



CORONERS COURT OF NEW SOUTH WALES

Inquest: Inquest into the death of Krista Kach

Hearing date: 11 February 2026

Date of decision: 13 February 2026

Place of decision: Coroners Court of New South Wales, Lidcombe

Decision of: Magistrate Teresa O'Sullivan, State Coroner

Catchwords: CORONIAL LAW – interlocutory application – application by former NSW Police officers to be excused from giving evidence – death as a result of police operations

File number: 2023/00294543

Representation: Counsel Assisting: Ms S Callan SC, Ms E Sullivan and Ms H Skinner, instructed by Ms C Healey-Nash (Crown Solicitor's Office)

Ms Kach's family: Mr E Rowe (O'Brien Criminal & Civil Solicitors)

Commissioner of Police, NSW Police Force: Mr S De Brennan, instructed by Ms B Clark (Wotton Kearney)

TORS 2 and TORS 4: Mr D Nagle, instructed by Mr D Longhurst (Longhurst & Associates)

TORS 5: Mr S Gray (Cardillo Gray Partners)

TORS 9 and TORS 11: Ms C Hatzigeorgiou (Police Association of NSW)

Inspector Anita Kruse: Mr D Kennedy (David Kennedy and Associates)

Introduction

- 1 An inquest into the death of Krista Li-Chin Kach is scheduled to commence on 2 March 2026. Ms Kach died on 14 September 2023 in Stockton, NSW. The cause of Ms Kach's death was identified as "gunshot wound to the chest" in the post-mortem report.
- 2 Two former officers of the NSW Police Force (NSWPF), known in these proceedings as TORS 2 and TORS 4, have been included on the provisional witness list for the inquest hearing. The relevance of their evidence is referenced below at [3]–[6]. In the ordinary course, subpoenas to attend and give evidence would be issued to both officers requiring their attendance at the hearing. However, TORS 2 and TORS 4 have made an application that these subpoenas be withdrawn (which, in these circumstances, I treat as an application that the subpoenas not be issued), with leave for TORS 2 and TORS 4 to provide evidence by way of further statements or written responses to questions (to the extent required).

Background

Factual background

- 3 On 14 September 2023, at around 1:30pm, NSWPF officers attended Ms Kach's residence in Stockton after receiving reports that she was threatening persons with an axe. When officers attempted to gain access to the yard, Ms Kach barricaded herself inside her unit.
- 4 More officers, including police negotiators and officers from the Tactical Operational Regional Squad (TORS), arrived throughout the course of the afternoon and attempted to engage with Ms Kach. TORS 2 and TORS 4 were among the 11 TORS officers deployed to the scene. Ms Kach did not respond to police requests to open the door and exit the premises.
- 5 At around 9:30pm, a decision was made to breach (i.e. enter) Ms Kach's unit. TORS 4 was the Team Leader of the team which breached Ms Kach's unit via the front door. As part of the entry, a TORS officer discharged one round from

a 'Super-Sock' shotgun to Ms Kach's right chest region. TORS 2 and another TORS officer each deployed their Tasers, which also hit Ms Kach. Ms Kach was transported to hospital but declared deceased at 10:47pm.

- 6 A critical incident was declared, and both TORS 2 and TORS 4 were identified as directly involved officers. TORS 2 took part in a directed interview on 20 September 2023 and provided a supplementary statement on 13 August 2025. TORS 4 took part in a directed interview on 18 September 2023 and provided a supplementary statement on 25 July 2025.

Procedural background

- 7 An inquest into Ms Kach's death is mandatory pursuant to ss 23(1)(c) and 27(1)(b) of the *Coroners Act 2009* (the Act).
- 8 On 26 February 2025, TORS 2 and TORS 4 were each notified that they were considered to have a sufficient interest in the subject matter of the coronial proceedings in accordance with s 57(1) of the Act. They were also notified that the inquest into Ms Kach's death had been fixed for hearing from 2-6 March 2026 and 23-27 March 2026.
- 9 On 19 January 2026, a provisional issues list and witness list were distributed to the interested parties. The provisional witness list identified TORS 2 and TORS 4 as witnesses to be called to give evidence in the inquest. The provisional issues list relevantly includes the following:
- (a) Whether the actions of officers from the NSW Police Force (NSWPF) at 1/25 Mitchell Street, Stockton (the Mitchell Street property) on 14 September 2023 were appropriate and reasonable in the circumstances.
 - (b) The adequacy and appropriateness of NSWPF policy, procedure and training regarding the use of less lethal tactics (namely, Super-Sock rounds).

- (c) The appropriateness of the response to Ms Kach's presentation including mental health issues on 14 September 2023.
- (d) The absence of use of Body Worn Video (BWV) cameras by attending TORS officers, and the appropriateness of NSWPF policy and procedure regarding the use of BWV by tactical officers.
- (e) Whether NSWPF critical incident protocols and procedures were followed immediately after the incident.

