

IN THE MATTER of: an Inquiry into the death of:  
Osama Adnan Youssef ABUKWAIK  
Husna AHMED  
Syed Areeb AHMED  
Farhaj AHSAN  
Haji Ashraf ALI  
Mohsen Mohammed AL-HARBI  
Syed Jahandad ALI  
Ansi Karippakulam ALIBAVA  
Hussein Hazim AL-UMAR  
Linda Susan ARMSTRONG  
Sheikh Muse Nur AWALE  
Zakaria BHUIYA  
Karam BIBI  
Kamel (Moh'd Kamal) Kamel DARWISH  
Atta Mohammad Ata ELAYYAN  
Ali Mahmoud ELMADANI  
Abdukadir ELMI  
Mohammed Omar FARUK  
Ahmed Gamal Eldin Mohamed Abdel GHANY  
Lilik Abdul HAMID  
Dr Amjad Kasem HAMID  
MD Mojammel HOQ  
Ghulam HUSSAIN  
Mucaad Aden IBRAHIM  
Junaid ISMAIL  
Ozair KADIR  
Mohammed Imran KHAN

continued ...

Hajji Maheboob Allahlakhar KHOKHAR

Dr Haroon MAHMOOD

Sayyad Ahmad MILNE

Mohamad Moosid MOHAMEDHOSEN

Hussein Mohamed Khalil MOUSTAFA

Hamza Alhaj MUSTAFA

Khaled Alhaj MUSTAFA

Haji Mohemmed Daoud NABI

Talha NAEEM

Tariq Rashid OMAR

Musa Vali Suleman PATEL

Abdelfattah QASEM

Ashraf El-Moursy RAGHEB

Naeem RASHID

ShuMuhammad Zeshan RAZA

Ashraf Ali RAZAK

Haji Matiullah SAF

Dr Muhammad Abdus SAMAD

Muhammad Suhail SHAHID

Mounir SOLIMAN

Muhammad Haziq Bin Mohd TARMIZI

Zekeriya TUYAN

Arif Mohamedali VOHRA

Ramiz Arifbhai VORA

**SUBMISSION ON BEHALF OF A NUMBER OF THE FAMILIES (“the families”) OF  
THE SHAHEED ON THE HEARING DETERMINING SCOPE INTO THE CORONIAL  
INQUIRY INTO THE DEATHS OF 51 PERSONS WHO WERE KILLED ON MARCH  
15, 2019**

May it please the Coroner:

1. The families acknowledge your minute dated 2 December 2021 (**December Minute**) and are grateful for the adjournment of the Scope Hearing until 22-24 February 2022.
2. These submissions should be seen as supplementary to and be read in conjunction with the submissions and supplementary submissions filed on behalf of the families on 9 September 2021 and 01 October 2021 respectively.
3. The submissions are made without the benefit of reading the submissions of other Interested Parties. If necessary, Counsel will address the Coroner in respect of those submissions at the Scope Hearing, including any additional points the families wish to adopt.
4. The families note the Coroner’s emphasis on the purposes of the inquiry through an inquisitorial process at paragraph 6 of the December Minute. This is important to the families too and Counsel is concerned that this inquisitorial process is not following well-established Coronial processes in terms of information disclosure. There seems to be no explanation from this departure in procedure and it is impacting on Counsel’s ability to advise and receive instructions from the families in respect of the scope of the inquiry in order to fully respond to the issues raised in the December Minute. This point is expanded upon below in respect of the issues.
5. The families intended to support the application for the Human Rights Commission to be granted leave to intervene however the Coroner’s Minute of 1 February 2022 was issued prior to filing a submission in support. The families believe the Human Rights Commission has an important role to play in the Inquiry, including this phase of the Inquiry. All counsel acting for families have raised human rights issues which need to be fully considered including ensuring that there is a rights compliant investigation into the deaths of the Shaheed (see *Wallace*<sup>1</sup>). The families support the Human Right Commission being enabled to make oral submissions at the Scope Hearing.
6. Following on from the above, critical to this stage of the Inquiry is whether the Royal Commission of Inquiry (RCOI) was a rights compliant investigation. As previously submitted, the families say that is not the case. In the submissions of 09 September and 01 October 2022, concerns about the approach of the RCOI

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<sup>1</sup> *Wallace v Attorney-General* [2021] NZHC 1963 4

including the lack of public scrutiny and the suppression of certain evidence remains at the fore when considering a rights based approach. Further to those submissions, it is noted that under s17 of the Inquiries Act 2301, the RCOI had the power to designate a person or group of people as a core participant. This never happened which has affected the families' rights including judicial review of the decisions and recommendations made by the RCOI. This is a factor to consider in respect of whether the RCOI was a rights based inquiry.

