CORONERS COURT
NEW SOUTH WALES

Inquest:	Inquest into the death of AB
Hearing dates:	21-23 April 2015
Date of findings:	22 May 2015
Place of findings:	Coroners Court, Glebe
Findings of:	Magistrate C. Forbes
Catchwords:	CORONIAL LAW-death in police operation-police negotiations-transfer from corrective services to immigration detention
File number:	2013/123760
Representation:	Mr I Bourke SC, Counsel Assisting instructed by Ms D McMullen, Crown Solicitors Office Mr J Agius, SC representing the Department of Immigration and Border Protection Ms K Richardson representing International Health. and Medical. Services Ms K Peterson representing Serco Australia Pty Ltd Mr R Hood representing the Commissioner of NSW Police Ms S Beckett representing the South Western Sydney Local Health District Ms P Robertson representing Nurse T Fagaloa Mr D Barrow representing the mother of AB
Findings:	I find that AB died on 20 April 2013 from multiple injuries he suffered when he caused himself to fall from a height at Liverpool Hospital, NSW.

In accordance with S.75(5)*Coroners Act 2009* I permit a publication of the report of this matter however evidence identifying the deceased or any members of his family shall not be published in any report and the deceased shall be referred to by the pseudonym AB.

IN THE STATE CORONER'S COURT
GLEBE
SECTION 81 CORONERS ACT 2009

REASONS FOR DECISION

Introduction

1. This inquest concerns the sad death of AB on 20 April 2013. He was a 33 year old man who had been released from Parklea Correctional Centre on 9 April 2013 into the custody of Villawood Immigration Detention Centre (VIDC). His permanent residency in Australia had been revoked and he was facing being deported to Papua New Guinea. On 19 April 2013, at VIDC, he inflicted deep cuts into his arms and neck and was taken by ambulance to Liverpool Hospital. He underwent surgery at the hospital. Upon his recovery he broke the window of his fifth floor hospital room and went out onto a ledge. Police were called and after 12.5 hours of negotiations he caused himself to roll off the ledge and fell to his death.

2. The role of a Coroner as set out in s.81 of the *Coroner's Act 2009* (the Act) is to make findings as to:

    (a) the identity of the deceased;

    (b) the date and place of the person's death;

    (c) the physical or medical cause of death; and

    (d) the manner of death, in other words, the circumstances surrounding the death.

3. This inquest is a mandatory inquest by reason of the fact that AB died during the course of police negotiations. The combined operation of ss. 27 and 23 of the Act require a Coroner to conduct an inquest where the death appears to have occurred "*in the course of police operations*".

    "The purposes of a s.23 Inquest are to fully examine the circumstances of any death in which Police …… have been involved, in order that the public, the relatives and the relevant agency can become aware of the circumstances. In the

majority of cases there will be no grounds for criticism, but in all cases the conduct of involved officers and/or the relevant department will be thoroughly reviewed, including the quality of the post-death investigation. If appropriate and warranted in a particular case, the State or Deputy State Coroner will make recommendations pursuant to s.82."[1]

4. It should always be borne in mind that inquests are not criminal investigations, nor are they civil liability proceedings intended to determine fault or lay blame on persons involved in the incident. This Inquest has been a close examination of the circumstances surrounding AB's death and pursuant to s.37 of the Coroner's Act a summary of the details of this case will be reported to Parliament.

AB

5. AB's mother has requested this Court to refer to her son as AB in this Inquest, and I accede to that request.

6. AB is a much loved son of his parents. He was born in Papua New Guinea in 1979.

7. AB and his mother lived in Papua New Guinea until he was about 6 years old, at which time he came to Australia with his mother and commenced living with his father.

8. In 1987 AB's mother and father married. Later in 1987, AB's mother gave birth to a second son. After AB's mother's marriage, she and AB applied for and were granted permanent residency in Australia, although AB never became an Australian citizen.

9. AB attended Dapto Public School and then Kanahooka High School near Dapto where he completed Year 11. After leaving school, AB had a number of labouring and other jobs, and attended some courses at TAFE. His Mother described him as an outstanding sportsman, who was at some stage selected to play rugby league for NSW.

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[1] Waller's Coronial Law & Practice in New South Wales 4th Edition, page 106

10. When he was about 25 years old, he commenced a relationship and had 2 children.

11. On 25 March 2009 AB committed a serious assault on his partner, and was sentenced to imprisonment for a total period 3 years 5 months.

12. On 7 June 2011, while AB was serving his term of imprisonment, the Minister for Immigration cancelled his permanent residency visa, on "character" grounds. This decision was based on his criminal convictions. As AB was not an Australian Citizen, he became liable to be deported to Papua New Guinea.

13. On 26 September 2011, having served his term of imprisonment, AB was transferred to VIDC to await his deportation to Papua New Guinea.

14. AB challenged the decision to cancel his visa. The Administrative Appeals Tribunal affirmed the Minister's decision to cancel the visa. Appeals by AB to a single judge of the Federal Court, and then to the Full Federal Court, were unsuccessful.

Facts in outline

AB's first transfer to VIDC

15. On 26 September 2011 AB was first transferred from prison to the VIDC. He was there for about 2 weeks. I find his conduct between 26 September and 9 October 2011 made it plain that he would rather remain in gaol in Australia than be sent to Papua New Guinea. This is not altogether surprising, given that since the age of 6, AB had lived in Australia.

16. While in the VIDC, AB undertook conduct aimed at ensuring that he stay in Australia. He:-
    - Damaged property inside the Detention Centre
    - Contacted NSW Police wishing to confess to various crimes
    - Made threats to "take a hostage" inside the Detention Centre

17. On 9 October 2011, AB committed a serious and unprovoked assault on a Serco Australia Pty Ltd (Serco) security officer employed at the VIDC. Serco is the company responsible for security at the VIDC. I accept that this assault was committed by AB for the sole purpose of attempting to remain in Australia rather than being deported to Papua New Guinea.

