

CORONERS COURT OF SOUTH AUSTRALIA

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INQUEST INTO THE DEATH OF RUSSELL PETER NASH

[2026] SACC 11

Ruling of his Honour State Coroner Whittle

23 April 2026

RULING IN THE COURSE OF AN INQUEST

Application under s 44 of the *Police Complaints and Discipline Act 2016* in the course of an inquest into the death by suicide of a serving member of police. Discussion of the merits of the application and the principles to be considered under s 44.

Held:

1. There are special reasons which require the making of the order sought.
2. The interests of justice cannot be adequately served except by the making of the order sought.
3. Application granted.

Counsel Assisting: MR D EVANS

Interested Party: COMMISSIONER OF POLICE

Counsel: MR M ROBERTS KC - Solicitor: MILLS OAKLEY

Witness: S/C N OAKLANDS, CONST K SCHOLZ, MS L WARNER & DR C SNELLGROVE

Counsel: MR C KUMMEROW - Solicitor: TINDALL GASK BENTLEY LAWYERS

Hearing Date/s: IN CHAMBERS

Inquest No: 31/2025

File No/s: 2821/2021

This judgment contains discussion of suicide and may be distressing to some people

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**INQUEST INTO THE DEATH OF
RUSSELL PETER NASH
[2026] SACC 11**

Introduction

- 1 I have proceeded to hear evidence in an inquest into the death of a member of police, Mr Nash, who took his own life while serving as the Bandmaster in the band of the South Australia Police.
- 2 Shortly prior to his death, Mr Nash had, with the assistance of a lawyer, formulated the foundations of a complaint of bullying and harassment against the Chief Inspector in his chain of command. Following his death, Mr Nash's former immediate supervisor made a complaint of bullying and harassment which she alleged had contributed to Mr Nash's death.
- 3 Evidence received during the inquest revealed that this complaint was investigated by SAPOL's Internal Investigation Branch which operates under a secrecy regime under the *Police Complaints and Discipline Act 2016*. I will not comment on the manner in which the fact of the investigation came to light as it appears contentious and, in my view, has no bearing upon what I am required to determine. It is sufficient to observe that lawyers for the Commissioner of Police advised staff of the Court following conclusion of the oral evidence that a significant quantity of documents were produced as part of that investigation, including witness statements. The Commissioner of Police then formally declined to provide those documents to the Court for any purposes.
- 4 I also do not propose to comment on the apparent assertion that at the last hearing I myself expressed interest only in the outcome of the internal investigation rather than the documents, except to observe that when I raised the outcome I then said 'the documentation in relation to which I'd like to have produced.'¹ In any event, I consider this to be irrelevant to the task at hand as subsequent events have overtaken my request.
- 5 Following the Commissioner of Police's determination not to provide any materials, Counsel Assisting made an application for an order under s 44(d) of the *Police Complaints and Discipline Act* requiring the production of the documents produced during the investigation.
- 6 The application was supported by a number of witnesses who were represented during the inquest, but was opposed by the Commissioner of Police. It is this application that I will now determine.

Submissions

- 7 I received submissions from Counsel Assisting which were adopted by some witnesses, and then submissions in response from the Commissioner of Police. Other witnesses who were represented made no submissions. I have read and considered all submissions made.
- 8 There are a number of submissions made by the Commissioner of Police that require special consideration before turning to the general merits of the application.

