**CORONERS COURT**
**OF NEW SOUTH WALES**

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| **Inquest:** | Inquest into the death of Ossama Al Refaay |
| **Hearing dates:** | 14 – 16 October 2019 |
| **Date of findings:** | 25 October 2019 |
| **Place of findings:** | NSW Coroners Court - Lidcombe |
| **Findings of:** | Magistrate Elizabeth Ryan, Deputy State Coroner |
| **Catchwords:** | CORONIAL LAW – mandatory inquest - death of a person in custody – death as result of methylamphetamine toxicity – adequacy of systems for preventing introduction of contraband into Long Bay Hospital. |
| **File number:** | 2016/110830 |
| **Representation:** | Counsel Assisting the inquest: P Aitken of Counsel i/b NSW Crown Solicitor's Office.<br>Corrective Services NSW: J de Castro Lopo, NSW Department of Communities and Justice, Legal. |

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| **Findings:** | **Identity**<br>The person who died is Ossama Al Refaay.<br><br>**Date of death**:<br>Ossama Al Refaay died on or about 11 April 2016.<br><br>**Place of death**:<br>Ossama Al Refaay died at Long Bay Correctional Facility, Malabar NSW 2036<br><br>**Cause of death:**<br>Ossama Al Refaay died as a result of acute methamphetamine toxicity.<br><br>**Manner of death:**<br>Ossama Al Refaay died as an inmate of Long Bay Hospital, when a balloon or balloons filled with methylamphetamine which he had swallowed burst or dissolved inside his abdomen. |
| **Recommendations:** | That the Commissioner of Corrective Service New South Wales consider:<br><br>1. *In circumstances where there is evidence of an attempt by a visitor to smuggle contraband to an identifiable inmate, formalising the process of notification:*<br>• *by requiring notice in writing to be provided to the relevant intelligence officer of that attempt; and*<br>• *by requiring that an alert notification be placed on the inmate's Inmate Profile Document concerning the attempt.*<br><br>2. *Increasing the period of time at Long Bay Hospital within which CCTV footage of the visiting area is retained, from 15 days to 30 days.*<br><br>3. *Trialling the use of a low dose body scanner for adult visitors visiting inmates at Long Bay Hospital, having due regard for any relevant statutory and privacy considerations.* |

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| **Non-Publication Order** | **1.That the following information contained in the brief of evidence tendered in the proceedings not be published under section 74(1 )(b) of the Coroners Act 2009 (NSW):**<br><br>*a. The names, personal information and Master Index Numbers (MIN) of any persons in the custody of Corrective Services New South Wales ('CSNSW'), other than Mr Al Refaay (Tab 37).*<br>*b. Paragraphs 7 and 8 of OIC Joseph Coorey's first statement dated 2 November 2016 (Tab 7)*<br>*c. Nominal roll Long Bay Hospital (Tab 17)*<br>*d. Prisoner Cell Register (Tab 30)*<br>*e. Floor Plan of Long Bay Hospital (Tab 56 A).*<br>*f. Employee Daily Schedule for Long Bay Hospital (Tab 44, 54 (a)(b)(f) and 74)*<br>*g. OPM Section 15.1-24 - Phone numbers on pages 19, 21, 26 (Tab 76)*<br>*h. COPP Section 17 .1 'Searching inmates' Section 1.3 and references to Security and Intelligence Branch of CSNSW and internal file numbers on page 24 (Tab 77)*<br>*i. COPP Section 17.2 'Searching Correctional Centres' (Procedure 1 of section 3.1 (page 6) and references to the 'Security and Intelligence' branch of CSNSW and internal file numbers on page 12 and 13) (Tab 77)*<br>*j. Custodial Operations Policy and Procedures (COPP) Section 17.3 (Tab 77)*<br>*(i) Policy Summary (page 1)*<br>*(ii) Scope (page 2)*<br>*(iii) Balance of document to page 26.*<br>*k. Operations Procedure Manual (OPM) Section 13.8 Crime Scene Management -in use as at 2016 (Tab 78)*<br>*I. Any Images and footage taken from CCTV.*<br><br>**2. Pursuant to section 65(4) of the Coroners Act 2009 (NSW), a notation be placed on the Court file that if an application is made under s.65(2) of that Act for access to CSNSW documents on the Court file, that material shall not be provided until CSNSW has had an opportunity to make submissions in respect of that application.** |

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Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death.