18. AB was taken into Police custody and charged with assault occasioning actual bodily harm. The next day he pleaded guilty at the Local Court to the offence charged and was sentenced to 18 months imprisonment, with a non-parole period of 12 months.

19. AB was detained in various NSW Correctional Centres, until 9 April 2013.

Second transfer to VIDC

20. On 9 April 2013, AB was released from Parklea Correctional Centre into the custody of Serco and taken to the VIDC.

21. Prior to AB's arrival at the VIDC, there was concern as to whether he could safely be managed at that facility (or whether a request should be made for him to stay in a NSW prison until ready to be deported).

22. Ultimately, a decision was taken by the Department of Immigration and Border Protection (DIBP), in consultation with Serco that AB would be accepted into the VIDC – but would be housed initially in the highest security Murray Unit.

Arrival into Murray Unit at the VIDC

23. On Tuesday, 9 April 2013, AB arrived at the VIDC and was placed in the Murray Unit. He remained in the Murray Unit until 12 April 2013.

24. In the Murray Unit, AB was subject to very tight security, and was either locked in a cell-like room or was accompanied by at least three Serco escorts wearing a body armour (referred to as Personal Protective Equipment or PPE).

25. At about 1.50pm on the day that AB arrived he was interviewed by Serco Intelligence Manager, Ms M Lawlor. Ms Lawlor asked AB a number of questions, aimed at assessing the risk he might pose to staff and other detainees. The conclusion she reached was that there was a – "*High probability AB will assault an officer so that he can be placed back in a correctional environment…it will be unprovoked and opportunistic – will wait until security measures are not as rigid*"[2]

26. A "Full Client Placement Assessment" apparently carried out that same day concluded that AB's risk to others was "extreme"[3]

27. On the morning of Wednesday 10 April 2013, AB was interviewed by DIBP case worker Mr G Campbell. The purpose of that interview was to provide AB with documents which informed him of the procedures connected with his removal from Australia, and of his rights to consent to that process or to seek some form of review. Mr Campbell explained that the interview was conducted (for the most part) with three armoured guards standing behind him. Although AB said little at the beginning of the interview, Mr Campbell said that AB seemed to relax a little as the interview went on. AB indicated that he intended to apply for a Protection Visa, and that he would resist his deportation.

28. At about 2pm that day, IHMS[4] Mental Health Nurse R Flack interviewed AB through a "slot" in the door of his cell with three armoured Serco guards in the room. The purpose of this assessment was to determine how AB's placement in the Murray Unit was impacting his mental health. Nurse Flack recorded – "*Denies suicidal thoughts; denies thoughts of self-harm; denies thoughts of harm to others; guarantees safety of self and others. Client mental state at this time is not being affected by his current placement in Murray cells, client will require daily review by mental health team. Email sent to relevant stakeholders*".[5]

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[2] Vol 5 p79.

[3] Vol 5 tab 15.

[4] IHMS – International Health and Medical Services – the service responsible for the provision of medical services within the VIDC.

[5] Vol 6 p18; Vol 5 p113.

29. At about 9.11am the next morning (Thursday 11 April 2013) AB was visited in the Murray Unit by Mental Health Nurse T Fagaloa. This assessment also occurred through a "slot" in the cell door, and in the company of armoured Serco guards. Nurse Fagaloa completed a PSP (Psychological Support Program) Care Plan, in which she noted that – "*Client reviewed for review of care plan…denies suicidal ideation/TOSH/thoughts of harm to others…Client willing to engage with Mental Health and agreeable to review 12/04/13. Client does not meet criteria for PSP*[6]*/SME*[7]*. Client now Client of Concern – PLAN: Client of Concern review by Mental health 12/04/13*[8] .

30. Mental Health Nurse Fagaloa also noted – *"Client stated he was OK. Cooperative in interview. Client able to explain context of previous assault on Serco officer…legal representation at the time had given him the impression that he had no other avenues to stay in Australia and so assaulted officer in attempt to remain here…has been told that there is another avenue available for appeal…Client was open about drug use while in prison stating that he used daily…last used Morphine 100mg on 09/04/13…Stated that Morphine was the drug he used most…Nil abnormal perceptions or psychosis evident…Risk low – Denies TOSH/SI/harm to others … PLAN – Review as COC* (Client Of Concern) *12/04/13 – Writer has discussed with Primary Health re assessment of withdrawal symptoms. Client aware of pathway to access MH if required"*[9]

31. While AB was being "assessed" by Mental Health Nurse Fagaloa, a "VIDF Daily Briefing meeting" commenced (at 9.20am) in which AB was discussed. Ms Lawlor reported her concerns that AB had not interacted with the officers, remained quiet and reserved, and was clever and calculating – "*the danger signs are present"*. The meeting was informed that IHMS had advised that AB was not on any prescribed medications, and that while a 24 hour extension of his placement in the Murray Unit was likely, this would not extend to the weekend, given that AB had presented with "nil issues" since his arrival.

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[6] Psychological Support Program (IHMS Procedure – Vol 6 tab 8)
[7] Supportive Monitoring and Engagement (See IHMS Procedure Vol 6 p168)
[8] Vol 6 p58, p57
[9] Vol 6, p20

32. At about 12.30pm that same day, Registered Nurse K Origlasso (to whom Nurse Fagaloa had spoken) conducted an "Induction Health Assessment" on AB. While AB told her that he had *"smoked heroin in jail every day for 6 months"*, Nurse Origlasso (who has significant experience in the management of patients with drug histories) concluded that AB did not appear to be in acute withdrawal. A urine drug screen carried out that day showed no trace of opiates.

33. Nurse Fagaloa had noted after her basic assessment that AB should be reviewed as a Client of Concern on 12 April 2013 but this did not occur. It has been suggested that this was because, in the "VIDF Daily Briefing" at 9.15am that morning, the meeting was told by Ms M Mailei (head of the Mental Health team) that AB was not a Client of Concern in terms of mental health issues.[10] The reason might also be linked to the fact that a decision appears to have been taken the previous night to integrate AB into "the mainstream".[11] On the morning of Friday 12 April 2013 AB was transferred from the Murray Unit to the less restrictive Blaxland Unit.

