CORONERS COURT OF SOUTH AUSTRALIA

INQUEST INTO THE DEATH OF DAVID JOHN LOW

[2026] SACC 26

Inquest Findings of his Honour State Coroner Whittle

13 July 2026

CORONIAL INQUEST

Examination of the cause and circumstances of the death of a man who called for medical help while inside his locked home. The inquest explored the decision making which led to a lengthy delay before entry to the home was attempted.

Held:

1. David John Low, aged 64 years of Kilburn, died at Kilburn on 25 February 2020 as a result of ischaemic and hypertensive heart disease (operated) with cardiomegaly with contributing diabetes mellitus and morbid obesity.

2. Circumstances of death as set out in these findings.

Recommendations made.

Counsel Assisting: MR D EVANS

Interested Party: SA AMBULANCE SERVICE & COMMISSIONER OF POLICE
Counsel: MS S WILSON - Solicitor: CROWN SOLICITOR

Witness: MR D SPARROW
Counsel: MR J HOMBURG - Solicitor: GILCHRIST CONNELL

Witness: B/SGT C RYDER, SGT A WEAVER, SGT B MANN & C/INSP K CONWAY
Counsel: MS S WILSON - Solicitor: CROWN SOLICITOR

Hearing Date/s: 05/12/2024-06/12/2024, 10/12/2024 & 19/12/2024

Inquest No: 46/2024 **File No/s: 0420/2020**

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INQUEST INTO THE DEATH OF DAVID JOHN LOW [2026] SACC 26

Introduction

1 The Court heard an inquest into the death of a 64-year-old man who made a call to a carer seeking help for a medical episode. Notwithstanding the reasonably prompt attendance of a paramedic, entry was not made for quite some time. The inquest focussed on the processes and procedures followed, as well as the considerations which led to delayed entry.

Content of these findings

2 The standard of proof to be applied in coronial findings is the civil standard, the balance of probabilities. Where I express a finding of fact in these findings, I have done so on the basis that I am satisfied that that fact was proved as more likely than not on the basis of the evidence I heard and received and consider reliable. In considering making findings which imply or express criticism of individuals, I am guided by the principle enunciated in *Briginshaw v Briginshaw*[1] and I shall not make such a finding unless the evidence leads me to a comfortable level of satisfaction that the finding should be made taking into account the nature and potential consequences of the finding.

3 In these findings I shall not summarise all the evidence tendered or heard during the inquest but refer to it only in such detail as is warranted by its forensic significance and the interests of narrative clarity. It should not be inferred from the absence of reference to any aspect of the evidence that it has not been considered.

4 Police witnesses are referred to by the rank held at the time of Mr Low's death.

David John Low

5 David Low was born on 24 November 1955. He was married for 45 years and had two daughters. He lived at Kilburn. He had a career as a self-employed cabinetmaker who started in that profession at the age of 15 years.[2] Mr Low was a person who experienced a number of medical issues but was generally reluctant to visit doctors.[3]

6 In about 2000, Mr Low was diagnosed with diabetes.[4] He initially ignored the diagnosis and made no changes to accommodate the condition. Some time after the diagnosis, Mr Low stubbed the big toe on his right foot and it became infected. He ignored it and eventually had to have all the toes on his right foot amputated.

7 Mr Low experienced breathing issues and was prescribed Ventolin, which made no impact. In 2011, Mr Low's wife noticed that he was having issues with mobility. As his grandfather had died of a heart attack at age 47, Mr Low visited his general practitioner[5] and was referred to a heart specialist. Mr Low was recommended intervention to place

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[1] *Briginshaw v Briginshaw* (1938) 60 CLR 336
[2] Exhibit C5 at [4]
[3] Exhibit C5 at [7]
[4] Exhibit C5 at [5]
[5] Exhibit C5 at [9]

stents. He was advised that his breathing issues related to his heart issues and that his diabetes had masked the pain.

8 Mr Low went through with the operation and had two stents inserted.[6] About six weeks later, he had a fall which resulted in further surgery.

9 In August 2015, Mr Low was experiencing poor circulation in his leg. He then had another fall at home. Swabs taken at hospital revealed that he had an infection which had entered the bone and he had his left leg amputated below the knee.

10 Following that, Mr Low had a pacemaker inserted, but he was advised that he needed a more suitable pacemaker inserted, which could not have been achieved in the first surgery given his condition at the time.[7]

11 In 2016, Mr Low applied for NDIS support for transport while his wife was at work. He was approved for general cleaning, maintenance, community access and social activities.[8] Mr Low engaged a service provider called Spry. Mr Low refused suggestions to increase the level of help he received from carers as he wanted to remain as independent as possible.

12 In 2017, Mr Low underwent surgery to have the more suitable pacemaker installed.[9]

13 In October 2018, Mr Low was assigned a new support worker, Glenn Gibbs.[10] Mr Gibbs was not given keys to Mr Low's house. Mr Gibbs attended initially once a week, then increasing to twice a week, for five hours on each occasion.[11] This mostly involved taking Mr Low to physiotherapy to help his mobility and other medical appointments.

14 From 2019 onwards, Mr Low's mobility was very poor. He would experience breathlessness from moving short distances within the house. He began to have difficulties standing up and started to rely more on his wheelchair. He commenced using a CPAP machine for sleep. He spent a couple of weeks in hospital in 2019 due to breathlessness.

15 On 14 January 2020, he was again admitted to hospital for breathlessness. He was discharged on 4 February 2020 and visited his GP on 21 February 2020 for a follow-up.[12]

25 February 2020

16 Mr Low's wife left home for work in the morning of 25 February 2020 while Mr Low was still asleep.[13] At about 1 pm, he rang his youngest daughter and asked her to come around to help him get up.[14] She arrived 10-15 minutes later and by that time Mr Low was sitting on the edge of the bed. He told his daughter that he was not feeling the best and did not have a lot of strength in his legs, but he was otherwise in good spirits. It was

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[6] Exhibit C5 at [10]
[7] Exhibit C5 at [15]
[8] Exhibit C5 at [17]
[9] Exhibit C5 at [19]
[10] Exhibit C4 at [3]
[11] Exhibit C4 at [6]
[12] Exhibit C11 at 25
[13] Exhibit C5 at [25]
[14] Exhibit C3 at [10]

unusual for him not to be able to get up at all. His daughter fed him and brought him his medication. She tried to help him to the bathroom, but she was not strong enough to lift him. She told Mr Low to rest a little longer and turned on his CPAP machine. She drove home to collect her son who had agreed to help her. They returned and tried again but were still not able to get Mr Low up.[15] He said he did not want an ambulance called as he thought they would just take him to hospital for six hours and then bring him home.

17 Mr Low's daughter and grandson left at about 3 pm. Mr Low was happy and joking around. He was still in bed.[16]

18 Later in the afternoon, Mr Gibbs called Mr Low to arrange his scheduled visit for the following day. Mr Low complained of pain in his arms and legs and said that he could not move. Mr Gibbs asked whether Mr Low wanted to ride it out or whether he should call an ambulance. Mr Low became really distressed and was grunting in pain, more and more heavily, before he apparently dropped the phone and the call abruptly ended.[17] Mr Gibbs assumed that Mr Low had hung up in a panic or to call an ambulance. Mr Gibbs was worried and tried to call back a few times, but it kept ringing out. Mr Gibbs called his boss, Valentine Olaleye, who said he would attend Mr Low's house. Mr Gibbs' concern was such that he also rang triple zero. A recording of that call was received into evidence.[18]

19 Darryl Sparrow, an Intensive Care Paramedic of 20 years' experience with the SA Ambulance Service (SAAS), was on duty as a Single Person Response Unit, or SPRINT paramedic.[19] He received a dispatching to Mr Low's house at 4:06 pm.[20] He was advised that there was an unknown problem for a patient in distress who is wheelchair bound and had called his carer for help and then got disconnected. The tasking recorded 'Consciousness unknown, Breathing status unknown'.[21]

