

**IN THE CORONERS COURT
AT CHRISTCHURCH**

**I TE KŌTI KAITIROTIRO MATEWHAWHATI
KI TE ŌTAUTAHI**

**CSU-2019-CCH-000165 to
CSU-2019-CCH-000214;
CSU-2019-CCH-000326**

UNDER

THE CORONERS ACT 2006

AND

IN THE MATTER OF

**An inquiry into the deaths of
51 people in relation to the 15 March
2019 Christchurch Masjid Attacks**

**SUBMISSIONS OF THE HUMAN RIGHTS COMMISSION AS
INTERVENER ON SCOPE OF CORONIAL INQUIRY**

8 February 2022

**HUMAN RIGHTS COMMISSION
J S Hancock | N J Wynne
Phone +64 9 306 2663
PO Box 6751
Wellesley Street
Auckland 1141
Email: johnh@hrc.co.nz | nickyw@hrc.co.nz**

MAY IT PLEASE THE CORONER:

Introduction

1. In a Minute dated 2 February 2022, the Human Rights Commission (“Commission”) was granted leave to intervene¹ in this coronial inquiry for the purposes of this phase regarding the inquiry’s scope.²

2. In doing so, the Coroner considered the Commission should address the following issues relevant to the suggested approach in the Minute of Judge Marshall re Scope of the Inquiry dated 28 October 2021 (“Scope Minute”) set out below in summary:³
 - (a) Whether or not the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 (“Royal Commission”) has discharged the state’s obligation to undertake a rights-compliant investigation;

 - (b) The human rights issues that are properly issues for this coronial inquiry to exercise jurisdiction to inquire into.

3. These submissions will accordingly address those two issues. In doing so, the Commission will attempt to provide the Coroner with a human rights perspective as to where the scope of the inquiry should lie. The Commission does not seek to cover all matters raised or addressed by counsel representing participants to the inquiry.

Issue One: Did the Royal Commission discharge the state’s obligation to undertake a rights compliant investigation?

4. The Commission submits that the Royal Commission of Inquiry into the Terrorist Attacks on Christchurch masjidain on 15 March 2019 (“Royal Commission”) did not discharge the state’s obligation to undertake a rights-compliant investigation and nor was it intended to. The Commission sets its reasons out below.

¹ Pursuant to the Commission’s functions under sections 5(2)(a) and 5(2)(j) of the Human Rights Act 1993.

² Minute Re Application of Human Rights Commission to Intervene in Inquiry or be Granted Interested Party Status, Coroner B Windley, 1 February 2022 at [20].

³ At [23] ref. Minute of Judge Marshall Re Scope of Inquiry, 28 October 2021 at [76].

Firstly, the scope and purpose of the Royal Commission of Inquiry was not intended to discharge the obligation

5. In the Scope Minute, her Honour Judge Marshall referred to the High Court judgment in *Wallace v Attorney-General*⁴ in which Ellis J held that section 8 of the New Zealand Bill of Rights Act (“NZBORA”) requires the state to undertake a “rights-compliant” investigation into a death at the hands of a state actor, or where a death has resulted from a breach of the State’s protective duties.⁵
6. Her Honour considered that the Royal Commission was required to consider matters that might fall to a Coroner to inquire into, including the protective duties and actions of state actors prior to the terrorist attacks as well as the personal circumstances, prior actions and movements of the terrorist himself.⁶ Her Honour accordingly concluded that the Royal Commission of Inquiry appeared to have “likely” discharged the obligation, finding that while the Royal Commission was largely conducted in private, it “sought to balance the need for transparency by other means”, including the publication of its report which contained its findings and recommendations.⁷
7. As regards her Honour’s conclusions, the Commission respectfully submits that the scope of the Royal Commission of Inquiry was never intended to fully discharge the obligation under section 8. The terms of reference of the Royal Commission limited the temporal scope of its factual inquiry to prior events related to the attack itself. The response of the police and other emergency services were therefore out of the Royal Commission’s scope of inquiry.⁸
8. Furthermore, the Royal Commission intentionally did not attempt to close the door on future legal processes or lines of inquiry or accountability for

⁴ *Wallace v Attorney-General* [2021] NZHC 1963.

⁵ See Scope Minute, summarised at [52]-[55].

⁶ At [75].

⁷ At [76].

⁸ Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 Order 2019, Schedule: Terms of Reference, [Clause 6\(3\)\(c\)](#).

affected whānau, witnesses and survivors. The Royal Commission reported that:⁹

There may be further legal and other processes that affected whānau, survivors and witnesses wish to engage in too. We consider it critical that affected whānau, survivors and witnesses are engaged with in an empowering way – that is, they are given the opportunity to collaborate in the design and delivery of such processes. This may require special legislation. This will help minimise the trauma that may come with participating in further processes in which they need to share their stories and evidence, while supporting their recovery and ensure a fair and just outcome.

