



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

**Inquest:** Inquest into the suspected death of missing person Luis Fernandez

**Hearing dates:** 20 to 22 February 2023

**Date of findings:** 16 March 2023

**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, allocation of officer-in-charge if investigation, delays in NSWPF investigation, collection and preservation of evidence in a timely manner, automatic dissemination of intelligence reports, land search, Missing Persons Standard Operating Procedures, Missing Persons Unit, Missing Persons Registry

**File number:** 2019/00306095

**Representation:** Mr C O'Neill, Counsel Assisting, instructed by Ms C Potocki (Crown Solicitor's Office)

Ms K Burke for the Commissioner of the New South Wales Police Force, instructed by the New South Wales Police Force Office of General Counsel

Mr P Madden for Detective Senior Constable R Gray, instructed by Walter Madden Jenkins

**Findings:**

On the available evidence I find that Luis Fernandez, who was reported as a missing person on 1 January 2019, is now deceased.

Mr Fernandez died on or after 28 December 2018.

The available evidence and the absence of any postmortem examination does not allow for any finding to be made as to the place, cause or manner of Mr Fernandez's death.

**Recommendations:*****To the Commissioner of the New South Wales Police Force:***

I recommend that consideration be given to ensuring that there are no technical or other impediments preventing an officer-in-charge of a missing person investigation from receiving disseminations regarding intelligence reports relevant to an active investigation, directly and in a timely manner.

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## **1. Introduction**

- 1.1 Luis Fernandez was 78 years old at the time that he was reported as a missing person by his niece on 1 January 2019. Mr Fernandez was last seen by his family at a gathering on Christmas Day 2018. Upon receiving the missing person report, the New South Wales Police Force commenced an investigation to locate Mr Fernandez and any evidence as to his whereabouts.
- 1.2 Evidence gathered during the investigation eventually indicated that Mr Fernandez was last seen alive on 28 December 2018 in the vicinity of Glenfield station. How and why Mr Fernandez came to be at that location is not entirely clear. Even less clear is what happened to Mr Fernandez after he was last seen alive. Despite many enquiries made by investigating police Mr Fernandez has not been found.

## **2. Why was an inquest held?**

- 2.1 After all existing lines of enquiry to locate Mr Fernandez had apparently been exhausted, the New South Wales Police Force (**NSWPF**) submitted a report to the Coroner in June 2019 that it was suspected that Mr Fernandez was 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 a 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.<sup>1</sup>
- 2.3 In Mr Fernandez's case, the missing person investigation conducted by the NSWPF has been unable to reveal precisely what happened to Mr Fernandez after he was last seen alive on 28 December 2018. 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 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.

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<sup>1</sup> *Coroners Act 2009*, section 27.

### 3. Mr Fernandez's life

- 3.1 As will be discussed later in these findings, all of the evidence gathered to date suggests, tragically, that Mr Fernandez 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 to 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 Mr Fernandez's life in a brief, but hopefully meaningful, way.
- 3.2 Mr Fernandez was born in 1940 in Uruguay. He came from a large family of 13 siblings. Mr Fernandez later emigrated to Australia and at the time that he was reported missing, he had lived in Australia for approximately 50 years.
- 3.3 One of Mr Fernandez's brothers, Jose, also lived in Australia together with other family members, including Mr Fernandez's niece (Jose's daughter), Raquel Fernandez.
- 3.4 Mr Fernandez left home and started working from a young age. Due to his many and varied jobs, which took him to a number of different places, Mr Fernandez often referred to himself as being like a gypsy. Mr Fernandez later moved to Australia, to build a life for himself, where again he tried his hand at many different jobs including being a boilermaker, breaking in horses and working for Australia Post. Mr Fernandez was known to have a very strong work ethic, and was very independent and self-reliant.
- 3.5 As a young man, Mr Fernandez enjoyed going out with friends to go dancing at clubs. Mr Fernandez also had a passion for boxing and had previously trained to be a professional boxer before an injury cut short his career. Mr Fernandez had a love for horses, motorbikes, Western movies and movies featuring Bruce Lee, and keeping fit. He was also known to have a sweet tooth and enjoyed having cakes as well as other sweet treats. Ms Fernandez fondly recalls her uncle falling into a "*little food coma*" after eating a meal.
- 3.6 Mr Fernandez later formed a relationship and had a son, Shengo Deane. After the relationship ended when Mr Deane was only three years old, he moved to New Zealand with his mother. When Mr Deane was around 20 years old he moved back to Australia and later reconnected with his father. It is heartbreaking to know that Mr Deane describes the circumstances of Mr Fernandez going missing as being the second time that he has lost his father.
- 3.7 Mr Deane describes his father as warm, caring and generous, someone who always wore his heart on his sleeve, and who was a man full of integrity and firmly held beliefs and values. Mr Fernandez often became emotional when he was together with his son. After the birth of Mr Deane's own son, Mr Fernandez loved spending time cuddling and playing with his grandson. They spent precious time together, going to the park and simply enjoying each other's company. Mr Fernandez often spoke of how much he loved his grandson's eyes and smile and that this made his heart so happy.

- 3.8 Mr Fernandez also loved all of his nieces and nephews and had a very close bond with Ms Fernandez's children and granddaughter. During the times that Mr Fernandez lived with his niece and her family, he enjoyed his daily routine with Ms Fernandez's granddaughter, taking her out of her cot, having breakfast with her, playing with her and giving her many cuddles.
- 3.9 Mr Fernandez loved his brother, Jose, and was also very close with his sister-in-law. Together they were known to other family members as the "Three Amigos". They regularly went to church together every Sunday and enjoyed breakfast together afterwards.
- 3.10 Mr Fernandez was a selfless and softly spoken man who had much time for others around him. He was known to have a great sense of humour and was always accepting of anyone he met.
- 3.11 There can be no doubt that the loss and pain experienced by Mr Fernandez's family is immeasurable. His separation from his family in such sudden, unexpected and tragic circumstances is truly heartbreaking.

#### **4. Mr Fernandez's medical history**

- 4.1 Mr Fernandez had a history of hypertension, raised cholesterol and ischaemic heart disease with angina. On 11 April 2015, Mr Fernandez was admitted to hospital with an episode of chest pain. He was assessed as having relatively low blood pressure. The discharge summary indicates that Mr Fernandez raised the idea of obtaining a device like a VitalCall which he was asked to discuss with his general practitioner (**GP**). However, there is no evidence that this occurred.
- 4.2 On 4 August 2015, Mr Fernandez underwent a computed tomography (**CT**) brain scan as part of a surgical consultation after suffering a fall in a car park in Fairfield. The report of the CT scan indicated bruising of the left temporal scalp, periventricular white matter changes suggestive of chronic small vessel ischaemia, previous stroke and atrophy of the brain.
- 4.3 On 7 March 2016, Mr Fernandez saw his GP after feeling stress associated with his current housing. Mr Fernandez reported hearing gunshots and other noise.
- 4.4 On 10 May 2016, Mr Fernandez's blood pressure was noted to be abnormally low, particularly in the context of his history of high blood pressure and treatment. On 24 January 2018, Mr Fernandez's low blood pressure and weight loss were noted to be likely related to medical problems or issues with medication compliance. Mr Fernandez's compliance with his medication regime was again noted to be of concern on 29 March 2018 when it was found that Mr Fernandez was not taking a double dose of his prescribed medication to prevent angina.
- 4.5 On 6 December 2018, Ms Fernandez was in a car when she saw her uncle walking on the side of the road in Tahmoor. Mr Fernandez returned with his niece to her home to stay. During the evening, Mr Fernandez was seen to be shining a torch around her room and asking questions that did not make sense. The following evening, Mr Fernandez went into his niece's room, speaking in Spanish. Ms Fernandez later located a plastic bag in her uncle's room which Mr Fernandez had used to urinate in.

- 4.6 At around the same time, Mr Fernandez expressed dissatisfaction with where he was living in the context of expressing apparent paranoid thoughts. Ms Fernandez believed that there were dangerous people living in his unit complex who were out to harm him. Due to these changes in Mr Fernandez's behaviour, his family began to hold concerns regarding his ability to live independently and care for himself.
- 4.7 Neither Mr Deane nor Ms Fernandez could accommodate Mr Fernandez living with them in their homes. As a result, by around mid-December 2018, they had decided to make arrangements for Mr Fernandez to move into an aged care facility. This first required Mr Fernandez to be assessed. Mr Fernandez agreed with this proposition and Mr Deane made arrangements for an assessment (although he did not tell his father that he was doing so).