20 Mr Sparrow arrived at the area about eight minutes later.[22] However, the house number provided by Mr Gibbs was incorrect, which is not surprising given the hesitation I noted when listening to the audio recording of the call. Mr Sparrow spoke to the occupant and was advised that it was the wrong house. He called the Operations Centre and asked for confirmation of the description of the house, which resulted in another call to Mr Gibbs. It took about six or seven minutes before Mr Sparrow attended at Mr Low's house and knocked. There was no response. Mr Sparrow called the Operations Centre, discussing the details of the callout and requesting an ambulance crew to attend, at a lower priority than applied to his dispatch, where lights and sirens would not be used.[23]

21 At 4:24 pm, Mr Sparrow radioed the Operations Centre to ask them to confirm that Mr Low was definitely inside. An operator spoke to Mr Gibbs and asked, 'How certain

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[15] Exhibit C3 at [22]
[16] Exhibit C3 at [25]
[17] Exhibit C4 at [10]
[18] Call 16.03.01, transcribed in Exhibit C8 Annexure B at 1-5
[19] Exhibit C12 at [2] and [5]
[20] Exhibit C8 Annexure A at 2
[21] Exhibit C8 Annexure A at 1
[22] Exhibit C8 at 2
[23] T105.24

are you that he is at that address?'. Mr Gibbs said, 'Ah, a hundred percent, I'm pretty sure'. Recordings of these calls were received into evidence.[24]

22 During the course of that call, at 4:26 pm, Mr Sparrow called in and another operator relayed to him that Mr Gibbs was on the phone to another operator saying that he was 'sure he is at the house'. He was also advised that there was a recent ambulance callout to the address for breathing problems. He was told again that Mr Low's carer was definitely sure Mr Low was at the address. Mr Sparrow was happy to hear that attempts to contact family members were being made. He said '…saying that I guess we need SAPOL I suppose'.

23 Constable Chantelle Ryder and Probationary Constable Madeleine Wright were on duty. They responded to the call for assistance, arriving at 4:37 pm. When they arrived, Mr Sparrow was standing on the front doorstep of Mr Low's house waiting.

24 Mr Sparrow told the officers that he had arrived at 4:15 pm and had been unable to raise anyone inside the house.[25] He said that staff at the call centre were trying to get into contact with Mr Low's wife and that he was waiting for this before trying to enter the house.

25 Constable Ryder said she asked Mr Sparrow if it was his intention to break in. Mr Sparrow told her that he was not willing to do that because he could not rule out that Mr Low had either self-presented to hospital or had been collected by his wife to attend hospital.[26] In his evidence, he agreed that it would be odd if Mr Low had been collected and taken to hospital and was still not answering his phone, but said he had 'probably not' turned his mind to that implausibility at the time.[27] Constable Ryder called her supervisor, Sergeant Amanda Weaver, to advise her of the situation. She spoke to Sergeant Weaver at 4:45 pm. Sergeant Weaver told Constable Ryder to commence making enquiries, as time was of the essence. She said she was on the way.

26 Constable Ryder noted that all the windows around the house were either frosted or did not allow a view inside due to large heavy blinds. The only exception was the kitchen window. The police officers knocked loudly on the doors and windows and yelled out.[28] There was no response and nothing was heard from inside the house. They borrowed a ladder from nearby tradesmen to gain access to the backyard, but they could not find a good entry point to the house.

27 Mr Sparrow said that police were calling Mr Low's phone and given that he could not hear it ringing, he assumed that Mr Low was not inside. He said that at this point he thought that he did not have the sufficient belief to enter; he did not believe Mr Low was inside as there was no evidence that he was inside.[29]

28 Commencing at 4:52 pm, the Operations Centre operator called her team leader. They discussed the case. A recording of that call was received into evidence.[30] The team leader

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[24] Call 16.21.11 and Call 16.25.44, transcribed in Exhibit C8 Annexure B at 9-13
[25] Exhibit C14 at [11]
[26] Exhibit C14 at [20]
[27] T99.20
[28] Exhibit C14 at [16], Exhibit C20 at [13], T47.21 and T49.20
[29] T61.32
[30] Call 16.52.47, transcribed in Exhibit C8 Annexure B at 16-19

was told that Mr Sparrow '…is arguing wife could have picked him up'. The team leader said, 'If there are rooms they can't see into I am inclined to break in'. He then said, 'I'm inclined to break in anyway'.

29 Sergeant Weaver was on duty with Sergeant Benjamin Mann. They arrived at 4:53 pm. Sergeant Weaver said that when she arrived, she asked why entry had not been made and did not receive a response. Sergeant Weaver commenced using her baton to unwind a window winder when Constable Ryder told her SAAS had decided not to use [SAAS] powers of entry and Sergeant Weaver removed her baton. At this point, she commenced making an assessment about whether to seek approval from the District Duty Inspector for police to force entry.

30 At 4:55, Mr Sparrow had a conversation with the operator where he was advised that the team leader had said entry should be made, he was told 'that is the consensus here'. Notwithstanding that advice, Mr Sparrow still did not instruct SAPOL to force entry (assisting him in exercising SAAS powers).

31 Mr Olaleye arrived at 4:55 pm and told police about his call with Mr Gibbs. He said he was sure Mr Low was still inside the house, that his bedroom was at the rear of the house and that there was not enough time for his wife to have come and collected him.[31] He said he did not have keys. Sergeant Weaver jumped the fence into the backyard and tried to observe through windows.

32 Sergeant Weaver said that she formed a firm belief in her mind that Mr Low was inside and needed assistance. She called the District Duty Inspector, Karmen Conway, at 4:58 pm from the backyard.[32] Inspector Conway recalled that Sergeant Weaver said, 'We're going to have to break'.[33] Inspector Conway refused to grant permission to break in, telling Sergeant Weaver that it was a medical tasking and SAAS were required to do their job. Inspector Conway said that, at the time, she was aware that SAPOL had been tasked to attend as a Grade 3 which was not an immediate attendance requirement and that the triple zero caller had not mentioned 'anything suggesting life status questionable'.[34] She said she was not aware that the paramedic in attendance was a SPRINT paramedic.[35] Inspector Conway said that she did not believe at the time that she had the power to 'override' a SAAS decision not to force entry until she was aware of the reason they had changed their mind about entry.[36] Sergeant Weaver told Inspector Conway that she would not be leaving the scene without finding Mr Low. Inspector Conway said that she told Sergeant Weaver that if 'SAAS still refuse to use their powers that she was to ring me back'.[37] She has never suggested that she provided a timeframe for that callback to occur.

33 Sergeant Weaver told Inspector Conway that she would challenge the paramedic's decision not to force entry, but that she would likely be calling back to ask Inspector Conway to reconsider her decision.

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[31] Exhibit C19 at [12] and Exhibit C15 at [10]
[32] Exhibit C15 at [13]
[33] Exhibit C17 at [7]
[34] Exhibit C17 at [4]
[35] Exhibit C17 at [5]
[36] Exhibit C17 at [10]
[37] Exhibit C17 at [16]

34 Sergeant Weaver then jumped the fence to the front and spoke to Mr Sparrow. He again declined to force entry. Sergeant Weaver instructed him to 'get it done'.[38] She explained to him the reasons that Mr Low was likely still inside in need of assistance. Mr Sparrow did not change his position. Mr Sparrow said that he thought Sergeant Weaver was '…a little angry that I hadn't used my powers to break into the house'.[39] He said, 'The arrival of Sergeant Weaver didn't really affect what I was thinking about whether his wife had picked him up and taken him to the doctor'.[40]

35 At 5:06 pm, Mr Sparrow radioed the Operations Centre and reported that there was 'a bit of argy bargy here about whether we should be exercising our powers of entry'.[41] He asked them to check whether Mr Low had presented at The Queen Elizabeth Hospital, being the nearest major hospital. They called and confirmed that he was not there and then reported that back to Mr Sparrow at 5:16 pm.[42]

36 Sergeant Weaver asked Mr Olaleye to call Mr Low's phone over and over so they could try to hear it ringing inside. She sent her officers over the fence to see if they could hear it ringing at the back of the house. They could not. Sergeant Weaver rang The Queen Elizabeth Hospital herself and confirmed that Mr Low had not presented there.

