
**STATE CORONER'S COURT OF NEW SOUTH WALES**

**Inquest into the deaths arising from the Lindt Café siege**

**Re claim for public interest immunity made by the Commissioner of Police**

| | |
|---|---|
| Inquest: | **INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE (KATRINA DAWSON, TORI JOHNSON AND MAN HARON MONIS)** |
| File number: | 2014/368881, 2014/368701 and 2014/369898 |
| Coroner: | **STATE CORONER MICHAEL BARNES** |
| Date of judgment: | 14 November 2016 |
| Catchwords: | **CORONIAL LAW** – application of public interest immunity – claim of public interest immunity made by Commissioner of Police (NSW) in respect of documents<br><br>**PRIVILEGE** – claim of public interest immunity made by Commissioner of Police (NSW) in respect of documents – public interest in effective law enforcement – public interest in the administration of justice – whether public interest immunity attaches to post-incident debrief documents |
| Legislation: | *Coroners Act 2009* (NSW) section 61(1) and (10) |
| Cases cited: | *Alister v The Queen* (1984) 154 CLR 404<br>*Attorney-General v Stuart* (1994) 34 NSWLR 667 |

| | |
|---|---|
| | *Commonwealth v Northern Land Council* (1993) 176 CLR 604<br>*Conway v Rimmer* (1968) AC 910<br>*Nicopoulos v Commissioner for Corrective Services* [2004] NSWSC 562<br>*Sankey v Whitlam* (1978) 142 CLR 1<br>*Young v Quinn* (1985) 4 FCR 483 |
| | Abernethy J et al, *Waller's Coronial Law and Practice in New South Wales*, (2010), 2nd ed. |
| Place: | Sydney |
| Number of paragraphs: | 54 |
| Counsel Assisting: | J Gormly SC with J Downing and S Callan |
| Solicitor Assisting: | M Heris, Office of the State Coroner |
| Counsel for the Family of Katrina Dawson: | M O'Connell SC |
| Solicitor for the Family of Katrina Dawson: | P Hodges, Mills Oakley |
| Counsel for the Family of Tori Johnson: | G Bashir SC with P Dwyer |
| Solicitor for the Family of Tori Johnson: | W de Mars, Legal Aid NSW |
| Counsel for the Commissioner of NSW Police on public interest immunity: | M Kumar and R Bhalla |
| Solicitor for the Commissioner on public interest immunity: | L Armstrong, New South Wales Crown Solicitor |

**IN THE STATE CORONER'S COURT**
**OF NEW SOUTH WALES**

**2014/368881**
**2014/368701**
**2014/369898**

**INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE**

**CORONER:** **STATE CORONER MICHAEL BARNES**

**DATE OF ORDER:** **14 NOVEMBER 2016**

**WHERE MADE:** **SYDNEY**

**THE COURT ORDERS THAT:**

1. The claim for public interest immunity made by the Commissioner of Police is upheld.

**IN THE STATE CORONER'S COURT**
**OF NEW SOUTH WALES**

**2014/368881**
**2014/368701**
**2014/369898**

**INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE**

**CORONER:** **STATE CORONER MICHAEL BARNES**
**DATE:** **14 NOVEMBER 2016**
**PLACE:** **SYDNEY**

**REASONS FOR JUDGMENT**

**THE COURT:**

## Introduction

1. This claim arises following a notice to produce having been issued by the Court pursuant to s. 53 of the *Coroners Act* (2009) to the Commissioner of New South Wales Police ('**Commissioner**') on 6 September 2016. It sought the production of certain documents relating to the Tactical Operations Unit ('**TOU**') of the New South Wales Police Force, namely: 'A copy of any notes created in relation to any "debrief" of Tactical Operations Unit officers that occurred with respect to the events of the siege at the Lindt Café on 15 and 16 December 2014'.

2. Documents answering that description were provided to the Court later on 6 September 2016 ('**TOU debrief notes**').

3. Subsequently, a claim for public interest immunity ('**PII**') was made by the Commissioner with respect to the documents. The Commissioner does not object to disclosure of the TOU debrief notes to the Court and the legal team assisting me in this matter, but resists further disclosure to the interested parties, their legal representatives, and the public more generally.

4. The family of Katrina Dawson ('**Dawson family**') and the family of Tori Johnson ('**Tori's family**') have challenged the Commissioner's PII claim. Counsel Assisting have not made submissions regarding this issue.