9. A Coronial inquest is, of course, a legal process that the affected whānau of the deceased, survivors and witnesses may engage with. Unlike the processes used by the Royal Commission, it enables evidence to be tested in court by way of inquest. The Royal Commission's comments regarding their participation are particularly salient when considering the appropriate weight given to the submissions of the families on the matter of the scope of this inquiry. They also signal the need to ensure that the participation of affected whānau, survivors and witnesses in proceedings is not unduly limited by strict, narrow or overly technical approaches.

Secondly, the Coronial inquiry and the Royal Commission of Inquiry are complementary components of the State's human rights obligations to the affected whānau, survivors and witnesses.

10. Under Article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), States Parties have duties to provide effective remedies when human rights are violated. The New Zealand Government has ratified the ICCPR and is bound by it. It thereby has a duty to provide the affected whānau, survivors and witnesses with an effective remedy to address the grave human rights violations they have experienced as a result of the terrorist attacks.
11. The specific rights to an effective remedy for victims of terrorism under Article 2.3 of the ICCPR and corresponding State duties are set out in the

⁹ Ko tō tātou kāinga Tēnei | Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 (2020) at 751.

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹⁰. The Principles do not only establish the duty of States to provide reparatory or compensatory relief to victims, they also establish the duties of:¹¹

- (a) Satisfaction, which includes the processes, judicial and investigative, aimed at stopping violations from occurring in future; and
- (b) A guarantee of non-repetition, which includes reviewing and reforming laws, as well as promoting mechanisms for preventing, monitoring and resolving social injustice and conflicts.

12. It is submitted that the Royal Commission and the purposive and functional aspects of the coronial system under the Coroners Act 2006 address these duties in distinct, yet complementary ways. The investigative obligation under s 8 is accordingly linked to the state's remedial obligations under article 2.3.¹²
13. While Ellis J affirmed that the role of the coronial process is "most apt" in meeting the State's investigative duties under s 8,¹³ her Honour also underlined that it is the totality of investigative processes used that is relevant when calculating whether the s 8 obligation has been satisfied, finding in that case that "[e]ven viewed collectively, the inquiries¹⁴ cannot be viewed as rights-compliant because none of them can be said to be relevantly effective".¹⁵
14. The question of whether the Royal Commission has, in of itself, provided an effective inquiry for the affected families, survivors and witnesses is

¹⁰ [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) A/RES/60/147 (2006).

¹¹ At [11].

¹² The link between the right to an effective remedy and the substantive rights contained in the NZBORA itself have been reflected in a number of landmark judgments where the New Zealand Courts have applied article 2.3 when considering its remedial jurisdiction under the NZBORA. These include *Simpson v Attorney-General (Baigents's case)* 2 NZLR 667 (CA) at 704 (Gault J), *Taunoa v Attorney-General* [2008] 1 NZLR 429 (SC) at [106] per Elias CJ; *Attorney-General v Taylor* [2019] 1 NZLR 213 (SC) at [41] per Ellen France and Glazebrook JJ

¹³ *Wallace v Attorney-General*, above n 4 at [578].

¹⁴ Which in the Wallace case included the police investigation, criminal trial by way of private prosecution, investigation by the Independent Police Conduct Authority and coronial inquiry and inquest.

¹⁵ *Wallace v Attorney-General*, above n 4 at [638(e)].

clearly a matter of considerable contention and is addressed extensively in the submissions of counsel for the families.

15. While the Commission acknowledges that it is a reasonable and pragmatic need to avoid unnecessary duplication across multiple lines of inquiry,¹⁶ it is also important, that in order to meet the duty of effectiveness, a coronial process is able to inquire into events and issues not covered by a prior inquiry or investigation.
16. It is notable that counsel for families have submitted that there are key issues regarding systemic or preventive issues that were not adequately covered, or covered at all, by the Royal Commission. These include:
 - (a) The lack of a full analysis of the consequences of the failures in the firearms licencing process, including a determination whether the attacks could have been prevented but for those failures;¹⁷
 - (b) That while the Royal Commission found that there was an inappropriate concentration of counter-terrorism resources on Islamic extremism, it did not assess what preventive impact a similar concentration of those resources on right-wing extremism might have had, in particular with regard to online radicalisation.¹⁸

Thirdly, the unprecedented nature of the terrorist attack and the human rights violations that resulted requires a broad, rather than narrow, investigative response.

