

**IN THE CORONER'S COURT
AT CHRISTCHURCH
(IN-CHAMBERS)**

**I TE KŌTI KAITIROTIRO MATEWHAWHATI
KI TE ŌTAUTAHI
[I TE TARI]**

**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**

Date of Minute: 2 December 2021

**MINUTE OF CORONER B WINDLEY AS TO NEXT STEPS IN
DETERMINING THE SCOPE OF THE CORONIAL INQUIRY**

Introduction

- [1] I have now assumed responsibility for the coronial inquiry into each of the 51 Shaheed who died as a result of the Christchurch masjid terror attacks on 15 March 2019. I want to acknowledge the efforts of the Interested Parties in their engagement so far in the coronial process into these tragic events. I have assumed responsibility at the point where a formal inquiry into each death has been opened and the specific parameters of the inquiry, in terms of the issues to be investigated, now needs to be established. Chief Coroner Judge Marshall's Minute of 28 October 2021 (the **Scope Minute**) proposed a starting point in working towards that decision.
- [2] On 22 November 2021, Interested Parties were advised that the due date for filing written submissions on scope in response to the Scope Minute would be

extended, and the hearing for any oral submissions to be made, previously set down for 14 and 15 December 2021 (the **Scope Hearing**), would be vacated and given a new date with directions to follow. That decision followed the receipt of an application on behalf of a number of Interested Parties to adjourn the Scope Hearing and seeking amended timetable orders.¹ The adjournment application was supported by a number of other Interested Parties.²

- [3] The purpose of this Minute is to:
- (a) emphasise the current stage the inquiry is at, and the purpose of the upcoming written submissions and Scope Hearing within it;
 - (b) set a new timetable for:
 - (i) the due date for filing written submissions in response to the Scope Minute; and
 - (ii) the Scope Hearing, which will provide an opportunity for Interested Parties to be heard, personally or through their counsel, on their written submissions;
 - (c) provide context and direction on a number of issues raised by counsel in their submissions seeking that the Scope Hearing be adjourned; including:
 - (i) requests for documents to be translated;
 - (ii) requests to view footage of the attacks and the manifesto;
 - (iii) requests for written pathologist's reports and meetings with Dr Sage;
 - (iv) the process for providing information and documents to Interested Parties, and outstanding information requests; and
 - (d) set out the next steps.

The stage of the inquiry and the purpose of the opportunity to make further submissions in response to the Scope Minute

- [4] There are some important points that bear emphasising about the current stage of the inquiry and, in light of that, the purpose of providing Interested Parties the opportunity to make further submissions on scope. The points that follow are

¹ See Submissions of Counsel for some of the families of the Shaheed and in respect of timetabling and procedure, filed by Mr Hampton QC and Ms Dalziel on behalf of members of the Shaheed who collectively refer to themselves as the 15 March Group, dated 18 November 2021.

² This included supporting submissions from the Islamic Women's Council of New Zealand and families of the Shaheed represented by Ms Toohey.

made in the hope of assisting Interested Parties and counsel in preparing any further submissions, and in their approach to information requests.

The common goal

- [5] The Scope Minute sets out both the legal framework that applies to the inquiry and a proposed starting point for how each of the issues that have been raised to date by Interested Parties are to be dealt with. A fundamental purpose of this inquiry is to investigate and establish facts in relation to the cause and circumstances of the deaths of each of the 51 Shaheed that are both necessary to fulfil the statutory purposes of a coronial inquiry and reflect the legitimate public interest in understanding how those deaths came to pass. That factual foundation is necessary to identify potential comments and recommendations that might reduce the chances of similar tragedy in the future.
- [6] Collectively, we are all ultimately working towards the common goal of achieving the purposes of the inquiry through an inquisitorial process, which is deliberately distinct from the adversarial approach of most other jurisdictions. In an inquiry of this scale, it will be particularly important that Interested Parties' submissions and information requests are approached with the purposes of the inquiry in mind and taking into account the stage of the inquiry, what is being sought, and the specific purpose or task at hand for which it is sought. Keeping these things front of mind will facilitate the timely and sensible progression of the inquiry and best assist in ultimately achieving its purposes.

