

IN THE STATE CORONER'S
COURT OF NEW SOUTH
WALES

INQUEST INTO THE DEATHS OF KATRINA DAWSON, TORI JOHNSON & ANOR
(THE 'PROCEEDINGS')

CONFIDENTIALITY/NON-PUBLICATION ORDERS

Preliminary

1. Notwithstanding these Orders, Counsel Assisting the Coroner or ASIO may apply to the State Coroner's Court (**'the Court'**) on notice at any time for such further or additional orders, including orders varying these Orders, as the Court deems appropriate. Any application to vary these Orders may only be made on the giving of 72 hours written notice to the Australian Government Solicitor (**'AGS'**) and any affected party or such shorter time as agreed.

2. In these Orders:

The singular includes the plural.

"ASIO" means the Australian Security Intelligence Organisation.

"the ASIO hearings" means the closed court hearings concerning ASIO's assessment of the risk posed by Mr Monis.

"national security" means "Australia's defence, security, international relations or law enforcement interests."

"national security information" means information:

- (a) that relates to national security; or
- (b) the disclosure of which may affect national security.

[see ss 7 and 8 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (**'NSI Act'**).]

"Security Classified Document" means:

- (a) a document that has a security classification marked on it ("Protected", "Confidential", "Secret" or "Top Secret");
- (b) a document which AGS has advised a person in writing must be treated as a Security Classified Document, even if that document is not marked with a security classification, and whether the advice is provided by AGS before or after the person first received the document; and
- (c) any other document which by these Orders must be treated as a Security Classified Document.

For the avoidance of doubt, any copy of a Security Classified Document must be treated

as a Security Classified Document under these orders.

"Relevant Person" means:

- (a) The State Coroner of New South Wales, Magistrate Michael Barnes;
- (b) Mr Jeremy Gormly SC;
- (c) Ms Sophie Callan;
- (d) Ms Melissa Heris;
- (e) Detective Chief Inspector Angelo Memmolo;
- (f) Detective Sergeant Ricky Hennessy;
- (g) Detective Senior Constable Lucy Ede;
- (h) Detective Senior Constable Josephine ('Rosie') Allen;
- (i) any officer or lawyer from, or who represents, ASIO (an ASIO representative);
- (j) Ms Jamie Lowe, First Assistant Secretary National Security Law and Policy Division, Commonwealth Attorney-General's Department;
- (k) Mr Cameron Gifford, Assistant Secretary, National Security Law and Policy Division, Commonwealth Attorney-General's Department; and
- (l) any court official or transcription official who is required to attend the ASIO hearings.

Permitted disclosures

- 3. Any information that relates to or may affect national security that is contained in any document that is provided to the Inquest by ASIO may, subject to the Orders made below, be disclosed in and for the purposes of the conduct of the proceedings, provided that any such disclosure occurs in accordance with these Orders.

Security Classified Documents

Confidentiality of Security Classified Documents

- 4. A Relevant Person must not publish, disclose or otherwise reveal any part of the content of any Security Classified Document to any other person, except to:
 - 4.1 another Relevant Person; or
 - 4.2 the extent that such disclosure is necessary for the conduct of the proceedings and takes place in accordance with these Orders or with the written consent of ASIO.

Declassification of Security Classified Documents

- 5. Subject to later written notification by AGS, if a person is notified in writing by AGS or ASIO that:
 - 5.1. the classification with which that document or group of documents is marked no longer applies to the document or group of documents; and
 - 5.2. no other classification applies to the document or group of documents;

then from the date of that notification that document or group of documents is no longer subject to such of these Orders that apply only to Security Classified Documents.

Access to Security Classified Documents

6. Access to Security Classified Documents is limited to the Relevant Persons referred to in Order 2 above.

Copying and Handling of Security Classified Documents

7. With the exception of documents of the kind described in Order 8 below, Relevant Persons must not copy any Security Classified Document or part of such a document.
8. If any further copy of a Security Classified Document is required to be made by ASIO and provided to the Court:
 - 8.1. written notice must be given to ASIO, through AGS specifying the number of copies that are required and the full names of all persons to whom such copies are to be provided;
 - 8.2. ASIO must comply with any reasonable request for copies, and must provide the requested copies (each of which must be numbered) within a reasonable time of the receipt of the request, to the persons specified in the notice, subject to those persons being permitted to access Security Classified Documents and provided that receipt of the material is acknowledged in writing upon the copies being handed over.