**The role of the Coroner**

Pursuant to section 81 of the Act a Coroner must make findings as to the date and place of a person's death, and the cause and manner of death.

In addition the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.

These are the findings of an inquest into the death of Ossama Al Refaay.

**Introduction**

1. On 11 April 2016 Ossama Al Refaay died in his cell at Long Bay Correctional Facility where he was on remand for charges of people smuggling.

2. As Mr Al Refaay was in custody, the responsibility for ensuring that he received adequate care and treatment lay with the State. Pursuant to sections 23 and 27 of the Act, an inquest is required when a person dies in custody to assess whether the State has discharged its responsibilities.

**Mr Al Refaay's life**

3. Ossama Al Refaay was of Iraqi background and was born on 6 September 1979 or 1981, depending on NSW or Federal police records. He arrived in Australia by boat in June 2001. He had a wife living in Uzbekistan, and was pursuing a spousal visa for her to come to Australia.

4. In 2005 Mr Al Refaay met Ms Eve Szymanska in Sydney and they formed a relationship. The couple had a daughter who is now aged 11 years. Although the relationship ended about a year after her birth Mr Al Refaay was in regular contact with Ms Szymanska and his daughter, and helped with food and bills. After Mr Al Refaay entered custody in 2015 Ms Symanska did not have any further contact with him. She did however attend each day of this inquest. While he was in custody Mr Al Refaay received visits from friends within the Iraqi community.

5. Mr Al Refaay was using methylamphetamine and oxycontin during the time of his relationship with Ms Symanska. It is not known to what extent his drug use continued afterwards. On 19 March 2015 Mr Al Refaay was arrested on charges of people smuggling and other offences. He was moved to the hospital complex within Long Bay Correctional Centre on 18 May 2015 for dental treatment, and remained there until his death. At the time of his death Mr Al Refaay was sharing a cell with an inmate BB who described him as a friendly person who spoke often about his family.

**Long Bay Hospital and Visitor Centre**

6. Long Bay Hospital is located within Long Bay Correctional Centre, and consists of two areas known as LBH1 and LBH2. LBH1 houses up to 70 inmates who are mental health patients, post surgical patients, and inmates needing aged care. LBH2 is used to house overflow of remand inmates from other gaols, and accommodates up to 250 inmates. These inmates do not necessarily have ongoing medical issues.

7. LBH1 and LBH2 share the same Visitor Centre. Visits to inmates are allowed on Thursdays, Fridays, Saturdays and Sundays, and take place in three separate rooms of the Visitor Centre. CS officers are rostered to manage and supervise visits. Each of the three visit rooms has cameras fixed to the ceiling which record constantly and are faced in different directions. As a correctional facility classified as '*maximum security'*, LBH is subject to CS policy that a strip search of all inmates be conducted after they have received contact visits.

8. On 29 January 2016 Mr Al Refaay received a visit from a person who was found to have concealed in his armpits small balloons containing tobacco. When Mr Al Refaay was interviewed he said he was expecting to be passed the tobacco, and it was intended for his own use.

9. For the following 28 days Mr Al Refaay was only permitted to receive visits on a non-contact basis, that is in a room with a glass screen and metal grille. His visitor was banned from further visits for a period of time. However no alert was entered on Mr Al Refaay's Inmate Profile as a result of the incident. The court heard this was an oversight and that ordinarily this would be expected to happen. The effect would have been that the notation would appear on records used by the Deposition Clerk on visiting days, enabling the Clerk to advise supervising officers that the inmate is at risk of trafficking contraband and may need a higher level of attention during the visit. A further consequence is that the inmate could be considered for targeted cell search.