## **5. Events of December 2018**

- 5.1 On 25 December 2018, Mr Fernandez went to Mr Deane's home in Botany to celebrate Christmas Day with family members. At the time, Mr Fernandez lived alone in a unit in Eastlakes. Although Mr Fernandez displayed occasional confusion at the family gathering, he was otherwise noted to be well and happy. Mr Deane and Mr Fernandez discussed the prospect of Mr Fernandez moving into an aged care facility, and that Mr Fernandez needed a phone. As Mr Fernandez's existing phone was not working, Mr Deane took it in for repair.
- 5.2 Mr Deane subsequently made an appointment at Botany Medical Centre for Mr Fernandez to be assessed for aged care. On 27 December 2018, Mr Deane went to his father's home to take him to the appointment. However, Mr Fernandez was not at home.
- 5.3 Banking records indicate that at 1:19pm on 27 December 2018, Mr Fernandez withdrew \$400 from an ATM in Ingleburn. This amount was consistent with previous withdrawals around the time that Mr Fernandez received his periodic aged care pension. CCTV camera footage in the vicinity of the ATM indicates that Mr Fernandez was wearing an orange polo shirt and a blue ankle brace at the time.
- 5.4 Opal card records indicate that Mr Fernandez last used his card at 6:56am on 28 December 2018 at a bus stop in Sackville Street, Ingleburn.
- 5.5 Mr Deane returned to his father's home at different times over the following days but was unable to locate Mr Fernandez.

## **6. Mr Fernandez is reported as missing**

- 6.1 On 1 January 2019, Ms Fernandez made a call to Triple Zero to express concerns that Mr Fernandez could not be located. The following day, NSWPF officers attended Mr Fernandez's home but also could not locate him. The attending police officers conducted a canvass of a number of units near Mr Fernandez's home but did not receive any information as to his whereabouts. Ms Fernandez was subsequently advised to attend a police station to formally

report Mr Fernandez as missing. Ms Fernandez immediately went to Mascot police station to make such a report.

6.2 At 6:39pm on 2 January 2019, an appeal for information from the public was published on the NSWPF Facebook account. This appeal generated a number of responses from the public together with a number of reported sightings of Mr Fernandez including, relevantly, the following:

(a) Anne Speechley reported that on 28 December 2018 she saw an elderly man wearing an orange and a blue ankle brace walking near her home on Harold Street, Macquarie Fields (**the Macquarie Fields Sighting**). Ms Speechley struck up a conversation with the man who told Ms Speechley that he was from Uruguay and was on his way to his brother's house. Ms Speechley saw the man get into a taxi with registration T710.

(b) Michelle McCallum reported that at around 7:00pm on 1 January 2019 she and her husband (Garry McCallum) saw an elderly man with a limp walking along Wilberforce Road in Windsor (**the Windsor Sighting**). The man told Mrs McCallum that he was 73, had lived in Australia for 52 years and had a sister in Penrith. The man also said that he had been in hospital for the past three days. Mrs McCallum noted that the man was wearing a hospital bracelet. Mrs McCallum and her husband offered to give the man a lift and that they dropped him at 446 Wilberforce Road, a location known as Butterfly Farm. Mrs McCallum later contacted Hawkesbury Hospital and provided a description of the man to see whether he had left or had been recently discharged from hospital.

## 7. Initial stages of the NSWPF investigation

7.1 At around 2:00pm on 2 January 2019, Sergeant David Cattell was working at the Botany Bay Police Area Command (**PAC**) as Crime Coordinator. As part of his duties, Sergeant Cattell reviewed the missing person report made by Ms Fernandez and conducted a risk assessment. Sergeant Cattell considered that the matter "*could be a lengthy and protracted investigation and more aligned within the parameters of criminal investigators/detectives to review and take over the investigation*". Accordingly, Sergeant Cattell allocated Mr Fernandez's case to Acting Detective Sergeant Amy Gerrish who was the Acting Investigations Manager.

7.2 At 4:20pm, Sergeant Cattell reviewed two Crime Stoppers reports in relation to the Macquarie Fields Sighting and the Windsor Sighting. He linked both reports to Mr Fernandez's case.

7.3 At 4:36pm, Acting Detective Sergeant Gerrish allocated Mr Fernandez's case to Detective Senior Constable Rachel Gray. At the time of this allocation, Acting Detective Sergeant Gerrish was unaware of the intelligence report regarding the Macquarie Fields Sighting.

7.4 Importantly, Detective Senior Constable Gray was not working on 2 January 2019. At the time, Detective Senior Constable Gray worked two days per week in accordance with her part-time working arrangements.

7.5 On 3 January 2019, Acting Detective Sergeant Gerrish requested records regarding the use of Mr Fernandez's Opal card and transactions relating to his Commonwealth Bank account. Acting

Detective Sergeant Gerrish also requested admission records from Hawkesbury Hospital. After receiving the bank records on 4 January 2019, Acting Detective Sergeant Gerrish made a further request for CCTV footage in relation to the ATM withdrawal on 28 December 2018.

- 7.6 On 2 and 3 January 2019, NSWPF officers again attended Mr Fernandez's home to see whether he had returned. They were unable to raise him and noted that the lights inside the unit were off and the front door was locked.
- 7.7 On 7 January 2019, Detective Senior Constable Gray returned to work and discovered that she had been allocated Mr Fernandez's case. She reviewed the case and made a number of enquiries on 7 and 8 January 2019, including making enquiries of Hawkesbury Leisure Park, requesting Mr Fernandez's Centrelink and Medicare records, and requesting all phone numbers that Mr Fernandez may have used.
- 7.8 On 8 January 2019, NSWPF returned to Mr Fernandez's home and again were unable to raise him.
- 7.9 Detective Senior Constable Gray's next rostered shift was on 15 January 2019. At this time, the Macquarie Fields Sighting was investigated further with a request sent to 13CABS in order to identify whether they were the company which provided the taxi seen by Ms Speechley on 28 December 2018 and if so, whether the driver of the taxi could also be identified.
- 7.10 Detective Senior Constable Gray subsequently received information that the taxi seen on 28 December 2018 was indeed operated by 13CABS and that the driver on the day was Kazi Kabir. However, information provided by 13CABS appeared to indicate that Mr Kabir did not pick up a passenger from Harold Street.
- 7.11 Police unsuccessfully attempted to contact Mr Kabir. On 7 February 2019, Acting Detective Sergeant Gerrish and Detective Sergeant Pincham attended the home of the registered owner of taxi T710. The police officers confirmed that the contact number for Mr Kabir was correct, and asked the taxi owner to have Mr Kabir contact police.
- 7.12 Mr Kabir subsequently contacted Mascot police station and told police that between 12:00pm and 2:00pm on 28 December 2018 he picked up a male passenger who at the time was with Ms Speechley. Mr Kabir also told police that he took the passenger to Glenfield station, and that the passenger paid \$50 cash for the fare and was given \$30 change.
- 7.13 Investigating police subsequently learned from 13CABS that the camera footage inside taxi T710 was only retained for 72 hours. This meant that even if a request had been made for the footage on 2 January when the Macquarie Fields Sighting was reported to police, the footage from taxi T710 would no longer have been available. 13CABS also later informed police that the pick up occurred at 11:31am on 28 December 2018 and was a street hail from Harold Street, Macquarie Fields and not a booking.
- 7.14 Over the following days and weeks, Detective Senior Constable Gray and other police officers conducted additional enquiries in an attempt to locate Mr Fernandez. Regrettably, despite these efforts Mr Fernandez has not, to date, been found.

## **8. What issues did the inquest examine?**

8.1 Prior to the commencement of the inquest a list of issues was circulated amongst the sufficiently interested parties, identifying the scope of the inquest and the issues to be considered. That list identified the following issues for consideration:

- (1) Whether Mr Fernandez is now deceased and if so, the date and place of his death, and the manner and cause of his death.
- (2) In considering the manner of Mr Fernandez's suspected death, the nature, timeliness and adequacy of the police investigation including:
  - (a) the actions taken by police in the period following the missing person report on 1 January 2019;
  - (b) whether police missed critical deadlines in the period following the missing person report for obtaining evidence;
  - (c) the appropriate allocation of the investigating officer; and
  - (d) whether there has been any unreasonable delay in the police investigation and, if so, whether such delay has adversely affected the collection and preservation of evidence.
- (3) Whether any recommendations are necessary or desirable, pursuant to section 82 of the Act, in relation to any matter arising from the circumstances of Mr Fernandez going missing.