Transfer to Blaxland Unit

34. AB was transferred to "Dorm 2" of the Blaxland Unit, where he was housed with other detainees.

35. AB was not assessed or seen by any Mental Health nurse or other mental health professional while he was in the Blaxland Unit.

36. On Sunday, 14 April 2013, AB was visited by his mother. According to his mother, AB was "good" that day. They cracked jokes and had some food together. She said he did not speak of harming himself, and noted in her statement that he had never harmed himself previously.

37. There are limited records of AB's behaviour and conduct between his arrival in the Blaxland Unit on 12 April 2013, and Friday 19 April 2013, when he was taken to

[10] Vol 5, tab 45A.
[11] Vol 5, p67.

Liverpool Hospital. That is probably because in the Daily Briefing meeting of 12 April 2013, the action plan was for Serco to monitor AB, especially re "drug control". The meeting seems to have agreed that AB would be *"discussed weekly at the stakeholders meeting"*. It seems clear that at this stage the focus on AB was his risk to others and not his risk to himself, or his mental health generally. This seems to be confirmed by the minutes of the Daily Briefing meetings held on Monday 15 April and Tuesday 16 April, in which the only mention of AB relates to security issues. On Monday 15 April 2013 he was placed on "Security Watch" requiring 30 minute observations. [12] This was because of concerns that he may attack someone, or incite others to violence, not because of any mental health concerns.[13]

38. In an entry of Monday 15 Apr 2013, a Serco Officer noted:

> *"Client seems to be in good health. Eats well. Sleeps well. No issues. Client has settled in dorm 2, made few friends...* [AB] *has been good, he has made few friends and has been polite to officers... ".*[14]

39. On the same day, the DIBP case worker Mr G Campbell attended the Blaxland Unit to speak again to AB. AB refused to speak with him. The Serco Security Watch Occurrence Log noted that (at 2.30pm) AB had *"seen JP to sort out his paperwork"* and (at 6.30pm) it was noted that he was *"exercising in gym with friend".*[15]

40. The next day, Tuesday 16 April 2013 the Security Occurrence Log entries indicate nothing out of the ordinary. They note that at various times during the day, AB was – *working on paperwork with fellow client; playing pool; watching TV; and outside having a cigarette, talking with other clients* [16]

41. The Security Occurrence Log entries continue into the next day – Wednesday 17 April 2013, noting that AB was (at 9am) *very quiet – did not respond to greeting.* However, he

[12] Vol5, p137, p149
[13] Vol5, p159
[14] Vol5, p135
[15] Vol5, p148
[16] Vol5, p146

apparently (at 10.30am) said *"thank you"* after receiving some mail, and it was noted (at 3.26pm) that *"Client interacting with myself and 2 other clients in the outside courtyard, appears to have a positive attitude so far being in detention".*[17]

42. The thirty minute Security Watch observations continued into the next day – Thursday 18 April 2013. Although no security concerns were noted, the log entries record that AB was very quiet, stand-offish, distracted and not sleeping well – *"Will respond bluntly when spoken to".*[18]

Friday 19 April 2013

43. The Security Watch Occurrence Log records two observations early that morning:-

    (8.03am) *Client appears to be asleep. No interaction*

    (09.02) *Client outside talking with CSO Pucher + CSO Pedrosa – Remains distant, not wanting to talk much* [19]

44. At about 10.30am a "code black" was called, after it was discovered that AB had obtained a razor blade, and inflicted deep cuts to his arms and neck. Although the blade does not appear to have been retained and photographed, various witnesses described it as the type of small blade that would usually be found inside a disposable razor. The "Reception Assessment Process Checklist" completed by Serco on 9 April 2013, when AB arrived at the VIDC, notes that he was issued with "razor" as detainees were provided with shaving equipment at the VIDC.

45. AB refused to put down the razor blade, and continued to cut himself. Upon her arrival, Serco Intelligence Manager Ms M Lawlor took charge of the situation and was successful in engaging with AB, and to some degree distracting him from inflicting further injury to himself. Shortly after this, Serco security officers (wearing Personal Protection Equipment) took hold of AB, and detained him on the ground, where he was handcuffed. He was treated for his injuries by ambulance officers before being taken (under guard) to Liverpool Hospital, where he arrived shortly after 12.30pm.

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[17]Vol5, p144
[18]Vol5, p141
[19]Vol5, p139

46. He was scheduled under the *Mental Health Act (NSW) 2007*. This meant that he was detained at the Hospital as an involuntary patient. While in the Hospital, AB's custody was in the hands of the six Serco officers who were given the task of preventing him from escaping.

47. AB was taken into surgery to treat his wounds in the late afternoon and was taken to recovery just before 7.30pm. At about 9.10pm that night he was transferred to the surgical ward 5E, on the fifth floor.