10. On 3 April 2016 Mr Al Refaay received one of his regular visits from a Mr Eile Mazloom, who is described in CS records as Mr Al Refaay's friend. By this time Mr Al Refaay was once again being permitted the usual 'contact visits'. During the visit Mr Mazloom's feet were seen to be partly out of his shoes, arousing suspicion of an attempt to pass contraband to Mr Al Refaay. Mr Al Refaay was strip searched after the visit but nothing was found.

11. The day before he died Mr Refaay received another visit from Mr Mazloom, who was this time in the company of another male AA. The time of the visit was around or soon after 12.30pm on 10 April. On that day ten CS officers were rostered to manage visits as follows: seven to supervise the visits rooms, two to process visitor entry and exit, and one to escort inmates for legal visits. Of the staff rostered to supervise the visits area, one was monitoring the CCTV cameras and another four were directly monitoring the visits in the three rooms.

12. CS officers did not record any concerns about Mr Al Refaay's visit from Mr Mazloom and AA. However three months after Mr Al Refaay's death AA was visiting at another correctional centre and was found in the carpark in possession of a small balloon containing strips of the drug buprenorphine.

**The night of 10 April 2016**

13. During the evening of 10 April Mr Al Refaay's cell mate BB thought he seemed anxious. Mr Al Refaay told him he'd had a bad visit with his brother. In the early hours of 11 April BB heard Mr Al Refaay say something loudly in his own language, but thought he was praying and went back to sleep. At 3.40am BB awoke and went to use the toilet and found Mr Al Refaay seated on it. He was pale and unresponsive. A plastic bag had been positioned inside the toilet bowl. BB immediately called emergency services, but they could find no signs of life and he was pronounced deceased. Muslim inmates conducted prayers for him later that morning.

**What caused Mr Al Refaay's death?**

14. Forensic pathologist Dr Istvan Szentmariay performed an autopsy examination and found the cause of Mr Al Refaay's death to be acute methamphetamine toxicity. His abdominal cavity contained seven small balloons which were located in the small bowel. These were packed with a hard substance. Within the same area Dr Szentmariay identified four other balloons that appeared to have burst.

15. Subsequent sampling of the seven intact balloons established that five contained vegetable matter (probably tobacco), one contained buprenorphine, and the seventh contained methylamphetamine. The burst balloons and their remnant contents were not tested due to work health and safety risks.

16. Toxicological analysis of Mr Al Refaay's post mortem blood samples showed very high concentrations of methamphetamine, consistent with the release of methylamphetamine from the ingested material. At the inquest Dr Szentmariay described the level as *'severely high'* and commented that such a level was rarely seen in daily forensic practice. He considered it was reasonable to conclude that at least one of the burst balloons had contained methylamphetamine.

17. Dr Szentmariay was strongly of the view that Mr Al Refaay had swallowed the balloons, stating that had they been inserted via the rectum it would have been impossible for them to have migrated up the digestive tract to the location where they were found.

18. In oral evidence to the inquest Dr Szentmariay said that swallowed material generally takes between 8 and 10 hours to reach that part of the small bowel where the balloons were located within Mr Al Refaay. However this process could take longer if the material was, as were these balloons, of a larger size than most foods. Taking this timeframe into account, in his opinion it was

feasible that the balloons had been ingested by Mr Al Refaay during the visit he had received the afternoon before his death.

19. Mr Al Refaay's post mortem urine samples showed the presence of buprenorphine, although his blood sample did not. Dr Szentmariay explained that this drug remains detectable in the blood stream for up to 24 to 48 hours, but for a much longer period in urine. The test results indicated that Mr Al Refaay had ingested the buprenorphine on a separate, probably earlier, occasion to that when he ingested the methylamphetamine.

20. No other drugs were detected, and there were no external or internal injuries.

21. The above evidence enables a finding that the cause of Mr Al Refaay's death was acute methamphetamine toxicity. His death was most likely the result of one or more of the ingested balloons which contained methylamphetamine bursting or dissolving internally.