8.2 In order to assist with consideration of some of the above issues, opinion was sought from the following independent experts:

- (a) Detective Senior Sergeant Anthony Combridge, a Victorian police officer with 34 years' experience currently attached to the Victorian Missing Persons Squad;
- (b) Adjunct Professor Tuly Rosenfeld, consultant geriatrician and physician;
- (c) Mr James Whitehead APM, a former Queensland Police Service State Search and Rescue Coordinator and Training Officer with 33 years of search and rescue experience.

8.3 Each of the above experts provided reports which were tendered as part of the brief of evidence during the inquest. Each expert also gave oral evidence during the inquest.

8.4 The issues which the inquest examined are considered in more detail below and some of the issues have been dealt with together.

## **9. Is Mr Fernandez now deceased?**

- 9.1 The first finding that a Coroner must make following an inquest into the suspected death of a missing person is whether that person is now deceased. 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 burden 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 missing person has died before it can be made.<sup>2</sup>
- 9.2 In considering the question of whether Mr Fernandez is now deceased, regard must be had to the results, or lack of results, from the NSWPF investigation, together with other information relevant to the circumstances in which Mr Fernandez went missing.

### ***Appeals for information***

- 9.3 Apart from the media release on 2 January 2019, the NSWPF issued a number of further media releases, via local newspapers and social media platforms, appealing to the public for information regarding Mr Fernandez. These media releases were issued on 15 January 2019, 21 January 2019, 1 February 2019, 20 March 2019 and 24 April 2019. In addition, on 23 January 2019, a state-wide email was sent to all NSWPF officers seeking further information regarding Mr Fernandez.

### ***Reported sightings***

- 9.4 Apart from the Macquarie Fields Sighting and the Windsor Sighting a number of other alleged sightings of Mr Fernandez were reported by members of the public. Relevantly, some of these sightings include:
- (a) On 31 December 2018, Mr Fernandez was reportedly sighted in Forster Tuncurry. Due to the limited information provided, the NSWPF was unable to confirm the validity of this sighting.
  - (b) On 2 January 2019, Mr Fernandez was reportedly sighted at a liquor store in Little Bay. After police officers reviewed CCTV footage from the store they confirmed that the person sighted was not Mr Fernandez
  - (c) Also on 2 January 2019, Mr Fernandez was reportedly seen at Central station, Sydney asking a member of the public for a cigarette. A description of this person was also provided. Although police officers were unable to obtain any CCTV footage in relation to this sighting it was discounted as being unreliable as the description provided did not match Mr Fernandez, and Mr Fernandez also did not smoke.
  - (d) On 4 January 2019, was reportedly sighted at a bus stop in Eastlakes. Although there was no CCTV footage in relation to this reported sighting, investigating police later ruled out this

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<sup>2</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

sighting as the person was later seen at Eastlakes shopping centre and found to not be Mr Fernandez.

(e) On 9 January 2019, Mr Fernandez was reportedly seen at a 7-Eleven store in Casula. After reviewing relevant CCTV footage, investigating police noted that the person observed was not Mr Fernandez.

(f) On 10 January 2019, a male person matching Mr Fernandez's description was reportedly seen on a public street in Campbelltown. Although the description of this person and his exact location were not provided, investigating police did not consider this to be a credible sighting.

9.5 Between February and April 2019, a number of further reported sightings of Mr Fernandez were made to police. After examining the available information in relation to each reported sighting, investigating police discounted each of these reports as being credible sightings of Mr Fernandez.

### ***Gathering of forensic evidence***

9.6 After 8 January 2019, police officers returned to Mr Fernandez's home on a number of further occasions including on 15 January 2019, 16 January 2019, 27 January 2019 and 17 February 2019. In addition, police gained entry to Mr Fernandez's home on 21 January 2019 and found the unit to be neat and tidy with no evidence of any suspicious circumstances. Police noted that there was food still in a fridge inside the unit, indicating that no person had attended the unit for some time. Police also seized Mr Fernandez's toothbrush so that a DNA sample could be taken from it for comparison purposes.

9.7 Police gained entry to Mr Fernandez's home on a second occasion on 20 February 2019. A crime scene examination of the interior of the unit was conducted and three fingerprints were taken for comparison purposes and uploading onto the NSWPF fingerprint database. Police also seized a number of financial documents, a mobile phone, and some personal items (water bottles, a pillowcase and hairbrush) for DNA comparison purposes.

9.8 A male DNA profile was subsequently recovered from the personal items seized from Mr Fernandez's home. This DNA profile has been uploaded to the NSW and National DNA databases for continuous searching against other DNA profiles.

9.9 In addition, investigating police obtained a DNA sample from Mr Deane. This DNA profile has also been uploaded to the NSW and National DNA databases for continuous searching against any DNA profile recovered from unknown deceased persons in order to identify a biological parent/child relationship.

### ***Physical searches***

9.10 Investigating police also conducted a number of physical searches including:

(a) On 8 January 2019 police officers contacted a number of caravan parks in the vicinity of Windsor seeking information regarding Mr Fernandez and any bookings made in his name.

- (b) On 1 February 2019, investigating police attended a Leagues club that Mr Fernandez was known to frequent but found no evidence that Mr Fernandez had been to the club since 9 October 2018. Additional enquiries were made with another club in Campbelltown that Mr Fernandez had previously attended but no relevant information was identified.
- (c) On 11 March 2019, police officers conducted a search of the Glenfield area showing Mr Fernandez's photos to a number of shop owners. Glenfield station and a nearby multi-storey car park were also searched. Police officers also searched an area of bushland near Glenfield station but found no sign of Mr Fernandez.
- (d) Also on 11 March 2019, investigating police attended the Butterfly Farm and spoke to the owner who confirmed that Mr Fernandez had never attended the location. Police also attended a number of local parks and spoke to homeless persons in the Windsor area. A photo of Mr Fernandez was shown to a number of people who indicated that they had not seen Mr Fernandez.
- (e) Investigating police also made enquiries with Mr Fernandez's usual general practitioner (**GP**) in Randwick which revealed that Mr Fernandez had not attended his GP since 10 December 2018.

### ***Signs of life checks***

9.11 In addition, investigating police conducted a number of documentary and electronic searches which are commonly known as "signs of life checks". These checks involve enquiries being made with financial institutions, government organisations, and law enforcement agencies to identify whether there are any records indicating that a missing person has had some interaction with these organisations and institutions. The results from these enquiries establish the following:

- (a) There has been no activity on Mr Fernandez's Medicare card and Pharmaceutical Benefits Scheme since 10 December 2018;
- (b) Mr Fernandez's registered Opal card was last used on 28 December 2018;
- (c) No transactions have been made involving Mr Fernandez's known bank account since 27 December 2018 and enquiries with other major banks indicates that Mr Fernandez does not hold any other bank accounts;
- (d) Enquiries revealed that Mr Fernandez has not lodged a housing transfer from his home address in Eastlakes;
- (e) Examination of Mr Fernandez's mobile phone records indicate that the last outgoing call he made was on the afternoon of 16 December 2018 to a family friend, and that since this date many calls have been made to Mr Fernandez's mobile number which have gone unanswered;

- (f) Checks have been conducted with all of the major hospitals in Sydney together with NSW Ambulance and there are no records of Mr Fernandez having attended any of the hospitals or being treated by NSW Ambulance;
- (g) A check has been conducted with the Department of Home Affairs which confirmed that no person using Mr Fernandez's name has travelled overseas; and
- (h) Enquiries have been made with Missing Persons Units in other States and Territories, and with the Registry of Births, Deaths and Marriages which have confirmed that there are no records in relation to Mr Fernandez.

### ***Medical conditions and expert opinions***

9.12 Professor Rosenfeld noted that at the time Mr Fernandez went missing he suffered from a number of significant medical conditions:

- (a) ischaemic heart disease with angina;
- (b) vascular brain disease with ischaemic changes (vascular dementia) that would have affected his balance and mobility;
- (c) hypertension;
- (d) raised cholesterol levels;
- (e) worsening cognitive function with a number of behavioural problems as evidenced by episodes of confusion, wondering, delusions and paranoia observed by family members at the end of 2018;
- (f) likely moderately severe dementia; and
- (g) gait impairment and an increased propensity and risk of falling.

