IN THE CORONERS COURT
AT CHRISTCHURCH

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

I TE KŌTI KAITIROTIRO MATEWHAWHATI
KI TE ŌTAUTAHI

UNDER **THE CORONERS ACT 2006**

AND

IN THE MATTER OF **Inquiries into the deaths of 51 people in relation to the 15 March 2019 Christchurch Masjidain Attack**

Khaled Mwafak Alhaj-Mustafa
Mohammad Omar Faruk
Ansi Karippakulam Alibava
Mucaad Aden Ibrahim
Husna Ahmed
Syed Areeb Ahmed
Ramiz Arifbhai Vora
Muse Nur Awale
Hamza Khaled Alhaj-Mustafa
Muhammad Zeshan Raza
Karam Bibi
Ghulam Hussain
Linda Susan Armstrong
Musa Vali Suleman Patel
Mohamad Moosid Mohamedhosen
Mohammed Imran Khan
Ashraf El-Moursy Ragheb
Ali Mah'd Abdullah Elmadani
Matiullah Safi
Mounir Guirgis Soliman
Maheboob Allarakha Khokhar
Abdukadir Elmi
Syed Jahandad Ali
Kamel (Moh'd Kamal) Kamel Darwish
Ahmed Gamal Eldin Abdel-Ghany
Amjad Kasem Hamid
Zakaria Bhuiya
Abdelfattah Qasem
Ata Mohammad Ata Elayyan
Mohsen Mohammed Al-Harbi
Muhammad Haziq Bin Mohd-Tarmizi
Hussein Mohamed Khalil Moustafa

Arif Mohamedali Vohra
Hussein Al-Umari
Naeem Rashid
Talha Naeem
Muhammad Suhail Shahid
Ashraf Ali (Razak)
Haroon Mahmood
Lilik Abdul Hamid
Sayyad Ahmad Milne
Farhaj Ahsan
Muhammad Abdus Samad
Ashraf Ali
Junaid Ismail
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Haji Mohemmed Daoud Nabi
Zekeriya Tuyan

Date: 28 April 2022

DECISION OF CORONER B WINDLEY AS TO SCOPE OF ISSUES FOR INQUIRY

The issues to be considered in this coronial Inquiry are as set out at Appendix A to this decision. In summary, the issues are:

(a) The cause(s) of death for each of the 51 people who died as a result of the attack.

(b) The events of 15 March 2019 starting from the commencement of the attack through to the completion of the emergency response and Mr Tarrant's formal interview by Police. Issues for investigation within this timeframe will include whether Mr Tarrant had any direct assistance from other people that day, the emergency response efforts, and whether any aspect of that response may have affected the ability of any of the deceased to survive their injuries.

(c) The process by which Mr Tarrant acquired a firearms licence, whether the licence can be linked to the attack, and whether any identified deficiencies in that process have now been addressed by way of legislative amendments or process changes.

(d) Whether Mr Tarrant's online activity can be shown to have played a material role in his radicalisation with a particular focus on the period between 2014 and 2017. If so, consideration will be given to examining the extent of monitoring of users for extremist content by the relevant platform(s), then and now.

(e) The community's ability to detect and respond to the risk of violent extremism in others.

Structure of this decision

Introduction

[1] In 2021 a coronial inquiry was opened into each of the deaths of the 51 people named in the intituling of this decision who lost their lives as a result of the 15 March 2019 terrorist attack at Masjid an-Nur and the Linwood Islamic Centre in Christchurch (the **Inquiry**).[1] The attack was carried out by Brenton Tarrant who has since pleaded guilty to 92 criminal charges, including 51 of murder, 40 of attempted murder and one of engaging in a terrorist act.

[2] Three years on, the events of that day continue to have a profound and enduring impact on immediate family members of those who died, on those who were injured in the attack (many of whom suffered life-changing injuries), on those who witnessed the events, and on those who responded to them. The lives of many New Zealanders were forever changed by the atrocities of 15 March 2019.

[3] As at the date of this decision, there are some 119 Interested Parties in this Inquiry. Immediate family of each of the deceased hold Interested Party status as of right under the Coroners Act 2006 (**Coroners Act**).[2] All other people and organisations who sought Interested Party status have done so by way of written application. Those applications have been determined either by me or by the Chief Coroner, Judge Marshall.

[4] In addition to the criminal prosecution, the Government established a Royal Commission of Inquiry (**Royal Commission**) into the attack. Notwithstanding those processes, many Interested Parties submit that a wide range of issues related to what happened on that tragic day should be addressed within the coronial jurisdiction and this Inquiry. They have submitted that the prior processes have left important questions unanswered. It is now for me to determine which issues can be sufficiently linked to the cause and circumstances of the deaths, and are matters which I can, and should, inquire into in the coronial jurisdiction.

Purpose of this decision

[5] This decision sets out the issues that will be taken forward for substantive investigation in the Inquiry and my reasons for doing so. This Inquiry is unique, certainly in the New Zealand context, given that it has followed both a criminal prosecution and a Royal Commission. The latter had a broad mandate to investigate and make findings about the attack, together with recommendations directed at preventing future attack.

[6] I have a discretion to determine the issues for this Inquiry.[3] As set out in detail later in this decision, there are many factors I must take account of in exercising

[1] The Coroners Act 2006 does not expressly allow for a joint inquiry to be conducted into more than one death, only a joint inquest (s 84). The 'Inquiry' is therefore used as a collective term for the 51 inquiries that have been opened.
[2] Coroners Act 2006, s 9.
[3] *Abbott v Coroners Court of New Plymouth* HC New Plymouth CIV 2004-443-660, 20 April 2005 at [25].

my discretion on scope. The extent to which the issues raised have already been examined in the course of the criminal and Royal Commission processes is one factor. That factor has inevitably had a strong influence in shaping the submissions Interested Parties have made on what the scope of the Inquiry should be. For that reason, context regarding the criminal prosecution and the Royal Commission's inquiry provides an important starting point.

Criminal prosecution

[7] Mr Tarrant was pursued and arrested by Police on the afternoon of 15 March 2019 shortly after the attack. A significant criminal investigation followed his arrest. He was charged with the murder of 51 people present in and around the mosques,[4] the attempted murder of another 40,[5] and engaging in a terrorist act.[6]

[8] Mr Tarrant ultimately pleaded guilty to all charges on 26 March 2020. On 27 August 2020, Mander J sentenced him to life imprisonment without parole.[7]

Royal Commission

[9] The Royal Commission was established on 8 April 2019, less than four weeks after the attack. Its Terms of Reference required it to investigate and report on three broad areas: the actions of Mr Tarrant, the actions of relevant public sector agencies, and any changes that could prevent such a terrorist attack in the future. The Royal Commission's initial reporting deadline was 10 December 2019 but this was ultimately extended to 26 November 2020.

[10] On 8 December 2020, following its 18-month investigation, the Royal Commission publicly released its four-volume report titled *Ko tō tatou kāinga tēnei Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (**Royal Commission's Report**).[8] Each of the 44 recommendations set out in the Royal Commission's Report were subsequently adopted in principle by the Government. A work programme of implementation has followed and continues. More detail on this follows later in this decision.

[11] The response to the terrorist attack once it had begun was expressly excluded from the Royal Commission's Terms of Reference, as was the guilt or innocence of any individual charged with offences relating to the terrorist attack.[9] Amendments to

[4] Crimes Act 1961, ss 167 and 172.
[5] Crimes Act 1961, s 173.
[6] Terrorism Suppression Act 2002, s 6A(1).
[7] *R v Tarrant* [2020] NZHC 2192, [2020] 3 NZLR 15. Mr Tarrant was also sentenced to life imprisonment on the charge of committing a terrorist act, and a concurrent term of 12 years' imprisonment for the charges of attempted murder.
[8] Available at https://christchurchattack.royalcommission.nz/.
[9] Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 Order 2019, Schedule 1 (**Royal Commission's Terms of Reference**).

firearms legislation and activity by entities or organisations outside the public sector, such as media platforms, were also expressly excluded.[10]

Information disclosure in prior processes

[12] The guilty pleas meant there was no criminal trial.[11] The acceptance of responsibility for criminal offending by way of a guilty plea might ordinarily be thought to be helpful to the immediate family of a victim in that it relieves them of the trauma they would otherwise face in attending a trial and having to hear, in detail, what happened to their loved one. In this case, however, the guilty pleas have left some Interested Parties feeling they have been deprived of the chance to see and consider the evidence underpinning the prosecution, or witness it being formally tested in court. This has had a direct impact upon the scope of the issues Interested Parties have submitted I should inquire into.

[13] In addition, the Royal Commission's investigation was largely conducted in private.[12] The Terms of Reference expressly required that information it received in its investigations into the operational practices of public sector agencies remain confidential where protection of public safety and the security and defence interests of New Zealand made that necessary. The Royal Commission also considered that private hearings were necessary to encourage witnesses, particularly from the intelligence community, to be wholly forthcoming. I refer later in this decision to the measures the Royal Commission took in an endeavour to offset the fact much of its work was done behind closed doors.

[14] I mention this aspect of the Royal Commission at this point because, again, many of the Interested Parties' submissions on scope arise from the concern that they have not had the opportunity to see, consider, and test the evidence that was before the Royal Commission.

[15] Many of the Interested Parties submit that an information void has resulted from the way these prior processes and proceedings have played out. Orders made to preserve the confidentiality of evidence that was before the Royal Commission now effectively preclude access to that information by the families of the deceased and other Interested Parties.[13] The end-result is that Interested Parties, and in particular, immediate families, have not been able to see and consider the source evidence gathered in relation to the events of 15 March 2019, at least not until the information disclosure process within this coronial Inquiry commenced. This information void is a central reason advanced by a number of Interested Parties

[10] *Ko tō tatou kāinga tēnei Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (**Royal Commission's Report**), vol 1 at 49.
[11] There was a public sentencing hearing which immediate family were able to attend and to read their victim impact statements if they wished to do so (see *R v Tarrant*, above n 7).
[12] See in particular Royal Commission's Report, vol 1 at 51; and Minute 4: Access to Inquiry documents and Non-publication of names of witnesses and participants, Royal Commission of Inquiry, 26 November 2020 (**Final Section 15 Orders**).
[13] Final Section 15 Orders at [47]–[63].

that I should inquire into most, if not all, of the issues that have already been investigated by the Royal Commission.