17. The terrorist attacks on the Christchurch masjidain on 15 March 2019 (“terrorist attacks”) were unprecedented and constitute one of the worst instances of mass murder in New Zealand’s history. Terrorism has a

¹⁶ There have been previous instances where Royal Commissions of Inquiry and coronial inquiries have examined the same event. This was the case, most recently, in the Coronial Inquiry. The collapse of the CTV Building as a result of the Christchurch Earthquake of 22 February 2011 was the subject of a Royal Commission of Inquiry as well as a coronial inquiry and inquest hearings. As regards the issue of scope of the coronial inquiry, Coroner Matenga excluded matters covered by the Royal Commission of Inquiry.¹⁶

¹⁷ N Hampton QC, K Dalziel, *Submission of Counsel for a number of families of shaheed* 9 September 2021, at [32]-[33]. NOTE: This is directly relevant to issues 4-9 in Appendix A of the Scope Minute.

¹⁸ At [29] NOTE: This is directly relevant to issues 2 and 50 in Appendix A of the Scope Minute.

grave impact on human rights. The Office of the United Nations High Commissioner for Human Rights has held that:¹⁹

Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

18. Further, as Brooke LJ observed in *R (Khan) v Secretary of State for Health*:²⁰

the more serious the events that call for inquiry, the more intensive should be the process of public scrutiny. In such cases the families of the deceased should be involved in the procedure to the extent that is necessary to safeguard their interests.

19. This coronial inquiry is directed at the most serious atrocity in modern New Zealand history. The Commission respectfully submits that in considering its scope, the Coroner should not feel unduly restricted by the ambit and findings of the Royal Commission. The views of the families as to the questions unanswered by the Royal Commission must be given considerable weight. This will ensure that the inquiry acts to empower the families and safeguard their rights and interests.

Issue Two: The human rights issues that are properly issues for this coronial inquiry to exercise jurisdiction to inquire into.

Human Rights Principles Relevant to Scope

20. The Commission submits that human rights principles are applicable to determinations regarding the scope of a coronial inquiry and the exercise of a coroner's discretion to make recommendations about matters related to death.

¹⁹ Office of the United Nations High Commissioner for Human Rights (2008) *Human Rights, Terrorism, and Counter-terrorism – Fact Sheet No. 32*. Geneva: Switzerland at 7.

²⁰ *Khan, R (on the application of) v Secretary of State for Health* [2003] EWCA Civ 1129 at [62].

21. It is well established that the interpretation of all relevant legal instruments must account for New Zealand's obligations under international human rights treaties it has ratified.²¹ The Supreme Court has held that "New Zealand law must be construed, where possible, to give effect to its international obligations".²²
22. This includes the interpretation of the functions and purpose of the Coroners Act 2006. A coronial process centred on human rights principles calls for a broad, purposive approach, over a narrow reading of the Act's provisions. Section 6 of the NZBORA requires "[w]herever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights that meaning shall be preferred to any other meaning". The Supreme Court in *Hansen* found that s 6 NZBORA "is the primary statutory direction concerning the interpretation of the Bill of Rights Act."²³ The Court notes that s 6 "adds to, but does not displace, the primacy of s 5 of the Interpretation Act"²⁴ and that s 6 therefore "makes New Zealand's commitment to human rights part of the concept of purposive interpretation."²⁵
23. These submissions also refer to non-binding international human rights documents, such as United Nations treaty body general comments, which provide interpretive guidance on human rights treaty provisions, and UN Special Rapporteur reports and findings. The Commission notes that the Court of Appeal has found that general comments are "pertinent" to the interpretative process.²⁶ When considering the application of the human rights framework, the courts have also referred in their judgments to the observations made by United Nations Special Rapporteurs.²⁷
24. The Commission further notes that jurisprudence in the area of intersectionality between human rights and death investigations has

²¹ *Chamberlain v Minister of Health* [2018] 2 NZLR 771 (CA) at [31].

²² *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462, (2011) 9 HRNZ 257 at [4] per Elias CJ; See also *Hamed v R* [2011] NZSC 101, [2012] 2 NZLR 305, (2011) 9 HRNZ 424 at [36] per Elias CJ.

²³ *R v Hansen* [2007] 3 NZLR 1 at [179] per McGrath J.

²⁴ At [252].

²⁵ At [252].

²⁶ *Quilter v Attorney-General* [1998] 1 NZLR 523, at 530.