The purpose of the further submissions and Scope Hearing

- [7] The opportunity to make further written submissions on scope and the associated Scope Hearing reflects the continuation of the process initiated by Judge Marshall when she first invited submissions from Interested Parties on issues for inquiry. This current phase of the inquiry is tasked with determining what should happen with each of the issues subsequently raised by Interested Parties, and specifically to what extent those issues can and should form part of the inquiry going forward.
- [8] Ordinarily, determining the scope of the inquiry would not require submissions and an interlocutory hearing to discern and refine the issues to be taken forward for inquiry. However, the fact that there has been a successful criminal prosecution and a concluded Royal Commission of Inquiry will necessarily bear on the issue of whether there are purposes of a coronial inquiry which remain unmet in this case, notwithstanding the factual matters established in the course of those previous inquiries and proceedings. In that respect, the current phase is not a standard feature of a coronial inquiry process but is nonetheless fundamental to defining the parameters of the inquiry as we progress to the

likely more familiar stages of the pre-inquest conferencing³ phase and inquest hearing, if I ultimately decide an inquest hearing is required.

- [9] As part of an inquiry, an inquest hearing may be required. Typically, not all issues for inquiry will require further exploration by way of evidence given under oath and tested in cross-examination in the forum of an inquest hearing. Again, the decision on issues that require an inquest involves a further refinement of the issues that have been confirmed for inquiry. If I determine to hold an inquest, the procedure outlined in the Chief Coroner's Practice Note on the Conduct of Inquests (2016/01) will be followed in due course. This will include the preparation of a common bundle of documents relevant to the issues for inquest and convening a series of pre-inquest conferences at which counsel will have the opportunity to make submissions on the final form that the issues and the relevant evidence will take at the inquest.
- [10] Before any of those things can occur, decisions must be made as to the scope and nature of the issues that the inquiry can and should investigate. In light of that procedural context it should be evident that we are currently still in the very early stages of the coronial inquiry and there is still some distance to travel.

Categorising the issues

- [11] In the Scope Minute the issues raised by Interested Parties were proposed to be categorised into three broad groups:
- (a) Issues proposed to be treated as within scope (**Issues in Scope**);⁴
 - (b) Issues proposed to be treated as outside scope (**Issues Out of Scope**);⁵
and
 - (c) Issues proposed to be dealt with in the nature of an information request response in the first instance (**Information Response Issues**).⁶
- [12] An explanation of what the categorisation of these issues means for the purposes of the further submissions and Scope Hearing, and the impact that has on information requests follows.

Issues in Scope

- [13] Amongst the proposed Issues in Scope are:⁷

³ By which I mean, a pre-inquest conference as described in the Chief Coroner's Practice Note on the Conduct of Inquests (2016/01).

⁴ Issues 19-30 in Appendix A to the Scope Minute.

⁵ Issues 2-10, 32, 44-54 and 56 in Appendix A to the Scope Minute.

⁶ Issues 11-18, 31, 33-43 and 55 in Appendix A to the Scope Minute.

⁷ Scope Minute, at [68] and [69], and noting that cause of death is always an issue in an inquiry.

- (a) the cause of each person's death;
- (b) the nature and adequacy of the first response to the attacks; and
- (c) further to (b), the survivability of those who died had the first response been any different.

[14] It is important to emphasise that these are issues that are currently proposed to be carried through for inclusion in the inquiry. At this stage I have not seen any submissions that suggest that any of the proposed Issues in Scope should instead be excluded from the inquiry.⁸ If that remains the case once all further written submissions have been filed, then it will be a straightforward matter to confirm in my final decision on scope, that those particular issues will be carried through and be subject to such further investigation as may be needed, potentially including at an inquest hearing, as the inquiry progresses.

[15] A number of submissions filed urged the adjournment of the Scope Hearing because of the stated need to receive information about, and make submissions on, Issues in Scope. I do not consider that to be necessary. The specific aspects of these issues that are for further inquiry will be considered and determined more precisely in the next phase as the inquiry progresses. For the purposes of determining scope, where an Interested Party supports the Issues in Scope being carried through to inquiry as proposed in the Scope Minute, detailed submissions to that effect will not be necessary.

[16] The status of an issue as one of the proposed Issues in Scope also has an impact on the urgency with which a number of the information requests made by Interested Parties in relation to those issues will need to be addressed. This is addressed further in the examples given below.

Issues Out of Scope

[17] It follows from what I have said above that further submissions should focus on the proposed Issues Out of Scope. In other words, submissions by Interested Parties should focus more closely on why they say any of the proposed Issues Out of Scope should, instead, be carried through and treated as issues within the scope of the inquiry.

