



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 20 /17

*I, Sarah Helen Linton, Coroner, having investigated the death of **Keven Herbert Leban MILLER (aka Herb MILLER)** with an inquest held at the **Perth Coroner's Court, Court 51, CLC Building, 501 Hay Street, Perth on 30 May 2017** find that the identity of the deceased person was **Keven Herbert Leban MILLER** and that death occurred **on or about 12 February 2009 at sea between Kalbarri and Shark Bay** in the following circumstances:*

Counsel Appearing:

Sergeant L Housiaux assisting the Coroner.

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INTRODUCTION

1. Keven Herbert Leban Miller was an experienced mariner who was last seen alive on 12 February 2009 when he set out to sea in a new boat he had just collected in Kalbarri. At the time he was 53 years old and lived in Useless Loop in Shark Bay, Western Australia. He was planning to pilot the boat home. The journey should have taken less than 24 hours.¹
2. On 16 February 2009 Mr Miller did not turn up for his rostered evening shift. Mr Miller was a reliable employee so his absence caused his manager to become concerned. He made some enquiries to try to locate Mr Miller, which were unsuccessful. The following morning Mr Miller's manager notified the Kalbarri Police that Mr Miller was missing. The local police notified the Water Police and a full scale air and sea search was undertaken to locate Mr Miller. No sign of Mr Miller or his boat were ever found.
3. On 9 February 2016 one of Mr Miller's daughters contacted the Coroner's Court of Western Australia by email in relation to her father. This was the first time Mr Miller's disappearance had been reported to the coroner. On 18 March 2016 the WA Police were asked to provide information to the State Coroner to establish whether there were grounds to suspect that Mr Miller had died.
4. On 8 April 2016 a report was provided by a police officer attached to the Missing Persons Team indicating that police had investigated the disappearance of Mr Miller and the evidence supported the conclusion Mr Miller had died during the voyage from Kalbarri to Useless Loop. On the basis of the information provided the State Coroner determined that pursuant to s 23 of the *Coroners Act 1996* (WA) (the Act) there was reasonable cause to suspect that Mr Miller had died and that the suspected death should be investigated. Following that direction it is a requirement that a coroner must hold an inquest into the circumstances of the suspected death.
5. I held an inquest at the Perth Coroner's Court on 30 May 2017. The documentary evidence comprised a comprehensive report of the police investigation into the disappearance of Mr Miller.² The author of the report, Detective Sergeant Stephen Perejmibida, who is the Officer in Charge of the Missing Persons Team, was also called as a witness at the inquest.

BACKGROUND INFORMATION

6. Mr Miller was born on 30 June 1955 in Waipukurau, New Zealand. He moved to Australia with his family when he was still a child and he grew up and lived most of his life in Australia, spending time in various states and territories. At different times Mr Miller worked as a labourer, transport

¹ Exhibit 1, Tab 2, p. 2; Tab 10, p. 3.

² Exhibit 1.

driver, machine operator, deck hand, station mechanic and road train truck driver.³

7. Mr Miller was in a long-term relationship with Kathleen Backshall and they had three children together, a son and two daughters. Mr Miller and Ms Backshall married on 4 February 1980. The couple eventually divorced on 23 January 1986. Following the marriage breakdown Mr Miller's contact with his children was initially limited and sporadic, but their contact became more regular as the children grew older.⁴
8. In terms of his physical health, it is reported that Mr Miller had worked in Africa in 1996 and contracted malaria whilst there. Mr Miller also underwent surgical repair of a stomach hernia on 27 October 2008. He had been a heavy smoker and drinker for much of his adult life. However, prior to his death he had given up smoking and reduced his alcohol intake as part of an intention to improve his health generally following his hernia operation.⁵ Mr Miller's sister described him as a big strong man who generally enjoyed good health and loved to work.⁶
9. As a person, Mr Miller was described as friendly and easy going. He loved to chat and tell a joke and also loved to spend time watching cartoons with his granddaughter. Around the time of his death Mr Miller appeared generally happy, financially secure and had no enemies or known reason to wish to disappear.⁷ Shortly before he embarked on his journey Mr Miller had been told by his sister that his father was very ill and likely only had weeks to live. Mr Miller was planning to make urgent travel arrangements when he got back to Shark Bay to go to the eastern states to see his father.⁸
10. Relevantly to this inquest, Mr Miller had a great deal of experience on the ocean in yachts and power boats. He had worked on the Dirk Hartog barge for a number of years and also worked on crayfishing boats out of Geraldton. He was a very capable seaman and had previously sailed a boat from Fremantle to Geraldton. Mr Miller had owned two boats since he began living at Useless Loop.⁹ Mr Miller was able to read charts and was comfortable as the skipper.¹⁰

