An inquest into the deaths of the Australian passengers on board MH17 when it was shot down over Eastern Ukraine on 14 July 2014 was held in Melbourne, Australia, on 15 and 16 December 2015.

The inquest was notable for a number of reasons, most of them not favourable to an understanding of what happened over Ukraine that July day. Any persons relying upon media reports of the inquest would be absolutely no better informed than when the inquest began, and at least in several instances either seriously misled or, more commonly, simply not informed about the few snippets of real information that were revealed.

The overarching conclusion however, must be that this inquest was a travesty of an inquiry that did not service at all either to the coronial process or the right of the public to be better informed about one of the worst tragedies to befall Australian citizens in recent years.

The inquest was conducted over two days, but in fact occupied less than a half-day of actual evidence. The transcript ran to less than 40 pages, a third of which was occupied by testimonies of family members of the deceased passengers describing the understandably devastating consequences of their loss. Whilst obviously important from an emotional or human point of view, it did absolutely nothing to advance the principal objective of a coronial inquest, which is to determine what happened to cause the deaths of the victims.

In his Inquest Finding, an 11-page judgment delivered on the second day of the hearing, the Presiding Deputy State Coroner, Iain West, said that the finding was limited to formal findings of fact in respect of the deceased persons, and the circumstances surrounding the cause of death.

That Mr West was even presiding over the Inquest was itself curious. In November 2014 Mr West and Professor David Ranson of the Victoria Institute of Forensic Pathology jointly presented a paper to a pathology conference in Melbourne, Australia. That presentation was a slide show with oral commentary on the passengers on MH17, the circumstances of the crash, the process of recovering both bodies and the aircraft debris, the mortuary processes at Hilversum in The Netherlands, the role of the Coroner in overseeing the investigation, and a summary of their findings to date.

Those findings went well beyond the forensic examination of the bodies. It included discussion of problems of managing the crime scene, difficult criminal justice issues, and the “warfare setting”.

Professor Ranson, West’s co-author of the pathology conference paper, was in turn one of only three witnesses upon whom the Coroner’s findings were based. It is difficult to conceive of a more obvious conflict of interest. In the context of the MH17 investigation, it is matched only be the presence of Ukraine, as one of the main suspects in the case, as part of the Joint Investigation Team (JIT) conducting the parallel criminal investigation over the findings of which it holds an effective veto.
The curious structure of the Inquest was further compounded by the person assisting the Coroner during the Inquest hearing. That person was Sergeant Sharon Wade of the Police Coronial Support Unit. Erica Capuzza, the State Coroner’s Office Solicitor, instructed her.

In cases of this importance one would have expected the person assisting the Coroner to have been a senior barrister, well versed in coronial inquest law, and able to cross-examine key witnesses to test any flaws in the evidence and adduce additional information to assist the Coroner.

In fact, there was not a single cross-examination question asked of either of the two witnesses who gave oral evidence, Professor Ranson and Superintendent Andrew Donoghoe of the Australian Federal Police. Neither were any of the other parties represented by counsel, so there was no possibility of cross-examination from that source either.

The whole process left one with the uncomfortable feeling that this was not so much an inquiry to establish evidence as a pro forma process to publicly state a pre-determined conclusion that accorded with the political imperatives of this case. A reading of the media coverage of the Inquest reinforced this impression. Regardless of whether it was the reporting of the two State owned broadcasters, ABC and SBS, the private TV channels 7 and 9, the Fairfax press, or the Murdoch owned News Media press, the content (and omissions) were virtually identical.

All of the media outlets gave over the bulk of their reports to the testimony of the victim’s families. While of human interest as noted, it was completely irrelevant to the purpose of the Inquest.

Although the evidence of Superintendent Donoghoe was referred to briefly, of which more below, the most important points of his evidence, and those of Professor Ranson, were completely ignored.

The report in the Australian, the Murdoch owned newspaper that is Australia’s only national daily, opined “it’s thought Russian backed rebels shot down the jet.”

Thought by whom? The reporter possibly. By Rupert Murdoch? His media empire has waged journalistic war on Russia in general and President Putin in particular, for many years. That approach is exemplified in a banner headline in the Murdoch owned Brisbane Courier Mail of PUTIN’S MISSILE when the report of the Dutch Safety Board (DSB) was released in October 2015.

There was certainly no evidence before the Coronial Inquest that could justify such a comment. There is no evidence at all to sustain that view from the DSB report relied upon by Deputy Coroner West in his findings.