37 Mr Olaleye tried to call Mrs Low but could not get through.[43] While that was happening, Sergeant Mann was able to find contact details for Mr Low's eldest daughter, Kellie, through SAPOL systems and rang her.[44]

38 At 5:15 pm, an Operations Centre operator phoned the [SAAS] State Duty Manager, Andrew Albury. She said that she needed approval to force entry. The State Duty Manager asked why and the operator said, 'because they didn't think that it was enough, but the team leader told them to break in and so they wanted SDM approval as well'. The State Duty Manager asked for Mr Sparrow to call him immediately. Mr Sparrow called the State Duty Manager at 5:19 pm and said, 'I'm not convinced there's enough evidence that he's in there to be honest, but I'm happy to tell them to kick the door in'. He said that Mr Low had not said what kind of help he might have needed and suggested it might be help on the toilet that he needed. Mr Sparrow again said he would be happy to tell police to kick the door in and the State Duty Manager told him that it was nothing to do with police because it was a medical issue, not mental health. At the end of that call, Mr Sparrow advised that Mr Low's daughter had arrived.

39 She arrived at 5:23 pm, opening the house. Officers and paramedics entered and found Mr Low in his bed in the front room. He was declared life extinct at 5:35 pm.[45] Sergeant Weaver noted that Mr Low's hands were only just starting to pale.[46]

40 A short time later, the State Duty Manager, Mr Albury, phoned Mr Sparrow, asking if Mr Low was 'deceased deceased' when they got in. A recording of that call was received

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[38] Exhibit C15 at [15]
[39] T50.36
[40] T68.18
[41] Call 17.08.11, transcribed in Exhibit C8 Annexure B at 20
[42] Call 17.16.36, transcribed in Exhibit C8 Annexure B at 23
[43] Exhibit C19 at [15]
[44] Exhibit C16 at [7]
[45] Exhibit C12a
[46] Exhibit C15 at [22] and T216.27

into evidence.[47] Mr Sparrow said, 'Oh absolutely' explaining that Mr Low would have died within seconds of hanging up on the call to the carer. He again spoke about the 'argy bargy' and said, 'it wasn't going to make one scrap of difference'. He spoke of Sergeant Weaver being quite pointed about him using his powers and that he had said, 'You've got to have enough evidence'. He said that Mr Low was so heavy that he would not have even started CPR if he had entered. He said 'we didn't have enough evidence' to force entry.

41 While still at the house, Sergeant Weaver and Mr Sparrow had an argument in which Mr Sparrow told her that earlier entry would not have made a difference. Sergeant Weaver said that she found the discussion distressing. Police spoke to Mr Low's GP and obtained a cause of death. The entry of a cause of death by a medical practitioner has the consequence that the State Coroner's investigation powers are not engaged. Sergeant Weaver spoke to Inspector Conway and expressed her view that the actions of emergency services was short of what should be expected.[48] Given what had happened, and notwithstanding that the doctor had issued a cause of death, Sergeant Weaver instructed her officers, quite properly in my opinion, to make a report of the death to the State Coroner.

Cause and time of death

42 A post-mortem examination was conducted by Dr Cheryl Charlwood. Dr Charlwood gave her opinion that Mr Low had died as a result of ischaemic and hypertensive heart disease (operated) with cardiomegaly with contributing diabetes mellitus and morbid obesity.[49] At the conclusion of the inquest hearing I advised Mrs Low that I would forward to the Registrar of Births Deaths and Marriages a written finding that this was Mr Low's cause of death, so that a death certificate could be issued. This occurred on 9 December 2024. I remain satisfied that Dr Charlwood's opinion properly reflects the evidence, and I confirm my finding that Mr Low died as a result of ischaemic and hypertensive heart disease (operated) with cardiomegaly with contributing diabetes mellitus and morbid obesity.

43 While establishing a specific time of death is often an impossible task, as I have observed, Mr Low had a pacemaker device installed which monitored the performance of his heart. This provides a unique source of evidence about the condition and activity of Mr Low's heart during the relevant time.

44 A highly experienced specialist consultant cardiologist and electrophysiologist, Dr William Heddle, reviewed Mr Low's pacemaker data. Dr Heddle said that the data shows Mr Low experienced ventricular sensing episodes between 3:08 pm and 3:39 pm.[50] Given that, he said, it appears Mr Low died of a low heart output state with pulseless electrical activity rather than an arrhythmic episode. Dr Heddle was not able to pinpoint a precise time of death using the data but surmised that death occurred between 4:18 pm and 4:39 pm (during which time Mr Sparrow was outside Mr Low's house).

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[47] Call 17.44.20 and Call 17.45.23, transcribed in Exhibit C8 Annexure B at 25-28
[48] Exhibit C15 at [27]
[49] Exhibit C2a at 2
[50] Exhibit C18 at 2

45 Arriving at this time involved a correction of the raw data to account for daylight saving time. I am satisfied that this correction is appropriate and that to do otherwise would suggest that Mr Low had called for assistance at a time after his death, which is obviously not possible.

46 The following activities occurred before and during the window established by Dr Heddle:

Time	*Post- arrival*	*Event*	*Description*
4:03 pm		Triple zero call	Gibbs is 'very worried about him'
4:06 pm		Triple zero dispatch	
4:14 pm		Sparrow arrives	
4:16 pm	+2 min	Sparrow call to SAAS	Finding out correct address, requests callback
4:17 pm	+3 min	SAAS call to Gibbs	Gibbs describes the wheelchair ramp again
4:18 pm	+4 min	SAAS Radio to Sparrow	Advised looking for wheelchair ramp
4:21 pm	+7 min	Sparrow Radio to SAAS	No answer at door, requests crew
4:24 pm	+10 min	Sparrow Radio to SAAS	Still no answer, asks for calls making sure carer believes Low is inside
4:25 pm	+11 min	SAAS call to Gibbs	Gibbs says he is 100% certain that Mr Low is inside and that he 'might be in a bad way' in there
4:26 pm	+12 min	Sparrow call to SAAS	Advised that Gibbs is on the phone currently, told that Gibbs is sure he is in the house, told previous breathing problems 15 January taken to TQEH, told again Gibbs definitely sure he is at the address, Sparrow suggests SAPOL
4:37 pm	+23 min	Ryder and Wright arrive	

Time of death established by Dr Heddle

Powers of entry

115 The *Health Care Act 2008* gives a SAAS paramedic a power to use force to enter premises. It provides:

> **61—Power to use force to enter premises**
>
> (1) A person who is a member of the staff of SAAS may use reasonable force to break into any place if the person believes that it is necessary to do so—
>
> (a) to determine whether any person is in need of medical assistance; or
>
> (b) to provide any person with medical assistance.
>
> (2) A member of the staff of SAAS acting under subsection (1) must comply with any protocols or procedures established by SAAS for the purposes of this section.

116 There is no requirement under the Act for there to be evidence that a person is inside. The power specifically allows entry where there is a belief that it is necessary to determine whether anyone does need medical assistance. That section was in the same terms in 2020 as it is today.