48. He remained under guard that night by 6 Serco officers while in the ward, and there were no adverse incidents.

Saturday 20 April 2013 at Liverpool Hospital

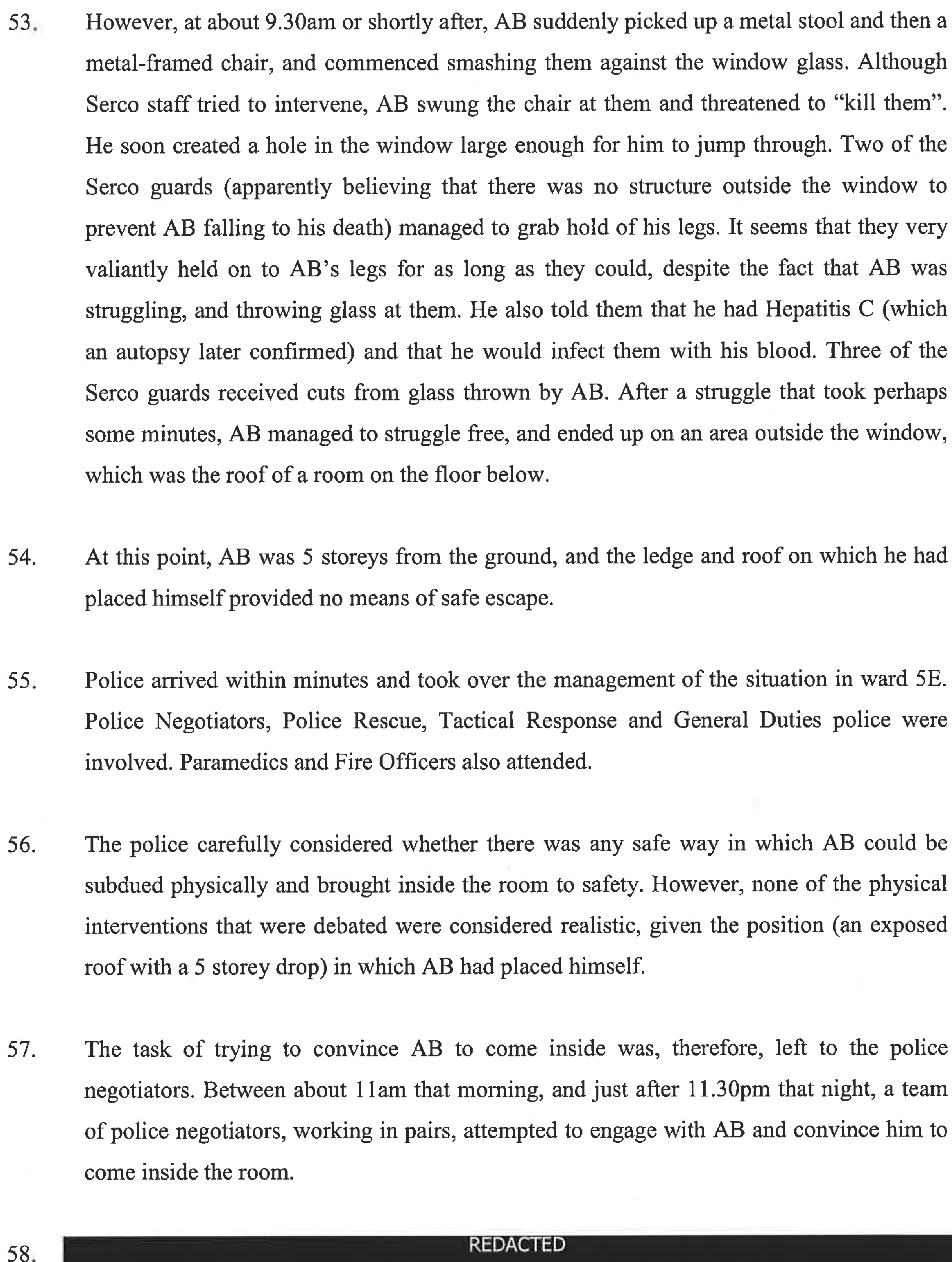
49. On Saturday 20 April 2013, AB woke up around 6.40 am and made a number of requests, including a request that his family be informed that he was in hospital. It seems that this request was passed up the chain of command at Serco and was being considered when the events took place.

50. At 7am, a nurse gave AB a dose of Endone (Oxycodone), and shortly after this he was taken downstairs by the Serco guards for a cigarette.

51. At about 8am there was a change of shift of the Serco guards, with six new staff taking over. Shortly after this, AB ate some breakfast.

52. Just after 9am, both nursing staff and a Serco officer noted that AB appeared to be calm and acting appropriately. The Serco escort notes at 9.05am recorded that – "*Hospital Nurse visits the client…calm and communicating positively…Escort team maintain line of sight at all times…all exit points covered…*" [20]

[20] Vol5, p197



53. However, at about 9.30am or shortly after, AB suddenly picked up a metal stool and then a metal-framed chair, and commenced smashing them against the window glass. Although Serco staff tried to intervene, AB swung the chair at them and threatened to "kill them". He soon created a hole in the window large enough for him to jump through. Two of the Serco guards (apparently believing that there was no structure outside the window to prevent AB falling to his death) managed to grab hold of his legs. It seems that they very valiantly held on to AB's legs for as long as they could, despite the fact that AB was struggling, and throwing glass at them. He also told them that he had Hepatitis C (which an autopsy later confirmed) and that he would infect them with his blood. Three of the Serco guards received cuts from glass thrown by AB. After a struggle that took perhaps some minutes, AB managed to struggle free, and ended up on an area outside the window, which was the roof of a room on the floor below.

54. At this point, AB was 5 storeys from the ground, and the ledge and roof on which he had placed himself provided no means of safe escape.

55. Police arrived within minutes and took over the management of the situation in ward 5E. Police Negotiators, Police Rescue, Tactical Response and General Duties police were involved. Paramedics and Fire Officers also attended.

56. The police carefully considered whether there was any safe way in which AB could be subdued physically and brought inside the room to safety. However, none of the physical interventions that were debated were considered realistic, given the position (an exposed roof with a 5 storey drop) in which AB had placed himself.

57. The task of trying to convince AB to come inside was, therefore, left to the police negotiators. Between about 11am that morning, and just after 11.30pm that night, a team of police negotiators, working in pairs, attempted to engage with AB and convince him to come inside the room.

58. REDACTED

In accordance with S.75(5) *Coroners Act 2009* I permit a publication of the report of this matter however evidence identifying the deceased or any members of his family shall not be published in any report and the deceased shall be referred to by the pseudonym AB.

REDACTED

59. Significantly perhaps, AB's conversations with police negotiators were not focussed on threats of suicide. According to the police negotiators, AB did not say he was going to "jump" if his demands were not met. At one stage, he said he would stay on the roof "for a week", and at other times said that police would have to shoot him, because he was "not jumping".

60. The negotiators used a variety of strategies (over many hours) in trying to convince AB to return to safety. Regrettably however, none were successful in getting him to re-enter the building. By about 11pm, it was obvious that AB was very tired and was "shaky". Police were very concerned that in this state, he may fall from the roof. It seems likely that at this stage, AB was not only extremely fatigued, but also was probably suffering from hypothermia (police noticed that he had been shivering for several hours).