Return to the coronial jurisdiction

[16] The coronial jurisdiction was squarely engaged in the immediate period following the 51 deaths. The Coroner was required to establish the identify of each of the deceased and direct necessary post-mortem examinations. Following that initial stage, the criminal investigation and proceedings essentially precluded any further steps in the coronial process until the criminal proceedings were finally concluded. The deaths returned to the coronial jurisdiction following the sentencing.

Leadup to provisional assessment of the issues for the Inquiry

[17] On 14 December 2020 the Chief Coroner, Judge Marshall, wrote to Interested Parties to explain the next steps in her capacity as the Coroner with responsibility for each of the cases. The letter included information about the role of the coroner, about coronial inquiries and inquests generally, and reasons why a coronial inquiry had not (at that time) been opened. The letter also outlined the various reports that were being prepared for disclosure to Interested Parties (as set out below).

[18] Further steps were then undertaken in an effort to assist Interested Parties in the preliminary identification of issues of interest and concern to them, and to provide key information to immediate families.

[19] On 26 January 2021 Judge Marshall met with representatives of the masjidain, and the Muslim Community Reference Group, which was established by the Royal Commission and included representation from a number of community organisations that now have status as Interested Parties in this Inquiry.[14] The purpose of that meeting was to provide an opportunity for further explanation of the content of her 14 December 2020 letter. Meetings were also held with immediate family members who wanted to meet Judge Marshall. Those meetings provided an opportunity for them to ask questions on the same issues. At those meetings, the Interested Parties talked, amongst other things, about their strong desire for there to be a coronial inquiry, and about their wish to have access to information and evidence that would allow them to identify issues of interest and concern to them, and to participate effectively in the coronial process.[15]

[20] In February 2021 initial overview documents were made available to Interested Parties.[16] The initial overview documents comprised:

[14] Including the Islamic Women's Council of New Zealand, the Federation of Islamic Associations of New Zealand (Inc.), and the Muslim Association of Canterbury.
[15] The strong desire for a coronial inquiry was reflected in the Royal Commission's Report, see for example vol at 133.
[16] Cover letter provided with evidential overviews dated10 and 11 February 2021.

(a) The Police Evidential Overview for 15 March 2019 and its appendices, which included a timeline of events, a map showing the movements of Mr Tarrant that day and the agreed summary of facts relied on for the sentencing in the criminal proceeding. These documents were available to all Interested Parties and were also made publicly available on the Ministry of Justice's dedicated website.[17]

(b) For immediate families, in addition to the above, individual information packs comprising the following documents specific to their loved one:

i. A summary of key facts (as known to Police) about the death of their family member, including where they were in the masjid at the time of the attack and a diagram showing where their body was located.

ii. Details of when their family member was formally verified as deceased, the removal of their body from the masjid, and steps taken to confirm their identity.

iii. Supporting documentation, including a copy of the Coroner's Certificate (COR13),[18] the Reconciliation Report,[19] the pathologist's handwritten notes as to the cause of death, and a report prepared by Forensic Pathologist, Dr Martin Sage, who had assessed the survivability of the injuries of each of the deceased.

[21] Interested Parties were then invited to make written submissions on issues that could properly form the basis of a coronial inquiry.[20] These initial submissions were due by 9 September 2021.

[22] In mid-2021 Judge Marshall engaged Dr John Hick, Professor of Emergency Medicine at the University of Minnesota and Faculty Emergency Physician at Hennepin Healthcare, Minneapolis. Dr Hick was asked to provide an expert opinion from an international perspective on the medical response to each of those who died as a result of the 15 March attack, and in particular on whether any opportunities to save their lives were missed. In September 2021, Dr Hick provided his expert report titled "Analysis of the Medical Response to the Mass

[17] https://coronialservices.justice.govt.nz/masjid-attacks-coronial-process/. The reason for making the overview available in this way was that a number of the Interested Parties were/remain unrepresented. Ensuring access to relevant information from the Inquiry has been an issue of ongoing importance.
[18] The Coroner's Certificate confirms a deceased person's details, including the date and place of death. It also records that a coroner has been satisfied there are no circumstances likely to call for further examination of the body.
[19] The Police Deceased Victim Identification (**DVI**) – Reconciliation Report links the DVI number allocated to a person at the beginning of the identification process with that person's confirmed details. It confirms the person's name, date of birth, place of birth, nationality, the missing person's number allocated and the DVI number.
[20] Letter from Judge Marshall to Interested Parties, 13 July 2021.

Homicide of 15 March 2019" to Judge Marshall, which was then made available to Interested Parties.

Judge Marshall's provisional assessment of the issues

[23] As at 21 October 2021 Judge Marshall had decided to formally open an inquiry into each of the 51 deaths. In making that decision she recorded that she had considered the questions and concerns Interested Parties had told her about, what was resolved by the prosecution process and the Royal Commission's Report, and what issues could be looked at by a coroner. She further stated that opening an inquiry would allow for more detailed investigation into the causes and circumstances of the deaths.[21]

[24] On 28 October 2021 Judge Marshall released her provisional assessment of the range of issues that Interested Parties had submitted should be matters for the Inquiry (**provisional assessment**).[22] She recorded that her review of the submissions received from Interested Parties had revealed some aspects of the circumstances of the 51 deaths that did not appear to have been adequately established, at least at that time, and which were within the parameters of the coronial jurisdiction.[23] The provisional assessment appended a collated summary of the submissions received from Interested Parties. The summary set out some 56 potential issues.[24]

[25] The provisional assessment stands alone, and I need not repeat its content here. The provisional assessment made it clear it was a starting point for what was envisaged as an iterative process in determining the issues for the Inquiry. It is important to emphasise that in making this decision I have approached the provisional issues afresh, having had the benefit of Judge Marshall's provisional assessment of them, but also having had the benefit of further detailed written and oral submissions from Interested Parties.

[26] Judge Marshall divided the provisional issues into three initial categories: issues in scope, issues out of scope and issues being treated, at least in the first instance, as issues upon which further information relevant to (and potentially dispositive of) the issue could be provided to Interested Parties. Judge Marshall categorised the issues in the following way:

(a) All issues that related to the emergency and investigative response on 15 March, as well as the survivability of the 51 deceased, were provisionally categorised as within scope.

[21] Letter from Judge Marshall to Interested Parties, 21 October 2021.
[22] Minute of Judge Marshall re Scope of Inquiry, 28 October 2021 (**provisional assessment**).
[23] At [29].
[24] The issues set out in Appendix A recorded the provisional issues substantially in the same wording as articulated by Interested Parties in submissions.

(b) Issues that had been investigated by the Royal Commission were provisionally categorised as out of scope or, at least in the first instance, as information disclosure issues. This was because it was likely the Royal Commission had adequately determined the questions it had investigated. To the extent those issues involved matters that would ordinarily fall to be addressed by a coronial inquiry, the Royal Commission's findings could be relied upon in this Inquiry. More detail on this assessment follows later in this decision.

(c) The information disclosure issues were not provisionally assessed as being categorically either in or out of scope. Rather, Judge Marshall's intention was that the information Police had on those issues would be provided to Interested Parties, who could then make submissions on how the issue should be categorised.

[27] Timetabling directions invited Interested Parties to make any further written submissions on the issues for Inquiry by 26 November 2021. A hearing was also set down for 14–15 December 2021 so Interested Parties who wished to do so could supplement their written submissions with oral submissions. Interested Parties were not obliged to make oral submissions, and ultimately a small number who had filed written submissions elected not to make oral submissions.

[28] In December 2021, Interested Parties were provided with the Police response to a number of the information disclosure issues in a document titled 'Coronial Response – Broader Issues'. That document set out the Police summary of the evidence available and the conclusions Police had drawn on each of the information disclosure questions Police could answer directly. Many of the remaining information disclosure issues were addressed by the Canterbury District Health Board (**CDHB**) through a notice to provide information. CDHB's response to those issues was provided to Interested Parties as part of the First General Information Disclosure on 8 March 2022.

Commencement of responsibility for the Inquiry

[29] I assumed responsibility for the Inquiry in November 2021 following Judge Marshall's announcement of her retirement.

Receipt of further submissions

[30] Just prior to the 26 November 2021 due date for written submissions a number of Interested Parties applied for the 14-15 December hearing to be adjourned, and for new timetabling directions. The applications were made on the basis that further time was required to prepare written submissions and prepare for the hearing. A new hearing for oral submissions on the issues for the inquiry was set down for 22 to 24 February 2022 (the **Scope Hearing**). The date for filing any further written submissions was also extended until 4 February 2022, and subsequently further extended to 9 February 2022.

[31] Thirteen written submissions were received on behalf of a large number of immediate families and other Interested Parties. Most, but not all, were represented by counsel. Having been granted status as an intervener in relation to the scope of the Inquiry, the Human Rights Commission (**HRC**) also filed written submissions. The extensive nature of the written submissions is testimony to the critical importance of this decision on scope.

[32] The Scope Hearing was originally to be held in Christchurch. That would have occurred but for the rapidly escalating community spread of the Omicron variant of Covid-19. I did not consider an in-court hearing for the Interested Parties who wished to attend in person could be undertaken safely. Accordingly, I made the decision to hold the Scope Hearing remotely.[25] The Scope Hearing took place remotely by way of a Virtual Meeting Room between 22 and 24 February 2022, with all Interested Parties able to observe the hearing remotely and to make oral submissions if they wished.

[33] The Scope Hearing was very helpful in providing an opportunity to clarify both the written and oral submissions, to unpack them and, where necessary, to test the reasoning behind them. While a broad range of submissions were made, by far the most common was that many of the same issues the Royal Commission investigated should be looked at *de novo* in this Inquiry. This submission was advanced essentially on the basis that the Royal Commission's work had not adequately addressed those issues and had not adequately involved the immediate families in its processes, and as a result important questions remained.

[34] A key aspect of that submission was the related submission that the investigation by the Royal Commission was not a human rights-compliant investigation of the kind the State is obliged to conduct under s 8 of the New Zealand Bill of Rights Act 1990 (**NZBORA**). Section 8 protects the right to life. This issue was the subject of extensive discussion in the course of the Scope Hearing, and I address it in detail below.

