STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest into the deaths arising from the Lindt Café siege

Re application by the Director of Public Prosecutions (NSW)

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:	5 June 2015
Catchwords:	**CORONIAL LAW** – sections 81 and 82 of the *Coroners Act 2009* (NSW) – manner and cause of death – proper scope of inquest – whether examination of bail issues outside permissible scope of inquest
Legislation:	*Coroners Act 2009* (NSW) sections 3, 81 and 82
Cases cited:	*Atkinson v Morrow* [2005] QSC 92 *Conway v Jerram* (2010) 78 NSWLR 371 *Conway v Jerram* [2011] NSWCA 319 *Doomadgee v Clements* [2006] 2 Qd R 352 *Harmsworth v State Coroner* [1989] VR 989
Date of hearing:	4 June 2015

Place:	Sydney
Number of paragraphs:	42
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Solicitor for Officer B:	G Willis

IN THE STATE CORONER'S COURT
OF NEW SOUTH WALES

2014/368881
2014/368701
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INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE

CORONER: **STATE CORONER MICHAEL BARNES**

DATE OF ORDER: **5 JUNE 2015**

WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. The bail questions that will be investigated by this inquest be framed in the following terms:

   (a) What was Mr Monis' bail history?

   (b) Did prosecuting authorities respond appropriately to his applications for bail in relation to the charges he was facing at the time of the siege ('**the charges**')?

   (c) Did the prosecuting authorities respond appropriately to grants of bail received by Mr Monis in relation to the charges?

   (d) Was the granting of bail to Mr Monis causally linked to the death?

   (e) If the answer to (b) or (c) is "no" what were the reasons for the inadequate responses and what changes are needed to prevent recurrence?

IN THE STATE CORONER'S COURT
OF NEW SOUTH WALES

2014/368881
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INQUEST INTO THE DEATHS ARISING FROM THE LINDT CAFÉ SIEGE

CORONER: **STATE CORONER MICHAEL BARNES**
DATE: **5 JUNE 2015**
PLACE: **SYDNEY**

REASONS FOR JUDGMENT

THE COURT:

Introduction

1. On 29 January 2015, in his opening of the inquest into the deaths that occurred during the Lindt Café siege ('siege'), senior counsel assisting submitted certain questions, regarding the granting of bail to the apparent instigator of the siege, Man Monis, would be examined by the inquest. Those questions about Mr Monis' bail were articulated in a provisional list of issues distributed to interested parties on 21 April 2015 as follows:[1]

> '*4.1. What was Mr Monis' bail history?*
>
> *4.2. Did prosecuting authorities and police respond appropriately to Mr Monis' application(s) for bail?*

[1] I note Counsel Assisting has subsequently proposed to replace Issue 4.3 with the following: '*What actions were or should have been taken by prosecuting authorities in terms of a review, appeal or fresh application in respect of bail?*'

4.3. Was any decision to grant him bail infected by error? If so, what actions were taken with respect to an appeal against the decision to grant bail? Were such actions reasonable?'

2. In his opening of this bracket of evidence, senior counsel assisting indicated the bail questions would be dealt with in sittings commencing on 17 August 2015. It is sufficient to indicate at this stage that at the time of the siege, Mr Monis was on bail for charges of accessory to murder and 43 counts of sexual and aggravated indecent assault. Bail had been considered and granted on three occasions, most recently on 10 October 2014.

3. On 20 May 2015, the Crown Solicitor, who acts for the Director of Public Prosecutions (NSW) ('**DPP**'), wrote to the solicitor assisting the inquest submitting that the questions concerning bail were beyond the proper scope of the inquest; that were the inquest to seek to investigate them it would fall into jurisdictional error; and seeking a ruling on the question. The matter was last week raised by the DPP's counsel in court. I invited written submissions from those wishing to be heard on the issue and oral argument was heard yesterday. The Commonwealth of Australia ('**Commonwealth**') supported the DPP's position; the Commissioner for Police neither supports nor opposes the application but provided helpful submissions dealing with the relevant law. The families of the other two people who died in the siege strongly oppose the application. This is my ruling in relation to it.

The law

4. Generally speaking, the role and function of a coroner and the scope of the responsibilities of the office are set out in the *Coroners Act 2009* ('**Act**').

