

# Inquest into the deaths arising from the Lindt Café siege

## Statement of reasons for orders made pursuant to s. 65 and s. 74 of the *Coroners Act 2009* on 21 March 2016

1. This morning, the legal representatives for the family of Tori Johnson made an application pursuant to s. 74 of the *Coroners Act 2009* (NSW) ('Act'), by which they sought prohibition of the publication of certain of the proposed content of the opening address of Counsel Assisting ('**opening address**'). They have also sought restricted access to that same material, pursuant to s. 65(4) of the Act.
2. In support of the application, a confidential affidavit sworn today by William de Mars, solicitor for the family was provided to me, along with a short minute of order.
3. Among other things the material sought to be the subject of those orders is the audio recording of the '000' call made by Tori Johnson at the commencement of the siege. As that is the only item that is the subject of the application that is included in counsel assisting's opening, I shall only deal with that part of the application today.
4. That audio records Tori interacting with the '000' operator, as he attempts to convey to her the nature of his situation, which he does at Man Haron Monis' behest. It is known that Mr Monis instructed Mr Johnson in what to say during the call, and he can be heard interacting with Tori in the background.
5. This '000' call comprises the primary trigger for the police response to the siege.
6. As a result, the audio contains highly relevant evidence, above and beyond that which can be gleaned from the transcript alone, which goes to the questions of manner and cause of death.
7. Subsection (2) of s. 74 sets out a number of matters that a coroner may have regard to (without limitation) in determining whether it is in the public interest to prohibit publication of evidence in the proceedings. Those matters include:
  - a. the principle that coronial proceedings should generally be open to the public;
  - b. the likelihood that the evidence of a witness might be influenced by other evidence in the inquest;
  - c. national security; and
  - d. the personal security of the public or any person.

8. The application made on behalf of Tori's family is not grounded in any of those areas. While the section is not exhaustive with respect to what a coroner may take into account, guidance on the section's application can be drawn from *Mirror Newspapers Ltd v Waller* (1985) 1 NSWLR 1. In that decision, Hunt J indicated that non-publication orders ought only be made where publication or broadcast would frustrate or render the administration of justice impractical. A concern that justice would be frustrated or rendered impractical does not arise in respect of this application.
9. Hunt J also highlighted that the circumstances justifying the order must be exceptional or special.
10. The authors of *Waller* have expressed the following view:

'Typically, non-publication orders are made to protect witnesses from possible retaliation or threats, to protect young children or young persons giving evidence, or to prevent scandalous evidence of an irrelevant nature being reported'.
11. The evidence sought to be suppressed by this application is not, in my view, of an 'irrelevant nature'.
12. Having regard to all of those matters, I decline the application.



Magistrate Michael Barnes  
State Coroner