9.13 Having regard to the above conditions, Professor Rosenfeld considered it unlikely that Mr Fernandez "*was able to take his usual medications or attend adequately to his nutritional or fluid needs when out and about walking on his own in, what is said to have been unusually hot weather*" on 28 December 2018. Professor Rosenfeld went on to express this view:

[Mr Fernandez's] brain disease, frailty, dementia, risk of falls, inability to care for himself in adverse situations would have contributed to his likely rapid deterioration in the event of adverse events - such as a fall or becoming lost in an unfamiliar or dangerous situation.

9.14 Professor Rosenfeld also noted that Mr Fernandez would have been susceptible and sensitive to the effects of a range of adverse environmental issues such as heat or cold exposure, and that his various comorbidities likely significantly reduced his underlying physiological reserve function. Ultimately, Professor Rosenfeld opined:

In my view it is more likely than not, with the progression of his underlying medical problems, dementia, superimposed delirium and the likely acute medical problems that were likely in the time leading to his disappearance, that Mr Fernandez died at or soon after his disappearance.

In my view, failing medical treatment and care, hospitalisation or admission to residential care Mr Fernandez would likely have died as a result of the progression of his medical problems and complications associated with vascular dementia within a short period from the time of his disappearance (weeks or months).

- 9.15 Mr Whitehead noted that when Mr Fernandez was last seen he “*was fatigued, possibly dehydrated because of his walk and the hot temperatures of the day, undernourished and with declining cognitive ability*”. Mr Whitehead further opined:

It is possible [Mr Fernandez] has walked until he has either fallen over or reached the point of exhaustion [...] where he has then sought some shelter from the sun, subsequently passing from hyperthermia, dehydration, physical injury from the fall, medical episode or a combination of all. That he has not yet been located suggests that this occurred in a more remote area not frequented by people, but at the same time within his walking capability.

It is an unfortunate fact that a proximally 5% of missing/lost people with dementia/Alzheimer’s and 9% of missing/lost people with a psychological illness are never located despite intense searching.

- 9.16 Detective Senior Sergeant Combridge also expressed the view that it is more likely than not that Mr Fernandez is now deceased “*owing to his considerable health issues combined with being exposed in a hostile environment (item riches, lack of shelter/water/food/medication)*”.

## **Conclusions**

- 9.17 A consideration of all of the available evidence referred to above establishes the following:

- (a) Despite extensive and comprehensive physical, documentary and electronic searches no evidence has been identified indicating that Mr Fernandez is still alive. These searches have included what are commonly described as “signs of life checks”. Each of these checks has not produced any evidence that Mr Fernandez is still alive.
- (b) Forensic samples have been obtained from Mr Fernandez’s personal belongings and from his relatives. DNA and fingerprint profiles have been obtained from these samples which have, in turn, been entered onto relevant missing person and other databases. No match has been found for Mr Fernandez on any of these databases.
- (c) Mr Fernandez had a number of known and significant underlying medical conditions. These conditions would have adversely affected Mr Fernandez’s ability to cope with factors such as exposure to the elements and an outdoor environment, lack of fluids and nutrition, disorientation and associated stress, and mobility impairment or incapacitation as a result of a possible accidental fall.

- (d) If Mr Fernandez experienced an episode of misadventure, it is unlikely that he would have been able to recover from it without medical and other assistance.
- (e) By all accounts, Mr Fernandez had a strong bond with many family members and saw many of them on a frequent basis. There is no plausible explanation why Mr Fernandez would not maintain contact with his family members since 28 December 2018.
- (f) There is also no evidence that after 28 December 2018 Mr Fernandez sought or found new accommodation, or had any financial means to support himself or provide for his basic living needs. Indeed, when Mr Fernandez was last seen alive on 28 December 2018 he was not seen to be carrying any personal possessions other than the clothing he was wearing.

9.18 Having regard to the matters set out above, the conclusion that must, sadly, be reached is that, on the balance of probabilities, Mr Fernandez is now deceased.

## **10. When and where did Mr Fernandez die?**

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

10.2 In order to examine when and where Mr Fernandez died, it is necessary to consider both the Macquarie Field Sighting and the Windsor Sighting as they are regarded as being the most likely last confirmed sightings of Mr Fernandez.

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

10.3 In relation to the Windsor Sighting, Mrs McCallum gave evidence that she saw an older man walking along Wilberforce Road who appeared to be hot and staggering along. Due to the nature of his movements, Mrs McCallum considered that the man may have been intoxicated or suffering from a medical condition. Mrs McCallum described the man as wearing a purple shirt, grey pants, a cap, no glasses and with a few days of facial hair growth.

10.4 After engaging the man in conversation, Mrs McCallum stated that he reported having recently been in Hawkesbury Hospital for three days but had to leave his belongings there (and Mrs McCallum noted that he was wearing a wristband that is commonly worn by hospital patients), had a sister in Penrith, spoke with an accent and had been living in Australia for approximately two years. After accepting a lift from Mrs McCallum, the man asked to be dropped at the Butterfly Farm in Wilberforce, a short distance away.

10.5 Having regard to the evidence in relation to this reported sighting, it is considered unlikely that the man seen by Mrs McCallum was Mr Fernandez for the following reasons:

- (a) Although the physical description of the man is similar to Mr Fernandez, the clothing worn by the man is not consistent with the clothing worn by Mr Fernandez as shown on the CCTV footage from the ATM withdrawal on 27 December 2018;
- (b) The personal details provided by the man (having a sister who lived in Penrith, and having lived in Australia for approximately two years) are inconsistent with Mr Fernandez's known personal details and history; and
- (c) There is no reliable evidence of Mr Fernandez ever having previously travelled to either Windsor or Wilberforce, or having any need to do so.

10.6 It should be noted that Mr Whitehead also expressed the view that the Windsor Sighting can be discounted as a reliable sighting of Mr Fernandez for the same reasons mentioned above.

10.7 As to the Macquarie Fields Sighting, Ms Speechley gave evidence that she was sitting on her veranda when she saw an older man walking along the road, intermittently sitting down on wooden barriers along the road. Ms Speechley considered this to be unusual as it was a hot day (approximately 40 degrees) and she saw that the man's face was red and he was sweating. Ms Speechley gave evidence that she obtained some ice water, approached the man and offered it to him which he gratefully accepted. Ms Speechley noted that the man was wearing an orange T-shirt, cream-coloured shorts, matching shoes and socks, glasses and was carrying a black backpack.

10.8 After engaging the man in conversation, Ms Speechley stated that the man said that his name was Luis Fernandez and that he was from Uruguay. When Ms Speechley asked the man what he was doing in the Windsor area, the man said that he was going to see his brother and pointed in the direction of Simmos Beach in Macquarie Fields. Ms Speechley offered to take the man to the area but the man indicated that he would take a taxi and Ms Speechley saw that he had some money in his hand.

10.9 After speaking to the man for approximately 30 minutes, the man flagged down a taxi and got inside. Ms Speechley gave evidence that because "*something seemed off*" about her encounter with the man, she wrote down the man's name, the clothes that he was wearing, the taxi number and the man's intended direction of travel.

10.10 The available evidence indicates that the Macquarie Fields sighting is a reliable sighting of Mr Fernandez for the following reasons:

- (a) Bank records indicate that Mr Fernandez made an ATM withdrawal on 27 December 2018 from Ingleburn Village Shopping Centre, a relatively short distance from the location of the Macquarie Fields Sighting;
- (b) Mr Fernandez's Opal card records show that his card was used at 6:56am on 28 December 2018 at a bus stop on Sackville Street, Ingleburn, again a relatively short distance from the Macquarie Fields Sighting;

- (c) Mr Fernandez's brother lived on Ellen Street, Ingleburn, a walking distance of some 4.8 kilometres from the Macquarie Fields Sighting;
- (d) The physical appearance of the man seen by Ms Speechley is consistent with him having walked a reasonable distance in high temperatures; and
- (e) The personal details (name, country of origin, location of his brother) provided by the man seen by Ms Speechley are consistent with Mr Fernandez's personal details.

10.11 **Conclusions:** The evidence referred to above therefore mean that the last time that Mr Fernandez was seen alive was on 28 December 2018. However, because there is a distinct lack of evidence as to what happened to Mr Fernandez after he got out of the taxi near Glenfield station, it is not known whether Mr Fernandez died on the same day or sometime afterwards. Both are equally possible given the lack of further evidence. Therefore, Mr Fernandez's death is best described as occurring on or sometime after 28 December 2018.

