Submissions of the Islamic Women's Council of New Zealand (IWCNZ) to the Coronial Inquiry into the Scope of Coronial Hearing

8 February 2022

Introduction

1 The scope of the inquiry, opened into the deaths of each of the 51 people who died as a result of the Christchurch terrorist attacks on 15 March 2019, has not yet been finally determined. On 28 October 2021 Judge Marshall issued a minute, intended only as a "starting point".[1] Judge Marshall anticipated "an iterative process to refine the scope of the coronial inquiry" and flagged that interested parties would "have an opportunity to make further submissions on issues to be included within the scope of the inquiry".[2]

2 Judge Marshall set out seven factors as key considerations guiding the assessment of what are properly matters for the inquiry (expressed in slightly condensed form below):

(i) Whether an issue is relevant to the cause or circumstances of a death under inquiry;
(ii) Whether an issue is too remote from the death(s) to be regarded as sufficiently causative;
(iii) Whether an issue raises concerns about high-level government or public policy which may be too remote from the death(s) or is otherwise not amenable to reasonable inquiry in the forum of a coronial inquiry and inquest;
(iv) Whether the issue lends itself to potential comments or recommendations to reduce the chances of deaths in similar circumstances;
(v) Whether the issue was within the mandate of another inquiry, proceeding or investigation, and whether that other inquiry, proceeding or investigation adequately established the key matters to be established by a coroner under s 57(2) of the Coroners Act 2006;
(vi) Whether the issue was the subject of a recommendation made by the Royal Commission of Inquiry;
(vii) Whether the issue was otherwise addressed by legislative reform "in the intervening period".

3 As well as these seven factors, Judge Marshall referred to the exercise of the Coroner's discretion in determining the scope of the inquiry, and the touchstone of what would be

[1] See Minute at [4].
[2] Ibid.

"necessary, desirable and proportionate".[3] That same touchstone was referred to in an aid to the minute of Judge Marshall as to the scope of the inquiry.[4]

4 Judge Marshall's preliminary decision was that the question of how the terrorist was radicalised and how this could be prevented in the future (named as 'issue 2' in Appendix One to Judge Marshall's minute) was outside the scope of the inquiry. This question included the subquestion of why his online activity and devices remain largely uninvestigated, and what regulatory or legislative or other steps could be taken in relation to accessing and controlling websites and online gaming that incite dehumanisation and violence. She noted that "[s]ubject to further written and oral submissions that may be received or made on scope", her view was that issues 2–10 (as well as 32, 44–54, and 56) were not within scope because they were "not relevant to the cause and circumstances of the deaths under inquiry".[5] Judge Marshall was also of the view that the Royal Commission of Inquiry explored the "potential influences" on the attaacker's "radicalisation to violence".[6] She concluded that issues 2–9 (as well as 48–50 and 52) should be excluded "on the basis that they have already been the subject of the independent inquiry by the RCOI".[7]

IWCNZ position

5 IWCNZ submits that the role of digital platforms in contributing to the behaviour of the Christchurch attacker is an issue properly within the scope of the coronial inquiry. 'Digital platforms' is a commonly used term, referring to online venues that offer (among other things) the capacity to exchange information and resources. Digital platforms include social media platforms like Facebook and Twitter, discussion board websites like 4chan and 8chan, chatrooms adjacent to and within online gaming venues (including games involving first-person shooter activity), and sites hosting cryptocurrency activity. Allowing submissions on this topic will ensure the coronial inquiry can investigate: the contribution of digital platforms to the formation of the Christchurch attacker's beliefs and radicalisation; the role of those platforms in enabling the attacker's views or plans to be

[3] Ibid at [74].
[4] See p 1 of that aid: "A Coroner must decide what is necessary, desirable and proportionate in determining the scope of the coronial inquiry."
[5] Ibid at [73].
[6] Ibid at [75].
[7] Ibid at [78].

reinforced; the extent to which those platforms enabled practical guidance to be given to the attacker; recommendations to the legislature about these platforms; and any other matter Coroner Windley considers relevant, in light of the requirements of the Coroners Act 2006.

6 IWCNZ sets out its reasons for this submission in the following pages. This submission follows the seven factors set out by Judge Marshall (subject to some comments, in particular on how "remoteness" is characterised). For ease of reference it has grouped them under the following three broad headings: causal and circumstantial relevance; appropriateness of investigation for coronial inquiry; and whether the issue is already addressed by the Royal Commission, legislative reform, or any other investigation. Introductory comments are made on how these seven factors should be viewed through the lens of the Coroners Act 2006; the New Zealand Bill of Rights Act 1990; administrative law requirements; and case law on coronial inquiries, in New Zealand and from Australia and the United Kingdom.

7 IWCNZ submits that the overarching legal framework under which the Coroner considers and determines the scope of her inquiry favours a permissive, generous, and flexible approach which will include inquiry into the role of digital platforms so as to help prevent future deaths in similar circumstances and promote justice. This framework is discussed below.

The Coroners Act 2006

8 The purpose of this Act, as noted in s 3, is "to help to prevent deaths and to promote justice". This should be the overriding aim of the Coroner when determining the scope of this inquiry. Section 3 explains that this is done through investigations, and identifications of causes and circumstances, of certain deaths; and making recommendations that may reduce chances of further deaths. The same provision also underscores (in s 3(2)(b)(i)) the cultural and spiritual needs of family, and people in close relationship to, a person who has died – and (in s 3(2)(b)(ii)) the "public good associated with a proper and timely understanding of the causes and circumstances of deaths".

9 These provisions highlight the importance of the causes and circumstances of deaths, and make clear that the Coroner must be timely in reaching an understanding of causes and circumstances, but that understanding must also be proper. Section 5 repeats that a coroner must act without delay, though this must only be done "so far as it is consistent with justice and practicable to do so": suggesting that justice is the paramount guide for the Coroner, with timeliness being a secondary but important consideration.

10 Coroners' inquiries have the purposes set out in s 57. They must establish, first, "so far as possible", that a person has died, the person's identity, when and where the person died, the causes of the death, and the circumstances of the death. Given that in this case the fact of death, identity, and location are not in issue (there are some questions over timing of individual deaths that are not the subject of this submission), the primary relevant considerations in relation to the Christchurch attacks are the causes and circumstances of death.[8] Second, inquiries exist to make recommendations or comments. Third, inquiries will help determine whether the public interest would be served by a death being investigated by other authorities.

11 Section 57A guides the making of recommendations or comments, and allows recommendations or comments to be "made only for the purpose of reducing the chances of further deaths occurring in circumstances similar to those in which the death occurred": s 57A(2). Section 57A(3) requires that recommendations or comments be clearly linked to factors that contributed to death; evidence-based; and accompanied by an explanation of how they might reduce the chances of further deaths in similar circumstances. Section 57B requires certain persons or organisations to be consulted when recommendations or comments are made. Section 58 requires natural justice to be afforded to bodies that are the subject of adverse comment by a coroner.