PURCHASE OF THE 'SEA HAWK'

11. Around mid-December 2008 Mr Miller contacted David Duthie about a boat that Mr Duthie had advertised for sale. The boat was a 42 foot (12.8 metre) jarrah hulled fishing boat known as the Sea Hawk. The registration of the boat was DE109. Mr Miller travelled to Kalbarri from Useless Loop to view the boat and they negotiated a sale, with Mr Miller agreeing to purchase the boat for \$15,000. Mr Miller paid for the boat by bank cheque at that time

³ Exhibit 1, Tab 2, p. 5.

⁴ Exhibit 1, Tab 2, p. 5.

⁵ Exhibit 1, Tab 2, p. 5; Tab 8.

⁶ Exhibit 1, Tab 9.

⁷ Exhibit 1, Tab 2, p. 5; Tab 8; Tab 9.

⁸ Exhibit 1, Tab 2, p. 6; Tab 9.

⁹ Exhibit 1, Tab 2, p. 6; Tab 6 [17] – [18].

¹⁰ Exhibit 1, Tab 3 [36].

but then left the boat in Kalbarri in the care of Mr Duthie for a period of time.¹¹



Exhibit 1, Tab 10, p. 4 – Miller’s Vessel ‘Sea Hawk’

12. Mr Miller travelled back to Kalbarri at one stage to fit some cigarette lighter type power outputs on the boat. While Mr Duthie was looking after the boat he also replaced a bank of batteries in the boat and had a person dive on the boat to clean the propeller and underside of the boat. Prior to selling the boat Mr Duthie had also replaced the switchboard and repaired the alternator. There was an auto pilot feature on the boat but this was faulty and Mr Miller was apparently aware that it did not work.¹² The engine had not been recently serviced but Mr Duthie asserted it always ran well and started without issue every time.¹³
13. In terms of safety features, the Sea Hawk had an old style EPIRB and flares on board. These were located in a sealed barrel. Mr Miller had apparently attempted to get a new style EPIRB prior to his trip, but had not been able to do so for some reason.¹⁴ Mr Miller equipped himself with a hand held GPS and the boat was fitted with a marine radio with antenna, which Mr Duthie had previously used to communicate with Kalbarri Volunteer Marine Rescue.¹⁵
14. The boat was fitted with two bilge pumps, one of which was only manually operated but the other was selectable between manual and automatic. Prior to leaving Kalbarri, Mr Miller asked Mr Duthie to set that pump to automatic, which he did. When Mr Duthie had kept the boat in the inlet he

¹¹ Exhibit 1, Tab 3.

¹² Exhibit 1, Tab 3 [15], [22].

¹³ Exhibit 1, Tab 3 [13], [20].

¹⁴ T 9; Exhibit 1, Tab 3 [16].

¹⁵ Exhibit 1, Tab 3 [18].

indicated he would pump water out about once a week but there were no major leaks in the boat.¹⁶

15. The boat had a life raft on board, which was stored down in the hull, and it also had a yellow plastic dinghy and an aluminium dinghy on the deck and an outboard motor was provided by Mr Miller.¹⁷
16. Mr Miller had previously told Mr Duthie he was going to take the boat back to Useless Loop. In preparation, Mr Duthie had filled the boat up with fuel. The motor used approximately 12 litres per hour and the full tank held 1600 litres.¹⁸

