

# **AID TO DECISION OF CORONER WINDLEY AS TO SCOPE OF THE CORONIAL INQUIRY INTO THE DEATHS OF 51 PEOPLE IN RELATION TO THE CHRISTCHURCH MASJIDAIN ATTACK<sup>1</sup>**

## **Purpose and background to the Scope Decision**

The *Decision of Coroner Windley as to the Scope of Issues for Inquiry* (the **Scope Decision**) sets out the issues related to the deaths of the 51 people who died as a result of the Christchurch masjidain attack on 15 March 2019 that will be investigated in the coronial jurisdiction, and the reasons why.

The Scope Decision follows a lengthy process commenced by the Chief Coroner, Judge Marshall, in December 2020 to identify the issues of concern to those most affected by the attack, and which could and should be inquired into under the coronial jurisdiction. That process included Judge Marshall's 28 October 2021 Minute which set out the 56 issues she had been asked to consider, and a provisional view as to which of those she considered could and should be formally investigated in the coronial Inquiry. Coroner Windley assumed responsibility for the Inquiry in November 2021 and further written submissions were then received on the issues. A hearing took place between 22 – 24 February 2022 for Coroner Windley to hear any additional oral submissions on scope.

The atrocities of 15 March 2019 were unprecedented in New Zealand, as is the nature and scale of this Inquiry. The Inquiry is also unique in that it has followed both a criminal prosecution and a Royal Commission of Inquiry (**Royal Commission**) which had a broad mandate to investigate and make findings about the attack, together with recommendations directed at preventing future attacks.

Currently there are 119 people and organisations who have formal status as Interested Parties in the coronial Inquiry. Those Interested Parties include immediate family members of the deceased, people who were bullet-injured or otherwise witnessed the attack, and organisations recognised as representing the wider interests of the affected community.

The high level of engagement and extensive submissions that have been received from Interested Parties is testimony to the critical importance of this decision on scope.

## **What does the Scope Decision cover?**

The Scope Decision sets out:

- the context and relevance to the coronial Inquiry of other investigations into the attack that have already taken place i.e., the criminal prosecution and the Royal Commission;
- the relevant parts of the Coroners Act 2006 and caselaw principles that helps a Coroner to decide what a coronial inquiry can and should look at;
- a consolidated approach to assessing the provisional issues Interested Parties have asked the Coroner to investigate; and
- what issues the coronial Inquiry will look at, and why.

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<sup>1</sup> This aid is intended to assist Interested Parties and others in understanding key aspects of the Scope Decision. The Scope Decision stands as the formal decision of Coroner Windley on the issue of scope and in the event of any inconsistency between the Scope Decision and this aid, the Scope Decision will prevail in all respects.

The Coroners Act 2006 establishes the purposes of a coronial inquiry; those purposes are fundamental to deciding what issues a coronial inquiry should look into. The most relevant purposes for this Inquiry are:

- to establish (if possible) the identity of each of the people who died, what the cause of each person's death was, and in what circumstances did they die; and
- to make comments or recommendations (in accordance with s 57A) that may reduce the chances of further deaths occurring in similar circumstances.

A Coroner has a broad discretion to decide the issues to be looked into. Not every matter related to a death will be a matter for a Coroner to investigate; a line has to be drawn at some point. Some matters will not have caused or contributed in any significant way to the death. A Coroner must decide what is necessary, desirable and proportionate in determining the scope of the inquiry.

The extent to which the issues raised have already been examined in the course of the previous criminal prosecution or Royal Commission processes is one factor for the Coroner to consider in exercising her discretion. But it is a factor that has inevitably had a strong influence in shaping the submissions Interested Parties made to the Coroner on what the scope of the Inquiry should be. Some Interested Parties have expressed particular concern with the fact that the Royal Commission's investigation was largely undertaken in private and that together with orders that now apply to the evidence it received, they have not been able to see and consider the evidence behind the Royal Commission's findings and feel that important questions remain unanswered.

The relevance of the Royal Commission to this Inquiry was the subject of extensive discussion in the Scope Hearing and similarly is extensively explored in the Scope Decision.

### **What issues will be inquired into?**

#### *Cause(s) of death – in scope*

The cause(s) of each person's death will be a matter the Coroner will need to (if possible) make a finding on and will therefore automatically be an issue for the Inquiry.

#### *Events from the commencement of the attack until completion of the emergency response – in scope*

Some issues that sufficiently relate to the wider circumstances of the deaths but were not considered by the Royal Commission and only needed to be covered in a limited way in the criminal prosecution, will be investigated as part of the coronial Inquiry. This includes the events of 15 March 2019 starting from the commencement of the attack through to the completion of the emergency response and Mr Tarrant's formal interview by Police. Issues for investigation within this timeframe will include whether Mr Tarrant had any help from others on that day, the emergency response efforts, and whether that response may have affected the survivability of the deceased.

#### *Mr Tarrant's firearms licence – in scope*

How Mr Tarrant obtained a firearms licence was identified as an issue of particular concern to Interested Parties and is one the Coroner will inquire into. This issue, and firearms licencing law and processes generally, were matters investigated by the Royal Commission. However, the source evidence about the link between Mr Tarrant's firearms licence and how he caused the 51 deaths has, so far, not been available to Interested Parties to see and to consider but can now be made available as part of the coronial Inquiry. If a causative link between the firearms licence and the

attack can be drawn, this will allow the Coroner to also assess what progress has been made on implementing the relevant recommendations made by the Royal Commission.