10 On 3 February 2026, a notice of motion and supporting affidavit were filed by the legal representatives for TORS 2 and TORS 4 (the application) and circulated to the interested parties. The application was listed for hearing on 11 February 2026.

Summary of the application

11 By notice of motion dated 3 February 2026, TORS 2 and TORS 4 seek the following orders:

1. The subpoena to appear on [TORS 2] be withdrawn
2. The subpoena to appear on [TORS 4] be withdrawn
3. Leave be given for [TORS 2] and [TORS 4] to provide further statements or written responses to questions should orders 1 and 2 be made.
4. Any such other order as the Court deems necessary.

12 The application is supported by an affidavit of Dominic Longhurst sworn 21 January 2026 (Longhurst affidavit), which was relied upon at the hearing of the application on 11 February 2026. Annexed to the Longhurst affidavit are two reports from Dr Charles Betts, consultant psychiatrist.

TORS 4

13 In his report regarding TORS 4, Dr Betts outlines [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 Dr Betts states:

[REDACTED]
[REDACTED]

15 Dr Betts considers [REDACTED]
[REDACTED] Dr Betts does not consider that TORS 4 is well enough to give evidence at the hearing, but that TORS 4 may be able to provide evidence via a written sworn statement in question-and-answer format with psychological support.

TORS 2

16 In his report regarding TORS 2, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 Dr Betts states:

[REDACTED]
[REDACTED]

- [REDACTED]
- 18 Dr Betts considers [REDACTED]
[REDACTED]
[REDACTED] Dr Betts does not consider that TORS 2 is well enough to give evidence at the hearing, but that TORS 2 may be able to provide evidence via a written sworn statement in question-and-answer format with psychological support.

Submissions

- 19 At the hearing of the application, in addition to hearing submissions from the legal representatives for TORS 2 and TORS 4, submissions were made by counsel assisting, the Commissioner of Police and Ms Kach's family. No other party sought to be heard.
- 20 Mr Nagle, counsel for TORS 2 and TORS 4, submitted that the medical position is that both former officers suffered [REDACTED] arising from the execution of their duties with the NSWPF, and that there would be a real likelihood of exacerbation of [REDACTED] if required to give oral evidence, such that they are not in a position to do so. Mr Nagle noted that TORS 2 and TORS 4 were willing to provide sworn written answers to questions, and that both former officers had already provided supplementary statements, indicating their willingness to engage. Mr Nagle submitted that I have the benefit of the directed interviews with the former officers which took place after the incident on 14 September 2023, and that in those circumstances, their evidence is largely known. Mr Nagle noted that he and Mr Longhurst will attend the hearing to represent the interests of TORS 2 and TORS 4. Mr Nagle also indicated that any further evidence by the officers could be provided in the form of sworn affidavit or declaration.
- 21 Mr De Brennan, counsel for the Commissioner of Police, observed that consistent with the Commissioner's work, health and safety obligations, the application by TORS 2 and TORS 4 was supported.

22 Mr Rowe, solicitor for Ms Kach’s family, fairly acknowledged the medical documentation before the Court, and noted that he did not seek to diminish the legitimacy of that material. However, he submitted that I ought to consider a number of key matters when determining the application. First, the centrality of these witnesses’ evidence. That is, TORS 2 and TORS 4, being the tactical officers present at the relevant time, are primary eyewitnesses and their evidence must be weighed up against the concerns raised in the medical material. Second, there is an absence of other independent evidence, namely Body Worn Video footage, which heightens the reliance upon such eyewitness testimony. Finally, Mr Rowe also pointed to the various accommodations which could be made for the witnesses in giving oral evidence, such as frequent breaks.

23 Ms Callan SC, counsel assisting, submitted that there was a sound basis for the application to be upheld. Accepting that both officers are in a position to give relevant evidence (and noting the absence of Body Worn Video footage as to an objective account of events), Ms Callan SC noted that on the basis of compelling medical evidence, it was difficult to imagine that reasonable accommodations for TORS 2 and TORS 4 could be made. Ms Callan SC further noted order 3 in the notice of motion and the willingness of TORS 2 and TORS 4 to provide further statements. Ms Callan SC observed that, a practical level, a process could be managed by the assisting team, ensuring that interested parties to have a proper opportunity for their questions for TORS 2 and TORS 4 to address in further statement(s).

Legislative framework

24 Section 59(1) of the Act provides:

(1) The coroner in coronial proceedings may examine on oath or affirmation all persons who—

(a) tender evidence relevant to the proceedings, or

(b) are able, in the opinion of the coroner, to give evidence relevant to the proceedings.

25 As Deputy State Coroner Lee observed in his decision in relation to a similar application in the Inquest into the death of Hillal Barbour,

“It is clear from the above that there is no requirement that a coroner in coronial proceedings must examine on oath or affirmation all persons who are able, in the opinion of a coroner, to give evidence relevant to the proceedings. Rather, the use of the word “may” in section 59(1) affords a discretion to a coroner regarding whether such a person is to be examined. It necessarily follows that even where a person has been served with a subpoena issued pursuant to section 66(1)(a) of the Act, and appears at court in compliance with that subpoena, a coroner may decide not to examine that person even if they are able, in the opinion of the coroner, to give evidence relevant to the proceedings.”¹

26 In this case, the inquest has not commenced and subpoenas have not been issued to any witnesses, including TORS 2 and TORS 4.