117 I observe that there is no express power in the legislation to enter premises when force is not required to be used to achieve that. That is not to observe that there is no such power at all; in fact, it is likely that there is common law authority to enter for the purposes of providing emergency assistance. That is something that I do not need to consider further in the context of these findings. However, I do observe that in recent times the use of signage forbidding entry appears to have increased.[51] It seems to me, in light of the evidence I heard, that the presence of such signage could be an example of something that might lead to confusion, or at least delay, while advice is taken about the sufficiency of the basis to enter, particularly if the purpose of entry is to ascertain whether any person is present inside that requires assistance and where that fact is not *known*. Such delay needs to be guarded against. I will return to this issue when considering recommendations, as I consider that an express power ought to be legislated.

118 The *Summary Offences Act 1953* gave an inspector of police the power to authorise forced entry to a house or other premises. It provided:

> **83C—Special powers of entry**
>
> (1) Where a senior police officer[52] suspects on reasonable grounds—
>
> (a) that an occupant of premises has died and his or her body is in the premises; or
>
> (b) that an occupant of premises is in need of medical or other assistance,
>
> the officer may authorise a police officer to enter the premises for the purpose of investigating the matter and taking such action as the circumstances of the case may require.
>
> (2) An authorisation under subsection (1) must be in writing unless the authorising officer has reason to believe that in the circumstances urgent action is required, in which case, the authorisation may be given orally.
>
> …

119 Section 83C has since been amended, but not in any way which materially affects the issues arising during this inquest.

120 According to data published by the Commissioner of Police, in the 2023/24 financial year, that power was exercised 314 times, with 78 of those cases resulting in entry to an empty premises and 26 cases of entry to premises where no medical assistance turned out to be required.

121 Despite having had time to prepare for giving evidence, Mr Sparrow gave evidence that he did not know where the SAAS power to enter actually came from.[53]

SAAS involvement

122 I heard and carefully assessed evidence from paramedic Mr Sparrow. During his evidence I noted long pauses between questions and many of his answers. It was submitted to me that this was a result of proper consideration of the questions,[54] however

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[51] See, for example, *Cosenza v Denisoff* [2026] SASCA 54
[52] Defined in s 4(1) as a member of police at or above the rank of Inspector
[53] T91.11
[54] T351.26

that is not the impression I formed. Mr Sparrow's approach did not appear to me to be consistent with merely a careful consideration of the questions. I regarded as telling, the types of questions which attracted long pauses before answering. In my assessment, Mr Sparrow appeared to be a witness who was considering very carefully the *consequences* of his answers. He appeared to be guarding himself. I consider that some of his answers were intended to be self-serving, rather than an unbridled picture of the topic. This has given me pause to consider the weight that I am prepared to give his evidence.

123 Notwithstanding Mr Sparrow's hesitation in answering some questions, he did concede that he had not acted appropriately. He conceded that he 'fixated' on trying to contact family.[55] He conceded that his proposition that Mrs Low had come home, picked Mr Low up and taken him off to hospital and then stopped answering her phone, in the short time between the triple zero call and his arrival, was an implausible scenario.[56] Of course, the implausibility of that was something that Mr Olaleye and Sergeant Weaver gave evidence that they pointed out to Mr Sparrow at the time, Sergeant Weaver referring to the idea as 'rubbish'[57] and Mr Sparrow accepted that they possibly did tell him that.[58]

124 The evidence raised issues of the appropriateness of applicable policies and the adequacy of training. I am satisfied that Mr Sparrow was fixated on the wrong issue – proving that Mr Low was not in the house by doing everything other than breaking in to check. I am also satisfied that Inspector Conway focussed on a red herring – why Mr Sparrow had not exercised the SAAS power.

125 Mr Sparrow gave evidence that if he had heard police say they could get in without causing damage, he would have told them to do it.[59] He said that causing damage played a role in his decision-making.[60] During his evidence, Mr Sparrow was played the call from Mr Albury and he agreed that he told Mr Albury that police had told him that they could get in without causing damage.[61] He agreed that police would have told him that, given he had immediately reported it to Mr Albury.

126 What the evidence made clear was that Mr Sparrow did not at any time get close to deciding to use his own power to force entry. This was made most clear when he explained that he had called for a crew to be sent on priority 3, which is a non-urgent response time. Mr Sparrow said that he called for that because he thought he might have got through to family in that time and that Mr Low would have been found elsewhere before a crew actually arrived.[62] However, if he thought that he might be about to enter using his powers, he would have called for a crew at the same priority he had been dispatched at.

127 I find it difficult to conclude whether Mr Sparrow arrived and was convinced that Mr Low was not inside, or whether that position remained open in his mind, but I am satisfied that he was not prepared to enter unless and until he was certain, or at least close to certain,

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[55] T95.5
[56] T99.37
[57] T171.37
[58] T100.14
[59] T109.18
[60] T117.11
[61] T129.25
[62] T106.24

that Mr Low was in there. Mr Sparrow's explanations about his thinking did not satisfactorily explain his behaviour. What he did appeared to be based on very little sound reasoning. He appeared to do everything he could to prove that Mr Low was elsewhere, while the clock ticked away. He said that he was guided by previous incidents where he had forced entry, only to find that it was not necessary, although he acknowledged there had been no repercussions following those incidents.[63] By his approach he did not address the risk posed by the worst case scenario, which must have been plainly obvious to anyone reading the tasking, as it was plainly obvious to Sergeant Weaver. He did not listen to Sergeant Weaver setting out the logic of the situation, although he admitted he had heard what she said.[64]

128 To be clear, at one point Mr Sparrow's evidence was that he challenged his own assumptions at this point, but he went on in his evidence to say that Sergeant Weaver had not affected his thinking[65] and the obvious state of affairs that followed demonstrated that he was not actually listening, or at least taking on board, what she was saying. In the same way, he chose not to act on his own call centre telling him to enter.

129 I conclude that Mr Sparrow was effectively paralysed by the possibility that a best case scenario, as he saw it, might have been what occurred. He even tried to invent new best case scenarios which were illogical, and here I refer to Mr Sparrow's suggestion that it was 'help on the toilet' that Mr Low had phoned to ask for. Of course, if it was help on the toilet Mr Low had needed, then he would still be at home and would not have been rushed away to the hospital in the moments before Mr Sparrow's arrival. That possibility was completely unfounded speculation that improperly downplayed the potential seriousness of the callout. It was inappropriate for a paramedic to speculate in that way, particularly given Mr Sparrow could not recall a single instance of that happening to him before.[66] Mr Sparrow defended that statement in his evidence, saying that help on the toilet could actually be serious, but then accepted that it was not his intention, when he made the statement during the call, to imply that Mr Low needed help on the toilet and this was a serious situation.[67] I have listened to the call carefully. I am satisfied that Mr Sparrow made this statement as a reflection of his assessment that Mr Low might not be in serious need of help.

130 I find that approaching the case with a focus on a best case scenario, that is, almost assuming that Mr Low had been taken to hospital by his wife until proven otherwise, was an inappropriate way to approach the situation, having regard to the facts as they were known to Mr Sparrow at the time. Equally concerning, as I will turn to in a moment, is how this was able to be Mr Sparrow's approach that day. How did his training and the policy framework allow or lead him to fixate on proving Mr Low was not inside?

131 I find that Mr Sparrow knew, at the very latest immediately upon finding Mr Low inside, that he should have gone in about an hour earlier. That is clear from his pattern of behaviour after entering, which I am satisfied was designed to cause others to perceive that Mr Low's death was inevitable, or that it must have occurred before Mr Sparrow's arrival. Mr Sparrow even asserted things completely outside his expertise, for example

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[63] T116.6
[64] T67.4
[65] T68.18
[66] T80.35
[67] T134.2

that Mr Low had died within seconds of his call for help.[68] He said there were things that he wished he had known, which the calls reveal he actually did know at the time. Although he denied it in his evidence, I am satisfied that Mr Sparrow told people on the scene that entering would not have made 'a scrap of difference'.

132 Accepting, as I do, Dr Heddle's opinion as to the range of timing of Mr Low's death, I am satisfied that Mr Low's death occurred at a time when Mr Sparrow was outside of his house.