Legal framework and principles applicable to determining scope

[35] The legal framework and applicable principles in determining the scope of an Inquiry of this kind were discussed in detail in Judge Marshall's provisional assessment. However, given their importance to my analysis and decision, I have set them out again below. My summary largely mirrors Judge Marshall's, while also incorporating a number of points advanced in submissions that I found helpful.

[25] Minute of Coroner B Windley on Decision to Hold Scope Hearing Remotely, 31 January 2022.

Statutory framework

[36] The Coroners Act provides the statutory footing for, and defines the parameters of, the coronial jurisdiction. Section 57 sets out the purposes for which a coronial inquiry is conducted as follows:

> **57 Purposes of inquiries**
>
> (1) A coroner opens and conducts an inquiry (including any related inquest) for the 3 purposes stated in this section, and not to determine civil, criminal, or disciplinary liability.
>
> (2) The first purpose is to establish, so far as possible,—
>
> (a) that a person has died; and
>
> (b) the person's identity; and
>
> (c) when and where the person died; and
>
> (d) the causes of the death; and
>
> (e) the circumstances of the death
>
> (3) The second purpose is to make recommendations or comments (see section 57A).
>
> (4) The third purpose is to determine whether the public interest would be served by the death being investigated by other investigating authorities in the performance or exercise of their functions, powers, or duties, and to refer the death to them if satisfied that the public interest would be served by their investigating it in the performance or exercise of their functions, powers, or duties.

[37] Plainly Coroners do not have an exclusive interest in investigating deaths; s 57(4) acknowledges in some cases the public interest will be best served by an investigation undertaken by another investigating authority. Of particular note is that "other investigating authority" is defined under s 9 to include both the New Zealand Police and a Royal Commission of Inquiry. Efforts geared toward avoiding unnecessary duplication of investigations into deaths with other investigating authorities are amongst the functions of the Chief Coroner (see s 7(2)(d)).[26]

[38] Section 63 further sets out a non-exhaustive range of considerations a coroner must have regard to when deciding whether to open an inquiry:

> **63 Decision whether to open and conduct inquiry**
>
> In deciding whether to open and conduct an inquiry, a coroner must have regard to the following matters:
>
> (a) whether or not the causes of the death concerned appear to have been natural; and

[26] The Chief Coroner's statutory functions include under s 7(2)(d) of the Coroners Act to "help to avoid unnecessary duplication in investigations into deaths by liaising, and encouraging co-ordination…with other investigation authorities, official bodies, and statutory officers".

(b) in the case of a death that appears to have been unnatural or violent, whether or not it appears to have been due to the actions or inaction of any other person; and

(c) the existence and extent of any allegations, rumours, suspicions, or public concern, about the death; and

(d) the extent to which the drawing of attention to the circumstances of the death may be likely to reduce the chances of the occurrence of other deaths in similar circumstances; and

(e) the desire of any members of the immediate family of the person who is or appears to be the person concerned that an inquiry should be conducted; and

(f) any other matters the coroner thinks fit.

[39] In some cases, a person will have been (or may be) charged with a criminal offence relating to the death or its circumstances. If the Coroner is satisfied that to open (or proceed with) an inquiry might prejudice that person, s 68 provides that a Coroner may either postpone opening an inquiry or adjourn an existing inquiry.

[40] Similarly, in some cases an investigation into the death or the circumstances in which it occurred may be underway (or likely to occur) under another enactment. If the Coroner is satisfied that other investigation is likely to establish the cause and circumstances of the death, or that opening or continuing with a coronial inquiry would likely prejudice that other investigation, then s 69 provides that a Coroner may either postpone or adjourn the coronial inquiry.

[41] Where an inquiry has been postponed or adjourned under s 68 or s 69, s 70(3) provides that a Coroner may decide not to open or resume the inquiry if satisfied that the matters specified in s 57(2), including the cause and/or the circumstances of death, have "been *adequately established* in the course of the relevant criminal proceeding or investigation" (emphasis added).

Discretion to determine scope of a coronial inquiry

[42] Within the bounds of this statutory framework, it is well established that a coroner has a broad discretion to determine the scope of a coronial inquiry.

[43] The starting point is s 57, which sets out the purposes a coronial inquiry seeks to achieve. As set out above, these are principally to establish, so far as possible, the matters set out in s 57(2) including the cause and circumstances of death, and, to make recommendations or comments under s 57(3) for the purpose of reducing the chances of further deaths occurring in similar circumstances. Section 57A requires that recommendations must be clearly linked to the factors that contributed to the death(s) in issue and must be based on evidence considered during the inquiry.

[44] The s 57 purposes reflect a deliberately broader scope for coronial inquiries than exists in some other common law jurisdictions.[27] This is also reflected in the New Zealand Law Commission's report on Coroners, which considered that coronial inquiries should not be "limited to matters of mere formality but should be of social and statistical significance in a modern community".[28]

[45] The duty and role of a coroner was similarly discussed by Sir Thomas Bingham MR in *R v North Humberside Coroner, exp Jamieson,* stating:[29]

> It is the duty of a coroner as the public official responsible for the conduct of inquests...to ensure that the relevant facts are fully, fairly and fearlessly investigated ... [and to] ensure that the relevant facts are exposed to public scrutiny.

[46] In a decision referred to me by the IWCNZ, *Matthew v Hunter*, which concerned the Coroners Act 1988, Heron J noted that, while confined by the statutory purposes, 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]".[30] It should be noted, however, that the 1988 Act did not require recommendations or comments to be clearly linked to the factors that contributed to deaths and to evidence considered during the inquiry as s 57A(3) of the current Act does.

[47] At the same time, a coronial inquiry into the circumstances of death is not an open-ended and unfettered exercise. As Randerson J noted in the High Court decision of *Abbott v Coroners Court of New Plymouth*:[31]

> There is nothing in the language of [the predecessor to s 57] or any other parts of the Act to suggest that the coroner does not have a discretion to limit the scope of the inquest so long as he [or she] complies with the Act. It is not for the parties to an inquest to determine the scope of the inquiry. The nature of the inquiry is prescribed by the Act and it is well established that an inquest is a fact-finding exercise, not a method of apportioning guilt.

[48] This is consistent with the approach in other common law jurisdictions. For example, the Court of Appeal for England and Wales in *Coroner for the Birmingham Inquests (1974) v Hambleton* observed:[32]

> A decision on scope represents **a coroner's view about what is necessary, desirable and proportionate by way of investigation to enable the statutory function to be discharged.** These are not hard-edged questions. The decision on scope, just as a decision on which

[27] See in particular paragraph [54] below in relation to the position in the UK.
[28] Law Commission *Coroners* (NZLC R62, 2000) at 3.
[29] *R v North Humberside Coroner, ex p Jamieson* [1994] EWCA Civ J0425-3, [1995] QB 1 at 26.
[30] At 687–688. *Mathew v Hunter* [1993] 2 NZLR 683 (HC) at 687–688.
[31] *Abbott v Coroners Court of New Plymouth*, above n 3, at [25].
[32] *Coroner for the Birmingham Inquests (1974) v Hambleton* [2018] EWCA Civ 2081, [2019] 1 WLR 3417 at [48].

> witnesses to call, and the breadth of the evidence adduced, is for the coroner. [emphasis added]

[49] In referring to the proportionality requirement outlined in the preceding passage, the Islamic Women's Council of New Zealand (**IWCNZ**) submitted that "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".[33] This submission drew on comments in the decision under appeal in that case that "an inquiry into the circumstances of a death caused in an affray involving three people is likely to involve different considerations to an inquiry where the death is caused in the course of a riot involving many hundreds of participants".[34]

[50] I accept that where extensive harm, including the violent deaths of many people, has occurred as the result of a complex event, this is likely to bear on the breadth and complexity of the resulting coronial inquiry. However, care must be taken in interpreting the sense in which proportionality was being discussed by the Court of Appeal in *Hambleton*. I do not interpret the Court to mean that the scope of a coronial inquiry must be proportionate to the scale of the tragedy that has unfolded. That would be an imprecise if not impossible standard to apply in practice. A single death may nonetheless require a very broad coronial inquiry. In the end, every case must be considered on its own facts. The scale of the tragedy cannot itself bring within scope matters that would not otherwise be for this Court to inquire into. Section 57(2) must remain the touchstone.

[51] The Court of Appeal in *Hambleton* further cautioned that the scope of an inquest is not determined by looking at the broad-based circumstances of what occurred and requiring all matters touching those circumstances to be explored.[35] Rather, the matters to be explored must have some anticipated nexus with the death. As *Hambleton* stressed, and s 57A(3)(a) makes clear, considerations of causation and remoteness will be fundamental when determining the scope of an inquiry.

[52] Both Australian and United Kingdom authorities provide some guidance in this regard. In Australia, for example, Nathan J in the Victoria Supreme Court discussed the scope of an inquiry in relation to deaths in a prison fire and held:[36]

> The enquiry must be relevant, in the legal sense to the death or fire. This brings into focus the concept of "remoteness". Of course, the prisoners would not have died if they had not been in prison. The sociological factors which related to the causes of their imprisonment could not be remotely relevant. … such an inquest would never end, but worse it could never arrive at the coherent, let alone concise findings required by the Act, which are the causes of death ... Such discursive investigations are

[33] IWCNZ written submissions, 8 February 2022 at [26].
[34] *Hambleton v Coroner for the Birmingham Inquests (1974)* [2018] EWHC 56 (Admin), [2018] 4 WLR 37 at [32]. IWCNZ written submissions, 8 February 2022 at [36].
[35] *Coroner for the Birmingham Inquests (1974) v Hambleton*, above n 32, at [51].
[36] *Harmsworth v State Coroner* [1989] VR 989 (VSC) at 995–996. Section 68 of the Coroners Act 2008 (Victoria) requires a Coroner investigating a fire to find, if possible, the origin and cause of the fires, and the circumstances in which the fire occurred.

> not envisaged or empowered by the Act. They are not within jurisdictional power.