Again, one is left with the feeling that the Australian media have no interest in asking even basic questions about the shoot down of MH17, or reporting any of the extensive evidence that has emerged since 14 July 2014. The sole purpose, both of the reporter’s gratuitous comment and the willful ignoring or suppression of any significant evidence, appears to be to reinforce the notion of the culpability of the Russian backed separatists in Eastern Ukraine for the tragedy.

Regardless of any evidence that emerges to the contrary, the pre-determined conclusion is that Russia is culpable through its support of the separatists.

In her opening statement to the Court, Sergeant Wade produced the Report of the DSB published on 13 October 2015. It was formally produced to the Court as Exhibit 1. It had previously been given to the Coroner as part of his coronial brief. To exhibit a foreign report as part of a domestic inquiry implies that the contents of the report are accepted without question. That is far from the case. The means by which the DSB Report was introduced, with no-one capable of being cross-examined, reinforced the pro forma nature of the proceedings.

In his findings, given on the second day of the hearing, Mr West quoted extensively from that report. He noted that he accepted and adopted the findings of that report. Whether he had been provided with and read the extensive appendices to the DSB report was not disclosed. Cross-examination on that point would have been useful but may also have upset the carefully stage-managed nature of the inquest.

The DSB Report’s findings have been extensively analyzed elsewhere and do not form part of this analysis. One point however is noteworthy as an illustration of the flawed nature of this Inquest.

A key finding of the DSB quoted by Mr West was as follows:

“The in-flight disintegration of the aeroplane near the Russia/Ukraine border was the result of the detonation of a
warhead. The detonation occurred above the left hand side of the cockpit. The weapon used was a 9N314M model
warhead carried on the 9M38 series of missiles, as installed on the BUK surface-to-air missile.”

It is suffice to note here that the manufacturers of the BUK missile system (Almaz-Antay) carried out their own
extensive forensic tests, the results of which were ignored by the DSB (who relied upon a secret report) and by Mr
West.

The significance of the Almaz-Antay report is twofold. First, they said that the 9M38 model series missile cannot use
the warhead 9N314M. It was simply an impossible incompatibility.

Secondly, the type of warhead alleged to have been used contains just under 8000 metal elements, of which about
one-third, or 2600 fragments are of a distinctive bowtie shape.

Only three such bowtie fragments were said to have been recovered from the wreckage. For chain of custody
reasons, even those three cannot be reliably determined to have originated in the wreckage of MH17. One could not
mount a criminal case on that scant and inherently unreliable evidence.

It appears from Professor Ranson’s evidence that no autopsies were carried out on any of the 298 victim’s bodies.
Given the nature of their deaths, as rather graphically described in Professor Ranson’s reports of 25 August 2014
and 15 December 2015, being caused by injuries directly resulting from the high altitude disintegration of the
aircraft, autopsies were probably not necessary.

The absence of any autopsy evidence however, also precluded evidence about the nature of the missile that
destroyed the plane, leading inexorably as it did to the deaths of the passengers.

Further evidence from the Almaz-Antay report claimed that they were able to pinpoint more precisely the place from
where the BUK missile was fired. The DSB had only narrowed it to a 320 square kilometer area that was contested
by both sides in the on-going conflict.

The Almaz-Antay report located the missile firing from an area held by the Ukrainian forces close to the village of
Zaroschenskoe. This significant conclusion was reached on the basis of actual experiments and mathematical
calculations. The western media has ignored it. Deputy Coroner West ignored it. If he had known of the Almaz-Antay
report’s existence it should have inhibited his uncritical acceptance of the flawed DSB Report.

The firing of a BUK missile is not a case of point and shoot. It requires, inter alia, the use of ancillary radar units.
The Russian media presentation of 21 July 2014 (also largely ignored by the Australian media) demonstrated that
such radar units were operational at the material time and in the relevant location. As noted above, that was an area
controlled by the Ukrainian military.

Before dismissing the Russian evidence, as the western media almost invariably do, as having a self-interested
motive, it is important to return to the DSB Report, and in particular Appendix T, which contains the reports of the
Dutch Review Committee for the Intelligence and Security Services (CTIV).

Their findings, especially at parts 5.2 and 5.3 of Appendix T, say that there was no evidence that the separatists had
possession of powerful anti-aircraft systems such as BUK missiles. Neither was there any evidence that they had the
training necessary to fire such systems. Nor was there any evidence that the separatists had any intention of
shooting down a civilian airliner. The weaponry they did have at their disposal was incapable of operating at the
altitude that MH17 was flying.

It will come as no surprise that such evidence as adduced by the Dutch intelligence services and reported in the
appendices to the DSB report have yet to see the light of day in the Australian media. That would run contrary to the
preferred narrative and is therefore suppressed.