Formal policy and procedure

133 It is clear that s 61(2) allows SAAS to make 'protocols or procedures' for paramedics to follow when exercising s 61(1) powers of entry. I can make observations about the sorts of protocols or procedures to which this provision might be referring: for example, a procedure requiring consultation with a senior paramedic, akin to SAPOL's legislative requirement for authorisation by an Officer of Police; a protocol that entry be effected in a manner that causes the least possible damage; or a protocol that entry be effected in a particular way (e.g.: by forcing a window, or breaking a rear door lock).

134 I consider that the intent of Parliament in enacting s 61(2) was to allow for SAAS to guide the *manner* in which paramedics exercise the power, and that Parliament did not authorise a substitution of the test for any other test. If Parliament had intended that, it would not have specified any test at all.

135 I received into evidence a copy of the SAAS policy on forcing entry, titled 'Procedure – Forced entry to property by ambulance officers' (the procedure).[69] I find that it is fundamentally flawed, as I now explain.

136 Paragraph 3 of the procedure in force at the time of Mr Low's death provided:

> If an ambulance officer has reasonable cause to believe that a patient in a locked or difficult to access premises requires assistance, the ambulance officer may use reasonable force to gain access to that patient.

137 I first observe that the concept of *reasonable cause* has been introduced where it does not appear in the legislation. The legislation speaks only of a belief, with no standard fixed. SAAS has raised the bar and set a higher standard than the legislation authorises. While SAAS has the power to raise the bar, it ought to carefully consider whether it should. It should carefully consider whether it creates a situation of risk that their paramedics might not enter premises where they should and would be authorised by the Act, if not for the procedure.

138 Having made that observation, the most serious concern I have is that the paragraph completely omits an entire aspect of the power provided. That is, limb (1)(a); 'to determine whether any person is in need of medical assistance'. The SAAS policy suggests that the paramedic must believe the person is inside, prior to exercising the power provided by the section. Of course, the legislation specifically allows for the situation where the paramedic believes it is necessary to break into a place *to determine whether* someone does need medical assistance. That is precisely the situation that

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[68] T125.33
[69] Exhibit C12b and Exhibit C12f

Mr Low's case has highlighted. Mr Sparrow might not have been sure that Mr Low was inside; he obviously had his doubts, and he gave evidence about those. However, the power allowed him to break in once he believed it was necessary *to determine whether Mr Low was inside* and in need of assistance or not. The procedure really ought to make that absolutely clear to avoid this situation again.

139 The procedure provides an appropriate statement, as follows:

> Duty of care to the patient overrides the potential cost of damage to the property.

140 In order to reinforce that forced entry may be necessary without actual knowledge of a patient's presence, the procedure ought to go further and observe that duty of care overrides the potential cost of damage to the property and also the potential that entry is gained to a place where the patient turns out not to be.

141 The next section of the procedure, 3.1, requires paramedics to 'make *every* attempt to ensure that there is reasonable cause to break in' (emphasis added). On its face, this effectively precludes any urgent entry. By saying 'every attempt' it requires unending checking and confirmation before exercising the power. This part of the procedure must provide more guidance about what checks should be done and when the urgency of the situation should or must take over from making checks. To draw this concern back to Mr Low's case, it might be thought reasonable to try to call a family member to see if they have collected the patient, but when that family member does not answer, a paramedic should not think they have to wait to get through to someone.

142 The next two dot points reinforce the same problem; 'make every reasonable attempt to communicate with the patient' and 'where possible and appropriate obtain consent'. What is a reasonable attempt? Mr Sparrow thought that was calling hospitals, calling family members and calling the carer back. Others might think that simply means calling out through the window and getting no response or asking if there are next of kin details recorded and, when there are none, being satisfied that it is not possible to obtain consent. The problem I am highlighting with the procedure is that it might allow for that interpretation, but it also might allow for Mr Sparrow's interpretation, that it is appropriate to obtain consent by spending an hour trying to call family members. Mr Sparrow gave evidence that this was his approach when he said, 'I guess I was just worried about that I hadn't exhausted, I guess, every possibility from a point of view of him not being in there'.[70]

143 Given what is said in subsection (2) of s 61 of the *Health Care Act*, it is arguable that if SAAS introduces a policy which limits the exercise of the power under that section, that the limitation actually becomes part of the power and confines it. There is an analogy with a legislative power which says it must be exercised in accordance with regulations, which is accompanied by regulations that say the power can only be exercised in a limited circumstance. SAAS should consider these matters very carefully before confining its own powers in this way.

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[70] T102.1

144 I consider that there is no reason for SAAS to artificially limit the clear power under s 61(1). Parliament clearly intended for SAAS to have that power and so SAAS should ensure that it does not limit itself unnecessarily.

The consequences of a flawed policy

145 With that said, it is hardly surprising that paramedics like Darryl Sparrow have a flawed understanding of their power of entry. Of course, Mr Sparrow said he had never read the procedure and that he learnt it through 'osmosis'. I do not propose to address that issue in great detail, but quite obviously the use of a power as serious as this should actually be trained for. In any event, it is as likely as not that those through whom Mr Sparrow osmotically learnt also had a flawed understanding of their power, probably shaped by having read the flawed policy. It is therefore potentially a very wide issue. Sergeant Weaver also gave some concerning examples of occasions where SAAS were not immediately entering when there were people in need of urgent assistance.[71]

146 Mr Sparrow's understanding of what he needed varied throughout his evidence, he said that he had to be 'convinced',[72] or have 'evidence',[73] or a 'reasonable belief',[74] or 'compelling information',[75] or to 'discount other possibilities',[76] or to 'exhaust every possibility from a point of view of him not being in there'.[77] When he described what evidence he was looking for, he said he wanted to hear someone yelling out inside or a phone ringing inside, or be told that the person's car is in the driveway.[78] He said he was looking for something to make it 'more my belief' that Mr Low was in there.[79] On that evidence, he had a belief but wanted to elevate the standard of his belief. All of this is, of course, against the background of having been told multiple times over multiple calls that the carer was certain Mr Low was inside, and of having that reinforced by the carers who attended, by the call centre and by Sergeant Weaver. He went against the weight of all of that, which speaks to the magnitude of his misunderstanding of his powers. Mr Sparrow conceded that he had set a threshold that was way too high.[80] I find that this occurred due to a combination of a flawed policy and an obvious lack of training on this issue.

147 Counsel for Mr Sparrow highlighted that Mr Sparrow accepted he should have entered in the circumstances he knew, at least by the time Mr Olaleye arrived and confirmed again a certainty that Mr Low was inside.[81] Mr Sparrow also accepted numerous things he could have done to address his reluctance to enter.

148 Counsel for Mr Sparrow accepted that Mr Sparrow had failed to execute his power because of adherence to the SAAS procedure which 'fundamentally undermined what is contemplated by s 61 of the *Health Care Act*',[82] although he had not read it. It was

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[71] T197.35
[72] T48.29
[73] T61.32
[74] T86.1
[75] T86.17
[76] T88.37
[77] T102.2
[78] T86.7
[79] T87.28
[80] T114.6
[81] T350.32
[82] T339.29

submitted that the procedure introduced mandatory obligations which delayed the exercise of what is an urgent power.

149 I have considered all of the submissions made about Mr Sparrow in light of the principle in *Briginshaw* and I remain quite comfortably satisfied that the findings I have made about him are appropriate and are strongly reflected in the evidence.

150 It was highlighted to me that the call for Mr Sparrow to exercise his power of entry was not identified any earlier than his arrival at the correct address.[83] It was said that this means that proper policy and procedure around the use of the power is imperative so that the power can be exercised properly and quickly. I agree. I will consider this again when considering whether to make any recommendations.