27 In determining whether to exercise my discretion not to examine TORS 2 and TORS 4, it is necessary to consider a number of factors, including the potential harm to them if they were required to give oral evidence, the importance of their evidence and whether there are other avenues to obtain such evidence.

Consideration

Risk of harm

28 In *Commissioner of Police (NSW) v Deputy State Coroner (NSW)* [2021] NSWSC 398 at [3], Hamill J observed that “[b]y their nature, coronial proceedings are straining and emotional occasions”.

29 As Deputy State Coroner Lee observed in the Inquest into the death of Hillal Barbour, this may be particularly so when:

- (1) a NSWPF officer is considered to be a directly involved officer or a sufficiently interested party, or both; and

¹ Inquest into the death of Hillal Barbour, Decision on interlocutory application by Deputy State Coroner Lee, 18 June 2025 at [18].

(2) the NSWPF officer, in the execution of their duties, has used lethal force which has caused the death of the person who is the subject of coronial proceedings.

30 In such circumstances, it can be readily accepted that the use of force that causes the death of another person is likely to have an effect on that officer.²

31 I accept the unchallenged expert evidence of Dr Betts about the harm that might be caused to TORS 2 and TORS 4 should they be required to give oral evidence at the inquest. I also accept that the risk of harm cannot be mitigated by either officer giving evidence remotely by audio-visual link.

Significance of evidence

32 TORS 2 and TORS 4 were directly involved in the incident which resulted in Ms Kach's death. It follows that their evidence is significant and that there is a strong public interest in their accounts being given in open court. In this respect, the comments of Deputy State Coroner Lee in Inquest into the death of Hillal Barbour apply with some force:

“One of the underlying public policy reasons for the mandatory requirements provided for by sections 23(1)(c) and 27(1)(b) of the Act is so that an independent and transparent inquiry can be conducted to examine the manner of a person's death. This ensures that appropriate consideration is given to whether any power exercised by a NSWPF officer was reasonable and appropriate, and consistent with the provisions of the LEPR and any applicable NSWPF policies, manuals, guidelines and operating procedures.

Such an inquiry is typically informed by the receipt of oral evidence from any NSWPF officer who exercised a lawful power available to them in the exercise of their functions. Where that NSWPF officer is considered to be a directly involved officer, it is typical for that officer to be directed pursuant to clause 8 of the *Police Regulation 2015* to take part in an interview. During such a directed interview, the directly involved officer is asked certain questions regarding the exercise of any lawful power and typically provides a version of events of the circumstances which resulted in a person's death.

All of these features are present in this case. In order to give effect to the public policy considerations underpinning sections 23(1)(c) and 27(1)(b) of the Act, it is typically the case that an inquest will adduce oral evidence from a directly

² Inquest into the death of Hillal Barbour, Decision on interlocutory application by Deputy State Coroner Lee, 18 June 2025 at [26]-[29].

involved officer and not rely only upon a version of events given compulsorily by a directly involved officer during a directed interview”.³

33 The other interested parties and, in particular Ms Kach’s family, have a direct interest in hearing from TORS 2 and TORS 4. They may also wish to cross-examine them on matters relevant to their interests. They will be deprived of this opportunity if the application is granted.

Other relevant evidence

34 As counsel assisting submitted, an extensive brief of evidence has been prepared during the course of the coronial investigation. This includes lengthy recorded interviews with TORS 2 and TORS 4, multiple other witnesses statements and electronic material. There were also nine other TORS officers present at the time. They have each participated in a directed interview and it is anticipated that four of the officers will give oral evidence at the inquest. It follows that there is presently a significant body of evidence regarding the events of 14 September 2023.

Other avenues for obtaining evidence from TORS 2 and TORS 4

35 TORS 2 and TORS 4 have both indicated that they are prepared to provide further written statements if further information is required from them. While I accept that there are disadvantages associated with relying solely on written statements and that they are not an equal substitute for oral evidence in court, their willingness to provide such statements means that there are other avenues available to obtain their evidence in a way that might mitigate the risk of harm to them.

Conclusion

36 In circumstances where TORS 2 and TORS 4 have participated in lengthy recorded interviews and where they are willing to provide further written statements to the Court, I consider that risk of harm to them outweighs the

³ Inquest into the death of Hillal Barbour, Decision on interlocutory application by Deputy State Coroner Lee, 18 June 2025 at [41]-[43].

benefits associated with them giving oral evidence during the inquest.
Accordingly, I will grant the application.

Magistrate Teresa O'Sullivan

State Coroner

13 February 2026

Coroners Court of NSW