**How did Mr Al Refaay obtain the balloons?**

22. It is open to find, based on the medical evidence, that Mr Al Refaay ingested the balloons within the timeframe of the visit he received on 10 April; that is an estimated 12-15 hours before his death. The expert evidence that Mr Al Refaay had swallowed the balloons also strengthens the inference that he obtained them in the course of the visit rather than by some other means: for example, by receiving them within the prison from another inmate or a prison officer. Had he done so there would have been less of an imperative to swallow them. There is a high likelihood that the strip search which routinely follows prison visits would detect contraband concealed on the body, but it would not be capable of revealing goods which had been ingested.

23. Given this, it was naturally suspected that Mr Mazloom and/or AA may have passed the balloons of drugs and tobacco to Mr Al Refaay during their visit. Both men were separately interviewed and each denied ever having done such a thing.

24. In his interview Mr Mazloom said that during the 10 April visit he had bought Mr Al Refaay a drink and a packet of chips from a vending machine within the Visiting Centre. He denied using these to transfer anything to him or seeing AA do so. The court heard that visitors are able to buy packets of food from vending machines in the foyer of the Visiting Centre and in the visit rooms. After they are opened the packets are sometimes used to conceal contraband which the visitor has concealed on his or her person. The inmate is then able to transfer the contraband into his mouth under the guise of eating the food. AA said he was unable to remember if he'd seen Mr Mazloom pass anything to him, as he'd been '*fried'* since then.

25. The evidence tending to support the proposition that Mr Mazloom and/or AA transferred the balloons to Mr Al Refaay is as follows:

- the visit of the two men occurred within the timeframe for Mr Al Refaay's digestion of the balloons

- during the visit Mr Mazloom bought a packet of chips and a drink for Mr Al Refaay, a process well understood to facilitate transfer of contraband
- Mr Al Refaay had previously shown an intention to receive contraband using the visit process (refer paragraph 8 above).
- AA was subsequently involved in an apparent attempt to bring drugs into a correctional centre (refer paragraph 12 above)

26. Notwithstanding the above, I accept the submission of Counsel Assisting that the evidence is not sufficient to be satisfied that either these two men was responsible for bringing the balloons into the visiting area. Both men denied having done so. It can be inferred that none of the supervising officers observed anything untoward, as no reports ensued. Although CCTV cameras are in operation in the visiting rooms, by the time the relevant footage was requested it had been recorded over due to the then policy of retaining footage for seven days only. Mr Al Refaay and Mr Mazloom had had a number of phone conversations in the weeks leading up to 10 April, but when the recordings of their conversations were listened to they did not contain anything of a suspicious nature. Finally, it was acknowledged by correctional officers that transfer of contraband via the visiting process is by no means the only way inmates can get access to it.

27. As regards the circumstances of Mr Al Refaay's death, there is some evidence that he was being physically threatened by a fellow inmate or inmates to bring contraband into the gaol. The investigation was not able to produce sufficient evidence that this was the case. Nevertheless it remains a possibility, and further underlines the harm that can ensue when contraband is able to be introduced into the prison environment.

28. There is no evidence that Mr Al Refaay ingested the balloons with the intention of taking his own life.

**The issue of contraband in LBH**

29. The inquest heard evidence from a number of senior CS officers, all of whom acknowledged that the bringing of contraband into LBH is an ongoing problem with serious consequences for the health and welfare of inmates and staff. Just one of its malign effects is the enabling of a black market in goods inside prison with accompanying violence and intimidation. Another is the high risk of serious injury or death which accompanies the methods of concealment needed to avoid detection. The court heard evidence from Terence Murrell, General Manager of Custodial Corrections within CS, that for these reasons the introduction of contraband into prisons was a very significant concern for the Commissioner and the focus of much attention as to how to reduce its incidence.

30. As regards the scale of the problem at LBH, at the inquest Mr Murrell acknowledged that collectively LBH1 and LBH2 have a relatively high rate of detection of contraband. This he attributed in part to it being a transit and remand centre and therefore housing inmates who are in a less stable state of mind than those who have already been sentenced.