5. Insofar as is relevant to the questions here under consideration, s 3 provides that the objects of the Act are:

> (*c*) *to enable coroners to investigate…deaths...in order to determine … the manner and cause of* [those] *deaths; and*

…

(e) to enable coroners to make recommendations in relation to matters in connection with an inquest…

6. Those objects are made operational by s 81 the Act which, so far as is relevant to this application, provides that a coroner must at the conclusion of an inquest record in writing findings as to the manner and cause of the death investigated; and s 82 which authorises the coroner to make such recommendations as the coroner considers necessary or desirable in relation to any matter connected with the death.

7. In their written submission, counsel for the DPP refer to authorities they say suggest indicate the Act in effect codifies the law in relation to coroners' powers and proceedings. Conversely, during the second reading speech relating to what became the *Coroners Act 1960,* the legislation upon which the current Act is largely based, the responsible minister observed the bill "*does not purport to codify the law relating to coroners*",[2] and the authors of the current edition of *Waller's Coronial Law and Practice in New South Wales* note that "*many aspects of coronial jurisdiction remain governed solely by the common laws in this State"*.[3] They go on to cite essential aspects of the role on which the Act is completely silent.

8. In any event, I do not understand those appearing for the DPP to submit no regard can be had to the common law or decisions from other jurisdictions when interpreting the provisions of the Act. Such an approach would create difficulties in circumstances where key phrases such as *manner and cause* are not defined in the Act and there are few New South Wales decisions of assistance.

[2] NSW Parliamentary Debates, Legislative Assembly, 1 March 1960, at p2658 per Assistant Minister Mannix
[3] *Waller's Coronial Law and Practice in NSW,* (4th ed.), Abernathy, Baker, Dillon & Roberts, Butterworths, 2010 at I.35 – 36.

The purpose of an inquest

9. In my view the proper interpretation of the scope provisions of the Act are assisted by a review of the purpose of an inquest.

10. An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:-

> '[A)*n inquest is a fact finding exercise and not a method for apportioning guilt.…It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends.…*
>
> *The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*'[4]

11. These distinct characteristics and purposes are relevant to the issue here under consideration as shall be referred to below.

The scope of an inquest – manner and cause findings

12. It is readily apparent a coroner does not have general or unlimited powers of inquiry. In *Conway v Jerram* (2010) 78 NSWLR 371, Barr AJ warned coroners to "*bear firmly in mind the limits to the coroner's jurisdiction.*"[5] He went on to adopt observations from *Harmsworth v the State Coroner* [1989] VR 989, that enquiries must be directed to the making of the statutory findings. [6]

13. In this State, insofar as it is relevant to this application, that means the inquiries should be those intended to enable the making of findings as the "manner" of the deaths being *investigated*. In *Conway*, Barr AJ indicated that phrase should be given "*a broad construction as to enable the coroner to consider by what means and in what circumstances the death occurred.*"[7]

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[4] *R v South London Coroner; ex parte Thompson* (1982) 126 Sol.Jo. 625, 628
[5] *Conway v Jerram* (2010) 78 NSWLR 371, [53]
[6] *Harmsworth v the Sate Coroner* [1989]VR 989
[7] *ibid* [52]

14. The decision not to order an inquest in *Conway* was confirmed on an application for leave to appeal which was dismissed. Young JA noted that the scope of an inquest is a matter for the coroner to determine and that the appropriate *scope* depends upon all of the circumstances. However, his Honour cautioned that '*a line must be drawn at some point which, even if relevant, factors which come to light will be considered too remote.*'[8]

15. *Harmsworth* is also authority for the proposition that regard must be had to how wide, prolix and indeterminate the inquest might become if the more remote issues are pursued.[9] This was adopted by Barr AJ in *Conway*:[10]

> *'To go any further back in time than the time at which M became a passenger in the motor vehicle…would be to enter upon an inquiry that might not end.*'

16. I accept the view of the authors of a leading Australian text on matters coronial when they say of this issue: '*The question is one of remoteness and is not readily susceptible to definition.*'[11]

17. It depends upon all of the circumstances of the case[12] and requires the coroner to use discretion and common sense to delineate those circumstances which are at least potentially to be characterised as contributing to the deaths in a causal sense.[13]

18. It is also appropriate to recognise that as part of an inquiry a coroner may well need to investigate matters wider than the issues on which he/she will ultimately make statutory findings. In *Atkinson v Morrow* [2005] QSC 92, Mullins J stated;[14]

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[8] *Conway v Jerram* [2011] NSWCA 319, [49]
[9] *Harmsworth supra* at 996
[10] *Conway supra* [61]
[11] *Death investigation and the coroner's inquest*, Freckelton and Ranson, Oxford U Press, Melbourne 2006, 548
[12] *Conway v Jerram* [2011] NSWCA 319 [47]
[13] *Re State Coroner; ex parte Minister for Health* [2009]WASC 165, [45]
[14] *Atkinson v Morrow* [2005] QSC 92, [10]