61. However, by late in the evening, there were signs that the negotiations might be getting somewhere. AB had been given two cigarettes, and had become quiet and (seemingly) more cooperative. This led to the negotiation team leader, Detective Senior Sergeant Abeyasekera, removing the pieces of broken glass from the window, and actually opening the window on its hinge, so as to make it easier for AB to re-enter. He was also able, without protest from AB, to reach out his hand through the window to AB, in an attempt to get him to come in.

62. However, just after 11.30pm that night, AB, without any explanation, moved away from the window towards the edge of the roof. He was apparently very weak and tired at this point. Once at the edge of the roof, AB lay down, then lifted his head towards police and said something like "*Tell my mother I love her*" or "*Say goodbye to my mother*" and then rolled his body off the roof. A paramedic, Mr Green noted that these actions occurred "*all of a sudden – there was no indication of it*".[21]

The issues

63. The important issue for this Inquest is the examination of the continuum of care and treatment provided to AB by Corrective Services, Justice Health, Serco, IHMS, DIBP, NSW Police and Liverpool Hospital prior to his death.

64. Counsel Assisting, Mr Bourke SC, in his opening statement outlined a number of questions that go to this issue that were explored during the course of this Inquest. They were as follows:

(i) Did the risk assessment conducted by the Department of Immigration and Border Protection and Serco in respect of AB in April 2013 correctly identify the risk posed by / to AB?

(ii) Was the risk AB posed to himself and others managed appropriately during his detention in VIDC in April 2013? In particular:

a) Should AB have been accommodated other than in VIDC?

b) Should AB have had access to a cutting implement? How did he gain access to that cutting implement?

c) Was the response to the incident of self-harm on 19 April 2013 appropriate in the circumstances?

(iii) Did the mental health screening and treatment of AB in April 2013 during his detention in VIDC appropriately identify and manage any mental health concerns?

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[21] Vol 2, p 485

(iv) Was the escort conducted by officers of Serco on 19 and 20 April 2013 appropriate and executed in accordance with the developed escort plans?

(v) Was the risk AB posed to himself and others managed appropriately during his admission to Liverpool Hospital on 19 – 20 April 2013? In particular, was the mental health treatment and assessment AB received after his arrival at Liverpool Hospital appropriate and conducted in accordance with policies of Liverpool Hospital?

(vi) Was the Police operation conducted on 20 April 2013 appropriate in the circumstances?

(vii) Was the communication between various agencies involved with AB (including Serco, IHMS, DIBP, Police and Liverpool Hospital) effective in managing the risk posed by AB to himself and others?

(viii) Whether the Coroner should, pursuant to s.82 of the *Coroners Act 2009*, make any recommendation/s in relation to any matter connected with AB's death.

65. Having heard all the relevant evidence in relation to those issues and considered the submissions made by all of the parties I will now deal with the matters that I consider to be relevant to my function as a Coroner. I group them into the following three categories

(i) Were the circumstances surrounding ABs transfer from Corrective Services custody to VIDC appropriate?

(ii) Were the circumstances surrounding his self-inflicted injury at VIDC and subsequent transfer to Liverpool Hospital appropriate?

(iii) Was the police operation appropriate?

(i) Were the circumstances surrounding AB's transfer from Corrective Services to VIDC appropriate?

(a) <u>On-going medical care</u>

66. In October 2012, while AB was still in Parklea, he was assessed for inclusion to the Justice Health & Forensic Mental Health Network Self- Medication Program. He was dispensed 30 days' supply of Quetiapine 400mg, to be taken each night, on a monthly basis. This continued up to the date of his release and transfer to VIDC in April 2013.

67. When AB arrived at VIDC no one was aware that he had been on any medication. The Inquest was informed that detainees do not arrive with their medical records. It is necessary to obtain the detainee's consent before medical records from Justice Health can be obtained. IHMS Health Services Manager, David Ferry explained that in the past when consent has been obtained and a request sent, it may take between 2 days and 2 weeks to receive the information from Justice Health. IHMS informed the Inquest that in recent months Justice Health have responded more quickly and that on some occasions IHMS have received the requested medical records on the same day that the request was made.

68. Clearly it is desirable for the IHMS medical staff to be aware of any medical history of a detainee upon their arrival.

69. Since the completion of oral evidence in this Inquest a statement from the Manager, Health Information and Record Service, of NSW Justice Health, Ms J Dyer, has been received. Ms Dyer states that there is no reason why a document similar to a "discharge summary" cannot be prepared for an inmate who is to be released in cases of "ongoing patient care". Ms Dyer notes that the recent introduction of an electronic system for accessing Justice Health records has made it easier for Justice Health staff to more readily obtain medical information, and will assist in the preparation of a document similar to a "discharge summary". These represent positive changes and I propose to recommend that a "discharge summary" accompany a prisoner when they are being transferred from Corrective Services to immigration detention.

70. I note that the DIBP is in the process of negotiating a Memorandum of Understanding with NSW Corrective Services which includes the issue of the provision of health information at the time or prior to transfer from Corrections to administrative detention. I also note that the DIBP have stated in submissions that consent for provision of medical

records will be requested from a detainee at the first point of contact between a DIBP officer and a detainee. This normally occurs at the point of transfer. I propose to make a recommendation that such a procedure be implemented.

71. The DIBP has also undertaken, in collaboration with IHMS to write to each of the State Correctional Authorities within Australia, to establish a formal commitment to and clearer way of obtaining health records. I commend the steps that are being taken to provide for "on going medical care" and propose to make a recommendation that will facilitate the provision of all relevant medical records in cases involving transfers from Correctional Centres in NSW.