⁸ The only submissions received so far that substantively address an Issue in Scope are the Submissions of Police Re Scope of Inquiry (8 November 2021). In relation to Issue 21 of Appendix A to the Scope Minute (Why did the Police not arrive faster?), the Police have submitted that there should be a clarification. Some submissions of Interested Parties have raised the issue of the terrorist manifesto being sent to "authorities" at 1:32pm. Police submit that the word "authorities" should be amended to "Parliamentary Services", because it was Parliamentary Services that received the email referred to. Police further submit that the response to the email was considered by the Royal Commission of Inquiry and, as a result, excluding further consideration of the handling of that email is consistent with how the other issues that the Royal Commission of Inquiry considered are currently categorised. If this submission is accepted, this would narrow the issue being considered rather than exclude it from the inquiry.

- [18] An Interested Party who has no submissions to make on the proposed Issues Out of Scope and who also agrees with carrying through the proposed Issues in Scope may therefore not need to make any further submissions at all in response to the Scope Minute. Alternatively, they may wish to focus their submissions on what they submit should happen with the issues which are, in the first instance, being treated as Information Response Issues.
- [19] I expect that any submissions on the proposed Issues Out of Scope can be made without the need for further documentation to be provided at this point. If an Interested Party considers a particular document or documents is needed in order to make a submission on the proposed Issues Out of Scope, then they should identify what they consider is needed and why it is needed in order to make further submissions on scope.

Information Response Issues

- [20] The issues categorised as proposed Information Response Issues are matters that, at least in the first instance, lend themselves to being 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.
- [21] 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.

Implications for information requests

- [22] The approach I have set out above has implications for information requests that have already been made or may be made in the near future. Some examples are given below:
- (a) The majority of recent information requests have been for information relating to a victim's cause of death, the first response to the attacks, and a victim's ability to survive the injuries inflicted. These are all Issues in Scope. There have been a number of requests for copies of the source documents provided to Dr Hick for the preparation of his expert report. Subject to relevance and privacy considerations, information requests for copies of documents provided to Dr Hick can and will be accommodated in due course. But, the provision of those documents is not time

sensitive for the purposes of the further written submissions and Scope Hearing.⁹

- (b) Interested parties have recently been provided with the Police first response timeline. The timeline references all source documents relied upon in arriving at the timings given. The first response to the attacks is already one of the proposed Issues in Scope. If an Interested Party agrees with the proposal to carry the issue through to inquiry, then in my view it is not necessary for them to receive the source documents referenced in the timeline in order to make written submissions and be heard on those submissions at the Scope Hearing. The accuracy or otherwise of the timeline in so far as the first response is concerned, is proposed to be an issue to be explored as part of the substantive inquiry phase that will follow, not as part of the current task at hand to determine whether or not it should be included as an issue for further inquiry. As such, the need to have one or more of those source documents as the inquiry progresses is a separate matter that can be addressed at a later point.

New dates for filing written submissions and the Scope Hearing

- [23] Bearing in mind what I have said above, written submissions will now be due by 5:00 pm on Friday **4 February 2022**.
- [24] A new date for the Scope Hearing to take place at the Law Courts in Christchurch has also been secured. I acknowledge that ordinarily a coroner would first endeavour to confirm availability of Interested Parties and their counsel if they have one, however this has not been possible for a number of reasons. A combination of the sheer number of Interested Parties and other likely attendees, the associated court facilities that are required, the third anniversary of the attacks, Ramadan and Eid al-Fitr, and my existing inquest commitments in other inquiries, has left only one date option.
- [25] The rescheduled Scope Hearing is set down to take place between **22-24 February 2022** in Christchurch. Any Interested Party who files written submissions is not obliged to also make oral submissions (personally or through counsel) at the Scope Hearing, but they certainly have the opportunity to do so.
- [26] I am conscious that this rescheduled date is still close to the anniversary of the attacks. That is a consequence of having to reschedule the Scope Hearing and the time of year that we have now reached. I do not consider it to be in the interests of the timely progression of the inquiry to delay the Scope Hearing beyond March 2022. The only alternative option as I see it would be to have an

⁹ Obviously, personal medical information provided to Dr Hick about a victim can only be made available to the family of the individual victim concerned.

earlier hearing date and I see immediate difficulties with that option also due to the time of year.

