

FORM 35

Rule 57(5)

ORDER BY CORONER TO ACCESS SEIZED THING

Section 114 of the Coroners Act 2008

In the Coroners Court of Victoria at Melbourne,

I, Peter White, Coroner, having received the application of the Chief Commissioner of Police in relation to the investigation into the death of Carl Williams,

SAY:

1. Under Section 39 (1) of the Act, a Coroner may issue an authorisation to a member of the police force to investigate a death by
 - a) breaking, entering and searching premises, using reasonable force if required;
 - b) taking copies of any documents relevant to the investigation;
 - c) seizing things (including) documents and taking samples, which may be relevant to the investigation.
2. Section 39 (1) may be seen then as a very important part of the way in which the Coroner may inform him/her self of relevant matters relating to the investigation into a death and which may help facilitate a Coroner's finding as required by the Act.
3. In this case, I issued authorisations in December last year and in March of this year, to members of Victoria Police Driver Taskforce to obtain documents and other materials from three units within the Department of Justice, which may be relevant to the Coronial investigation into the death of Carl Anthony Williams, who died at Barwon Prison on 19 April last year.
4. The Driver taskforce was established to investigate the immediate and surrounding circumstances of the death of Mr Williams and I note that the investigators in that Taskforce were and continue to carry out their functions both for the purposes of a Coronial investigation and for the purposes of a criminal investigation.
5. It is important to understand that the evidence the subject of this application was sought and obtained by the Court purely for carrying out a coronial investigation and not for any other purpose. Again, it is not the function of the Coroner to obtain evidence for the purpose of an investigation of a criminal offence.
6. However, where the situation arises that there is evidence obtained by the Coroner, which may also be required for the purposes of a criminal investigation, the Act allows for a means by which such evidence may be properly applied to the investigation and/or prosecution of any person charged with an offence concerning the death.¹

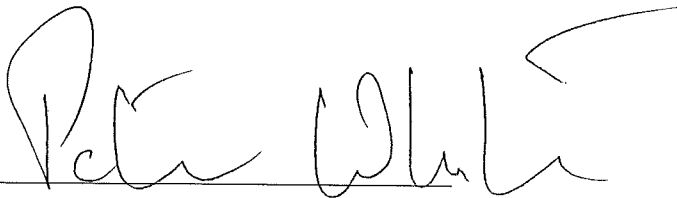
¹ See Coroners Act at Section 114.

7. In this case, an application has been made on behalf of the Chief Commissioner of Police pursuant to 114(3) for documents obtained under the above-mentioned authorisations.
8. Under Section 114(3), if a Coroner is satisfied that the documents are required for the purposes of a criminal investigation or prosecution, he/she may order that they be provided to the Chief Commissioner for the duration of the investigation and prosecution.
9. Based on the two affidavits sworn by Detective Senior Sergeant Woods, who is attached to the Driver taskforce, I am so satisfied.
10. I note here however, that some of the materials referred to in the first affidavit have previously been provided to the Taskforce for the purposes of the criminal investigation.

AND ORDER THAT:

1. Accordingly, I order that all of the materials referred to in Senior Sergeant Woods' first affidavit, except those materials previously obtained as a result of orders made by Magistrate Mr Garnett on 11 November 2010, be now provided to the Commissioner for Police under Section 114 of the Act, for the duration of the Taskforce investigation and or arising criminal prosecution, and thereafter that these materials be returned to the custody of this Court.
2. I further order pursuant to Section 73 (2) (a) and (b), that no person, organization or other entity publish in any way the materials set out in the attachment of the first affidavit of Detective Senior Sergeant Woods, sworn 21 July 2007.
3. I also order that any application for the release of these materials should only be heard after all interested parties here today are notified of such application and given an opportunity to be heard.
4. Finally, I order that if on consideration of this ruling any interested party wishes to seek a further order or an amendment to this order, that they have a right to apply, this with notification to Counsel assisting and by service on the Courts Senior in house Solicitor.

Signature:



Peter White
Coroner

Date: 5/08/2011