31. Statistics were provided to the court of the incidence of contraband being detected in LBH, but these did not identify which of the various methods of entry had been utilised. In many cases this information is simply not available. In addition to use of the visit process, known methods include introduction by mail, by means of prison officers and others who provide goods and services to the prison, the use of drones, and items being physically thrown into centres.

32. As a result it was not possible to be precise about the number of times there had been attempts, successful or otherwise, to introduce contraband into LBH by means of transfer from a visitor. One officer, Senior Correctional Officer Brendan Flanagan, believed there may typically be as many as five such incidents per month but he acknowledged this was an estimate only. He agreed with the proposition of Counsel Assisting, that given the difficulties of surveilling the large numbers of people in the LBH visit rooms (inmates and visitors alike), the most effective preventive approach would be to attempt to detect contraband on the visitors themselves before they had the opportunity to bring it into the visit rooms.

33. However this approach is problematical. There are many ways in which a visitor might conceal goods on his or her person. By comparison, the measures for detection which CS officers are permitted to take are limited by statutory and privacy considerations. Upon entering the Visiting Centre, visitors are required to put handbags and loose personal items into a locker in the foyer. They must also walk through a metal detector and have shoes and belts screened by an x-ray machine. However small items concealed under clothing or inside the mouth might well escape detection. Nor do CS officers have the powers of police officers to detain and search visitors on suspicion they are carrying contraband.

34. Mr Murrell acknowledged that targeting visitors to reduce the incidence of visitor-introduced contraband requires a careful approach. Maintaining relationships with family and friends is very important for inmates' welfare, and for their reintegration into the community once released from prison. For this reason there is a need to make the visit environment as humane as it may be, in particular for the sake of children who are visiting. On the other hand, as Senior Correctional Officer Flanagan emphasised in his evidence, CS owes a duty of care to inmates and staff to eliminate as far as possible the risks posed to them by introduction of contraband into the prison environment.

**Question of recommendations**

35. With the above in mind, at the close of the evidence three recommendations were proposed by Counsel Assisting, designed to reduce the incidence of visitor-introduced contraband. These appear in italics below.

*That consideration be given, in circumstances where there is evidence of an attempt by a visitor to smuggle contraband to an identifiable inmate, to formalising the process of notification:*

- *by requiring notice in writing to be provided to the relevant intelligence officer of that attempt; and*
- *by requiring that an alert notification be placed on the inmate's Inmate Profile Document concerning the attempt.*

36. As noted in paragraph 9 above, an alert was not placed on Mr Al Refaay's Inmate Profile after his unsuccessful attempt on 29 January 2016 to receive tobacco from a visitor. The evidence was that such a notification would not always occur, in particular where the attempt was unsuccessful. In addition the court heard there is no process, after such incidents, for a written notification of the attempt to be made to LBH's intelligence officer. I accept that both measures would be desirable, in the interests of prompting a higher level of vigilance of inmates in similar circumstances to those of Mr Al Refaay. Submissions made on behalf of the Commissioner of CSNSW indicated his support for this recommendation.

*That consideration be given to increasing the period of time at Long Bay Hospital within which CCTV footage of the visiting area is retained, from 15 days to 30 days.*

37. After Mr Al Refaay's death the period of retention of CCTV footage of the visits area was increased from 7 to 15 days. However at the inquest, Senior Investigation Officer Graham Kemp expressed that there are cases, such as that of Mr Al Refaay, where a longer retention period was necessary. Submissions made on behalf of the Commissioner were that the feasibility of this extension will be investigated.

*That consideration be given to trialling the use of a low dose body scanner for adult visitors visiting inmates at Long Bay Hospital, having due regard for any relevant statutory and privacy considerations.*

38. This proposal is directing at increasing the prospects of detecting contraband before it is able to reach the visit rooms. Low dose scanners are designed to detect items concealed under clothing. Their reflected waves are reconstructed into a 3D image which does not show human anatomy, but highlights the area of the body where an item has been concealed. Evidence was heard that low-dose scanners are in use in some privately run correctional centres in NSW, but only in relation to inmates. They are also in use for passenger screening at some Australian airports.