¹ T1926.33

Bias

- 9 A great deal of the submissions on behalf of the Commissioner of Police were directed to what is asserted to be a proper characterisation of the approach of Counsel Assisting, that is, an inappropriate approach or an approach of such a nature that it, in and of itself, is a consideration of relevance to the exercise of s 44(d).
- 10 The use of the language of ‘bias’ and the manner in which Counsel Assisting’s approach has been examined represents a misapprehension of the role of Counsel Assisting in this State and a conflation of the role of the Coroner with the role of Counsel Assisting.
- 11 My role, as a judicial inquisitor, and that of the Coroners Court, is to hear evidence which investigates the circumstances surrounding a death and to do so fairly and with an open mind as to the conclusions that should be drawn.
- 12 The role of Counsel Assisting is quite different. Counsel Assisting must ensure that all issues that might be of interest to me are explored to a position of clarity. There is no obligation on Counsel Assisting to explore every possible issue that might arise, nor is there any prohibition on Counsel Assisting from scrutinising with rigour the evidence of a witness who appears to have had a critical role in the death under investigation. In *Re Doogan; Ex parte Lucas-Smith & Ors* (2005) 193 FLR 239, the Supreme Court of the ACT said at [162]:
- ...justice is not always, nor even usually, attained by a forensically passive approach in which counsel assisting eschew any responsibility to explore particular possibilities actively or to test assertions which may or may not be accurate. On the contrary, coroners are entitled to expect that counsel assisting them will actively pursue the truth and that will almost inevitably involve identifying particular possibilities or tentative conclusions and testing the evidence with a view to determining whether it can be confirmed or discounted.
- 13 It must be observed that Mr Nash complained of being bullied during his final weeks of life, and that Ms Warner made the same complaint in the weeks after his death. That this topic was the subject of scrupulous investigation during the inquest can hardly be a surprise and could not be said to be improper. On the contrary, the exploration of the veracity or otherwise of those claims is of critical importance to the findings I will be required to make.
- 14 I also consider it unhelpful to observe that certain issues might have been explored more fully by Counsel Assisting and certain others to a lesser degree. Such is the nature of having different minds involved in a matter where they will naturally find different levels of significance among the evidence.
- 15 I consider that the assertion of inappropriateness on the part of Counsel Assisting in his robust exploration of the issues and general approach to this inquest has no merit.
- 16 In Senior Counsel’s submissions on his behalf, the Commissioner of Police seeks to personalise this matter, which is not personal at all – it is simply an application for an order under an Act. When the purpose of an inquest is brought back into focus, that is, to ascertain with clarity the entire circumstances that led to a death and its aftermath, criticism of those assisting by the vigorous testing of evidence is inapt and distracts from the substance of the evidence procured.

- 17 Despite the criticisms of the manner in which Counsel Assisting approached this inquest, no formal impropriety has been alleged, nor could it; Counsel Assisting's approach was robust yet mundane. It accorded with the authorities about the limits pertaining to that role. It is unfortunate that this difference in philosophical approaches and what might be perceived as the Commissioner's desire to have a less robust process has made its way into formal submissions. All Counsel ought to consider very carefully whether there is any actual impropriety to be alleged before making personally-directed comments and observations about their opponents.
- 18 I appreciate that the purpose of those submissions is to paint a context of unfairness which it is said has the capacity to vary the nature of the proceedings, for the purposes of the consideration of whether to make the order sought. However, without actual impropriety alleged, the proceedings remain a typical example of coronial proceedings. Therefore personally-directed submissions about Counsel Assisting are unpersuasive.
- 19 Had I been persuaded that the approach of Counsel Assisting was improper, I would have found this to be a factor in favour of special reasons, as production of the internal investigation materials would reveal a body of evidence that had no relationship to Counsel Assisting but would have instead been procured without the unfairness said to have occurred during the oral evidence at inquest. This would have the capacity to alleviate the unfairness said to exist in that scenario.
- 20 I do not propose to consider those matters submitted on this topic further as, quite apart from having no merit, I consider them to be a distraction from the actual questions to be answered; whether there are special reasons and whether the interests of justice can be adequately served by any means other than the making of the order.

'Prosecution' of Mr Devey

- 21 It was effectively submitted that there has been a quasi-prosecution of Mr Devey and that this is of relevance when considering the application of the test under s 44(d) as the proceedings before me have taken a nature akin to other jurisdictions where a particular set of considerations arise.
- 22 While I have no doubt that Mr Devey may have found the process of giving evidence in the inquest difficult, apart from the obligation on a witness to answer difficult questions under oath, the coronial jurisdiction itself is deprived of all distinctive qualities of a prosecutorial process. There are critical differences. One is that the actions of any one individual are not the sole focus of the evidence. In this inquest, the actions of Mr Devey form only one part of the circumstances that were explored, although they are critical and occupied much of the oral evidence. Another is that the result that is pursued is the ascertainment of the entire circumstances of a death of a particular person rather than an analysis of the existence of particular elements of an offence. A third, and perhaps most significant, difference between criminal and coronial proceedings arises by virtue of s 25(3) of the *Coroners Act 2003* which provides:
- (1) The Coroner's Court must, as soon as practicable after the completion of an inquest, give its findings in writing setting out as far as has been ascertained the cause and circumstances of the event that was the subject of the inquest.
 - ...
 - (3) However, the Court must not make any finding, or suggestion, of criminal or civil liability.