Storage and transportation of Security Classified Documents

9. Security Classified Documents must be stored in a 'B' class security container as defined in the Commonwealth Protective Security Policy Framework ('**B class container**'). The B class container must be locked and kept in a room:
 - 9.1. that is locked whenever a Relevant Person who has access to the Security Classified Documents is not present; and
 - 9.2. that only persons authorised by a Relevant Person can access when locked.
10. The B class container may be kept other than in a room that can be locked as described in Order 9 above, where the person responsible for that safe obtains the written consent of ASIO on the basis that the room has an effective means of limiting entry to authorised persons at all times and that entry will be so limited at all times.
11. Submissions, notes or other documents (including any judgment, orders, findings or recommendations of the Coroner) that record or reveal any of the contents of a Security Classified Document (whether in hard copy or electronic or other form), made by any person who has been permitted to have access to Security Classified Documents:
 - 11.1. must be marked with the same classification as the most highly classified Security Classified Document to which those submissions, notes or documents relate and must be treated as a Security Classified Document;
 - 11.2. must not be made on any electronic device other than the computers referred to in Orders 35 and 36 below; and
 - 11.3. must be stored in a B class container at all times when they are not in use

(meaning that, if such notes are made on a computer, the computer, or the hard- drive of the computer, must be stored in the safe when it is not in use).

12. When:

- 12.1. any Security Classified Document,
- 12.2. any submissions or notes or other documents (including any judgment, orders, findings or recommendations of the Coroner) that record or reveal any of the contents of a Security Classified Document(s), or
- 12.3. any transcript of the ASIO hearings

is transported by a Relevant Person (whether in hard copy or electronic or other form, including for the avoidance of doubt when contained on a laptop computer), it must be carried in a locked secure brief case (**'the transportation'**). During the course of the transportation, the secure brief case is to remain with the Relevant Person at all times when it contains a Security Classified Document.

The destruction of Security Classified Documents

13. Subject to order 14, if any Relevant Person who has been permitted to have access to Security Classified Documents has in their possession, custody or control:

- 13.1. a Security Classified Document;
- 13.2. transcript of the ASIO closed court hearings;
- 13.3. notes taken during any closed court hearing;
- 13.4. submissions, notes or any other document (whether in hard copy or electronic form), or copies thereof, which record or reveal any part of the content of a Security Classified Document or which contain extracts from a Security Classified Document;
- 13.5. any computer hard drive on which any of the documents described in 13.1 to 13.4 is or has been stored;

other than a document that has become an exhibit, that person must provide those documents and computers (if any) to AGS so that it can arrange for the destruction or sanitation (which, if the owner of the documents so desires, can take place at a time arranged between the owner and AGS so that the owner can witness their destruction or sanitation), within 28 days of the earlier of:

- 13.6. the conclusion of the proceedings (defined as being once findings are delivered by the State Coroner of New South Wales pursuant to s. 81 of the *Coroners Act 2009* (NSW)); or
- 13.7. the person ceasing to act in the proceedings (unless the documents are provided to a Relevant Person who is bound by these Orders).

Retention of Security Classified Documents forming part of the Court file

14. Following the conclusion of the proceedings, the following items are to be placed in envelopes or other suitable storage containers provided by ASIO, and sealed by one or more of the Relevant Persons referred to at (a)-(d) of the definition of 'Relevant Person' in Order 2, and provided to ASIO for safe storage:

- (a) the exhibits from the ASIO hearings;
- (b) one hard copy of any judgment, orders, findings or recommendations of the Coroner that record or reveal any of the contents of a Security Classified Document(s);
- (c) one electronic copy of any judgment, orders, findings or recommendations of the Coroner that record or reveal any of the contents of a Security Classified Document(s);
- (d) one hard copy of the documents provided by ASIO to the Court for the ASIO hearings;
- (e) one electronic copy of the documents provided by ASIO to the Court for the ASIO hearings;
- (f) one hard copy of the transcript of the ASIO hearings;
- (g) one electronic copy of the transcript of the ASIO hearings;
- (h) one copy of the audio recording of the ASIO hearings;
- (i) one hard copy of any notes taken during the ASIO hearings and made by any of the Relevant Persons identified at (a)-(h) of the definition of 'Relevant Person' in Order 2;
- (j) one hard copy of any written submissions that record or reveal any of the contents of a Security Classified Document;
- (k) any original notes made by any of the Relevant Persons identified at (a)-(h) of the definition of 'Relevant Person' in Order 2; and
- (l) one hard copy of any other document that records or reveals any of the contents of a Security Classified Document, prepared by any of the Relevant Persons identified at (a)-(h) of the definition of 'Relevant Person' in Order 2;

(collectively, the '**sealed material**').