## Assessing a PII claim

5. The involved parties all accept that the assertion of a PII claim triggers a three stage assessment process, as formulated by Gibbs CJ in *Alister v The Queen* (1984) 154 CLR 404 at 412. The three steps are:

    a. the **harm** that would flow from disclosure must be demonstrated. If demonstrated, a court will initially incline against disclosure;[1]

    b. the party seeking access must establish that disclosure would be likely to **materially assist** their case; and

    c. if those conditions precedent are met, those **factors must be balanced** against one another, to determine which public interest ought prevail.

6. In essence, the Court is required to weigh the public interest that harm shall not be done to the community by disclosure of certain documents against the public interest in the administration of justice not being frustrated by the denial of material that must be produced if justice is to be done.[2] It is not enough for an opponent to a PII claim to show that the material is relevant.[3] Rather, they must go further, and demonstrate that the documents are so critical that without them, justice will be denied.[4]

7. It is also useful to note that while there are a number of well-recognised categories of PII, the categories are not closed, and may alter from time to time. Nevertheless, documents that, if disclosed, would hinder or affect proper policing, fall into a recognised category.[5]

## The Commissioner's claim

8. In support of his claim, the Commissioner provided two open affidavits, both sworn by Assistant Commissioner Peter Gallagher APM, dated 10 August 2016 and 21 August 2016, respectively ('**first Gallagher affidavit**' and '**second Gallagher affidavit**'). Written submissions by Ms Miiko Kumar and Mr Rob Bhalla of Counsel were also provided.

9. The Commissioner submitted that the first step – demonstration of harm – was satisfied in two respects. First, that disclosure of the TOU debrief notes would harm future policing because it would impede the debrief process regularly undertaken by the TOU. The evidence of Assistant Commissioner Gallagher was to the effect that the relevant debriefs occurred in circumstances where the participating officers understood that the process was confidential, and had an expectation that it would remain so.[6] It was on

---

[1] *Commonwealth v Northern Land Council* (1993) 176 CLR 604 at 617.
[2] *Sankey v Whitlam* (1978) 142 CLR 1 at 38.
[3] *Sankey v Whitlam* (1978) 142 CLR 1 at 38.
[4] *Conway v Rimmer* (1968) AC 910.
[5] *Young v Quinn* (1985) 4 FCR 483 at 494 and 496.
[6] First Gallagher affidavit at [6], and [18]-[23]; second Gallagher affidavit at [6]-[8].

that basis that they participated, and they did so in an open and honest manner.[7]

10. Assistant Commissioner Gallagher stated that if the TOU debrief notes were to be disclosed beyond me and those assisting, then there would deleterious effect on future debriefs because there could be no expectation of confidentiality. Specifically, knowledge that the process would not remain confidential would cause officers to be reticent about candidly and fully participating in future sessions.[8] He cited examples that have arisen as a direct result of the present request and claim. They include the cancellation of a formal debrief scheduled to occur in October 2016 with some of the entry team officers involved in the Lindt Café siege response. The cancellation was triggered by those officers declining to participate (after having previously indicated that they would) for fear that the records arising would be provided to this Court, or a subsequent one.[9] A second example relates to the receipt of comparatively limited feedback from TOU officers during a number of unrelated debriefs that have occurred since the present request for the TOU debrief notes became known.[10] Furthermore, there have been indications from some TOU personnel that they have decided to not provide any information in future debrief sessions, and in some cases, will refuse to attend at all.[11]

11. That reluctance is significant because TOU debriefs exist to enable areas of improvement to be identified and implemented via post-operation discussions.[12] On Assistant Commissioner Gallagher's evidence:[13]

> *The purpose of the debrief is to provide a forum for the free-flowing exchange of information, experience and opinions so that the [New South Wales Police Force] can continuously improve its policies, strategies and capabilities to maximise operational and safety outcomes.*

Therefore, if participating officers feel inhibited and reticent to discuss candidly what transpired during an operation, including what could have been done better, areas of improvement may not be uncovered.