Police involvement

151 So far, I have focussed on the approach of SAAS to Mr Low's case. However, the evidence established that there were also police outside his house during the window of time which is established by Dr Heddle's evidence. I must consider whether, notwithstanding the approach taken by SAAS, there was an opportunity for SAPOL to exercise its own powers to deal with the situation and prevent Mr Low's death.

152 At a time soon after the commencement of the timeframe established by the pacemaker data, there was an attempt by police to obtain the required authority to exercise their own power of entry, which failed. That raises concerning issues which, if repeated, puts lives at risk into the future. It raises the potential of the same thing happening again but in circumstances where timely entry under SAPOL's powers could save a life. For that reason, this aspect of the aftermath of Mr Low's death is relevant and I consider that I ought to explore it.

153 In analysing the topic I must assess and remark upon the roles that each of the officers played that day and the evidence they gave. In my analysis, I set aside each member's rank. Except for the fact that the power to approve the use of the power of entry was afforded to Inspector Conway by virtue of rank, the rank of the members is irrelevant to the assessment of them as witnesses.

154 I heard oral evidence from Constable Ryder and received an affidavit of Probationary Constable Wright. It is clear to me that they did exactly what they ought to have done; attended the scene quickly, assisted Mr Sparrow to check the house for signs of life and a way of easy entry, then called their supervisor. Constable Ryder said that she did that because she was 'quite confused as to why we were there and what we had been called for'[84] and that she wanted to commence steps towards using SAPOL powers of entry. Neither of those police members was really able to shed any light on the conversations which occurred at the scene or the information passing around throughout the afternoon.

155 I heard oral evidence from Sergeant Mann. He said he took on the task of finding contact details for someone who could unlock the house. That was a good thing for him to do in the circumstances as they were at that point.

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[83] T345.15
[84] T144.14

156 I heard evidence from Sergeant Weaver. She was an impressive, no-nonsense witness. No evidence suggested that Sergeant Weaver was anything other than a diligent, competent and hard-working member of police.

157 It is clear that Sergeant Weaver brought to the scene logic, reason and a sense of urgency. In saying that, I do not mean to dismiss the role of the other police at the scene, I merely highlight Sergeant Weaver in that way as she was the one who took charge, confronted Mr Sparrow with logic and very quickly gave up on that as an exercise in futility. Sergeant Weaver brought the approach which everyone would hope members of police would have when responding to emergencies at their homes. She encountered a block with Mr Sparrow, which she described as 'almost beyond belief',[85] so she turned to her next avenue, the District Duty Inspector. When she encountered a block there, she kept going, trying to gather information at the scene to support what was obvious to her, that Mr Low was inside. She was undertaking that task when entry was gained with a key. Following the events, she pushed for the matter to be brought to the State Coroner's attention. Sergeant Weaver should be commended for her actions on that day, fruitless though they were.

158 It is an unfortunate part of the circumstances of Mr Low's death that Sergeant Weaver believes she had her tool of choice in Mr Low's front yard[86] and that she was certain she could have gained entry within seconds, but no one would give her the authority she needed to do that. I am left with no doubt that Sergeant Weaver would have gained entry quickly if she had either been asked to assist in the exercise of SAAS powers or authorised as required to exercise SAPOL powers. I must try to prevent such a failure being repeated.

159 Regarding Sergeant Weaver's call to Inspector Conway, given Sergeant Weaver's very clear evidence about the nature of the conversation, I find that the conversation amounted to a request for approval under s 83C, regardless of whether that section was mentioned or not, and that Inspector Conway must have realised, and did realise that, particularly given that she told Sergeant Weaver to call her back. If she did not think she was being asked to give approval to force entry, then why would Sergeant Weaver need to call back with more information?

160 I was not impressed by Inspector Conway's evidence. She frequently gave answers that contradicted her own earlier evidence and there were even some occasions where her position had been clarified, but then she returned to earlier positions which were not sound. It was most concerning that she continued to hold incorrect views of her powers, four years after this incident, despite having recently read the legislation and also in light of a SAPOL Significant Incident Investigation which concluded that she was in need of a managerial conversation about her understanding of her powers.[87]

161 Sergeant Weaver said that Inspector Conway told her that this was a SAAS job.[88] That aligns perfectly with Inspector Conway's evidence where she said on multiple occasions that if SAAS arrived first, then they would be 'lead agency' and should be exercising their power to force entry.[89] That was clearly her view and she clearly said it to Sergeant

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[85] T215.5
[86] T219.9
[87] Exhibit C9 at 21
[88] T196.35
[89] T287.25

Weaver. Inspector Conway was given an opportunity during her evidence to step back from that position, four years later, to acknowledge that her power was independent of SAAS's power and that the right thing to do was to consider whether she was satisfied it was appropriate to exercise her own power, as she had been asked to do, regardless of the actions or decisions of SAAS. However, she continued to maintain throughout her evidence that what SAAS was or was not doing was relevant to her assessment under s 83C. That is particularly concerning given that Inspector Conway acknowledged in her evidence that SAAS might simply have not been doing its job properly.[90] Even after acknowledging that, she continued to maintain that SAAS's decision was relevant. She said on multiple occasions that in approving entry, she would have been 'overruling' or 'overriding' SAAS's decision.[91] She eventually conceded that what SAAS was doing was a distraction from her actual task under s 83C,[92] before re-stating again that it was still relevant.[93]

162 Inspector Conway's approach after the point of having read the tasking and receiving the call from Sergeant Weaver was wrong. She said that she did not take the text of the tasking at face value, but conceded that she should have.[94] She accepted that there was a possibility of the worst case scenario on the face of the information in the tasking, but said that there were a significant number of unknowns.[95] She said that she took the dispatch grading into account in assessing whether this could be a worst case scenario on the facts.[96] She then conceded that the grading of SAPOL's tasking is irrelevant after resources have been assigned and have attended a tasking[97] and that the tasking is sometimes wrong,[98] but said that her view of the seriousness of the case, which she had partly formed on the basis of the grading level, did not change. To disregard to any measure the potential for the worst case scenario because there were unknowns and because SAPOL resources had been dispatched at a lower level was not an appropriate approach.

163 Sergeant Weaver gave evidence that Inspector Conway told her that because the situation was medical, SAAS were required to use their powers.[99] I accept that this was said. I consider the approach was quite wrong. Parliament gave to SAPOL a power to enter premises using reasonable force for the purpose of getting to someone who needs medical assistance. There is no reason in logic why the first to attend a scene is required to exercise their power first, or why a medical issue can only be dealt with using SAAS's authority. Each authority has to assess the exercise of their independent powers based on the information known to that agency at the time. The concept that SAPOL might not be the 'lead agency' and therefore cannot exercise its powers has no foundation in the legislation. The very fact that Inspector Conway said this leads to me reject the submission made on her behalf that she understood her powers.

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[90] T292.37
[91] T284.14, T287.5, T289.6, T289.34 and T290.31
[92] T292.29
[93] T293.18 and T297.1
[94] T267
[95] T270.33
[96] T271.2
[97] T273.36
[98] T271.12
[99] T210.18

164 However, the extent of her misunderstanding went further. Inspector Conway also said that she would have expected Sergeant Weaver to simply enter. She said in her sworn affidavit that Sergeant Weaver had her own power under s 83C. She said she had read s 83C recently and had also read her affidavit recently, and that it remained correct. She repeated in oral evidence that Sergeant Weaver could have simply exercised s 83C powers herself.[100] Counsel Assisting suggested to her that Sergeant Weaver in fact had no power under s 83C (unless authorised under that section) and she disagreed.[101] She was then guided through the legislation and eventually agreed that Sergeant Weaver had no power under s 83C.[102] After that process, Inspector Conway then said, once again, that Sergeant Weaver could exercise s 83C if it was urgent and then tell an inspector about it afterwards.[103] The fact that her fundamentally flawed view of her own powers went on for so long is concerning. This suggests that there is a training deficit.