Although s62 of the Coroners Act (VIC) 2008 states that a Coroner holding an inquest is not bound by the rules of
evidence, that is not carte blanche to ignore relevant and compelling evidence. In the present case, given the
reliance upon the DSB Report by Mr West, his selective quoting from that report did nothing to discourage the over-
eagerness of the Australian media to continue their distorted and frankly misleading reporting of the MH17 disaster.

Apart from Professor Ranson, the only other witness to give oral evidence (excluding the victim family testimonies)
was Superintendent Andrew Donoghoe of the Australian Federal Police (AFP).

Again, the Australian media ignored the important parts of Mr Donoghoe’s evidence. He disclosed for the first time,
for example, that Australian authorities had been in direct negotiations with the separatists to allow access to the

Such reports were contrary to media reports at the time, the separatists had been of considerable assistance. The victim’s

bodies, as Mr West reinforced, had been treated with the utmost respect.

Mr Donoghoe also confirmed the existence of the agreement entered into by the governments of Australia, Belgium,

Netherlands and Ukraine on 7 August 2014 (Malaysia joined the agreement later). This agreement related to the

setting up of the JIT that is carrying out the separate criminal investigation.

The existence of this agreement has never been disclosed in the Australian mainstream media. Its contents remain
classified and resistant to Freedom of Information requests, both in Australia and in the Netherlands. I have
previously reported on those attempts. It is known however, that the agreement gives each of the government
parties a veto over the results of the JIT investigation.

This is an astonishing situation. It gives Ukraine, one of the prime suspects in the investigation, not only a role in the

investigation, but also a veto over the publication of any adverse findings. This must surely be a first in a major
criminal investigation.

The absence of any critical scrutiny at the inquest, the lack of any form of cross-examination, and the singular lack of

inquiry by Deputy Coroner West meant that Mr Donoghoe’s oblique reference confirming both the existence of the
August 2014 agreement and its astonishing provisions was completely ignored or missed by the media attending the

inquest.

Given the determined resistance by government agencies to disclosure of the terms of the agreement, and the
consistent lack of interest in establishing the truth by the Australian media, a reasonable inference would be that the
failure to report Mr Donoghoe’s evidence was deliberate rather than inadvertent.

At the conclusion of Mr Donoghoe’s written report he notes a further important point completely ignored by the
media. He pointed to the investigations being conducted by the Dutch Prosecution Service with the aim of adducing
sufficient evidence to prosecute the perpetrators of the attack. This is a separate investigation from the JIT
investigation and is potentially more important because as far as is known the Dutch Prosecution Service is not
bound by the 7 August 2014 agreement or any other similar agreement.

The interim findings of the DSB report pointed to a BUK missile with a 9N314M warhead being the cause of the
aircraft’s high altitude disintegration. As noted, there is significant doubt as to the accuracy of the DSB’s conclusion.
Mr Donoghoe’s evidence makes it clear that in order to obtain conclusive criminal evidence, to a standard that would
support a criminal prosecution, the Dutch criminal investigation needed to exclude other possible scenarios. These
other scenarios necessarily includes investigating exactly what type of BUK missile was used (if that is proven), as
well as air-to-air missiles.

He also said, without elaboration, that certain ‘persons of interest’ had been identified. Cross-examination may have
been able to provide some elaboration on that enigmatic Police-speak, without jeopardizing the integrity of the
criminal investigation and the rights of the suspects.

The JIT criminal inquiry is ongoing and not likely to report before mid-2016. Mr Donoghoe’s final sentence confirmed
that the results of the MH17 investigation would only be released after agreement between the countries parties to
the 7 August agreement. As noted above, this explosive revelation was ignored by the Deputy Coroner and by the
media.

The safest conclusion to infer from Mr Donoghoe’s evidence is that it is highly unlikely that the results of the JIT will
ever be released. The overwhelming weight of evidence points to Ukraine as the culprit and their effective veto
blocks publication of that conclusion.

It is always open to a non-party, such as the United States to release further information. The US has, as John Kerry
boasted on 20 July 2014 in his interview on NBC’s Meet the Press, exact knowledge of who fired what from where on
14 July 2014. Mr Kerry was undoubtedly alluding to information obtained from the two US satellites in geo-
stationary orbit over the Donbass region of Eastern Ukraine on 14 July 2014.

As the Americans refused to release that data to the DSB inquiry, the criminal investigation is likely to be the same
sorry farce as the Melbourne Coronial Inquiry. A golden opportunity go inform the public and bring closure to the
victim’s families has been sacrificed, yet again, on the altar of political expediency.
James O’Neill, an Australian-based Barrister at Law, exclusively for the online magazine “New Eastern Outlook”.