



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

Inquest:	Inquest into the deaths of Carol Anne Clancy Michael Martin Clancy Gabriele Lauschet Jack Samuel O'Brien Victor Oreshkin Mary Philomene Tiernan
Hearing dates:	17 May 2016
Date of findings:	17 May 2016
Place of findings:	NSW State Coroners Court, Glebe
Findings of:	NSW State Coroner, Magistrate Barnes
Catchwords:	Manner and cause of death: Aviation Disaster
File number:	2015/156092, 2015/156451, 2015/155249, 2015/156359 2015/156393, 2015/156056
Representation:	Assistant Crown Solicitor Catherine Follent appearing to assist the State Coroner, with Solicitor Advocate Emma Sullivan, instructed by Senior Solicitor and James Herrington – all of the Crown Solicitor's Office
Non publication order:	Tabs 2 of exhibit 2,3,4,5,6&7

The Coroners Act in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the deaths of Carol Clancy, Michael Clancy, Gabriele Lauschet, Jack O'Brien, Victor Oreshkin and Mary Tiernan

Introduction

- 1) On 17 July 2014 Malaysia Airlines flight MH 17 departed Amsterdam, the Netherlands bound for Kuala Lumpur, Malaysia. A little over three hours after take-off, it crashed in the province of Donetsk, Ukraine. The plane was carrying 15 crew members and 283 passengers – a total of 298 persons. All of them died in the crash. Among them were 27 Australian citizens, one dual citizen, 10 permanent residents of Australia and three people with close ties to our country.
- 2) Six of the passengers usually resided in New South Wales.

Jurisdiction

- 3) Even though the deaths of the MH17 passengers and crew occurred overseas, a New South Wales Coroner has jurisdiction to investigate and make findings in relation to the deaths of those who were ordinarily resident in this state when their deaths occurred.
- 4) The primary purpose of an inquest is to make findings as to the identity of a deceased person; the date and place of their death; and the manner and cause of the death. In this case, the inquest provides an official and public forum in which the deaths of our community members that occurred in the MH17 disaster and the suffering that precipitated to be acknowledged. Further, it enables the particulars of the deceased persons and the circumstances in which they died to be formally recorded. Regrettably, there are still important aspects of the disaster that remain unknown.
- 5) I am acutely aware that each of the deaths investigated at this inquest has caused great grief and distress to the families and friends of those who died. The statements made to the court by those close to the deceased demonstrated that there are indeed many secondary victims. That the deaths were caused by a deliberate malicious act on the other side of the world undoubtedly adds to the anguish. I offer all of those impacted by these deaths my sincere condolences.

The investigations

- 6) The day after the crash the Australian Federal Police (AFP) established Operation Arew in support of the Australian Government's response to the MH17 incident. The next day it deployed officers to Ukraine and the Netherlands to assist in the recovery and identification of the passengers and to obtain evidence in relation to the incident. In its early stages the Australian contingent comprised more than 140 personnel. Fourteen AFP members remain deployed. The AFP members included specialists in disaster victim identification (DVI), forensics, criminal investigation and intelligence.
- 7) A Joint Investigation Team (JIT) based in the Netherlands, established by the Netherlands, Ukraine, Belgium, Malaysia and Australia remains in place and has been extended until 7 October 2016.

Searches

- 8) The Ukrainian emergency services commenced a recovery operation soon after the incident, and all indications are that that process was undertaken with appropriate respect and dignity for the victims of the downed flight.
- 9) Joint search teams were formed comprising specialists from the Netherlands, Australia and Malaysia and included DVI, forensic investigations, search and navigation, and canine teams. Search areas were identified and prioritised according to available intelligence and data identifying concentration of debris and the likely location of human remains. The aim of the search operation was the recovery of those remains and items likely to assist in the identification of victims.
- 10) Between 24 and 31 July 2014 AFP officers accessed the crash and debris sites, conducting initial reconnaissance and assessment. On 1 August 2014 a joint Dutch and Australian search team commenced search activities at the site, joined on 3 August 2014 by members of the Royal Malaysian Police.
- 11) The search continued until 5 August 2014 and on 6 August 2014 AFP, Dutch and Malaysian officers attended the village of Rozsypne, located within the debris field, and engaged with local residents, seeking their assistance in identifying human remains and evidentiary items.
- 12) Further recovery missions in the Ukraine were conducted by a joint team of Dutch police officers with members of the Dutch Safety Board and the Dutch Ministry of Defence in April, June and August 2015. In August 2015 the recovery missions were completed.

Disaster victim identification

- 13) On 21 July 2014 Associate Professor David Ranson, Forensic Pathologist of the Victorian Institute of Forensic Medicine, was requested by the AFP to form part of an overseas mortuary deployment team of specialist police, forensic odontology, forensic pathology and mortuary science staff to assist with identification. The team comprised forensic specialists from a number of countries including the Netherlands, Malaysia, Indonesia, Belgium, the United Kingdom and Australia. The team's work was a humanitarian effort and they were not part of the criminal investigation process.
- 14) Following their identification, the remains of the New South Wales passengers, with the exception of Sister Tiernan, were repatriated to Australia. The remains of the Australian victims were repatriated through Victoria, by way of a formal ceremonial process.

