

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE



Court Reference: COR 2017 5202

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: WILLIAM WILLMS

Findings of:	AUDREY JAMIESON, CORONER
Delivered on:	29 April 2019
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank 3006
Hearing date:	29 April 2019
Police Coronial Support Unit:	Leading Senior Constable Duncan McKenzie

I, AUDREY JAMIESON, Coroner having investigated the death of **WILLIAM WILLMS**

AND having held an inquest in relation to this death on 29 April 2019

at MELBOURNE

find that the identity of the deceased was **WILLIAM WILLMS**

born on 3 December 1909

and the death occurred on an unknown date after 23 July 1973

at an unknown place

from:

1 (a) UNKNOWN CAUSES

in the following summary of circumstances:

1. William Willms was aged 63 years old and lived in Mount Evelyn with his wife Margarethe when he was last seen on 23 July 1973.
2. Mr Willms was sighted by bus driver Ron Jones alighting from Mr Jones' bus at Lilydale Railway Station that afternoon. Mr Willms has not contacted his family since that time and there have been no confirmed sightings of him after 23 July 1973. Mr Willms was reported missing by his wife on 24 July 1973.
3. Despite extensive searches by police in the ensuing 46 years, his fate remains unknown. All efforts to locate him have been unsuccessful, and there have been no 'proof of life' indicators since his disappearance.

PURPOSE OF A CORONIAL INVESTIGATION

4. The Coroners Court of Victoria is an inquisitorial jurisdiction.¹ The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.² The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances but is

¹ Section 89(4) *Coroners Act 2008* (Vic)

² Section 67(1) *Coroners Act 2008* (Vic)

confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.³

5. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by Coroners, generally referred to as the ‘prevention’ role.⁴ Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.⁵ These are effectively the vehicles by which the prevention role may be advanced.⁶ It is not the Coroner’s role to determine criminal or civil liability arising from the death under investigation. Nor is it the Coroner’s role to determine disciplinary matters.

JURISDICTION

6. On 12 October 2017, the suspected death of Mr Willms was reported to the Coroners Court of Victoria by Detective Senior Constable (DSC) Ross McDonald. DSC McDonald had been tasked to investigate the historic missing person report of Mr Willms, following the disbanding of the Bellier Taskforce⁷.
7. As his body has never been found, Mr Willms’ death is a suspected death. The definition of death under section 3 of the *Coroners Act 2008* (Vic) (‘the Act’) includes a ‘suspected death’ and provides jurisdiction for an investigation.
8. Pursuant to section 4 of the *Coroners Act 2008* (Vic), I determined that a coronial investigation into Mr Willms’ suspected death was reasonable and appropriate in the circumstances. At my direction, DSC McDonald prepared a coronial brief in this matter which

³ This is the effect of the authorities – see for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

⁴ The ‘prevention’ role is now explicitly articulated in the Preamble and Purposes of the Act, in contrast to the *Coroners Act 1985* where this role was generally accepted as ‘implicit’.

⁵ See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

⁶ See also sections 73(1) and 72(5) of the Act which requires publication of coronial findings, comments, recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

⁷ The Bellier Taskforce was initiated by Victoria Police to address missing person cold cases.

contained, *inter alia*, a statement from Mrs Willms, documents pertinent Mr Willms' Psychiatric History and historical and contemporaneous records of police investigations into Mr Willms' disappearance.

9. This finding draws on the totality of the material; the product of the coronial investigation into the death of Mr Willms. That is, the court records maintained during the coronial investigation, the Inquest Brief and further material sought and obtained by the Court.
10. In writing this Finding, I do not purport to summarise all of the evidence but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence does not infer that it has not been considered.

STANDARD OF PROOF

11. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining whether a matter is proven to that standard, I should give effect to the principles enunciated in *Briginshaw v Briginshaw*.⁸ These principles state that in deciding whether a matter is proven on the balance of probabilities, in considering the weight of the evidence, I should bear in mind:

- the nature and consequence of the facts to be proved;
- the seriousness of an allegation made;
- the inherent unlikelihood of the occurrence alleged;
- the gravity of the consequences flowing from an adverse finding; and
- if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect inferences.

12. The effect of the authorities is that Coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

⁸ (1938) 60 CLR 336.