²⁷ See *Fleming v Attorney-General* [2021] NZEmpC 77 at [34] and [65].

developed significantly in other commonwealth jurisdictions, such as the United Kingdom²⁸ and Australia.²⁹

25. The Commission submits that the primary human rights principles engaged in respect of scope are:
- (a) The right to life: s 8 NZBORA, art 6 ICCPR;
 - (b) The right of victims of human rights violations to an effective remedy: art 2.3. ICCPR; and
 - (c) The right to equality and non-discrimination: s 19 NZBORA, International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).
26. In addressing these human rights principles, the Commission will also address some of the specific issues set out in Appendix A of the Scope Minute namely:
- (a) Issue 32 (as regards first responders’ conduct);
 - (b) Issue 50 (as regards institutional bias against Muslims);
 - (c) Issues 47 (as regards cultural response); and
 - (d) Issue 10 (as regards the effect of the Royal Commission’s suppression order regarding relevant information).
27. The Commission agrees with the issues that have been deemed as falling within the scope of the inquiry as set out in Appendix A of the Scope Minute; namely issues 11 13-18, 20-31, 33-43 and 55.
28. For reasons given above, the Commission submits that careful consideration must be given to whether issues identified as covered by the Royal Commission³⁰ that remain of concern to the families should be excluded from the scope of the inquiry. The Commission submits that a human rights approach requires that any presumption of exclusion of

²⁸ *Khan, R (on the application of) v Secretary of State for Health*, above, n 20.

²⁹ Inquest into the death of Francis Robert WARD (F/No 1088/2013), Inquest into the death of Mulrunji (2006) COR 2857/04(9), Inquest into the death of Scott Simpson (988/04).

³⁰ Issues 2-9, 48-50 and 52, Appendix A of the Scope Minute.

those issues should be avoided when determining scope. The Commission understands that counsel for the families will be addressing these issues in submissions.

The Right to Life

29. The right to life is protected under international treaties and domestic legislation. Article 6(1) of the ICCPR, which New Zealand ratified in 1978, provides that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. It has been described as “the supreme right”,³¹ because without its guarantee, all other human rights would be without meaning.³² On the right to life, the Human Rights Committee (who monitors the implementation of the ICCPR) noted that:³³

The right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.

30. Consequent upon the obligation on States to protect life, there is a positive duty to prevent death. The Commission submits that the right to life can be adequately protected through a full and proper investigation of death, including any systemic matters relating to death. Referring to a suite of European Court of Human Rights cases considering the right to life, the United Kingdom Court of Appeal in *Re (Khan)* held that where the state bears a potential responsibility for the loss of life:³⁴

...the state should provide a procedural mechanism whereby the cause of death may be investigated, and responsibility for the death ascertained, through an investigation held in public which must be both judicial and effective;

[and]

³¹ [General comment no. 36, Article 6 \(Right to Life\)](#) CCPR/C/GC/35 (3 September 2019) at 1.

³² See Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd rev. ed. (N.P. Engel, 2005), at 121.

³³ [CCPR General Comment No. 6: Article 6 \(Right to Life\)](#) (30 April 1982) at [5].

³⁴ *Khan, R (on the application of) v Secretary of State for Health*, above n 20, at [62].

... the more serious the events that call for inquiry, the more intensive should be the process of public scrutiny.

31. In the Commission's respectful submission, it follows that an effective, appropriately thorough inquiry into the deaths that occurred as a result of the terrorist attacks on 15 March 2019, must take into account the conduct of first responders. Accordingly, the Commission submits that issue 32 should be included within the scope of the inquiry and address this submission in more detail below.

Issue 32: *"Were first responders from Police confrontational or aggressive in approach to some survivors?"*

32. The Commission submits that all aspects of the first responders' conduct are directly relevant and sufficiently causative to establishing the purposes outlined in s 57(2) of the Coroners Act 2006, particularly in relation to establishing the cause and circumstances of death.
33. An independent, thorough inquiry into the immediate aftermath and first response to the terrorist attacks may assist in the making of recommendations or comments by the Coroner to reduce the chances of future deaths occurring in similar circumstances.³⁵ In the Australian *Mulrunji Inquest*,³⁶ concerning the death of an Aboriginal man in custody, the Coroner made comments in relation to police training, procedure and practice when investigating deaths in custody. The Coroner also highlighted how difficulties in cross-cultural communication between police and Aboriginal witnesses may have impaired the effectiveness of the police investigation.³⁷
34. The Commission submits that the Coroner's ability to make recommendations of substantial public interest should not be limited by excluding hearing evidence relating to all aspects of the first responders' behaviour. The conduct of the first responders is inextricably linked to the issue of whether they were sufficiently equipped in terms of training and

³⁵ Coroners Act 2006, s 57A.

³⁶ [Inquest into the death of Mulrunji](#) (2006) COR 2857/04(9).

³⁷ At [39].

resources, an issue that the Chief Coroner has provisionally ruled as being in-scope.³⁸ To date, the only investigation into the emergency response has been carried out by the police.³⁹ It is fundamental that there is independent public scrutiny of the circumstances surrounding the deaths in considering what can be learned to avoid the occurrence of deaths in similar circumstances in the future.