12 Section 117 observes that a coroner has the same powers, privileges, and authorities (and immunities) as a District Court Judge, including the power to issue summonses and issue warrants to enforce such summonses. Under s 118 a coroner can call for any investigations or examinations, or can commission any reports, "medical or otherwise", that the coroner thinks proper. A coroner can require any person, by written notice, to supply information

[8] It is noted that there are some questions over timing of individual deaths. These are not the subject of this submission.

or a class of information under s 120; s 120(3) makes clear that this applies to a natural person or body corporate.

13 Importantly, notwithstanding that the decision on scope of inquiry is pre-eminently for the Coroner, there is no explicit provision in the Coroners Act requiring the Coroner to circumscribe the scope of any coronial inquiry.

The New Zealand Bill of Rights Act 1990

14 The New Zealand Bill of Rights Act applies to acts done by the judicial branch of government, under s 3 of that Act. The Coroner's Court is part of the judicial branch. In *Fitzgerald v R*,[9] Winkelmann CJ in the Supreme Court recently said: "judges are bound by the Bill of Rights and must respect and affirm the rights and freedoms preserved there. That is the effect of s 3 of the Bill of Rights."[10] The same must be true of coroners, given that coroners and the Coroner's Court form part of the judicial branch. Section 6 of the Bill of Rights says: "wherever 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." Chief Justice Winkelmann added in *Fitzgerald*: "s 6 is naturally read as creating a starting presumption that a rights-consistent meaning should be given to enactments where the application of that enactment to a particular case engages the affirmed rights and freedoms, in the sense that it touches upon those rights and freedoms."[11]

15 IWCNZ submits that the Coroners Act, in particular the statutory purpose of helping to prevent deaths and promote justice, should be given a rights-consistent meaning by the Coroner in this case that favours a broad approach to the scope of the inquiry. Two rights are relevant or touched upon in a decision about the scope of an inquiry: the right to life (s 8 of the Bill of Rights) and the right to justice (s 27).

(i) The right to life

[9] [2021] NZSC 131.
[10] At [118].
[11] Ibid at [48].

16 The minute on the scope of the inquiry issued by Judge Marshall has already noted, recounting the recent decision in *Wallace v Attorney-General,*[12] that s 8 refers not only to the need for the state to protect the right to life, but (as part of that right) the need for the state to investigate certain deaths. Section 8 "not only permits, but in fact requires, the inclusion of an obligation to investigate a death that has occured at the hands of a State actor".[13]

17 Judge Marshall went on to say that the "s 8 obligation for a 'rights-compliant investigation is not confined to cases where death is directly and immediately at the hands of the State" but also applies to "a breach of the State's protective duties".[14] Judge Marshall, citing *Wallace* and recent United Kingdom jurisprudence,[15] noted that a rights-compliant investigation must satisfy five criteria: it must be independent, be effective, be timely, be conducted in public, and provide an opportunity for the family of the deceased to be involved.

18 Judge Marshall did not consider it necessary to consider whether there had been an arguable breach of s 8's duty to undertake a rights-compliant investigation: whether, in other words, the five criteria had been satisfied thus far in relation to inquiries into the Christchurch attacks. But Judge Marshall did reach a preliminary view that the Royal Commission of Inquiry "appears likely to discharge the State's obligation to undertake a rights-compliant investigation."[16] It is suggested that such a conclusion requires further argument, and that the Coroner making a decision about scope should err on the side of broader consideration of issues, to ensure the investigation is "effective" (as required by s 8). It is accepted that the inquiry must also be timely; but 'timely' refers to appropriate time, and it is submitted that it is appropriate that an investigation of an attack at this scale and causing such harm is accorded significant time.

(ii) The right to natural justice

[12] [2021] NZHC 1963.
[13] At [52] of the minute.
[14] At [56].
[15] In particular *Jordan v United Kingdom* [2001] ECHR 327.
[16] At [76].

19 Section 27 of the Bill of Rights also points to a coroner taking a more permissive, generous, or flexible approach to the scope of the inquiry. It guarantees that every person "has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law." The Coroner's Court is a tribunal or public authority to which this provision applies; a decision on scope is a determination in respect of the rights or interests of parties, including the Islamic Women's Council of New Zealand. The content of principles of natural justice was well elaborated by Elias J (as she then was) in *Ali v Deportation Review Tribunal*, where her Honour said:[17]

> Fundamental to the principles of natural justice is the requirement that where the circumstances of decision making require that someone affected by it be given an opportunity to be heard, that person must have reasonable opportunity to present his case and reasonable notice of the case he has to meet. The more significant the decision the higher the standards of disclosure and fair treatment.

20 Ensuring that interested parties in the coronial inquiry have a "reasonable opportunity to present [their] case" entails making a decision on scope that does not unduly restrict the ability of parties to submit on matters that they consider relevant to the inquiry. Put another way, natural justice militates in favour of a generous, permissive, or flexible approach to scope. The decision on scope is particularly significant, rendering "standards of ... fair treatment" correspondingly higher, given that individuals represented by the Islamic Women's Council of New Zealand have been deeply affected by the Christchurch attacks (including through loss of life of family members), as well as other associated threats via social media.

Administrative law

21 The same obligation on the Coroner's Court to respect principles of natural justice, and accordingly to adopt a broach approach to scope, arises under administrative law.[18] A reasonable opportunity for interested parties to present their case entails avoiding overly restrictive efforts to winnow down the coronial inquiry at an early stage.

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[17] [1997] NZAR 206 (HC) at 220.

[18] See, for example, *Daganayasi v Minister of Immigration* [1980] 2 NZLR 30 (CA); at 141 it is noted that natural justice is "but fairness write large and juridically, fair play in action."

22 Also relevant in relation to administrative law are the principles governing how public bodies are to exercise their discretion, set out in *Padfield v Minister of Agriculture, Fisheries and Food*[19] and later cases. Discretion must not be exercised in a way that frustrates the object of the Act which confers the discretion.[20] In this case that means that the Coroner must not exercise the discretion to determine the scope of the inquiry in a way that frustrates the purpose of the Coroners Act 2006, which (as noted in s 3) is "to help to prevent deaths and to promote justice". If there is a reasonable possibility that hearing submissions on a topic could "help to prevent deaths and to promote justice", those submissions should not be ruled out of scope at the outset; to do so would be an improper exercise of discretion. Discretion must be exercised according to law. Put another way: while the discretion of the Coroner is broad, it cannot be exercised in a way that means the Coroner does not fulfil functions set out in legislation, including establishing "the causes" and "circumstances" of deaths. As well, the Coroner ought not to fetter the discretion to determine the scope of the inquiry by adopting arbitrary or artificial exclusions on subject-matter that could turn out to be ill-advised.

Case law on coronial inquiries

23 Additional guidance can be drawn from case law, especially from New Zealand, the United Kingdom and Canada, due to their comparable legal systems. In *Matthew v Hunter*,[21] Heron J underscored that while a coroner is confined to statutory purposes when making recommendations, the coroner has a "useful public voice" and "the wider public interest involved in the prevention of further loss of life requires a not too limiting interpretation of [the recommendation-making power]."[22] This comment was made under the previous legislative framework, the Coroners Act 1988, but given the enduring emphasis on preventing death in the 2006 Coroners Act, the comment remains relevant. It also bears on the correct coronial approach to determining the scope of the inquiry: because the Coroner has a useful public voice, and because of the public interest in the statutory purposes of preventing loss of life and promoting justice, the Coroner should avoid adopting a too limiting approach to the scope of the inquiry at the outset.