> '*That the scope of the inquest is for the purpose of establishing those matters* (the findings) *does not limit the evidence to that which is directly relevant to those matters. It is obvious that it may be necessary for evidence of a broader nature to be adduced before the coroner for the purpose of assisting the coroner to reach a conclusion on the specific matters on which findings are required.*'

19. Similarly in *Doomadgee v Clements* [2006] 2 Qd R 352, Muir J observed:[15]

> *The scope of the inquiry under s45 is extensive and not confined to evidence directly relevant to the matters listed in s45(2*).

Hi Honour was referring to the provisions in the *Coroners Act 2003 (Qld)* that correspond to s 81 in the Act.

Recommendations

20. There may also be another basis for looking at the bail questions in this inquest. In *Conway* the judge at first instance, Barr AJ, observed that if an inquest is held the power of a coroner to make recommendations about matters of public health and safety seem to enable a coroner to consider matters outside the scope that may be necessary to determine the manner and cause of death.[16] Of course this inquest is mandatory, reflecting the policy imperative that deaths that occur in police operations will always warrant scrutiny and consideration from a prevention perspective.

21. Barr AJ did not find it necessary to give reasons for departing from the view expressed by the Victorian Supreme Court in *Harmsworth* to the effect that the power to make preventative recommendations is incidental and subordinate to the obligation to make findings. Perhaps this was because he was aware that unlike the *Coroners Act 1985* (Vic) as it was when that case was decided, the New South Wales statute does not merely confer a discretionary power on coroners to make comments but explicitly recognises the making of such comments as an object of the Act.

[15] *Doomadgee v Clements* [2006] 2 Qd R 352, 360
[16] *Conway supra* [63]

22. The s 3 objects of the Act, the two most relevant of which are cited above, are not ranked: there is nothing in the Act to suggest one should predominate over another. Indeed in his second reading speech introducing the 2009 Act, the then Attorney General stated that the power to make recommendations is one of the most significant conferred upon coroners and the s 3 paragraph dealing with recommendations he described as "*one of the main objects of the bill.*"[17] Having regard to the long history of the role of coroners in making findings as to cause and circumstances of death it is appropriate to acknowledge that function as the primary role, but there is in my view no basis for concluding that when an inquest is held inquiries cannot be made and evidence called for the sole purpose of considering preventative recommendations.

23. Accordingly, I conclude that I am authorised to determine the scope of the inquest guided by common sense while striving to ensure matters too remote do not lead the inquest down an endless non-productive path. If the bail questions are relevant to either coronial function – findings or recommendations – and they are not too remote and it is permissible for inquiries to be made in relation to them. When determining the issue of remoteness it is appropriate that I have regard to:-

- the nature of these proceedings – inquisitorial rather than adversarial; fact finding rather than right determining or punitive;
- the circumstances in which the deaths occurred;
- whether it is in the public interest to inquire into how and why Mr Monis was granted bail;
- whether investigating the bail questions may reveal a tenable causal link between those issues and the deaths; and

[17] New South Wales, *Parliamentary Debates*, Legislative Council, 4 June 2009, 7 (John Hatzistergos, Attorney General, and Minister for Industrial Relations).

- the likelihood that recommendations relevant to public safety may result from such an inquiry.

The facts

24. For the purpose of this application I proceed on the basis that the evidence will show that:-

- Man Monis precipitated the siege that directly led to the deaths of three people whose deaths are being investigated by this inquest.

- On 15 November 2013 Mr Monis was charged with being an accessory before and after the murder of his estranged wife. He was refused police bail and did not apply for it when he was first brought before a court.

- On 12 December 2013 he was granted conditional bail notwithstanding the Office of the DPP ('**ODPP**') officer who appeared opposed bail.

- On 14 April 2014 Mr Monis was arrested and charged with three sex offences allegedly committed in 2002. He was denied police bail and denied bail when he was first brought before the court.

- On 26 May 2014 he was granted conditional bail over the opposition of the ODPP officer who appeared for the prosecution.

- On 10 October 2014 Monis was before the court in relation to the previously preferred charges, when additional charges were filed in court on a further 40 sex offences allegedly committed between 2002 and 2010; these additional charges had been commenced by future court attendance notices served on him the previous day. The ODPP officer did not oppose bail being granted subject to conditions and this occurred.

- In no instance was an application made to review or revisit the grants of bail made to Mr Monis.

