



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Malcolm McPhail
<b>Hearing dates:</b>	25 July 2023
<b>Date of findings:</b>	25 July 2023
<b>Place of findings:</b>	Coroners Court of NSW, Lidcombe
<b>Findings of:</b>	<b>State Coroner, Magistrate Teresa O’Sullivan</b>
<b>Catchwords:</b>	CORONIAL LAW – Missing Person, Dementia, Search and Rescue
<b>File number:</b>	2022/38361
<b>Representation:</b>	<b>Advocate Assisting the Coroner:</b> Sergeant Durand Welsh
<b>Findings:</b>	<p><b>Identity of deceased:</b> The deceased person was Malcolm McPhail.</p> <p><b>Date of death:</b> Mr McPhail died between the 30 March 2021 and the 31 March 2021.</p> <p><b>Place of death:</b> He died at an unknown location within three kilometres of his home residence at 1113 Bowraville Rd, Spicketts Creek, NSW.</p> <p><b>Manner of death:</b> The manner of Mr McPhail’s death is unknown.</p> <p><b>Cause of death:</b> The cause of Mr McPhail’s death is unknown.</p>

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## **Introduction**

1. The Coroners Act 2009 (NSW) in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.
2. These are the findings of an inquest into the death of Malcolm McPhail.
3. In making these findings, I extend my sincere condolences to the family of Malcolm McPhail, in particular his wife, Kathleen McPhail. She and Malcolm supported each other as husband and wife for more than half a century, and his disappearance must have been an extremely shocking and traumatic event. While this inquest cannot answer the ultimate question of where Malcolm's remains are located, it is hoped that from the inquest process some closure can be achieved for Kathleen and the other members of Malcolm's family.

## **The Inquest**

4. The inquest was held for the purpose of a public examination into the circumstances of Malcolm's disappearance and suspected death.
5. Pursuant to section 81 of the Coroners Act 2009 (NSW) (the Act), the role of a coroner is to make findings as to the identity of the person who died, and the date, place, cause and manner of the person's death. In circumstances such as Malcolm's, where a death is reasonably suspected but no remains recovered, an inquest is usually required so that a formal determination can first be made as to whether the person is deceased. Proof that the missing person is deceased "must be clear, cogent, and exact" before a finding of the fact of death is made.<sup>1</sup>

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<sup>1</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

## **The Evidence**

6. The hearing of the inquest into the death of Malcolm McPhail was held at the Coroners Court of NSW in Lidcombe on the 25 July 2023. The sole witness required to give evidence was Detective Senior Constable Alexander Dews, who is the officer in charge of the investigation. Senior Constable Dews took carriage of the case from Detective Senior Constable Sharyn Coffee, who is currently unavailable. While Senior Constable Dews had carriage of the case, it should be noted that he was not a participant in the physical searches for Malcolm.

## **Background**

7. Mr Malcolm McPhail was born on the 30 June 1938. He was married to Kathleen McPhail, and together they have two children, Michael and Dierdre. Malcolm and Kathleen resided together at 1113 Bowraville Road, Spicketts Creek, for 50 years.
8. The property at 1113 Bowraville Road, Spicketts Creek, is located on approximately 100 acres of land. The property extends either side of Bowraville Road. Within the property, on the southern side of Bowraville Road, are located three residences. One residence is adjacent to the roadway and tenanted. Malcolm and Kathleen occupy a residence behind the tenanted residence and approximately 150 metres from Bowraville Road.
9. Michael McPhail, Malcolm's son, occupies the third residence on the property. His residence is approximately 50 metres in an easterly direction from Malcolm's property.