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[19] [1968] AC 997.
[20] See in particular: ibid, per the speech of Lord Reid.
[21] [1993] 2 NZLR 683.
[22] Ibid at 687–688.

24 In *R v North Humberside Coroner, ex p Jamieson*,[23] it was said by Sir Thomas Bingham MR (as he then was) that it "is the duty of the coroner as the public official responsible for the conduct of inquests ... to ensure that the relevant facts are fully, fairly and fearlessly investigated. ... [The coroner] must ensure that the relevant facts are exposed to public scrutiny."[24] This remark was made in the context of discussing inquests, but the approach applies equally to inquiries, and is a reminder that coroners ought to investigate facts, even where to do so may be to bring them into conflict with powerful institutions and interests. Investigations must be undertaken "fearlessly" so that what has happened can be "exposed to public scrutiny".

25 In *R v Inner West London Coroner, ex p Dallaglio*,[25] Simon Brown LJ said that "[t]he inquiry is almost bound to stretch wider than strictly required for the purposes of a verdict. How much wider is pre-eminently a matter for the coroner ..."[26] This is an important reminder of the starting point: that the inquiry is not a narrow investigation into liability but a broader investigation that will generally have a wider remit than a criminal trial. It is also worth noting that the United Kingdom statutory regime on coronial inquiries is in some ways narrower than New Zealand's;[27] these statements should therefore be taken as setting what constitutes the bare minimum for coroners when considering how to determine scope, though they may choose to be more flexible and permissive in approach.

26 In *Coroner for the Birmingham Inquests v Hambleton*,[28] the Court of Appeal underscored that a coroner will be guided in making decisions on scope by what is "necessary, desirable and proportionate": the same standard set out in the aid to Judge Marshall's minute in this case.

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[23] [1995] QB 1.
[24] At 26.
[25] [1994] 4 All ER 139.
[26] At 155.
[27] In particular, s 5 of the UK's Coroners and Justice Act 2009 presents the matters to be ascertained by a coroner more narrowly: the purpose is to ascertain "who the deceased was"; "how, when and where the deceased came by his or her death"; and "the particulars (if any) required by the 1953 Act to be registered concerning the death." Where necessary in order to avoid a breach of the Convention rights, the purpose may include ascertaining "in what circumstances the deceased came by his or her death." In New Zealand's Coroners Act 2006, the routine purpose of inquiries set out in s 57(2) includes establishing causes and circumstances of death; "the circumstances" are not only relevant where investigation is necessary to avoid breach of a Convention right. The view that New Zealand's coronial statute is broader was also expressed in: David Baragwanath, 'How we got here: Law Commission Report 62 and the Coroners Act 2006', Coroners Orientation Programme, 18 June 2007, Wellington, at 13, available online at https://www.courtsofnz.govt.nz/assets/speechpapers/coronersspeechjune07.pdf.
[28] [2018] EWCA Civ 2081.

But an example was given of how this standard will be applied, from the Court below in *Hambleton*, which recorded that proportionality may be affected by the nature of the crime at the heart of the inquiry. It was said there that "an enquiry into the circumstances of a death caused in an affray involving three people is likely to involve different considerations to an enquiry where the death is caused in the course of a riot involving many hundreds of participants."[29] Applying this point by analogy to the present case, it would be logical for the coronial inquiry into the Christchurch attack to cast its net wider when considering causes and circumstances, given the number of people affected and the scale of the harm done. The gravity and enormity of the crime militates against an overly narrow focus on the immediate causes or circumstances surrounding the deaths.

27 A decision of the Queensland Supreme Court observed that a coroner may have to be open-minded about the possibility that the relevance of certain submissions may only become clear once they have been heard in full. Citing UK jurisprudence, the Court in *Doomadgee v Deputy State Coroner Clements*[30] noted that the Court may act "on any material which is logically probative": that is, "material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined".[31] Put another way, at the early stage of determining scope, the test for what is included in the inquiry may be less onerous than 'relevance'. It may simply be a test of what material tends logically to show the existence of facts relevant to the issue determined. Elaborating on the point, the Court said: "regard should be had to all relevant available evidence even if only to conclude, in respect of some of it, that no benefit can be gained from its use or that, in comparison with other evidence, it has little, if any, probative value".[32]

28 Other case law is relied upon below in relation to consideration of each specific factor. The case law cited above is useful in determining the overarching legal framework to be applied, and favours a permissive, flexible, generous approach to determining the scope of the inquiry.

Whether the role of digital platforms in contributing to the attacker's behaviour is properly a matter for the coronial inquiry

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[29] Cited in: ibid at [33]. The Court of Appeal overturns the decision of the High Court but makes no adverse comment on this point.
[30] [2006] 2 QR 352.
[31] At [35], citing *Miller v Minister of Housing and Local Government* [1968] 1 WLR 992, 995.
[32] Ibid at [53].

29 Against this backdrop, these submissions address the seven factors set out by Judge Marshall. As indicated earlier, for the purposes of these submissions IWCNZ has grouped them under the headings:

- causal and circumstantial relevance (factors 1 and 2);
- appropriateness of coronial inquiry (factors 3 and 4);
- and whether already addressed by another investigation, Royal Commission of Inquiry, or legislative reform'(factors 5, 6, and 7).

30 Particular attention is paid to the first factor (relevance to the cause or circumstances of a death under inquiry) and the sixth factor (whether the issue was addressed by the Royal Commission of Inquiry) since these were the grounds on which Judge Marshall reached her preliminary view that this kind of issue should not be considered by the coronial inquiry.

Causal and circumstantial relevance

(i) The issue is relevant to the cause or circumstances of a death under inquiry

31 The word "circumstances" is commonly defined as conditions that "affect" what happens.[33] In this case the role of digital platforms, and the Christchurch attacker's interaction with digital platforms, are plainly relevant to conditions that have affected the deaths under inquiry. The role of digital platforms, and the Christchurch attacker's interaction with digital platforms, may also be deemed a background cause of the deaths – in the sense that the Christchurch attacker's use of digital platforms gave rise to his radicalisation and perpetration of the attacks – but it is not necessary to go so far as claiming that this issue is relevant to a cause, given the use of the broader term "circumstances" in the Coroners Act 2006.

32 The Royal Commission of Inquiry (the Commission) makes sufficient descriptive reference to the role of digital platforms to demonstrate the relevance of this point, but the Commission does not investigate at any length the relationship between digital

[33] See definitions in Collins and Meriam-Webster dictionaries at https://www.collinsdictionary.com/dictionary/english/circumstance and https://dictionary.cambridge.org/dictionary/english/circumstance.

platforms and the deaths on 15 March 2019. When recounting the attacker's background, the Commission notes he was an "avid internet user and online gamer".[34] It recounts that the attacker told his mother in 2017 that he had started using 4chan, an online message board, when he was 14 years old.[35] After commenting on his travel, the report says: "of far more materiality was his immersion during this period in the literature, and probably the online forums, of the far right."[36] The report points out that his Facebook activity was "erratic", though notes that he joined a Facebook group called The Lads Society, which was a venue for extremist content.[37] It comments, in brief, on far-right gaming posts and the attacker's use of TradeMe. It adds that YouTube was a "far more significant source of information and inspiration" than extreme right-wing sites.[38] Later, the Royal Commission records that online platforms were key immediately prior to the attack, including planned posts on 4chan/8chan message boards and on Facebook,[39] posts on Facebook and Twitter,[40] the uploading of the manifesto to Mediafire,[41] and the streaming of the attack.

