

CORONERS COURT OF SOUTH AUSTRALIA

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INQUEST INTO THE DEATH OF JUDITH ANNE DITTER

[2026] SACC 39

Inquest Findings of his Honour Deputy State Coroner White

24 September 2026

CORONIAL INQUEST

Examination of the cause and circumstances of the death of a woman who was crushed in her car by a falling tree limb. The inquest explored whether the defect in the tree could have been identified prior to the incident.

Held:

1. Judith Anne Ditter, aged 59 years of Crafers, died at Stirling on 11 November 2020 as a result of mechanical asphyxia and cervical and thoracic spinal injuries.
2. Circumstances of death as set out in these findings.

Recommendations made.

Counsel Assisting: MR M KIRBY

Interested Party: SA POWER NETWORKS

Counsel: MS H VEALE - Solicitor: SPARKE HELMORE LAWYERS

Interested Party: SA WATER & DEPARTMENT FOR INFRASTRUCTURE AND TRANSPORT

Counsel: MR K LINDNER - Solicitor: CROWN SOLICITOR

Interested Party: ADELAIDE HILLS COUNCIL

Counsel: MR P BULLOCK SC - Solicitor: WALLMANS LAWYERS

Witness: MS K HAYES

Counsel: MR T MELLOR - Solicitor: MELLOR OLSSON LAWYERS

Witness: MR T FLEMING

Counsel: MR N BIRCHALL - Solicitor: WOTTON KEARNEY

Witness: MR C YOUNG & MR M LORENZ

Counsel: MR K LINDNER - Solicitor: CROWN SOLICITOR

Witness: MR A LEE & DR D NICOLLE

Counsel: MS H VEALE - Solicitor: SPARKE HELMORE LAWYERS

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INQUEST INTO THE DEATH OF JUDITH ANNE DITTER [2026] SACC 39

Introduction

- 1 Judith Ditter was a 59-year-old woman who taught primary school children for most of her working life, most recently at Seymour College. She was married and had three children and one grandchild. Mrs Ditter and her husband raised their family in the Adelaide Hills area living in both Aldgate and Crafers. At the time of her death she had lived in their Crafers home for 23 years. It is clear that she was a devoted teacher and woman who was committed to her family, her students, her community and her faith.
- 2 She died as a result of what on the face of it appeared to be a sudden and unexpected event. The inquest explored whether her death could have been prevented if others had recognised the likelihood of that event occurring.

A sudden and unexpected event

- 3 Mrs Ditter died on the evening of 11 November 2020. That night, arrangements had been made for Mrs Ditter to collect her daughter and drive her to Edwardstown so she could collect her car.¹ She drove to her daughter's house, arriving at about 10:15 pm.
- 4 That night was very windy, although there was no rain and the road was dry. Gusts of wind up to 61 km/h were recorded at Mount Lofty, which is near-gale force.²
- 5 Mrs Ditter's daughter got in the car and they drove along Mount Barker Road in Stirling. As they approached the location of 94 Mount Barker Road, a large tree in the front corner of that property failed, dropping a large limb that overhung the road onto the top of Mrs Ditter's vehicle. There was no way Mrs Ditter would have been able to avoid it.³
- 6 As a result, Mrs Ditter's daughter suffered a fracture to the base of her skull, some fractured ribs, fractures to her first vertebrae and a fractured forearm.⁴ Mrs Ditter died as a result of the incident.
- 7 In the other lane, another car was also passing through and the limb crushed the front of that car, but did not physically injure the driver more than superficial scratches.⁵

Cause of death

- 8 A post-mortem examination was conducted by senior specialist forensic pathologist, Dr John Gilbert.⁶ Dr Gilbert found an unstable fracture of the fourth cervical vertebrae, a mid-shaft fracture of the right clavicle, a fracture to the anterior mandibular arch, a T3/T4 fracture dislocation, left posterior and lateral rib fractures associated with small bilateral pneumothoraces, and left and right scapular fractures. Dr Gilbert found no evidence of any organ damage or vascular injury. He concluded that Mrs Ditter's death

¹ Exhibit C4 at [2]

² Exhibit C18 at 18

³ Exhibit C4 at [6]

⁴ Exhibit C4 at [10]

⁵ Exhibit C5 at [6]-[7] and [22]

⁶ Exhibit C2a

was as a result of mechanical asphyxia and cervical and thoracic spinal injuries. I am satisfied that Dr Gilbert's opinion properly reflects the evidence and I enter a finding that that was Mrs Ditter's cause of death. The mechanism was, of course, the falling tree limb.

Trees

- 9 Trees, in particular large and old trees, have the capacity to evoke strong emotions among many in the community. I will not address issues of that nature. The general preservation of the environment is simply not an issue of coronial concern. However, I wish to observe that what ought to override all concerns is a desire to prevent the loss of life by any means that can be achieved. Nature is unpredictable, and the combination of wild weather and unsafe trees can lead to catastrophic results. For that reason, no matter the nature of the tree concerned, measures must always be taken where a tree presents a significant safety issue that cannot be mitigated by other means, such as fencing an entire area off from the public. The cost sustained by the community, both personal and financial, from the loss of a life cannot yield to general desires to preserve a dangerous natural situation. Individual assessment is critical.

The tree

- 10 The tree in question was a large eastern cottonwood tree (*populus deltoides*), more than 80 years old and potentially up to 120 years old.⁷ It was situated on the front corner of a private residence at 94 Mount Barker Road, Stirling. The residence at 94 Mount Barker Road was relatively new, being built in 2013 by Mr and Mrs Wakeling. Planning approval documents obtained from the Adelaide Hills Council (the Council) show that the work was authorised and carried out.
- 11 There is no reliable estimate on the length and weight of the particular branch that failed, however, from the damage that was caused to Mrs Ditter's vehicle, it is perfectly clear that the weight was quite substantial. I received photographs into evidence and these also reflect the sheer length and girth of the branch. The branch had grown out over Mount Barker Road and, when it came to rest, it crossed both sides of the road.
- 12 The tree is recorded on the development application plans which identify its size as 20 to 25 metres high with a circumference of 3.9 metres and a spread of 20 metres. The dimensions of that tree as marked on the original plans in 2013 classified the tree as being a 'significant tree' according to the *Development Act 1993*.
- 13 An eyewitness, Marian McLucas, was travelling along Mount Barker Road at the relevant time, in the opposite direction to Mrs Ditter. Ms McLucas' vehicle was also struck, however she was fortunate in that her car was hit by the thinner, lighter end of the branch, instead of the weightier end that fell on the closer side of the road. Ms McLucas' vehicle sustained damage but she herself did not sustain any significant injuries.
- 14 Since Mrs Ditter's death, the tree has been completely removed.⁸

⁷ T51, T94 and T256

⁸ T17

Relevant law

- 15 Significant trees and regulated trees are identified in legislation as requiring applications for permission to carry out any ‘tree-damaging activity’. There are limits on the extent to which, and circumstances under which, they can be pruned. They are protected from activities being carried out that may injure or damage the tree, its structural integrity or its health.
- 16 These protections cover activity in the area surrounding the tree, including the canopy of the tree, and also within two areas of surrounding ground. The first is the ‘structural root zone’ which is the area surrounding the base of the tree where the stability of the tree within the ground can be impacted. The second is the ‘tree protection zone’ which is an area surrounding the tree where activity could affect the viability and health of the tree. The structural root zone is a smaller area contained within the tree protection zone.