12. As an alternative to that, or as a corollary, Assistant Commissioner Gallagher also expressed concern that in any future debriefs, no record would be made of what was raised, or the notes would be insufficiently detailed.[14] In his opinion, both of those scenarios would adversely impact the New South Wales Police Force's ability to resolve any issues identified during the debrief process.[15]

---

[7] First Gallagher affidavit at [6], and [14].
[8] First Gallagher affidavit at [10] and [15], and [21]-[22].
[9] Second Gallagher affidavit at [13].
[10] Second Gallagher affidavit at [14].
[11] Second Gallagher affidavit at [15],
[12] First Gallagher affidavit at [3], [7] and [19]; second Gallagher affidavit at [4]-[5].
[13] First Gallagher affidavit at [3].
[14] First Gallagher affidavit at [22].
[15] First Gallagher affidavit at [22].

13. As a second limb to the PII claim, and also in the alternative and in addition to the first, the Commissioner submitted that effective operational policing in the future would be harmed because TOU methodology would be revealed by the notes, which may give criminals an advantage in future.

14. In relation to the second step, the Commissioner submitted that the TOU debrief notes would not materially assist the interested parties in this matter. The Commissioner pointed to the length and breadth of the inquest, the circumstances in which the debrief occurred that mean the notes are of little value, and the lack of any 'evidentiary value and importance' in the material.

15. With respect to the third step, the Commissioner argued that because harm would flow from disclosure of the notes, and it was not necessary in the interests of the administration of justice for them to be disclosed, the public interest in maintaining the notes' confidentiality prevailed, such that the balancing exercise ought resolve in favour of non-disclosure.

16. In making those submissions, the Commissioner also argued that a document that set out the contents of the TOU debrief notes in a summarised and/or depersonalised fashion would not be capable of overcoming the harm that would flow from the release of the notes themselves, and therefore resisted preparation of such a document.

## The arguments made by the Dawson family

17. Mills Oakley, solicitors for the Dawson family, provided written submissions that opposed the Commissioner's PII claim. They submitted that the claim ought not be upheld for several reasons:

    a. the harm was overstated and generalised;

    b. police methodology could be protected by non-publication orders and access-restriction orders (which would permit access by the families);

    c. any previously undisclosed police methodology would be limited in scope, and amenable to protection by non-publication and access-restriction orders (again, that would permit family access);

    d. there is a heavy burden of proof when a PII claim is made in respect of a class of documents, rather than with respect to specific content (relying upon *Sankey v Whitlam* (1978) 142 CLR 1 per Stephen J at 62);

    e. disclosure of the TOU debrief notes would not set a precedent;

    f. there would not be any diminution of candour amongst TOU officers in the future, because this situation is exceptional and officers can be forced to participate in debriefs;

g. it is 'on the cards' that 'the TOU debrief notes would materially assist in resolving the issues with which this Inquest is concerned'; and

h. the public interest in determining the manner and cause of Ms Dawson's death outweighs the harm the Commissioner submits would flow from the notes' disclosure.

18. A particular focus of the Dawson family submissions was the Commissioner's assertion that officer candour would be affected in future debriefs by release of the TOU debrief notes. They noted that many of the officers gave evidence in Court, in circumstances where they were required to be open and honest by reason of their oath/affirmation. They also submitted that any officer concern about the TOU debrief notes being 'used against' them ought be disregarded because:

    a. embarrassment and criticism are insufficient to enliven the protection conferred by PII;

    b. concern about self-incrimination could be cured by s. 61 of the *Coroners Act 2009* (NSW); and

    c. it was 'inconceivable that NSW police officers would take steps to use debrief notes against a colleague'.

19. They also rejected 'candour' more generally as a basis for a PII claim made on behalf of public servants, by reference to obiter of Salmon LJ in *Rogers v Secretary of State for the Home Department* [1972] 2 All ER 1057 and Stephen J in *Sankey v Whitlam* (1978) 142 CLR 1.

20. The perception of officers – whether validly held or not – was rejected as a basis for asserted harm as it assumed a precedent setting conclusion that ignored the exceptional circumstances of this matter.

21. Furthermore, any officer refusal to participate in future debriefs could be overcome, in their submission, by a direction to comply being issued pursuant to reg 8 of the Police Regulation 2015 (NSW).

## The arguments made by the family of Tori Johnson

22. The legal representatives for the family of Tori Johnson also provided written submissions to the Court that opposed the Commissioner's PII claim. They adopted the Dawson family submissions, and raised some additional arguments.