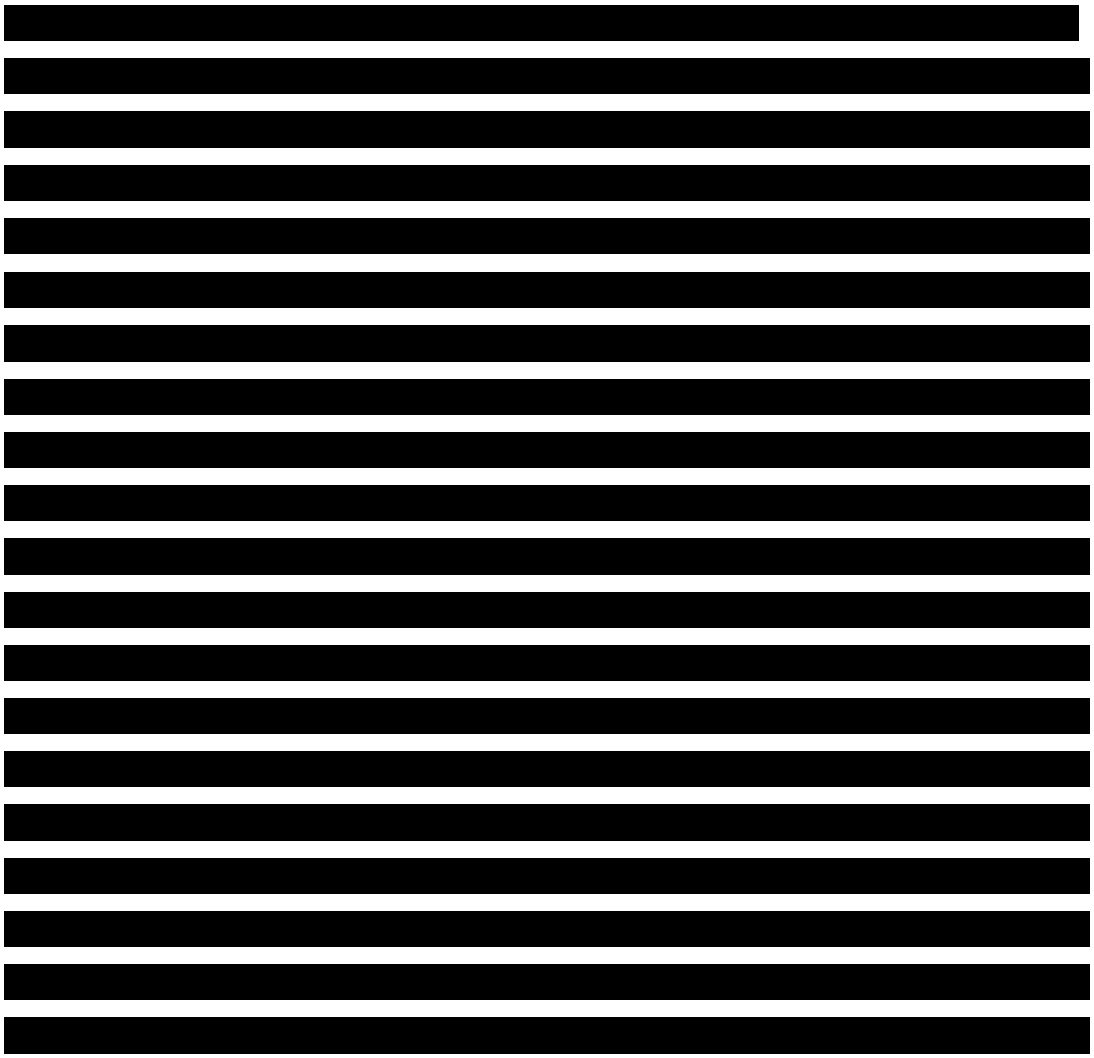
33 The Commission supplies a narrative about the attacker's activities, including in relation to digital platforms. It recognises that the narrative is incomplete: "We have no doubt," the Commission writes, "that the individual's internet activity was considerably greater than we have been able to reconstruct."[42] But the narrative alone provides a credible basis for the relevance of online platforms to the deaths on 15 March 2011. This point is reinforced by the sentencing notes of Mander J.[43] The Judge observes that: "Your focus appears to have been on following far right websites" as part of the attacker's "time … to plan and prepare".[44] He adds: "You have held longstanding discriminatory views against ethnic minorities that clearly evolved from your own experience, research and interaction with likeminded individuals over a relatively long period";[45] because the attacker had

[34] *Ko tō tātou kāinga tēnei: Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, Volume 2, at 166.
[35] Ibid at 168.
[36] Ibid at 183.
[37] Ibid at 188–189.
[38] Ibid at 193.
[39] Ibid at 224.
[40] Ibid at 228.
[41] Ibid at 229.
[42] Ibid at 234.
[43] *R v Tarrant* [2020] NZHC 2192.
[44] Ibid at [114].
[45] Ibid at [121].

limited interaction with individuals offline, this can only be taken to be a reference to the relevance of online interaction to the development of the attacker's radical views.

34 Another possibly telling sign that the attacker's interactions on digital platforms may have revealed important information about the attacker's own belief pathway is that he sought to "minimise his digital footprint so as to reduce the chances of relevant Public sector agencies … being able to obtain a full understanding of his internet activity" prior to the attack: removing a hard drive from his computer and deleting emails, amongst other things.[46]

35 The attacker's manifesto itself also suggests strongly that the role of digital platforms, and the attacker's interaction with them, are relevant to the circumstances of the deaths that occurred on 15 March 2019.



[46] *Royal Commission*, Vol 2, above n 34, at 188.