### *Categories of Issues*

7. Appendix A of Judge Marshall's Scope Minute (**Scope Minute**) outlined the issues raised in the original sets of submissions made by various "interested parties" and put them into four categories:
  - a. Outside of Scope because it was said to be outside the Coroner's jurisdiction;
  - b. Outside of Scope as it was said to be "considered by" the Royal Commission of Inquiry (**RCOI**);
  - c. Inside of Scope; and
  - d. Issues proposed to be dealt with by an information request (whatever such categorisation means – and if such a category can rightly exist given the Coronial legislation – this is discussed further below).

### *Information Requests*

8. On 8 December the families received the Police response for the issues proposed to be dealt with by information request.
9. Dealing with this "category" at face value (and leaving the important discussion of its validity in the meantime – a fundamental point to be discussed later at paragraphs 13-14), this response is inadequate for the following reasons:
  - a. as was inevitable, any response to such Issues was bound to result in the families requesting further information, underlining the unsatisfactory nature of such a category – it is submitted that one can envisage a never-ending series of requests for further information, once another round of inadequate, unsupported and often unsubstantiated "disclosure" (in the guise of responses to information requests) is made;
  - b. none of the sources of evidence were provided to allow scrutiny to see if the evidence, when examined closely, did support the Police summary; and
  - c. in any event the Police responses to the information requests do not provide a sufficient element of public scrutiny.

10. Notwithstanding Coronial comments to the effect that the sources were not necessary for the Scope Hearing, Counsel fundamentally disagree. It would seem that certain Issues have been categorised as outside of scope because it is claimed that they have already been adequately dealt with by the RCOI and that other Issues can be deemed to be adequately dealt with by information requests and thereby brought outside the scope of the Coronial Inquiry. If it is to be this concept of "adequacy" which decides what is inside or outside scope then it is fundamental for Counsel to be able to see the source material to assess whether, indeed, these Issues have been adequately addressed. It is illogical to categorise scope by "adequacy" and request submissions on categorisation, and then not provide the parties with the source material and yet ask the parties to make submissions on why issues are within or without scope.
11. The families have not received information from the Christchurch Hospital, Christchurch District Health Board, the post-mortem reports, the materials provided to Dr Hick, including a St John Ambulance internal event review and ambulance personnel responses to specific questions, and the terms of reference given to Dr Hick. The meetings with Dr Sage are currently on hold pending resolution of a dispute between the Coroner's office and Dr Sage.
12. It is noted that Counsel for other family members, Aarif Rasheed, received substantial documentation from the Police late in the afternoon on 4<sup>th</sup> February 2022, the original due date for the submissions. This was the source material upon which the Police based their response. This was not provided to other Counsel which support's the families' concern that the information request process leads to ad hoc, individualistic and inconsistent information sharing. The families that counsel represent in this submission have been requesting police information since September 2021 and did not receive from the Coroner the material disclosed on Friday.
13. Dealing now with the validity of the categorisation point, it is submitted that:
  - a. there is no such separate category available to a Coroner; and
  - b. given these issues were listed to be dealt with by way of information request, that demonstrates that they are inherently relevant. Otherwise, Judge Marshall would have simply categorised them as outside of scope.
14. Accordingly, it is submitted that it is logical for all issues, that were categorised to be dealt with by way of Information Requests, to be considered within scope and included in an inquest to ensure that public scrutiny can appropriately be conducted.