- 23 These differences are so central to the jurisdiction being exercised that I simply cannot accept the submission that a robust examination of the actions of any coronial witness could be tantamount to a prosecution to the extent required for that to be a consideration of relevance in the exercise of s 44(d).
- 24 With those key elements absent, the submissions made on this topic effectively amount to a complaint that a witness felt as though he was being prosecuted while under questioning and because issues relating to his actions were being explored during the inquest. I should think it is not an uncommon phenomenon, with many witnesses undoubtedly reporting this feeling following the conclusion of their evidence. An analogy can be drawn with an inquest into a death during a surgical procedure. The actions of the surgeon in the lead up to and during the surgery will be critical to the inquest. Questioning of the surgeon is likely to be quite robust. The surgeon may report a feeling of being prosecuted. However, that feeling does not have the capacity to alter the true nature of the proceedings, which remain coronial.

Section 44(d)

- 25 Section 44(d) of the *Police Complaints and Discipline Act 2016* is what I have been asked to act upon. It provides:

Despite any other Act or law, a person who is, or who has been, engaged in the administration or enforcement of this Act or the repealed Act cannot be required to divulge information disclosed or obtained in the course of an investigation under this Act or the repealed Act except where such a requirement is made—

...

- (d) by order of a court, the court being satisfied that there are special reasons requiring the making of such an order and that the interests of justice cannot adequately be served except by the making of such an order.

- 26 There have been a number of authorities published which consider this provision, however the most comprehensive and particularly relevant is *Commissioner of Police v Coroners Court of South Australia* [2022] SASC 26.

Considerations

Purposes for protection

- 27 I accept the Commissioner of Police's submissions that the *Police Complaints and Discipline Act 2016* provides protections which serve purposes set out in *White & Ors v State of South Australia & Ors* [2007] SASCFC 75 at [46]-[47] and that it is against these purposes that the application for provision of materials must be weighed. I accept the Commissioner of Police's submission that there are exceptions to the secrecy regime and that the requirements for divulgence under those exceptions are stringent.
- 28 I accept Counsel Assisting's submissions that the purpose of maintaining confidentiality of complainants carries less weight in the present matter as a result of Ms Warner having publicly identified herself as the complainant. I accept the submission that the purpose of preventing the destruction or concealment of relevant material by the publication of the fact of an internal investigation carries less weight in the present matter as a result of the fact that the investigation occurred some years ago. I do not consider that provision

of the materials could prejudice any investigation of crimes as the complaint did not involve issues pertaining to criminal operational police work.

- 29 I consider it of relevance that the precise mischief that the two limbs of the s 44(d) test were introduced to address do not arise for concern here.

The coronial jurisdiction

- 30 It was submitted by Counsel Assisting that the nature of the coronial jurisdiction, being non-adversarial, means that the special reasons test will be easier to satisfy than it would in other jurisdictions. It was submitted by the Commissioner of Police that this submission is incorrect. In *Commissioner of Police v Coroners Court of South Australia*, Blue J said at [130]:

Given the nature of the inquisitorial function performed by the Court and the fact that it is not seeking to advance its own interests (in contrast to a party in civil or criminal adversarial litigation) but is seeking to ascertain the cause or circumstances of the relevant death, **it is more likely that the special reasons test will be satisfied** but nevertheless each case must be considered by reference to its own circumstances.