23. They submitted that it was 'on the cards' that the TOU debrief notes would identify deficiencies in the TOU response to the siege and areas for improvement, and drew parallels between the goals of the debrief process and this inquest's objectives. Their submissions also highlighted aspects of the evidence received to date that they said suggested inadequacies in the Police response, or tensions between accounts in important respects. Tori's family seeks access to the TOU debrief notes with a view to probing those

areas further. The possibility that comments made by officers may have been proffered from a position of relative ignorance or limited perspective during the debriefs was not of concern, and instead posited it as potentially forensically advantageous.

24. The submissions also dismissed the Commissioner's argument that disclosure of the TOU debrief notes would produce a chilling effect on the candour of officers involved in future debriefs, and argued that any discomfort caused is a necessary part of the process.

25. Furthermore, Tori Johnson's family submitted that the manner of their participation in the debrief process could be expected to mirror that of the inquest, therefore officers ought not be concerned about the release of the TOU debrief notes unless the content conflicted with or undermined the evidence of witnesses at the inquest.

26. Contrasts with other inquests involving critical incidents were drawn as a basis for resisting a conclusion that release of the TOU debrief notes would be precedent setting, the difference being said to arise from the exceptional nature of this matter.

## The Commissioner's reply

27. In response to the families' submissions, the Commissioner provided both open and confidential submissions in reply to the Court. Access to the latter was restricted to me, and those assisting in this matter.

28. In the open reply, the Commissioner emphasised that the TOU debrief notes were accessible by the Court, and could be viewed and used by me and those assisting me. As a result, if I considered them relevant, the TOU debrief notes could be used to determine the questions of manner and cause of death, and/or render assistance in formulating recommendations. The Commissioner submitted that this access served the public interest in the administration of justice by enabling the tribunal of fact to have all available relevant material. That factual scenario was also cited as a mechanism by which the integrity of the debrief process, and the integrity of the evidence given by TOU witnesses, could be examined and tested.

29. The Commissioner challenged the submission that the harm asserted appeared overstated and generalised. The Commissioner recounted the manifestations of actual harm that had already occurred (summarised at [10] above), and reiterated that those issues will continue to injure policing 'unless the integrity of the debrief process is restored'.

30. The Dawson family submission that officers could be directed to participate in debriefs was met with an assertion that no enforceable direction existed (or could exist) that would ensure open and forthcoming participation.

31. The Commissioner also asserted that the Dawson family's submissions regarding officer 'candour' misattributed fear of criticism/embarrassment as the basis for the present PII claim, when the harm sought to be prevented was reticence/refusal to participate fully in future debriefs. Notwithstanding that,

the Commissioner submitted that the weight of the authorities is such that candour is an available basis for a PII claim,[16] although noted that most of those authorities concerned public servants providing candid advice, or Cabinet deliberations.

32. The confidential submissions addressed the two families' submissions on the potential material assistance of the TOU debrief notes, by reference to the content of the documents themselves. I am not able to further describe the content of those submissions without traversing the material that is the subject of the claim, but have given them due consideration.

## Decision

33. In order to undertake the three step process described above, I have had regard to the TOU debrief notes themselves. While the Commissioner has no objection to the Court, and those assisting me, from having access to those documents for the purposes of the inquest, the authorities also indicate that in appropriate cases, the Court may take an informal 'peek' at the documents without their being formally produced.[17]

34. The first question arising for determination is whether the Commissioner has established that harm to the community would flow were the TOU debrief notes to be disclosed.

35. As noted above, the Commissioner argued that there exists two possible harms: future inhibition of effective debrief processes and revelation of police methodology.

36. With respect to latter, it was common ground that there is a public interest in police methodology remaining confidential, and that the TOU debrief notes contained (or would likely contain) material of that kind. The two families argued that any harm arising from disclosure of the material beyond the Court could be accommodated by protective orders (applicable to the interested parties and none other), in much the same way as other sensitive policing techniques and methods have been dealt with in the matter to date. The Commissioner has not demonstrated why such a regime would be inadequate to deal with that particular harm (although it was submitted that it would not overcome the problems associated with the debrief process). My review of the TOU debrief notes does not cause me to alter that view. Accordingly, I do not consider that the public interest in effective operational policing would be harmed were the TOU debrief notes made available to the interested parties subject to a stringent regime of protective orders.