The criminal investigation

- 15) The Joint Investigation Team is conducting a criminal investigation into the disaster, with the ultimate goal of identifying and prosecuting the perpetrators of the attack.
- 16) The Dutch Safety Board concluded that flight MH17 was shot down by a Buk missile system. The interim findings of the criminal investigation also point to that conclusion.
- 17) The interim findings of the criminal investigation also concur with the Dutch Safety Board's conclusion regarding the area of the launch site. Within the scope of the criminal inquiry, certain persons of interest have been identified. Calls for witnesses from the conflict area to come forward were made in March and July 2015 and the response to those calls was significant. Over 100 witness statements have been taken to date. It is anticipated that the

criminal investigation will continue until at least late this year. Coroners do not make findings of criminal guilt, but it would be pointless sophistry not to acknowledge that these deaths were part of a gross mass murder. It is reasonable to expect that a prosecution will be launched at some stage. While some of the survivors have no interest in holding individuals to account for the atrocity, seeing them as small players in a bigger macabre game, others, understandably, want justice for the dead and condign punishment of those responsible.

Dutch Safety Board investigation

- 18) The Dutch Safety Board, the aviation crash investigation authority of the Netherlands, is a member of the International Civil Aviation Organisation and has primary responsibility for the conduct of the investigation into the cause of the downing of MH17.¹ It is not the purpose of the Dutch Safety Board's investigation to apportion blame or liability in respect of any party or parties.
- 19) On 13 October 2015, the Dutch Safety Board released its final report into the investigation of the crash of flight MH17. The report comprises 638 pages, including annexures, and makes a number of findings as to the cause of the crash.
- 20) In summary, it found that the incident aircraft, a Boeing 777-200, was airworthy and operated by a competent and qualified crew when flying at 33,000 feet near the Ukrainian/Russian border under the control of Ukrainian Air Traffic Control. At 3:20pm local time a warhead carrying a missile installed on a Buk surface-to-air missile system was detonated outside and above the left hand side of the cockpit of flight MH17. The impact of the explosion caused structural damage to the forward part of the aircraft. This led to an in-flight break-up and immediate decompression. The break-up resulted in a 50 square kilometre wreckage area and the death of all 298 occupants.
- 21) The Board analysed whether the in-flight break up could have been caused by other scenarios such as the detonation of an explosive device inside the aircraft, a fuel tank explosion, an uncontained engine failure, an external event such a lightning or a meteor strike. Those scenarios (and others) were all excluded based on the evidence available.
- 22) The Board also found that none of the investigated wreckage parts showed indications of the presence of pre-existing damage (such as fatigue, corrosion or inadequately performed repairs).² Nor was the damage caused by the pre-formed fragments from the warhead exacerbated by any technical issue.³
- 23) Calculations based on the impact patterns allowed the Dutch Safety Board to identify an area of 320 square kilometres within the Eastern Ukrainian conflict zone from which the missile was most likely launched. The Board stated that further forensic research was

¹ The International Civil Aviation Organisation is a specialised agency of the United Nations working with 191 organisational members to develop international standards and recommended practices for safe, efficient and secure flight operation worldwide. These standards and recommended practices are contained in Annexes. There are 19 Annexes which support the *Convention on International Civil Aviation* and set out aviation standards and practices endorsed by the International Civil Aviation Organisation. Annex 13 is titled "Aircraft Accident and Incident Investigation". It provides that the objective of an investigation by the Organisation is the prevention of similar incidents and accidents.

² DSB report, p 156.

³ DSB report, p 157.

required, however, to determine the specific launch location, although that was a matter beyond the mandate of the Board's investigation.⁴

24) The Buk missile was designed and manufactured in Russia. It was of a type known to be in the Ukraine conflict zone.

Findings required by s81(1)

As a result of considering all of the documentary evidence tendered and the submissions made by counsel assisting at the inquest, I am able to confirm that the deaths occurred and to make the following findings in relation to them.

The identity of the deceased

The persons who died were:-

- Carol Anne Clancy;
- Michael Martin Clancy;
- Gabriele Lauschet;
- Jack Samuel O'Brien;
- Victor Oreshkin; and
- Mary Philomene Tiernan

Date of death

They all died on 17 July 2014.

Place of death

They died in Donetsk, Ukraine.

Cause of death

All of the deaths were the result of injuries sustained as a result of a high altitude aircraft disintegration caused by the detonation of a warhead.

Manner of death

The fatal injuries were inflicted as a result of a person or persons who has or have not yet been identified, deliberately firing a missile equipped with an exploding warhead at the jetliner in which the deceased persons were passengers, causing it to disintegrate at high altitude.

I close this inquest.

Magistrate Michael Barnes

State Coroner, NSW

⁴ DSB report, p 147.