### *Public Scrutiny*

15. At paragraph [53] of the Scope Minute Judge Marshall cited the *Wallace* case at [53] (d) stating that one feature of a rights compliant investigation was that it “be conducted in public”. This is incorrect. At paragraph [388] of *Wallace* it states that an investigation must “have a sufficient element of public scrutiny.” This is a key difference. It is submitted that a sufficient element of public scrutiny is a genuine opportunity to test the evidence on which the RCOI and the Police summaries have been based on.
16. Looking overseas sufficient public scrutiny has been in the form of public hearings which allow cross-examination. The Manchester Arena Inquiry (**MAI**)<sup>2</sup> into the 22 May 2017 bombing in the United Kingdom is currently holding public hearings that are live streamed and in which evidence is being subject to cross-examination.
17. The MAI outlines on their website how their inquiry works which includes:<sup>3</sup>
  - a. All relevant evidence will be shared in advance of hearings with Core Participants
  - b. Core Participants can suggest lines of questioning that should be pursued by the inquiry
  - c. Inquiries hold hearings and any person or relevant organisation can be called as a witness to give evidence;
  - d. Witnesses can be asked questions by Counsel to the Inquiry or by legal representative of Core Participants (with the Chairman’s permission).
18. This approach has been applied to issues similar to those debated as being within or without of scope in this inquiry: such as the terrorist’s background, radicalisation, preparation and planning, the attack itself, the emergency response, and the background to the emergency responders’ training.<sup>4</sup>
19. The Lindt Café siege in December 2014 in Australia was subject to a full Coroner’s Inquest by the Coroner’s Court of New South Wales. The Inquest Report<sup>5</sup> states that the hearings were held in public and stated early in the report that:<sup>6</sup>

“There were also questions that could only be examined fully and independently by a court with the power to hear and test evidence from sworn witnesses.” These included ... Whether the siege was a terrorist

<sup>2</sup> <https://manchesterarenainquiry.org.uk/>

<sup>3</sup> <https://files.manchesterarenainquiry.org.uk/live/uploads/2019/11/07204218/What-is-a-Public-inquiry-1.pdf>

<sup>4</sup> <https://files.manchesterarenainquiry.org.uk/live/uploads/2019/11/18090347/MAI-Terms-of-Reference-17-Sept-2020.pdf>

<sup>5</sup> <http://www.lindtinquest.justice.nsw.gov.au/Documents/findings-and-recommendations.pdf>

<sup>6</sup> Ibid at Heading ‘Scope of Inquest’ at [38].

incident and whether Monis was an ISIS operative, ... , whether intelligence and security agencies had adequately assessed the risk of Monis undertaking politically motivated violence..."

20. Given that certain of the evidence relied upon for the RCOI's findings and recommendations, relevant to the interests of the Families (and, therefore, it is submitted, to this Inquiry), has been suppressed, it is perceived that a (dominant/predominant) reason this information is not to be tested in public is due to the conflicting public interest that our security and intelligence strategies be kept confidential. This was a concern and an issue in the Lindt Café Coroner's Inquest but was managed delicately. The Inquest held various levels of public hearing, full public viewing, family only viewing and closed court.<sup>7</sup> It is submitted this approach would be appropriate for this present inquiry and would ensure that the families' interests are met.

*Submissions on issues to be within scope*

21. The families agree 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.

**Issues 2-4:** [The Terrorist's] Radicalisation and Government surveillance

22. It is submitted that issues 2-4 are within scope. The Individual's radicalisation is directly relevant to the cause of death to the 51 victims as it provided his purpose and motive, and 'directed' his homicidal terrorist actions. The information known about by the various government agencies, and whether that information provided red flags that were missed by those agencies, is directly relevant to the cause of these deaths and does lend itself to potential comments or recommendations directed to reducing future deaths through how agencies recognise, monitor and act upon potential terrorist threats.
23. This was an issue that was addressed by RCOI and, on this basis, was found by Judge Marshall to be Outside of Scope. It is, however, submitted that this issue continues to be within scope as, inter alia, the RCOI was insufficient as it was not a rights-compliant investigation. The evidence relied upon by the RCOI was conducted in private, was not tested by cross-examination, and nor has it been sufficiently subject to public scrutiny.
24. It is of note that both the MAI and the Lindt Café Coroner's Inquest are to address, or have addressed, the backgrounds of the respective terrorists.

**Issues 5-8:** Firearms Licence

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<sup>7</sup> Ibid at [40-48].