[53] Similarly, in *Re Doogan* the ACT Supreme Court undertook a judicial review of the Coroner's decision to hold an inquiry into deaths from bush fires. The Court observed that while many factors may have contributed to the development of the fire a line in the chain of causation had to be drawn at some point. The Court further noted the empowering legislation operated to confine the scope of a coronial inquiry in a way that a Royal Commission was not subject to:[37]

> Each of these questions could, of course, lead to yet others and, ultimately to a virtually infinite chain of causation. Yet the scope for judicial inquiry pursuant to s18(1) must be limited. Whilst none of these suggested issues could be said to be irrelevant, they are somewhat remote from the concept of the cause and origin of the fire, and any adequate investigation of them would involve not only substantial time and expense, but also delving into areas of public policy that are properly the prerogative of an elected government rather than a coroner, or indeed, any other judicial officer.
>
> Section 18(1) does not authorise a coroner to conduct a wide-ranging inquiry akin to that of a Royal Commission, with a view to exploring any suggestion of a causal link, however tenuous, between some act, omission or circumstance and the cause or non-mitigation of the fire. …
>
> A line must be drawn at some point beyond which, even if relevant, factors which come to light will be considered too remote from the event to be regarded as causative. The point where such a line is to be determined not by the application of some concrete rule, but by what is described as the "common sense" test of causation affirmed by the High Court of Australia in *March v E & MH Stramore Pty Ltd (1991) 171 CLR 506*. …

[54] In the United Kingdom a Coroner's inquiry has, in most cases, a more limited mandate. A Coroner is required to establish, amongst other matters, "how, when and where the deceased came by his or her death". The "how" has traditionally been a "limited question directed to the means by which the deceased came by his death" rather than ascertaining how the deceased died "which might raise general and far-reaching issues".[38] Since 2004, however, and as reflected in the current Coroners and Justice Act 2009, the "how" has been extended to require a determination of "by what means and in what circumstances" where a breach of a State duty is indicated, making a broader investigation "necessary in order to avoid a breach of [the European Convention on Human Rights]".[39] The additional requirements associated with a human rights-compliant investigation into breaches of State duty are discussed in further detail below.

[55] Despite these statutory differences, I am assisted on the question of remoteness by the decision of Lady Justice Hallett in her 2010 inquest into the deaths of 52 people who died as a result of the 2005 London suicide bombings. Lady Justice Hallett

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[37] *R v Coroner Doogan, ex parte Lucas-Smith* [2005] ACTSC 74, (2005) 193 FLR 239 at [27]–[29]. The Coroners Act 1997 (ACT) allows a Coroner to inquire into the circumstances of a fire.
[38] *R v Coroner for North Humberside and Scunthorpe, ex parte Jamieson*, above n 29, at 24.
[39] Coroners and Justice Act 2009 (UK), s 5.

rejected the argument that the actions of the bus driver (in letting one of the bombers board the bus prior the attack) were within the scope of the inquiry, finding that:[40]

> The bus driver's "action of allowing Hussain to board the bus" is, in my judgment, too remote in the chain of causation to be properly and purposively construed as an act or omission that "caused or contributed to the deaths" of the deceased.

[56] Similarly, in July 2020 guidance issued by Judge Teague (the Chief Coroner of England and Wales) on COVID deaths and the workplace, cautioned against using the forum of a coronial inquest to address concerns about high-level government or public policy, particularly where such concerns are causally remote from the death under inquiry. The Guidance includes the following passage:[41]

> There have been a number of indications in the judgments of the higher courts that a coroner's inquest is not usually the right forum for addressing concerns about high-level government or public policy, which may be causally remote from the particular death. See for example *Scholes v SSHD* [2006] HRLR 44 at [69]; *R (Smith) v Oxfordshire Asst. Deputy Coroner* [2011] 1 AC 1 at [81] (Lord Phillips) and [127] (Lord Rodger). In the latter case, Lord Phillips observed that an inquest could properly consider whether a soldier had died because a flak jacket had been pierced by a sniper's bullet but would not "be a satisfactory tribunal for investigating whether more effective flak jackets could and should have been supplied by the Ministry of Defence." However, it is repeated that the scope of inquiry is a matter for the judgment of coroners, not for hard and fast rules.
>
> When handling inquests in which questions such as the adequacy of personal protective equipment (PPE) for staff are raised, coroners are reminded that the focus of their investigation should be on the cause(s) and circumstance(s) of the death in question. Coroners are entitled to look into any underlying causes of death, including failures of systems or procedures at any level, but the investigation should remain an inquiry about the particular death.

[57] Taking these authorities together, I consider that my discretion to determine the scope of this inquiry is to be exercised by reference to what inquiries are necessary, desirable and proportionate for the discharge of my statutory functions under the Coroners Act. The following fundamental considerations can be distilled and will provide the basis for my approach to the issues raised by the Interested Parties.

(a) Is the issue relevant to the cause or circumstances of a death under inquiry?

(b) Is the issue too remote from the death(s) to be regarded as sufficiently causative?

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[40] *Coroner's Inquests into the London Bombings of 7 July 2005*, 21 May 2010 (Decision following pre-inquest hearing from 26 to 30 April 2010) at [106] and [117] (**London Bombing Inquest**).
[41] Office of the Chief Coroner "Guidance No 37 COVID-19 deaths and possible exposure in the workplace" (1 July 2020) <www.judiciary.uk> at [16]–[17].

(c) Does this issue raise 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?

(d) Does the issue otherwise lend itself to a potential comment or recommendation within the parameters of s 57A?

General relevance of other investigations to the scope of a coronial inquiry

[58] In this case there is additional context; the Inquiry follows both a criminal prosecution and a Royal Commission investigation.

[59] As noted above, where a coronial inquiry follows an earlier investigation, a Coroner's decision on scope must carefully take the earlier investigation into account. This is apparent from the statutory scheme, and in particular s 70 which provides that a Coroner may choose not to open or resume an inquiry if satisfied that the matters specified in s 57(2) have "been *adequately established* in the course of the relevant criminal proceeding or [other] investigation". There are compelling reasons for avoiding duplication, encompassing not only the need for effective and efficient administration of justice but also the public interest in judicial bodies producing authoritative results and avoiding conflicting findings on the same issue.

[60] These considerations apply with equal force to decisions on scope as they do to a decision about whether to open an inquiry. Often another investigating agency will have a particular investigative focus and will not necessarily deliver complete answers to all the questions which must be addressed under s 57(2). Even so, a Coroner may be satisfied that some relevant questions have been "adequately established", and therefore that no further inquiry into those issues is required.

[61] This principle was expressly confirmed in the High Court decision in *Abbott*. The coronial inquiry in that case followed a private criminal prosecution, with regard to which Randerson J held:[42]

> … the Coroner was obliged to resume the inquest… for the purpose of establishing any remaining issues about the circumstances of the death [but has] a discretion under [the predecessor of s 70] to confine the inquest to those aspects of the circumstances of the death which he does not consider to have been adequately established in criminal proceedings.

[62] The same principles are reflected in Coroner Matenga's decision on the scope of the coronial inquiry following the 22 February 2011 Canterbury earthquake/aftershock that claimed more than 180 lives. Much like the present case, a Royal Commission – in that case the Royal Commission of Inquiry into Building Failure caused by Canterbury Earthquakes – had been established soon after. Its Terms of Reference directed it to examine, among other matters, the

[42] *Abbott v Coroners Court of New Plymouth*, above n 3, at [24]. Note that the term "inquest" was used in reference to what would under the current Coroners Act be an inquiry.

causes of building failures that had led to such a high number of deaths including:[43]

(a) Factors that lead some buildings to fail so severely;

(b) Why the failures caused such extensive death and injury (including by reference to characteristics such as age, location and conformity to earthquake standards); and

(c) The adequacy of legal and best-practice requirements for design, construction and maintenance of buildings in New Zealand.

[63] In addressing the scope of the coronial inquiry, Coroner Matenga had regard to the Royal Commission's investigation as follows:[44]

> [3] Pursuant to Orders in Council a Royal Commission was established to inquire into building failure caused by the Canterbury earthquakes ("the Royal Commission"). As a result, I was able to limit the scope of this inquiry given that the cause of the catastrophic collapse of the CTV Building (and others) would be investigated by the Royal Commission. Following a conference held at Wigram Manor, Christchurch on 30 April 2012 I directed that the inquiry would focus on the circumstances of the deaths of Dr Tamara Cvetanova and 5 others who [survived the initial collapse but later] died in the CTV Building. The inquiry would entail an examination of the emergency response, the role (if any) the response may have played in the deaths of Dr Cvetanova and others, and what can be learned to avoid the occurrence of deaths in similar circumstances in the future. Matters being considered by the Royal Commission were specifically excluded from the inquiry.

[64] Plainly the reasons for the collapse of the CTV and other buildings would – but for the Royal Commission – have been matters requiring examination under s 57 as part of the cause and circumstances of the deaths under inquiry. As is clear from the above passage, the coronial inquiry proceeded on the basis that it was not necessary nor in the public interest for investigations being undertaken by an independent Royal Commission to be duplicated in the coronial court.

[65] In this case, the relevance of the Royal Commission's investigation and the extent to which I can rely on its findings, is a strongly contested issue in a way it was not in the coronial inquiry into the deaths in the CTV building. The arguments advanced by Interested Parties are important and raise questions about both the work the Royal Commission carried out, and how principles of international human rights law apply to my Inquiry.

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[43] For terms of reference see https://canterbury.royalcommission.govt.nz/About-the-Terms-of-Reference.

[44] *Inquiry into the deaths of Dr Tamara Cvetanova and others* Coroners Court Christchurch CSU-2011-CCH-000225, 25 March 2014.

The Relevance of the Royal Commission to the Scope of this Inquiry

[66] Interested Parties raised a number of concerns about the Royal Commission which touched on almost every aspect of its investigative process and findings. These concerns and my assessment of them provide a useful starting point, though they are far from decisive on their own.