Investigation into the tree

- 17 Given the seriousness of what happened, the attention of those involved, including the State Coroner, naturally turned to an assessment of the tree and whether there were opportunities to recognise and prevent the catastrophic limb failure that claimed Mrs Ditter’s life.
- 18 That investigation commenced on the night of Mrs Ditter’s death. Immediately following the incident, police and emergency services attended the scene and took what steps they could to assist as best as was possible. The road was cordoned off and made safe, medical assistance was given to those who required it, the area was cleared and power was restored. A comprehensive major crash investigation was then commenced by South Australia Police (SAPOL) and a conclusion was reached, which I agree with, that there are no criticisms to be made of Mrs Ditter’s driving nor of her vehicle.⁹ She was entirely innocent in the event. Her death was, sadly, the result of terribly unfortunate timing. There was nothing that Mrs Ditter could have done herself to predict or prevent it.
- 19 The incident occurred within an area governed by the Council, although the tree was on private property. The day after the incident, the Council engaged a qualified arborist, Shane Selway of Adelaide Arb Consultants, to conduct an assessment of the tree that had failed. SAPOL then spoke with Mr Selway and asked him to prepare a report for use in the investigation. He attended to assess the tree on 12 November 2020, the day following Mrs Ditter’s death.
- 20 Mr Selway attended during the inquest and gave evidence. He was described by counsel as a ‘very pro-tree individual’ which I take as a compliment for a member of his profession. I was also assisted by evidence from a botanist, arborist and ecologist, Dr Dean Nicolle OAM. Dr Nicolle’s evidence was slightly more limited in that Mr Selway had the advantage of having examined the tree in person. Notwithstanding that difference, I was greatly assisted by the evidence of each witness, both of whom demonstrated extensive knowledge and experience. As is often the case with expert witnesses, their opinions were largely in accord, although they differed on some specific aspects and conclusions. I do not propose to recount the depths of the technical evidence

⁹ See Exhibits C7, C8 and C9

I heard about tree structure and growth which was helpful, but not necessary to recite in these findings.

- 21 Mr Selway explained that this particular species is fast-growing which has the consequence that it puts fewer resources into cell development, resulting in thin cell walls and the ability for fungus to spread through it easier.¹⁰ He said that this meant this species is seen with hollowed out trunks regularly.
- 22 The hollow extended from ground level to approximately four metres above the ground.¹¹ There were other cavities extending off the main cavity. Mr Selway said that, except for the significant defect of the hollowing within its trunk, the tree was otherwise in fair health. Dr Nicolle said he would instead describe the health as 'fair' or 'average'.¹² He said that the defect was caused by fungal pathogens which had entered the tree after sustaining a wound in the trunk or roots at some point in its life. This assessment was based on observations of the tree's canopy and the foliage, and other signs of its general health. Mr Selway said there are many ways in which a fungus can enter a tree:

Mechanical damage would be a very common thing in an urbanised environment where, you know, environments change, someone might run a vehicle into the trunk of a tree as well causing a wound, the tree may have been pruned, resulting in wounds, or insects may be coming along and laying eggs in the tissue of the tree as well with ovipositors and, therefore, causing wounds to occur also ... but certainly mechanical damage to roots is very common.¹³

- 23 He explained that the infection reduced the functioning of the tree's components to the point where it was able to maintain foliage density and root density, but did not have resources to maintain its structural integrity in the stem and branches by preventing it from reinforcing itself with secondary growth.¹⁴
- 24 Mr Selway said that if he had assessed the tree the day before it fell, there would have been indicators that it presented a risk, including the sounds of an extensive hollow, bark patterns and discolouration. Dr Nicolle was clear that it would have required an expert assessment in order to detect the fault in the tree.¹⁵
- 25 Both Mr Selway and Dr Nicolle gave evidence that there is a difference between a tree's general health and its structural integrity.¹⁶ A tree might be healthy, but structurally unsound. A tree might be structurally sound but unhealthy. A tree that is both healthy and structurally sound can still drop a limb if enough forces are applied to it.¹⁷
- 26 Dr Nicolle explained in his evidence that the fungal pathogens that entered the tree would have decayed the dead heartwood which exists at the centre of the tree's trunk, but this would not necessarily have caused any diversion of resources from other areas of the tree which would have otherwise been an indication of infection. Essentially, because the

¹⁰ T50-T51

¹¹ T51-T52

¹² Exhibit C23 at [3.3]

¹³ T54

¹⁴ T96-T98 and T121

¹⁵ Exhibit C23 at [3.6]

¹⁶ T36 and T270 and Exhibit C23 at [5.0]

¹⁷ T90

decay was in the deadwood, a living tree would not have shown any signs of responding to the infection. The heartwood simply does not react to infection.¹⁸

- 27 Dr Nicolle went on to say that since the cambium layer of the tree remained intact and alive, new living wood continued to grow around the outside of the hollow section, which may have had the capability of remaining structurally sound.¹⁹ He likened this to a pipe surrounding the hollow inside. However, Dr Nicolle also pointed out that the particular weakness that arose here was the result of the hollowed section occurring particularly around the junction point of a very large and heavy branch.²⁰ Mr Selway explained this as a reduction of ‘holding wood’; the tissue connecting the branch and the trunk at that junction.
- 28 Both Mr Selway and Dr Nicolle spoke of the various factors that will impact the health and structural stability of a tree and the role that human interaction can have on that tree. In particular, I heard evidence about what amounts to ‘tree-damaging activity’ that I will discuss in detail later. Both agreed that the fungal pathogens would have been able to enter the core of the tree due to some kind of damage, either on the outside of the trunk or in the roots. There was evidence of tree damage likely as a result of pruning at some point, Dr Nicolle thought it could have been when the tree was much younger and smaller.²¹ There were a number of occasions where improvement work may have damaged the tree or its roots. The possibility of natural damage was also entertained, such as through animal or insect activity. Notwithstanding this damage, it is not possible to determine with any certainty after the fact what the specific mechanism of entry of the pathogen was.²²
- 29 Mr Selway and Dr Nicolle agreed that the hollowing of the core was likely to have been present in the tree for a long time, potentially even decades.²³
- 30 In light of the reports and evidence of both Mr Selway and Dr Nicolle, I am satisfied that the failure of this tree was caused by a combination of factors, being a large hollow cavity within the trunk which incorporated the junction of the particular branch that fell, the size and weight of that branch that was extending from that flawed junction, and the high winds on the day and the evening, which were extreme and placed increased stress on that particular junction.
- 31 Mr Selway considered all of the physical evidence, excluding the benefit of hindsight, and gave the opinion that if an assessment of the tree had been conducted prior to Mrs Ditter’s death, it would have returned a moderate risk of tree failure.²⁴ He considered it significant that about 9,000 cars passed beneath the tree each day, increasing the level of concern about the risk of failure.

¹⁸ T52

¹⁹ T258

²⁰ T270-T271

²¹ T252

²² T73

²³ T94

²⁴ T81

- 32 Dr Nicolle allowed for a greater role for environmental factors, such as climate change, in the development of the fault.²⁵ Mr Selway did not disagree that it was likely a factor, but would not be drawn into ranking all factors.

Tree-damaging activity

What technically is tree-damaging activity?

- 33 For the purposes of the *Planning, Development and Infrastructure Act 2016*, any ‘tree-damaging activity’ in relation to a regulated tree is considered a development.²⁶ Tree-damaging activity is defined as:

tree-damaging activity means—

- (a) the killing or destruction of a tree; or
- (b) the removal of a tree; or
- (c) the severing of branches, limbs, stems or trunk of a tree; or
- (d) the ringbarking, topping or lopping of a tree; or
- (e) any other substantial damage to a tree,

and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition.

- 34 Section 102 of the *Planning, Development and Infrastructure Act 2016* provides:

Subject to this Act, no development may be undertaken unless the development is an approved development.

