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Missing person

How our laws deepen the pain for families of the long-term missing

For the grieving families of the 2600 Australians who have been missing for years, moving on isn't an option – either emotionally or in the eyes of the law.



Loren O'Keeffe founded the Missing Persons Advocacy Network after her brother Dan disappeared in 2011. **Tash Sorensen**

Chris Wright

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When Loren O'Keeffe's brother Dan went missing, 10 years ago last month,

Wher instinct was to do something. Do *anything*: no effort or sacrifice would have been too much.

But what? Where was the rule book for what to do when an adult like Dan vanishes without trace?

"I vividly remember asking the police that first day what to do, because I could see that they weren't doing enough," she says. "They didn't appear to be taking it seriously and they gave us no direction whatsoever."

So, lacking precise instruction, she just did everything. Inspired not by guidance but by movies, she printed hundreds of posters with his picture and stuck them up around his home in Geelong, Victoria; called nearby hospitals and crisis accommodation; notified friends and family; hit social media.



Loren O'Keeffe with her brother Dan.

In the days, then months, then years that followed, O'Keeffe sifted endless calls from well-wishers, cranks, psychics and people genuinely believing they had sighted Dan, or even that they *were* Dan.

She kept her phone on at night, in the shower, everywhere she went, and she went door to door around shelters trying to find him.

Her frantic efforts were so comprehensive that they eventually began to fill a part of the institutional vacuum O'Keeffe had encountered at the outset.

She came to learn just how many were in a similar situation of desperate inertia as her family; just how many Dans were out there and how many families were in this state of uniquely unresolved grief – a grief cruelly compounded by the fact there is no category for a missing person in the eyes of a legal system that presumes someone is alive unless proven otherwise.

“All of a sudden people, who were in this community who had never seen a movement for a missing person like Dan started to come and say: ‘You know what, my child went missing 20 years ago, and we still don’t know what to do.’”

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About 18 months into the search, which had caused her to leave her job and devote her whole life to it, paying the bills by renting the spare room out through Airbnb, she realised there was a need to formalise her work into a proper website to help families in the same situation as hers.

“I just couldn’t believe that in that day and age, when there was guidance on YouTube for boiling an egg or tying a shoelace, over 100 Australian families every day were experiencing that panic and not getting any guidance whatsoever. I just couldn’t understand how this didn’t already exist. So I started writing it all down.”

The result was the Missing Persons Advocacy Network (MPAN), set up in 2013 as a charity with Deductible Gift Recipient status and a Vodafone World of Difference grant. It is the organisation that O'Keeffe wished had existed to help her at the time.

Over time, O'Keeffe’s mission has changed. Four years after Dan’s disappearance, his remains were found; there was resolution of a sort but

no good outcome. And so there was a decision to make. Would she walk away from it all, or would she press on to help others in the same situation? The decision didn't take long.

"Nothing else seemed to be anywhere near as important as this," says O'Keeffe. "I've seen the gap. It needs to be filled and no-one else was trying to fill it.

"But, even bigger than that, I felt like it was my purpose. There is solace in knowing there is a community of people who are also living with this ambiguous loss that is so difficult to explain to people who haven't been touched by it."