[emphasis added]

- 31 I repeat that I reject the submission that criticism of Counsel Assisting, even if merited, would not change the nature of the jurisdiction such that the Court would be advancing its own interests.
- 32 I therefore take, as a background matter, that the test is not as onerous in the coronial jurisdiction than it would be if the purpose for which the order was sought was for use in proceedings that are not inquisitorial. I also take, as a matter of importance, that each matter must be determined on its merits. It is not sufficient alone to establish special reasons to merely observe that these are coronial proceedings. Something distinct and significant is needed which takes the case outside of the ordinary class of coronial proceedings which means there are specific reasons for which the making of the order is required.
- 33 I accept that the extensive powers of investigation afforded under the *Coroners Act 2003* are subject to limitations, including the limitation that information covered by the *Police Complaints and Discipline Act 2016* may only be obtained by consent or by order. I do not misapprehend that the Coroner's powers override these limitations, hence my careful assessment of whether the test under s 44(d) has been satisfied or not. In light of that, I take as another background matter that the suite of powers afforded to Coroners evinces an intention that coronial investigations are to be as thorough as possible, subject to the judicial assessment and judicial use of powers to require provision of materials.
- 34 I make it plain that these observations of the nature of the coronial jurisdiction are background matters. They are not things that either satisfy or negate the test under consideration. They are factors that I take into account in assessing the weight of the various factors in favour and those against the making of the order which guide my consideration in respect of where that balance falls.

Fishing

- 35 It was submitted that the application for provision of the materials amounts to 'a fishing expedition'. If the order sought could be fairly described as a fishing expedition, this

would be a factor against special reasons existing. The Commissioner of Police asserted that the purpose for the application is ‘to see if there may exist material that could further the position [Counsel Assisting] adopted in this inquiry where he openly sought to impugn the credibility of Mr Devey’.

- 36 Putting aside the inappropriateness of the use of the word ‘openly’ and the negative connotations that phrase tends to convey, I am unable to accept that characterisation of the application and it is unclear to me from where in Counsel Assisting’s submissions, in which he explains the purposes for seeking the order, that assertion was taken.
- 37 For an application for provision of materials to be written off as a fishing expedition, there needs to be an absence of likelihood of relevant materials. It must be able to be said that it is not ‘on the cards’ that the material sought would be relevant to the issues which arise during the proceedings. Here, it is positively known that the content of the investigation is whether there was bullying and harassment directed at Mr Nash – that was precisely the complaint that was made. I have been asked to determine during the inquest whether there was or was not bullying and harassment of Mr Nash in the lead up to his death. That is, the subject matter of the investigation is something that I am required to make a finding about. The fact that witnesses have been spoken to about this precise topic takes the application outside of what could reasonably be described as a fishing expedition. To that end, I reject the Commissioner of Police’s submissions that suggest there is insufficient basis to expect that relevant documents exist.
- 38 There are also specific factual disputes that were raised during the oral evidence that were raised in the complaint. I will set these out in detail later in this ruling. I find that it is plainly on the cards that the material sought will assist in an assessment of questions that I have inquired into, evidential disputes that arose, and issues that I am required to make findings about.

Overlap of issues

- 39 The Commissioner of Police submitted that the entire envelopment of the subject matter of the internal investigation into the overall scope of the inquest is insufficient alone to amount to special reasons as this would fail to pay proper regard to the mischief the secrecy provisions seek to address.
- 40 While I consider that the relevance of the documents sought is wider than merely that they wholly overlap with the inquest subject matter, I find it difficult to accept the Commissioner’s position on this point. It may be that in a given case the factors present mean that an overlap alone is sufficient to satisfy the test. It was certainly a matter that Blue J described as ‘highly relevant’ to the question of special reasons.
- 41 I draw support from the analogous situation described by Blue J in *Commissioner of Police v Coroners Court* at [139]:

However, where the Coroners Court is conducting an inquest into a death in custody that occurred in the course of pursuit by the police of a person evading apprehension, IIS has conducted an investigation into the conduct of officers involved in the pursuit and the information disclosed or obtained in the course of that investigation is not produced voluntarily to the Court, it may be expected that in most cases the special reasons test will be satisfied (after the Court has had regard to the individual circumstances). The very fact that the Court is conducting an inquisitorial process to ascertain the cause and

circumstances of the death which occurred in the course of the pursuit and there has been an investigation into the conduct of those officers tends (without being definitive) to take 'the circumstances out of the ordinary' and 'carry particular or significant weight' and suggests that the individual circumstances are likely to require disclosure and hence make it more likely that the special reasons test will be satisfied. Again, this is not a blanket proposition and each case must be considered by reference to its own circumstances.