BACKGROUND

13. Mr Willms was born in Ukraine and worked as a mathematics teacher in the former United States of Soviet Russia (USSR). He subsequently moved to Germany, where he married Mrs Willms and had their first child, Lucy in 1950. Mr Willms and his family successfully applied to migrate to Australia, and they arrived by boat in Melbourne on 1 April 1951. Mr Willms and his family were initially taken to the Bonegilla Migrant Centre near Albury / Wodonga. Mr Willms was unable to continue work as a teacher due to his age and language barriers. He commenced employment as a labourer at a timber mill in Bairnsdale but discontinued this work after approximately one year due to a back injury.
14. After living in a number of camps in Victoria, Mr Willms and his family moved into their first home in Footscray later that year. In 1952, Mr and Mrs Willms had a second child, Victor. While living in Footscray, Mr Willms worked in various factory jobs to support his young family, before they purchased their first home in Mt Evelyn in 1955. Their first home was approximately 14 acres, and Mr Willms had the intention of growing strawberries on the property. However, it became apparent that the property was too big to maintain. The Willms family subsequently sold their property and purchased another smaller property in Mt Evelyn where Mr Willms worked the land, growing strawberries.

EVENTS PROXIMATE TO DISAPPEARANCE

15. In the late 1960s, it became more difficult for the family to earn a living from their land and Mrs Willms began factory work to support the family. Mr Willms was placed on the disability pension due to his back condition. Around this time, Mr Willms mental health began to deteriorate. He consulted his General Practitioner Dr Hardy, who referred him to Larundal Psychiatric Hospital, where he was admitted on 22 May 1968. He was diagnosed with '*M63 Endogenous Depression*' and was treated with medication and electroconvulsive therapy.
16. Over the following five years, Mr Willms was admitted to Larundel Psychiatric Hospital on two further occasions. He also received outpatient treatment at the Ernest Jones Clinic. During this time, Mr Willms continued to display agitation and suicidal tendencies, with concerns surrounding his failing business, financial concerns and his lack of employment and his desire to provide for his family.
17. According to Mrs Willms, Mr Willms' condition declined further in 1973 and he '*was not happy with anything*'. On 16 July 1973, he was admitted to Plenty Psychiatric Hospital, but discharged himself two days later. He returned home via public transport. He '*was still*

unhappy and frustrated because he could not work', but Mrs Willms believed he was still taking his medications.

18. On 23 July 1973, Mrs Willms left the family home at approximately 6.30am to go to her work in Lilydale. On her return home from work at 4.00pm, she found that Mr Willms was not at home and their car was still in the garage. Mrs Willms spoke to their neighbour, Tony Malvestuto who was working in their front paddock. Mr Malvestuto stated that he had last seen Mr Willms at around lunchtime. He had not observed any unusual behaviour by Mr Willms. Mrs Willms made further enquiries with her neighbours that afternoon and discovered that Mr Willms had been seen travelling on an Adams Bus Company bus from Mt Evelyn to Lilydale at around 3.00pm to 4.00pm.
19. Mr Willms did not return home. On 24 July 1973, Mrs Willms attended Lilydale Police Station and lodged a 'Missing Person Report' on Mr Willm.

POLICE INVESTIGATION

20. On 24 July 1973, Victoria Police created a Missing Person Report and Code Sheet for Mr Willms. The Report noted Mrs Willms' belief that her husband had disappeared due to his mental ill health and that he had previously been admitted to Larundel Psychiatric Hospital. The Report also indicated that Mr Willms was in poor physical health, that he often complained of very sore knees and sometimes found it difficult to walk.
21. Over the following months Mr Willms' family made further enquiries at homeless shelters in the central business district and posted an advertisement in a newspaper asking Mr Willms to return home but they did not receive any response. Analysis of Mr and Mrs Willms' joint bank account did not identify any unusual transactions.
22. On 6 August 1973, Senior Constable (SC) M. F. Dennis interviewed Mrs Willms. During the interview, Mrs Willms stated that she could not offer any further information in relation to her husband's whereabouts. She informed SC Dennis that they had no relatives in Australia, other than their children who lived independently in Melbourne and that Mr Willms had been seen getting on the bus to Lilydale Train Station between 3.00pm and 4.00pm on 23 July 1973. SC Dennis noted that the bus driver in question was identified as Mr Ron Jones.
23. On 9 August 1973, SC G. R. Spencer noted that checks had been conducted in the Lilydale area and enquiries made at the Lilydale Train Station, to no avail. Mr Jones was not able to furnish further information. Police officers also conducted checks at the local psychiatric facilities but were unable to find any evidence of Mr Willms.