35. Comments by a Coroner may uphold the positive duty to protect life by identifying how deaths in future terrorist attacks may be avoided. It is submitted that including issue 32 within the scope of the inquiry would allow the Coroner to inquire into not only the cause of death of a person but also the circumstances contributing to those deaths.⁴⁰
36. Case law in this country has established that for a coroner's inquest to possess a useful social function, it must be able to go beyond the mere medical cause of death.⁴¹ In *Re Hendrie*, Hardie J stated⁴²

...that the coroner must also investigate the circumstances surrounding the death. This must necessarily involve in this case not only a determination of the procedures that were employed, but also a determination as to whether the correct procedures were employed.
37. Furthermore, the Commission submits that a victims' rights approach to determining the scope of this inquiry should encompass all matters pertaining to the first responders' conduct in relation to victims, including witnesses, survivors and affected whāunau. In the Commission's submission, such an approach would grant some restoration of human dignity to victims of violations and mitigate against the risk of further victimization.⁴³

³⁸ Issue 20, Appendix A of the Scope Minute, at 7.

³⁹ Operation Deans – Evidential Overview 15 March 2019.

⁴⁰ Coroners Act, s 57.

⁴¹ *Re Hendrie HC Christchurch* CP445/87, 12 January 1998 at [11].

⁴² At [11].

⁴³ The concept of 'secondary victimization' is discussed further at paragraph [46] below.

The Right of Victims of Human Rights Violations to an Effective Remedy

38. As referred to previously, international human rights principles provide that the affected whānau and witnesses of the terrorist attacks are victims of rights violations for the purposes of art 2.3 of the ICCPR. The UN Basic Principles provide: ⁴⁴

For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

39. The UN Basic Principles sets out a broad range of remedial obligations upon the state. As outlined above in paragraph these include the obligations of satisfaction and the duty to guarantee non-repetition, both of which engage the procedural duty to undertake effective, rights complaint investigations. The UN Basic Principles also provides for the right to seek and obtain information about the causes and conditions that led to the violation of rights, so that victims may learn the truth.⁴⁵
40. The UN Basic Principles also includes rights to compensation, reparation and restitution, among other things. However, these aspects are only part of the overall remedial framework that the state is required to implement. Further to that point, the Commission acknowledges that matters relating to financial compensation are not within the parameters of the Coroner’s jurisdiction.
41. The UN Basic Principles are based on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (“the Declaration”), adopted by the UN General Assembly on 2 November 1985.⁴⁶ It is notable

⁴⁴ [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims](#), above n 10, at [8].

⁴⁵ At [24].

⁴⁶ [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) GA Res 40/34 (1985).

that New Zealand was a co-sponsor of the Declaration, which encouraged states to implement its principles. The Declaration is premised on the notion that victims should be treated with compassion and respect for their dignity, and that they are entitled to redress for the harm that they have suffered. It recommends measures to be taken on behalf of victims of crime to improve access to justice and fair treatment, restitution, and assistance. The Declaration defines 'victims' in the same general terms as the UN Basic Principles.⁴⁷

42. The Declaration's key principles are as follows:

- (a) Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered;⁴⁸
- (b) The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (i) Informing victims of their role and the scope, timing and progress of the proceedings, especially where serious crimes are involved and where they have requested such information;⁴⁹
 - (ii) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected;⁵⁰
 - (iii) Providing proper assistance to victims throughout the legal process;⁵¹ and
 - (iv) Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well

⁴⁷ *Declaration of Basic Principles of Justice for Victims* above, n 46, at [1].

⁴⁸ At [4].

⁴⁹ At [6(a)].

⁵⁰ At [6(b)].

⁵¹ At [6(c)].

as that of their families and witnesses on their behalf, from intimidation and retaliation.⁵²

43. The United Nations' *Handbook on Justice for Victims*⁵³ ("the UN Handbook") identifies the State as assuming a dominant role in the justice process, where crimes are generally treated as being committed against the State and its communities, rather than crime being a violation of the victim's rights.⁵⁴ A corollary to the State's dominance in the justice process has meant that victims are afforded fewer opportunities to participate.
44. Inclusion and participation are key human rights principles. All victims should have access to the justice and legal system and be supported in their efforts to participate, including through access to information, timely notification of significant events and decisions, the provision of information on the procedures and processes involved, and assistance when there are opportunities to be heard.⁵⁵
45. It is well established that the impact of victimisation is often great and far reaching, and can include physical and psychological injury, as well as financial and social cost.⁵⁶ Victims of crime are also often subjected to secondary victimization, which refers to "the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim".⁵⁷ Particularly in the context of the aftermath of the terrorist attacks, secondary victimization is likely to occur through difficulties faced by affected whānau and survivors in accessing restricted or suppressed material and in a different or unfamiliar language.
46. The UN Handbook addresses the concept of secondary victimization which occurs not as a direct result of the criminal act, but through the

⁵² *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* GA Res 40/34, above n 46, at [6 (d)].

⁵³ [Handbook on Justice for Victims](#): on the use and application of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999).

⁵⁴ At 1.