- 42 In the present case there was no police pursuit. However, there was an allegation from two sources (including from Mr Nash himself before his death) that the death occurred in the course of bullying and harassment. Ms Warner's complaint specifically queried whether the alleged bullying and harassment contributed to Mr Nash's death. The internal investigation related to that very complaint.
- 43 In light of that comparison, I consider the overlap of issues to be a consideration of particularly high weight in the circumstances of the present inquest. I accept Counsel Assisting's submissions that a failure to order production of the documents has the capacity to undermine my eventual findings and open them to public criticism for lack of diligent investigation and being of potentially uncertain veracity.
- 44 Counsel Assisting's submissions were criticised as a 'house of cards' on the basis that he had 'assumed' that the internal investigation and inquest scope overlapped. I reject this characterisation. It is noteworthy that Ms Warner forwarded her complaint to the Coroner's Office and it was also used to guide the investigation. Ms Warner's complaint, which sparked the internal investigation, said:²

I believe Devey had a negative impact on Sergeant Russell Nash's mental health and failed in SAPOL's obligation to provide a safe work environment. While he may not be totally responsible for Russell's complex state of mind, I believe his behaviour added to Russell's overloaded 'bucket' at this point in time. I would go so far as to say he was a contributor to Russell's negative state of mind and the tragic action he ultimately took. I am not being reactive as I flagged this in an email in about late December 2020 with Russell's external return to work coordinator, Ms Natalie Bottroff, Employee Assistance Stefani Krstevski (Case Manager), who with my permission forwarded it on to Dr Jane Cooper, who with my permission forwarded it onto OC Health Safety and Welfare Branch (HSWB). Sadly, it appears the OC HSWB did not follow this matter up to prevent further targeting and bullying. Also Russell's parents have asked me to follow up and make it known to Senior Management that Devey was targeting their son which was having a negative impact on his recovery and return to work; and his bullying of Russell is widely known throughout the Band – an email I have received since Russell's passing from a person outside of the Band says, 'Devey had launched a comprehensive campaign to bring him down. Not two ways about that'.

In this correspondence I have documented some of the events/behaviour that have occurred since Devey took over management of the Band and the CES. Please note, during my interactions with CES while I was OC Band, CES staff made it very well known to me and others that they were subject to the same behaviours exhibited by Devey towards Band staff.

² Exhibit C42a at 60

45 This is precisely one of the key topics that was explored during the evidence. To say that the investigation enquired into the same topics is not supposition, it represents a comparative assessment of the words of the complaint with the scope of the inquest.

46 Ms Warner then went on to write about the following specific issues which were explored during the inquest:

- a. Whether Mr Devey said he ‘doesn’t get addiction’ and whether he referred to Mr Nash’s use of alcohol in a demeaning manner.
- b. Whether Mr Devey said that the band were ‘embarrassing themselves’.
- c. The reasons behind band members being prohibited from practising their instruments at work.
- d. The circumstances of the welfare check.
- e. The removal of ARU work from Mr Nash.
- f. The decision not to select Mr Nash for an acting opportunity.
- g. The submission of the HIRS.
- h. Mr Devey’s approach to managing Sergeant Buckley.
- i. The proposal to impose a PLAP.
- j. Constable Davies’ functional capacity evaluation.
- k. Mr Devey’s approach to Ms Warner.

