



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 26/20

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **Christen Lee Fogarty (also known as Christen Lee Shar)** with an inquest held at the **Coroner's Court, Court 83 Central Law Courts, 501 Hay Street, Perth,** on **24 March 2020** find the death of **Christen Lee Fogarty (also known as Christen Lee Shar)** has been established beyond all reasonable doubt, and that the identity of the deceased person was **Christen Lee Fogarty** and that death occurred sometime in the timeframe following **25 July 2002** at **an unknown location in the Pilbara** in the following circumstances:*

Counsel Appearing:

Senior Constable Craig Robertson assisting the Coroner.

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INTRODUCTION

Late on Wednesday 24 July 2002 Christen Lee Fogarty (Mr Fogarty) stayed at home in Newman when his mother left to travel to Meekatharra. Thereafter Mr Fogarty did not appear to be at home when checked upon by family and friends on 26, 27 and 29 July 2002. His mother reported him as missing to police at Mount Magnet on the evening of 29 July 2002. Despite a concerted attempt by police and other emergency services, Mr Fogarty has never been positively sighted again and no confirmed trace of him located to indicate he survived for any extended period following the 24 July 2002.

The inquest into the disappearance of Mr Fogarty was held in Perth. The documentary evidence comprised the brief of evidence, Exhibit 1 Tabs 1-27 and the Public Notice of inquest dated 13 March 2020 as Exhibit 2. Oral evidence was heard from Acting Commander Brad Sorrell (Commander Sorrell) who in 2002 had been a Sergeant at Newman Police Station where the family of Mr Fogarty were then resident. Evidence of later enquiries was provided by Senior Constable Alison Walker, currently working at the Child Abuse Investigation Team.

Long Term Missing Persons Project (LTMP)

In 2017 it was established there were a number of files relating to the long term disappearance of a number of people who had been in Western Australia at the time of their reported disappearance.

Section 23(1) of the *Coroners Act 1996 WA* (the Act) allows the State Coroner to direct an investigation into a suspected death in certain circumstances without a body, for the purposes of allowing a coroner, under s 23(2), to establish beyond all reasonable doubt that death has occurred. The investigation must be done by way of inquest and will attempt to clarify how the death occurred and the cause of the death. This effectively brings the suspected death into the ambit of s 25 of the Act and allows registration of the death under the *Births, Deaths and Marriages Registration Act 1998*.

The reported number of LTMP made it unrealistic for the Office of the State Coroner (OSC) to absorb those matters into the already long outstanding inquest list in a timely manner. A plan was proposed for a project to clear the backlog of LTMP files once it had been determined the matters fitted the circumstances set out in s 23(1) of the Act. That is, the State Coroner or delegate had reasonable cause to suspect the person had died and the death was a reportable death (s 3 of the Act).

In 2018 funds were approved for a coroner to work exclusively on the LTMP cases on a part-time basis for twelve months, as a separate listing from the OSC general inquest list. This followed a pilot project of four inquests conducted in 2018.

In 2019 a coroner was appointed for that project with the support of an in-house Coronial Investigation Squad (CIS) police officer as Counsel Assisting (CA).

Work on the files indicated a number of disappearances related to specific areas of Western Australia such as the Kimberley around Kununurra or Broome, and Albany. For these matters it was decided that, while there is always a preference for inquest to be held in the communities to which they relate especially for indigenous communities where there is an emphasis on oral history, resources would not be effectively utilised for all matters to be heard in the place of disappearance. Instead matters related to remote areas were considered from the perspective of the best availability for relevant witnesses. Where there were no witnesses available in the relevant area of disappearance the matter would be heard in Perth.

In the case of Mr Fogarty CA was unable to contact any witnesses prepared to assist the court further and the inquest relied on the oral evidence of Commander Sorrell in Perth.

The anticipated outcome of the LTMP project was that by June 2020 all reported LTMP matters would be resolved and that future missing person files would be dealt with in the normal course of the OSC usual business.