25. Counsel submits this is a crucial element to the chain of events causing the terrorist attacks. These issues were also held by Judge Marshall to be Out of Scope as it was addressed by the RCOI.
26. This evidence needs to be tested and subjected to public scrutiny. The Police need to be properly questioned on the processes and procedures for gun licensing during that time. It may have been addressed by the RCOI but it has not been subjected to public scrutiny. Therefore, there has yet to be a rights-compliant investigation around this aspect of the terror attack.
27. It is of note that Terms of Reference of the MAI explicitly state that the making of the bomb is to be publicly tested and cross-examined. Additionally, evidence of the origins of the gun obtained for the Lindt Café shooting was investigated by the Coroner which resulted in a finding that there were gaps in the Police's firearms intelligence.<sup>8</sup>
28. It is acknowledged that there have been amendments made to the Arms Act 1983 and that there was an assessment of Police processes in the RCOI. However, there continues to be no direct challenge as to the Police's licence processes which led to a man gaining his firearms licence, being able to obtain multiple rapid-fire weapons and stockpile ferociously lethal ammunition, and subsequently murder 51 people.
29. It is submitted that this needs to be tested publicly and that RCOI was inadequate in fulfilling a rights-compliant investigation.

**Issues 11-16:** [The Terrorist's] associations and potential associates on the day

30. It was proposed that these issues could be covered by information requests, therefore the issues were not considered to be out of scope. It is submitted therefore that these issues should be considered as inherently within scope.
31. The Police information provided is inadequate and the Police do not provide the source material.
32. The connections of the Individual, his movements, and the information on which the Police base their conclusions are fundamental and relevant to the families' understanding of what is claimed to have occurred. The evidence Police rely on needs to be held to public scrutiny to fully understand what happened. Without the evidence being provided it is merely taking them at their word.
33. The evidence mentioned addressing these issues that has not been provided includes:
  - a. Online activity documents (itemised in the Police response)

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<sup>8</sup> <http://www.lindtinquest.justice.nsw.gov.au/Documents/findings-and-recommendations.pdf> at [20-33]

- b. DSS Piahana's statement and source materials referred to in the Police response (see Issue 15)
  - c. Statements of family and friends
  - d. Fingerprint analysis and results
  - e. DNA and blood samples
  - f. Exhibits transfer to ESR
  - g. Police radio transmission and their transcripts
  - h. Email to parliamentary Services and posts to family prior to the attack
  - i. Job sheet of the Individual's phone
  - j. Recorded interviews
34. This evidence all lies within scope and needs to be subject to public scrutiny.

**Issue 17: Steroids**

35. It is submitted that steroids, their purchase, the manner of that purchase and the use of those steroids is pertinent to understand the terrorist's preparation. Such information needs to be considered in depth to understand if it can be a red flag or warning to intelligence agencies, particularly in cases where there are lone actors.

**Issue 18: [The Terrorist's] scouting trip**

36. The Police information outlines that they have not been able to establish where the Individual stayed. However, the evidence this has been based on has not been provided for there to be scrutiny. For example, was the Individual asked where he stayed in any of his interviews?

**Issue 27: Evidence of assistance given to injured at scene who survived**

37. This was not addressed by Police, nor has any information been provided.
38. As submitted above, as it is categorised as to be dealt with by way of information request it is inherently within scope.

**Issue 31: Could traffic CCTV have assisted in apprehending the [Terrorist] prior to reaching the Linwood Islamic Centre?**

39. Police provided a response where they inform that the Individual did pass a licence plate recognition traffic camera in Riccarton. They then state that the vehicle was not within readable range of the camera because he was not in a bus lane.
40. This information needs to be scrutinised and questioned. The Police state that an LPR camera is part of the Christchurch Crime Prevention Camera Network (**CCPN**)

and is separate from the Traffic Camera network and that they do not integrate with the database. They stated that the CCPN "is operate as a joint venture between the Police and Christchurch City Council for the purpose of Crime Prevention, Detection and for Evidential purposes."

41. They inform that the Individual did pass one of six LPR cameras, one on Riccarton Road, Deans Avenue however stated that this LPR "only covered the east bound bus lane and was installed by the City Council for bus lane monitoring and enforcement." This not consistent with an LPR purpose and questions should be asked as to how this is considered a part of the CCPN and not the Traffic Camera Network.
42. This response and the evidence relied upon needs to be subject to public scrutiny as it raises further questions.

**Issue 32:** First Responders (Police) confrontational or aggressive in approach

43. This was a matter which was important to the families and upon which submissions were made.
44. It is submitted that there is an issue of additional trauma and shock from such behaviour contributing to a death - however this was proposed to be outside of the scope of the Inquiry. The families do not understand why this is the case, particularly if a rights-based approach to the inquiry is adopted.