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

- 10.12 The *National Search & Rescue Manual* provides useful statistical information in relation to lost person behaviour. It notes that 80% of lost persons with dementia who do not require a walking aid are located within 3.2 kilometres from where they were last seen, and those with a psychological illness (including paranoia) are found within a 4.7 kilometre radius from where they were last seen.
- 10.13 Mr Whitehead considered that given the distance that Mr Fernandez had likely walked (4.8 kilometres) before he was seen by Ms Speechley, a further 2 kilometres "*would represent a reasonable limit to his travel*". Using Glenfield station as a starting point, Mr Whitehead identified a number of potential search areas defined by radii of 2 kilometres, 3.2 kilometres and 4.7 kilometres. These areas include Glenfield and a number of neighbouring suburbs. Mr Whitehead identified two areas within these radii which represent the areas of highest probability of Mr Fernandez being found as they are a natural progression of following Railway Parade from Glenfield station and are uninhabited but may be used for limited recreational purposes.
- 10.14 In a statement prepared in September 2022, Detective Senior Sergeant Combridge also opined that consideration should be given to organised land searches of the urban fringe green space adjacent to Glenfield station in line with assessments regarding survivability and lost person behaviour, with additional consideration being given to the deployment of a cadaver dog to assist with such searches.
- 10.15 The areas of highest probability identified by Mr Whitehead consists of bushland surrounding the suburbs of Glenfield, Long Point and Macquarie Fields, approximately 15 kilometres in length. On 9 December 2022, police officers from the Public Order Right Squad with the assistance of a cadaver dog conducted a refined search of the areas around Glenfield that Mr Fernandez would have been able to access. The area stretched from Goodenough Street to the north to Canterbury

Road crossing Bunbury Creek to the south. Unfortunately, the search did not identify any evidence in relation to Mr Fernandez.

10.16 The available evidence from Mr Fernandez's Opal card indicates that he did not use it to take public transport after being dropped off at Glenfield station on 28 December 2018. However, where Mr Fernandez may have travelled to after being dropped off is not known. A targeted search of an area near the station has not yielded any evidence as to where Mr Fernandez may have travelled.

10.17 **Conclusions:** Although the expert evidence indicates that Mr Fernandez's range of travel was limited, it remains possible that Mr Fernandez may have walked (or travelled by other means) away from the Glenfield area. Given the limited evidence available, a conclusion cannot be reached as to precisely where Mr Fernandez died.

## 11. What was the cause and manner of Mr Fernandez's death?

11.1 The manner of a reportable death typically falls into a number of well-established categories: natural causes, misadventure, intentionally self-inflicted and, sometimes, homicide. The police investigation did not identify any evidence considered to be suspicious regarding the circumstances in which Mr Fernandez went missing. Similarly, there is no evidence that any third party had any involvement in Mr Fernandez going missing. Therefore, the possibility that Mr Fernandez died as a result of the actions of another person can reasonably be excluded.

11.2 However, determination of the precise manner and cause of Mr Fernandez's death is more problematic. As noted above, Professor Rosenfeld considered that progression of Mr Fernandez's underlying medical conditions could have resulted in his death at around the time that he went missing or soon after. In other words, Mr Fernandez could have died of natural causes.

11.3 On the other hand, Professor Rosenfeld also noted that Mr Fernandez would have been particularly susceptible to the effects of adverse environmental issues due to his underlying medical conditions. If Mr Fernandez had encountered any misadventure, such as accidentally falling or becoming lost in an unfamiliar or dangerous situation, then Professor Rosenfeld opined that he would have rapidly deteriorated in the absence of nutrition, fluids, shelter and medical or other assistance. Therefore, the possibility that Mr Fernandez died in circumstances of misadventure with a non-natural contribution to death (such as an accidental fall or exposure to the elements) cannot be excluded.

11.4 **Conclusions:** Having regard to the above, the available evidence regrettably does not allow for any conclusion to be reached as to the cause or manner of Mr Fernandez's death.

## 12. The nature, timeliness and adequacy of the police investigation

12.1 Consideration of this issue involves examination of a number of aspects of the overall police investigation. These aspects are discussed individually below. However, it is first necessary to provide a brief overview of the NSWPF missing person policy framework which existed at the relevant time, and currently.

### ***Policy framework***

12.2 As at January 2019, the NSWPF Missing Person Standard Operating Procedures published in 2013 (**2013 Missing Person SOP**) provided direction to NSWPF officers in relation to each stage of a missing person investigation, risk assessment, responses that align with nationally agreed protocols and information regarding the type of assistance available to an investigation and where to obtain it. The 2013 Missing Person SOP provided that when responding to a missing person report, the NSWPF will, relevantly:

- (a) take reports immediately and submit them without delay, as the person may have met with foul play, misadventure or is in potential danger;
- (b) show sensitivity and understanding to the involved family and/or friends, maintaining regular contact throughout the investigation, even if there is no new information;
- (c) conduct a risk assessment to inform the appropriate level of investigative response; and
- (d) continue with the enquiries, maintaining regular investigative activity to pursue resolution of the missing person matter.

12.3 At the time that the 2013 Missing Person SOP was first published the NSWPF Missing Persons Unit (**MPU**) provided coordination, quality assurance, education, information management and investigative support to NSWPF police officers. Whilst the MPU at the time monitored missing person reports and provided assistance to missing person investigations, it did not have a direct investigative capacity; instead, it offered specialised advice and information to investigators.

12.4 Between around December 2017 and March 2019, a number of internal NSWPF reviews were conducted in relation to the nature and quality of missing persons investigations, and the policy framework which underpinned such investigations. On 27 June 2019, the NSWPF Executive was briefed regarding the dissolution of the MPU and the establishment of the Missing Persons Registry (**MPR**).

12.5 On 1 July 2019, the MPR commenced operation as a specialist unit within State Crime Command with a greater investigative focus than the previous MPU. The MPR is staffed by a manager, together with a number of investigators and analysts.

12.6 On 1 January 2020, the Missing Persons, Unidentified Bodies & Human Remains Standard Operating Procedures (**New Missing Person SOP**) were published. It was intended to be a “*one-stop guide*” for all NSWPF officers who engage in missing persons, unidentified bodies and human

remains investigations. Since 2020 the New Missing Person SOP has been updated with revised versions published annually.

### ***Initial actions undertaken by police***

12.7 Following the call made by Ms Fernandez to Triple Zero on 1 January 2019, NSWPF officers attended Mr Fernandez's home in a timely manner and conducted a canvass of the surrounding neighbourhood to gather any information as to his whereabouts. When it became apparent that Mr Fernandez could not be immediately found, police officers advised Ms Fernandez to make a formal missing person report and she did so.

12.8 Ms Fernandez's report resulted in the NSWPF issuing a media release via social media on 2 January 2019. As has become apparent, this media release generated valuable information to the investigation, namely the Macquarie Fields Sighting.

12.9 **Conclusions:** The initial stage of the NSWPF response to Mr Fernandez being reported as missing was appropriate and consistent with the 2013 Missing Person SOP which existed at the time. Initial checks were performed in an attempt to locate Mr Fernandez. When these checks indicated that Mr Fernandez was likely to be missing, Ms Fernandez was encouraged to make a formal missing person report. This resulted in an appeal for information to the public which eventually elicited information that would prove to be critical to the investigation.

### ***Initial risk assessment***

12.10 On 3 January 2019, Sergeant Cattell conducted a risk assessment of Mr Fernandez's matter in accordance with the 2013 Missing Person SOP which relevantly provided the following:

People who are missing may be at risk of physical harm because they are vulnerable, for example, unable to cope with weather conditions, or depend on medication.

[...]

Risk assessment is a critical process for all [missing person] matters and it should directly inform the level of response from NSWPF. Remembering that going missing itself is not a crime, the NSWPF response should match the level of identified risk for the person who is missing; the higher the risk to the person, the greater the response.

12.11 At the time of this assessment, the matter was initially being investigated by a General Duties police officer. Following his assessment, Sergeant Cattell considered that the matter "*could be a lengthy and protracted investigation and more aligned with the parameters of criminal investigators/tactics to review and take over the investigation*". Accordingly, Sergeant Cattell allocated the matter to Acting Detective Sergeant Gerrish so that she in turn could allocate the matter to "*the most appropriate and experienced Detective*" as the new officer in charge.

12.12 Sergeant Cattell was regrettably not available to give evidence at the inquest. Therefore, the nature of his risk assessment, and the adequacy of it, could not be explored in oral evidence.