THE DECEASED

Mr Fogarty's birth certificate indicated he was born to Phillip Harold Fogarty and Marlene Bebie Shar on 3 October 1979 at King Edward Memorial Hospital in Subiaco, Western Australia.¹ Thereafter it appears his parents did not stay together and Mr Fogarty was generally referred to by his mother's surname as Christen Lee Shar. For the purposes of this finding I have adopted the name from his birth certificate, while accepting at the time of his disappearance he was generally known by the surname Shar.²

At the time of Mr Fogarty's disappearance his family were living in a Western Desert community house at 29 Culldorah Street, Newman, and comprised of Mr Fogarty's mother, Marlene Shar, his sister Roxanne Shar, another sister and four brothers. Roxanne's daughter also lived with the family. The family had recently arrived in Newman³ and prior to that had lived at both Mount Magnet and the Yulgajinna Community, Meekatharra,⁴ areas with which Mr Fogarty was familiar.

Ms Shar advised the police Mr Fogarty had an undiagnosed mental disability with the capacity of a 12 year old. She explained he could not solve problems for himself, but would retain information if shown what to do. She described him as a generally happy person who got on well with his family, but was very shy.⁵ Mr Fogarty had been recommended for a Disability Pension by Dr Manton of Mount Magnet many years before.⁶ As a result he had his own passbook account with the Commonwealth Bank, however, his mother had control of his passbook. Commander Sorrell advised the court that Mr Fogarty's disability was obvious on attempting to communicate with him.⁷

Ms Shar also advised police Mr Fogarty was competent to look after himself with the basics of camping. He had been taught how to look for water holes and how to use sheep trails to find his way to places where he was likely to be located by local

¹ Exhibit 1 Tab 14

² Transcript 24.3.20 page 5

³ Transcript 24.3.20 page 17

⁴ Exhibit 1 Tab 6

⁵ Exhibit 1 Tab 6

⁶ Exhibit 1 Tab 3

⁷ Transcript 24.3.2020 page 4, 12

landowners when in the bush. In his normal frame of mind Ms Shar was confident Mr Fogarty would be able to look after himself for a short period.

The problem was that when Mr Fogarty was unsure of himself he would retreat into himself and become despondent.⁸ He preferred to stay at home, rather than mixing with other people, although he was genuinely happy with the family when they were together. Both Mr Fogarty's mother and Roxanne described how a difficulty within the family would be perceived by Mr Fogarty as a criticism of himself and may cause him to run away. This had happened when they were living in Mount Magnet when Mr Fogarty was 15 or 16 years of age and had accidentally been involved in an incident with his little brother which had caused his little brother to be hurt.⁹ In response to the incident Mr Fogarty had run away from home and the entire family were involved in searching for him, with his aunt eventually finding him hiding in the back of a vacant house with his bicycle, two doors down from the family home. Ms Shar indicated *"If he gets told off, he gets upset and can't really handle it. He is very shy, and someone has to talk to him first before he will talk to them"*.¹⁰

This resulted in Mr Fogarty receiving little schooling and he could not read or write. He had been the patient of Dr Manton many years previously and the only time he had seen a dentist was whilst he was at school in Mount Magnet. There were no significant dental records for Mr Fogarty.¹¹

Commander Sorrell stated that to his knowledge the family had only been in Newman for a relatively short period of time and due to his mental disability, it was quite possible Mr Fogarty may have felt ostracised by people in the town. Commander Sorrell did not believe Mr Fogarty felt comfortable in Newman and thought it quite possible he would choose to walk away from Newman when despondent or distressed,¹² as had been his first contact with Mr Fogarty about a month before his disappearance.