- 35 It can immediately be seen that these provisions protect the life of the tree. They do not appear, however, to focus any attention on activities around the tree that might weaken it to the point that heavy limbs will eventually fail and cause safety issues to people. It seems unlikely that this would amount to causing ‘the severing of branches’ for example, although it may be considered ‘other substantial damage’. I also observe that the assessment of tree-damaging activity is necessarily prospective, with an assessment of the likely impact certain actions will have on the tree.

- 36 There are other relevant sources of authority.

- 37 The Australian Standard AS 4970-2009 establishes the concepts of the ‘structural root zone’ and the ‘tree protection zone’.²⁷ Structural root zone is defined in Standard 1.4.5 as:

The area around the base of a tree required for the tree’s stability in the ground. The woody root growth and soil cohesion in this area are necessary to hold the tree upright. The SRZ is nominally circular with the trunk at its centre and is expressed by its radius in metres.

²⁵ Exhibit C23 at [3.8]

²⁶ See s 3

²⁷ Exhibit C19

This zone considers a tree's structural stability only, not the root zone required for a tree's vigour and long-term viability, which will usually be a much larger area.

- 38 Tree protection zone is defined in Standard 1.4.7 as:

A specified area above and below ground and at a given distance from the trunk set aside for the protection of a tree's roots and crown to provide for the viability and stability of a tree to be retained where it is potentially subject to damage by development.

- 39 Mr Selway explained that the diameter of the tree at 1.4 metres above ground level is measured and then multiplied by 12 to produce the tree protection zone,²⁸ although this is capped at 15 metres.²⁹
- 40 Dr Nicolle explained that the two zones established by the Standards have differing aims.³⁰ The existence of the structural root zone is intended to identify actions that are likely to impact the anchorage of the tree. The tree protection zone is intended to identify actions that are likely to impact the health of the tree. On this approach, it will be significant to observe that the structural root zone is within the tree protection zone which encompasses both areas.
- 41 I received into evidence a copy of the Department for Infrastructure and Transport's 'Vegetation Removal Policy'.³¹ That policy reminds staff that approval is required under the *Development Act 1993* to conduct tree-damaging activity but sets out exceptions provided under various authorities. In particular, it advises staff:

Schedule 3(17) of the *Development Regulations 2008* specifically excludes certain tree-damaging activities from the definition of 'development' (and therefore from the requirement to gain [Development Assessment Commission] approval). No approval is needed to impact a regulated tree (including a significant tree) in certain circumstances listed in *Development Regulations 2008* Part 2, 6A (5). Additionally, some tree-damaging activities within the Adelaide Park Lands or on any land on which a road is located or is proposed to be built or widened; and that is under the care, control and management of the Commissioner for Highways, do not require approval in accordance with Schedule 14(4) of the *Development Regulations*.

Section 20(5) of the Highways Act states that the *Development Act* does not apply to land that has been acquired under Section 20 of the *Highways Act*, except in relation to a State Heritage place or where the land acquired is to be used for the purposes of a lease or licence granted in respect of a road that vests, or land that remains vested in the Commissioner under S21A of the *Highways Act*. Therefore, there is no requirement to seek approval to damage a regulated tree.

Similarly, Part 2, Division 3(9) of the *Rail Commissioner Act* states that the *Development Act* does not apply to land that has been acquired by the Rail Commissioner under this Act, except in relation to a State Heritage place.

If the tree may not be cleared without the consent of the NVC under the NVA it does not constitute a regulated tree (as per Part 2, Clause 6A of the *Development Regulations 2008*). In this circumstance, the [*Native Vegetation Act*] effectively overrides the *Development Act*

²⁸ T69

²⁹ T115

³⁰ T249-T250

³¹ Exhibit C27c

and approval should be sought in accordance with the [*Native Vegetation Act*] process (using this SOP).

One exception to the above exclusion is if the tree is declared to be a significant tree, or a tree within a group of trees declared to be significant trees, by a Local Council Development Plan, then development approval will also be required to remove it even if the activity is permitted/approved under the [*Native Vegetation Act*]. This declaration of a significant tree by the relevant Development Plan overrides the definition and exclusions in the Development Regulations.³²

- 42 The policy also establishes the concept of an ‘immediate hazard’ and excludes the requirement to consult the Council where ‘the vegetation is to be removed as an immediate hazard, from the department’s controlled access roads, or from roads that are vested in the Commissioner of Highways’.³³ Immediate hazard is defined as follows:

Vegetation is considered to be an immediate hazard if:

- there is an immediate danger that a tree or limb will fall because of disease, damage or any other cause; and
- there is a real and unacceptable risk of personal injury or damage to property if that occurs; and
- the state of the tree has been assessed by a person with expertise in the area of plant health, or by any other person acting in an emergency situation or in any other situation that gives rise to an immediate risk of personal injury or damage to property; and
- the clearance is confined to removing the limb or other part of the plant causing the danger and only extends to total removal of the tree if that is necessary to remove the existing immediate danger.³⁴

- 43 It goes on to provide:

In an emergency situation, work involving a regulated or significant tree can be undertaken without first having received a development approval. As soon as practicable after the emergency work is undertaken (and within four weeks), DAC must be notified and a retrospective Development Application must be submitted in accordance with S54A of the Development Act.

In accordance with the Development Act, any tree-damaging activity for emergency works on a regulated or significant tree must be undertaken to cause the minimum amount of damage to the tree. Therefore, prior to gaining approval from DAC, a tree is only to be pruned to the extent that reduces the hazard to an acceptable level of risk. A whole regulated or significant tree can be removed in an emergency situation if the level of risk cannot be reduced to an acceptable level by pruning alone.

Where a tree has been assessed as a potential or future hazard, not posing an imminent and unacceptable risk of personal injury or property damage, and is situated outside the maintenance responsibilities of the department as defined in the department’s Operational Instruction 20.1, the tree assessment information should be directed to the relevant authority (most often the Local Council) for their action.

- 44 I accept that there are very good reasons for the Department for Infrastructure and Transport to have the ability to simply deal with a dangerous tree that is posing an

³² Exhibit C27c at 20

³³ Exhibit C27c at 7 and 14

³⁴ Exhibit C27c at 7

unacceptable risk of injury, after receiving expert input. It appears that the regime within which the Department can interfere with significant trees is robust; it contains strong powers but also safeguards. It appears entirely appropriate.

- 45 I am particularly reassured by the inclusion of the requirement to notify the Council after a risk is identified, but not imminent enough to authorise immediate action by the Department. This has the result that if the Department identifies a risk but is not able to action it, there is a requirement to ensure the local authority will be aware of it and, subject to adequate resourcing, can assess and address it. I heard that this is satisfied simply by email to the Council.³⁵
- 46 I also heard reassuring evidence that the Department for Infrastructure and Transport operates a tree monitoring program in relation to concerning trees that come to the Department's attention.³⁶

Was there tree-damaging activity?