12.13 **Conclusions:** The information available to the NSWPF as at 3 January 2019 suggests that a risk assessment of Mr Fernandez’s matter required a more urgent and timely response and was unlikely to be a “*lengthy and protracted investigation*”. This is because even by 2 January 2019 there was information available to the NSWPF indicating that Mr Fernandez had a number of particular vulnerabilities. Indeed, these vulnerabilities were noted in the 2 January 2019 social media appeal for information which referred to Mr Fernandez’s age and the fact that police “*hold serious concerns for his welfare as he suffers from a medical condition*”.

12.14 However, the inability to explore in oral evidence the nature of this initial risk assessment and what information may have contributed to it means that a more definitive conclusion cannot be reached as to the adequacy of the risk assessment.

### ***Allocation of Officer-in-Charge***

12.15 As at January 2019, Detective Senior Constable Gray was working two days per week in accordance with her part-time working arrangements. She gave evidence that most of the other police officers within her command were aware of these arrangements, namely that she would work two days and then be rostered off for five days. Detective Senior Constable Gray also gave evidence that when not on duty she did not have remote access to any of the cases that had been assigned to her, and that her other commitments meant that she was unable to perform any policing duties outside of her rostered of work hours.

12.16 Acting Detective Sergeant Gerrish gave evidence that after being allocated the matter by Sergeant Cattell she did not form any view as to the likely length of the investigation. However, Acting Detective Sergeant Gerrish explained that she considered that the matter required allocation to a detective primarily because Mr Fernandez was an older man. In allocating the matter to Detective Senior Constable Gray, Acting Detective Sergeant Gerrish acknowledged that she was aware of Detective Senior Constable Gray’s part-time working arrangements, and that there would be periods during the investigation when Detective Senior Constable Gray was unavailable.

12.17 Acting Detective Sergeant Gerrish went on to explain that although Detective Senior Constable Gray was the officer-in-charge, this did not prevent enquiries being made by other police officers as part of the investigation, and it did not stop the initial progression of the matter. Detective Senior Constable Gray gave similar evidence that enquiries relevant to the investigation were followed up when she was not on duty, and that she was kept updated either verbally or via a handover. Detective Senior Constable Gray also gave evidence that her supervisors had a degree of oversight over the investigation and that reports were being made “*up the chain of command*” with the result being that her supervisors were “*happy with the way the investigation was progressing*”.

12.18 Acting Detective Sergeant Gerrish gave evidence that when she allocated the matter to Detective Senior Constable Gray at 4:36pm on 3 January 2019, she was not aware of the intelligence report relating to the Macquarie Fields Sighting. This is despite Sergeant Cattell having reviewed the intelligence report in relation to the Macquarie Fields Sighting at 4:20pm on 3 January 2019 and “*linked it*” to Mr Fernandez’s case.

12.19 Acting Detective Sergeant Gerrish also gave evidence that even if she had been aware of the Macquarie Fields Sighting this would not have changed her decision to allocate Mr Fernandez's matter to Detective Senior Constable Gray. Instead, Acting Detective Sergeant Gerrish gave evidence that she would have followed up the Macquarie Fields Sighting herself by seeking the details of the taxi driver who picked up Mr Fernandez. Acting Detective Sergeant Gerrish acknowledged that this would have resulted in an important lead in the investigation being pursued more quickly.

### ***Follow up of the Macquarie Fields Sighting***

12.20 Acting Detective Sergeant Gerrish did not become aware of the Macquarie Fields Sighting until sometime between mid-January 2019 and early February 2019. At some unknown time, Acting Detective Sergeant Gerrish also became aware of the information provided by 13CABS to Detective Senior Constable Gray on 15 January 2019 regarding the contact details for Mr Kabir.

12.21 As noted above, at the relevant time these two pieces of information appeared to contradict each other. In other words, the Macquarie Fields Sighting indicated that Mr Fernandez had been picked up by a taxi from Harold Street, Macquarie Fields. In contrast, the information provided by 13CABS indicated that taxi T710 did not pick up any passenger from Harold Street.

12.22 In order to resolve this apparent conflict, Acting Detective Sergeant Gerrish (together with Detective Sergeant Pincham) attended the home of the taxi owner, later spoke to Mr Kabir, obtained confirmation that Mr Kabir did in fact pick up the man believed to be Mr Fernandez from Harold Street on 28 December 2018, and obtained further information regarding where he was taken. All of these investigative steps were completed on 7 February 2019. Acting Detective Sergeant Gerrish gave evidence that there was nothing preventing these investigative steps being completed earlier in the investigation.

12.23 Despite investigators being aware by 7 February 2019 that Mr Fernandez had been dropped off at Glenfield Station on 28 December 2018, a search of Glenfield Station and its surrounding areas was not conducted until 11 March 2019. Detective Senior Sergeant Combridge considered that "*the investigative momentum*" for Mr Fernandez's case had dissipated by around 4 February 2019 and noted the following:

The investigation becomes reactive to information being received rather than proactively seeking lines of inquiry. This is not unusual in any investigation, but for a missing persons investigation it is a pivotal transitory point. The investigation would have benefited from a case review at this point to determine any lines of enquiry that required actioning. In particular, there was an opportunity to identify and action inquiries in and around the Glenfield Train Station, and this may have been prioritised prior to 11-Mar-2019 had a review occurred.

[...]

There was also an opportunity to deploy resources to the Glenfield area and conduct a more expansive public and CCTV canvas that may have generated further inquiries. This opportunity has since passed and would provide little benefit now.

12.24 Detective Chief Inspector Glen Browne, the former Manager of the NSWPF Missing Persons Registry (**MPR**), similarly expressed the belief that “*investigating police did miss opportunities to conduct canvassing around Glenfield Railway Station and associated land searching*”. However, he did not consider it likely that this missed opportunity “*impacted the survivability of Mr Fernandez as almost a full week had passed before this information became available to police*”.

12.25 Although the issue of survivability may have carried less significance by 7 February 2019, the opportunity to conduct a timely search of Glenfield station and canvass its surrounding areas was important for other aspects of the investigation. As Detective Senior Sergeant Combridge noted:

There are still aspects of the investigation that remained time critical, even after the expiration of survivability timeframes, that can influence the outcome of the response.

12.26 Some of these aspects include gathering evidence to confirm whether Mr Fernandez had in fact died and if so, whether the available evidence could assist in determining where and when he died, and the cause and manner of his death. This would have helpfully provided more certainty for Mr Fernandez’s family who were no doubt extremely distressed at the time (and remain distressed to date) regarding the lack of answers to their many questions as to what happened to Mr Fernandez. Equally importantly, if Mr Fernandez’s remains had been found they could have appropriately been returned to his family and loved ones.

12.27 Detective Chief Inspector Browne also expressed the view that the delays in conducting the 11 March 2019 search “*should not have occurred however, these are matters that can only be answered by Detective Senior Constable Gray and her supervisors*”. In evidence, Detective Senior Constable Gray acknowledged herself that priority was not given to the highest value intelligence, namely the Macquarie Fields Sighting and the subsequent discovery that Mr Fernandez had made his way to Glenfield station.

12.28 In his evidence, Detective Senior Sergeant Combridge indicated that this appeared to be a “*single point of failure*”. That is, in the context of an investigation a “*single-member dependability issue*” can arise where receipt of critical information may only be known to one person within an investigative team. Ideally, such information should be shared amongst team members, with an appropriate level of handover in place to ensure that such information is acted upon.

12.29 Detective Senior Constable Gray acknowledged that much of her time on duty was spent with reviewing and updating information that had been gathered as part of the investigation in her absence. This meant that Detective Senior Constable Gray had less time to actually pursue leads that were considered to have investigative value. Detective Senior Constable Gray also agreed that more investigative activity was conducted on the days when she was rostered on duty, and that if the officer-in-charge of the investigation had been rostered for duty on more days, the timeline for investigative tasks to be performed would effectively have been condensed.

12.30 **Conclusions:** The decision to allocate Mr Fernandez’s matter to a detective (rather than a General Duties police officer) was appropriate. This is because of Mr Fernandez’s particular vulnerabilities and the degree of risk he was exposed to. At the relevant time, Detective Senior Constable Gray was performing duties in accordance with her part-time working arrangement, about which there can be no criticism. Whilst Detective Senior Constable Gray sought to progress the investigation when she was on duty in accordance with the 2013 Missing Person SOP, it is evident that the investigation was reliant upon other police officers to advance it when Detective Senior Constable Gray was not on duty.