[redacted]

36 Overseas scholarship and commentary on the Christchurch attack has confirmed the relevance of online activity to the deaths of 15 March 2019 and has called for further analysis of the point. The International Centre for Counterterrorism (ICCT), based in The Hague, notes that "Tarrant's manifesto suggests that the internet was responsible for the creation of his belief system".[47] But the ICCT's analysis of the Royal Commission notes that: "While the report [by the Royal Commission] is quite clear in detailing Tarrant's process of radicalization, it is also the aspect of the report that … feels a little incomplete."[48]

37 Academic works have also established theoretically and empirically that online activity can contribute to dehumanising offline behaviour. A study in the British Journal of Criminology showed an association between online activity and racially and religiously aggravated crimes, independent of any triggering events.[49] Just-published research by Walhström and Törnberg charts three underlying mechanisms that tie together online activity and offline behaviour: highlighting that online activity can shape views, entrench positions, and provide practical guidance for offline violence.[50] Such academic work confirms that the Coroner will not have to range over uncharted territory. Overall, it seems clear that submissions on this topic, to return to the standard set out in *Doomadgee*,[51] are

[47] Yannick Veilleux-Lepage, Chelsea Daymon and Amarnath Amarasingam, *The Christchurch Attack Report: Key Takeaways on Tarrant's Radicalization and Attack Planning* (December 2020), International Centre for Counter-Terrorism – The Hague, at 2.
[48] Ibid, at 1.
[49] Matthew L Williams, Pete Burnap, Amir Javed, Han Liu, Sefa Ozalp, 'Hate in the Machine: Anti-Black and Anti-Muslim Social Media Posts as Predictors of Offline Racially and Religiously Aggravated Crime' (2020) 60(1) British Journal of Criminology 93–117.
[50] Mattias Walhström and Anton Törnberg, 'Social Media Mechanisms for Right-Wing Political Violence in the 21st Century: Discursive Opportunities, Group Dynamics, and Co-Ordination' (2021) 33(4) Terrorism and Political Violence 766–787.
[51] See above n 30.

likely to be "logically probative": they tend "logically to show the existence or non-existence of facts relevant" to the causes and circumstances of deaths on 15 March 2019. If the Coroner has any doubt about relevance, it is suggested that a decision should err on the side of hearing the submissions – given the statutory purpose of the Coroners Act 2006 (in promoting justice), the Bill of Rights (in particular, the right to natural justice under s 27), administrative law duties, and other case law, and given that the Coroner can always opt to decide at a later date (once the submissions are heard) that the point is not a proper one for the inquiry.

(ii) The issue is not too remote from the death(s)

38 The submissions make a slight adjustment to Judge Marshall's preliminary framing of the consideration relating to remoteness which was that a key consideration is whether an issue is "too remote from the death(s) to be regarded as sufficiently causative".[52] As the purpose of the coronial inquiry, further to s 57 of the Coroners Act 2006, is to establish not just the "causes" but also "circumstances" it is submitted that this consideration should be reframed as 'whether the issue is too remote to be regarded as sufficiently relevant to the causes *and circumstances* of the deaths'.

39 Reframed in this way, it cannot be said that the role of digital platforms, and the attacker's interaction with those platforms, are so distant from the deaths to need to be discounted from the scope of the inquiry. The Commission itself may have offered the strongest statement contradicting the contention that the issue is too remote. After mentioning 4chan, 8chan, and YouTube in brief, it said: "[the attacker]'s exposure to such content may have contributed to his actions on 15 March 2019 – indeed, it is plausible to conclude that it did."[53]

40 In this passage the Commission draws no definitive conclusion on the role of digital platform content (using tentative language like "may"), apparently deriving from a view that the responsibility of digital platforms was outside of its remit. But it does find that it was plausible that the attacker's exposure to digital platform content may have contributed to his actions, and the deaths he brought about on 15 March. A test of remoteness in the

[52] At [67] of the Minute, above n 1.
[53] *Royal Commission*, Vol 2, above n 34, at 234.

coronial context is a test of whether an issue has sufficient causal or circumstantial significance. Given the Commission's conclusions, the role of digital platforms, and the attacker's interactions with them, cannot be said to be causally or circumstantially insignificant.

41 It is accepted that the Coroner should endeavour to avoid "discursive investigations", as noted in the Queensland Supreme Court decision in *Harmsworth v State Coroner*[54]. The real question is whether an issue is capable of being addressed practically: i.e. can questions can be formulated, and answered, about that issue. As the Court said in *Harmsworth*, "[I]nquiries must be directed to specific ends."[55]

42 Without pre-empting later submissions that might be made, should the scope be widened as IWCNZ submits it should, it is submitted that relevant questions about the role of digital platforms, and their use by the Christchurch attacker, might include:

(1) What information has been gathered by the Royal Commission and other agencies on the role of digital platforms and their use by the Christchurch attacker, what gaps exist, and can the Coroner use powers under ss 118 and 120 of the Coroners Act 2006 to gather further relevant information on this issue?

(2) To what extent is it likely:

a. that digital platforms (including social media platforms such as Facebook and Twitter, discussion boards like 4chan, venues like YouTube, and gaming chatrooms) contributed to the Christchurch attacker's belief pathway ('cognitive radicalization'),[56] and by extension, to the deaths that occurred on 15 March 2019?
b. if (2)(a) does not apply, that vulnerable persons will be influenced through digital platforms in adopting dehumanising beliefs that might lead to killings of the dehumanised group in society?

(3) To what extent is it likely:

a. that digital platforms strengthened the Christchurch attacker's willingness to act violently on those radical beliefs ('behavioural radicalization'),[57] including through cementing and entrenching his beliefs?[58]

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[54] [1989] VR 989 (VSC) at 995–996.
[55] Ibid at 995.
[56] ICCT, *Christchurch Attack Report*, above n 47, at 1.
[57] Ibid.
[58] There is peer reviewed, recently published social science evidence distinguishing between the online posting behaviours of violent and non-violent right-wing extremists, which could assist in answering this question: Ryan Scrivens, Thomas W. Wojciechowski, Joshua D. Freilich, Steven M. Chermak, and Richard

b. if (3)(a) does not apply, that vulnerable persons will be influenced through digital platforms to act violently on those radical beliefs, including through cementing and entrenching his beliefs?

(4) To what extent is it likely:

a. that digital platforms (including gaming chatrooms) provided a venue where the Christchurch attacker was emboldened and encouraged to act violently?
b. if (4)(a) does not apply, that vulnerable persons who may form an intention to murder or attack other groups in society will be provided with a venue where they are emboldened and encouraged to act violently?

(5) To what extent is it likely:

a. that digital platforms enabled practical guidance to be given to the Christchurch attacker, for example in relation to weapon-making or other aspects of executing the attack?
b. if (5)(a) does not apply, that vulnerable persons who may form an intention to murder or attack other groups in society will be enabled to obtain practical guidance on weapon-making or other aspects of executing an attack from digital platforms?

(6) Were digital platforms aware of the attacker's cognitive and behavioural radicalisation, or ought they have been aware of that radicalisation, and could they have taken reasonable steps to intervene to interrupt the attacker's path to violence in advance of 15 March 2019? Are digital platforms able to become aware of users' cognitive and behavioural radicalisation and, if so, can they take reasonable steps to interrupt a potential attacker's path to violence?

43 Specifying and answering questions like these is likely to require the Coroner to review the attacker's manifesto, which provides one source of information about his radicalisation. While that manifesto needs to be treated with caution, particularly because it may be self-serving, the Coroner is well capable of making judgments about its contents and to use redaction and discretion to determine whether and to what extent aspects of the manifesto's contents are necessary to be included in her decision.

44 Specifying and answering these kinds of questions, which can be done in an iterative way in conjunction with counsel and other relevant parties, will ensure the inquiry does not become a discursive investigation, and can ensure that the statutory purposes of the coronial legislative framework are advanced i.e., future deaths can help to be prevented, and the Coroner can help to promote justice. By answering these questions, the coronial

Frank, 'Comparing the Online Posting Behaviours of Violent and Non-Violent Right-Wing Extremists' (2021) Terrorism and Political Violence 1–18.

inquiry can identify and highlight any warning signs that could and should have been detected by digital platforms. It is in the public interest that these warning signs are more widely understood.