24. On 20 January 1974, Sergeant (Sgt) J. B. Curley of Mt Evelyn Police made contact with Mrs Willms and Victor to ascertain whether they had heard any further information in relation to Mr Willms' disappearance. They informed him that they had not received any information at that time.
25. On 31 January 1980, Sgt S.C Jones at District Headquarters in Nunawading noted that Mr Willms' police file was still held in abeyance. Sgt Jones noted that the use of metal detectors meant that more unmarked graves and human remains were being located and that the details of Mr Willms should be kept close at hand in case further information was uncovered. The police file was transferred to Mt Evelyn Police Station.
26. On 11 February 1980, Victoria Police re-interviewed Mrs Willms and she informed police that she had not heard from Mr Willms nor had she received any other information in relation to his disappearance. She opined that her husband was deceased, owing to his mental ill health at the time that he had left their home. Police noted that Mr Willms did not have an available dental record. The police file was transferred to the Missing Persons Bureau.
27. On 7 June 1989, Eales & Mackenzie Solicitors contacted Victoria Police on behalf of Mrs Willms. The solicitors informed police that they had conducted searches through the registrar General's Office for Australian Probate Office registrations and Victorian Registrar of Births Deaths and Marriages (BDM) without obtaining any further knowledge of Mr Willms' fate. They requested that Victoria Police conduct checks of their records, with a view to establishing whether his death had been registered.
28. On 22 June 1989, Chief Superintendent W. Jackson of Nunawading noted that it had been almost 16 years since Mr Willms went missing. In view of the known circumstances, he determined that the request for information by Mrs Willms' solicitors should be granted.
29. On 7 August 1989, Mrs Willms' solicitors reviewed the Victoria Police file. Subsequently, a "presumption of death" was granted and Mr Willms' name was removed from the title of the Mt Evelyn property.
30. In 2007, Mr Willms' file came under the purview of the Bellier Taskforce, a Victoria Police initiative created to address missing persons cold-cases. On 3 December 2007, a Missing Person Risk Assessment for Mr Willms was entered in to the Victoria Police Law

Enforcement Assistance Program (LEAP)⁹ database and enquiries were made through Australia Post, Deed Poll, Immigration, Centrelink and Medicare (PBS) to no avail.

31. On 7 May 2008, an Australian Immigration Status Officer indicated that they had no results for the name "Willms". On 22 July 2010, Centrelink informed Victoria Police that they had no electronic record of Mr Willms. On 29 July 2010, Medicare Australia informed Victoria Police that they had been unable to find any results for Mr Willms by a Pharmaceutical Benefits Scheme (PBS) search.
32. The Bellier Taskforce was subsequently disbanded in 2010, and in February 2011 DSC McDonald was assigned as the primary investigator into the disappearance of Mr Willms. DSC McDonald undertook further inquiries with the Department of Health in relation to Mr Willms' psychiatric history and current Deed Poll information. The Victoria Police Missing Person Unit conducted a further investigation with review of all outstanding cases where body remains had not yet been identified. These cases did not appear to relate to the disappearance of Mr Willms. Their investigation did not provide any further information into the movements or whereabouts of Mr Willms.
33. In February 2016, DSC McDonald attended the Willms' family home in Mt Evelyn. It was noted that the property was no longer worked as a commercial entity and a newer brick home had been built, but the property was otherwise unchanged. Police officers undertook a search of the out-buildings but acknowledged that the search was unlikely to reveal further evidence. DSC McDonald spoke with both Mrs Willms and her daughter Lucy Mackenzie (nee Willms). Both expressed a belief that Mr Willms was deceased, and Mrs Mackenzie reiterated how unwell her father had been at the time of his disappearance.
34. DSC McDonald ascertained that Dr Hardy, Mr Malvestuto and Mr Jones have since passed away. The bus company, Adams Bus Company, no longer exists, and there was no form of CCTV footage available to assist the investigation. Investigators have also been unable to locate Dr Hardy's medical records relating to Mr Willms.

CORONIAL INVESTIGATION

35. Upon review of the Inquest Brief, I requested that DSC McDonald provide clarification of the checks that had been undertaken on the database of unidentified body remains, and if

⁹ On 1 March 1993, Victoria Police implemented LEAP state-wide. The LEAP database stores particulars of all crimes brought to the notice of police as well as family incidents and missing persons. It also includes details on locations, vehicles and persons involved. The database is online and updated constantly, 24 hours a day.

appropriate, to arrange scientific testing to attempt to identify whether any unidentified body remains matched Mr Willms.

