Date of death

Max died on a date unknown sometime after 25 January 2017.

Place of death

The available evidence does not allow for any finding to be made as to the place of Max's death.

Cause of death

The available evidence and the absence of any postmortem examination does not allow for any finding to be made as to the cause of Max's death.

Manner of death

The available evidence and the absence of any postmortem examination does not allow for any finding to be made as to the manner of Max's death.

13.1 On behalf of the Coroner's Court of New South Wales I extend my sincere and respectful condolences to Max's family. In any missing person investigation it is too simplistic to speak of closure at the conclusion of an inquest, in circumstances where the unbearable uncertainty and many unanswered questions that family members have are ongoing. However, it is hoped that the coronial process has been of assistance in some small way to Max's family and those closest to him.

13.2 I close this inquest.

Magistrate Derek Lee
Deputy State Coroner
17 July 2020
Coroner's Court of NSW