Ruling

25. The applicant submits that the bail issues are too remote to be considered causative. They submit I am bound by the decision in *Conway* and contend it cannot be distinguished from the relevant facts in this case.

26. *Conway* involved a teenage girl who died in a car crash when she was 16 ½. The facts as contained in the judgment indicate she had left home at 15 after her parents separated and she came into conflict with her mother. Her mother reported her concerns about her daughter to the Department of Community Services ('**DoCs**') and over the next 18 months departmental officers sought to assist her obtain accommodation. It seems she contacted the DoCs officers when she wanted that help. This is what happened three weeks before her death when she contacted her case worker and told her she had nowhere to live. The case worker found her emergency accommodation. The same thing happened a week later. At no stage was the girl ever taken into custody or detained against her will and there is no evidence or suggestion that there was ever any basis for the DoCs to have done so. She suffered fatal injuries when she took up with a young male friend who took her 'joy-riding' in a stolen car that crashed.

27. In oral argument it was submitted that the *Children and Young Persons (Care and Protection) Act 1998* ('**CYPA**') creates a responsibility to remove a young person at risk of harm from the effects of a known danger in a similar manner to the way the *Bail Act 2013* (NSW) ('**Bail Act**') creates an obligation on prosecuting authorities to protect the community from accused persons.

28. Senior counsel for the DPP argued that as the court in *Conway* had declined to require an inquest be held to investigate whether there was any link between the failure of the welfare authorities to take the deceased teenager into protective custody because that was beyond the coroner's jurisdiction, so too I would fall into jurisdictional error were I to seek to investigate whether the response of the prosecuting authorities to Mr Monis' bail applications was causally linked to the siege deaths.

29. In my view that argument fails on two bases. First, I reject the suggested parallel between the responsibilities of the welfare agencies and the prosecuting authorities: the most casual review of the relevant Acts demonstrate their totally

different focus. The CYPA aims to provide for the safety and welfare of a young person while respecting the young person's right to form their own views about their situation. For example, s 9 sets out the principles to be applied in the administration of the CYPA and stipulates in (d) that when deciding what action is necessary to protect a young person from harm the least intrusive intervention in the life of the person should be followed. There is no general power of detention on account of risk of harm. Rather the CYPA provides in s 43 for removal of the child from a place of risk if the young person is at '*immediate risk of serious harm*'. The Bail Act on the other hand provides that when a person is arrested that person is not entitled to liberty unless bail is granted or dispensed with. The submission that those charged with responsibility for care for young people at risk is the same as the responsibility of those obliged to administer the preventative detention of the bail regime is misguided in my view.

30. Second, in *Conway* there was no suggestion by counsel for the plaintiff that the failure of the child welfare agencies had caused or contributed to her death. Contrary to the submission by senior counsel for the DPP, there is nothing in the report of the decision to support his submission that those seeking an inquest alleged that '*but for the neglect of the relevant department, in failing to use its powers to control her liberty … this young girl … would not have died*'. Counsel for the plaintiff in *Conway* did not submit DoCs had an obligation '*to control her liberty*' nor that the very limited circumstances in which the s 43 involuntary removal power could have been invoked existed.

31. Accordingly, I conclude I am not bound by the decision in *Conway* to grant the DPP's application, although I accept the principles enunciated in it provide valuable guidance as to how I should exercise the discretion reposed in me to delineate the scope of the inquest.

32. The DPP also submits that even were the bail questions not too remote, for two reasons the inquest should not seek to address them.

33. First, as all parties agree that it would be inappropriate for me to critique or try to go behind the decisions of the magistrates who granted conditional bail, senior counsel on behalf of the DPP submitted that it would be impossible for me to respect that boundary and at the same time effectively examine the actions of the prosecuting authorities in connection with bail. It is submitted that, for example, it would be impossible to consider what could or ought to have been done by the prosecuting authorities subsequent to the granting of bail without reflecting upon whether the decision to grant bail was correct. I do not accept that. As senior counsel assisting points out, disciplinary proceedings involving the performance of legal practitioners and civil actions seeking redress based on alleged professional negligence regularly proceed without intruding upon judicial immunity or independence.

34. Second, senior counsel for the DPP submits that even those questions that do not necessarily involve an examination of the judicial decisions on bail should not be commenced because such an inquiry would send the inquest on a never ending search of a counterfactual nature that could not contribute to the findings I am required to make or any recommendations I may be inclined to make. '*(A)n unidentified and unidentifiable scope of possible integers*' was how senior counsel for the DPP described it. He raised the danger of the inquest getting involved in '*a never-ending unstoppable process, both as to decision, to appeal and the like*'.