- 47 Documents and records were obtained from the Council, from SA Water and from SA Power Networks. These records identified a number of potentially tree-damaging activities that had occurred nearby to the tree, including excavations in and around the structural root zone. The most significant of these events was the construction of the residence in 2013, which involved the installation of utilities and services to the property, such as power and water. There was construction of a driveway immediately adjacent to the tree. A new fence and gate had been added at some point immediately adjacent to the main trunk. Also in 2013, a Stobie pole had been erected by SA Power Networks. Between 2018 and 2019, there were repairs to the footpath and roadside immediately in front of the tree. In May 2013, a new water meter had been installed.
- 48 I received into evidence particularly helpful Google Street View images which demonstrated a timeline of changes to the area surrounding the tree over time.
- 49 According to Mr Selway's report, each of these activities had the potential to injure or damage the tree in a way that could lead to poor tree health and subsequent structural instability. However, they both also agreed that it was more likely that the damage to the tree that facilitated the entry of the pathogens that removed the core structure was prior to any of these particular activities. In particular, two visible wounds were able to be observed in photographs of the tree taken in 2013.³⁷
- 50 Notwithstanding that it was not likely that the particular actions were the cause, the documentation in relation to each of the works did not demonstrate any particular consideration of that effect at the time of planning applications, approvals and the conduct of the works, which raises coronial concern.
- 51 Mr Selway said in his report that the combined works had produced the potential effect. That is, the tree suffered from weaknesses that were the likely result of these activities. Mr Selway said that there were a number of occasions since 2012 where the tree ought to have been inspected by a professional. His opinion was that these inspections were

³⁵ T425

³⁶ T441

³⁷ Exhibit C20

required under the Regulations relating to significant trees. This raised the question, particularly relevant for coronial purposes, of how multiple instances of extensive works were able to be performed without any authority requiring an inspection, or apparently turning its attention to the potential impact on the health of the tree and the consequent safety issue that might pose.

Road works

- 52 I heard evidence from Michael Lorenz, a civil engineer and the Director of Road Maintenance with the Department for Infrastructure and Transport. Of course, as I have set out above, the Department, appropriately, has particularly strong powers to interfere with significant trees in certain circumstances and their focus is on preservation of a 'clearance envelope' for the roadway.³⁸ If there was action taken by the Department in relation to the tree, it would likely be able to find authorisation for doing so. However, rather than assessing whether actions were authorised, my attention was more closely attuned to the question of whether there were activities that affected the health of the tree, without specifically having considered that potential impact.
- 53 I received into evidence an extract from a database held by the Traffic Management Centre which records incidents relating to Mount Barker Road which had been reported by members of the public.³⁹ I also received a document which summarised works conducted in relation to vegetation along Mount Barker Road,⁴⁰ although only broad stretches were delineated.
- 54 Those documents revealed that in 2010, there were 93 trees being removed along the relevant 2.6 km stretch of Mount Barker Road (either inside the vehicle envelope or outside it), with 242 other trees slated for major or minor pruning. The records were not presented in a manner that allowed any conclusion to be formed about what the Department's assessment of the relevant tree, in particular, was nor how comprehensive it was. I am therefore unable to reach any conclusion about whether these works had any impact on the relevant tree.
- 55 In 2019, the kerbing alongside the roadway, but within the structural root zone, was installed,⁴¹ together with a new footpath. This would have required some excavation, likely relatively shallow, in order to install. Mr Selway said that this might have had an impact on the tree.⁴²
- 56 The Traffic Management Centre database recorded an incident likely to have been at or around the relevant tree on 16 October 2020. The incident appears to have been closed on the database by a maintenance team on 1 November 2020. The records produced were not sufficient to identify what happened or what the incident related to.⁴³ Other than identifying that this was a potential interaction with the tree, I am left unable to make any other finding. It certainly appears to have triggered no further attention being given to the tree.

³⁸ Exhibit C27 at [11]

³⁹ Exhibit C27b and T417

⁴⁰ Exhibit C27g

⁴¹ The verge was previously unbounded

⁴² T71

⁴³ T419

Driveway and fence

- 57 During the construction of the new residence in 2012, the driveway between the house and the road, passing by the tree, was likely used by heavy vehicles. The driveway itself was then replaced after 2013. Mr Selway explained that if trucks had passed over the structural root zone along this driveway, this may have caused compaction which can damage the tree.⁴⁴ Dr Nicolle agreed.⁴⁵ The final driveway was compacted gravel and there was no evidence that there had been any excavation required in order for that driveway to be installed.
- 58 Similarly, a new post and rail fence was installed after 2013. This was a private activity and involved no government agencies. Of course, private individuals are required to seek approval before conducting any potentially tree-damaging activities in the vicinity of a significant tree. It is known that no such approval was sought in relation to the fence and I consider that this likely reflects a lack of proper understanding in the community about obligations regarding significant trees.⁴⁶

Water meter

- 59 Another potential tree-damaging occasion was the installation of a water meter in very close proximity to the tree in November 2012. I heard evidence from Chris Young of SA Water on this topic. He is the General Manager of Operations and Maintenance at SA Water.
- 60 Mr Young explained that on Mount Barker Road there was already in existence a service pipe riser. SA Water was asked to install an above ground water meter, connecting it to the existing pipe.⁴⁷ The installation took 30 minutes to complete. Given that no excavation was required, I am satisfied that this work did not have any impact on the tree, and in particular did not contribute to the eventual fatal limb failure.
- 61 Mr Young drew my attention to an SA Water document which governs consideration of the impact of any works on nearby trees, titled 'Best Practice Operating Procedure – Tree Assessments'. That document records:

Damage to a tree through development can have a compounding effect on the tree, including crown, trunk, and root damage. Root damage is the most common cause of damage to trees during construction and maintenance activities adjacent infrastructure. Disturbance to a tree's root system and surrounding soil from these activities can impact tree health, structural integrity, and aesthetics. This may lead to an increase in branch failure and may cause whole tree failure. Impacts of construction works can be difficult to repair, and it may take several years for a tree to display the impacts of development.⁴⁸

- 62 The procedure then refers to the tree protection zone and references the Australian Standard as well as the legislative definition of regulated and significant trees. The procedure requires a site assessment to be undertaken and consideration to be given to whether a proposed pipeline or trench will impact the tree's roots. The procedure guides the user through the process of calculating the tree protection zone and the structural root

⁴⁴ T69

⁴⁵ T264

⁴⁶ T109

⁴⁷ T209-T210 and Exhibit C14 at 69

⁴⁸ Exhibit C14b

zone. It then provides practical guidance about how to achieve the work required while minimising any impact on the health or integrity of the tree. Measures include using a hydrovac, directional drilling and hand digging.

- 63 I was impressed by SA Water's procedure. It is a comprehensive tool which is undoubtedly helpful to those undertaking works near significant trees. I have no doubt that such a procedure would, in practice, minimise the risk of safety issues arising in trees from SA Water's work.
- 64 I note that SA Water's operations are often urgent, providing a basic necessity of life to South Australians. There may be good reason for them to conduct quick work and I accept that this should not be unnecessarily burdened by delays in assessing every tree that might be affected by such work. I am satisfied that they have the proper procedures in place to assess the impact of their work as it relates to trees.

Stobie pole

- 65 One of the other opportunities related to what Mr Selway noted was another potentially tree-damaging event which was the installation of the new Stobie pole at the very edge of the structural root zone of the tree in May 2013.
- 66 I heard evidence from Alan Lee, the acting Networks Standards Manager for SA Power Networks. Mr Lee gave evidence that in designing the footing for a Stobie pole such as this, consideration is given to the soil type into which the pole is being anchored. Prior to the design and installation someone would go to the site and scope the area. Mr Lee was not aware if that person would consider any other environmental aspects of the location.
- 67 Mr Lee explained that the particular installation on Mount Barker Road required a hole to be dug that was some 970 mm wide and two metres deep.⁴⁹ That is, quite obviously, a significant opening in the land surrounding the tree. I heard evidence from Dr Nicolle that the depth of such a hole would be less relevant to the tree's health than the surface area being disturbed.⁵⁰
- 68 Dr Nicolle explained that the Australian Standards consider boring holes a 'tree-sensitive activity' if it occurs within the tree protection zone. There was a conflict in the evidence about the designated location of the cavity created for the installation of the Stobie pole. Mr Selway gave evidence that he considered it to be within the structural root zone. However, Dr Nicolle conducted calculations and determined that the particular hole created for the installation of the Stobie pole was possibly outside of the structural root zone.⁵¹ He said that it would not be tree-sensitive activity outside of the structural root zone unless there was exploratory activity being undertaken, such as using a soil vacuum. Mr Selway's own calculations resulted in the Stobie pole being half in and half out of the zone.⁵² He also accepted that even if the pole was proposed for within the structural root zone, that would not have meant it was inappropriate to proceed with the work.⁵³