47 I particularly highlight that it is not known exactly what light the documents might shed on the issues. It may be that the investigation reveals facts favourable to the position taken by the Commissioner of Police during the inquest, or facts adverse to that position. While it can be said that the light the documents might shed is not known, it cannot be said that they will not shed light on issues within the inquest scope. It is not the particular position or the weight that might be attributed to the evidence when properly assessed that leads to the necessity for the order, the relevance is in the fact that the documents are evidence which relate to the very issues under examination and therefore their continued secrecy has the capacity to lead the Court to potentially erroneous findings which might be unfair to any or all of the witnesses. As such, a matter of procedural fairness arises which I consider can only be addressed by the consideration of all materials that deal with the issues under examination that the Court is able to obtain. This is another factor of particularly heavy weight in the assessment of both limbs of the test.

48 To be clear, I accept as a general proposition that coronial investigations might miss relevant material by many different means. However, once material of direct relevance becomes known to the Court then, whether or not it is known to the public, it is incumbent on the Court to give serious consideration to the desirability of obtaining that material. It is for this reason that the Commissioner of Police’s submission that the interests of justice are served without the material being provided cannot be accepted. If additional material exists that might relieve a witness of a judicial criticism or clarify a specific aspect of the

circumstances of a death, then it matters not that there have been days of oral evidence already given, as that oral evidence may in fact work a concealed unfairness or be viewed as unjust by the public, and the witness, if the matter is determined in the absence of the additional material known to deal with the issues under consideration.

The quality of the investigation

- 49 In relation to the submission that I am not empowered to explore the adequacy of SAPOL's internal investigation into the complaint of bullying and harassment, I disagree. Amendments to the *Coroners Act 2003* in 2021 introduced the following provision:

For the purposes of this Act, a reference to the circumstances of an event may be taken to include matters related to or arising out of the event or its aftermath.

to clarify precisely that this kind of scenario is within the Court's jurisdiction. I consider that whether an investigation into the circumstances that led to Mr Nash's death was adequate and whether the investigation properly assessed whether that involved bullying and harassment by a senior Officer of Police is a matter which forms part of the aftermath of Mr Nash's death.

- 50 I reject those submissions of the Commissioner of Police which have the effect of suggesting that the documents produced during the internal investigation are not within the tolerable limits of the scope of my inquiry. Not only are the specific factual issues the subject of the complaint wholly within the inquest scope, but the fact of the internal investigation itself is also a circumstance arising out of, and part of, the aftermath of Mr Nash's death which is within what I am empowered to examine. The Commissioner's submissions appear to overlook s 3(3) of the *Coroners Act 2003* and reliance on authorities decided without that provision are prone to lead to misapprehension of the breadth of the contemporary coronial scope. To be clear, I appreciate that I am not exercising a jurisdiction of unlimited scope. However, I disagree that an internal investigation into issues that were alleged to have contributed to Mr Nash's death following his death is not within scope.
- 51 I accept that there are specific purposes for an internal investigation and that I would be required to assess the investigation within the context of its own regime. I did not understand Counsel Assisting to have suggested that I ought to assess the quality of the internal investigation in comparative terms to what the coronial jurisdiction might achieve or explore. The Coroners Court is adept at making assessments of the sufficiency of actions against the background of the regime within which those actions were taken.
- 52 Notwithstanding its specific purpose, I do consider the quality of the investigation to be a matter of importance. Identifying any improvements to bullying and harassment investigations is a matter which has the capacity to prevent further deaths. That is, if there are proper procedures in response to such allegations, it might have the capacity to lead to a complaint in future that is responded to in a manner that leads to the complainant not making the decision to take their own life. This is an aspect of the coronial jurisdiction that I consider is of extreme potential consequence in the present matter, which may be an example of the most serious consequences of bullying and harassment, if that is what in fact occurred. I make it clear that I have no preconceptions about whether there was bullying and harassment, nor whether the investigation was adequate or not. In fact, the advice that a significant volume of materials were gathered, on its face, gives great comfort to the likely adequacy of the investigation. However, without the materials, I

simply do not know. An opportunity to consider specific health and safety improvement of great significance may be lost.