- [27] While I understand that counsel and Interested Parties need to balance many things, in an inquiry of this size consulting all counsel and interested parties on dates and seeking agreement on them would be, in and of itself, a hugely time consuming and likely futile process. Going forward, I will endeavour to provide date options for hearings wherever I can. If I set a date that means that counsel or an Interested Party considers they are seriously compromised in their ability to participate, they should raise it in writing, and I will explore the options for resolving the issue.

Requests for documents to be translated

- [28] Some submissions have suggested that the Scope Minute needs to be translated into the nominated languages of Interested Parties before it can be discussed with them. Reference has also been made to translated resources having been promised to Interested Parties.
- [29] It is not clear to me whether the request is for all documents provided in the inquiry to be translated. If so, my current view is that it will not provide for a workable provision of information moving forward with the inquiry. The breadth of the information requests being made demonstrates the point. It is inconceivable that all documents likely to be provided in the inquiry can be translated, and in my view there is no requirement to do so.
- [30] The initial letters and documents sent to families by Judge Marshall were interpreted into the nominated languages for Interested Parties because counsel were not at that time available to the Interested Parties in order to assist them to absorb those letters and documents and make the decisions that they needed to make at that time. Most Interested Parties have now chosen to be legally represented and I see it as the role of counsel to explain the documents provided to the Interested Parties that they represent in clear terms. I understand that where a grant of legal aid has been approved, counsel is able to seek an amendment to the grant for funding to provide interpretation or translation services to the legally aided person to assist with their communications. It may be that as the inquiry progresses there is a document or documents for which there is a particular identified need and specific reason for a translated version to be made available to an Interested Party. If that is the case, then a request detailing the specific need and reasons will need to be made for my consideration.
- [31] I am considering the options available for the group of unrepresented Interested Parties whom I understand may have previously had documents translated for them.

Requests to view footage of the attacks and the manifesto

[32] In an effort to better understand the attacks and events of 15 March 2019, and what happened to their loved ones, some Interested Parties have notified a wish to view:

- (a) the Livestream video of the attacks; and/or
- (b) the CCTV footage from the attack at Masjid an-Nur; and/or
- (c) the manifesto.

[33] I have been in discussions about a potential process for providing access to that material to approved Interested Parties for approved purposes with the Chief Censor, the Privacy Commissioner, and Police.¹⁰ As Interested Parties and counsel will appreciate, this is a complex issue and it is one that is being carefully worked through. While I expect this issue to be resolved in the near future, if access to this material is granted I do not consider this needs to take place in advance of the due date for written submissions. This is because the issues surrounding what is on the footage (in particular) are closely related to the proposed Issues in Scope.

Requests for written pathologist's reports and meetings with Dr Sage

[34] There have been a number of requests for written pathologist's reports to be provided ahead of the due date for further written submissions. This is an issue I am currently in discussions with the Forensic Pathologists about. For present purposes I reiterate that cause of death is one of the proposed Issues in Scope in the inquiry.

[35] The cause of death is one of the matters which a coroner is required to establish under the s 57 purposes of an inquiry. It follows that in order to make a relevant finding and satisfy that inquiry purpose, the cause of death will be an inquiry issue. That does not necessarily mean that further investigation into the medical cause of death will be required in the inquiry phase, as the pathological evidence may be assessed to be sufficient to establish the medical cause of death. Again, whether (and if so what) further investigation of this issue is in fact required, will be considered more closely in the substantive inquiry phase. Therefore, I do not see cause of death, at this stage, being a matter requiring further submissions in relation to inclusion in scope. As such, the fact that written pathologist reports are not currently available does not, to my mind, hinder an Interested Party in making any further scope submissions.

¹⁰ Both the Livestream and the Manifesto have been classified as objectionable publications by the Chief Censor under the Films, Videos and Publications Classification Act 1993.

[36] A related issue is that of meetings with Dr Sage. A number of these were held recently, and I understand that they have been helpful to families. I also understand that some additional families may now wish to meet with Dr Sage and have requested those meetings to be in private; that is, between only Dr Sage, the family member(s) and their legal counsel if they have one and excluding a coronial representative. The meetings, at least to date, have been authorised under s 27(1A) of the Coroner's Act 2006 and are for the intended purpose of facilitating the coronial inquiry. It is entirely a matter for Dr Sage whether he wishes to pursue additional meetings, and does so in private, but for the purposes of the inquiry I need to ensure that I have an evidential record upon which to progress the issues of cause of death and survivability. It is for that reason that I am discussing the provision of written reports with the Forensic Pathologists. An update on this issue will be provided in due course.