⁸ Transcript 24.3.2020 page 6

⁹ Exhibit 1 Tab 5, t6

¹⁰ Exhibit 1 Tab 6

¹¹ Exhibit 1 Tab 3

¹² Transcript 24.3.2020 page 4, 12

Ms Shar advised the police that approximately a month before his disappearance they had been at home in Newman and her niece had been living with them. Roxanne explained that up until an incident approximately a month prior to his disappearance, Mr Fogarty appeared to be settling in Newman and had even started going to the shops with the family. However, following an incident with her cousin, Mr Fogarty had become withdrawn. Roxanne explained the cousin had been making advances toward Mr Fogarty of a sexual nature. When Roxanne told Ms Shar, Ms Shar asked her niece to leave the family home. Mr Fogarty told Roxanne that behaviour had been continuing for a number of years, including when the family lived at the Yulgajinna Community near Meekatharra. When the family discussed this they recalled that back at the community Mr Fogarty had previously taken off to the rubbish tip and isolated himself.¹³

As a result of his cousin being asked to leave the home in Newman, Mr Fogarty became upset and believed the situation was his fault. He asked his mother if he could have some money and when she did not have any he disappeared. He did not reappear for dinner that night and the family went out to search for him, unsuccessfully. They reported the matter to the Newman police and that was the occasion when Commander Sorrell found Mr Fogarty walking along the highway and noted he had a detectable disability. The police returned Mr Fogarty to his home and he advised his mother he thought the whole incident with his cousin had been his fault. It clearly distressed him and he cried and that was the only time his mother had ever seen him cry.¹⁴

Ms Shar stated the only times she had known Mr Fogarty to actually disappear for an extended period by himself was the time in Mount Magnet when his brother was hurt and the time in Newman when he felt the incident with his cousin was his fault.

The family frequently went camping and on those occasions Mr Fogarty would often remain home by himself. Although he was perfectly competent when camping to find water and to feed himself he genuinely preferred to stay home and was quite capable of looking after himself when left at home. Roxanne stated that when the

¹³ Exhibit 1 Tab 5

¹⁴ Exhibit 1 tab 6

family left Mr Fogarty alone they would leave him food in the fridge and he was able to cook meat for himself.¹⁵

Following the incident with his cousin it was apparent to the family Mr Fogarty was more withdrawn than usual. Although it was not known to his mother, Mr Fogarty had advised his younger brother, Raymond, that he wanted to go somewhere where he wouldn't be found.¹⁶

It was Commander Sorrell's view that following the incident with his cousin Mr Fogarty was not comfortable in Newman and may have been attempting to return to Meekatharra which was familiar to him.¹⁷

DISAPPEARANCE

On Wednesday 24 July 2002 the entire family left Newman for Meekatharra, intending to travel from there to Mount Magnet. Mr Fogarty had been asked repeatedly by his mother to go with the family, but he stated he wished to stay home and eventually his mother agreed to that because it was what he usually did. She was quite confident because whenever he had been left behind before he would always be at home when they returned.

Ms Shar thought Mr Fogarty seemed to be a little happier at the time they left than he had been for the previous month following the incident with his cousin.¹⁸ Ms Shar's intention was to leave late on the Wednesday, drive to Yulgajinna Community to collect some of her possessions, and then return home via Mount Magnet on the following Sunday (28 July 2002). It was late when they left, approximately 11.30pm towards midnight. The last Ms Shah saw of Mr Fogarty was him standing outside the front door when they drove off in their Toyota.

On Friday 26 July 2002 Ms Shar rang Gina Riley (Ms Riley) and asked if she would go and check on Mr Fogarty. When she rang Ms Riley back on Saturday Ms Riley informed her the house was locked up and no-one was present. Ms Shar was not

¹⁵ Exhibit 1 Tab 5

¹⁶ Exhibit 1 Tab 6

¹⁷ Transcript 24.3.2020 page 14

¹⁸ Exhibit 1 Tab 6

particularly concerned and on the Monday 29 July 2002 asked her niece, Jennifer Long (Ms Long), to go and check for Mr Fogarty. When Ms Shar rang back she was told Mr Fogarty wasn't at home and Ms Long didn't believe he had been there for some time. Ms Long believed Mr Fogarty had just got out of bed and left, presumably that would be the morning of 25 July 2002.¹⁹ Ms Long had been feeding the dogs.