Royal Commission's Terms of Reference

[67] As I have noted, the Royal Commission was established by Order in Council on 8 April 2019, less than four weeks after the attack. It was chaired by the Hon Sir William Young, a Judge of the Supreme Court, who was joined as a Commissioner by former New Zealand Ambassador, Jacqui Caine. The Commission was directed to make independent and authoritative findings on matters within its Terms of Reference, which it described as follows:[45]

> 3 Our Terms of Reference directed us to inquire into what Public sector agencies knew about the individual's activities before the terrorist attack, what (if anything) they did with that information, what they could have done to prevent the terrorist attack and what they should do to prevent such terrorist attacks in the future.
>
> 4 As well, we were asked to investigate the individual's activities before 15 March 2019, including:
>
> a) his time in Australia;
>
> b) his arrival and residence in New Zealand;
>
> c) his travel within New Zealand, and internationally;
>
> d) how he obtained a gun licence, weapons and ammunition;
>
> e) his use of social media and other online media; and
>
> f) his connections with people, whether in New Zealand or internationally.
>
> 5 We were directed to make findings as to:
>
> 4(a) whether there was any information provided or otherwise available to relevant [Public] sector agencies that could or should have alerted them to the terrorist attack and, if such information was provided or otherwise available, how the agencies responded to any such information, and whether that response was appropriate; and
>
> (b) the interaction amongst relevant [Public] sector agencies, including whether there was any failure in information sharing between the relevant agencies; and

[45] Royal Commission's Report, vol 1 at 48.

(c) whether relevant [Public] sector agencies failed to anticipate or plan for the terrorist attack due to an inappropriate concentration of counter-terrorism resources or priorities on other terrorism threats; and

(d) whether any relevant [Public] sector agency failed to meet required standards or was otherwise at fault, whether in whole or in part; and

(e) any other matters relevant to the purpose of the inquiry, to the extent necessary to provide a complete report.

6 And finally, recommendations were sought on:

5(1)(a) whether there is any improvement to information gathering, sharing, and analysis practices by relevant [Public] sector agencies that could have prevented the terrorist attack, or could prevent such terrorist attacks in the future, including, but not limited to, the timeliness, adequacy, effectiveness, and co-ordination of information disclosure, sharing, or matching between relevant [Public] sector agencies; and

(b) what changes, if any, should be implemented to improve relevant [Public] sector agency systems, or operational practices, to ensure the prevention of such terrorist attacks in the future; and

(c) any other matters relevant to the above, to the extent necessary to provide a complete report.

[68] The Terms of Reference directed that certain matters were outside the Royal Commission's scope; it was explicitly directed not to investigate or report on:

(a) The guilt or innocence of any individual charged with offences in relation to the terrorist attack;

(b) Amendments to firearms legislation (because the government was separately pursuing that issue);

(c) Activity by entities or organisations outside the State sector (such as media platforms); or

(d) How relevant State sector agencies responded to the terrorist attack on 15 March 2019, once it had begun.

[69] As is apparent from the Terms of Reference, the Royal Commission was not, and was never intended to be, the sole forum in which the attack was to be investigated. The explicit exclusion of how state sector agencies responded after the attack shows it was clearly contemplated that a coronial inquiry would be the appropriate

forum for those issues to be considered. This reflects a similar approach to the exclusion of emergency and recovery response efforts from the Terms of Reference for the Royal Commission of Inquiry into Building Failure Caused by the Canterbury Earthquakes.

[70] At the same time, in relation to both the background to the terrorist attack and the responsibility of State agencies, the Terms of Reference were notably broad. As a result, in meeting its Terms of Reference, the Royal Commission's investigation, and its report, extensively addressed many significant aspects of the circumstances that led to the events of 15 March 2019 and the 51 deaths.

[71] To date no formal challenge has been made by any of the Interested Parties to the process or findings of the Royal Commission, in contrast for example to what occurred in cases such as *Peters v Davison* and *Mahon v Air New Zealand Limited*.[46] The fact that the Royal Commission's Report, which was the product of 18 months of dedicated and independent work, currently stands as a formal set of findings and recommendations under s 12 of the Inquiries Act 2013, is not contested by any Interested Party. While those findings are not binding on this Court, nor are they to be readily disregarded.

Submissions of Interested Parties – the Royal Commission did not constitute a rights-compliant investigation

[72] A number of Interested Parties appear to accept, at least as a general principle, that this Inquiry is not required to look at matters that have already been adequately established in other investigations. But many submitted that this principle does not hold for the findings of the Royal Commission. Various reasons were advanced for why this was the case, but the primary submission was that the Royal Commission did not meet the requirements of a rights-compliant investigation as described in the High Court's decision of *Wallace v Attorney General.*[47]

[73] *Wallace* involved proceedings brought against the Crown arising from the death of Steven Wallace who was fatally shot by a Police officer. The procedural background is relevant. The Police and Crown declined to prosecute the officer who fired the fatal shots, but the Wallace family brought a private prosecution. The officer was acquitted. The coronial inquest was then resumed but on a limited basis, the only issues for inquiry being Police policy and procedure for violent offenders, and the provision of first aid to Mr Wallace. In a judicial review of that decision (referred to above at [61] in relation to a coroner's discretion in fixing the scope of an inquiry), the High Court confirmed the Coroner was not obliged to rehear all evidence relating to the circumstances of Mr Wallace's death. The inquest was then convened and findings were issued in relation to the two identified issues. The Independent Police Conduct Authority (**IPCA**) also

[46] *Peters v Davison* [1993] 3 NZLR 744 (HC) and *Mahon v Air New Zealand Ltd* [1983] NZLR 662 (PC).
[47] *Wallace v Attorney-General* [2021] NZHC 1963.

investigated. In making its findings the IPCA considered the evidence given at the criminal trial and at the inquest, and itself interviewed more than 50 witnesses.

[74] Some years later, Mr Wallace's family brought proceedings against the Crown alleging it breached Mr Wallace's right to life as affirmed and protected by s 8 of the NZBORA.[48] Drawing on international human rights jurisprudence, Ellis J held that s 8 of the NZBORA includes both protective and procedural obligations; the procedural obligation required the State to conduct a rights-compliant investigation into a death that implicates (or may implicate) a State actor (referred to as the **s 8 procedural obligation**). The decision examines in detail the five criteria for a "rights-compliant investigation". In summary, Ellis J held a rights-compliant investigation must be independent, effective and reasonably prompt, must have a sufficient element of public scrutiny, and must involve the deceased's next of kin sufficiently to safeguard their legitimate interests.[49]

[75] With the exception of Police, all Interested Parties who addressed this issue assumed the s 8 procedural obligation was engaged in relation to the 51 deaths, notwithstanding that the deaths occurred at the hands of a terrorist rather than a State actor. It is certainly correct that the s 8 obligation can be engaged even where a State actor is not directly involved in the death – for example it undoubtedly applies to deaths in prison, where the State is under a duty to protect those in its custody. That said, it is important to examine whether the s 8 obligation is engaged in this case, which does not involve the State directly, and does not directly implicate any agency with an immediate protective duty towards those who died.

[76] Irrespective of the strict legal position, there can be no question that the unprecedented nature and scale of the attack, and the deep and enduring impact it has had on New Zealand, and in particular the Muslim community, creates a strong public interest in an investigation that meets comprehensive standards. For this reason, I accept that it is appropriate to import international and human rights law standards as a benchmark for assessing the investigations that have taken place into the attack. It follows that the issue of whether the Royal Commission's investigation appears to have satisfied the criteria for each investigative standard, as those standards have been interpreted and applied in New Zealand by the High Court in *Wallace,* will be an important consideration in determining the scope of the Inquiry.

[77] On this point Mr Mansfield QC, for Mr Tarrant, submitted that the Royal Commission was never intended to be a rights-compliant investigation as required by the s 8 procedural obligation. Rather, he submitted, that the purpose of the Royal Commission was "so that those government agencies could tidy up their

[48] The long title to NZBORA sets out that one of its purposes is to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR expresses the right to life in similar terms to s 8 of the NZBORA with Ellis J agreeing that not too much should be made of the distinction that Article 6 expresses the right positively (right to life), whereas s 8 expresses it in a negative (right not to be deprived of life).
[49] *Wallace,* above n 47, at [388].

houses or the government could create different policy regarding how those government agencies should operate ...", and "the government drove that investigation".[50] In short, he submitted that the Royal Commission was very much defined (and confined) by its Terms of Reference as set by the government, whereas the judicial role of the coroner and the purposes of a coronial inquiry are separate and unfettered by government interests in that "it is very much for the public".[51] Mr Mansfield submitted that duplication in the work of the Royal Commission and this Inquiry is permitted because of the separate roles and separate jurisdictions. There is, he said, no requirement that I show any deference to the Royal Commission, and nor does it matter that I may ultimately reach different or contrary conclusions. Mr Mansfield submitted that, at least from Mr Tarrant's perspective, I should simply "put a red line" through the Royal Commission's Report and investigate all causes and circumstances of death afresh. He submitted:[52]

> And you should in performing that function simply ignore the Royal Commission's report unless the same evidence comes before you and unless you reach the same view based on the evidence you receive.
>
> ... I would say forget about the determinations made by the Royal Commission because they need not bother you. You have your own important function and role and the Royal Commission's work and/or its recommendations might be relevant to Government but shouldn't in what you do and any recommendations you make as a result of the evidence you receive.

[78] I did not understand other Interested Parties to go so far as to submit I should simply ignore the Royal Commission's investigation, findings and recommendations. However, counsel for many of the immediate families, together with FIANZ and the IWCNZ submitted that, overall, the Royal Commission did not constitute a rights-compliant investigation. The specific concerns they raised are discussed in detail below, but predominantly stem from the submission that the Royal Commission lacked sufficient public scrutiny, provided inadequate next-of-kin participation and/or was not effective.

