

# Inquest into the deaths arising from the Lindt Café siege

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Opening address for third segment (ASIO)

**Jeremy Gormly SC and Sophie Callan**

**18 November 2015**

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arising from the Lindt Café siege**

**Opening Address for segment regarding ASIO**

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**(3rd Segment) – 18 November 2015**

**INTRODUCTION**

1. This is the opening address for the third segment of this inquest. As foreshadowed in earlier openings, this segment will comprise a closed hearing dealing with the Australian Security Intelligence Organisation – widely known by its acronym ASIO - and related security issues.
2. It is intended that this public opening will provide detail, amongst other things, of the parameters of the closed hearings in a way that will give as much information as possible about the segment while ensuring the avoidance of damage to important security requirements as his Honour just been outlining.

3. It is a matter of public record that ASIO had cause in the course of its security risk assessment work, to assess and deal with Man Haron Monis dating back to his arrival in Australia from Iran nearly twenty years ago, in 1996 right up to the days leading to the siege at the Lindt Café.
4. This gives rise to five issues relevant to the inquest which will be examined during the closed hearings.
  - a. First - what information was actually held by ASIO regarding Mr Monis;
  - b. Second - what assessments were undertaken by ASIO and were they adequate and appropriate;
  - c. Third - how was information from the Joint Counter Terrorism Team, in which ASIO is involved, relevant to ASIO's task of assessing the risk represented by Mr Monis?
  - d. Fourth - whether, how, and when national security legislative powers were or could have been used in relation to Mr Monis' activities. That is to say, should he have been detected as a risk and should action have been taken against him at some time before the siege?
  - e. And finally, fifth - was Mr Monis on any kind of watch list? Was he the subject of adequate

surveillance having regard to what was or perhaps should have been known about him?

## **ASIO**

5. Before turning to the factual background, it is useful to make some preliminary observations regarding ASIO.
6. ASIO has been in existence in a legislative form since the 1950s. Though there have been changes in legislation over time.
7. ASIO's mission has been described in Commonwealth Parliamentary reports as including identifying and investigating threats to security,<sup>1</sup> both within and outside Australia.
8. ASIO is set up under Commonwealth legislation at the present time. The *Australian Security and Intelligence Organisation Act 1979* (Cth). It defines 'security' as the protection of Australia and its citizens from a range of threats, including most relevantly:
  - a. Espionage;
  - b. Sabotage;

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<sup>1</sup> ASIO Report to Parliament (2013-2014) p.vii

- c. Politically motivated violence which is an item of particular interest in this inquest; and
  - d. The promotion of communal violence.
9. ASIO's role is to identify and assess possible threats to national security or the lives and safety of Australians in sufficient time and with sufficient accuracy to prevent such threats eventuating. In this respect, ASIO's work is predictive and advisory, an exercise in informing risk management and enabling governments to take preventative actions.<sup>2</sup>
10. ASIO is therefore a surveillance and information gathering body. It has wide powers and extensive facilities to conduct that work but the limits of its work are defined. It is not a policing body. It has no powers of arrest. Its agents do not have policing powers.
11. ASIO's role is to obtain and assess information, and then to provide information and advice to government.
12. If it obtains information predictive of a national security risk, it must pass that information on to an

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<sup>2</sup> ASIO Report to Parliament (2013-2014) p.x

entity that has the powers to act upon it – for instance, the police.

