

SOUTH



AUSTRALIA

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 29th day of April 2002 and the 17th day of May 2002, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Antal Maglai.

I, the said Coroner, find that, Antal Maglai aged 42 years, late of 17 MacQuaire Avenue, Hillcrest, South Australia died at Browns Bay, Innes National Park via Marion Bay, South Australia on the 7th day of October 1999 as a result of salt water drowning.

1. **Introduction**

1.1. Antal Maglai was a 42 year old man who had been camping and fishing at Corny Point with his brother, Sebestyen and Sebestyen's son Mate and a friend's son Tamas. On 7 October 1999, the group travelled to Browns Bay which is in the Innes National Park on Yorke Peninsula in South Australia. The death of Nigel Richard Feeney occurred on the same day.

1.2. Sebestyen Maglai described what happened as follows:

'We arrived at Browns Bay at about 11am on Thursday 7th October 1999. The wind was really strong coming from the northwest straight into the bay so we decided to go south to the bay around the corner. We walked left from the car park down a cliff to a little bay south of Browns Bay. Antal said that he was going to fish off a large rock off the point. He decided to stay there and I said it was too windy, but he decided to stay. The boys and I went further south along the beach from the rocks. As we left he said to me

that if he didn't catch any fish he would go to the right hand side of the rock, which was the north side.

We had walked along the beach for about 5 minutes before stopping and the boys and I started fishing. It was about 20 minutes later I decided to go up and get the sandwiches from the car and check on Antal. I walked back and was about 50 metres from the rocks and I saw one of Antal's shoes washed up on the beach. I picked it up and started running towards the rock. I then saw him floating face down in the water between the big rock and some smaller rocks.

I ran in and was in water above my knees. I grabbed him and turned him onto his side and saw that he was dead. I knew that he was dead because of his eyes. I then pulled Antal up onto the beach. He wasn't moving and I think he had a bruise on his face. I got the boys and we all went up the cliffs and stopped someone in the car park and got them to call for help. I think someone had a mobile to call for help.'

(Exhibit C14a, p1-2)

2. Cause of death

2.1. A post-mortem examination of the body of the deceased was performed by Dr R A James, Chief Forensic Pathologist, on 10 October 1999.

2.2. Dr James' conclusion was that the cause of Mr Maglai's death was salt water drowning.

2.3. Dr James commented:

'The deceased apparently was fishing from rocks at Brown's Beach in the Innes National Park and was found floating in the water. He had been wearing leather shoes, apparently without cleats.

The appearances, particularly those of the lungs and the frothy exudate in airways, are indicative of salt water drowning. The abrasion on his left hip is consistent with sliding down the rocks proximate to entering the water. The bruise on the forehead may well be the result of striking his head on rocks rendering him less capable of dealing with unexpected immersion. The alcohol level is not available at the time of this report. It is apparent that the deceased, while not wearing waders, was nevertheless also not wearing metal cleated shoes which are helpful on slippery rock surfaces fishing in the circumstances.'

(Exhibit C16a, p3-4)

2.4. A toxicological analysis of Mr Maglai's blood excluded the presence of alcohol (Exhibit C17a).

3. Issues arising at the inquest

- 3.1. First Class Constable David Mattner from Yorketown Police Station attended at the scene of Mr Maglai's death at about 12:45pm. He described the location as follows:

'Browns Bay is at the south-westerly edge of the Innes National Park at the most southerly tip of the Yorke Peninsula. Access is by sealed main road with about the last 8 kilometres of dirt road, finishing at a parking bay overlooking Brown's Bay itself. From the main car park we walked west down a track and down about a 50 foot cliff to a granite rock outcrop into the sea. On the southern side was a stretch of beach about 500 metres long.

The deceased was a European looking male about 40 years of age with black hair lying on the beach in the shade of a metre high rock, immediately south of the main rock outcrop. He was about 4 metres from the water's edge and there were drag marks through the sand to where his body was. He was lying on his right hand side and was covered by a blanket. There was a single black leather shoe at the water's edge.