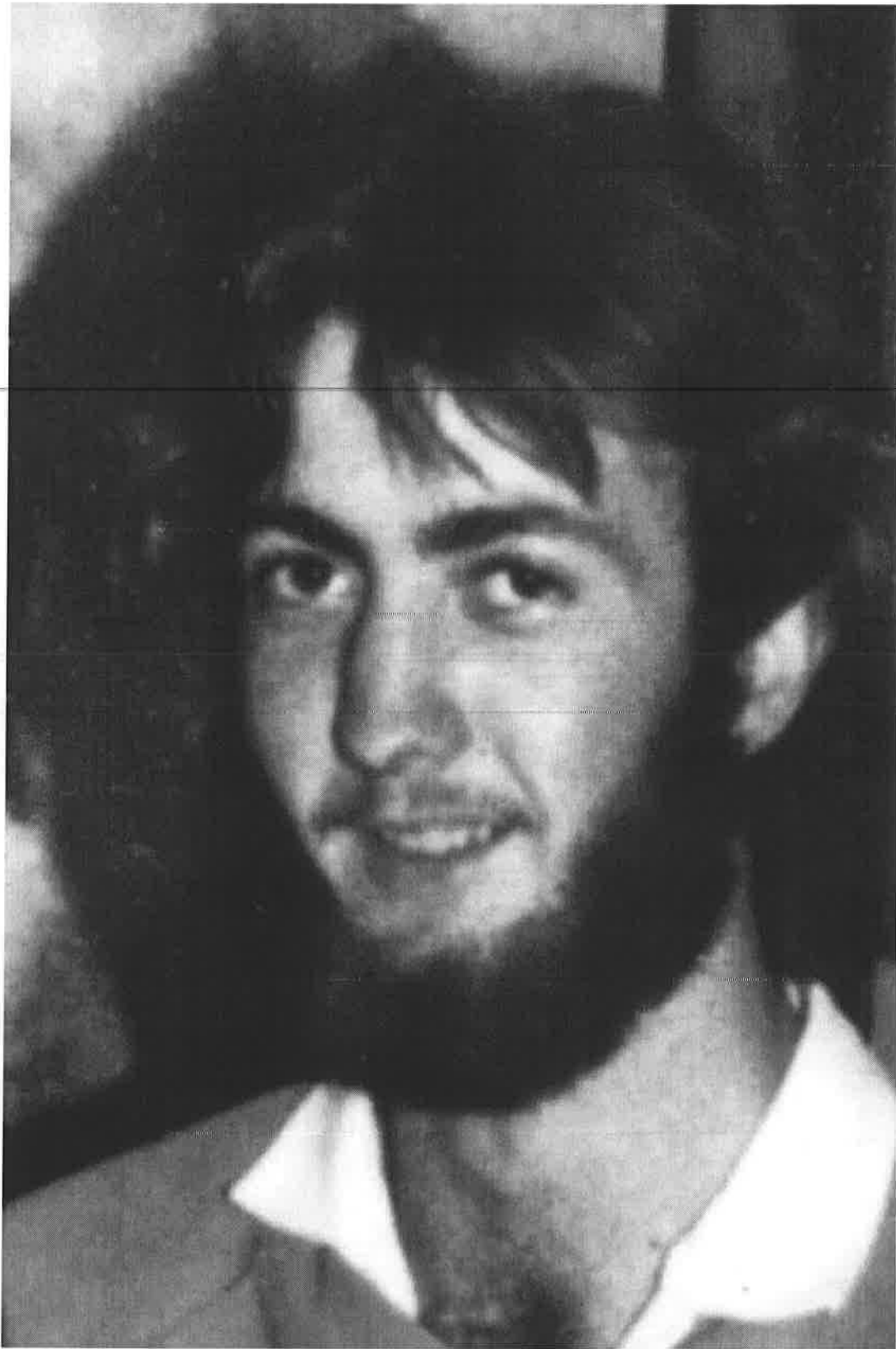
"Ambiguous loss" is a recognised psychological term applied to families of the missing. It has been called the most traumatic kind of grief and the most unmanageable form of stress.

MPAN's mission of the moment is to gain official recognition for National Missing Person's Week, which takes place in the first week of August.

The idea of a dedicated week pre-dates the tragedy of the O'Keeffes; it was instigated by the family of Tony Jones, a Perth man who went missing while backpacking in north Queensland in 1982.

Government recognition would be achieved through sufficient signatures on a petition requiring it to be read out on the floor of the House of Representatives, after which it would be assigned to the appropriate minister, who would then consider MPAN's petition in more detail.