Appropriateness of coronial inquiry as a forum

(iii) The issue does not raise concerns about high-level government or public policy that are too remote from the death(s) or otherwise not amenable to reasonable inquiry in the forum of a coronial inquiry and inquest

45 It is submitted that this consideration should not repeat the inquiry conducted above in relation to remoteness. Instead, it should focus on whether the coronial inquiry is a reasonable forum for answering these kinds of questions, including whether there are good reasons for the issue being not amenable to inquiry by the Coroner. While the Coroner's Court is different from other courts, questions of the amenability of legal issues to review in the public law context often turn on whether a body has expertise to consider a particular issue, and whether it is constitutionally appropriate for that body (rather than the executive or legislature) to determine an issue.[59] That two-part framework is a helpful guide to the evaluation required here.

46 The questions suggested above, which are examples of how the Coroner might approach this issue, are questions that the Coroner is well capable of answering. Coroners have sufficient expertise in this exercise. The exercise involves the gathering of information following review of the Royal Commission and sentencing notes. Inevitably there are matters of judgement in determining to what extent, for example, the digital platforms enabled practical guidance to be procured by the Christchurch attacker. But the Coroner is not unfamiliar with matters of judgement.

47 Questions of this kind do not involve an open-ended, academic fishing expedition into theories of social media and political violence. They merely require the Coroner to understand how digital platforms work (including possibly the operation of algorithms) and their role in this case. The questions begin with the Christchurch case where the

[59] See discussion in: B.V. Harris, 'Judicial Review, Justiciability and the Prerogative of Mercy' (2003) 62 Cambridge Law Journal 631–660; and Paul Daly, 'Justiciability and the "Political Question" Doctrine' (2010) Public Law 160.

Coroner would step on from the work of the Commission and sentencing judge's findings. Extensive evidence, including police evidence, is available but may not have been referred to in the Commission's report or in the sentencing notes. To the extent that information is unavailable to answer these questions, the Coroner can point this out, and is also able to use significant powers under ss 118 and 120 to endeavour to procure that information. It may be inconvenient to the digital platforms to be approached for further information potentially relevant to the attack. But convenience should give way to the Coroner's statutory aims to help prevent future deaths and promote justice.

48 It might be contended that it is for the legislature to consider these matters, especially questions surrounding the regulation of the internet. But questions like the ones posed above involve detailed fact-finding to which the legislature is less well-accustomed. To the extent that policy or legislative response should be the responsibility of the legislature, the Coroner can limit her recommendations to ones requiring those bodies to take steps in their areas of responsibility that would go towards preventing further deaths in similar circumstances.

49 Coroners have customarily been engaged in a partnership with the executive and legislature, highlighting issues of concern or urgency for the executive and legislature where they arise out of a particular inquiry. In 2012 Chief Coroner MacLean flagged that bullying on social media is "often a background factor" in suicides, demonstrating a willingness to speak about digital platforms; he added that Law Commission proposals "deserve the attention of the legislature".[60] In the *Day* finding in 2019,[61] Coroner Ryan underscored the harm of social media posts, noting that the case "highlights the need for robust legislation controlling and regulating social media posts."[62] More recently, in the 2021 *Maaka* finding,[63] Coroner Tetitaha commented on how social media tools can be responsible for violence: "It is possible for social media and the algorithms underpinning social platforms to identify and influence young users such as Houston who may be exhibiting distress and

[60] As reported in: Simon Collins and Vaimoana Tapaleao, 'Suicide link in cyber-bullying', *New Zealand Herald*, 7 May 2012, available online at https://www.nzherald.co.nz/nz/suicide-link-in-cyber-bullying/YZMT2KDIKCQYRQ2Q4XN7Q6XDAY/ (last accessed 31 January 2022).
[61] [2019] NZCorC 39 (7 August 2019).
[62] Ibid at (d).
[63] [2021] NZCorC 34 (17 March 2021).

direct them to appropriate assistance." She added: "This type of intervention may have prevented this death."[64]

50 Coroner Windley in the *Roberts* finding[65] underscored the subtle way social media can contribute to harm, saying: "[s]ocial media provided the platform Ms Roberts to be instantly exposed to what I take to have been accusations and vitriolic comments of other users."[66] These past statements illustrate that coroners are able to assess the contribution of digital platforms to violence, and are also able to act in partnership with the executive and legislature to improve policy-making in relation to this subject-matter. That same approach to partnership can be adopted in the inquiry into the Christchurch deaths.

51 There may be sensitive security information that arises when considering the role of digital platforms and their relationship to the deaths on 15 March 2019. Again, as with the manifesto, the Coroner is able to exercise care and discretion in approaching security information, deciding where appropriate what information needs to be published and what information simply merits consideration as part of the inquiry.

52 It is acknowledged that allowing submissions to be received on the role of digital platforms, and their relationship to the deaths on 15 March 2019 and potential future deaths in similar circumstances, will necessarily extend the inquiry from one focused only on the immediate cause of deaths. However, it is submitted that the added length is proportionate to a crime of this enormity which directly affected hundreds of families in New Zealand and overseas, and also affected the security and wellbeing of the nation itself. The significance of the attacks is evident in the fact the attacker received the harshest prison sentence ever handed down in New Zealand. For these reasons it is appropriate that the Coroner include this topic in the scope of her inquiry. Such an inquiry is likely to help prevent further deaths and promote justice. It might even be possible and appropriate, if necessary, for the work of the coronial inquiry to be divided between two coroners with one looking at immediate causes of death and another at wider systemic issues, such as this one.

(iv) The issue lends itself to potential comments or recommendations that would reduce the chances of future deaths in similar circumstances

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[64] Ibid at [v].
[65] [2019] NZCorC 33 (16 July 2019).
[66] Ibid at [I].

53 The threats of similar future activity are a very real issue for IWCNZ where leaders have received and continue to receive personal threats, including on YouTube.[67] There is, shockingly, widespread evidence that there remains a risk of future deaths in similar circumstances. A report commissioned by the Department of Internal Affairs in 2021 shows deeply concerning trends in some New Zealanders' engagement with far-right social media. The report recorded that "[f]ar-right Facebook pages in New Zealand have more followers per capita (757 per 100,000 Internet users) than Australia (399), Canada (252), the US (233) and the UK (220)"; and that "New Zealanders sent the second-most QAnon-related tweets per capita (1,500 Tweets per 100,000 Internet users), only surpassed by the US (3,000) during the period analysed".[68] Such evidence reinforces IWCNZ's submission that allowing submissions in this inquiry to be heard on the role of digital platforms in contributing to deaths is necessary, desirable, and proportionate.

54 The Coroner is not required to be satisfied that any comments or recommendations she may make will definitively reduce the chances of future deaths in similar circumstances. The *Day* and *Maaka* findings cited above demonstrate that recommendations do not have to be made with granular specificity; nor must a coroner have complete certainty that recommendations will reduce the chances of future deaths in similar circumstances. The real question for the Coroner in this hearing is whether comments or recommendations can be reasonably formulated in relation to this issue, and whether comments or recommendations could have a reasonable likelihood of reducing the chances of future deaths in similar circumstances.