**Issues 33-35:** [The Terrorist's] journey from Al Noor mosque to the Linwood Islamic Centre

45. Police have provided a response stating "there is clear and unequivocal evidence that Police did not arrive at Masjid an-Nur whilst the Individual was still present and allow him to leave." This evidence needs to be tested and subject to scrutiny.
46. Any potential that there was a delay which could attribute to the survivability of a victim needs to be properly traversed and subject to public scrutiny. This was acknowledged by the Police who stated in response to issue 34 "The issue of whether any of the Shaheed had a greater chance of surviving if the response had been different is among the issues that are proposed to be considered further in the inquiry". Accordingly, is considered within scope. This must include the Police movements during the time the individual was driving from al-Noor to the Linwood Islamic Centre.

**Issues 36-39:** Role of Christchurch Hospital and Christchurch District Health Board and Co-ordination in preparing to respond to a terrorist attack and co-ordination of emergency services.

47. The families have not received any information from either the Christchurch Hospital or the Christchurch District Health Board in relation to issues 36 to 39.

48. As discussed above, issues categorised to be a part of information request are inherently within scope otherwise they would have been categorised as outside of scope.
49. Police have provided a response to some of the issues above and they require public scrutiny. It is submitted that training needs to be understood and would be better understood through cross-examination and testing the evidence of the staff and trainers of those staff.
50. Emergency response and co-ordination is a focus in the Manchester Inquiry particularly the planning, preparation and co-ordination of the emergency services in response to an attack with mass casualties. This is an important example of cross-examination. In 2011 inquests into the 7 July London terror attacks lead to the finding of recommendations to change how emergency services worked together and responded to such an attack. It brought about the JESIP programme in 2012 which in five principles means co-locate, communicate, coordinate, jointly understand risk and shared situational awareness.<sup>9</sup>
51. In the cross-examination, it was admitted that JESIP did not work on 22 May 2017, when the Manchester bombing occurred. Despite this, the expert witness stated that he thought JESIP has always been and remains currently fit for purpose. Upon pressure in questioning, he went on to state that JESIP was not embedded in training with either the Greater Manchester Police or the British Transport Police. It was admitted that JESIP did not work at all on the day of the shooting and it failed at many exercise beforehand.<sup>10</sup>
52. This demonstrates the need to scrutinise all of the programmes and training that Police and other emergency services provided in their response to properly understand whether all emergency services were adequately trained on the day and the programmes and training relied on were sufficient.

**Issue 40-41:** Reasons for discrepancies recording of time in relation to death, communication and timeline of the shootings

53. The families have multiple questions they wish to understand and raise. These specific issues would be best provided in evidence for families to assess.

**Issue 47:** Cultural response and coronial inquiry

54. It is not clear why this is "outside the scope of the inquiry", particularly if a rights-based approach to the inquiry is adopted.
55. The processes of the inquiry are important and there needs to be demonstrable awareness of and accommodation for cultural and spiritual needs. Already

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<sup>9</sup> <https://files.manchesterarenainquiry.org.uk/live/uploads/2021/09/15185206/MAI-Day-146.pdf>; pages 12-16

<sup>10</sup> <https://files.manchesterarenainquiry.org.uk/live/uploads/2021/09/15185206/MAI-Day-146.pdf>; pages 12-

Counsel have needed to address the importance of the availability of translations and translators.

**Issues 48, 49, 50 and 52:** Protection of mosques, Islamic centres and institutional bias against Muslims.

56. Full understanding of how threats were assessed whether by lone actors or organisation, and how resources were allocated are crucial in the prevention of further terrorist attacks. This is important not only in how to protect Muslims or understand the institutional bias against Muslims but is also important to understand potential threats of any nature beyond those considered to be by Muslims are monitored categorised and taken seriously.

*Conclusion*

57. All issues that have been categorised as Out of Scope due to the issues having been addressed by the RCOI are to be considered as within scope as RCOI was not a rights-compliant investigation as is being conducted overseas.

58. All issues that were categorised to be dealt with by way of information request are within scope as they have not been subject to a sufficient element of public scrutiny and are inherently within scope as otherwise they would have been categorised as without scope.

Dated at Christchurch this 8<sup>th</sup> day of February 2022



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Nigel Hampton QC  
Counsel for families



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Kathryn Dalziel  
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