39. There are evident legislative, privacy and resourcing considerations surrounding this proposal. There is also however the potential for it to enable drugs and other contraband to be detected before they have even reached the visit rooms. Submissions made on behalf of the Commissioner undertook to evaluate the success of the scanners being trialled in the privately run facilities and assess whether their use in CSNSW centres is warranted and feasible.

40. I make all three recommendations, for the consideration of the Commissioner.

41. In closing, I make the following comments in relation to three issues which were canvassed in evidence at the inquest. These were the prohibition of vending machines, the level of staffing in the Visiting Centre, and whether additional training in use of the existing x-ray machines is required.

42. In their evidence two senior correctional officers expressed the view that the vending machines in the visit rooms and foyer ought to be removed. They argued this would eliminate one of the methods by which contraband is transferred to inmates via the visits process. In his oral evidence Mr Murrell acknowledged this, but drew attention to the importance of enhancing the visit experience for inmates and families. He also pointed out that there remained other ways by which contraband could be transferred from visitor to inmate during the visit.

43. The question of whether it would be good policy to remove these vending machines requires balancing the sometimes conflicting imperatives of security and inmate welfare. I note the position put by the Commissioner in response to this issue, that vending machines at LBH will not be entirely removed unless it has been established that food packets are an identified method of transfer. As regards this, the anecdotal evidence of the operational officers at inquest indicated this was a method employed for transfer of contraband. In light of this the Commissioner may wish to consider the evidence of Senior Officer Flanagan, that allowing the vending machines to contain only small packaged goods such as chocolate bars may at least reduce the scope of the problem.

44. As regards the other two issues, one senior correctional officer mentioned in the course of his evidence that he did not believe he was able to sufficiently recognise suspicious items on the screen of the x-ray machine through which visitors' shoes and belts must pass. He suggested this may be the case with others officers as well. His evidence may prompt the governor of Long Bay Correctional Facility to enquire if officers believe they need remedial training in the use of these machines.

45. Finally, operational officers who gave evidence commented that at busier visit times (mainly Saturdays and Sundays) they would be assisted with additional resources to supervise inmates and visitors. In his evidence however Mr Murrell stated that staffing levels had been agreed in consultation between management and the relevant unions. The inquest did not hear detailed evidence about the adequacy of staffing levels in the visit rooms so I do not make this the subject of any recommendation but note the comments of operational staff, for the attention of the Commissioner.

**Conclusion**

On behalf of all at the NSW Coroner's Court, I express sincere sympathy to Ms Symanska and to her daughter for the loss of Mr Al Refaay. I also express my thanks to Mr Aitken, Counsel Assisting the inquest, to Mr Bell of the NSW Crown Solicitor's Office, and to the NSW Department of Communities and Justice, Legal, for their assistance.

**Findings required by s81(1)**

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

**Identity**

The person who died is Ossama Al Refaay.

**Date of death**:

Ossama Al Refaay died on or about 11 April 2016.

**Place of death**:

Ossama Al Refaay died at Long Bay Correctional Facility, Malabar NSW 2036

**Cause of death:**

Ossama Al Refaay died as a result of acute methamphetamine toxicity.

**Manner of death:**

Ossama Al Refaay died as an inmate of Long Bay Hospital, when a balloon or balloons filled with methylamphetamine which he had swallowed burst or dissolved inside his abdomen.

**Recommendations pursuant to section 82**

That the Commissioner of Corrective Service New South Wales consider:

1. *In circumstances where there is evidence of an attempt by a visitor to smuggle contraband to an identifiable inmate, formalising the process of notification:*
   - *by requiring notice in writing to be provided to the relevant intelligence officer of that attempt; and*
   - *by requiring that an alert notification be placed on the inmate's Inmate Profile Document concerning the attempt.*

2. *Increasing the period of time at Long Bay Hospital within which CCTV footage of the visiting area is retained, from 15 days to 30 days.*

3. *Trialling the use of a low dose body scanner for adult visitors visiting inmates at Long Bay Hospital, having due regard for any relevant statutory and privacy considerations.*

I close this inquest.

**E Ryan**
Deputy State Coroner
Lidcombe
25 October 2019