55 Without pre-empting fuller submissions (which may canvas a range of possible comments or recommendations that the Coroner could make in relation to this issue) one potential recommendation open to the Coroner may be that the government gives consideration to the introduction of a statutory duty of care on digital platforms to prevent harm. This

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[67] Still today IWCNZ has not had an adequate explanation or reassurance that the 19 February 2019 messager on IWCNZ's Facebook page referring to a "burn the Quran day" outside Jamia Masjid in Hamilton on 15 March 2019 was not in digital or other communication with the Christchurch attacker.

[68] Milo Comerford, Jakob Guhl and Carl Miller, 'Understanding the New Zealand Online Extremist Ecosystem' (2021) Institute for Strategic Dialogue at 12, available online at https://www.dia.govt.nz/diawebsite.nsf/Files/Countering-violent-extremism-online/$file/NZ-Online-Extremism-Findings-Report.pdf

would specify a duty of care with some clear limits, rather than leaving the courts to develop this area of law on a case-by-case basis.

56 The Online Safety Bill, currently before the UK Parliament, proposes statutory duties of care under particular circumstances.[69] Such a proposal would not necessarily be unduly onerous: it might only apply when content is flagged with digital platforms, and would require (consistent with the ordinary law of negligence) the digital platform to take reasonable steps to prevent harm that might be caused. A move in this direction has been supported by data regulation experts in the United Kingdom,[70] and in New Zealand.[71] The Coroner would not need to elaborate a detailed proposal, since such a statutory duty of care (as suggested by the name) would be developed in legislation. But a duty of this kind appears to have a reasonable likelihood of increasing vigilance by digital platforms, reducing the risk of harm, and thereby lowering the chances of future deaths in similar circumstances. It may be that improved content moderation by digital media platforms and strengthened enforcement powers for existing regulators may also be appropriate areas for consideration, which could be more comprehensively canvassed in fuller submissions.

57 Recommendations need not be solely legislative or regulatory in nature. The Coroner is well placed to offer and provide guidance to the Government, civil society, and platforms themselves. Such guidance could be more fully considered in lengthier submissions, but might include recommendations:[72]

- For platform transparency relating to policies on content moderation, and transparency on reporting relating to hate and harassment;
- To establish third party audits of platforms' content moderation allowing public verification;
- To improve training of law enforcement to identify and overcome incitement situations online; and

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[69] See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf.

[70] William Perrin and Lorna Woods, 'Harm Reduction in Social Media – A Proposal', Carnegie Trust UK, available online at https://www.carnegieuktrust.org.uk/blog-posts/harm-reduction-in-social-media-a-proposal/ (last accessed 31 January 2022).

[71] Kim Connolly-Stone, 'Should Social Media Platforms Have a Duty to Care?', ITP Tech Blog, 14 October 2021, available online at https://techblog.nz/2707-Should-social-media-platforms-have-a-duty-to-care (last accessed 31 January 2022).

[72] As an example of some thoughtful recommendations in relation to gaming and online hate, see: ADL, 'Hate is No Game: Harassment and Positive Social Experiences in Online Games 2021', available online at https://www.adl.org/hateisnogame#recommendations (last accessed 8 February 2022).

- On awareness programmes for parents and communities.

Whether the issue is already addressed by another investigation, the Royal Commission of Inquiry, or legislative reform

(v) The issue was not within the mandate of another inquiry, proceeding or investigation to inquire into and make findings on – and that other independent inquiry, proceeding or investigation did adequately establish any of the matters required to be established (so far as possible) by a Coroner under s 57(2)

57 The sentencing of the Christchurch attacker did not, as expected, deal at any length with the relationship between digital platforms and the attacker's violence. As noted above, it referred in passing to the attacker's website use as part of a brief explanation of the attacker's personal background. The sentencing notes also nodded to possible sources of the attacker's discriminatory views but did not traverse his actions on digital media platforms fully or discuss their role in his violence.

58 One of the terms of reference of the Royal Commission was the attacker's "use of social media and other online media".[73] However, for three reasons set out below, it is submitted that the Royal Commission did not address the issue IWCNZ asks the Coroner to include in the scope of her Inquiry, namely the role of digital platforms in contributing to the deaths on 15 March 2019.

59 First, the Commission presented a narrative of (some of) the Christchurch attacker's use of social media and other media. But a narrative is not an analytical assessment of its role in contributing to deaths on 15 March 2019. The Commission did not undertake such assessment. This is understandable: as the terms of reference only referred to the attacker's "use of social media and other online media". They did not ask the Commission to evaluate the connection between that online media activity and the deaths of 15 March 2019; nor did they ask the Royal Commission to apportion the weight to be given to digital platform activity, compared with other possible causes or in light of the broader circumstances of the deaths. It is for this reason unsurprising that the Royal Commission only made a passing, non-committal suggestion about the importance of online forums – saying "of far more materiality was his immersion during this period in the literature, and *probably* the

[73] *Ko tō tātou kāinga tēnei: Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, Volume 1, at 48.

online forums, of the far right".[74] It is for the same reason unsurprising that the Commission only tentatively indicated a connection between online content and the deaths of 15 March 2019 – "[h]is exposure to such content *may have* contributed to his actions on 15 March 2019 – indeed, it is plausible to conclude that it did."[75]

60 Second, the Commission held that "certain issues were outside our scope", including "activity by entities or organisations outside the Public sector agencies (such as media platforms)".[76] This was consistent with cl 6 of the Schedule to the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 Order 2019, which said the "inquiry must not inquire into, determine, or report in an interim or final way on … activity by entities or organisations outside the State sector, such as media platforms." The focus of the Commission was overwhelmingly on the response of state agencies to the attack of 15 March 2019. The Royal Commission was directed to make findings on public sector agencies' use of information; interaction between public sector agencies; whether relevant public sector agencies failed to anticipate or plan for the terrorist attack because of a focus on other threats; whether there was any failure of standards on the part of a public sector agency; and any other matters relevant to the purpose of the inquiry.[77]

61 The Commission was then asked to make recommendations on improvements to information-related practices by public sector agencies; changes to public sector systems or practices; and any other matters relevant to the above.[78] The Commission's eyes and ears were open to the activities of the New Zealand state. Again, it is entirely expected that a state-facing inquiry, called to make recommendations and findings on public sector conduct, would not address the role of digital platforms in any fulsome sense. Digital platforms – whether social media platforms like Facebook, message board platforms like 4chan, venues like YouTube, or gaming chat platforms as on World of Warcraft – are not part of the state or the public sector. The Commission only referred to these platforms when concluding that public sector agencies did not have the legal authority or capacity to

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[74] *Royal Commission*, Vol 2, above n 34, at 183 (emphasis added).
[75] Ibid at 234 (emphasis added).
[76] *Royal Commission*, Vol 1, above n 73, at 49.
[77] *Royal Commission*, Vol 1, above n 73, at 49.
[78] Ibid.

monitor social media,[79] and underscoring that the security and intelligence agencies had no role in overseeing extremist content online.[80] The Commission confirmed in its discussion of its terms of reference that "certain issues were outside our scope", including "activity by entities or organisations outside the Public sector agencies (such as media platforms)".[81] It therefore did not investigate, or address, the relationship between digital platforms and the deaths that occurred on 15 March 2019.