165 Inspector Conway then said that she would expect Sergeant Weaver to have entered using authority of a general order,[104] which she then conceded she knew could not override the legislation,[105] conceded also that she did not tell Sergeant Weaver to do so,[106] and conceded it was not something that she actually expected Sergeant Weaver to do, namely to effectively disregard a decision of a superior.[107] The applicable General Order on Operational Safety states:[108]

> Where entry to premises is required:
> …
> • that an occupant of the premises is in need of medical attention or other assistance
> …
> pursuant to sections 83c(1) and (3) of the *Summary Offences Act 1953*–Special powers of entry, the statutory authority to enter must be obtained by the investigating member from an officer of police **prior** to the entry.
> …
> When it is not possible for the senior patrol member to anticipate the need to force entry before going into a [sic] premises they must advise an officer of police of the circumstances which made the entry necessary as soon as possible after the entry. When their usual officer of police is unavailable, the senior patrol member must advise the on-call officer of police or in that officer's absence, their sergeant.
>
> [emphasis in original]

166 Thus, Inspector Conway pointed out a part of a general order which could not be suggested to override the specific provisions referred to above it, dealing with entry to provide medical assistance, such as in the circumstances of Mr Low's case.[109] It specifically states, 'When it is not possible to anticipate the need for entry before going into a [sic] premises'. Sergeant Weaver anticipated the need to go in before she did, so the portion of the general order raised by Inspector Conway simply does not apply. It is

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[100] T274.29 and T275.16
[101] T275.12
[102] T276.9
[103] T277.8
[104] T276.9
[105] T276.30
[106] T278.30
[107] T279.10
[108] Exhibit C9a at 17
[109] T299.20

very clearly talking about a scenario like a house on fire, which is exactly the example Inspector Conway gave when introducing this part of the general order.

167 The Commissioner of Police's submission that Sergeant Weaver trains her officers not to wait and to simply go in in these scenarios speaks volumes on this topic. She trains her officers not to wait in emergency scenarios. Not only did they wait here, but when Sergeant Weaver arrived, she also waited. She contacted Inspector Conway. That tells me that none of those officers thought that the situation could fit into any scenario other than what is set out in s 83C. Sergeant Weaver did not consider she was dealing with circumstances that justified her circumventing the processes put in place for approval to force entry. That was an appropriate assessment and, in any event, it was not suggested to any of the witnesses that they should not have worried about following the process and should have burst in, upon arrival. Unfortunate as it was, the fact is that Mr Low could not be seen and so the approval process had to be followed.

168 It is also not logical to respond to a criticism of not approving entry under the power to enter for medical assistance to say that a more urgent power should have been used. If it is conceded that a more urgent power was called for, then the question has to be asked even more strongly: why was the power which Inspector Conway viewed as *lesser* not approved?

169 If it is thought that Inspector Conway took into account that Sergeant Weaver had not simply arrived and broken down the door immediately (as Inspector Conway seemed to imply at points in her evidence),[110] then that is yet another irrelevant consideration to the exercise required under s 83C. The power is there, specifically directed to medical emergencies, and it must be used. To put it another way, Sergeant Weaver cannot choose her own path, either to seek the authority set out in the legislation governing that situation, or disregard that legislation and just simply burst (break) in. She must comply with the path set out in the legislation which fits the scenario. This was not a scenario of a house on fire where police break in to pull out unconscious people or the like, this was a scenario described by s 83C.

170 This possibility of entry without authorisation was raised in Sergeant Weaver's frank and honest evidence, when she said that there is always a moment's thought of just sneaking in, but she said that at the end of the day she comes back to the rules.[111] That this is her approach is supported by the fact that this is what she did on the day; she followed the processes set out. I find that Inspector Conway could not have genuinely expected Sergeant Weaver to enter Mr Low's house after she had not given her approval and to the extent that she raised this, it again suggests a training deficiency.

171 Given the varying reasons given by Inspector Conway for her manner of approaching s 83C, and how clear the proper exercise of the power was, I am satisfied that there is a training deficiency.

172 As I mentioned at the outset of these findings, the principle in *Briginshaw* is an important consideration which protects those drawn into judicial proceedings from comments which too readily criticise. After tentatively reaching my views about Inspector Conway's involvement in Mr Low's death or its aftermath, I paused to review and consider again

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[110] T301.9 and T304.31
[111] T223.15

whether I should make the findings I now have. In the end, I am satisfied as to those findings and that Inspector Conway's understanding of her powers was flawed. I am satisfied that the criticisms I have made are soundly based and appropriate. I appreciate that such findings may be difficult for Inspector Conway to accept, however she demonstrated in her evidence, numerous times, a lack of understanding of s 83C and the regime around it.

173 Overall, the approach taken to the situation as it presented itself here was inappropriate. Inspector Conway received a call from a very experienced, senior member, who was telling her that she was certain that a man in distress who required medical assistance was inside the house. To be blunt, that should have been ample information upon which to approve entry.

174 Counsel for Inspector Conway and the Commissioner of Police made a submission 'accepting' that Inspector Conway was confused in her evidence of the situation as she understood Sergeant Weaver to have conveyed it.[112] A submission was made that Inspector Conway had used 'unfortunate' wording in describing her thought processes.[113] It was submitted that I should find that it was reasonable for her not to grant permission to force entry because Inspector Conway thought that SAAS had originally intended to enter and later changed their mind, and Inspector Conway wanted to know the basis for the change of mind.[114]

175 The Commissioner of Police argued that Inspector Conway had reasonably relied on the dispatch text which indicated that SAAS were to use their powers of entry and had requested patrol assistance with that.[115] It must be observed that the dispatch text did not say that, and the understanding of the tasking which Inspector Conway claimed to reach involved elevating it beyond what it said. The tasking said, 'SAPOL, crew on scene will be *likely* trying to force entry & requesting patrol assistance'[116] (emphasis added). Even if I accept that it was reasonable for Inspector Conway to interpret the tasking in that way, I do not accept that it was reasonable for Inspector Conway to use that understanding as a basis to refuse to authorise forced entry when Sergeant Weaver asked. As I have explained, what SAAS were or were not doing ought not to have been a consideration of any significant weight for Inspector Conway, who was being asked to exercise her own power to authorise an exercise of SAPOL powers. I also cannot accept the submission of the Commissioner of Police that it was reasonable to conclude that it was not necessary for SAPOL to use its power, when Sergeant Weaver specifically alerted Inspector Conway to the fact that SAAS was not exercising its power. That was the very purpose of Sergeant Weaver's call.

176 It was suggested that Inspector Conway had formed a view that SAAS had changed their mind about entering and that it was reasonable that this caused her to doubt that there were grounds to enter. If Inspector Conway approached the request in this way, I find that it was inappropriate to sweep away Sergeant Weaver's clear concerns for that reason and expect a further call later if Sergeant Weaver was able to ascertain Mr Sparrow's

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[112] T359.14
[113] T361.15
[114] T360.27
[115] Written submissions on behalf of the Commissioner of Police at [12]
[116]

reasoning. In any event, as I have explained, what SAAS were or were not doing was simply a diversion from the proper task.

177 If the authority to authorise forced entry sits with officers of police, who I observe are unlikely to actually be on the scene of a crisis, then those officers of police need to quickly ask any relevant questions and trust the information of those members who are actually on scene, particularly where the member asking for approval is a senior member with decades of experience.

Preventability

178 Dr Heddle's opinion was that attempts to save Mr Low were unlikely to have been successful except, possibly but not probably, within five or so minutes of Mr Sparrow's initial arrival at the house. Given Dr Heddle's wealth of experience, I accept that evidence.

179 However, Mr Sparrow did not know that at the time. In light of that, his self-serving statements to others after entry was eventually made have persuaded me that he knew he ought to have entered.