EVENTS LEADING UP TO THE DISAPPEARANCE

17. Mr Miller had told his daughter, Tammy, that he had bought a boat in Kalbarri and intended to collect it and bring it back to Useless Loop. At the time she spoke to him mid-January 2009 he seemed to be in good spirits about the project. He was reportedly a little 'on edge' but she attributed this to his recently having given up smoking.¹⁹
18. Mr Miller's daughter Cindy last saw Mr Miller on 20 January 2009 when he stayed the night at her house. He also told her about the boat purchase and appeared to be in good spirits, but she was also aware that he had had some problems arranging to collect the boat and was now intending to pick it up and pilot it back to Useless Loop in February 2009.²⁰
19. Mr Miller originally asked a friend, Stephen Perich, to help him drive the boat back to Useless Loop with him. Mr Perich knew Kalbarri as he had a boat moored there. Based on his knowledge of the area, Mr Perich suggested they wait until the 'Big Bank' (an authorised fishing area for rock lobster that opens for a limited period at the start of the year) opened. Mr Perich's reasoning was that there would be more boats in the water at that time that might be able to help them if they ran into trouble, which would make their voyage safer. The Big Bank was scheduled to open in January or February 2009. However, the Fisheries Minister unexpectedly closed the fishery that year to protect lobster breeding stock, which meant Mr Miller's plans had to change.²¹
20. A week before he left, Mr Miller asked Mr Perich if he could go down to Kalbarri with him after work on Wednesday, 11 February 2009 to collect the boat. Mr Perich had plans for the Friday, so he indicated he wouldn't be able to help. He understood Mr Miller was keen to bring the boat to Useless Loop, but they didn't discuss any alternative plans.²²

¹⁶ Exhibit 1, Tab 3 [23] – [25].

¹⁷ Exhibit 1, Tab 3 [29].

¹⁸ Exhibit 1, Tab 3 [14], [21].

¹⁹ Exhibit 1, Tab 7.

²⁰ Exhibit 1, Tab 8.

²¹ Exhibit 1, Tab 6.

²² Exhibit 1, Tab 6.

21. It appears from the evidence that when Mr Perich wasn't available to assist, Mr Miller decided to do the trip on his own. One of Mr Miller's daughters reports that he had gone to Kalbarri and tried unsuccessfully to collect the boat four times before but the boat had had problems and hadn't been ready, which might explain why he was keen to complete the job this time even though he would have to do it alone.²³
22. Mr Miller drove down to Kalbarri on Thursday, 12 February 2009 with the intention of taking charge of the Sea Hawk from Mr Duthie. Mr Miller sold Mr Duthie the vehicle he had driven to Kalbarri.
23. Mr Duthie assisted Mr Miller to load onto the boat a toolbox, 9kg portable stove and an esky with ice and drink. Mr Miller mentioned having purchased food and Mr Duthie assisted to fill up a large water container on the boat, in addition to one that was already filled.²⁴
24. At approximately 1.15 pm Mr Duthie skippered the boat out of the Kalbarri inlet with Mr Miller on board, as the inlet was very muddy and Mr Duthie was familiar with navigating it in those conditions. Mr Duthie's friend came and collected him in a dinghy, which left Mr Miller the sole person on board the Sea Hawk. Mr Miller had told Mr Duthie that he intended to head out about 6 nautical miles off the coast and then head north. This plan was in part to avoid getting too close to the Zuytdorp Cliffs, which form an almost unbroken line along the coast from Kalbarri to Steep Point in Shark Bay and rise out of the Indian Ocean to hundreds of feet in height. They are notoriously dangerous if you travel too close to them.²⁵ Mr Miller's plan was to make it to Steep Point at about 3.00 am to 4.00 am on Friday and then wait until daybreak to negotiate around the point in towards Useless Loop.²⁶ Mr Duthie last saw Mr Miller's boat heading out to sea in a westerly direction.²⁷
25. At the time Mr Miller headed out to sea the weather conditions were unfavourable, with reported high winds and a large swell. Those conditions were normal for that time of year in that region.²⁸

THE SEARCH FOR MR MILLER

26. Mr Miller had worked at the Shark Bay Salt Mine at Useless Loop since July 2004. He was described as a very steady worker with minimal absenteeism. He normally worked a roster of ten days on and four days off. He finished his last shift on Wednesday, 11 February 2009 at 6.00 pm. He was next rostered to work on Monday 16 February 2009 on the night shift.²⁹
27. It was well known around Mr Miller's workplace that Mr Miller had bought a boat and intended to sail it back from Kalbarri. Mr Miller's manager,

²³ Exhibit 1, Tab 8 [4].

²⁴ Exhibit 1, Tab 3 [26] – [28].

²⁵ Exhibit 1, Tab 10, p. 12.

²⁶ Exhibit 1, Tab 3 [30].