62 Finally, the Commission was directed "to investigate the [attacker's] activities before 15 March 2019" as well as the response of state agencies.[82] This temporal focus confirms that the Royal Commission was tasked with developing a narrative about the attacker, and then with scrutinising the public sector. It was asked to make a wider assessment of the role of digital platforms in the lead-up to 15 March 2019, on the day, and after. Accordingly, a gap remains in the investigation that has been undertaken following the tragic events of 15 March 2019. That gap can be appropriately filled by this coronial inquiry.

(vi) The issue is not the subject of a recommendation that has been made by the RCOI

63 The role of digital platforms, and their relationship to the deaths on 15 March 2019, is not the subject of a recommendation made by the Royal Commission. Part 10 of its report is dedicated to recommendations. This Part is split into four areas:

- recommendations to improve New Zealand's counterterrorism effort;
- recommendations to improve firearms licensing system.
- recommendations to improve support the ongoing recovery needs of affected whanau, survivors and witnesses;
- recommendations to improve social cohesion and New Zealand's response to our increasingly diverse populations, and recommendations for implementation.

64 The four themes across these recommendations are strong government leadership and direction, engaged and accountable government decision-making, everyone in society having a role in making New Zealand safe and inclusive, and fit-for-purpose laws and policies. The words "social media" appear only twice in the body of the text of the final

[79] *Ko tō tātou kāinga tēnei: Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, Volume 3, at 609.
[80] Ibid at 634.
[81] *Royal Commission*, Vol 1, above n 73, at 49.
[82] Ibid at 48.

volume of the report, in the citation of research on the link between hate speech and hate crime.

65 The regulation of hate speech might in some ways appear to be a related topic, in that some hate speech occurs on digital platforms; but the discussion of hate speech regulation addresses quite different considerations from an analysis of how digital platforms contribute to cognitive and behavioural radicalisation, how digital platforms enable practical guidance to be shared that can facilitate violence, and what can be done by digital platforms to interrupt this path to violence.

(vii) The issue is not otherwise addressed by legislative reform in the intervening period

66 Those minded to exclude from the scope of the coronial inquiry the role of digital platforms might point to three reforms in the intervening period: the Christchurch Call, the introduction of new hate speech legislation, and the review of content regulation. The reasons why these do not address the issue are set out below.

67 The Christchurch Call was an international effort, led by Prime Minister Jacinda Ardern and French President Emmanuel Macron, that responded to the Christchurch attacks. Eighteen state actors initially supported the Call, alongside France and New Zealand, with more supporters being added since; the Call was also supported by online actors, such as Amazon, Twitter, Google, Microsoft, YouTube, and others. It involved a series of voluntary commitments, amongst other things on effective enforcement of existing laws, encouraging media outlets to apply ethical standards "when depicting terrorist events online", and considering "appropriate action" to prevent use of online services to disseminate terrorist and violent extremist content".[83]

68 There are various grounds on which the Christchurch Call cannot be said to have constituted a legislative reform addressing the issue outlined above. The Christchurch Call is not a legislative reform; it is a series of voluntary commitments. Its focus was clearly directed to the problem of live streaming of terrorist activity, with a secondary emphasis on satellite online platform problems. It aimed only to start a conversation about further use of online services in the dissemination of terrorist and violent extremist content,

[83] See https://www.christchurchcall.com/call.html.

encouraging greater use of "regulatory or policy measures consistent with a free, open and secure internet and international human rights law"[84] and affirming the role of civil society. If anything, this submission from the Islamic Women's Council of New Zealand calling on the Coroner to consider the relationship between digital platforms and the violence of 15 March 2019, and inviting consideration of recommendations to address the issue, can be regarded as an appropriate next step following the Christchurch Call's open-ended invitation to further action. But the Christchurch Call cannot be thought to have in any sense 'covered the ground' when weighing up what legislative reforms have occurred in the intervening period.

69 The Government has embarked on legislative reform of hate speech laws. It undertook a detailed public consultation process in 2021. That reform is moving in the direction of expanding groups protected by hate speech legislation, drafting a clearer hate speech offence, and including incitement to discrimination as part of the revised legislative framework.[85] However, digital platforms' role in contributing to violence – such as the attacks of 15 March 2019 – go far beyond hate speech. Hate speech reforms may touch on the issue discussed above indirectly, but digital platforms provide various channels of influence for violence that go far beyond hate speech. Moreover, the Government's hate speech reforms cannot be said to have "addressed" the issue discussed here: they are in progress, and their effect has yet to be evaluated.

70 The Government has also announced a content regulation review. Consultation is said to begin in early 2022.[86] There may be some overlap between this review and the issue of digital platforms' relationship to acts of violence, such as that which occurred on 15 March 2019. But detail of the review is thin at the time of writing this submission. Any legislative reform can hardly be said to have "addressed" the issue discussed here. The review is said to be "content neutral",[87] and is therefore unlikely to focus on the particular risks and harms associated with digital platforms.

71 At any rate, and in the event of any doubt that this legislative reform might 'cover the ground', past coroners' findings have not resiled from making comment (for example, on

[84] Ibid.
[85] See 'Proposals against incitement of hatred and discrimination', Ministry of Justice, 2021.
[86] See https://www.beehive.govt.nz/release/govt-acts-protect-nzers-harmful-content.
[87] Ibid.

the role of social media in suicide cases) merely because there is some parallel legislative or policy process underway. Coroners' inquiries can play a useful role in affirming or accelerating legislative or policy processes or encouraging a particular focus. Coroners' expertise and close engagement with specific facts can, indeed, be a significant resource in the development of legislation or policy. The announcement of the content regulation review, the progress of hate speech law reforms, and the work done on the Christchurch Call therefore do not provide compelling reasons for the Coroner to refuse to hear submissions on digital platforms and their contribution to the deaths occurring on 15 March 2019.

Conclusion

72 Online lives are, for many, an extension of, and a part of, offline lives in the contemporary world. Much of people's information comes from online. Lives are organised online, and many spend much of their lives online. To bracket out the online life of the Christchurch attacker from an investigation of the deaths he caused would be artificial and counter-productive to coroners' overriding purpose, namely, to help prevent deaths and promote justice.

73 It is submitted that the seven considerations set out by Judge Marshall should be assessed individually and also in the round. In considering the overarching legal framework, causal and circumstantial relevance; the appropriateness of the coronial inquiry as a forum, and whether the issue has already been addressed by legislative reform, it is clear that the issue of the role of digital platforms in contributing to the deaths on 15 March 2019 cannot be discounted. It is in the interests of survivors and their families, and in the interests of the wider public, that the influence of online digital platforms be addressed within scope of the inquiry.

74 IWCNZ looks forward to constructive further engagement as the inquiry proceeds and its scope is refined.

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