

Inquest into the deaths arising from the Lindt Café siege

Directions hearing on 7 September 2016

Preliminary opening address by Mr Jeremy Gormly SC

Introduction

1. A number of issues need to be addressed today. There is the tendering of some pieces of evidence; that will be short and should not be contentious. There are some comments to be made about two areas of the investigation (Australian Security Intelligence Organisation ('**ASIO**') and the Australian Defence Force ('**ADF**'). There is also a range of issues to be handled about transcript corrections, public interest immunity ('**PII**'), the availability of a public presentation of the brief containing all necessary redactions and other shorter matters.
2. It will also be necessary to settle a timetable for written submissions. We are well along that path. There are over 200 questions to be answered as part of the submissions process but we do expect the material to be served in a staged way, commencing well before the deadline set for us to make those submissions. We will come to the submissions timetable a little later.
3. As a matter of timing I anticipate the tendering will take about 10 minutes or so. I will identify what I am tendering. The comments concerning the ASIO segment of the investigation will be 15 minutes or so and the ADF segment about 20 minutes or so. Thereafter the matters to be considered are timetabling and procedural. If it becomes necessary to do so, some portion of the PII arguments might be in closed hearing. That could be done in the second half of the day.

Tendering

4. Tender of 'negotiation articles';
5. Tender of select correspondence:
 - a. letter from Office of the State Coroner to Australian Government Solicitor dated 14 July 2016 re Joint Police/ADF guidelines for counter-terrorism operations;
 - b. letter from Australian Government Solicitor to Office of the State Coroner dated 25 July 2016 re Joint Police/ADF guidelines for counter-terrorism operations;
 - c. letter from Office of the State Coroner to Henry Davis York re query concerning negotiator involvement in crafting media statements; and
 - d. letter from Henry Davis York to Office of the State Coroner re query concerning negotiator involvement in crafting media statements;

6. Tender of supplementary statement of Johanna Pheils, a senior ODPP officer who has provided statements to the inquiry during segment 2; previously distributed to the parties. It came without notice but is helpful and consistent with a statement provided by Ms Pheils during the bail segment
7. Tender of material from Crime Scene Officer Dominic Raneri (*Note: material was not tendered at time of witness giving evidence*):
 - a. USB prepared by Crime Scene Officer Raneri and referred to at commencement of his oral evidence;
 - b. items prepared by Crime Scene Officer Raneri, pursuant to requests, created during oral evidence or subsequent to same;
 - c. the email from Crime Scene Officer Raneri dated 7 July 2016, which describes methodology used to prepare synchronisation presented to the parties on Tuesday 5 July 2016; and
 - d. the amended version of Crime Scene Officer Raneri's timeline table, which includes additional events drawn from the 5 July 2016 synchronisation. It is in the wide ranging nature of an inquest that it can examine any issue that bears on the death.

Preliminary comments before ASIO and ADF statements

8. I turn now to the ASIO and ADF statements but first the reasons for making these statements need to be outlined.
9. Most inquiries such as special or royal commissions have terms of reference formulated with a particular circumstance in mind. The scope of an inquest is quite different. Its terms of reference are unchangeable and fixed by statute. No adjustment is made at the time of an event to shape the terms of reference to meet current considerations, narrow the scope, or narrow any matters to be investigated.
10. The terms of reference of an inquest are therefore wider than is usually possible in virtually any other form of inquiry. A coroner may look at any matter whatever that bears upon the facts and circumstances surrounding an event to be investigated by the coroner. The only limits are those within the general law. In this case there has, quite deliberately been a detailed inquiry on all matters relating to the three deaths. That has led us to investigate the state of mind of Monis, the ballistics and armoury issues, the role of the counter-terrorist systems that were in place, the role of the policing and intelligence bodies, the management of the siege, the experience of the hostages, the aftermath of the inquiry, indeed anything likely to assist in understanding this first terrorist event and how it was managed. There has been no artificial obstacle to the investigation and no barrier preventing investigation where it was relevant. If any matter related to the task of finding identity, time, place, manner and cause of death we have investigated it.

11. Establishing the whole circumstances of this event is not the whole task confronting your Honour. After taking the relevant evidence the Coroner is then enabled by the *Coroners Act 2009* (NSW) to look to the question of recommendations. As with terms of reference, there are no limitations on recommendations that can fetter a coroner. The Coroner may make recommendations about any matter considered appropriate and relevant. Furthermore, the Coroner may make recommendations direct to any entity he or she considers appropriate, whether state, territory or Commonwealth, a state of affairs completely different from virtually any other form of public or closed inquiry.
12. When publishing findings after a hearing, a coroner cannot be required to make closed findings. There may be a case in law or otherwise for closed findings but that is a matter for the Coroner to consider. It cannot be imposed on him. The essence of coronial proceedings is that they are public. Parts of coronial proceedings may be closed for good reason, but to close the whole of coronial proceedings is to miss the public purpose of the act
13. In this matter there have been good reasons in law and public safety for some closed hearings, probably some closed findings and some limits on investigation. Your Honour has required us and those assisting you have been careful to accord due respect to issues of public interest immunity, matters of public safety, safety of officers in the public line, and matters relating to methodology. Sometimes they have been considered in closed hearings. Sometimes they could be examined in only a limited way. These restrictions would have applied to any form of public inquiry no matter how it was constituted. All these matters could have been investigated in an inquiry that operated out of the public eye. There are benefits in such an inquiry but no one can see their work. Public hearings allow everyone to see what happened and have great benefits but they do come with some responsibility to ensure that they do not harm good working systems and the hardy and brave police and agency officers in the field. We have been careful to do that and have done it with the cooperation of the relevant agencies.
14. I make these comments preliminary to comments about ASIO and the ADF investigation. In both these cases we have had to be careful in the way I have outlined. Both had a presence in relation to the siege and were necessarily a part of the coronial investigation. Not to have looked at them would have left an unsatisfactory gap. To look at them however required the acceptance of some limitations.
15. The statements I am about to make reflect those limitations. They are different limitations in each case. As to ASIO there is occurring a full investigation but the evidence and the outcome is not going to be public. It is a price paid to meet the dual goals of a public hearing and a thorough investigation. As to what has been called the ADF issue, the nature of the task was always quite different as we shall hear. I start with the ASIO comments. There were some questions outstanding from the last occasion and this matter is still actively in hearing.