

**IN THE CORONER'S COURT  
IN CHRISTCHURCH**

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

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

**UNDER**

**THE CORONERS ACT 2006**

**AND**

**IN THE MATTER OF**

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

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**SUBMISSIONS FOR MR TARRANT AS TO SCOPE OF HEARING**

**DATED: 11 FEBRUARY 2022**

**NEXT HEARING: TUESDAY, 22 FEBRUARY 2022 TO THURSDAY, 24 FEBRUARY  
2022**

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## **SUBMISSIONS FOR MR TARRANT AS TO SCOPE OF HEARING**

**MAY IT PLEASE THE CORONER**, Counsel for the Mr Tarrant respectfully submits:

### **1. INTRODUCTION**

1.1 These submissions are filed by counsel for Mr Tarrant to inform the Coroner as to his:

- 1) continuing inability to access essential documents he requires to participate in this inquiry;
- 2) view as to the proper scope of this inquiry and the impact of the inquiry on Mr Tarrant's privacy interests; and
- 3) response to the "memorandum of counsel on behalf of police" dated 4 February 2022.

1.2 In summary, Mr Tarrant is still unable to meaningfully participate in this inquiry because of the approach taken by the Department of Corrections in refusing him access to documents. The Coroner's continuing assistance is requested in order to address this issue.

1.3 As to Mr Tarrant's position on the scope of this inquiry, he is in favour of this coronial process and does not oppose the inquiry's core work. However, he seeks that the enquiry be kept to the issues permitted and not extended to irrelevant matters. He also seeks that his privacy and confidentiality interests be respected, as they would be for any individual, and that information disclosures only occur consistently with this.

1.4 Finally, Mr Tarrant rejects the Police's view that his interested party status should be "revisited" after the issues for the inquiry are settled. This is a concerning development that threatens the very fairness of this inquiry and its findings. Such an approach would be entirely inconsistent with any modern justice principles and offend Mr Tarrant's rights and principles of natural justice.

## 2. MR TARRANT'S INABILITY TO ACCESS DOCUMENTS

2.1 By letter dated 7 January 2022, the Coroner wrote to the Chief Executive of the Department of Corrections in relation to document disclosure to Mr Tarrant. The subject of the letter was:

“... the urgent need to establish a clear and consistent process for the provision of Inquiry documents to Mr Tarrant, and for enabling Mr Tarrant to communicate with me about the Inquiry from the prison”.

2.2 In a helpful schedule, the letter recorded the documents sent to date to Mr Tarrant, and noted the array of grounds asserted by the Department to justify withholding them. Central among those documents is the report of the Royal Commission of Inquiry (**the Royal Commission Report**). A previous copy of that document was attempted to be provided to Mr Tarrant by his former legal counsel. The Department continues to refuse Mr Tarrant access.

2.3 The Coroner's letter recorded the Department's alleged basis for withholding the Royal Commission Report from Mr Tarrant.<sup>1</sup> The grounds recorded by the Department have no basis in fact at all. Mr Tarrant having access to the Royal Commission Report poses no basis for being withheld.

2.4 The unfairness caused to Mr Tarrant by the Department's unreasonable and unlawful approach is significant. As Mr Tarrant cannot access the report, he cannot consider its findings. As well as harming Mr Tarrant's ability to correct factual errors in *that* report, the Department's approach also restricts Mr Tarrant from taking an informed position on this coronial process.

2.5 This is because without being able to review the Royal Commission report, Mr Tarrant is unable to consider the extent of any overlap between the Commission's scope and findings, and this inquiry's proposed scope and findings. It is fundamentally unfair and unlawful for this situation to continue.

2.6 The Department's approach also threatens the fairness of this proceeding to Mr Tarrant on a continuing basis. Entirely consistently with Mr Tarrant's entitlement to legal representation, counsel intends to provide copies of all

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<sup>1</sup> Letter dated 7 January 2022 at p. “9” of table. Please note that if the purported grounds for nondisclosure are raised or addressed at the hearing, counsel will be seeking non-publication orders in relation to this claim, because it is ill-founded and may cause prejudice and harm to Mr Tarrant.

documents produced by the interested parties to this inquiry that are relevant to Mr Tarrant's legal rights to Mr Tarrant in order for him to consider his position. In the absence of compelling justifications to withhold those documents, Mr Tarrant is legally entitled to access them like any other prisoner. Any steps by the Department to further restrict access will cause further unfairness.

2.7 Counsel is currently considering what legal steps to take to ensure Mr Tarrant's access to documents in accordance with his legal rights. At this stage, he respectfully requests a copy of the Department's response to the Coroner's letter dated 7 January 2022, if any was received. Counsel will update the Coroner as to what progress is achieved in obtaining fair access to documents for Mr Tarrant.

### **3. THE PROPER SCOPE OF THIS INQUIRY**

3.1 As recorded above, Mr Tarrant does not oppose this inquest and its work. He intends to observe the proceedings (beginning with the Scope Hearing, and with future steps) without participating personally via audio or video. His involvement<sup>2</sup> in the proceedings will be through counsel. As with any ordinary interested person, he intends on reviewing the documents that are relevant to his position and advancing submissions that affect his rights and interests.