12.31 This had two important consequences. First, the investigation had an uneven, stop-start quality to it resulting in fragmentation of the investigation and loss of momentum after only about a month. Second, the investigation became dependent on identification of critical investigative leads coinciding with the availability of police officers to pursue them. By way of example, even though information regarding the Macquarie Fields Sighting was available as early as 2 January 2019, it was not until 7 February 2019 that Acting Detective Sergeant Gerrish was able to identify Glenfield Station as the location where Mr Fernandez was last seen alive. Further, even after this location was identified, it took until 11 March 2019 for a search of the area to be conducted.

12.32 The gaps between investigative steps being taken suggests that there were missed opportunities to collect and preserve evidence relevant to the investigation in a timely manner. It is now not possible to know whether these missed opportunities had any bearing upon Mr Fernandez’s survival prospects. However, at the very least, an earlier search of the Glenfield station area and its surrounds increased the chance of the investigation discovering evidence which could have provided Mr Fernandez’s family with greater clarity and certainty as to what happened to Mr Fernandez after 28 December 2018.

### **Search efforts**

12.33 The 2013 Missing Persons SOP identified a number of key roles in managing missing person matters, ranging from the Investigating Officer to the Local Area Commander. As part of the investigation phase of a missing person investigation, the 2013 Missing Person SOP relevantly provided that one of the responsibilities of the Investigating Officer was to “*contact the MPU for assistance and advice*”.

12.34 Detective Senior Constable Gray gave evidence that as at January 2019 she had no previous experience with the MPU and did “*not exactly*” understand its purpose or function. Notwithstanding, Detective Senior Constable Gray indicated that from the inquiries that she made, no assistance was available from the MPU and that it had effectively been “*disbanded*”. The reason for this is not entirely clear. However, it appears that by January 2019 the dissolution of the MPU (which would formally occur in around June 2019) was already well advanced. Indeed, Detective Chief Inspector Brown gave evidence that the absence of the MPU as a resource for investigators in missing person investigations represented a “*gap*” and that whilst he could only presume that “*someone was working*” at the MPU, he did not know what actual resources were available at the relevant time.

12.35 One consequence of the delay until 7 February 2019 in identifying that Mr Fernandez had caught a taxi to Glenfield station is that a search more proximate to the date when Mr Fernandez was reported missing could not be conducted. Mr Whitehead expressed the view that the 11 March 2019 search was limited to checking areas around Glenfield station, associated car parks and a cursory search of the nearest bushland. He further opined:

The hot weather and intervening 2.5 months would have been sufficient for decomposition to have progressed beyond the stage were a corpse would be producing any strong odour, therefore limiting the effects of cursory search of bushland. There does not appear to have been any coordinated searching of the Glenfield locale.

A thorough and coordinated search at that time would have provided a greater opportunity of locating Mr Fernandez than a search conducted subsequent to [the date of Mr Whitehead's report].

From a purely search and rescue perspective this incident should have been categorised as an Urgent Response, based on Mr Fernandez being by himself, elderly with underlying medical conditions and unforbearing weather.

12.36 Detective Senior Sergeant Combridge similarly noted:

Oversight by areas who have considerable experience in aspects of this response, namely urban search and rescue, survivability and lost person behaviour, may have assisted front-line members to remain focused on the highest priority tasks once [Mr Fernandez's] last known whereabouts [were] established.

12.37 Detective Senior Constable Gray gave evidence that on or about 8 March 2019, she spoke to a handler from the NSWPF canine unit to request a cadaver dog to assist with the search planned for three days later. According to Detective Senior Constable Gray, she was informed that a cadaver dog would remain on hold until a cursory search and been performed. In addition, Detective Senior Constable Gray gave evidence that she also spoke with a search and rescue coordinator over the phone to request assistance. However, Detective Senior Constable Gray said that she was informed that no assistance could be provided, and a cadaver dog could not be deployed, until further direction was provided regarding a defined targeted search area and Mr Fernandez's likely direction and distance of travel.

12.38 Section 5.3 of the 2013 Missing Person SOP provided the following guidance in relation to a land search:

If and when a decision is made to conduct a land search operation, the duty operations Inspector, VKG Sydney and Police Rescue and Bomb Disposal Unit (Alexandria) is to be notified immediately of the situation.

A qualified Land Search Coordinator must be nominated to undertake the actual search operation planning and coordination function.

12.39 Section 16.1 of the New Missing Person SOP similarly provides for the following in relation to land searches:

If relevant to the circumstances, land searches should be considered as a priority. Where a physical land search is necessary, immediately notify the Rescue and Bomb Disposal Unit via the State Coordination Unit, Radio Operations Group. The Rescue and Bomb Disposal Unit provide accredited Land Search and Rescue (LandSAR) coordinators and experienced search team leaders to support police commanders in relation to search and rescue operations for missing or overdue persons, vehicles, unregistered aircraft and physical evidence in a land environment.

12.40 Detective Chief Inspector Browne explained the following:

If this matter had occurred today, the current oversight provided by MPR investigators is likely to identify those outstanding investigations, and in particular the fact a Land Search Coordinator had not been engaged. Relevant advice would have been provided in that regard, together with advice about the need for appropriate canvassing, including CCTV canvassing.

12.41 **Conclusions:** The search conducted on 11 March 2019 was cursory in nature and provided little opportunity to identify evidence that could have progressed the missing person investigation. By at least 7 February 2019 information was available to the NSWPF which established that Mr Fernandez had been exposed to challenging environmental conditions. This should have resulted in a greater sense of urgency in initiating a search at his last known location.

12.42 Apart from timeliness, the search required coordination and assistance from a qualified Land Search and Rescue Coordinator. The 2013 Missing Person SOP provided for such assistance and Detective Senior Constable Gray appears to have made appropriate enquiries to seek such assistance, together with the deployment of a cadaver dog. However, it appears that some confusion attached to the nature of Detective Senior Constable Gray's enquiries as no assistance was in fact provided. If the MPU had been operational at the time, it is likely that it would have been able to provide Detective Senior Constable Gray with the necessary support in order to facilitate an appropriate land search in the same way that the current MPR provides oversight and advice to investigators in the field.

### ***Other information gathering***

12.43 A police officer did not take a statement from Ms Speechley in relation to the Macquarie Fields Sighting until 19 February 2019, almost seven weeks after it occurred. A constable took the statement. On 2 February 2023, Detective Sergeant Daniel Poole (who later assumed responsibilities as officer-in-charge of Mr Fernandez's matter) took a further statement from Ms Speechley in which she provided additional details regarding the events of 28 December 2018 that were not referred to in her first statement. These details are significant in that Ms Speechley stated that Mr Fernandez told her his full name (and not just his first name) and that he had a son (and two other children). In addition, Ms Speechley provided a description of the taxi driver and also recalled that Mr Fernandez appeared to be well affected by the heat of the day and the distance that he had walked.

- 12.44 Further, Detective Senior Constable Gray did not take a statement from Ms Fernandez and Mr Deane until 16 and 17 February 2019, respectively. When asked why a statement was not taken from Ms Fernandez at an earlier stage during the investigation, Detective Senior Constable Gray gave evidence that arrangements had been made to take a statement from Ms Fernandez on an earlier occasion but these arrangements were cancelled after Ms Fernandez became unwell.
- 12.45 However, Ms Fernandez gave evidence that the earlier arrangement was for the statement to be taken on 14 February 2019 (only two days earlier) and that she had not been unwell at any time during the period from 1 to 14 February 2019. Mr Deane similarly gave evidence that although he travelled to New Zealand in the week of 14 January 2019 he remained contactable by phone and email and that he was otherwise available to provide a statement to police.
- 12.46 The delay in taking a statement from Ms Fernandez is of some significance. This is because in her statement, Ms Fernandez disclosed information indicating that her uncle had exhibited behaviour that was unusual and concerning in early December 2018 and which was suggestive of cognitive decline. Indeed, Detective Senior Constable Gray gave evidence that she did not become aware of the apparent decline in Mr Fernandez's mental health until 16 February 2019 when Ms Fernandez gave her statement. Such information would obviously have been relevant to any risk assessment performed in relation to Mr Fernandez.
- 12.47 Detective Senior Constable Gray correctly acknowledged in evidence that the level and nature of risk that a missing person may be exposed to can be reassessed at any stage during an investigation. Therefore, if Ms Fernandez's statement had been taken at an earlier stage it is likely that investigating police would have become aware of an additional layer of vulnerability, namely Mr Fernandez's apparently declining mental health. This in turn may have resulted in an increased sense of urgency in the initial stages of the investigation and perhaps avoided the dissipation in investigative momentum referred to by Detective Senior Sergeant Combridge. Indeed, Detective Senior Constable Gray gave evidence that she felt that the sense of urgency regarding the investigation was initially not as high compared to the later stages of the investigation.
- 12.48 One significant improvement introduced by the New Missing Persons SOP is the role of the Missing Persons Coordinator (**MPC**) due to the recognised "*need to have a suitably trained and experienced person at the local level to provide early intervention and guidance*" for missing persons investigations. The New Missing Persons SOP provide that some of the responsibilities of the MPC including monitoring and reviewing all missing person, identified bodies and human remains cases at the local level, and ensuring that such cases are appropriately investigated, have sufficient resources allocated and that the COPS Case accurately reflects the corresponding COPS event status. Detective Sergeant Poole will gave evidence that in his experience introduction of the MPC at a Police Area Command level has introduced a significant human element in ensuring that a missing person investigation progresses when the officer in charge of that investigation is off duty or on leave.