10. On the northern side of the property, Spicketts Creek runs in a generally south-west to north-east direction. A makeshift crossing exists at a shallow area of Spicketts Creek, but on either side of the crossing the water is reasonably deep.
11. The terrain on the northern side of Spicketts Creek is cleared paddock for approximately 350 metres, whereupon it devolves into dense bushland.
12. With regards to Malcolm's health at the time of his disappearance, he was known to be relatively healthy but had suffered a stroke over thirty years prior to his disappearance and took daily medication for hypertension. He was blind in his right eye, and Kathleen stated that he had started displaying signs of forgetfulness and was potentially in the early stages of dementia, although no formal diagnosis had been made.
13. On a near daily basis, Malcolm would attend the paddock area on the northern side of his property to remove weeds. On two prior occasions he had not returned home from his weeding when expected. On the first occasion, bushwalkers located him approximately five kilometres from his residence. On the second occasion, Michael located him approximately three kilometres from his residence.

## **Malcolm's Disappearance**

14. About 8 a.m. on the 30 March 2021, Malcolm and Kathleen were home at their residence. Kathleen was preparing to leave to play bowls and Malcolm was in the kitchen listening to the news. He was dressed in pyjamas, but had his clothes laid out and ready. Kathleen had made his lunch, which she had left inside the fridge.

15. About 2 p.m. Kathleen returned home. Malcolm was not home. His lunch was still in the fridge, untouched. Kathleen phoned their son, Michael, and informed him of Malcolm's absence.
16. Shortly afterwards, Michael attended with his partner Christine and their friends Dan and Garry. They conducted an unsuccessful search of the property and at 6:20 p.m. Kathleen telephoned emergency services.

## **Police and Emergency Services Response**

17. Police attended the property at 6:49 p.m. and State Emergency Services (SES) at 8:20 p.m. A further 10 police were deployed from Coffs Harbour, arriving on scene about 9:30 p.m. Police and SES continued the search until around 11:30 p.m., when it was suspended.
18. About 8 a.m. on the 31 March 2021, the search recommenced. The searching crew consisted of Lismore Land Search and Rescue (LANDSAR) officers, 15 SES officers, 15 Rural Fire Service (RFS) officers and a Westpac helicopter. About 4:25 p.m. on this date the search was suspended.
19. At 10:19 a.m. on the 31 March 2021, NSW Police issued a public appeal for assistance to locate Malcolm.
20. About 9 a.m. on the 1 April 2021, the search recommenced. The search crew consisted of police from Coffs/Clarence Police District, Lismore LANDSAR, police divers, 9 SES officers and 23 RFS officers.
21. At 10:47 a.m. on the 1 April 2021, NSW Police sent out a GEO tracking SMS location-based voice message. The message appealed for public information as to Malcolm's whereabouts.
22. About 3:15 p.m. on this date the search was suspended.

23. Police divers investigating Spicketts Creek did not believe Malcom had fallen into the creek, as he would have floated downstream and become caught in one of the shallow areas. They had located no signs of Malcolm, including when investigating under likely areas of entrapment that included a fallen tree noted by the original officer-in-charge, Detective Senior Constable Coffee, in her statement.
24. About 8:15 a.m. on the 2 April 2021, the search recommenced. The search crew consisted of police from Coffs/Clarence Police District, police divers, Lismore LANDSAR, 15 SES officers and 15 RFS officers.
25. On the 3 April 2021, police divers continued searching both upstream and downstream of Spicketts Creek.
26. On the 4 April 2021, approximately 80 searchers were involved in the search. On this date the Rescue and Bomb Disposal Unit requested the attendance of Sergeant Dallas Atkinson, the National Search and Rescue Co-ordinator.
27. On the 5 April 2021, under the direction of Sergeant Atkinson, searching continued. The search crew consisted of police from Coffs/Clarence Police District, a police cadaver dog, an RFS helicopter, a total of 40 SES and RFS personnel and local community members.