⁴⁹ Exhibit C22 at [18]

⁵⁰ T264

⁵¹ T249 and T274

⁵² Exhibit C18a

⁵³ T134

- 69 Dr Nicolle helpfully explained that if there had been damage to the roots of the tree within the structural root zone during the installation of the Stobie pole, then such damage would not have had any relationship to the injury that led to the branch failure that killed Mrs Ditter.⁵⁴ Mr Selway said that Dr Nicolle had not given sufficient attention to the impact on the tree's ability to grow, that to some extent, contributed to the eventual failure.⁵⁵ This is an indirect impact.
- 70 I am therefore satisfied that, while the tree may have been damaged by the installation of the Stobie pole, it had no direct impact on the outcome here. That is not to observe that care should not be taken by SA Power Networks in conducting works around significant trees, it is instead to observe that there was likely no actual negative consequences developed here.

Private arborist assessment

- 71 At the time of the incident, the relevant residence was owned by Kerrie Hayes. Ms Hayes had purchased the property in December 2019 and had only lived there for just under a year before Mrs Ditter's death. Ms Hayes gave evidence during the inquest.
- 72 Ms Hayes said that about five months before the limb failure she had engaged a qualified arborist, Tom Fleming from Embark Arboricultural Services, to assess the tree, among others, and to provide a quote for some tree works.⁵⁶ Mr Fleming also gave evidence.
- 73 Mr Fleming said that he had initially been engaged to assess trees closer to the house, but that he was then asked to also assess the trees closer to the road, including the relevant tree. In his affidavit, he said:

This happened at the end of my inspection and was a casual, 'what do you think of these two at the front?' ⁵⁷

He agreed that his impression of this as occurring was that it was an 'afterthought'.⁵⁸ This description aligns with what Ms Hayes wrote in her affidavit, 'while he was at my address on 20 April 2020, I asked him to inspect two large poplar trees on my front boundary...'.⁵⁹ Mr Fleming said that those trees had drawn his attention when he arrived at the property as they were very large and had branches extending over the road.

- 74 Mr Fleming explained that he was not engaged to conduct any risk assessment, but rather to prune an oak tree and to remove a poplar tree in the middle of the garden.⁶⁰ He said that in visually inspecting the relevant tree, he observed two cavities in the tree which were 'quite deep, they were dark'⁶¹ so he knew there was serious decay in those areas. Mr Fleming explained:

... the poplar species itself it has very soft timber and it's very susceptible to hardwood decay in the centre, so having a cavity on either side of that area led me to believe that the

⁵⁴ T266

⁵⁵ T136

⁵⁶ Exhibit C17 at [15]-[16]

⁵⁷ Exhibit C21 at [5]

⁵⁸ T292

⁵⁹ Exhibit C17 at [16]

⁶⁰ T149-T150

⁶¹ T157

tree was quite hollow through that stem and being so low down with a load above that, that concerned me.⁶²

- 75 He gave evidence that he positively recalled telling Ms Hayes that the two trees near the road involved a lot of work to remove which would likely involve closing the road and that it would be an expensive job. He recalled estimating about \$15,000 per tree. Mr Fleming formed the impression that Ms Hayes was shocked at the price. He says that he was then told to concentrate on the smaller jobs that he was actually called there to quote.⁶³ He was adamant, however, that he told Ms Hayes that the work needed to be done within the next six months and that this was a standard type of timeframe for quite urgent tree work.⁶⁴ This was tested quite strongly during his oral evidence and Mr Fleming remained firm that he positively recalled telling Ms Hayes of the urgency.
- 76 Mr Fleming did not reduce his advice about the relevant tree to writing. He explained that he does not approach business with any high pressure techniques.⁶⁵ He was engaged to remove some smaller trees that concerned Ms Hayes and to brace another.⁶⁶ He was never engaged further by Ms Hayes.⁶⁷
- 77 Mr Fleming explained that it is not his usual practice to lodge applications for approval to interfere with a significant tree. He said that he leaves this to the client who holds the title to the land and that he would point them to the online forms if needed.⁶⁸
- 78 Mr Fleming impressed me as a professional and courteous witness. I am inclined to accept what he said happened. While he relied on his records, he did not appear to me to be reconstructing his memory. I did not consider that his evidence explaining the distinction between the work involved in a free quote and a multi-page detailed tree assessment was unreasonable or reflecting him trying to distance himself from the matter. Of course, his evidence was that he plainly saw that the tree needed to be removed and he advised Ms Hayes of that. Most significantly however, Mr Fleming's evidence about the condition of the tree aligned with the evidence of Mr Selway and Dr Nicolle. Given that, I am satisfied that he appreciated the risk that the tree posed which makes it more likely that he would have impressed the urgency of acting on Ms Hayes.
- 79 Ms Hayes said that Mr Fleming had told her that two of the trees near to the road, which had limbs extending over the road, were classified as significant trees, and that he explained to her what that meant.⁶⁹ She said that he explained that she would need Council permission to remove them and that it would take two or three days, involving Mount Barker Road being closed.
- 80 Ms Hayes gave evidence that she did not form the impression that works to the relevant tree were urgent, although she understood that 'heavy pruning' was required. She said that she understood that the work could be done within 12-18 months.⁷⁰ She said that

⁶² Ibid

⁶³ T159

⁶⁴ T296

⁶⁵ Exhibit C21 at [15]

⁶⁶ T21

⁶⁷ Exhibit C21 at [13]

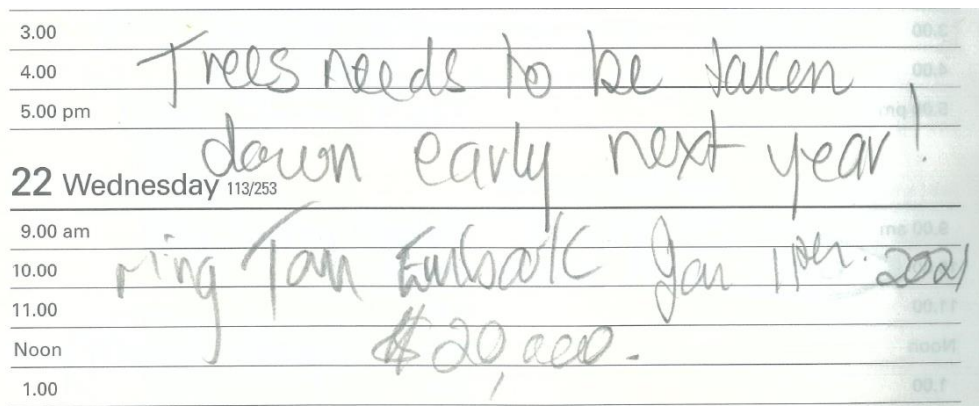
⁶⁸ T158

⁶⁹ T19

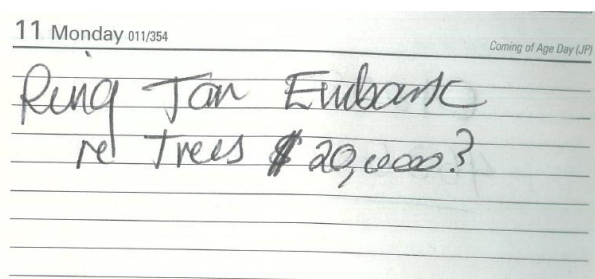
⁷⁰ T22

Mr Fleming had explained that it would take a couple of months to get the approvals for the tree work and the road closure. Her evidence was that if she had been informed that there was greater urgency to the work, she would have had no issue with proceeding to have the work completed. On the other hand, she gave no explanation for why there was any delay at all. Irrespective of a person's wealth, it would perhaps be surprising for a person to approve a \$20-30,000 expense immediately on the spot when raised as a surprise. I am not satisfied that Ms Hayes' capacity to pay means that she could not have hesitated, particularly when the trees in question were away from her residence.