Ms Shar then rang Julie Finley (Ms Finley) in Newman and asked if Ms Finley and her defacto would attend their home in Newman to check on Mr Fogarty. When Ms Shar rang Ms Finley back she was advised there did not appear to be any sign of Mr Fogarty at the family home.

INVESTIGATION

At that stage Ms Shar rang the Newman police and spoke to Senior Constable Ebsary who advised her to go into the Mount Magnet police station and file a Missing Person Report (MPR). Ms Shar attended in person, but the police station was closed so she returned to where she was staying and Sgt Wilden took a MPR from Ms Shar over the telephone.²⁰

In that MPR Sergeant Wilden of Mount Magnet police described Ms Shar as stating Mr Fogarty was *"Stressed out over family incident and blaming himself. Not a major incident but due to mental illness feelings are heightened over minor incidents"*.

The Newman running sheet indicated Newman police received information from Mount Magnet with respect to Mr Fogarty's disappearance on the evening of Monday 29 July 2002. Sergeant Wilden requested Newman police attend at 29 Culldora Street, Newman to check on Mr Fogarty. Senior Constable Ebsary took police aid, Landy Musso, with him because Mr Musso knew Mr Fogarty. Mr Musso was well-known through the Martu community and assisted the police with enquiries.²¹

¹⁹ Exhibit 1 Tab 7

²⁰ Exhibit 1 Tab 3

²¹ Exhibit 1 Tab 7

Senior Constable Ebsary attended at the home address that night and could find no-one in the house although the two small dogs in the backyard appeared to be cared for. It was later established Ms Long was attending to that matter.

Thereafter the Newman running sheet with respect to Mr Fogarty's disappearance records all steps undertaken by the police in an attempt to locate Mr Fogarty. The running sheet is significant for its detail and comprehensiveness. Commander Sorrell advised he had recently designed that style of running sheet and certainly it is one of the most comprehensive this court has seen with respect to missing persons. Initially Commander Sorrell suggested Ms Shar make enquiries with family in Meekatharra in case Mr Fogarty had returned there.²²

Enquiries by the police indicated Mr Fogarty had not been positively identified by any person following the family leaving the home late on the 24 July 2002. They had been actively searching for Mr Fogarty since hearing he was no longer at home. Police asked Ms Shar for a list of items Mr Fogarty may have taken with him had he intended to leave home. They checked the house to find all those items were still in the home which implied Mr Fogarty should still be in town.