The process for providing information to Interested Parties

[37] Submissions have also raised issues about the way that information is being provided to Interested Parties. The suggestion has been made that the process is not the usual information provision process for an inquiry.

[38] Responses to questions have, to date, been provided on a case by case basis. This has reflected the differing desires for information from Interested Parties and the stage the coronial process has been at. It has not been, and is not intended to be, a substitute for the usual processes that would be followed if, in due course, an inquest hearing is to be convened as part of the inquiry.¹¹

[39] There has also been objection to information being made available on the publicly accessible dedicated Masjid inquiry pages of the Ministry of Justice website. This is in a context where there are a range of competing interests and considerations at play. A number of Interested Parties have urged greater transparency in the provision of information, which they have submitted they have seen as a deficiency of the criminal prosecution and the Royal Commission of Inquiry processes. Other Interested Parties object to information being provided in what they consider to be an unnecessarily public manner and without the opportunity to balance any narrative that is being reported by the media.

[40] In assuming responsibility for the inquiry at this point, I am concerned to ensure that the issues for inquiry, and potentially for inquiry in the forum of an inquest hearing, are not played out in the media ahead of time. Equally, the challenges that a number of Interested Parties encounter, especially those who are unrepresented, in being able to receive and access information relevant to the inquiry in a timely manner, is also a significant concern. The Ministry of Justice has been exploring and assessing the technology options for securely providing information, often being large electronic documents, to Interested Parties, not all

¹¹ Such as, for example, the provision of an inquest bundle of documents.

of whom are represented. An enhancement of existing systems that ought to go some way to assisting with this issue is currently in development and other options are also being explored.

[41] In the meantime, the following approach will be adopted:

- (a) Where Interested Parties are represented by counsel, all evidential documents and information responses will be provided to counsel for the Interested Party. Information will only be provided to counsel. It will not also be copied to the Interested Party. This is because objections have also been made to some Interested Parties receiving evidence and information responses directly that have caused them surprise and upset. It will be for counsel to pass any information responses and evidence provided on to their clients as part of their usual professional obligations. Due to the size of the documents that will often be provided, Interested Parties may require provision of a secure link to the documents. Counsel will need to discuss with their clients exactly how they will provide that information to them.
- (b) Documents that may be evidence in the inquiry will not be published on the website, although public updates on scheduled dates and next steps will continue to be published in that forum.
- (c) For Interested Parties who are unrepresented, any information responses and/or evidence will be sent to the email address provided to Coronial Services as part of the Interested Parties' contact details. The email heading will note that the email contains information about the Masjid inquiry.

[42] Any amendments to this process will be made once the technology options for the provision of information and evidence moving forward in the inquiry have been fully explored.

Outstanding information requests

[43] A number of information requests have been made in recent weeks. These requests are diligently being worked through and will be responded to as soon as possible. Where the requests are particularly broad, the response may request that the Interested Party is more specific as to what is needed and why. If that does not resolve the issue, then decisions may need to be made by me as to whether the information is sufficiently relevant and necessary to the current phase of the inquiry, and if so, the appropriate timing of the provision of that information.

Next steps

[44] The rescheduled timetabling is as follows:

- (a) Any further written submissions on scope are to be filed, along with notification of whether the opportunity to also be heard on the submissions at the Scope Hearing is sought, by 5:00 pm on **Friday 4 February 2022** by email to coronial.response@justice.govt.nz;
- (b) The Scope Hearing will take place between **22-24 February 2022** in the Law Courts at Christchurch. The Scope Hearing provides a further opportunity for Interested Parties to be heard on their previously filed written submissions on scope, either personally or through counsel. Any Interested Party who files written submissions is not obliged to also make oral submissions (personally or through counsel) at the Scope Hearing, but they certainly have the opportunity to do so;
- (c) Any Interested Party who wishes to attend and observe the Scope Hearing or watch it online must register by filling in the form at <https://consultations.justice.govt.nz/comms/1a09bc2b> by **23 December 2021**. If the Interested Party previously registered to attend or watch the hearing that was scheduled for 14 and 15 December, **there is no requirement to register again**. Coronial Services will contact the Interested Party (or their counsel) closer to the February hearing date to confirm registration details and make any changes necessary.

[45] I will issue further directions in due course about requests to view the footage of attacks and the manifesto, and the provision of written pathologist reports.

[46] I trust this Minute provides some clarity on the issues that Interested Parties and their counsel have raised and the next steps in this phase of the inquiry.



CORONER B WINDLEY