- 81 During her evidence, Ms Hayes produced diary entries which she said supported the fact that she was acting on information from Mr Fleming that the work needed to be done within 12-18 months. She gave as evidence the entries that she had made close to the time of Mr Fleming's quote:⁷¹



- 82 Ms Hayes then made entries on 22 May 2020 and 28 May 2020, both simply recording 'Embark Tree'. These likely relate to the two attendances for work related to the smaller trees.⁷² Ms Hayes gave evidence that she had placed a sticker on 11 January 2021 to remind herself to have the trees removed. She said she chose that date because she thought people would be back from end-of-year holidays by that day.⁷³ Her 2021 diary had the following entry for that day:⁷⁴



- 83 Initially, Ms Hayes gave evidence that she had written this note in late 2020 when she got her 2021 diary. She then changed her evidence and explained that she had, in fact, made this note in 2024 after she had received a summons to attend the Coroners Court.⁷⁵ She explained that when she attended Court to give evidence, she had forgotten that the last

⁷¹ Exhibit C17b

⁷² T162 and T291

⁷³ T224

⁷⁴ Exhibit C17c

⁷⁵ Exhibit C17d at [3]

note had only been made about a fortnight earlier and proceeded to give an alternative account that it had been made four years earlier.

- 84 I have closely examined each of these entries, with particular attention to the April 2020 entry. What may not be observed in the depiction of the diary above but is observable when the original diary is viewed closely, is that the first two lines and second two lines appear to me to have been written in different pencils, one sharper than the other. Had this observation alone been determinative, I would have considered the need for expert assistance. However, it is not. The conclusion I have reached will be based on numerous factors, only one of which is the different pencil markings. When examined closely and carefully, the difference is also patently obvious.
- 85 I also observe that the note does not record that the process to remove the trees should be *started* early next year, but that the trees needed to be taken down by early next year.
- 86 On the basis of my close examination of the exhibit and careful consideration of what it actually records, together with careful consideration of all of the evidence as a whole, I am satisfied that Ms Hayes wrote the first two lines initially and then at some later point returned to the page and added the second two lines. They do not therefore represent a contemporaneous note of Mr Fleming's advice, but rather represent some later understanding that Ms Hayes had. The result of my conclusion is that I find that Ms Hayes had an understanding close to the time of Mr Fleming's visit that the trees needed to be taken down in early 2021. That is, about eight months later. Even Ms Hayes' subsequent note setting the date of 11 January 2021 is not inconsistent with that knowledge. While this finding is not a criticism of Ms Hayes, it is inconsistent with her evidence. I have therefore contemplated the level to which I am satisfied of the conclusion I have reached and whether I should refrain from making that finding when it is balanced against the impact it will have on Ms Hayes.⁷⁶ After that consideration, I remain satisfied to a high degree that Ms Hayes did have an understanding at the time of Mr Fleming's assessment that the trees ought to be removed within a shorter timeframe than she described in her evidence and obviously later formed a different understanding about.
- 87 In weighing up the competing evidence and taking into account Ms Hayes' records, I am satisfied that Mr Fleming gave the advice that he indicated he had. I am satisfied that Ms Hayes has either not remembered the conversation or has misunderstood what was said. I do not need to distinguish between those possibilities, but I observe that I am satisfied that Ms Hayes' intent was not to mislead the Court, simply that her evidence was not reliable on this point. In fact, she conceded herself that she may have misunderstood what Mr Fleming had told her.
- 88 This was an unfortunate outcome as I am satisfied that engagement of Mr Fleming's services within the timeframe he indicated would likely have seen the safety issue that the tree posed addressed prior to the failure. Of course, once again, I accept that Ms Hayes did not intend for the tragic incident to occur, nor could it be said that her actions brought it about. I merely observe that if earlier action was taken, it would have been desirable.

⁷⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336; see also *S J Berry Pty Ltd & Anor v McEntee & Anor* (2022) 142 SASR 31

Opportunities to inspect the tree

- 89 Having found that the occasion when the health of the tree was assessed failed to produce an outcome that addressed its risk to the public, I turn now to assess whether there were other opportunities for governmental agencies to identify that risk.
- 90 While exploring that issue, it became evident that it is not possible in this matter to attribute any responsibility⁷⁷ to any of the people involved. That is, the evidence did not reveal any single event that brought about the damage to the tree which eventually brought about the limb failure. In fact, the evidence allowed for the possibility that that sequence of events had commenced years before the time period under examination. I formed the view that attempting to explore events relating to the tree in the years prior to 2013 was unlikely to yield any clearer answer and was not, in any event, required to achieve the coronial purposes. I am satisfied that the safety issue that brought about the limb failure was itself able to be well-defined without identifying the specific event (if there was one) that led to the weakness developing.
- 91 The corollary of the fact that the structural issue within the tree being long-standing is that there was an equally long amount of time during which it could have been assessed, detected and addressed.
- 92 On that basis, I will analyse the occasions identified during the inquest where consideration of the effect certain actions might have on the tree could have been considered. I will then explore whether there ought to be changes to the law which would have the effect of mandating such considerations in those scenarios.
- 93 I pause to note that I heard evidence that the defect in the tree was not something that a lay person was likely to have been able to detect. I am therefore minded to assess more closely the opportunities for an expert to have been engaged, rather than any opportunities for a contractor, worker or other lay person to have inspected the tree.

Development applications

- 94 Concerns about the tree were first raised with the Council in December 2010 when an arborist's report was provided in support of an earlier abandoned development application. I received a copy of that report into evidence.⁷⁸ That report was focused on the oak tree which grew quite close to the house. However, in passing, the report said:

It is highly likely that excavation of the site may cause damage to the surface roots of the remaining trees, development of the property in accordance with council guidelines Development Act 1993 and in conjunction with the draft DR AS4970 "Protection of trees on development sites" to prevent and alleviate excess fill and earthworks near these trees that will expose roots; compaction with fill over the root plate to accidental damage and removal of tree roots which will result in reduced stability, vigor and available moisture under the canopy of the trees.

- 95 I accept that this report is not addressed at any safety issues and was instead aimed at the viability of the tree in light of the proposed works. Given that this report only incidentally mentioned the relevant tree and mentions no safety concerns, I am not critical that it

⁷⁷ As envisaged by s 13(2)(c) of the *Coroners Act 2003*

⁷⁸ Exhibit C16-5 at 341

appears not to have sparked any specific consideration of the relevant tree, particularly when the entire development application was subsequently abandoned.