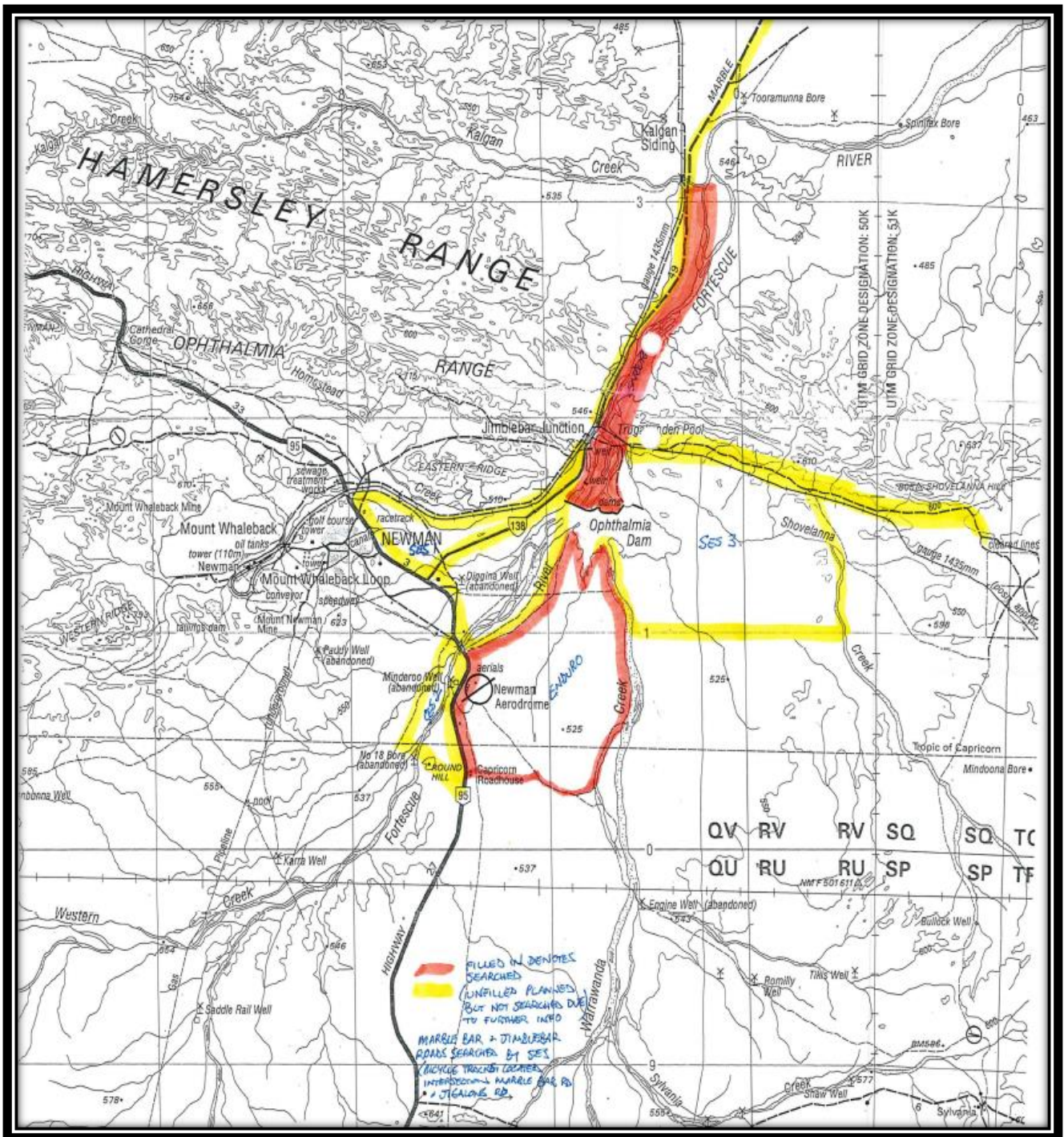
Shortly after midnight, in the early hours of the 30 July 2002, Ms Shar rang Newman police and advised she wished them to conduct a land search for Mr Fogarty. Ms Shar was told the information to hand did not provide any parameters for a search other than in the vicinity of the town. Commander Sorrell indicated in court the lack of an area specified for a land search (LANDSAR) made a comprehensive search impossible.²³ The delay in police being involved in a search was also an issue.²⁴

On the following page is a map showing the areas eventually searched.

²² Transcript 24.3.20 page 5, Exhibit 1 Tab 7

²³ 24.3.2020 pages 8, 20

²⁴ Transcript 24.3.2020 pages 5, 8, 21



Map showing areas searched Exhibit 1 Tab 9

At lunchtime on 31 July 2002 Ms Shar attended at Newman police station and reported she had made inquiries with Meekatharra, but nobody had any new information for her or the police. At that point Ms Shar advised the police

“Christen has been very depressed since Yasmin left a couple of weeks ago. He may squat in places where water is nearby. He may frequent the tip. He may frequent the speedway. Sticks to himself. He may camp in old cars or buses.”²⁵

²⁵ Exhibit 1 Tab 7

Ms Shar was also arranging for local trackers to see if they could assist. She was asked to remain in contact with Newman police if she became aware of any new information which might assist police develop parameters for a search. Police continued the search on the sorts of places Ms Shar had indicated Mr Fogarty may frequent.²⁶ It was apparent by this time it was considered possible/likely Mr Fogarty had his bicycle with him.

On the afternoon of Wednesday 31 July 2002 Commander Sorrell, a qualified LANDSAR co-ordinator, liaised with the Newman SES to consider parameters for a search area.