⁵⁵ At 34.

⁵⁶ At 4-6.

⁵⁷ At 9.

response of institutions and individuals to the victim.⁵⁸ The UN Handbook notes that institutionalised secondary victimization at times may:⁵⁹

...amount to a complete denial of human rights to victims from particular cultural groups...through a refusal to recognize their experience as criminal victimization. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel.

Issue 10: “Why was the terrorist RCOI interview suppressed for 30 years?”

47. The Commission submits that it is within the Coroner’s discretion to allow a coronial process which may include allowing the survivors, witnesses and affected whānau greater access to material considered by the Court.
48. The issue of access to information engages issue 10, which regards the Royal Commission’s suppression orders over the evidence it heard during its inquiry. While the issue, on its own, is remote from the causes or circumstances of death, it is directly relevant to the right to an effective, rights compliant investigation, as well as the remedial right of victims of terrorism to access to information.⁶⁰
49. At the conclusion of the Royal Commission of Inquiry into the Terrorist Attacks on Christchurch masjidain on 15 March 2019, an order pursuant to s 15 of the Inquiries Act 2013 was issued, permanently suppressing information it had obtained during its Inquiry.⁶¹ This included certain information regarding the terrorist, including interviews that were had with him.⁶²
50. While it is acknowledged that there are national security and confidentiality justifications for the suppression of certain information, the Commission notes that the limited flow of information from the Royal

⁵⁸ *Handbook on Justice for Victims*, above, n 53, at 16.

⁵⁹ At 16.

⁶⁰ *Human Rights, Terrorism, and Counter-terrorism – Fact Sheet No. 32*, above, n 19, at [11].

⁶¹ Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 (2020) [Minute 4: Final Minute](#) – Access to Inquiry documents and Non-publication of names of witnesses and participants available.

⁶² At [47]-[52].

Commission to affected whānau and survivors to provide answers has caused confusion and distress. As outlined in the Commission's Report, *Reflections on the Report of the Royal Commission of Inquiry into the terrorist attacks on Christchurch Masjidain On 15th March 2019* ("Reflections Report"), the suppression order is a blunt instrument, which applies equally to evidence procured regardless of the designation of the person providing it or its sensitivity.⁶³

51. The Royal Commission also appears to have taken a narrow approach to engagement and consultation with affected whānau. For example, the Royal Commission did not call for applications from the affected community to be designated as core participants, pursuant to s 17 of the Inquiries Act 2013. Section 17 provides that in determining whether to designate a person as a core participant, the inquiry must consider whether that person:

(a) played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates:

(b) has a significant interest in a substantial aspect of the matters to which the inquiry relates:

(c) may be subject to explicit or serious criticism during the inquiry or in the report.

52. Persons granted core participant status have the right to give evidence and make submissions to the inquiry, subject to any directions of that inquiry.⁶⁴ By contrast, the Royal Commission of Inquiry into Abuse in Care provides for a process for interested persons to participate in their substantive work through core participant applications.⁶⁵ Furthermore, the Commission is not aware of the Royal Commission consulting with the affected community regarding the scope of their investigation, for example, by way of publishing a provisional list of issues for feedback.

⁶³ New Zealand Human Rights Commission. [Reflections on the Report of the Royal Commission of Inquiry into the terrorist attacks on Christchurch Masjidain On 15th March 2019: Human rights of affected whānau, survivors and witnesses to accountability and remedies in the aftermath of the Report.](#) (2021) at 10-11.

⁶⁴ Inquiries Act 2013, s 17(3).

⁶⁵ Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions [Minute 1 – Procedural Hearing](#) 2 July 2019.

53. Another example of a more participatory model of inquiry is the Undercover Policing Inquiry (“UCPI”) in the United Kingdom, tasked with investigating undercover policing practices in England and Wales in response to appalling practices revealed in undercover policing,⁶⁶ has to date designated 248 individuals and groups. Those granted core participant status cover a range of people impacted by undercover policing practices, such as relatives of deceased individuals, social, political and environmental activists, and individuals in relationships with undercover officers. This approach has been taken despite the sensitive nature of UPCI’s work, much of which pertains to issues of national security.
54. The Royal Commission’s narrow approach to enabling participation was in some respects reflective of its terms of reference, which provided for no explicit line of inquiry in respect of the victims of the attacks and their families. This is reflected in the relatively very few recommendations (3 out of 44) directed at supporting the affected families, none of which included a specific item on remedy or redress.⁶⁷ Furthermore, while it is acknowledged that the Royal Commission established a Muslim Community Reference Group, there is little transparency as the extent to which victims and survivors were able to properly engage in the Royal Commission’s decision-making process, particularly in circumstances where there were no open hearings.⁶⁸
55. The coronial process is not bound by the rules of evidence and can be driven by the exercise of discretion within the bounds of the Coroners Act 2006. In giving judgment of the court in *Hay*, Brooke LJ acknowledged the broad discretion of a coroner in setting the scope of an investigation:⁶⁹

⁶⁶ Ellison QC, M. [THE STEPHEN LAWRENCE INDEPENDENT REVIEW](#) *Possible corruption and the role of undercover policing in the Stephen Lawrence case* (6 March 2014).