3.2 Mr Tarrant agrees with the Coroner's view as recorded in Appendix A to the minute dated 2 December 2021 that Issues 2 to 10 and 51 are outside the scope of this inquiry. He again records that his inability to access the Royal Commission Report has restricted his ability to consider the extent to which any further issues may be unnecessary given that report's scope.

3.3 Mr Tarrant also agrees with the Coroner's view that Issues 20 to 26 and 28 to 30 are within the scope of this inquiry.

3.4 Counsel notes the Coroner's view in relation to the balance of the issues described in Appendix A, described "Information Response Issues". The Coroner's minute described those issues as follows:<sup>3</sup>

The issues categorised as proposed Information Response Issues are matters that, at least in the first instance, lend themselves to being

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<sup>2</sup> Such as submissions or cross-examination.

<sup>3</sup> At [20] to [21].

addressed by way of providing an information response. To facilitate this process, Police have been gathering the evidence relevant to each of the Information Response Issues, and responses on each of these issues will soon be provided to counsel and Interested Parties.

Currently, the Information Response Issues are not specifically included in those proposed to be taken through as issues within scope of the inquiry. Once Interested Parties have considered the responses provided on the Information Response Issues, any submissions they have to make about whether these issues should be included as Issues In Scope, or instead become Issues Out of Scope should be addressed in their written submissions for the Scope Hearing. Following the Scope Hearing, I will make a determination on the status of these issues.

3.5 Mr Tarrant is not opposed to this approach. However, he does expressly record that information responses provided by the Coroner must be so provided consistently with his rights to privacy and confidentiality. Mr Tarrant accordingly seeks to be heard on whether, and the extent to which, information that impacts upon his privacy and confidentiality rights should be disclosed.

**4. RESPONSE TO THE MEMORANDUM OF COUNSEL ON BEHALF OF POLICE DATED 4 FEBRUARY 2022**

4.1 Counsel for the Police filed a memorandum on 4 February 2022 that submitted Mr Tarrant’s interested party status “should be reviewed by the Coroner once the Scope of Issues for the inquiry has been settled”.

4.2 This submission rests on the assumption that “the Scope centres on the response by Police and other emergency services and issues relating to the survivability” of the victims. The Police suggest that in those circumstances, there will be no need “to call into question [Mr Tarrant’s] conduct, nor make any adverse comment or criticism of it”.

4.3 This position cannot be sustained as a matter of law. Mr Tarrant is an interested party if he is “a person whose conduct is, in the view of the responsible coroner, likely to be called into question during the course of any inquiry in relation to the death or suspected death”.<sup>4</sup>

4.4 There is no question that this inquiry will call into question and make findings that touch on Mr Tarrant’s conduct. If Mr Tarrant was excluded from participation, and the inquiry ultimately “called into question” Mr

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<sup>4</sup> Coroner’s Act 2006, s 9 definition of “interested party”.

Tarrant’s conduct in its work or findings, the entire inquiry would be put at jeopardy due to the resulting unfairness to Mr Tarrant. It would be a fundamental breach of his rights and the requirement for natural justice.

4.5 When the death of any member(s) of our community is the subject of an inquiry by the Coroner as a result of any criminal conduct there will be the temptation to exclude the identified perpetrator of that crime. This may even appear or be a popular position to adopt. However, this is exactly when any robust modern system of justice must ensure that it ensures that all interested parties are heard and that it protects the rights and interest of all participants, including any identified offender, to ensure fundamental interests of natural justice are applied. Not being so disciplined will only undermine the hearing and any required determination made. Justice cannot be effected in a vacuum.

4.6 It goes without saying that “the right to be heard is a fundamental requirement of natural justice”.<sup>5</sup> That right is expressly recognised in s 27 of the New Zealand Bill of Rights Act 1990. The Coroners Act 2006 contains the “interested party” definition, and associated entitlements to disclosure and to be heard and to participate, as an express recognition of that essential right.<sup>6</sup> Accordingly, a violation of this right to be heard threatens the integrity of this proceeding.

4.7 The Police’s submission as to Mr Tarrant’s interested party status should be entirely rejected.

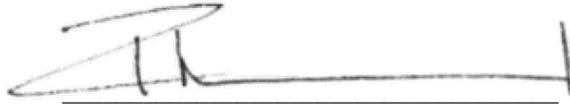
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<sup>5</sup> *Te Pou Matakana Ltd v Attorney-General* [2021] NZHC 3319 at [147].

<sup>6</sup> Coroners Act 2006, ss 23, 81(2), 89.

4.8 Counsel notes that the restrictions on Mr Tarrant's access contained in [5] of the Police memorandum are unnecessary given Mr Tarrant's intended participation at the scope hearing.

Dated at Auckland this 11<sup>th</sup> day of February 2022

A handwritten signature in black ink, appearing to be 'RM' followed by a long horizontal line and a vertical stroke at the end.

Ron M Mansfield QC / J Oliver-Hood

Counsel for Mr Tarrant

**THIS SUBMISSION** is filed by Ronald Michael Mansfield QC of Auckland, whose address for service is at Level 28, SAP Tower, 151 Queen Street, Auckland, Ph (09) 304 1627, Fax (09) 368 4473.