37. A different harm is envisaged by the first limb of the Commissioner's claim. Post-incident debriefs are conducted with TOU officers with a view to identifying, from an operational and systemic perspective, what worked well

---

[16] *Sankey v Whitlam* (1978) 142 CLR 1 at 40, 95; *Commonwealth v Northern Land Council* (1993) 176 CLR 604 at 615-616; *Egan v Willis and Anor* (1998) 195 CLR 424 at 510-511; *McKinnon v Secretary, Department of Treasury* (2006) 228 CLR 423, 466 [121]).

[17] *Conway v Rimmer* (1968) AC 910 at 971, 979, 995; *Attorney-General v Stuart* (1994) 34 NSWLR 667 at 672D.

and what could be improved for the future. The purpose is not blame attribution, rather, reform: the process seeks to enhance the quality of future TOU responses through the identification of systemic issues and the introduction of system improvements. The confidentiality of the process is said to be intrinsic to its functioning. Indeed, in that sense, the perception of the TOU operatives can be determinative of whether they, as individuals and a collective, are less forthcoming in future.

38. On the evidence of Assistant Commissioner Gallagher, the TOU's perception has already had a deleterious effect on the debrief process. The cancellation of one formal debrief arising from this matter, an observable diminution of information provided in unrelated debriefs, and an expressed reticence, and in some cases, refusal, to participate in future TOU debriefs have all been encountered. In each instance, the stripping away of confidentiality from the debrief process has been cited as the cause. Confidentiality, therefore, emerges as a condition precedent to an effective debrief process.

39. Such is its importance that forced participation – pursuant to a formal direction or otherwise – would not remedy any officer reluctance. Candour and self-reflection are not born of compulsion: honest and genuine participation can only ever be voluntary. Involvement in a debrief process of the kind under present consideration will not be voluntary or indeed effective if the participator fears retribution for themselves, or their colleagues.

40. That fear could not be overcome or neutered by the application of s. 61: that section is confined to the objection of a witness to giving particular evidence, or evidence on a particular matter.[18] Furthermore, a certificate under s. 61 can only be given in respect of evidence that is required to be given by a natural person.[19] It therefore cannot be given with respect to the contents of a document that was created before any connected person is called to give evidence.

41. If confidentiality is essential to the task of bettering the manner in which the TOU and its operatives work – and I accept that it is, by virtue of the debrief process – then it is in the public interest that a culture and practice of continuous improvement be fostered.

42. Accordingly, I consider that a significant harm to the public interest would flow from disclosure of the TOU debrief notes.

43. The second question is whether the TOU debrief notes would materially assist the two families in the inquest.

44. As observed above, it is not sufficient for the material sought to be merely relevant. It is necessary that the documents be so essential to the issues in dispute that without them, justice will be thwarted. Having had regard to the TOU debrief notes themselves, and the arguments made by the families, I do not consider that threshold to have been reached.

---

[18] Section 61(1) of the *Coroners Act 2009* (NSW).
[19] Section 61(10) of the *Coroners Act 2009* (NSW).

45. Having considered the TOU debrief notes for the purposes of this application, they present as a concise, relatively sparse, high level record of what was discussed during the TOU debriefs that occurred in April 2015. It is not apparent from them that they are a definitive, complete record, or that the minutiae of variance in recollection was discussed or even broached. Furthermore, assessment of individual performance does not appear to have been canvassed. In essence, they comprise a poor, secondhand record of comments made by TOU officers broadly concerning the operational response. It is not possible to determine whether the notes are correct, the accounts are complete, or whether the document is interim or final. On no view do they reflect decision-making or considered analysis. And, for the most part, the comments recorded relate to topics that are already available in a complete and tested form as *direct* sworn evidence in the inquest.

46. In that regard, I note that all of the involved TOU operators participated in electronically recorded walkthrough interviews in the days immediately following the siege, and detailed statements from those at the TOU command level were taken in the first days after the incident, and finalised shortly thereafter. The interviews occurred in circumstances where the officers had been directed to not speak to the others about the incident. Accordingly, the videos and transcripts of those recordings represent an unfiltered, contemporaneous and comprehensive account from each officer of his recollection at that juncture. The key TOU officers were also called to give oral evidence during the fourth segment, and were cross-examined by each of the families. As a result, the families had available to them detailed accounts from each officer, and in the case of those called to give oral evidence, the opportunity to test those accounts against the available evidence, opportunities which they availed themselves of on each occasion. This is not a situation where TOU officer accounts were non-existent, nor a case where critical officers were unavailable for cross-examination. Had that been so, and the TOU debrief notes the only record of their individual recollections, then those documents could more easily be characterised as being capable of materially assisting the families. That not being so inclines me to the view that the secondhand, indirect notations made of discussions had in April 2015 – almost five months after the siege, and confined in topic area – would not materially assist the two families in this inquest.