- 96 The next occasion where consideration of the tree could have occurred was in August 2012 when builders on behalf of the previous owners submitted a development application to the Council seeking approval to construct a dwelling. I heard evidence from an employee of the Council, Deryn Atkinson, about the processes involved in such applications. Ms Atkinson gave particularly helpful evidence about the history of changes to the planning and development landscape.
- 97 I accept the submission that in the particular circumstances of this matter, it was entirely coincidental that a development application took place at all. It is perfectly conceivable that no application was made, no development undertaken and yet the tree still failed. It is unlikely, in such a scenario, that anything could be done to prevent a failure of the tree. However, I am faced with the facts as they occurred. I am faced with a situation where there was a development application and I therefore consider it appropriate to determine whether this was an opportunity to consider the health of the tree.
- 98 Ms Atkinson explained that the Council has responsibility for significant trees or regulated trees in that they are the body responsible for granting or refusing permission to heavily prune such trees within their geographical area.
- 99 Ms Atkinson explained that in 2011 the legislation changed and the criteria for a significant tree was increased from a circumference of two metres, to a circumference of three metres. A new concept of regulated tree was introduced which encompassed any tree with a circumference greater than two metres up to three. These changes were accompanied by a new requirement that there be 'exceptional circumstances' before a technical report was required in relation to a regulated tree to consider approving an interference with the tree.⁷⁹ This was likely aimed at reducing the time it takes for approval of an application to deal with a large tree that falls short of significant.
- 100 Ms Atkinson explained that in 2024 the regime was changed again and the size of a regulated tree was reduced to a circumference of one metre and the size of a significant tree was reduced down to a circumference of two metres.
- 101 Ms Atkinson said that where the Council detected tree-damaging activity in relation to a regulated tree more than 20 metres away from a residential building, the Council has enforcement obligations.⁸⁰
- 102 The Council is also responsible for dealing with development applications that may or may not involve large trees.
- 103 The Council has a budget of \$2,000 per year to obtain external reports.⁸¹ This is used to obtain 'second opinions' from arborists where internal staff feel it would assist to deal with disagreement or an unusual issue. The Council has arborists on staff within the arboricultural team, however Ms Atkinson said that those arborists do not have the

⁷⁹ T172

⁸⁰ T178

⁸¹ T181

capacity to assist with planning work, as they are fully occupied dealing with Council-owned trees.⁸²

- 104 Ms Atkinson said that when the development application was received in 2012, an assessor would have reviewed the documents.⁸³ This assessor would consider, among other things, whether there are any potentially tree-damaging activities for significant trees involved.
- 105 In 2010, an earlier development application was filed. It was later abandoned. During that application, an arborist's report was prepared, in relation to a different tree. In the report, the arborist recommended 'No trenching and or services to be located between the tree and the driveway; all services must be located on the far side of the driveway (western side)'.⁸⁴ The report then recommended a further assessment after development and every two years in relation to any tree that is retained.
- 106 After the 2012 application had been lodged, a planning officer conducted a site assessment.⁸⁵ This would have involved an assessment of whether all regulated or significant trees had been properly included on the plan.⁸⁶ However, Ms Atkinson said that the planning documentation lodged did not indicate whether the intention was to retain or remove any of the trees and that this really ought to have prompted further questions being asked about the intention. Ms Atkinson said that the proposal on the plan for a driveway to pass through the tree protection zone should have raised questions about what impact that might have had on the significant trees adjacent to the driveway.
- 107 Ms Atkinson explained that in 2012, if a significant or regulated tree was already within 20 metres of an existing residential building (on the same property or adjacent), then it was exempt from requiring planning permission for it to be removed or pruned, and the concept of 'tree-damaging activity' had no application to such a tree.⁸⁷ Where a significant or regulated tree is situated more than 20 metres from an existing residence but might be impacted by works, approval is required.
- 108 Ms Atkinson said that a technical report would likely be obtained if a development was likely to involve extensive earthworks or where a new building would extend underneath the canopy of a significant tree.⁸⁸ This decision involved a judgement call to be made about whether a report should be obtained.
- 109 Given that the 2012 development application documents contain no reference to the relevant tree, and that it had an obvious health issue, I am satisfied, on the balance of probabilities, that the tree was not subjected to any level of scrutiny. Mr Selway and Dr Nicolle said that the defects would have been readily observable. In my view, given that there was likely to be an impact on the health of significant trees, a greater level of attention to those trees was called for during the development assessment. I am not making a finding that a greater effort was required under the law at the time, I am merely observing that it ought to have been required.

⁸² T196

⁸³ T186-T187

⁸⁴ Exhibit C16-5 at 352

⁸⁵ Exhibit C16-5 at 332

⁸⁶ T196

⁸⁷ T168

⁸⁸ T173

Installation of the water meter

- 110 I have set out above the circumstances surrounding the installation of the water meter in 2012, following the construction of the residence. I am satisfied that, not only did the works have no impact on the tree, but also that SA Water would have properly considered that question, in line with its comprehensive standard procedure.

Stobie pole

- 111 As I have set out above, I am satisfied that the Stobie pole was installed in a manner that probably did not interfere with the structural integrity of the tree. Given that it was near to the structural root zone (possibly within it on the evidence of one expert), I am satisfied that this was an opportunity to have the tree assessed by an expert. I am satisfied that it was not for SA Power Networks to conduct that assessment, as they have no arborists on staff. However, if they had the capacity to draw their potential impact on the tree to the attention of someone with the capacity to engage an expert in the task, then this would have been ideal.

Department for Infrastructure and Transport

- 112 Mr Lorenz said that there are a number of ways in which the Department for Infrastructure and Transport might come to engage an arborist for advice, including:
- a. If the Department makes a decision to conduct work which will affect a tree in some way and there are concerns about the stability or health of the tree; and
 - b. Where concerns are raised about a tree by a maintenance inspector.⁸⁹
- 113 Mr Lorenz explained that where concerns are raised, staff of the Department will travel to the tree and conduct a rudimentary assessment as to whether an arborist should be engaged. He said that the assessment would encompass:
- a. Whether the tree as it stands poses a risk to passing motorists; and
 - b. Whether there is a risk of parts of the tree falling onto the roadway.
- 114 Mr Lorenz said if there was immediate danger, the Department is empowered to remove any tree, but otherwise if there is a need for proper assessment, an arborist will be engaged. He said that in almost all cases where there is a third-party report of concern about a tree, an arborist will be engaged.⁹⁰
- 115 Mr Lorenz said that even where a tree poses an issue, an assessment is still made as to whether the issue posed outweighs the value the tree brings to the local environment.
- 116 Mr Lorenz said that since Mrs Ditter's death, the Department has been developing a maintenance form for an inspector to fill in which will record the result of any assessments of trees following notification of a potential issue.⁹¹

⁸⁹ T405-T406

⁹⁰ T407

⁹¹ T408

Cooperation

- 117 Ms Atkinson pointed out that there is no real cooperation between the Council, SA Power Networks and SA Water in relation to their works. There is certainly no requirement for any formal coordination or approval by any one of any other agency's work. Another agency is the Department for Infrastructure and Transport who also have no formal role to play in coordinating works that might create safety issues. It appears as though consideration of tree-safety falls between the cracks of individual agencies conducting their individual work.

Focus

- 118 Dr Nicolle gave evidence of something I have observed a number of times already; that the focus of much of the authorities' attention on significant trees is not a safety focus. It is a focus on preserving the tree.⁹² While that should continue, it should be supplemented with a focus on the fact that significant trees can pose significant risks to those under them. Considerations of trees should not be limited to whether any proposed actions might injure the tree, but also consider whether they might result in a safety issue to people.