⁶⁷ Recommendation 27 directs the Department of Prime Minister and Cabinet to discuss restorative justice processes with the affected community, but only goes as far as facilitating discussions with affective whānau about their interest in restorative justice processes from which redress may potentially follow and remedies may be identified.

⁶⁸ As noted in the Commission’s Reflections Report, it is understood that there was no consultation with affected whānau, survivors or witnesses prior to suppression orders being issued by the Royal Commission.

⁶⁹ *R v Coroner for Lincolnshire, ex parte Hay* (1999) 163 JP 666, at [46].

Subject to the need to obey the requirements of the Act and the Rules, it is for each coroner to decide how best he should perform his onerous duties in a way that is as fair as possible to everyone concerned...

56. Accordingly, the coronial process constitutes an entirely distinct inquiry from that of the Royal Commission, one that can enable greater access to information for affected whānau, participation, and respect for the cultural and spiritual needs for survivors, witnesses, and families.

Issue 47: “*Cultural response and coronial inquiry.*”

57. The Commission submits that in determining the scope of the inquiry, it is appropriate to apply a broad approach in recognising the cultural and spiritual needs of the affected whānau in accordance with the purpose section of the Coroners Act 2006.⁷⁰
58. The Court, for example, might consider the observation of religious days when hearing dates are set down, translating significant documents into relevant languages, and appointing cultural navigators/translators to support affected whānau and survivors during the coronial process.

Equality and non-discrimination

59. The Commission submits that the issue of discrimination is relevant to this inquiry and therefore issue 50 (institutional bias against Muslims) should be included in the scope of the inquiry.
60. In its final report, the Royal Commission found that there was an “inappropriate concentration of resources on the threat of Islamist extremist terrorism” and that that concentration was not based on an informed assessment of the threats of terrorism associated with other ideologies. Despite the Royal Commission concluding that the inappropriate concentration of resources did not contribute to the terrorist attacks being detected, the Commission considers that residual issues

⁷⁰ Coroners Act, s 3(2)(b)(i).

remain, including the potential existence of systemic discrimination within the intelligence and security agencies prior to the terrorist attacks.⁷¹

61. A fundamental principle in core human rights treaties is that people should not be discriminated against on the grounds of their status.⁷² Article 2(1) of the ICCPR provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

62. Furthermore, article 26 ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

63. On the basis that there appears to be a residual issue of discrimination following the Royal Commission's findings, the Commission submits the Court should include the issue of institutional bias against Muslims within the inquiry's scope. This issue is discussed in more detail below.

Issue 50: "*Institutional bias against Muslims.*"

64. The Commission submits that the scope of the inquiry should extend beyond the emergency response to identify any systemic issues that could be subject of comment or recommendation by the Coroner.

⁷¹ As outlined in the Commission's Reflections Report, above, n 63, at 11.

⁷² The prohibition has place in all key human rights treaties: art 10 International Covenant on Economic, Social and Cultural Rights; art 2 ICCPR; art 2 United National Convention on the Rights of the Child; art 1 Convention on the Elimination of All Forms of Discrimination against Women; art 3 Convention on the Rights of Persons with Disabilities.

65. The Royal Commission was tasked with inquiring into the public sector agencies' counter-terrorism effort, including whether there was an inappropriate concentration of resources on other terrorism threats that resulted in a failure to plan or anticipate the terrorist attack.⁷³
66. On this issue, the Royal Commission found there was an inappropriate concentration of resources towards Islamist extremism. However, it also found that no Public sector agency involved in the counter-terrorism effort failed to meet required standards or were otherwise at fault with respect to their lack of detection of the terrorist's planning.⁷⁴
67. In the Royal Commission's final report, a number of related questions from the community on the issue of institutional were answered only in general terms. For example, questions were asked on whether cultural competency and unconscious bias training is provided to Public sector agencies. In response to such questions, the Royal Commission said that decisions to provide such training are made at the individual Public sector agency level.⁷⁵ However, no findings are made in relation to whether institutional bias against Muslims existed within the Public sector agencies in their counter-terrorism effort.
68. The Royal Commission simply found that there was an inappropriate concentration of resources towards Islamist extremism but was not otherwise at fault, despite the Royal Commission finding that the agencies should have turned their attention towards the threat of extreme right-wing terrorism in response to the sharp increase in far-right activity internationally.⁷⁶
69. The affected whānau and wider Muslim community are therefore unclear on whether, if institutional bias was found to exist, any efforts to tackle such bias could have prevented, or prevent in the future, racially or religion-fuelled attacks.