### **Dr Luckin's Opinion**

28. At 2:35 p.m. on the 5 April 2021, Sergeant Atkinson spoke with Dr Paul Luckin, a survivability consultant. Inspector Matthew French was also present and the conversation was conducted on loud speaker. After being provided with Malcolm's background and the circumstances of his disappearance, Dr Luckin provided Sergeant Atkinson with his opinion, which was as follows:

- It was likely Malcolm suffered a catastrophic medical event. There was a high risk of him having a stroke or possibly a cardiac event. Dr Luckin leaned towards a cerebral event having occurred given that Malcolm was not located in the paddock he was believed to be going to.
- Malcolm possibly became confused as a result of a medical event and would most likely have stayed in familiar territory.
- Malcolm was probably deceased at the time of Sergeant Atkinson's call and had probably died within 24 hours of going missing.
- Dehydration or heat-related illness were unlikely to be factors.
- Malcolm was most likely within 2-3 kilometres of his last known position.

29. Following the discussion with Dr Luckin, Sergeant Atkinson, in consultation with Inspector French and after considering the heavy rain forecast for the following days, decided to suspend the search with a view to recommencing it later in the week.

30. On the 5 April 2021, the search was suspended at 4:30 p.m.

31. Due to torrential rain, the search was suspended until the 17 April 2021, when it recommenced under the supervision of Senior Constable Vidlar. The search crew consisted of police from Coffs/Clarence Police District, a police cadaver dog, 7 SES officers and 23 RFS officers. The search was suspended in the afternoon.

32. No further searches have been conducted by police since 17 April 2021.

## **Further Signs of Life Checks**

33. Police also conducted the standard enquiries that would be made in the event of a person being reported missing. These included requests to external



agencies for any signs that Malcolm was still alive, including various interstate and national bodies, including police forces, road authorities, utility providers, government housing providers, corrective service organisations, Births, Deaths and Marriages departments, Medicare, financial institutions, and Centrelink. No signs of life were detected.

34. A check of unidentified deceased persons and remains was conducted and no unidentified bodies or remains have been identified as being Malcolm McPhail.

35. To this date, there has unfortunately been no further evidence located that indicates Malcolm McPhail is still alive.

### **Time, Date and Place of Death**

36. The last time Malcolm was seen alive was at 8:00 a.m. on the 30 March 2021. The location he was last seen was his home residence at 1113 Bowraville Road, Spicketts Creek, and he is believed to have left for the northern side of the property as per his usual routine.

37. In the opinion of survivability expert Dr Luckin, Malcolm probably died within 2 to 3 kilometres of his last known position. At the time Dr Luckin was contacted on the 6 April 2021, it was Dr Luckin's opinion that Malcolm was deceased and that he had most likely died within 24 hours of going missing, which would be on the 30 March 2021 or the 31 March 2021.

### **Cause and Manner of Death**

38. The cause of death is at this stage unknown. The preferred scenarios put forward by Dr Luckin and Sergeant Atkinson would constitute either a medical cause due to him becoming lost and isolated in bushland, an accidental injury, or a natural cause. Dr Luckin expresses the opinion that there is a high

likelihood Malcolm suffered a medical episode that could have resulted in confusion and subsequent death, but such an episode cannot be confirmed. Sergeant Atkinson states that in his opinion it is most likely that Malcolm entered the thick bushland to the west or north-west of the property, with a medical episode playing a role in his disappearance. He believes it possible, but less likely, that Malcolm died while crossing Spicketts Creek and was swept away, but police divers located no evidence of this.

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

39. 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 of the deceased***

40. The deceased person was Malcolm McPhail.

#### ***Date of death***

41. Malcolm McPhail died between the 30 March 2021 and the 31 March 2021.

#### ***Place of death***

42. Malcolm McPhail died at an unknown location within three kilometres of his home residence at 1113 Bowraville Rd, Spicketts Creek.

#### ***Cause of death***

43. The cause of the death is unknown.

#### ***Manner of death***

44. The manner of Mr McPhail's death is unknown.

45. I close this inquest.

**Magistrate Teresa O'Sullivan**  
State Coroner

25 July 2023