[79] On next-of-kin participation, Ms Dalziel submitted that the immediate families had a right to access and test the evidence on issues that remained unresolved, at least from their perspective, following the Royal Commission, even if that practically meant significant parts of the Royal Commission's investigation were repeated in this jurisdiction. Ms Dalziel submitted that the mere fact the Royal Commission looked at an issue did not mean it should be ruled out for consideration in this Court.[53] Rather, she submitted, I am entitled to look at each of the issues put forward by the Interested Parties and make a determination as to

[50] Scope Hearing Transcript of Mr Mansfield's Oral Submissions at 13.
[51] At 13.
[52] At 16-17.
[53] Scope Hearing Transcript of Interested Parties' Oral Submissions at 13.

whether they are in scope having regard to their connection with the cause and circumstances of the 51 deaths. Ms Dalziel submitted a number of issues were in scope on this basis but particularly emphasised those relating to Mr Tarrant's acquisition of firearms and ammunition.[54]

[80] Mr Rasheed, on behalf of a number of immediate families, likewise submitted that issues should not be excluded from this Inquiry simply because they were covered by the Royal Commission. Rather, he said "the statutory framework of the Coroners Act, as read in light of the various human rights authorities, requires the Coroner to 'walk alongside' the Royal Commission's work".[55] In Mr Rasheed's submission this requires an assessment of the adequacy of the Royal Commission against the yardstick of a rights-compliant investigation, taking into account not only whether an issue had been covered on the face of the Royal Commission's Report, but an assessment of "the various componentry of that inquiry" and therefore whether the inquiry into that issue was in fact effective.[56]

[81] Ms Toohey, on behalf of some immediate families, submitted the test to be applied was whether "the public interest is served by reliance on the investigation of the Royal Commission".[57] This submission is something of a reverse reading of s 4(2)(c) of the Coroners Act, which as I have set out earlier, provides that the third purpose of a coronial inquiry is "to determine whether the public interest would be served by the death being investigated by other investigating authorities" and to refer deaths where appropriate. There has been no suggestion, on behalf of any Interested Party, that I should refer any or all of the 51 deaths to another investigating authority. That said, I accept that the public interest in a rights-compliant investigation is an important factor for me to consider when determining whether an inquiry into any issues that have already been investigated by the Royal Commission is reasonable, proportionate and necessary to the discharge of my statutory functions.

[82] The HRC, as intervener, was reluctant to criticise how the Royal Commission addressed matters *within* its Terms of Reference, and acknowledged the need to avoid unnecessary duplication.[58] However, it submitted the Royal Commission's process nevertheless failed to discharge the obligations of a rights-compliant investigation for various reasons.[59] These included that the Terms of Reference limited the Royal Commission's scope to events prior to the attack, that the Royal Commission and the coronial Inquiry are complementary components of the State's human rights obligations, and that the unprecedented nature of the attack favours a broad rather than narrow approach to scope.[60] Accordingly, the HRC submitted that this Inquiry "should be complementary to, but not unduly restricted

[54] At 13–14.
[55] At 33.
[56] At 33–34.
[57] At 61.
[58] Human Rights Commission written submissions, 8 February 2022, at [15].
[59] At [4].
[60] At [5]-[19].

by the ambit of the Royal Commission nor its findings",[61] and that I "should avoid a presumptive approach to excluding issues purportedly covered by the [Royal Commission], particularly those issues that families submit were not addressed adequately or not at all".[62]

[83] Finally, Mr Zarifeh for the New Zealand Police, submitted that the Royal Commission had carefully and thoroughly investigated matters within its Terms of Reference. He emphasised that the Royal Commission had a complement of more than 50 staff and conducted some 400 meetings or interviews over the roughly 18 months it ran.[63] While acknowledging it would be for this Court to assess whether the Royal Commission's investigation process met the requirements of a rights-compliant investigation, Mr Zarifeh submitted it appeared to have done so. Accordingly, where issues were dealt with by the Royal Commission, Mr Zarifeh submitted that generally those matters had been sufficiently covered.[64]

Reliance on findings of the Royal Commission for the purposes of this Inquiry

[84] At the heart of the issues raised by the Interested Parties' submissions is the extent to which I can rely, if at all, on the Royal Commission to "adequately establish" a s 57 matter that would otherwise form part of this Inquiry.

[85] I reject Mr Mansfield's submission that I should completely ignore the work of the Royal Commission. I do not accept his characterisation of the nature and purpose of that inquiry. The government initiates and sets the Terms of Reference for a Royal Commission but it does not "drive" the investigation. While various concerns were raised about the Royal Commission's processes, the independence of the Royal Commission was not one of them.

[86] Further, the purposes of the Royal Commission expressly included the need to provide "an independent and authoritative report" for the benefit of the New Zealand public, "including its Muslim communities",[65] and to make recommendations "to ensure the prevention of such terrorist attacks in the future".[66] These purposes are notably similar to those set out in ss 3(1) and 57 of the Coroners Act, a point demonstrated by the fact that the Royal Commission investigated a large number of the issues which I am now being asked to inquire into. While this Court has different procedures, and in some respects a different focus, I do not accept that the two inquiries seek to achieve wholly different ends.

[87] Nor can I accept the submissions of the HRC that the Royal Commission investigation was not rights-compliant because its Terms of Reference did not

[61] At [74].
[62] At [74].
[63] Scope Hearing Transcript of Interested Parties' Oral Submissions at 139.
[64] At 139.
[65] Royal Commission's Terms of Reference, above n 9, at [1].
[66] Royal Commission's Terms of Reference, above n 9, at [5].

cover all possible matters, because it was only one component of the State's s 8 investigative obligation, or because of the unprecedented nature and scale of the attack. None of those matters are in dispute, but nor do they say anything about the test for a rights-compliant investigation and whether it was satisfied in respect of the matters that the Royal Commission *did* investigate. It is well established that "the fact finding and accountability components of the investigative obligation may be shared between authorities ... provided they are procedurally effective in totality".[67]

[88] Much of the HRC's submissions focused on these three concerns. While the submissions are correct as far as they go, they are more relevant to the need to open an inquiry (which has already occurred) as opposed to assisting with questions of scope. None of those matters indicate a need to re-investigate issues that the Royal Commission has covered.

[89] That said, I consider a blanket ruling that issues should be excluded from this Inquiry simply because that they were covered by the Royal Commission would be too blunt, and an inadequate basis to assess whether I can (and if so should) rely on the Royal Commission findings where they relate to s 57 matters. The Royal Commission investigated a large number of issues. To assess whether a matter has been adequately established, I need to look carefully at the nature of the Royal Commission's investigation and findings on each issue (an approach that broadly aligns with Mr Rasheed's submissions).

Does the legal obligation to conduct a rights-compliant investigation arise?

[90] As I have said, the oral submissions from the Interested Parties at the Scope Hearing, with the exception of Police, each proceeded on the assumed basis that the s 8 procedural obligation to conduct a rights-compliant investigation is engaged.

[91] Because I consider there to be a strong public interest in adopting the *Wallace* investigative standards as the benchmark for what the State's investigative response must achieve, it may be unnecessary to determine whether the s 8 procedural obligation is in fact engaged. This threshold question is nonetheless an important matter to explore given the number of Interested Parties whose submissions used the *Wallace* test as their starting point.

[92] The law on positive and procedural human rights obligations is still developing in New Zealand. The facts before me are very different to those in *Wallace*. As I have said, Mr Wallace died after being shot by a Police officer, an agent of the State. Ellis J's finding in that case was that the right to life in s 8 of the NZBORA

[67] *Wallace,* above n 47, at [387].

includes a procedural obligation to investigate a death "that has occurred at the hands of a State actor".[68] At the core of Her Honour's reasoning was that:[69]

> The prohibition on depriving others of life is toothless without a parallel obligation to interrogate and test the circumstances in which such a deprivation has occurred in the individual case.

[93] In reaching this conclusion Ellis J drew on the established procedural obligation under the right to life in Article 2 of the European Convention on Human Rights (**ECHR**). In particular, Her Honour referred to the statement of the ECtHR in *McCann v United Kingdom*.[70]

> It must often be the case where State agents have used lethal force against an individual that the factual circumstances and motivations for the killing lie largely, if not wholly, within the knowledge of the State authorities ... It is essential both for the relatives and for public confidence in the administration of justice and in the State's adherence to the principles of the rule of law, that a killing by the State is subject to some form of open and objective oversight.

[94] As Ellis J noted, it is well-established that Article 6 of the International Covenant on Civil and Political Rights (**ICCPR**) (to which New Zealand is a signatory) also incorporates an ancillary obligation to investigate "deprivations of life for which the State is responsible".[71] In light of the purpose of the NZBORA, which includes to "protect the rights it confirms", Her Honour was satisfied that the reasoning in *McCann* and similar cases applied with equal force and logic to s 8 where lethal force has been used by a State actor.[72]

[95] Ellis J made no comment on whether or to what extent the s 8 procedural obligation applies in circumstances where death did not occur directly at the hands of a State actor. There will be cases, such as *Edwards*,[73] which involved the death of a prisoner at the hands of a mentally disordered cellmate, where the State is under a protective obligation even if not directly involved in the death. The ECtHR has found that positive protective duties exist under Article 2 to maintain legal and administrative frameworks that are protective of life, and to take reasonable measures to protect a person whose life is known to be at immediate risk from the criminal acts of a third party.[74] Ellis J deliberately took the issue of other protective

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[68] *Wallace*, above n 47,at [384].
[69] *Wallace*, above n 47, at [382].
[70] *McCann v United Kingdom* [1995] ECHR 31 (Grand Chamber), at [192].
[71] *Wallace*, above n 47, at [375].
[72] *Wallace*, above n 47, at [382].
[73] *Edwards v UK* (2002) 35 EHRR 487.
[74] On the obligation to maintain legal and administrative frameworks see cases such as *Keenan v United Kingdom* [2001] ECHR 242; *Oneryildiz v Turkey* [2004] ECHR 658 (Grand Camber); and *Makaratzis v Greece* [2004] ECHR 694. On the positive obligation to take measures to protect life see cases such as *Osman v United Kingdom* [1998] ECHR 101 (Grand Chamber).

obligations no further saying: "It is not necessary, however, to consider those other protective duties in this judgment".[75]

[96] I am not aware of any other New Zealand cases that have directly considered the issue of the State's protective duties and how these relate to the s 8 procedural obligation.[76] This leaves important questions to be settled, both on the nature of the State's positive obligations themselves, and the scope of the procedural obligation that may be required to protect them.