15. ASIO undertakes to the Court to:

- (a) store the sealed material on behalf of the Court;
- (b) not access or unseal the sealed material; and
- (c) produce the sealed material to the Court within seven days of it being requested by the State Coroner of New South Wales (whomever may occupy that position at the relevant time).

Closed court hearings

16. Any person who intends to make any reference to the content of a Security Classified Document when:
 - 16.1 asking any question of any witness (whether in examination or cross-examination); or
 - 16.2 making any submission;must inform the Court before any such use or reference is made so as to enable the Court to be closed, and must not make any reference to the content of that document until the Court is closed.
17. For the purpose of these Orders, only a Relevant Person identified in Order 2 above is allowed to be present when the Court is closed.
18. Any person who tenders a Security Classified Document must tender that document as a confidential exhibit. If the Court admits the document as a confidential exhibit, the Court will store all confidential exhibits in accordance with the requirements of Order 9 above.
19. Subject to further order, there shall be no publication other than to a Relevant Person, of:
 - 19.1 any evidence given, or any submission made during the ASIO hearings;
 - 19.2 the content of any Security Classified Document; or
 - 19.3 any transcript of the ASIO hearings.
20. All notes taken by any person, including for the avoidance of doubt any court official or transcription official, during any part of the ASIO hearings (whether handwritten or electronic or in other form) must:
 - 20.1 be marked and treated as classified 'Secret';
 - 20.2 not be made on any electronic device other than the computers referred to in Orders 35 and 36 below; and
 - 20.3 be stored in a B class container at all times when they are not in use (meaning that, if such notes are made on a computer, the computer, or the hard-drive of the computer, must be stored in the safe when it is not in use).

Access to mobile phones, laptop or notebook computers, and other electronic devices in closed court

21. Mobile phones, laptop or notebook computers, and any other electronic devices capable of recording or transmitting sound or images, must not be in the Court during the ASIO hearings, save for:
 - 21.1 the laptop or notebook computers approved for use with security classified material provided by ASIO pursuant to Order 35;
 - 21.2 the laptop or notebook computers approved for use with security classified material used by an ASIO representative; and
 - 21.3 the electronic devices (including a laptop or notebook computer) required for the recording of the ASIO hearings for transcription purposes
22. Save for the electronic devices identified in Order 21 above, a Relevant Person may surrender any mobile phones, laptop or notebook computers or other electronic devices to

a Court Officer, who will not bring it into the hearing room where the ASIO hearings are occurring, so that it can be returned to the Relevant Person after such person leaves the hearing room.

Closed Court Transcript

23. Transcript of the ASIO hearings in accordance with these Orders must be marked by the transcription service providers as classified 'Secret', handled as a Security Classified Document pursuant to these orders and is to be available for collection by a Relevant Person from the transcription service in hard copy form.
24. Any person who has access to the ASIO hearings transcript electronically or otherwise, must not:
 - 24.1 send by electronic means the ASIO hearing transcript to any person or any internet site; or
 - 24.2 load the ASIO hearing transcript onto any computer other than the computers referred to in Orders 21.1, 21.2 and 21.3 above.
25. Any transcript of the ASIO hearings must be stored in accordance with the requirements of Order 9 above.