(b) VIDC reception and health screening

72. Given the history of AB's assault on the Serco guard during his first detention at VIDC it is not surprising that the primary concern by Serco on receiving AB on behalf of DIBP was on the risk that AB might harm others. A decision was made that he was to be detained in the high security Murray Unit for assessment. If his conduct had warranted it, there was an option of last resort for him to be returned to corrective services custody pending his deportation. This was never required. The evidence suggests his risk to others was monitored closely, carefully and appropriately during his time at VIDC.

73. AB did not receive any "treatment" for mental health issues while in the VIDC, and was not diagnosed as suffering any mental health condition.

74. AB was seen on Wednesday 10 April by Mental Health Nurse Richard Flack, and on Thursday 11 April by Mental Health Nurse Fagaloa. These were both short interviews, conducted through a "slot" in his locked cell door, and in the company of three Serco officers. Nurse Flack stated that he *"couldn't do the full mental health assessment because the guards were present"* and carried out a *"basic risk assessment"*. When AB was reviewed the next day by Nurse Fagaloa three guards were again present, which made it difficult to do a proper assessment. There can be little doubt that this process compromised the quality of the mental health assessments and that in any event those assessments were

primarily for the purpose of assessing the appropriateness of AB remaining in the Murray Unit.

75. Dr Diamond, an expert Psychiatrist, provided an independent review of the circumstances surrounding AB's death.[22] Dr Diamond's conclusion is that the events prior to 19 April 2013 did not suggest that AB was at risk of self-harm or suicide. In that regard the quality of the mental health assessments may have had limited significance to the tragic outcome. However, Dr Diamond did state that the two mental health assessments that were done were cursory and would not have been adequate to fully assess AB's mental/psychiatric state. While I do not find that a comprehensive mental health assessment would have prevented the events of 19 April 2013 I agree with Dr Diamond that the situation "left an angry violent, uncertain and distressed individual largely to his own devices…without any expert health management…" A lesson to be learned in hindsight may be that a person with AB's history could well have benefitted from more comprehensive psychological/ psychiatric assessment and support while he was in the detention centre environment.

76. I note that IHMS have a Mental Health Screening and Assessment procedure and that the current policy states that a Comprehensive Mental Health Assessment is to be conducted between 10 to 30 days after a person arrives in immigration detention, unless triggered earlier by a clinical concern. This time frame has been set to accommodate the fact that many detainees who come into detention are transferred on to other facilities within a 7 to 10 day period. I do not propose to make any recommendation about changes to that policy. I do however note that Serco and the DIBP could reflect on Dr Diamond's following comments:

> *"In my opinion the clear identification of* [AB] *as somebody who posed a security threat described as extreme, could well have been assisted by providing him with some assessment of his psychological state to begin with and possibly ongoing assistance to deal with his psychological vulnerability and disturbance."* [23]

[22] Vol 1 p 75

[23] Vol 1 p 75

In the future it may be appropriate that in cases where there is a real and established concern that someone may harm others that the concern be considered as a "clinical concern" that would trigger a Comprehensive Mental Health assessment earlier than the standard 10 -30 days.

(ii) **Were the circumstances surrounding his self-inflicted injury at VIDC and subsequent transfer to Liverpool Hospital appropriate?**

(a) Self-harm incident

77. AB inflicted the deep cuts in his arms and neck while he was in the Blaxland Unit. The implement that he used was the very small blade from a disposable razor. AB had no significant history of self-harm and there is no criticism of detainees being given access to appropriate and reasonable personal grooming equipment such as a small disposable razor.

78. The events surrounding his self-harm are described by a number of Serco officers. The Client Services Manager Ms Aiono-Laga described a "brief scuffle" which occurred when Officer Tang tried to "throw a blanket over [AB]" and that action was taken to remove other detainees from the area. Then Serco Regional Intelligence Manager, Ms M Lawlor arrived and engaged AB in conversation and distracted him from inflicting further cuts until Serco officers could don their protective gear and bring AB under physical control. This process was captured on a video recording. The events shown on the video are described by Dr Diamond in his report and he notes that there was no evidence of excessive violence, and that AB did not offer significant resistance. Dr Diamond notes that shortly after this, AB was attended to by Ambulance officers, and then transferred to hospital. Dr Diamond notes that *"All transfers are done in a relaxed, leisurely manner"*. It was managed appropriately.

79. Surprisingly, however, AB's mother was not informed about the self-harm incident and that he was taken to Liverpool Hospital for surgery. AB's mother had been at VIDC visiting her son on 14 April 2013 and after his surgery he made a specific request that his family be told that he is in Liverpool Hospital. The Department explained that without a detainees consent they were not in a position to contact the next of kin. I am informed that DIBP have made changes to their procedure so that in the future next of kin can be

notified of incidents of this nature. A revised "Detention Client Interview – Part C" form used by DIBP now includes a specific question asking whether the person gives their consent to the Department contacting next of kin in the case of an emergency. This is a positive step, and avoids the need for any recommendation about the matter.

(b) Transfer to Liverpool Hospital

80. The physical management of AB once he left VIDC in the ambulance was with a team of six Serco officers who were tasked with guarding him. There was no effective communication between Serco and Liverpool Hospital. No protocol existed between the Hospital and Serco in relation to these types of matters. The Hospital's security personnel were not aware that Serco officers were on the premises. Since the events of AB's death there have been changes to the relevant procedures and communication between the hospital and VIDC has improved. In April 2015, a Policy Directive entitled "Patient in custody of the Department of Immigration and Citizenship" was issued by the South Western Sydney Local Health District[24]. That document now sets out directions, to be followed by hospital staff in cases where an Immigration detainee is brought into the hospital. That document represents a positive and welcome step in addressing the lack of communication that took place in AB's case.

81. In addition to this Policy Directive, there has commenced a process of communication between the DIBP and the Liverpool Hospital, which has led to a draft "Letter of Understanding" with a view to preparing a "Memorandum of Understanding" between the two agencies concerning the timely provision of information on patient transfer. Annexures "A" and "B" are documents setting out the details of the changes that have been made by Liverpool Hospital and IHMS since AB's death. I commend the response to this issue and I am satisfied that it has been addressed and that no recommendations are required in that regard.