12.49 **Conclusions:** Statements from persons critical to the investigation were not always taken in a timely manner. These delays represent another example of the uneven and fragmented way in which the investigation was conducted. Further, the delays do not sit comfortably with the apparent confidence expressed by Detective Senior Constable Gray and Acting Detective Sergeant Gerrish that other police officers were available and able to progress the investigation when Detective Senior Constable Gray was not on duty. Instead, it seems that critical milestones in the investigation (such as the taking of statements from Mr Fernandez's relatives) depended largely on Detective Senior Constable Gray's availability.

12.50 The reason for the delays is not clear on the available evidence, although what is clear is that Mr Fernandez's relatives were able to make themselves available at earlier opportunities for their statements to be taken. Further, when Ms Speechley's second statement was taken by a detective more fulsome and important information was elicited.

12.51 The missed opportunities to gather information at an earlier stage meant that there was not a complete understanding of Mr Fernandez's vulnerabilities, namely the decline in his cognition during the period immediately preceding when he went missing. Such information is likely to have informed ongoing risk assessments and may have resulted in greater urgency in completion of necessary investigative steps.

### ***Information sharing***

12.52 Chief Inspector Sharon Blacklock is the coordinator of the NSWPF Computerised Operational Policing System (**COPS**) Data Management Team, Digital Policing and Operational systems, Digital Technology and Innovation. She gave evidence that when a case is allocated to a NSWPF officer, that officer receives an automatic notification to their COPS Officer Work Log known as WORKOFF. Further, Chief Inspector Blacklock stated that when an information report or any other report is added to an existing COPS case, the police officer responsible for the case is notified by an automatic dissemination which appears in that officer's WORKOFF. Using an analogy, Chief Inspector Blacklock gave evidence that the automatic dissemination appears much like an unread email would appear in a user's email inbox.

12.53 In contrast, Acting Detective Sergeant Gerrish gave evidence that prior to assigning Mr Fernandez's case to Detective Senior Constable Gray at 4:36pm on 3 January 2019, she was the officer-in-charge of the case on COPS. This meant that, according to the evidence of Chief Inspector Blacklock, Acting Detective Sergeant Gerrish should have received an automatic dissemination regarding the Macquarie Fields Sighting when it was attached to Mr Fernandez's case by Sergeant Cattell some 16 minutes earlier. However, Acting Detective Sergeant Gerrish gave evidence that she received no such automatic dissemination. Further, Acting Detective Sergeant Gerrish gave evidence that in her policing experience of more than 15 years she had never received such an automatic dissemination in her WORKOFF.

12.54 Similarly, Detective Sergeant Poole gave evidence that in his policing experience of 16 or 17 years, he has never received an automatic dissemination on WORKOFF as a result of an information report (such as the report of the Macquarie Fields Sighting) being linked to an active case.

Detective Sergeant Poole gave anecdotal evidence that he had inquired with a number of NSWPF colleagues, none of whom had ever received an automatic dissemination of the kind referred to by Chief Inspector Blacklock.

12.55 Detective Chief Inspector Browne gave evidence that, historically, responsibility and ownership of missing persons cases has been problematic. That is, an officer-in-charge of a missing persons investigation may go off shift and not return to duty for five or more days. Detective Chief Inspector Browne gave evidence that the New Missing Person SOP now carries multiple levels of supervision across junior and more senior NSWPF officers to ensure that individual investigative tasks as part of a missing persons investigation progress appropriately.

12.56 In addition, Detective Chief Inspector Browne explained that an intelligence component has been added to the MPR. This component now allows for any automatic dissemination related to a missing persons case (such as a dissemination in relation to the Macquarie Fields Sighting) to be reviewed by an intelligence analyst at the MPR. This dissemination is in turn provided to a detective at the MPR, leading Detective Chief Inspector Browne to opine that it is “*theoretically impossible*” for a report of the kind of the Macquarie Fields Sighting to be missed during a missing person investigation.

12.57 Counsel for the Commissioner of the NSWPF submitted that the degree of oversight currently provided by the MPR is significantly improved compared to what existed in 2019, and the hierarchical nature of the missing persons investigations means that the likelihood of an intelligence report similar to the Macquarie Fields Sighting being missed would be avoided or minimised.

12.58 **Conclusions:** Whilst the evidence establishes that the introduction of the MPR has added an additional level of oversight to missing persons investigations, it should be noted that the hierarchical nature of investigations, with supervisory levels of oversight, which currently exists was also in existence in 2019. Notwithstanding, the evidence suggests that some degree of confusion or difference in understanding exists between the COPS Data Management Team and experienced police officers in the field. This confusion or misunderstanding relates to whether officers-in-charge of a missing person investigation should, and are able to, receive disseminations (automatic or otherwise) regarding intelligence reports that may be critical to such investigations.

12.59 Whilst the level of oversight provided by the MPR provides some reassurance that such disseminations are identified in the context of a missing person investigation, this does not address the apparent confusion or misunderstanding which arose in evidence during the inquest. Further, the deficit in information available to Acting Detective Sergeant Gerrish highlights the importance of direct information sharing with police officers responsible for missing persons investigations. Therefore, it is desirable to make the following recommendation.

12.60 **Recommendation:** I recommend to the Commissioner of the New South Wales Police Force that consideration be given to ensuring that there are no technical or other impediments preventing an officer-in-charge of a missing person investigation from receiving disseminations regarding intelligence reports relevant to an active investigation, directly and in a timely manner.

### 13. Findings

13.1 Before turning to the findings that I am required to make, I would like to acknowledge, the efforts of Mr Callan O’Neil, Counsel Assisting, and his instructing solicitor, Ms Clara Potocki of the Crown Solicitor’s Office, and express my gratitude to them both. The Assisting Team has ensured that a thorough investigation has been conducted and provided tremendous assistance throughout the coronial investigation, and especially during the course of the inquest. I am extremely grateful for their meticulous approach, and for the compassion that they have shown during all stages of the coronial process.

13.2 I also acknowledge the assistance of Detective Sergeant Poole and his endeavours in advancing the coronial investigation.

13.3 I find that Luis Fernandez, who was reported as a missing person to the NSWPF on 1 January 2019, is now deceased.

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

#### ***Identity***

The person who died was Luis Fernandez.

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

Mr Fernandez died on or after 28 December 2018.

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

The available evidence does not allow for any finding to be made as to the place of Mr Fernandez’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 precise cause of Mr Fernandez’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 Mr Fernandez’s death.

#### **14. Epilogue**

13.1 On behalf of the Coroner's Court of New South Wales I extend my most sincere and respectful condolences to Mr Frnandez's family and in particular to his son, Shengo Deane, and his niece, Raquel Fernandez.

13.2 The unbearable anguish, uncertainty and loss that a family experience after a loved one is reported missing cannot be simply reduced to mere words. As Mr Deane himself described it, it is heartbreaking to know that he has now deeply felt the loss of his father on two occasions, with the second occasion bringing with it an overwhelmingly sad sense of finality. It is hoped that one day further information can be provided to Mr Fernandez's family to hopefully allow them to find some measure of solace from such a tragic event.

13.3 I close this inquest.

Magistrate Derek Lee

Deputy State Coroner

16 March 2023

Coroner's Court of New South Wales