

Inquest into the deaths arising from the Lindt Café siege

Directions hearing on 7 September 2016

Address by Mr Jeremy Gormly SC regarding ASIO

1. Your Honour, I now make some comments about the Australian Security Intelligence Organisation (**ASIO**) component of the investigation. It is raised in part because in a directions hearing on 10 August 2016 some questions arose concerning its present status. It is raised also because the ASIO component of this inquest is necessarily being done out of the public eye.
2. ASIO emerged as an issue relevant to the inquest because of:
 - a. both a public hope and expectation that someone like Mr Monis might be known to ASIO— in committing the siege he had on the face of it, engaged in an act of politically motivated violence; and
 - b. information contained in the Joint Government Review showed that ASIO received and assessed a number of National Security Hotline (**NSH**) reports about Mr Monis' Facebook page in the days prior to the siege.
3. The public assumptions were sound. There were in place processes to pick up someone like Mr Monis. Before those NSH reports came in, ASIO knew about Mr Monis, as did the Australian Federal Police (**AFP**) and the New South Wales Police. All had been involved in dealings with Mr Monis over the years. So in general terms the question was whether he should have been detected and stopped before he staged the siege.
4. In our public opening on 18 November 2015 regarding the ASIO segment of hearing, five issues were identified as relevant to the inquest, and which were to be examined in the closed ASIO 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; and

- e. 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?
5. To that I would add three further issues which have crystallised:
 - a. what role did ASIO play during the siege?
 - b. should Mr Monis have been predicted as likely to commit an act of politically motivated violence, or to put it as it was put in the opening; was he 'missed'? That has meant looking at what ASIO knew in December 2014, what it could or should have known, and whether that knowledge was properly analysed; and
 - c. finally, what, if anything, might have been done or might be done for the future, to improve predictive capability?
6. The most immediate and proximate matter was, of course, how did ASIO respond to the 18 NSH reports made from 9 December 2014? The reports came from a number of members of the public who had concerns about Mr Monis' Facebook page, with its violent and offensive images. These NSH reports were distributed to various parties including the AFP, the New South Wales Police and ASIO.
7. None of those three agencies predicted that Mr Monis would commit an act of politically motivated violence – that is, terrorism – prior to 15 December 2014.
8. ASIO assessed the NSH reports in the days prior to the siege and initiated some inquiries, completion of which had not taken place before 15 December 2014. A question is whether what they saw at the time should have led to predictive or more urgent action.
9. I should note that the inquest has also received evidence about how these same NSH reports were assessed by the New South Wales Police and the AFP. Your Honour may recall in this recent segment of hearing, some attention was paid in particular to what the New South Wales police did in relation to those NSH reports.
10. It is however of keen importance in the ASIO segment, to examine how ASIO had responded to information about Mr Monis. This is so having regard to the responsibilities of ASIO as compared to the police, and in particular, ASIO's statutory mandate to identify and investigate threats to national security.
11. From early in this inquest, those assisting your Honour took steps to identify a method which would permit a proper examination the ASIO issues without compromising ASIO's work or infringing applicable legislation. ASIO works at the front line. The examination could never have been done by way of public hearing. Various options were explored with ASIO and the other parties, but ultimately the best, for a number of reasons, has proved to be the traditionally forensic path. That is, with ASIO producing documents, and ASIO officers providing statements and being examined under oath in a court hearing. That came

at the cost of public exposure even to the other parties. It was however sensibly endorsed by all parties.

12. On 18 November 2015, following the public opening about the ASIO segment, Dr Renwick SC for the Commonwealth said:

Your Honour, I am instructed by the Director-General of Security, Mr Duncan Lewis, to say this; ASIO recognises and acknowledges that this is an extraordinary case. As such, to ensure that material relevant to this inquest is available for consideration, ASIO has taken the unprecedented step of facilitating access to its premises and relevant documents to those assisting your Honour who hold relevant security clearances.

The review of ASIO material was thorough and detailed and took weeks to conduct. At the end of that process, those assisting your Honour provided ASIO with detailed requests for relevant documents and evidence which have been comprehensively answered by ASIO. ASIO employees will give evidence in closed court about its investigations of Mr Monis, and that will allow a full and frank examination of the material and issues which relate to both ASIO and the inquest.

13. Once the method of dealing with the ASIO issue had been settled, the ASIO investigation has involved:
- a. various security clearances being obtained by members of the coronial team;
 - b. over a number of weeks a team of those assisting your Honour attended ASIO premises and examined documents under agreed but satisfactory protocols. We are satisfied that the documents that needed to be examined both hard copy and electronic have been produced and examined;
 - c. provision of statements from ASIO witnesses, based on questions identified those assisting your Honour and written questions provided by both families;
 - d. there was then an examination of ASIO witnesses in the closed hearings, informed by relevant documents – including those produced by ASIO and also documents obtained from the New South Wales Police, the AFP, and other agencies;
 - e. during that first tranche of ASIO hearings it became necessary to consider a particular area in more detail. It was also necessary to seek the assistance of informed ASIO officers on an additional matter that arose during the public evidence. ASIO has cooperated with that problem and an additional closed hearing is to be conducted. It is anticipated that the next hearing will finalise all that is needed so that your Honour may address the relevant issues and arrive at such findings and any recommendations as are needed.

14. The hearings to date have been useful. The investigation has looked at both the facts and also the systems used by ASIO to gather, analyse and respond to information. The questions about ASIO raised by the families have been actively used. The Australian Government Solicitor, acting for ASIO, have a copy of those questions, and a copy has been provided to the Inspector-General, Ms Margaret Stone.
15. Finally, I note it continues to be the expectation that your Honour will prepare a restricted report in relation to the ASIO segment, containing your findings and recommendations, and that the recipients of that report will be the Commonwealth Attorney-General, the Inspector General Ms Stone, and ASIO.
16. That is as much as can usefully be said about this area of the investigation.