*Mr Tarrant's radicalisation through social media/online digital platform use – in scope*

The extent to which social media and other online digital platforms contributed to Mr Tarrant's radicalisation is another issue Interested Parties identified as of particular concern. Mr Tarrant's social media use was examined by the Royal Commission although it was precluded from investigating private social media or online digital platform providers. The focus of the investigation by Police and the Royal Commission was the two years before the attack and had limited success in reconstructing Mr Tarrant's online activity, most likely because of his efforts to conceal that activity. There is, however, evidence to suggest he was already radicalised by 2017.

The Coroner has decided to inquire into whether there is evidence that Mr Tarrant was radicalised by way of his online activity, with a particular focus on the earlier period of 2014 and 2017 which has, as yet, not been examined. In doing so, the Coroner expressly cautions that while there is no doubt Mr Tarrant had become severely radicalised in the years prior to the attack, it may never be possible to discover the exact combination and weight of factors that operated in relation to him. The Coroner cannot embark upon an inquiry into the way social media platforms operate, or are regulated, in the abstract. Any effort to go further than the Royal Commission did to isolate any specific online platform or influence as sufficiently causally (and quantifiably) linked with Mr Tarrant's radicalisation (and therefore with the attack), is likely to encounter formidable evidential challenges. That said, the potential that a sufficient causative link may yet be possible to establish cannot be ruled out without first making additional inquiries. A progressive approach will be taken to the inquiry on this issue. Once a fuller picture of Mr Tarrant's online activity is to hand, and subject to whether it demonstrates the requisite causal link with his radicalisation, further consideration will then be given to whether this aspect of the Inquiry will be advanced further.

*Community detection and response to the risk of violent extremism in others – in scope*

The Royal Commission observed that one of the (relatively few) ways Mr Tarrant might have been stopped was if someone had noticed the signs he had become violently radicalised and had intervened. Drawing on this, the Coroner will look into the line of defence that the wider community may provide as one means of future prevention. This aspect of the Inquiry will look to credible sources for information about the signs and/or symptoms of actual or impending radicalisation, as it might affect an individual or an identifiable group, and at a practical level how might people or community groups respond to a detected risk of violent extremism in someone they know.

*Missed opportunities by intelligence, counter-terrorism agencies and other public sector agencies – out of scope*

Interested Parties have asked the Coroner to investigate whether intelligence and counter-terrorism agencies in particular had missed any opportunities to prevent the attack. This was also an issue that was extensively considered by the Royal Commission and was the subject of both findings and recommendations. The Coroner has decided to exclude this from the issues for the Inquiry. A key reason for this is that the security sensitive nature of the key evidence underpinning that issue makes it likely the coronial Inquiry would not be able to provide Interested Parties any greater access to that evidence. Nor is the Coroner otherwise persuaded that an Inquiry in the coronial jurisdiction would materially advance the issue in terms of findings and recommendations.

### *Issues too speculative or remote – out of scope*

The Coroner has decided that some issues are too speculative, remote from the cause or circumstances of death, or are otherwise not amenable to reasonable inquiry in this jurisdiction to be included. This includes Mr Tarrant's radicalisation through international travel, concerns about institutional bias in key State agencies, social cohesion, and New Zealand's immigration policy. Other issues raised that relate to matters following the deaths are excluded from the Inquiry because they fall outside the legal jurisdiction of a Coroner.

### *Summary of issues in scope*

*Appendix A* to the Scope Decision sets out in detail each issue that has been confirmed to be within the scope of the Inquiry and, where applicable, cross-references that issue with the provisional issues Interested Parties submitted should be looked into, as set out in Judge Marshall's October 2021 Minute.

In summary, the following issues are confirmed to be within the scope of the coronial Inquiry and will be taken forward for investigation:

- The cause(s) of death for each of the 51 people who died as a result of the attack.
- The events of 15 March 2019 starting from the commencement of the attack through to the completion of the emergency response and Mr Tarrant's formal interview by Police. Issues for investigation within this timeframe will include whether Mr Tarrant had any direct assistance from other people that day, the emergency response efforts, and whether any aspect of that response may have affected the ability of any of the deceased to survive their injuries.
- The process by which Mr Tarrant acquired a firearms licence, whether the licence can be linked to the attack, and whether any identified deficiencies in that process have now been addressed by way of legislative amendments or process changes.
- Whether Mr Tarrant's online activity can be shown to have played a material role in his radicalisation with a particular focus on the period between 2014 and 2017. If so, consideration will be given to examining the extent of monitoring of users for extremist content by the relevant platform(s), then and now.
- The community's ability to detect and respond to the risk of violent extremism in others.

### **Next steps and indication of inquest hearing**

The Scope Decision records the following next steps:

- Having decided on the issues, the coronial Inquiry is transitioning into the substantive inquiry phase to identify and provide Interested Parties with further evidence about each issue and to determine what, if any, further investigations and evidence is needed.
- Issues 1-9 in *Appendix A* to the Scope Decision which relate to the events on 15 March 2019 that culminated in the masjidain attack, the emergency response to those events including the initial Police investigation efforts, and issues of survivability of the deceased, plainly lend themselves to an inquest hearing as part of the coronial Inquiry. This will allow for evidence in relation to these issues to be heard and tested under oath. **No date for that inquest hearing has yet been set down.** A date will be determined in due course as part of the usual pre-inquest conferencing process.

- Whether the other issues for Inquiry will also require exploration in the forum of an inquest hearing is not known at this point in time. A decision about any additional inquest hearings will be made once the substantive inquiry phase is further progressed.