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Tony Jones disappeared in 1982, aged 20, while backpacking in Queensland. **Queensland Police**

“Officially recognising the week our family started would be an acknowledgement by our government that they stand with the thousands of Australians plagued by the ambiguous loss of a family member or loved one,” says Mark Jones, Tony’s brother, in a statement. “It would create the genuine visibility missing Australians so desperately deserve.”

And missing Australians are quite a constituency: perhaps the great untold story of modern life. According to data from the Australian Federal Police, over 51,000 missing persons reports were submitted in 2020 in Australia.

While most are swiftly resolved, there are over 2600 people listed as long-term missing persons. Based on her work with MPAN, O'Keeffe believes this number is outdated and more people have become long-term missing in the decade since Dan's disappearance.

Given that the Australian Institute of Criminology estimates that up to 12 people are directly affected by each missing person, the scale of the problem and its impact begins to become clear.

“Those people are directly impacted financially, emotionally and psychologically,” says O'Keeffe. “That's a huge number of people living with this very complicated grief and very challenging administrative and legal issues, people who aren't getting any sort of recognition from the government. And that's simply not good enough.”

Longer term, MPAN would also like government financial support; it continues to be funded purely by donations.

Modest support networks do exist at the government level, whether federal or state. An example is the Families and Friends of Missing Persons Unit within the Victim Services division of New South Wales' Department of Communities and Justice. It provides valuable counselling and support to families and friends of missing people, with its recognition that the grief for the missing is not the same as grief for the dead.

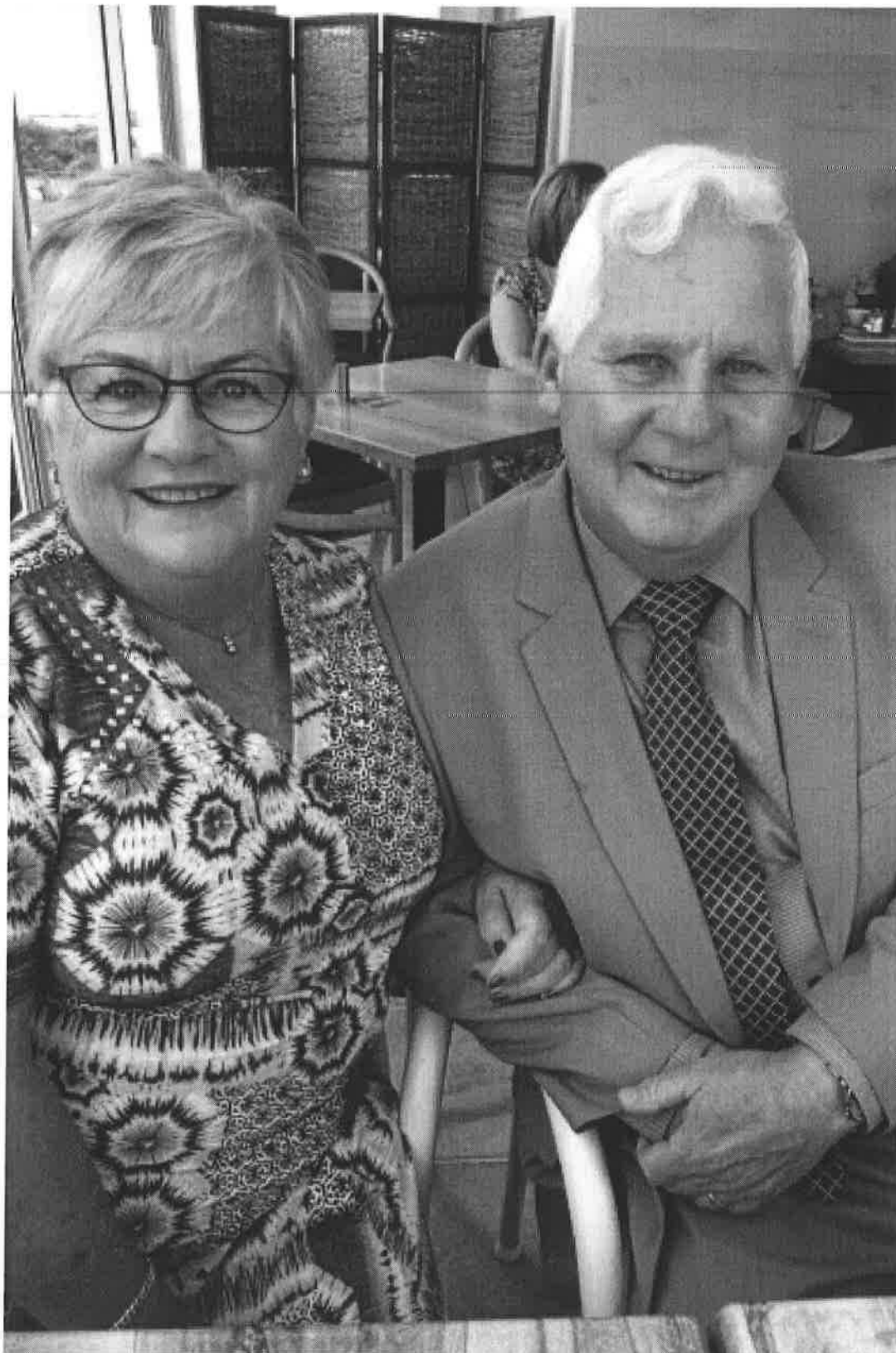
But the unit, which says it is unique in Australia, does not search for people, and has very limited resources. Also, not being part of the police force, police are not always swift to tell families that the unit exists.