The local publicity surrounding Mr Fogarty's disappearance had reminded police of a report from Capricorn Roadhouse that a person riding a pushbike had been seen on the afternoon of Thursday 25 July 2002, north of the Nullagine turnoff. The rider of the pushbike had informed Ellie Gardiner (Ms Gardiner) that he was "*just going for a ride*" when she asked him why he was riding there. Mr Fogarty was unknown to the people in the vehicle, however, it was considered possible the person was Mr Fogarty on his pushbike and that sighting approximately a week earlier was factored into the police search.²⁷ Ms Shar confirmed with police that Mr Fogarty's mountain bike was missing from their home address.

Commander Sorrell confirmed Mr Fogarty may have felt unwelcome in Newman due to his disability, however, was confident the search for Mr Fogarty by the police aides and communities was genuine in its communication with the police. There was no trace of Mr Fogarty.²⁸ The search parameters were extended and further defined on Thursday 1 August 2002. Ms Shar was informed of the intended area and assisted with comments of her own with respect to trackers she had already utilised.

Information had been provided from another source that the rail co-ordinator from BHP had seen "*an Aboriginal man riding a pushbike along the Marble Bar Road near*

²⁶ Transcript 24.3.2020 page 9

²⁷ Exhibit 1 Tab 7

²⁸ Transcript 24.3.2020 page 23

the rail crossing at the Jimblebar Junction.” It was not possible to define when, or the person’s appearance other than it had been on a morning the previous week. Ms Shar was convinced her son’s ability to survive in the existing conditions was high. A new search area was defined and an ultralight aircraft deployed.

The search included SES volunteers, police officers, Enduro Club members on motorbikes, Qantas, with the ultra-light plane, local pilots keeping watch and local shire rangers to assist with communications. The police personnel included well-respected Aboriginal trackers and senior members of the local Aboriginal communities.²⁹

There was extensive media coverage, but unfortunately no confirmed sightings of Mr Fogarty.

On the afternoon of 1 August 2002 SES searchers located bicycle tracks near the Jigalong turnoff and police attended with SES to determine whether there was a new search area. Police confirmed mountain bike tracks were tracked to an old car body wreck with a fire which indicated someone may have camped there for the night. Items located in the area of the car wreck were taken back to Newman where Roxanne confirmed she did not believe they belonged to Mr Fogarty.³⁰

Trackers on the 2 August 2002 followed the bicycle tracks and indicated it appeared as though a motor vehicle, Holden, had interfaced with the bicycle tracks and the trackers were confident that whoever was with the bicycle had been picked up by the Holden along with the bicycle. There were no more tracks. There was no indication of any violence used to encourage whoever had been on a bicycle into the Holden.³¹ There was no confirmation the person earlier observed on the bicycle, or tracked on a bicycle, was Mr Fogarty especially taking into account the clothing from the car body had not been identified by his sister as belonging to Mr Fogarty.

²⁹ Exhibit 1 Tab 2, Transcript 24-3-2020 pages 12-14

³⁰ Exhibit 1 Tab 7

³¹ Transcript 24.3.2020 page 10

The police were mindful of the alleged comment by Mr Fogarty that he wanted to go somewhere where his mother would not find him which suggested a bigger centre of population where he would not be recognised.

It would be fair to say the running sheet indicated there were many suggestions as to what may have happened to Mr Fogarty, and suggestions of places to look , all of which appear to have been followed up by the police without positive identification of Mr Fogarty or confirmation of his presence.

Commander Sorrell believed that failing Mr Fogarty being picked up by a vehicle, the chances of him surviving without water, and there was no evidence of his attendance at waterholes, was becoming very remote.

In March 2003 Ms Shar provided police with a DNA sample in the event remains of Mr Fogarty were located, however, to date there has been no indication of Mr Fogarty either alive or deceased.

Commander Sorrell agreed Mr Fogarty's disability was obvious and that should he have surfaced in a community in which he was unknown he would have come to the attention of the authorities due to his obvious inability to fend for himself.³² The concern was that Mr Fogarty may deliberately avoid detection due to the perception he had misbehaved. However, it would have been obvious, had he survived for any period of time, any later contact with people would have brought him to the attention of the authorities.