[97] In the course of the Scope Hearing counsel for the HRC in its intervenor role, Mr Hancock, was asked how I might define the circumstances in which the s 8 procedural obligation is engaged, and in particular the extent to which the acts or omissions of State actors must be implicated in a death. In response, Mr Hancock submitted that the issue of whether the State has any responsibility for these deaths is "actually irrelevant" to whether or not the obligation to investigate arises.[77]

[98] It is difficult to accept that can be correct, at least insofar as the s 8 procedural obligation is concerned. On Ellis J's reasoning, the procedural obligation exists to protect the substantive right to life by ensuring effective investigation in relation to potential breaches by the State.[78] While a substantive violation is not required for the procedural obligation to be breached,[79] it seems to me that for the procedural obligation to arise there must, at a minimum, be some basis for linking the death to at least the possibility of a substantive breach by the State.[80]

[99] To be fair to Mr Hancock's submission, I understood his position on this point to rely not only on the s 8 procedural obligation but also on specific remedial rights that he submitted arise under the ICCPR in relation to victims of terrorism. Therefore, as I understood his submission, a rights-compliant investigation process is a required State response, that in and of itself constitutes an effective remedy, for those most affected by Mr Tarrant's 15 March 2019 act of terrorism,[81]

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[75] *Wallace,* above n 47, at [517].
[76] The Human Rights Commission as intervener was not able to point me to such a decision during the oral hearing and my own research in preparation of this decision appears to confirm that position.
[77] Scope Hearing Transcript of Interested Parties' Oral Submissions at 155.
[78] *Wallace,* above n 47, at [382].
[79] *Wallace,* above n 47, at [376].
[80] Of note, the application of the NZBORA, as stated in s 3, makes clear that it applies only to acts done either by the legislative, executive, or judicial branches of the Government of New Zealand; or by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law. See also Adam Straw QC "The Legal Basis of the Duty to Investigate" (April 2016) Doughty Street Chambers at [9] which notes that "the starting point is that the state comes under a procedural duty to bring about an effective investigation [under art 2 ECHR] when it is arguable that there has been a breach of one or more of certain substantive rights".
[81] In the Scope Hearing I explored with Mr Hancock whether the HRC's submission was that this effectively engaged a broader purpose for a coronial Inquiry than s 57 which is focused on the person who died, and whether the wider interests of immediate families and certain others were suggested as the central focus over and above the interests recognised in affording status as Interested Parties. Mr Hancock referred to s 3 of the Coroners Act, which expresses that in helping to achieve its purposes the Coroners Act recognises cultural and spiritual needs of the family and others who were in a close

regardless of whether the State is in any way implicated by way of an action or omission in how that terrorist act came to take place. In effect, Mr Hancock submitted that the need for a rights-compliant obligation comes not from any allegation that the State has breached s 8, but by virtue of a separate, but substantively similar, obligation that arises in cases of terrorism.[82]

[100] The Royal Commission's investigation focused closely on the knowledge and actions of public sector agencies but did not draw any causal link between the attack and the acts or omissions of any public sector agency. A number of Interested Parties disagree with the Royal Commission's conclusions in this regard. For example, they assert there may well have been a link between Mr Tarrant's actions and the actions of the Police in granting him a firearms licence. I accept the submissions made by Mr Hancock and other counsel that the issue of whether the State might be implicated in the 51 deaths is an issue of real contention and concern for many Interested Parties.

[101] In any event, it is at best unclear whether the s 8 procedural obligation is engaged here as a matter of law. Nonetheless, the investigative standards in *Wallace* provide a helpful benchmark as to whether I can, and should, rely on the findings of the Royal Commission on matters that would otherwise form part of my Inquiry.

[102] This approach recognises that it remains arguable that the s 8 procedural obligation is engaged. But, more importantly, it reflects my view that the attack was of such a scale and severity, with such deep and enduring effects, that the public interest is best served in ensuring that any reliance on the findings of the Royal Commission follows an objective assessment of whether its processes satisfied the investigative standards of a rights-compliant investigation, irrespective of whether it was legally required to do so.

Requirements of a rights-compliant investigation and the Royal Commission process

[103] Ellis J affirmed in *Wallace* that no particular type of investigation is required for the s 8 procedural obligation to be satisfied. A rights-compliant investigation can be fulfilled through a combination of different inquiry processes provided they are effective in totality. Here, the criminal prosecution, together with the Royal

relationship with the person who has died as providing "that particular focus regarding loves ones' families that have been left behind". He also reiterated the point made by Mr Harris for IWCNZ that s 3 of NZBORA imposes a duty on the judiciary (and therefore a Coroner) to give effect to the NZBORA (Scope Hearing transcript at 165-66). Although not ultimately material to my decision, I do not consider that s 57 can be enlarged in the way the HRC appears to contend, and the cultural and spiritual needs of immediate families and others must be considered within the parameters of s 57.

[82] See, for example, the written submissions of the Human Rights Commission, 8 February 2022 at [10]-[12].

Commission's investigation and any investigation I conduct could, in combination, satisfy the requirements of a rights-compliant investigation.

[104] Irrespective of how an investigation proceeds, *Wallace* held that the minimum features of a rights-compliant investigation are that it must:[83]

(a) be independent;

(b) be effective;

(c) be reasonably prompt;

(d) have a sufficient element of public scrutiny; and

(e) "in all cases" involve the next-of-kin "to the extent necessary to safeguard his or her legitimate interests".

[105] None of the Interested Parties took issue with the Royal Commission's independence or its timeliness. The submissions focussed on whether the Royal Commission's investigation was effective, and whether it had sufficient public scrutiny and next-of-kin involvement.

[106] As I have stated above, a blanket ruling that issues should be excluded from this Inquiry simply because that they were covered by the Royal Commission would be too blunt, and an inadequate basis to assess whether I can (and if so should) rely on the Royal Commission findings where they relate to s 57 matters. Equally, I consider it unwise to approach the question of whether the Royal Commission was a rights-compliant investigation in a generalised or wholesale way; a more refined and nuanced assessment is required. The following sets out the criteria for a rights-compliant investigation that have emerged as being in contention, the test that applies for each, and my general comments in relation to the concerns raised by Interested Parties. My assessment of each issue, or group of issues, set out in later sections, includes more specific analysis of whether the Royal Commission was a rights-compliant investigation into that particular issue, or group of issues.

The test for public scrutiny

[107] A number of Interested Parties submitted the Royal Commission did not involve sufficient public scrutiny because it was essentially held in private. They submit that as a consequence they were deprived of an opportunity to view and to test the evidence that the Royal Commission received and considered.

[108] For example, Mr Hampton QC and Ms Dalziel submitted that:[84]

[83] *Wallace*, above n 47, at [388].
[84] Written submissions of Mr Hampton and Ms Dalziel, 8 February 2022, at [15].

> A sufficient element of public scrutiny is a genuine opportunity to test the evidence on which the Royal Commission of Inquiry and the Police summary have been based on.

[109] Similarly, Mr Rasheed submitted the Royal Commission's findings and recommendations should be able to be "traced back to key pieces of evidence" by Interested Parties, and the evidence itself must be tested in cross examination.[85] Mr Rasheed's submissions did not address how this Inquiry might resolve the central reason that the Royal Commission felt obliged to sit in private, namely the need to protect security-sensitive and classified information.

[110] Mr Hampton and Ms Dalziel did endeavour to address that issue. They referred to the Manchester Arena Inquiry as an example of a public hearing where evidence was live streamed and subject to cross examination. They submitted that hearing addressed some similar issues to those that arise in this Inquiry. Reference was also made to the Lindt Cafe coronial inquest, in Sydney, which held hearings in public but also examined some questions in private, including issues related to intelligence and security agencies and whether they had adequately assessed the risk of the terrorist undertaking politically motivated violence.[86]

[111] It is of course correct that other State and coronial inquiries in comparable jurisdictions have engaged various mechanisms, other than a private process, to balance the need to examine the relevant actions and events without compromising future efforts to keep the public safe. But the fact the Royal Commission undertook a private process does not of itself demonstrate a lack of sufficient public scrutiny. That could only be the case if the test for public scrutiny requires that Interested Parties are always able to "look under the hood", to assess and then test the source evidence. The implication of these submissions is that anything less will fail to meet the public scrutiny requirement of the s 8 procedural obligation.

[112] But *Wallace* itself does not set the test for public scrutiny as high as the Interested Parties suggest, a position I endeavoured to explore in the Scope Hearing. Rather, Ellis J found that public scrutiny (also referred to in *Wallace* as accountability) means that: [87]

> …there must be a sufficient element of public scrutiny of the investigation *or its results* to secure accountability in practice as well as in theory. [emphasis added]

[113] The alternative limb of Ellis J's definition is important here. The Royal Commission undertook its investigation in private for the reasons already discussed. But the steps in its investigation were set out in detail in its Report, as was much of the evidence it considered, where that could be made public. The

[85] Written submissions of Mr Rasheed, 8 February 2022, at [166.3].
[86] Written submissions of Mr Hampton and Ms Dalziel, 8 February 2022, at [16] to [20].
[87] *Wallace*, above n 47, at [403].

Royal Commission's Report is detailed and publicly accessible. That is all the public scrutiny element requires.

[114] In its findings, the Royal Commission was critical of a number of public sector agencies, including Police and the intelligence and security agencies. It made detailed recommendations aimed at improving the likelihood that a similar future attack would be detected in the initial planning stages. These aspects of the investigation and its outcome provide the requisite public scrutiny and accountability despite the source evidence not being heard in an open public forum in the way that the immediate families would have preferred.

[115] The fact that an investigation conducted in private may nonetheless meet the public scrutiny requirement is demonstrated in *Wallace* itself. The IPCA investigation in *Wallace* had been conducted in private, with the IPCA releasing a detailed report and findings, just as the Royal Commission did. Ellis J found that the IPCA investigation had met the public scrutiny requirement through that process. Her Honour found:[88]

> Although the IPCA investigation was conducted in private, its report – which contains a detailed record of the outcome of its investigation and the reasons for it – was made public as is required by law. It meets the s 8 accountability requirement.

[116] Mr Mansfield submitted that Ellis J was wrong to find that the IPCA investigation met the public scrutiny test. I am, of course, bound by Ellis J's statement of the law. Ms Toohey submitted that the IPCA investigation example can be distinguished, because that investigation resulted from an approach by the next-of-kin to the IPCA, and it followed a depositions hearing and a criminal trial during which evidence was heard in public.[89] While these aspects of the context to the IPCA's investigation in *Wallace* are correct, they are not factors that Ellis J relied on in finding that the public scrutiny element was met by the IPCA's investigation. That conclusion rested upon the publication of its report.

[117] Further confirmation can be found in statements of the ECtHR, which has observed that the requirement for public scrutiny:[90]

> … does not … go so far as to require all aspects of all proceedings following an inquiry into a violent death to be public as disclosure or for example, publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2.