Beyond that, the main police utility is the federal web site [missingpersons.gov.au](https://www.missingpersons.gov.au), now with some guidance on what to do.

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The site holds a register of missing persons, their photographs neatly arranged in alphabetical order, page after page, and it illustrates the startling democracy of the missing. All human life is here: men and women, children and the elderly, all races.

There are those who appear mentally ill or homeless, and those captured in moments of incongruous normality: smiling over a beer, captured bow-tied at a wedding, grinning self-consciously for a snap.



Ken Hanes, with wife Nola, before he disappeared in September 2020.

Among them is my father-in-law, Ken Hanes, smiling over his shoulder in a baseball cap, sitting on a blue bus seat, looking as normal as anything, except for that he's on a missing persons register next to stoic text about "grave concerns for his welfare".

Like most of the pictures on the site, it is a photograph the family frantically scrambled for in the earliest hours when it was essential to get an image out there, when there was still hope he might be found. Now it's like an epitaph, for there his story ends, in the public realm: just a moment like a million others.

In our case, we've believed beyond any doubt since five days after his September 22 disappearance that he is not just missing but dead, a non-swimmer who went off the Manly ferry at night, we believe intending to take his own life.

We know it, the police know it, everybody knows it, except the law itself. What's missing is his body, which was never found and almost certainly never will be now. And in the eyes of the law, that has considerable practical consequences.

Those consequences vary from the vast institutional paralysis around the big things, like executing a will or selling a house, to the soul-crushing minutiae of attempts to cancel a credit card or gain a refund on a holiday for two that will never now be taken. You come to realise that there are few things as unintentionally vicious as the line: "We're going to have to speak to the account holder."

This is an administrative cruelty that could be alleviated. "I can't do anything," says Nola Hanes, Ken's wife and my mother-in-law. "If only there was something that you could have from the police saying: this person is missing, it's going to take several years until this is finalised, and in the meantime the wife has the authority to cancel or suspend things.

"At the moment everything and everyone is just presuming Ken is still here. And that's difficult, because he's not."