13. For these reasons ASIO has powers and obligations to interact with other agencies both to enlarge its access to information and presumably to ensure a degree of coordination of information.
14. One important role it has is in its membership of the national Joint Counter Terrorism Team system. It operates to involve a range of state and commonwealth agencies, in particular the various state police forces and the Australian Federal Police.
15. The security issues dealt with by ASIO over the decades of its existence vary of course with international conditions. The risks thought to exist in earlier decades, for example in the 1950's or the 1960's are quite different from those that have emerged so markedly since 9/11—now 14 years ago.
16. It seems that at present ASIO acknowledges that the principal threat to national security in Australia comes from those who adhere to violent terrorist ideologies and who view Australia as a legitimate target for attack. In 2013-4 in a report to the Commonwealth Parliament, ASIO specifically

described this risk as one arising from violent jihadist ideology.<sup>3</sup>

17. On 8 December 2014, a week before the Lindt Café Siege, the former Director General of ASIO gave a speech about terrorism, during which he had cause to observe that "to discover and stop attacks we have to be right every time, the terrorists only have to be right once".<sup>4</sup>
18. In a parallel, perhaps, with the problems that confront bail authorities which we carried out some in last segment, ASIO is obliged to assess and predict the risk of violent acts by errant individuals or groups. Plainly the more information it has on its radar, the better, but the obtaining and assessment of useful information is its role.
19. In that context, it is relevant to note that for some time now, ASIO appears to have been alive to the risk of individuals outside established groups who may pose a 'lone actor' or 'lone wolf' threat. That is, an individual who has been triggered to plan and conduct violent acts but for political or religious motives.

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<sup>3</sup> ASIO Report to Parliament (2013-2014) p.2

<sup>4</sup> "Evolution of terrorism - and what it means for Australia" David Irvine, Address to the Australian Institute of International Affairs 8/12/2014

20. The lone actor may have some contact with other extremists but often seems to operate independently. Something of which ASIO needs to be aware. The individual may have no contact with other extremists but is inspired by an ideology promulgated by others. Sometimes of course violent behaviour motivated by political or religious views may be completely self contained. No doubt the autonomy and isolation of such individuals makes them more difficult to detect.<sup>5</sup>
21. It is striking that individuals can often be detected by authorities before harm is done. The counter-terrorist task is one that involves not only detecting possible individuals but weighing that person's risk against a pool of individuals that at least appear to fall within a higher risk category.

## **RELEVANT FACTS**

22. I turn now to the chronology of ASIO's dealings with Mr Monis.
23. On 1 October 1996, ASIO first became involved with Mr Monis because his application for a business visa was referred by the Department of Immigration to ASIO for routine checking.

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<sup>5</sup> ASIO Report to Parliament (2013-2014) p.4. See also "Evolution of terrorism - and what it means for Australia" David Irvine, Address to the Australian Institute of International Affairs 8/12/2014

24. Ten days later, ASIO had assessed Mr Monis' immigration application and issued what is described as a 'non-prejudicial assessment'. Shortly thereafter, the Department of Immigration granted him a visa.
25. Three weeks after that on 4 November 1996, ASIO received some potentially adverse information about Mr Monis, none of which though related to a terrorist threat to the Australian community or an intent to commit politically motivated violence. Based on that information, ASIO initiated an investigation into Mr Monis.
26. Later that month, on 18 November 1996, Mr Monis submitted an application for a protection visa – this was subsequently drawn to ASIO's attention apparently as part of a normal or routine system in place at the time.
27. On 18 May 1998, about 18 months later, Mr Monis contacted ASIO's public line claiming to have information of interest to ASIO and relevant to the upcoming Sydney Olympics. It was to be the start of a long series of attempted contacts or contacts by Mr Monis, many of which seemed to amount to little more than nuisance calls.

28. ASIO interviewed Mr Monis on two separate occasions and assessed him to have no information relevant to national security.
29. On 3 July 1998, three months after the May incident, the Department of Immigration referred Mr Monis' protection visa application to ASIO for security assessment. Later that year ASIO conducted a security assessment interview of Mr Monis.
30. About a year after that, in early 1999, ASIO provided the Department of Immigration with an adverse security assessment on Mr Monis, assessing that his continued presence in Australia posed an indirect, and possibly a direct, risk to national security (but not in relation to politically motivated violence). I should say the expression 'politically motivated violence' had a particular meaning because it appears amongst the definitions in s. 4 of the Act. ASIO recommended at that time against the issue of a Protection Visa.
31. In November 1999, ASIO commenced an investigation into Mr Monis. Early the following year it conducted a second security assessment interview with Mr Monis. Following that interview, a formal assessment was undertaken and ASIO

assessed that Mr Monis did not pose a direct or indirect threat or risk to national security. This new assessment superseded the previous adverse assessment.