82. IHMS have also implemented changes to improve communication with hospitals to which a detainee from VIDC is transferred. IHMS now send a referral form to the relevant hospital when a person leaves VIDC, which includes information regarding the detainee's

[24] V3 tab 4A

medical history, previous investigations, current medications, assessment and plan. IHMS have also implemented procedures to ensure a registered nurse (during business hours) or a staff member from a telephone centre with access to IHMS' records (after-hours) provides relevant medical information to an emergency department, where it is known to which hospital the detainee is being transferred.

(iii) Was the Police operation appropriate in the circumstances?

83. The police operation involved a large number of officers, and brought together a wide range of highly skilled operatives. This included general duties police, tactical operations police, police rescue, police negotiators, ambulance and paramedics, and fire fighters. Police arrived on the scene very promptly, and the evidence demonstrates that careful attention was given to all reasonably available options, with the intention of bringing AB to safety.

84. REDACTED

85. In the circumstances, the only available option was the option that was adopted – namely, for police negotiators to attempt to convince AB to come inside of his own accord. Although this was ultimately unsuccessful, this failure was not through want of police efforts.

86. The only comment of a critical nature by Dr Diamond was the comment that, with the benefit of hindsight, further attention should have perhaps been given to the likelihood of

hypothermia, and its effects of muscle-weakening, loss of resolve and possible "acceptance of death". In this regard, Dr Diamond said that consideration perhaps should have been given, later in the night, to consulting with a psychiatrist or other doctor about AB's apparent physical distress (shivering, weak and unsteady). If this had been conveyed to a relevant medical practitioner, it might have resulted in a suggestion to provide AB with some form of physical "comfort" such as a blanket, or a hot drink. Dr Diamond noted however, that his comment was made only with the benefit of hindsight, and observed that police negotiations of this kind routinely are successfully completed without involving external consultants.

87. In all the circumstances I accept that the negotiation process was carried out (as Dr Diamond said) expertly and in accordance with known and acceptable adherence to proper procedure. However, I direct that a copy of these findings be provided to the Commander, Police Negotiation Unit, so that consideration can be given to the comments of Dr Diamond on the possible effects of hypothermia, and the implications this might have in police negotiations generally.

FINDINGS UNDER S. 81 CORONER'S ACT 2009

AB died on 20 April 2013 as a result of multiple injuries he suffered when he caused himself to fall from height at Liverpool Hospital.

RECOMMENDATIONS

a. I recommend that the NSW Justice Health & Forensic Mental Health Network implement a procedure whereby a document in the nature of a "discharge summary" is prepared for patients being transferred from a NSW Corrections Centre to an Immigration Detention Centre, which summarises any current or recent medical conditions including mental health history and past attempts at self-harm and any current or recent medications of the patient.

b. I recommend that the Department of Immigration and Border Protection implement a procedure whereby, prior to the transfer of any person from a NSW Corrections Centre

to an Immigration Detention Centre, the person is requested to provide a signed consent to the release of medical records, and whereby any signed consent is promptly forwarded to the relevant health service agency within the Immigration Detention Centre.

c. I recommend that International Health and Medical Services revise its policies to require that consideration be given, in cases of persons transferred from a NSW Correctional Centre, to obtaining any relevant medical records especially where any health discharge summary provided by Justice Health includes information believed to be clinically significant.

Magistrate C Forbes
Deputy State Coroner
22 May 2015

In accordance with S.75(5) *Coroners Act 2009* I permit a publication of the report of this matter however evidence identifying the deceased or any members of his family shall not be published in any report and the deceased shall be referred to by the pseudonym AB.

"A"

INQUEST INTO THE DEATH OF [redacted]

OUTLINE OF CHANGES TO POLICY AND PROCEDURE IMPLEMENTED BY LIVERPOOL HOSPITAL, SOUTH WESTERN SYDNEY LOCAL HEALTH DISTRICT ("the Liverpool Hospital")

Liverpool Hospital protocols on presentation of patients under detention

1. The following changes have been implemented by Liverpool Hospital since the death of [redacted] and are now reflected in Liverpool Policy Directives (see Policy Directive Patient in Custody of the Department of Immigration and Citizenship[1]):
    a. When a patient detained and escorted by the Department of Immigration and Border Protection presents for either an outpatient/day surgery appointment or at the Emergency Department ("ED"):
        i. Security are to be notified of the attendance and advised of the number of escort officers;
        ii. The General Manager is to be notified of ED presentations. Out of hours the Executive on call is to be notified.
        iii. The escorting officers are to advise of risks and provide the completed Referral Form- Villawood Detention Centre.
        iv. A Risk Assessment Checklist is to be completed by the nurse/Midwife Unit Manager or the In-Charge of Shift Nurse/ midwife in consultation with Security;
        v. If advised the patient has a history of self-harm or violence, consideration is to be given to the safety of others; the location of the patient's room and equipment and items in the room allocated;
        vi. A single room is to be allocated if possible;
        vii. If the patient is transferred to another unit within Liverpool Hospital the Risk Assessment Checklist is to be considered.

[1] Now called the Department of Immigration and Border Protection (DIBP)

b. The creation of the Risk Assessment Checklist for Patients in Custody requires confirmation of notification (of Security; Nurse Manager and Operational or After Hours Manager) and consideration and assessment of the following matters:

   i. Self harm and/or aggression;

   ii. Safety of Environment;

   iii. Safety of Space; and

   iv. Clinical Requirements;

c. Provides clarification of the roles to be played by the escort detention officers and the Liverpool Hospital as to supervision of the detained patient, namely that:

   i. Hospital staff, including security officers, are not to be utilised by escort officers to supervise the detainee;

   ii. The Hospital may allocate additional supervision to an identified "at risk" patient, by way of Hospital security officers, and/or nursing persons.

   iii. If the patient is scheduled under s. 19 of the *Mental Health Act* the Liverpool Hospital must arrange supervision in the nature of 1:1 individual, being either a Liverpool Hospital security officer or nursing person (who does not replace the escort officer or fulfil their obligations).