- 53 It was submitted by the Commissioner of Police that because the quality of the internal investigation was not raised as an issue during the oral evidence, the submission of Counsel Assisting that this is a relevant use for the documents which should be factored into the assessment of whether there are special reasons should be rejected. However, it is clear that at least some of those involved in the inquest, in particular Counsel Assisting, proceeded on the misapprehension that there was no internal investigation. As I said at the outset, I do not need to resolve the reasonableness of that. However, it provides an understanding of the reason why this issue was not explored. Without the investigational documents, an assessment of the quality of SAPOL's investigation was not an issue under examination for most of the inquest evidence. However, the issue has now been raised. I consider that it is squarely a matter that falls within the scope of the inquest and a matter that I must consider in light of the exercise of my discretion to make recommendations.

No other means

- 54 Having identified specific purposes for which the provision of the documents is required, I observe that, the Commissioner of Police having declined to provide the material, the Court has no other available avenue to obtain the material than by the making of an order under s 44(d). The withholding of the materials from the Court is therefore an essential element in special reasons requiring production of the materials.³ To be clear, no criticism is made of the Commissioner of Police's decision. He exercised a discretion that was available to him. I merely observe that the result of the exercise of the discretion in the manner he decided has a particular result which impacts on the evidence available to the Court. This inability to obtain relevant evidence other than by the making of the order is then a consideration of some relevance as to whether the test under s 44(d) is satisfied.

Two limbs

- 55 For the reasons that I have set out, I consider that there are special reasons which require the making of an order under s 44(d). Against the background observations I have made above, the considerations of particular weight in assessing whether there are special reasons and whether those reasons require the making of an order are:
- a. That the documents are related to issues that are likely to entirely be consumed within the scope of the inquest.
 - b. That the documents are likely to shed light on numerous significant factual disputes that I am required to determine.
 - c. That there are specific coronial purposes that mandate consideration of the material, including the consideration of whether to make certain recommendations.
 - d. That there are procedural fairness issues resulting from an absence of relevant material being available.

³ *Commissioner of Police v Coroners Court of South Australia* [2022] SASC 26 at [172]

- e. That the legislative purposes for secrecy have limited work to do in the present circumstances and in any event the order sought is limited to production to the Court. The materials would not become public unless tendered and admitted into evidence following any submissions.
- 56 For the reasons I have discussed in detail above, I consider that the interests of justice cannot be adequately served other than by the making of the order under s 44(d). The considerations of particular weight in assessing the interests of justice are:
- a. Each of the considerations I have listed above in relation to special reasons.
 - b. That if an order is not made, the Court will not have access to the relevant materials in relation to the precise issues being explored during the inquest.
 - c. That public confidence in the findings I am required to publish may be affected by the fact that additional material known to exist was not obtained.

Discretion

- 57 Having been satisfied that both limbs of the test under s 44(d) are established, I turn my attention to the discretion that I have.⁴ I have once again assessed this question against the purposes for which the *Police Complaints and Discipline Act* operates a regime in secrecy, as I have discussed above. I consider that those purposes have less weight than the factors in favour of the making of the order.
- 58 The consideration of most weight in assessing the exercise of this discretion is that in assessing the application I have satisfied myself that the interests of justice cannot be adequately served by any other means than by the making of the order. Against that consideration, I weigh the purposes for the secrecy afforded under the *Police Complaints and Discipline Act 2016* as explained in *White*. In my view, the need for clarity of the circumstances of Mr Nash's death, the need to ensure procedural fairness, the need to ensure public confidence in coronial findings and the overall interests of justice lead me to exercise my discretion in favour of the making of the order.

Order

- 59 As a result of my consideration, I grant the application. I make an order that a summons to produce be issued. Mr Nash's death was in 2021. His family have sat through a number of weeks of difficult evidence pertaining to the death of their son, husband and brother, and are anxiously awaiting the conclusion of this matter. I consider it of great importance that this matter progress to finalisation as expeditiously as possible.
- 60 Counsel Assisting was advised, shortly prior to the Commissioner's decision, that the materials would be ready for production within a day or so. The materials having already been fully compiled to allow the Commissioner to diligently make a decision of the level of significance involved in the exercise of his discretion, I am satisfied that a summons should issue with a short timeframe for response.

⁴ *Commissioner of Police v Coroners Court of South Australia* [2022] SASC 26 at [108]