32. On 12 September 2001, (the day after the 9/11 attack), Mr Monis made one of calls to the ASIO public line and volunteered information alleging Iran funded the September 11 attacks. ASIO initiated an investigation and interviewed Mr Monis on two occasions in the following days. During one interview, Mr Monis asked whether he might receive a reward from the US Government for his help. ASIO further interviewed Mr Monis in late September 2001, then again October 2001 and further in January 2002. After investigation, and those various interviews, ASIO assessed that Mr Monis' claims were not credible. ASIO ceased its investigation into his claims at that time, so in September 2002.
33. On 18 June 2003, ASIO interviewed Mr Monis after he called the ASIO public line again to express concern over the delay of his Australian citizenship application. The following year, ASIO advised the Department of Immigration that Mr Monis was assessed as not being a direct or indirect risk to national security. As your Honour will recall from

Segment one, Mr Monis was ultimately granted citizenship in September 2004.

34. Over subsequent years, Mr Monis made several telephone calls to the ASIO public line to raise various matters. This shows at least that Mr Monis was as aware of ASIO as ASIO was of him. Nothing appears to have come from any of those calls.
35. On 17 February 2005, Mr Monis called the ASIO public line to ask if it was legal for him, as an Australian citizen, to meet officials of other foreign governments, including during a planned upcoming holiday. Mr Monis also claimed to have information about an Israeli airman missing in action since 1986. As with earlier claims nothing seems to have come of the information he provided. Seen to have to have been investigations and the assertions were not supported.
36. On 15 July 2005, Mr Monis called the ASIO public line and claimed to have urgent information relating to suicide attacks. ASIO met with him the same day. Mr Monis provided a hypothesis he had developed following the London bombings a week prior. He asked that this be passed on to UK and US intelligence agencies. Separately, Mr Monis claimed he had contacts with information on Al-Qaida and

other similar groups, and offered to assist ASIO. ASIO assessed the information provided by Mr Monis as not credible. Mr Monis also raised concerns that the Australian government was 'harassing' Muslim clerics. He relied on the search of him that occurred at Sydney airport following a return trip from overseas, about which we heard detailed evidence in segment one.

37. On 1 February 2007, Mr Monis called the ASIO public line again and requested a meeting. ASIO agreed to meet to hear what he had to say. During the meeting which ensued, Mr Monis said he wanted to become a teacher of Islam in the community and so he had changed his name to be more readily identifiable as a Muslim. He said he intended to teach Muslim youth in order to steer them away from terrorism. To help achieve this he said he was intending to temper his pro-Western views in order to connect (presumably with Islamic youth). It seems that Mr Monis at that time considered that a pro-Western approach was unlikely to attract Muslim youth.
38. In the same meeting however, Mr Monis offered to become a source for ASIO and provided a three page 'plan' outlining the offer. ASIO declined the offer. Following the meeting, ASIO internally

reconfirmed that contact with Mr Monis should not be pursued, citing concern about his motivation for contact, his unusual behaviour and that he had provided no information of security relevance so far.