⁷³ Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 Order 2019, above, n 8 at cl 4(c).

⁷⁴ Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, above n 9, at p. 621.

⁷⁵ At 718.

⁷⁶ At 593.

70. Further, it is important to note that the Royal Commission narrowed their inquiry into the Public sector agencies' counter-terrorism effort to refer specifically to the terrorist attacks carried out on 15 March 2019.⁷⁷ In other words, the Royal Commission did not inquire into whether certain factors (such as institutional bias against Muslims) that existed within the Public sector agencies, if addressed, could have prevented any attack by identifying an increase in the prevalence of right-wing extremism.⁷⁸ This is an important consideration, given the Royal Commission's conclusion that lone actors are less likely to be detected by the intelligence and security agencies.⁷⁹
71. The sum of these findings is a lingering impression of insufficient government accountability as to the issue of institutional bias and any contributory factor it may have had in the failure by the intelligence and security agencies to prevent the attacks. The importance of accountability in the context of securing the human rights of victims of terrorism was discussed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur opined that minimum requirements to be satisfied in the investigation of terrorist attacks include:⁸⁰
- The investigation must be capable of leading to the identification and punishment of those responsible. The principle of accountability extends to situations in which it is alleged that public officials have...negligently failed to prevent a terrorist act.
 - ...
 - There must be a sufficient element of public scrutiny of the investigation and its results to secure public accountability. This is essential to maintaining public confidence in the authorities' adherence to the rule of law, and prevents any appearance of collusion in, or tolerance of, unlawful acts or omissions [footnotes omitted].

⁷⁷ Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019. Above n 9, at 593.

⁷⁸ The number of right-wing extremism subjects of interest in New Zealand Security Intelligence Service counter-terrorism investigations increased post-15 March 2019 from zero to 16 by 31 January 2020. See Figure 47 at 599.

⁷⁹ Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019. Above n 9, at 410.

⁸⁰ [Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#) A/HRC/20/14 (4 June 2012) at [36].

72. Accordingly, the Commission submits that it would be appropriate for the Coroner to include within the scope of the inquiry any systemic failings stemming from institutional bias or discrimination that may have contributed to the lack of counter-terrorism information on the terrorist and his plans prior to the attacks.
73. This issue is relevant to the cause of death because the terrorist targeted a religious group who were also subject to the disproportionate focus from the security and intelligence agencies as terrorist suspects. The issue of remoteness can be satisfied because the Government has acknowledged and apologised for the “disproportionate scrutiny” of Muslim communities by the agencies prior to the terrorist attacks. The Royal Commission only looked into institutional bias against Muslims to a certain degree, leaving the residual issue of whether the deaths could have been prevented, had any institutional bias been addressed.

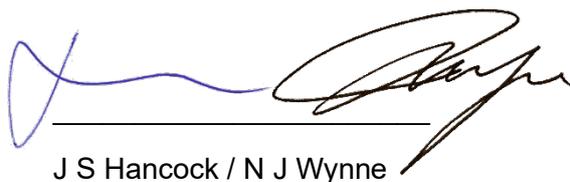
Conclusion

74. In conclusion, the Commission submits that human rights principles support adopting a broad, systemic approach to determining the scope of the inquiry that would enable the making of systemic recommendations that may prevent future deaths occurring in similar circumstances. Among other things, this approach entails that:
- (a) The Royal Commission did not discharge the state’s human rights obligation to undertake an effective rights-complaint investigation;
 - (b) The coronial inquiry should be complementary to, but not be unduly restricted by, the ambit of the Royal Commission of Inquiry nor its findings;
 - (c) The unprecedented nature of the terrorist attacks and the gravity of its impact upon the human rights of the victims requires a broad, rather than narrow, approach to this inquiry;

- (d) Significant weight should be accorded to the views of the affected families, survivors and witnesses as to issues of scope;
- (e) The Coroner should avoid a presumptive approach to excluding issues purportedly covered by the Royal Commission, particularly those issues that the families submit were not addressed adequately or not at all;
- (f) Issue 32, regarding the approach of first responders and issue 50, regarding institutional bias against Muslims are directly relevant and sufficiently causative to the deaths to be included within the scope of the inquiry; and
- (g) The coronial inquiry must be undertaken in a way that empowers the affected families, survivors and witnesses and safeguards their rights and interests.

75. The Commission respectfully seeks leave to address the Coroner on these submissions at the scope hearing to be held on 22-24 February 2022.

Dated 8 February 2022

A handwritten signature in blue ink, appearing to be 'J S Hancock / N J Wynne', written over a horizontal line.

J S Hancock / N J Wynne

Counsel for the Human Rights Commission