47. Furthermore, the submissions of Tori Johnson's family, in particular, seek to highlight various failures in the TOU response that they say arise from the evidence received to date. Whether any such failures did occur is a matter for the inquest's findings and will not be dealt with here. However, the very fact of the cataloguing of such issues in [7] of those submissions illustrates that there is a substantial body of evidence available on those topics, which has enabled the posited issues and 'tensions' to come to light. Given the two families' abilities to identify their areas of concern by reference to the available (direct) evidence, it is difficult to conceive how the sparse and secondhand notations contained in the TOU debrief notes would materially assist them in the inquest.

48. Significantly, my review of the TOU debrief notes did not reveal any inconsistencies with the evidence received to date. Furthermore, having

considered them, I am of the view that the TOU debrief notes would not deepen the understanding of, or clarify, the areas of possible evidentiary controversy identified by the families. That being so, the TOU debrief notes do not comprise documents that are likely to render material assistance to either or both families. The confidential reply submissions of the Commissioner support that assessment. It is not possible to expand further on this point without traversing the content of the TOU debrief notes themselves.

49. The question of 'material assistance' must also be considered in the specific and unique context of a coronial inquest. An inquest is not inter-partes litigation where rights and interests are to be determined: it is an investigation and fact finding exercise, conducted by an inquisitor. In particular, inquests are conducted in order to fulfill the statutory functions that befall the Coroner. As such, the interested parties in this matter – including the two families – do not have any 'case' to prove, as they would in the course of regular litigation. Even though the two families have important and justiciable interests in these proceedings, by reason of statutory mandate the factual decision maker in coronial proceedings has primacy. As a result, families' interest and participation in an inquest can be also viewed as an aide to the Court in reaching the factual findings required of it, rather than the sole raison d'etre for the proceedings. Having regard to that distinction, it is therefore significant that the Commissioner does not object to me and those assisting me having access to the TOU debrief notes for the purposes of fulfilling my statutory function. Were both the 'tribunal of fact', and the interested parties, to be deprived of relevant material then a case for frustration to the administration of justice could be made out more easily. That is not the situation here.

50. Accordingly, an assessment of the effect on the administration of justice in this instance must take into account the access that I, as the sole decision maker and fact finder, have to the contested material. As such, the more significant question in the coronial context is not so much whether an interested party would be materially assisted by access to the documents, but instead, whether the inquest would be. Indeed, the authors of the second edition of *Waller's Coronial Law and Practice in New South Wales* envisage a scenario, based on the decision of the New South Wales Supreme Court in *Nicopoulos v Commissioner for Corrective Services* [2004] NSWSC 562, whereby a coroner may take into account information which cannot be disclosed to interested persons on PII grounds.[20]

51. Therefore, having regard to the above, including a review of the TOU debrief notes themselves, I do not consider that the public interest in the administration of justice would be frustrated by the denial of them to the two families. That is by reason of my view that the two families would not be materially assisted in the inquest by access to the documents, nor would the Court be materially assisted in those parties having such access.

[20] Abernethy J et al, *Waller's Coronial Law and Practice in New South Wales*, (2010), 2nd ed, at [I.253]-[I.256].

52. In light of that conclusion, it is not necessary for me to balance the competing public interests (the third step). However, even if the TOU debrief notes had satisfied the second limb of the test, I consider that, on balance, the public interest in the preservation of confidentiality in the TOU debrief notes would outweigh the other considerations.

53. The very tangible negative effect on law enforcement in New South Wales, compared with the slight impact that would flow to the administration of justice, means that the balance must fall in favour of the confidentiality of the documents being maintained. Indeed, it would be an unfortunate byproduct of the inquest – which is designed to foster public health and safety – if it were to indirectly undermine community safety by hampering future improvement to high risk policing.

54. Having regard to all of these matters, I uphold the Commissioner's claim.

Magistrate Michael Barnes
State Coroner

14 November 2016