39. At that time the ASIO interest in Mr Monis was reactive to events. However, on 1 April 2008 ASIO initiated an investigation into Mr Monis given his commencement of inflammatory public statements which appeared to have come to attention of ASIO.
40. By 5 December 2008, so, some 7 months later, ASIO's investigation into Mr Monis had found:
  - a. there was no information to indicate Mr Monis' known associates, in Australia and overseas, were of security concern.
  - b. Mr Monis was not involved in politically motivated violence or the promotion of communal violence.
  - c. The [www.sheikharon.com](http://www.sheikharon.com) website did not pose a significant threat to security.
41. ASIO's assessment by the end of 2008, noted that Mr Monis quote: *"was not involved in politically motivated violence and has not tried to incite communal violence. While [Mr Monis] endeavours to use language that is ambiguous and open to*

*interpretation, he makes sure not to cross any lines and tries to ensure he can protect himself from allegations of inciting terrorism".*

42. In January 2009, ASIO concluded that particular investigation of Mr Monis.
43. Several months later, on 28 July 2009, ASIO provided a report to Commonwealth and State agencies on Mr Monis, stating that while he used provocative and inflammatory language, he had not articulated a specific threat. The report states that, *"at this time, there is no indication Sheikh Haron or his associates are likely to personally engage in violence"*. That is, at that time ASIO found no indication of a threat to national security.
44. What occurred from the time of that 2009 assessment over the following five years will be of interest in the hearing that are to occur, because it was during those five years that the postal offences occurred, the murder of <sup>Monis' ex-</sup><sub>wife</sub> was alleged against Mr Monis, and the sexual assaults came to light.
45. The receipt and management of that information and its relevance to an assessment of risk of politically motivated violence (the only aspect of Mr Monis' history that was of interest to ASIO), needs to be explored.

46. For instance, your Honour might recall evidence from the last segment suggesting that an ASIO officer attended court mention dates for the murder charges in 2013/2014. If this was the case, it appears to demonstrate particular charges, and the reason for attendance on court mention dates will be examined.
47. On 9 December 2014, the National Security Hotline received 18 calls and emails relating to Mr Monis just a few days prior to the siege. Each call or email drew attention to his Facebook page.
48. All calls, as they were received, were referred to ASIO and the AFP (some were forwarded to the NSW Police Force and Queensland Police as well).
49. Large as that number of calls and emails appears to be, it seems that a number of the calls and emails were duplications. Nevertheless, there were a number of calls and emails. Nevertheless, it is a question for consideration as to whether there was sufficient notice to security authorities of the content of the Facebook page to assess and act upon it.
50. ASIO assessed these Hotline reports on 9, 10 and 13 December 2014, including a review of Mr Monis' public Facebook page by an ASIO analyst with

relevant foreign language skills to enable that to occur.

51. The analyst concluded the posts did not indicate a desire or intent to engage in terrorism or politically motivated violence.
52. The Hotline reports that were referred to the police were considered by NSW police on the days they were received, and by the AFP prior to the siege. Both police agencies considered the Facebook posts contained no indications of an imminent threat. Nor were the postings assessed to meet the threshold for prosecution under new 'advocacy of terrorism' legislation.
53. I turn now to **Ms Callan** regarding the scope of the task involved in this segment of the inquest

## **INVESTIGATION TO DATE AND PARAMETERS FOR CLOSED HEARING**

54. Your honour, I propose to outline the investigation undertaken by the coronial team to date in relation to ASIO's assessment of Mr Monis.
55. Then I will address the parameters for the upcoming closed hearings.
56. At an early stage following the siege, those assisting your Honour met with ASIO at its offices to

commence arrangements to examine its role in the assessment and prediction of Mr Monis as a risk.

57. The first task was to establish a method of examination that achieved coronial purposes without impairing the kind of security required by the *Australian Security Intelligence Organisation Act 1979* (Cth) (**'ASIO Act'**) and by the surveillance work that ASIO must carry out. The Commonwealth *ASIO Act* imposes stringent secrecy requirements on ASIO and those who deal with it. Methods of examination to achieve coronial purposes and avoid public interest damage to the work of ASIO needed to be designed.
58. Plainly, full public hearings would expose the nature of ASIO's working methods and the identity of its officers—which is prohibited by the ASIO legislation. The need however, to know how ASIO reacted to Mr Monis drove various methods into consideration.
59. Ultimately the principal option that had emerged was raised in a meeting with all parties on 21 April of this year. After a frank exchange of views and with the agreement of all parties the option chosen was the one that is to occur.