Preventability

- 119 I am satisfied that there was an occasion where different actions could have prevented the limb failure which took Mrs Ditter's life. That was when the Council was assessing the 2010 and 2012 development proposals. At those times, the Council could have required the applicants to obtain arborists' assessments in relation to all regulated and significant trees, especially when the proposed works were going to be conducted in the immediate vicinity of those trees. If that were to have been required, I am satisfied that the defect would have been found and that remedial action would have prevented the eventual limb failure. That is, the limb would have been removed prior to it falling naturally.
- 120 I accept that the fact that a development application occurred on this property was coincidental to the defect in the tree which likely pre-dated the development. However, that may not be so in future. Future developments around significant trees might impact the tree. In fact, development is an activity that has a high tendency to interfere with the integrity of the land and by extension the root systems of trees. It is for this reason that I consider it worthwhile exploring improvements that can be made to development applications to identify safety issues with large trees.
- 121 I am satisfied that if Ms Hayes had proceeded immediately with the removal of the tree, or within the timeframe specified by Mr Fleming, Mrs Ditter would likely not have been killed.
- 122 I am also satisfied that, had any of the agencies conducting work in and around the tree had the obligation to notify the Council of the fact that they had conducted *potentially* tree-damaging work, and had the Council had resources to deal with such notifications, the defect in the tree could have been detected and addressed. Of course, there was no such requirement and there was no such resourcing to deal with such notifications. I am therefore making a finding that had a different legal regime existed, there were opportunities to prevent Mrs Ditter's death.

⁹² T255

Prior inquest

- 123 In considering my findings, I had regard to the 2012 findings of his Honour State Coroner Johns in the *Inquest into the death of Rebecca Anne Penfold Jolly*, which had similar circumstances. In those findings, his Honour said:

The Adelaide metropolitan area, and not merely the council area of the City of Burnside, has many examples of very large gum trees overhanging roads. Some roads are busier than others but it is not difficult to find plenty of examples within metropolitan Adelaide of gum trees overhanging roads and houses to an extent that causes disquiet, if not alarm. It is difficult to see how the risk can be eliminated without the wholesale destruction of Adelaide's treescape. In any event, a considerable body of work has been undertaken by the Independent Inquiry into Management of Trees on Public Land. Considerable work has been done within the City of Burnside with its tree management strategy and associated protocols. I assume that similar strategies may be found in the records of other Local Government Authorities. It is clear that efforts are being made and that, within the limits of the resources available, the people responsible for this area of public administration are genuinely attempting to manage a very difficult situation.

It is impractical to expect that every single tree in metropolitan Adelaide will be individually inspected and assessed. It is probably impractical to expect even that, within existing resources, every tree that might pose a risk if it failed will be so inspected. Of course, when a risk has been drawn to a local authorit[y's] attention, then it is incumbent upon that authority to carry out a complete inspection of that risk in accordance with generally accepted standards. (my emphasis)

[Footnotes omitted]

- 124 With respect, I agree with his Honour's observations and I add the additional complexity in the current matter of the tree being on private land. However, what I would like to seize upon is his Honour's final sentence quoted above, by increasing the occasions on which risks might be drawn to the attention of local authorities.

Recommendations

- 125 In light of my finding that a different legal regime would have prevented Mrs Ditter's death and my point of view that an increase in opportunities for local government to be made aware of risks, I turn now to one of the core duties under the *Coroners Act 2023*, namely whether any recommendations need to be made from this inquest to prevent a death occurring in the same manner as Mrs Ditter had to suffer.⁹³ The Act also directs me to consider recommendations concerning public health and safety. A key consideration in this assessment is the finding I have just made, that a different legal regime was likely to have prevented Mrs Ditter's death.
- 126 A number of recommendations were proposed for my consideration in submissions primarily aimed at identifying a suitable mechanism to recognise and respond to any tree containing serious defects which might cause harm if there was to be a limb failure or some other incident. I have considered those proposed recommendations and the submissions made by the interested parties about them.

⁹³ *Coroners Act 2003* s 25(2)

127 I accept that it will never be possible to eliminate the risk of a limb failure in all trees in the State. I do consider, however, that better systemic approaches can be implemented that will aim to identify those trees at most risk of causing harm before they are given the opportunity to realise the risk.

128 The Adelaide Hills Council bore the brunt of the work involved in explaining the circumstances that led to Mrs Ditter's death. That is naturally so, given that she was not only a resident of that Council area, but the tree that brought about her death was within that Council area. Of course, while evidence and submissions were limited to the Adelaide Hills Council, I am satisfied that there is no reason why recommendations aimed at improving safety should not be considered by all Councils. I accept that the Adelaide Hills Council area does have a very large number of trees, including about 3,000 trees in Stirling alone,⁹⁴ but other metropolitan areas cannot be described as arid, even comparatively. In order to reach each of the Councils, I would prefer to make my recommendations to the Local Government Association, which is a body constituted under the *Local Government Act 1999*. It represents all 68 Councils across South Australia. In that way, all Councils, including the Adelaide Hills Council, can consider how to implement improvements with advice from their peak body.

129 I therefore make the following recommendations to the Local Government Association of South Australia:

One That Councils be asked to employ arborists on staff within their planning department to ensure that planning application assessments properly consider whether proposed developments might create safety issues with nearby significant trees.

Two That Councils be asked to introduce formal protocols that where any potential tree-damaging activity is identified in relation to a significant tree, Councils must satisfy themselves as to the nature of the potential impact after having conducted or procured a tree assessment and whether the impact might create a safety issue. This would be greatly assisted by having an arborist on the staff of the planning team.

Three That Councils remind their staff that assessments of significant trees and work that might affect significant trees should not be limited to an assessment of whether the tree will survive, but also whether there might be any impacts that mean the tree could present a safety risk to people.

Four That Councils and the Local Government Association undertake steps to improve public awareness of the responsibilities of homeowners with regards to ensuring significant trees do not pose safety issues.

130 I make the following recommendations to the Minister for Planning:

Five That the Minister develop cross-Departmental protocols to ensure that, when engaging in any development works, the various agencies usually involved (i.e. SA Water, SA Power Networks and the Department for Infrastructure and Transport) engage with local councils and seek information regarding the

⁹⁴ T180

existence of significant trees near to proposed works and whether the works might create any safety issues.

Six That legislation relevant to development within South Australia be amended to require compliance with the Australian Standard 4970 of 2009 (relating to the protection of trees on development sites) so that there are very clear shared understandings of concepts like tree protection zone and structural root zone.

131 Australian Standard 4970 is a document that arborists and planners appear to be very aware of, however at the moment it is entirely optional. The reason I consider it would be beneficial to include it as a component of mandatory planning considerations is that it defines tree protection zones and structural root zones. As the circumstances leading to Mrs Ditter's death have made clear, these are really safety issues and not merely matters of environmental concern. It would likely be an acceptable implementation of recommendation five for only the safety aspects of the standard to be incorporated into law.

132 It would be unreasonable to expect agencies such as SA Power Networks or SA Water to either have arborists on staff or to engage arborists each time their actions *might* impact a large tree (as distinct from when their actions do). However, that does not mean that these agencies could not usefully contribute to a safer environment for the public. I make the following final recommendation to the Minister for Infrastructure and Transport:

Seven That a legislative requirement be introduced that where works are conducted by a government agency in the vicinity of any significant tree, a notification is made to the local government authority with an indication as to whether any damage is thought to have occurred, to allow an assessment to be made as to whether there is likely to be any safety issue arising as a result of the works.

133 This would put the Council on notice that there might be an issue and either the arboricultural team or the planning team (who will be assisted by an internal arborist) can attend and make an assessment as to whether any action needs to be taken to address a safety risk. I note that the Department for Infrastructure and Transport has already imposed a duty on its staff to notify the Council where a safety issue is identified but unable to be addressed, however what I have proposed goes a step further – notifying of activity that itself creates a risk but without one specifically being identified.

Condolences

134 Mrs Ditter's death was sudden, shocking and involved terribly unfortunate timing. Her daughter sustained serious injuries which will impact her for a long time. I acknowledge the contribution that Mrs Ditter made to our community as a hard-working and respected teacher. Losing her in this way no doubt created a particularly heavy loss for her family, friends and no doubt many former students. I express my sincere condolences to Mrs Ditter's family and to all those who miss her.

Keywords: Arborists; Falling/Overhanging trees/branches