²⁷ Exhibit 1, Tab 3 [33]; Tab 10.

²⁸ Exhibit 1, Tab 2, p. 3; Tab 10, p. 12.

²⁹ Exhibit 1, Tab 5.

Kenneth Grinter, rang Mr Miller's home telephone at about 6.00 pm on Sunday 15 February 2009 (two days after Mr Miller was scheduled to have reached Useless Loop if he had kept to his plan). There was no answer, so Mr Grinter left a message telling Mr Miller that he was needed to work the day shift, rather than the night shift, the next day.

28. The following day, being Monday 16 February 2009, Mr Miller did not turn up for the day shift. Mr Grinter presumed that Mr Miller had not received his message, so he was not initially concerned. However, when Mr Miller did not arrive for his originally scheduled night shift, Mr Grinter became concerned as Mr Miller was usually very reliable. Mr Grinter made some enquiries and no one reported seeing Mr Miller, nor could anyone confirm whether Mr Miller had left Kalbarri on his boat as planned. Mr Grinter called Mr Miller's daughter, Tammy, and told her Mr Miller had not turned up for work, which surprised her too. She started making enquiries with other family members while Mr Grinter contacted Kalbarri police to see if they could establish whether Mr Miller had left Kalbarri.³⁰
29. After Tammy Miller had made unsuccessful enquiries with other family members, she contacted police to report her father missing on 17 February 2009.³¹
30. Enquiries were made with Mr Miller's neighbours, work colleagues and families, none of whom had seen him. The last time Mr Miller used his phone was at 12.45 pm to call Mr Duthie on the day he took charge of the Sea Hawk.³²
31. It was established that the last person known to have seen Mr Miller alive was Mr Duthie at about 1.00 pm on 12 February 2009. Knowing that Mr Miller was last seen heading out to sea and given the length of time that had elapsed, under the auspices of the *Emergency Management Act 2005* (WA) the WA Police coordinated an extensive search and rescue operation for Mr Miller in the sea off the coast of Western Australia from Kalbarri to Shark Bay. It was known from the outset that an extremely large search area would have to be covered, in the vicinity of 20,000 square kilometres. To cover such a large area many aircraft were used, as well as various vessels.³³
32. The search ran for four days, from Tuesday 17 February 2009 to Friday 20 February 2009. The search used 26 aircraft on multiple runs and searched over 200,000 square nautical miles.³⁴ At the time it was reported the search was the largest sea search ever undertaken by WA Police.³⁵
33. If Mr Miller's vessel had still been afloat, it is believed by the search coordinators that it would have been seen by the search observers or detected on the highly technical Defence Ford Radar used. No debris was located belonging to the Sea Hawk and no sign of Mr Miller was ever

³⁰ Exhibit 1, Tabs 5 and 7.

³¹ Exhibit 1, Tab 7.

³² Exhibit 1, Tab 10.

³³ Exhibit 1, Tab 10, p. 4.

³⁴ Exhibit 1, Tab 19.

³⁵ T 6; Exhibit 1, Tab 2, p. 3.

detected.³⁶ By the fourth day given the length of time that Mr Miller had been missing, it was concluded that the time had well exceeded the time frame for survival and any chance of finding Mr Miller alive had gone. Accordingly, the search operation was suspended pending any further intelligence. Mr Miller's family were informed of the decision.³⁷

34. Sergeant Michael Wear from WA Water Police assumed overall coordination of the incident. He concluded that the lack of any debris suggests a catastrophic incident may have occurred and the vessel went to the bottom of the ocean. If Mr Miller's boat had travelled or drifted into the Zuytdorp Cliffs, it is also possible the boat would have been smashed to pieces and never located or debris could possibly have gone into caves along the cliff face.³⁸
35. It is also notable that Mr Miller had a radio and EPIRB but no radio communications were received from the boat and the EPIRB was not activated, suggesting a sudden and dangerous incident occurred.
36. As for the possible reasons why Mr Miller and his boat were taken by the ocean, it is only speculation as to how and why it occurred. Possibilities suggested included mechanical failure, weather and sea conditions and an event affecting Mr Miller's health.³⁹

HAS DEATH BEEN ESTABLISHED?