35. He was right to raise these concerns: without pleadings or the strict adherence to the rules of evidence to constrain and guide me, I must be conscious of the cost and delay unnecessary inquiry can cause. It is probably true that coroners do on occasions go too far down unproductive even unnecessary lines of inquiry. Conversely, coroners very regularly draw a line beyond which they decline to

inquire, even though as a matter of strict logic they have not reached the beginning of the chain of causation. They do that by applying common sense and the legal concept of remoteness. I am confident that with the assistance of the inquest's expert legal team and the others at the bar table these challenges can be met. I consider that if there are questions about Mr Monis' bail that are relevant and not too remote that might bear on the findings or recommendations I may make they can be examined without falling at either of the hurdles senior counsel for the DPP has usefully identified.

36. I therefore now turn to whether the bail questions are too remote from either coronial function to be within scope, having regard to the principles discussed earlier.

37. When determining whether an accused should be granted bail, a bail authority or court is required to consider whether the accused will appear in answer to his bail and whether the accused if released is likely to commit a serious offence and/or endanger the safety or welfare of the public or interfere with witnesses.

38. As Mr Monis seems to have gone on to commit serious offences and endangered the public two months after being released on bail inquiring into how he came to be at liberty relates to the matters I have identified as relevant to determining whether the bail questions are within jurisdiction.

39. The circumstances under which he and the others died make it so. They raise questions about the granting of bail the public interest requires answered. That the families' wish to hear about them is it itself another relevant public interest. A causal link between the grant of bail and the deaths may be found. The grant of bail on 10 October 2014 was temporally close to the deaths. The broader question of bail in this matter raises the potential for preventative recommendations. The proposed inquiries involve relatively confined questions and do not pose the risk alerted to in *Harmsworth* of an inquest that would

never end.[18] It is worth noting that the inquiries ruled beyond jurisdiction in that case concerned the sociological factors that led to prisoners offending and being imprisoned. No such general open ended inquiry is proposed here. I therefore conclude the bail questions, as amended below, are not too remote

40. An analogy may be of assistance. Coroners deal with a great many suicides. It is frequently necessary to review whether a person who has intentionally taken his or her own life received adequate mental health care. It is routine to investigate the decision making of the clinicians and the processes precipitating the release of a person from in-patient mental health care if soon after discharge that patient takes his/her own life and/or harms another. Similarly, in my view, it is relevant and not too remote for an inquest to inquire into whether a person charged with numerous offences of violence was appropriately released on bail if soon after that release he is involved in further violent offences resulting in deaths. In both cases the decision makers are required to assess whether the person to be discharged/released is likely to harm others. When such harm ensures it is reasonable to review the basis on which the decision to release the person was made.

41. I recognise the limitation on my authority to review the decisions of Local Court Magistrates and the futility in doing so.[19] That is not of concern as magistrates are required to and do provide reasons for their decisions and whenever a magistrate makes a bail determination it is amenable to review by a higher court at the instigation of any of the parties involved in the proceedings. However the performance, reasons and decisions of the prosecuting authorities

[18] *Harmsworth supra* at 996

[19] The principle of comity between courts provides that a court of one jurisdiction will recognise the validity of decisions taken by a court in another unless both are in the same judicial hierarchy and the first court has jurisdiction to review or overturn decisions of the second court. Judicial officers are accountable to the public via public comment and criticism and their decisions are corrected, if necessary, by appeal. However, for a judicial officer not engaged in such an appeal to call into question or find fault with another's decision risks undermining pubic confident in the courts and threatens judicial independence. For a useful discussion of these concepts see *Independence and accountability*, Doyle J, in *The role of the Judge*, Judicial Commission NSW, 2000, 79 – 88. A coroner cannot hear an appeal from a magistrate's decision.

in relation to bail in a particular case are not transparent and are not reviewed unless the accused is dissatisfied with the outcome.

42. Accordingly I propose that the bail questions that will be investigated by this inquest be framed in the following terms:-

1. What was Mr Monis' bail history?

2. Did prosecuting authorities respond appropriately to his applications for bail in relation to the charges he was facing at the time of the siege (the charges)?

3. Did the prosecuting authorities respond appropriately to grants of bail received by Mr Monis in relation to the charges?
4. Was the granting of bail to Mr Monis causally linked to the death?

5. If the answer to 2 or 3 is "no" what were the reasons for the inadequate responses and what changes are needed to prevent recurrence?