180 Further, and quite importantly, if the same circumstances happen again with a different patient, the result might be different. It might occur with a patient for whom early CPR would be the difference between life and death. Therefore, the fact that Mr Low's death was unlikely to have been preventable does not diminish the seriousness of the failures to enter.

Recommendations

181 I am required to consider whether it is appropriate to make any recommendations that might prevent, or reduce the likelihood of, a recurrence of an event similar to the event the subject of the inquest or that would increase public health or safety.

182 Since Mr Low's death, SAAS has amended the procedure to refer to 'Part 6, Division 3, Section 61.1 of the *Health Care Act*'. While the reference is a positive improvement, it still does not quote the terms of the power SAAS members are expected to exercise and thus requires further research to be done by those to whom the procedure applies.

183 In light of my findings above, I make the following <u>recommendations</u> to the Minister for Health and Wellbeing:

One That the 'Procedure – Forced entry to property by ambulance officers' be re-written to align with the legislative power and to give guidance about its application in urgent situations. A policy in respect of a legislative power might find its perfect starting point by setting out that legislative power verbatim.

Two That the procedure provide guidance about the extent of efforts that should be made prior to forcing entry, by reference to target timeframes for paramedic responses. For example, if a priority 2 case is under consideration, efforts should be abandoned if they remain unsuccessful after the 16 minute target timeframe is reached.

Three That SAAS implement training on section 61 of the *Health Care Act* in light of the re-written policy.

184 I consider that it is important that there be no impediment to the swift entry to premises where a person in need of medical assistance might be. As I foreshadowed, while legislative power has been provided to use force to enter for those purposes, there is no express power in the legislation to enter for that purpose, where force is not required. There is an argument that authority for the use of force might implicitly carry authorisation to enter without use of force, but that is far from certain. As I discussed, there may be instances where an express power speeds up the process of entering an unlocked door to check whether someone is inside. It would allow for this to be achieved on the basis of no more information than from a caller, that they believe a person is inside particular premises and that the caller believes they are in need of assistance.

185 I observe that paramedics attending and entering premises have a sole purpose, to provide emergency medical assistance. If there is no medical assistance needed, they have no other lawful interests inside a private property. This can be contrasted against police who might incidentally detect evidence of a crime while inside premises. If paramedics were to detect such evidence, they can do nothing more than report it if they are minded to. The risks of perverse outcomes as a result of paramedics being authorised to enter without force in order to assess whether emergency medical assistance is needed are therefore low. This must be balanced against the very great benefits quick access can have.

186 To that end, I make the following recommendation to the Minister for Health and Wellbeing:

Four That section 61 of the *Health Care Act* be amended to supplement the existing power with an express power to enter for the purposes set out in s 61(1)(a) and (b) where force is not required.

187 I am satisfied that the existence of this express power might have also assisted Mr Low. I have formed that view on the basis of the evidence from Sergeant Weaver that she would likely have found a way of entering without damage if Mr Sparrow had asked her to do that. The existence of an express power to enter without force in order to assess whether someone is present in need of assistance might have been more readily exercised by Mr Sparrow.

188 In passing, I note that the structure established by the *Health Care Act* appears to be based on definitions of 'ambulance service' and 'emergency ambulance service' that give rise to difficulties. In particular, the definition of 'ambulance service' establishes it as a series of actions, whereas the definition of 'emergency ambulance service' appears to be intended to establish it as an organisation, but is defined with circularity as an 'ambulance service'. If the Minister is minded to supplement s 61, then attention might be given to clarifying the definitions at the same time.

189 To the credit of SAAS, I received an affidavit from the Executive Director of Clinical Services accepting the need to do these things and to generally increase awareness of when a paramedic might be authorised to force entry, including particularly highlighting

that entry is authorised in order to determine whether a person is in need inside premises.[117]

190 I observe that all the legal authorisation and goodwill can only go so far and will fall short without the physical capability of actually forcing entry. Mr Sparrow gave evidence that SPRINT paramedics do not carry tools for forcing entry,[118] although he acknowledged that tyre changing tools could be used. Sergeant Weaver's evidence about that was that smaller tools are more likely to cause injury than more robust tools.[119] There are obvious benefits in there being proper tools available for SAAS to force entry, not only that there would be no possibility of delays in getting assistance from MFS or SAPOL, but also the mere fact of carrying around the tools would serve as a reminder for paramedics that they are empowered to break into any place where necessary. If SPRINT paramedics are ever going to be potentially sent to a scene before an ambulance, which is their apparent purpose, then they ought to have tools specifically designed for breaking in. I therefore recommend to the Minister for Health and Wellbeing:

Five That all ambulances and SPRINT cars be equipped with devices to assist with forcing entry to premises.

191 I received a corporate affidavit from SAAS which spoke against such a recommendation on the basis that paramedics ought to properly focus on clinical care, and that significant expense and training would be required.[120] I accept that there is a significant amount of work involved in what otherwise appears to be a simple change. While I accept that there will be many cases where SAAS will be happy to wait for members of SAPOL to arrive with more experience in forcing entry, and many cases where it will be reasonable to do so, I am unable to accept that there is no value in SAAS carrying equipment that makes forced entry easier. I am unable to accept that the value of the recommendation is outweighed by the effort that would be involved in its implementation.

192 I briefly mention the issue of liability. Mr Sparrow said that he did not think he was personally liable for damage,[121] but that the potential to cause property damage played a role in his decision-making.[122] He said that he did not want to go in 'all guns blazing' which he explained meant smashing a door or a window.[123] I observe that SAPOL members have a general immunity provision under s 65 of the *Police Act 1998*. It is an extremely wide immunity affording protection for all manner of things done honestly in the exercise of duties or purportedly so. This provision clearly gives a lot of comfort to police officers in going about their duties. They have a legislatively based freedom to do what is necessary to further their work. I observe that there is no equivalent provision for SAAS. Notwithstanding that concerns about liability did not play a role in Mr Low's case, that might not be so in future cases and potential consequences in a general sense

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[117] Exhibit C21
[118] T63.36
[119] T222.1
[120] Exhibit C21g
[121] T61.3 and T117.18
[122] T117.11
[123] T92.38

did play a role. I therefore make the following recommendation to the Minister for Health and Wellbeing:

Six That an immunity from liability be introduced for SAAS to ensure that when exercising powers of entry in emergency situations, time is not lost over concerns about liability. A perfectly appropriate working example of that kind of provision exists in s 67I of the New South Wales *Health Services Act 1997*.

193 I make the following recommendation to the Minister for Police:

Seven That training be implemented specifically focussed on the exercise of the s 83C power to authorise entry in urgent situations, including what factors should be taken into account and what should not be taken into account, as well as training specifically on the scenario where another agency is involved but not appearing to properly exercise its powers. This training should be repeated periodically to ensure that this very important power, which in and of itself has the capacity to save lives, is something that is always exercised in an appropriate way.

194 In relation to SAPOL's capability to force entry, Sergeant Weaver explained that the tools are kept only in Vixen (patrol sergeant) cars in the metro area[124] and this was supported by the evidence of other officers. Having the tools more readily available may cut down on potential delays while waiting for the sergeant to respond. Of course, that would need to be implemented with training and a protocol around its use. I therefore make the following recommendation to the Minister for Police:

Eight That SAPOL equip more patrol cars with devices to assist with forcing entry and provide training to operational members in the use of such equipment.

Condolences

195 Mr Low was a loved father and husband. His death was accompanied by particular circumstances of tragedy, in that it is likely that he died within metres of a paramedic trained and able to render potentially life-saving assistance. Sergeant Weaver's initial reaction to the incident – to observe that the actions of emergency services fell short of what is expected – was apt. I express my condolences to Mr Low's family for their loss and I hope that this situation will not occur again to any other family.

Keywords: *SA Ambulance Service; Forced Entry; Police*

[124] T164.26