37. Mr Miller has made no contact with his family since leaving Kalbarri on 12 February 2009. His two daughters and sister have all indicated that this is out of character for him, as they were a close family and he kept in regular contact with them by telephone.⁴⁰
38. The WA Police have conducted a number of 'proof of life' checks with various businesses, government agencies and financial institutions and it has been established that Mr Miller has not accessed his bank account, despite having substantial money in credit, not used Medicare or PBS services, not been in contact with police in any state or come to the attention of the Department of Immigration.⁴¹
39. There police have found no evidence of criminality in relation to Mr Miller's disappearance.⁴²
40. No one has come forward to suggest any reason why Mr Miller might want to disappear suddenly without notifying his workplace or family. He had a good job, his finances were in good order, he had no known disputes with any person. Mr Miller had been intending to make an urgent trip to see his dying

³⁶ T 6.

³⁷ Exhibit 1, Tab 10; Tab 11; Tab 19.

³⁸ T 6 – 9; Exhibit 1, Tab 10, p. 13.

³⁹ Exhibit 1, Tab 10, p. 13.

⁴⁰ T 9.

⁴¹ T 9; Exhibit 1, Tab 2.

⁴² Exhibit 1, Tab 2.

father shortly after he returned to Shark Bay, and it is very unlikely he would have failed to do so if he was able.

41. All possible investigative avenues available to the WA Police have been exhausted in attempting to locate Mr Miller. Detective Sergeant Perejmibida confirmed at the inquest that the results of the police investigation support the conclusion that Mr Miller died at sea sometime after he left Kalbarri on 12 February 2009.
42. Mr Miller's family appear to have already accepted that he died during the ill-fated sea journey in February 2009, which seems reasonable given his absence for these many years.⁴³ This inquest is really about giving them some final, official confirmation of what they already know in their hearts.
43. Based on all of the evidence I am satisfied beyond reasonable doubt that Mr Miller is deceased and I so find.
44. Having concluded that Mr Miller has died, it is clear from the circumstances surrounding his death that his death is a reportable death under the terms of the *Coroner's Act*, and it is my obligation to try to determine the cause of death and how the death occurred, if possible.

DATE, PLACE, CAUSE AND MANNER OF DEATH

45. I am satisfied that Mr Miller has died, but as to when, where and how he died, there is limited information on which to base a finding.
46. I am satisfied that Mr Miller died sometime on or after 12 February 2009 but as to how close to that date I cannot be sure. There was evidence that if all had gone to plan, he should have reached Shark Bay the following day. There was also evidence that if he was still in the area when the search began on 17 February 2009, he should have been detected by radar or by aerial searching. That puts the date to between 12 February and 17 February 2009. However, given the circumstances and the relatively short time the journey should have taken if it had been without incident, in my view it is most likely Mr Miller died on or close to 12 February 2009 and I will therefore limit the date of death to on or about 12 February 2009.
47. Given Mr Miller's last known whereabouts were at sea, and his voyage started at Kalbarri and was due to end in Shark Bay, I find that Mr Miller died at sea somewhere between Kalbarri and Shark Bay.
48. As Mr Miller's remains have not been discovered, his cause of death is difficult to determine. Police investigators have suggested scenarios consistent with an accidental death or a verdict of misadventure, given it might be found that Mr Miller undertook an inherently risky venture going out to sea on his own in an unfamiliar boat for a long sea journey in late afternoon/night. There is also the possibility that Mr Miller had an unexpected health event (and the boat went down after he died), which

⁴³ Exhibit 1, Tabs 7, 8 and 9.

might result in a finding of natural causes. Given the various possibilities I am unable to find that one is more probable than the others. Accordingly, I make an open finding as to the manner of death.

CONCLUSION

49. Mr Miller set out on a solo ocean journey in his new boat on 12 February 2009 and was never seen again. He did not follow recommended practice to notify the local volunteer search and rescue group, or a family member or friend, about his departure and predicted arrival in Shark Bay, so his absence was not reported to police for several days. Although a large search and rescue operation was then launched, the length of time that had elapsed reduced the likelihood that Mr Miller would be found alive, or at all. Sadly, despite an extensive search over a number of days, no sign of him or his boat has ever been found.
50. The death of Mr Miller is a reminder that even an experienced mariner can face insurmountable dangers when at sea. The circumstances of his death emphasise the need for those embarking on a sea voyage to let people know about their plans before they leave.

S H Linton
Coroner
13 June 2017