2. The Hospital's Policy Directive Patient in Custody of the Department of Immigration Citizenship seeks to clarify the obligations upon the Department of Immigration and Border Protection on presentation of a detained person at the ED or other hospital facilities, including providing the Liverpool Hospital with:

   a. The Referral Form – Villawood Detention Centre; and

   b. Information pertaining to risk.

Letter of Understanding between the Agencies and Liverpool Hospital

3. Liverpool Hospital has consulted with representatives of the various agencies, namely SERCO, the Department of Immigration and Border Protection, and the International Health and Medical Service ("IHMS")("the Agencies") to

reach a Letter of Understanding between the Agencies and the Liverpool Hospital, clarifying the roles and responsibilities between the agencies ensuring governance over detained patients presenting to Liverpool Hospital.

4. The current draft Letter of Understanding seeks to address the following issues:
   a. The role of SERCO and SERCO officers accompanying a detained patient at the Liverpool Hospital;
   b. The communication and identification of risk by SERCO to the Liverpool Hospital of the detained patient;
   c. The participation of SERCO officers in the risk assessment process concerning the detained patient on presentation at Liverpool Hospital;
   d. The content and mode of communication of medical information by IHMS to Liverpool Hospital;
   e. The mode and regularity of communication of information between IHMS and Liverpool Hospital during the hospitalisation of the detained patient, and at discharge;
   f. The participation of Liverpool Hospital security in the risk assessment process on admission of a detained patient; and
   g. The provision of contact details of relevant persons within Liverpool Hospital and the Agencies to allow for escalation of any concerns.

Sophia Beckett
Forbes Chambers

"B"

Inquest into the Death of [redacted]

Case No. 2013/00123760

<u>Changes at Villawood Immigration Detention Centre (VIDC) since 20 April 2013</u>

Prepared on behalf of International Health & Medical Services Pty Ltd (IHMS)

In relation information received from the Department of Immigration and Border Protection (DIBP):

1. For every person entering immigration detention from a correctional facility, DIBP sends an email to IHMS (and others) setting out general information about the detainee, including criminal history, immigration history and any health issues the person may have. That email provides IHMS with an indication as to whether the incoming detainee has any medical or mental health issues or is taking any regular medication. A copy of such an email is annexed and marked '**A**'. The personal details of the detainee have been redacted.

In relation to communications between Liverpool Hospital and IHMS:

2. IHMS sends a referral form when a person leaves VIDC for hospital. The referral form includes information regarding the detainee's medical history, previous investigations, current medications, assessment, plan etc. A copy of a blank referral form is annexed to the statement of David Ferry dated 23 December 2014 (see vol 2, tab 70a, p618i of the inquest brief). Discussions are presently underway between IHMS and Liverpool Hospital as to whether improvements to the referral form can be made.

3. During business hours a nurse from IHMS will let the relevant emergency department know the detainee is on the way to hospital, if it is known which hospital the detainee will be admitted to.

4. IHMS operates an after-hours call centre, the Health Advice Service. Its staff have access to IHMS's medical records. The procedure for engaging the Health Advice Service after hours generally occurs as follows:

   4.1 A detainee will notify Serco of a medical issue or emergency;

   4.2 Serco will call the Health Advice Service and a nurse or doctor will make a recommendation as to the appropriate plan, including whether to call an ambulance;

   4.3 If an ambulance is called, the person from the Health Advice Service will speak to the ambulance officer and provide relevant handover information. The person from the Health Advice Service will also make contact with the relevant Emergency Department to provide handover information regarding the detainee.

In relation to requests for medical records made to Justice Health:

5. It remains the situation that detainees do not arrive at VIDC from a NSW corrections facility with a health discharge summary or a copy of the person's medical records from Justice Health. IHMS must request medical records from Justice Health after obtaining a consent from the incoming detainee. In recent months, Justice Health have responded to those requests for information more quickly that in the past. On some occasions, IHMS has received the requested medical records on the same day the request was made.

Stephanie Bainat

From:	[redacted] < [redacted]
Sent:	Wednesday, 22 April 2015 3:31 PM
To:	[redacted]; [redacted]; VIDC Intel; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]
Cc:	[redacted]; [redacted]
Subject:	re: Intention to detain [redacted] - expected 26/04/2015 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon all

Please be advised that the below client is NOT ID MET and will be detained upon release from criminal detention on 26 April 2015, and transferred to VIDF and accommodated in the Blaxland compound.

Name: [redacted]
DOB: [redacted]
Client ID: [redacted]
Date of release: [redacted]
Location: [redacted]
RFS for pick up: [redacted]

CRIMINAL HISTORY

[redacted] is currently in criminal detention at Long Bay Correctional Centre – Area 1. [redacted] has been convicted of armed intent to commit indictable offence and assault occasioning actual bodily harm. He was sentenced to 2 years with a NPP of 1 year. He has had nil incidents while in criminal detention.

IMMIGRATION HISTORY

[redacted] last entered Australia on 29/11/2007 as the holder of a TU570 - Student visa. He departed on 11/11/2008 and his last arrival was on 09/01/2009 holding a TU-572 - Student Further stay onshore visa.

On 27/09/2013, [redacted] has made an application for a BS801 - Combined partner visa. He was granted a Bridging Visa C (BVC), in association with this application.
On 14/04/2015 [redacted] BVC was cancelled under s501(3A) Character Grounds. As per s501(f) "the Minister is taken to have decided to refuse the other application" as such [redacted] application for a Combined Spouse Visa is taken to have been refused.

[redacted] has indicated an intention to lodged a revocation of the Character Cancellation decision.

HEALTH

[redacted] has advised he has no medical or mental health issues. He has stated he is not taking regular medications.

Kind Regards,

[redacted]
Case Manager

NSW Character Team
Department of Immigration and Border Protection
Telephone: (02) [redacted]
Part Time: Monday, Tuesday, Wednesday and Thursday
Email: [redacted]

UNCLASSIFIED

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