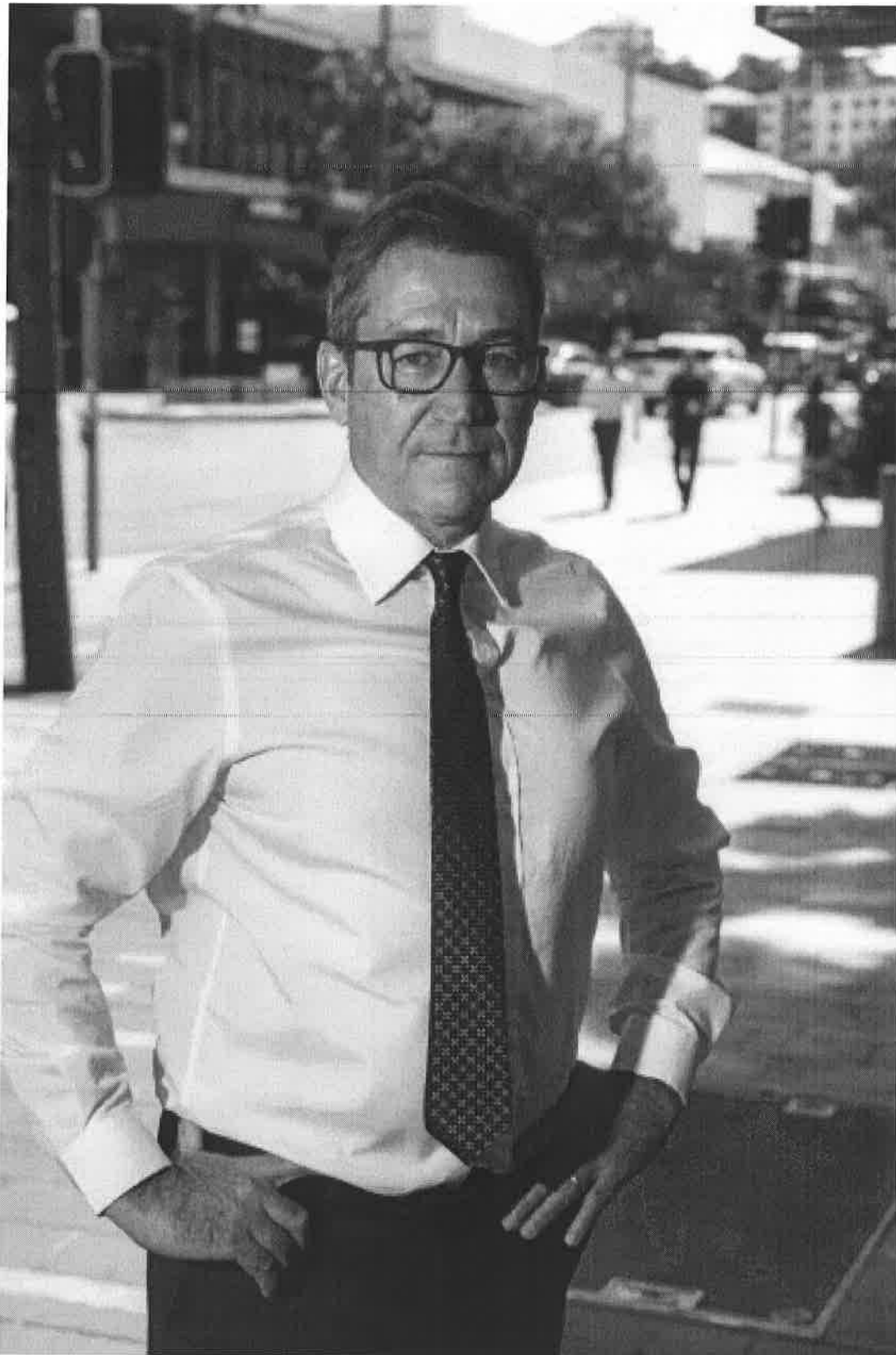
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Like many in her position, her grief is in limbo and so is her life. "Nobody will even talk to me. They just say: we have to talk to Ken," she says of banks and credit card providers.