Witnesses from the Australian Security Intelligence Organisation

26. Subject to any further Order of the Court, ASIO witnesses, including current or former ASIO employees or affiliates who give evidence in any part of these proceedings must give evidence and be referred to by use of an assumed identity.
27. A person shall not disclose or publish the identity of any ASIO witness, including:
 - 27.1 a description;
 - 27.2 a visual representation; or
 - 27.3 any other identifying feature other than the cipher or assumed name referred to in Order 26 above;that could identify that witness as an ASIO employee or affiliate.
28. A list of the names of all ASIO witnesses, which includes the details of their respective ciphers and assumed names,:
 - (a) shall be created by ASIO;
 - (b) shall be retained by ASIO in a manner that ASIO sees fit; and
 - (c) need not be produced to the Court absent an order of the State Coroner, which shall not be made without ASIO first having an opportunity to be heard on the question of whether the order ought be made and production ought occur.
29. The Court is to be closed while ASIO witnesses give evidence. For the purpose of these Orders, only a Relevant Person is to be present when the Court is closed under this Order.
30. ASIO witnesses are permitted to enter and leave Court and the court building by means that enable them to avoid being identified as persons connected with ASIO by any person who is not a Relevant Person.

31. A person shall not disclose or publish, other than to a:
- 31.1 Relevant Person,
 - 31.2 a member of the staff team assisting the State Coroner in the Proceedings;
 - 31.3 a court official assisting the State Coroner with the practical arrangements for the ASIO hearings;
 - 31.4 a Sheriff's officer assisting the State Coroner with the practical arrangements for the ASIO hearings; and
 - 31.5 a non ASIO witness called to give evidence during the ASIO hearings
- the date or time that any ASIO witness is to give evidence, or any information from which a reliable inference could be drawn about the date or time an ASIO witness is to give evidence.

Confidential affidavits

32. No affidavit marked as a confidential affidavit that is provided to the Court in support of any application to:
- 32.1 vary these Orders; or obtain additional Orders that relate to national security; shall be disclosed;
 - 32.2 to any person (other than the Relevant Persons identified at paragraphs (a)-(h) of the definition of 'Relevant Person' in Order 2) without the consent of ASIO; or
 - 32.3 otherwise than by order of the Court, any such application for such order to be made by the giving of 24 hours written notice to the AGS and any affected party or such shorter time as agreed.
33. There shall be no publication of the content of any confidential affidavit referred to in Order 32 other than by order of the Court.
34. Subject to any Order of the Court, all confidential affidavits will be either:
- 34.1 stored as a Security Classified Document in accordance with the above Orders;
 - 34.2 returned to the deponent of the confidential affidavit at the conclusion of the hearing in which the affidavit is read; or
 - 34.3 otherwise handled in accordance with the requirements specified in the affidavit.

ASIO Property

35. ASIO will provide the State Coroner, Counsel Assisting the Coroner and Ms Heris with laptop or notebook computers, safes and secure briefcases ('**ASIO Property**') referred to in these Orders. ASIO will provide such further equipment as might be necessary pursuant to these Orders.
36. Any laptop or notebook computer provided by ASIO, as referred to at Order 35, above is to be approved for use with security classified material, being a computer that cannot be connected (whether by physical or wireless means) to the internet or any local area network and must be stored in a B class container when not in use, regardless of whether the computer contains a Security Classified Document or not. Laptop or notebook computers approved for the sole purpose of providing transcription purposes (per Order 21.3) are also subject to the same usage and storage conditions.

37. ASIO Property must be returned to ASIO, or to the AGS, on behalf of ASIO within 42 days of the conclusion of the Proceedings (being within 42 days of findings being delivered by the State Coroner of New South Wales pursuant to s. 81 of the *Coroners Act 2009* (NSW)).

The Coroner's findings relating to Security Classified Documents

38. Nothing in these Orders shall prevent the Coroner from providing, securely, a confidential annexure to his judgment, orders, findings or recommendations which records or reveals any part of the content of a Security Classified Document ('**Classified Findings**') or the evidence given during the ASIO hearings to:
- (a) the Director-General of ASIO;
 - (b) the Inspector-General of Intelligence and Security; or
 - (c) the Commonwealth Attorney-General.
39. For the purposes of Order 38, any such Classified Finding can be provided securely to any of the person's referred to in (a)–(c) of Order 38 by any of the following means:
- (a) transportation by a Relevant Person in accordance with Order 12 above;
 - (b) with the prior written approval of ASIO, transportation by a courier authorised to transport Security Classified Documents; or
 - (c) providing it to an ASIO representative who has undertaken to deliver the Classified Finding to the person.

Notification of breach of orders

40. Any possible breach of these conditions or any third party attempt to access Security Classified Material (except as authorised by ASIO) must be brought to the attention of AGS and ASIO immediately.

Dated:

17 November 2015



M A Barnes

State Coroner