All further inquiries with modes of transport, medical facilities and bank accounts proved negative and although all information was checked, there was no further input with respect to location of Mr Fogarty following 2002. In February 2009 Mr Fogarty's information was uploaded onto the central police database as a missing person and then onto the national missing person database for Australia-wide information.³³

There has been no further information recorded for Mr Fogarty.

³² Transcript 24.3.2020 page 17

³³ Exhibit 1 Tab 2

Ms Shar passed away in 2010 and Mr Fogarty's father in 2016. Later contact with Mr Fogarty's sister, Roxanne, has been unproductive, although it is clear she had not seen or heard from her brother again.³⁴

Unidentified skeletal remains

There were two sets of unidentified remains located which it was initially thought maybe those of Mr Fogarty. However, one set were found to be definitely female and so not belonging to Mr Fogarty, while the other set were so far away as to make it highly unlikely.³⁵

There are otherwise no dental or medical records available for the identification of skeletal remains, unless there is identifiable DNA which can be compared to that of Ms Shar.

HAS DEATH BEEN ESTABLISHED?

I am satisfied on a review of the entire brief, which is remarkably extensive for a missing person, presumably because Mr Fogarty was so young, had a disability and everyone was extremely concerned about the despondent condition he was in just prior to his disappearance. While it was considered unlikely he would have been confident enough to disappear with a stranger if the bicycle tracks were his, the fact he considered he was in trouble and wanted to get away may have encouraged his absence. However, it is very unlikely he survived for any length of time because he has never come to the attention of authorities and his presentation would attract attention. He was only 22 at the time he disappeared and it is evident he was not able to make significant decisions about his welfare without help.

Commander Sorrell was fairly confident the communities through which he may have passed would have given information to his family and the local elders, who had a good relationship with the police.

³⁴ Transcript 24.3.2020 page 31

³⁵ Exhibit 1 Tab 2

The fact the search in earnest did not start until some 5-6 days after his disappearance would have hindered the search, as did the lack of information as to where he may have gone. I am confident trackers would have noted scavenger birds had there been any remains still exposed in the search areas. The environment where bicycle tracks were found is inhospitable if those were his, and it was likely that had remains been obvious they would have been located.

If Mr Fogarty had been removed from the search area by vehicle and remained alive it is likely he would have surfaced once in the community at large due to his presentation. Other than suffering from exposure and its resulting disorientation which may have encouraged him to conceal himself, the possibility remained that Mr Fogarty had been taken from the area, but it is clear he did not remain alive long enough for him to be noticed in the wider community.

I am satisfied beyond all reasonable doubt that Mr Fogarty is deceased and was deceased in the timeframe following his disappearance from Newman in July 2002.

MANNER AND CAUSE OF DEATH

I am unable to determine how Mr Fogarty died. The evidence is there was a very thorough and comprehensive search despite the lack of information, and the delay in a directed search. It was however, widely broadcast throughout the Pilbara and it is quite certain Mr Fogarty did not survive for long enough to come to the attention of any authorities, be it police or medical facilities. The possibilities as to what happened to Mr Fogarty are endless. While not being able to determine a manner and cause for his death, I am satisfied he is deceased.

I make an Open Finding into the death of Mr Fogarty.

CONCLUSION

There is no doubt that despite Mr Fogarty's difficulties he was well loved by his family. There is no indication anyone wished him harm although his disability may have drawn a lack of empathy in some of those coming across him. If it was

Mr Fogarty on the bicycle it seems entirely likely he voluntarily went with whoever collected him, but there is no clear information around that possibility. He did not reappear. A young man with the disposition of a twelve year old was very vulnerable and would undoubtedly have attracted attention had he reappeared in the wider community.

His mother and step-father continued searching for him for many years, but died without hearing anything to suggest he could still be alive.

E F VICKER
Coroner
2 June 2020