The credit cards, which can't be cancelled, accrue annual membership fees, then interest on those fees if you're not careful. It's a petty torment at a time when people need support and it is a significantly different anguish to bereavement. Every time Hanes picks up the phone for one of these fruitless calls she must tell her painful story yet again.

"When someone is deceased, it's all finished," says Hanes. "Whereas with missing persons, it's not finished, and it won't be finished for many years."

If the response to the story Ken's daughter, and my wife, Kathryn Hanes wrote last year is anything to go by – we're still being contacted about it nine months later – Nola Hanes is far from alone.



Lawyer Paul Radford says practical issues families are likely to encounter include accessing life insurance, superannuation and bank accounts of the missing. **Michael Chambers**

“The law presumes that someone is alive,” says Paul Radford, a partner at Queensland law firm Connolly Suthers. To rebut this presumption, he says, the family of a missing person must wait at least seven years before an application for a grant of probate or administration can be made. If you

can't wait seven years, you can apply to the Supreme Court for leave to swear death.

"It is very difficult to obtain leave and it is very costly," he says. "The person applying must prove it on the balance of probabilities – the usual civil standard. The applicant must produce evidence acceptable to the court that the person is not alive."

If a missing person has appointed an attorney under an EPA, or Enduring Power of Attorney, then the appointed attorney can handle the legal and financial affairs of a missing person in that person's best interests according to the EPA.

But if the appointment only takes effect upon the missing person losing capacity in the traditional sense – an incapacitating but non-fatal brain injury, for example – then "the position is less clear", Radford says. "Someone relying on it, like a bank, may not accept it."

If there is no EPA – or there is one that no-one will accept – the only option is to apply to a court or tribunal for what is called an administration order. Here, the rules differ from state to state, and in some they are impossible to obtain.

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Generally, whether to protect the interests of a missing person or avoid the danger of fraud, the law lines up against making it easy to "swear to the death", as the law has it, of a missing person.

Procedures vary from state to state, but the estate administration practice in Queensland is illustrative of the position.

I started to complete the form, but there's nowhere that I can put my circumstances. What's happened to me doesn't fit into their form.

— Nola Hanes

“Even if an order giving leave to swear death is made, that is not the end of the matter,” says Radford. “The order on its own does not of itself prove that a person is dead, and therefore does not bind other parties like insurers, which are entitled to require proof of death before paying out on a life policy.”

Radford says that practical issues families are likely to encounter include not just life insurance but accessing bank accounts to pay bills, terminating leases, supporting dependents and accessing superannuation.



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Loren O'Keeffe says situations like this “boil her blood”.

She comes across many of them: a Queensland woman whose husband went missing off the back of a trawler, clearly fatally. The woman was so unable to deal with the machinations of mortgages and superannuation and life insurance that she ended up having to come out of retirement and return to full time employment, “for fear of losing her house as well as losing her husband,” says O'Keeffe. “That is just unacceptable.”

In O'Keeffe's case, that burden was illustrated when Melbourne Cricket Club refused to suspend Dan's membership after he was declared long-term missing.

Learning from experiences like these, she and various partners have been working on a national “missing” status in Australia that would notify all financial institutions or utilities that someone is long-term missing and

that bills or accounts should be suspended, waived or transferred accordingly.

“Perhaps then distressed loved ones will not have to keep making the same calls to the same institutions every quarter and say: can you please stop the debt collectors for the \$30 on this phone bill? Can you please not fine them for not voting?”

Hanes has been trying to cancel a European cruise holiday she and Ken were due to take. Even discussing it is painful, but repeatedly she has to call them to explain her circumstances, where she finds herself caught in an administrative swamp. Eventually the cruise operator gave her a form to fill in.

“I started to complete the form, but there’s nowhere that I can put my circumstances,” Hanes says. “I’ve had to tell them: I can’t go any further with this. What’s happened to me doesn’t fit into their form.”

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