36. DSC McDonald subsequently requested a DNA mouth swab from Mrs Mackenzie. She obliged, and a sample was sent to the Victorian Institute of Forensic Medicine (VIFM) for analysis. Manager of Molecular Biology and Chief Molecular Biologist at VIFM Dadna Hartman stated that Mrs Mackenzie's DNA profile was not matched with any profiles contained within the Institute's Missing Persons DNA database.
37. On 1 November 2018, Mr Willm's case was referred to the Scientific Examination and Analysis Centre for Missing Persons. Dr Soren Blau, a Senior Forensic Anthropologist completed an assessment of all available ante-mortem information for Mr Willms. In his report dated 29 January 2019 he stated that ante-mortem information was compared to unidentified human remains stored at VIFM with no match identified. Fingerprints information enquiries confirmed that Mr Willms has no fingerprints on record. Enquiries confirmed that Mr Willms was known to have attended a dentist, however no dental records for Mr Willms can be located. A family reference nuclear DNA sample was provided by Mrs Mackenzie. There were no matches at the time of uploading to the Victorian Missing Persons DNA Database. It noted that following reasonable enquiries regarding a maternal relative, no suitable family member could be located. Therefore, mitochondrial DNA¹⁰ profile information was not available and subsequently, it was not possible to make a comparison between DNA profiles and all unidentified human skeletal remains. There was no information available in Mr Willms' medical records that could potentially assist in the identification process.

INQUEST

38. Pursuant to section 52(1) of the Act, a Coroner may hold an Inquest into any death they are investigating. In light of the circumstances of Mr Willms' death, I considered it appropriate to use my discretion to hold a Summary Inquest on 29 April 2019. However, I did not deem it necessary to hear from any witnesses.

¹⁰ Mitochondrial DNA is maternally inherited. That is, all siblings have the same mitochondrial DNA, which is the same as that of their mother. Cousins through a maternal line would also have the same mitochondrial DNA.

COMMENTS

Pursuant to section 67(3) of the *Coroners Act 2008* (Vic), I make the following comments connected with the death:

1. It has been over 45 years since Mr Willms was first reported missing by his wife and very little information has been gleaned since that first report. Given the surrounding circumstances of Mr Willms' disappearance, it is difficult to understand why it has taken the police so long to report his suspected death to the Coroners Court of Victoria.
2. The Bellier Taskforce was created in response to adverse comments made by His Honour State Coroner Graeme Johnstone in the Inquest into the death of Matthew Bibby.¹¹ His Honour noted systemic shortcomings in Victoria Police missing persons investigations, including, *inter alia*, inadequacies in record-keeping and investigative procedures. The then Office of Police Integrity also made recommendations in relation to missing persons investigations.
3. The Taskforce operated between 2007 and 2010 and comprised of one investigator from each of the five regions established within Victoria Police. In addition to progressing innumerable missing persons matters, these five investigators were tasked with redressing and developing improved processes and systems.
4. In 2013, Coroner Caitlin English (as she then was) finalised the Coronial Finding into the death of Robert John Bennett.¹² Her Honour wrote that the shortcomings in that missing persons investigation were attributable to '*policing standards at the time, attitudes to missing persons and available technology*'.¹³ I believe Coroner English's comments are applicable in this matter. The delays in the investigation into Mr Willms' death are reflective of historical attitudes and not of the current approach taken by Victoria Police in relation to missing persons.
5. I understand that improvements to current systems may not alleviate any compounded grief experienced by Mr Willms' family members. I wish to express my gratitude for their participation in the coronial process and my sincere condolences for their loss.

¹¹ COR 1996 3407.

¹² COR 2013 5574.

¹³ *Ibid* at 51.

FINDING

The investigation has identified that Mr Willms had suffered poor physical health and mental ill health, including suicidal tendencies. The investigation has also identified that Mr Willms had received voluntary inpatient psychiatric treatment from which he had self-discharged one week prior to his disappearance on 23 July 1973.

Police investigation, family investigation and proof of life checks between 1973 and the present have failed to lead any further information of Mr Willms' whereabouts. I note that Mr Willms current age would be 109 years old were he alive today.

I find that William Willms is deceased, and I find that the cause of his death and precise circumstances of his death are unknown.

Pursuant to section 73(1) of the **Coroners Act 2008**, I order that this finding be published on the internet.

I direct that a copy of this finding be provided to the following:

Margarethe Willms

Detective Senior Constable Ross McDonald

Victoria Police Missing Persons Squad

Signature:

AUDREY JAMIESON
CORONER
Date: 29 April 2019