I inspected the body ... I then inspected the surrounding area and found a fishing box on the main granite rock outcrop in a small crevice. The rock itself was about two metres high above the water line and about 10 metres wide. There was a small shelf that sloped slightly towards the water on the southern side of the rock about 1½ metres across and 2½ metres long with the edges of the rock sloping by about 25-30 degrees into the water. The shelf area was about 2 foot above the water line. The waves when washing up onto the rock would cover the shelf with about 1-2 inches of water. The rock area exposed to the waves was covered with growth and very slippery. The wind was coming from the northwest and was blowing about 25-30 knots. The wave face hitting the rock was about 2 foot high. The fishing box was in a crevice immediately to the north of the level shelf of the rock. It appeared that this was the position that the deceased had started fishing from. On the northern side of the rock the slope was about 25 degrees into the water and was also covered by growth and slippery. I could not find any scrape marks on the rock where the deceased was last seen or on the northern side of the rock. The deceased possibly had a fishing rod but this was not visible and may have fallen into the water.

On the southern side of the rock were some smaller rocks with a channel about 2 metres wide running back to the beach which was about 12 metres long. The water was about waist deep in the channel and dropped off past the end of the rock. This it appears was where the deceased was washed into shore and found by his brother.'

(Exhibit C18a, p1-3)

- 3.2. Constable Mattner concluded:

'In summary it appears that the deceased had been fishing off the rock where the fishing box was located, slipped on the sloping edge and hitting his hip then hit his forehead against the rock, possibly knocking him unconscious and drowning. The shoe that was found near the deceased had a worn sole and did not have any tread showing, which may

have contributed to his slipping and his subsequent death. There does not appear to be anything suspicious and cause of death accidental drowning.'

(Exhibit C18a, p4)

- 3.3. Constable Mattner pointed out that upon inspecting the area, there were no general warning signs in the Innes National Park referring to what he described as 'aquatic or geographic dangers in the National Park' (Exhibit C18b).
- 3.4. Constable Mattner took photographs of several signs encouraging visitors to protect the area by not littering, being appropriately concerned for the local wildlife, and giving advice about fishing in the area.
- 3.5. Other photographs taken by Constable Mattner amply demonstrate the hazardous nature of the sloping surfaces of the rock from which Mr Maglai was fishing and the general layout of the area.
- 3.6. Clearly, it was most unwise of Mr Maglai to fish in such a hazardous location in such unsuitable footwear. I agree with Constable Mattner's conclusions about the manner in which Mr Maglai's death probably came about. I also agree with Dr James' observations about the unsuitability of Mr Maglai's footwear.
- 3.7. It was suggested that the Department of Environment, Heritage and Aboriginal Affairs, as the occupier of the Innes National Park, and the body with control of the area, should have erected signs warning visitors about hazards they may encounter, including the fact that the rocks are slippery when wet.
- 3.8. The erection of a sign is often seen as the panacea for solving all such problems. However, there must be millions of such rocks around the coastline of the state and, indeed, in many inland areas. It is not possible for occupiers to warn people in each case.
- 3.9. This issue was recently discussed in the New South Wales Court of Appeal (see *Waverley Council v Lodge* [2001] NSWCA 439 – 29 November 2001). New South Wales has a very rocky coastline. The court said:

'Everyday experience does not support attributing talismanic force to signs as means of averting dangers. It is commonplace to see warning signs ignored. An attempt to analyse considerations supporting and adverse to erecting warning signs of this kind is made difficult by the obvious nature of the information which they would convey.'

...

There is a succession of subsidiary questions. One, subsidiary but quite important, is the choice of languages to be used in the signs. There is also the text of the sign, not a simple matter as the sign must be a strong claim on attention, a simple message with no potential ambiguity ... Another is an appraisal of other risks, such as risks related to rips, currents, waves and submerged rocks, and no doubt others, which in terms of the incidence of risk may have the same or a stronger claim to be dealt with by warning signs.

...

It should not be readily concluded that it would be easy or cheap to erect signs; that judgment could only come as part of an appraisal which could show how many signs should be erected and where, and what they should say; and of the projected costs; including costs of maintenance and repair. Other considerations besides cost present themselves. A decision appraising the difficulty or facility of erecting signs requires administrative ability which courts do not have readily available, especially when not assisted by any relevant evidence.'

- 3.10. Having regard to the obvious nature of the danger of fishing from wet rocks in smooth, leather-soled shoes, I do not consider that it would achieve anything to recommend, pursuant to Section 25(2) of the Coroner's Act, 1975, that signs be erected warning of that danger. I am not satisfied that it would prevent or reduce the likelihood of similar deaths. I therefore decline to make that recommendation.

Key Words: Drowning; Fishing; Warning Signs; Fall from Rocks

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 17th day of May, 2002.

Coroner