60. That option included a document examination and provision of statements from relevant ASIO officers, followed by a closed hearing in which the officers would be examined on all issues relating to the ASIO surveillance and assessment of the risk Mr Monis posed of committing politically motivated violence.
61. Any option for investigating this area of the evidence was going to come with restrictions that prevented the public disclosure of internal ASIO workings. The restrictions involved in the closed hearing option adopted are that the evidence is not and most likely never will be public, the parties do not get to hear or cross examine the ASIO witnesses and much of the findings and any relevant recommendations by your Honour on that part of the evidence is likely to have a limited distribution. At present that distribution appears to be to:
  - a. the current Inspector-General former Justice Margaret Stone,
  - b. the Commonwealth Attorney-General and
  - c. ASIO itself.
62. That would not necessarily preclude Your Honour from some public findings on this area, but of

course this would need to avoid any matter touching the risk of public security.

63. Not surprisingly perhaps, extensive security arrangements have had to be put in place for the Coroner's ASIO investigation and hearing process which has just been described.
64. Whatever the restrictions, the examination of the issues and of the ASIO witnesses is proposed to be rigorous and thorough. The examination will cover all relevant matters arising from our examination of the ASIO records and protocols.
65. In addition I note that on the invitation of Counsel Assisting, the legal representatives for the families of Katrina Dawson and Tori Johnson have provided us with lists of questions and topics that they would wish addressed in this ASIO segment, which will be done.
66. Meanwhile, the document examination was undertaken over the months of June and July of this year. Members of the counsel assisting team and several NSW police officers assisting your Honour attended ASIO's offices in Canberra to review the ASIO documentation. This comprised the history of ASIO's dealings and assessments of Mr Monis and also the relevant ASIO procedural documents, so we

are in a position to examine the criteria by which assessments of Mr Monis were made by ASIO at the relevant points in time.

67. ASIO's cooperation in that documentary review exercise, and to date in preparing for these closed hearings, is acknowledged.
68. What has flowed from the documentary review is the collation of all relevant documents as well as the supply of witness statements from ASIO officers, including supervisors, with relevant involvement.
69. It is proposed that during the closed hearings, there will be consideration of the documents, and questions asked of witnesses, by reference to the five issues that Mr Gormly earlier outlined in this opening.
70. I anticipate that the main focus and most time will be spent on the second issue - being what assessments were undertaken by ASIO and were they adequate and appropriate. To put it bluntly – did any assessment substantially underestimate the risk of Mr Monis committing violence?
71. This involves gaining a proper understanding of ASIO's standard procedures for such assessments

and how this applied in Mr Monis' case. For instance:

- a. how material is gathered,
  - b. precisely what material ASIO had about Mr Monis - and what if anything did ASIO not know about him;
  - c. the criteria by which assessments are made; and
  - d. how such material and assessments are retained and accessed down the track.
72. It will also be important to gain a proper understanding of the context in which information about Mr Monis was being considered. Was he one of hundreds or even thousands? How did his assessed risk stack up compared with others ASIO assesses?
73. If it appears there was a serious underestimation by ASIO of the risk he posed, then the closed hearings will also be used to scrutinise the reasons for this, be they human error, resource related, or some defect in the processes and procedures within ASIO.
74. It is anticipated that the hearings, though closed, will be conducted formally, with witnesses called, statements tendered and with examination occurring under oath.

75. That concludes the opening remarks to be made for this segment.

## **CONCLUSION**

76. I understand that Your Honour would shortly wish to adjourn to enable some re-arrangement of the Courtroom.

77. Upon your Honour's return I understand it is proposed to conduct a directions hearing regarding arrangements for the final segment of this matter, which will address the events of the siege.

78. But before adjourning, **Dr Renwick** of senior counsel has asked to briefly address your Honour on behalf of the Director General of ASIO in relation to this forthcoming segment.