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[88] *Wallace*, above n 47, at [512].
[89] Written submissions in reply of Ms Toohey, 25 February 2022, at [10].
[90] *Guide on Article 2 of the European Convention on Human Rights, Right to Life* (2021, Registry of the European Court of Human Rights) at [170].

[118] As counsel assisting me submitted, if this were not the case then Crown prosecutions which go to trial, where victims do not get to view or test all the evidence for themselves, could not meet the public scrutiny requirement. Ellis J held, and no party disputed, that a Crown prosecution involving a trial meets the public scrutiny test.

The test for next-of-kin participation

[119] The Interested Parties' concerns about the level of public scrutiny at the Royal Commission were closely associated with their concerns about whether the deceased's next-of-kin were able to participate adequately. Many immediate families submitted that the private nature of the investigation also excluded them from the Royal Commission's processes.

[120] While Mr Rasheed did not go so far as to submit families had been 'shut out' from the Royal Commission process, he described it as amounting to no more than 'contact' with families.[91] Mr Rasheed submitted that many immediate families were not able to engage with the Royal Commission's process at all and that most were only able to learn about and, on a few rare occasions, meet and talk with the Commissioners about the process rather than participate in any meaningful way. He described the attempts to involve families as being "at a relatively superficial level,"[92] that meetings were "purely informational"[93] but acknowledged that "contact with the Royal Commission became increasingly meaningful as the process progressed".[94] He submitted, as did a number of other Interested Parties, that immediate families should have been granted core participant status under s 17 of the Inquiries Act 2013.[95] In his written submissions Mr Rasheed was also critical of families "having not yet been afforded independent engagement with the Royal Commission report or process in order to enable [them] to a) digest the content of the report and b) respond to it in a way that enables them to articulate where they feel let down by the process".[96]

[121] Mr Razzaq, on behalf of FIANZ, confirmed that he had been involved in initial consultations about the Royal Commission's Terms of Reference and agreed with Mr Rasheed's characterisation of the level of the Royal Commission's engagement with families, though he qualified it further as, "empathetic contact … trying to understand our community".[97]

[122] Mr Rasheed submitted that an "inherent lack of appropriate experience and expertise" meant the Royal Commission was "hampered in its ability to effectively involve the wider victim (Muslim) community and the victim families (despite the

[91] Scope Hearing Transcript of Interested Parties' Oral Submissions at 50.
[92] At 46.
[93] At 49.
[94] At 49.
[95] Written submissions of Mr Rasheed, 8 February 2022, at [166.2].
[96] At [160].
[97] Scope Hearing Transcript of Interested Parties' Oral Submissions at 123-124.

latter being facilitated to some limited degree towards the end of the RCOI process".[98]

[123] Ms Toohey described the opportunities for family participation as "extremely limited" but did not expand upon why she submitted that was the case.[99] Ms Toohey submitted that, at least for the families she represents, sufficient participation in practical terms principally means having an ability to access and understand the underlying evidence and have it ventilated in an open forum.[100]

[124] In considering the next-of-kin participation aspect of the s 8 procedural obligation, Ellis J referred to the cases of *Amin* and *Edwards*, both of which involved the death of a prisoner whilst in custody.[101]

[125] Mr Edwards, who had mental health issues, was killed by another detainee. His parents had wanted him to receive medical care rather than be remanded in custody when he was arrested by Police. The detainee who killed Mr Edwards also had mental health issues and pleaded guilty to manslaughter by reason of diminished responsibility.

[126] The coroner's inquest into Mr Edwards' death was closed after the manslaughter conviction was entered because there was no obligation in those circumstances to continue. No other criminal charges were brought against any of the State agencies or anyone else involved in the case. A private, non-statutory, inquiry was held into Mr Edwards' death by three state agencies with statutory responsibilities for Mr Edwards.

[127] The inquiry heard evidence over 56 days within a 10-month period. It had no powers to compel witnesses or to require the production of documents. The inquiry published its report, which included a number of adverse findings made against those in the prison service, the court, Police and others, and which indicated a number of missed opportunities to prevent Mr Edwards' death. A Police Complaints Authority report upheld a number of complaints, but no civil or criminal proceedings were brought.

[128] The ECtHR found that the inquiry failed to comply with the requirements of Article 2 of the because of the inquiry's inability to compel witnesses, and because of the private character of the proceedings, from which Mr Edwards' parents were excluded other than when giving evidence. Importantly, the Court noted that no reason had been given for holding the inquiry in private.[102]

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[98] Written submissions of Mr Rasheed, 8 February 2022, at [154.3].
[99] Written submissions of Ms Toohey for Zuhair Darwish, 8 February 2022, at [17].
[100] Scope Hearing Transcript of Interested Parties' Oral Submissions at 67.
[101] *Edwards v UK*, above n 73; *R v Secretary of State for the Home Department, ex parte Amin* [2004] 1 AC 653 (HL).
[102] *Edwards v UK*, above n 73, at [83].

[129] In *Amin* an internal inquiry was conducted by the Prison Service following the death of a 19-year-old prisoner who was killed by another detainee. This was followed by another internal inquiry by the Commission for Racial Equality, conducted because the death was racially motivated. The internal inquiries together with a criminal investigation were found not to have constituted an effective investigation for the purposes of Article 2. None of the investigations focussed on establishing why the deceased was sharing a cell with his killer. This was important given the Coroner had declined to conduct an inquest. In addition, the Prison Service inquiry was not independent, all investigations were held in private, and the Prison Service Report was not published. This combination of circumstances led the Court to conclude that to satisfy Article 2 an independent public investigation was needed, where family were legally represented, were provided with the relevant material, and were able to cross examine principal witnesses. The decision acknowledges that there are no hard and fast rules and that what is required will vary with the circumstances.[103]

[130] In *Wallace*, Ellis J expressly considered both *Edwards* and *Amin.* She did not hold that families must be actively involved as full participants before an inquiry will meet the next-of-kin requirement. Rather, Ellis J linked the role of family to a requirement that the inquiry produce clear answers which address the family's need for accountability. Again, her analysis of the IPCA inquiry in *Wallace* is instructive. Like the Royal Commission, that inquiry took place behind closed doors without direct family involvement. The Wallace family does not appear to have had the degree of access to the IPCA that affected whānau had to the Royal Commission. Ellis J did not find that the IPCA inquiry breached the next-of-kin participation requirement of a s 8 rights-compliant inquiry. She observed:[104]

> I did not understand issue to be taken about the nature and extent of family involvement. Although the IPCA process is different from the coronial one (and does not involve a hearing, family representation or the opportunity to cross-examine witnesses) the Authority was plainly concerned to address a large number of specific issues to the family, and it did so.

[131] Again, further assistance in determining the required degree of participation of next-of-kin is provided by way of the ECtHR's published guidance to Article 2, and specifically the public scrutiny and participation of the next-of-kin investigation standards.[105] The guidance includes the same language adopted by Ellis J in describing the requisite standards of investigation. The guidance makes clear that the degree of public scrutiny and next-of-kin participation required may vary from case to case.[106] The guidance further notes that involvement of next-of-kin in the procedure to the extent necessary to safeguard his or her legitimate

[103] *R v Secretary of State for the Home Department, ex parte Amin,* above n 101, at [62].
[104] *Wallace,* above n 47, at [514].
[105] *Guide on Article 2 of the European Convention on Human Rights,* above n 90 at [170]-[171].
[106] At [170].

interests does not mean that the investigating authorities have to satisfy every request for a particular investigative measure made by a relative in the course of the investigation.[107]

[132] The submissions made by Mr Rasheed and Ms Toohey suggest that the test for next-of-kin participation (much like public scrutiny) requires that Interested Parties are able to fully participate, by attending the investigation hearings and having the opportunity to view and test the evidence. None of the cases cited go that far. The Royal Commission's Report demonstrates it was acutely conscious of the impact of its decision to proceed in private. It sought to mitigate that impact through its efforts to involve immediate family in its investigation and to address their concerns.

[133] The Royal Commission's Report, its companion publication, and the updates published on its website all show the extensive efforts it made to receive and address issues of concern to families, and ensure families were kept informed. In describing its engagement with affected whānau, the Royal Commission reported:[108]

> Engaging with affected whānau, survivors and witnesses of the terrorist attack was at the forefront of our thinking. We extended an invitation to affected whānau, survivors and witnesses to meet with us privately, on their own terms, when they were ready to do so. The Royal Commission was established less than a month after the terrorist attack and it was important not to rush people who were still grieving and coming to terms with what had happened. We also wanted to respect religious practices such as the 'Iddah grieving period, Ramadan, Eid al-Fitr, Dhul Hajjah, Eid al-Adha, Hajj pilgrimage and Muharram, We met with the Imams from Masjid an-Nur and the Linwood Islamic Centre, the Christchurch Muslim Liaison Group, the Linwood Islamic Charitable Trust and the Muslim Association of Canterbury. On occasion, we attended Jumu'ah at the Linwood Islamic Centre and Masjid an-Nur. We were able to speak to all those affected whānau, survivors and witnesses who expressed a wish to talk to us, whether they resided in New Zealand or were overseas.
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> Many of those closely affected by the terrorist attack invited us into their homes, sharing their grief as well as their hospitality with us. We were deeply humbled and privileged to do so. We were also assisted in these discussions by Aarif Rasheed and his team from JustCommunity, a legal, cultural awareness and advocacy consultancy group, and Deborah Lemon of Navigate Your Way Trust, a service provider helping people find pathways to housing and other services. Together, they assisted us to engage with over

[107] At [171].
[108] Royal Commission's Report, vol 1 at 53.

> families affected by the terrorist attack. We are extremely grateful to those who agreed to meet with us. The stories they shared about their experiences before, during and after the terrorist attack gave us valuable insight which has deeply enriched those reports. We hope we have adequately reflected what they told us. Their evidence is reflected throughout this report and in our companion publication *What we heard from affected whānau, survivors and witnesses*.

[134] In summarising that engagement, the Royal Commission noted:[109]

> At the heart of our inquiry were whānau of the 51 shuhada, and the survivors and witnesses of the terrorist attack and their whānau. Connecting with Muslim communities was an expectation of our Terms of Reference, but it was also the right thing to do; we gained valuable insights in this way.
>
> From whānau of the 51 shuhada, and the survivors and witnesses of the terrorist attack and their whānau we heard about the ongoing impacts of the terrorist attack, including challenges in obtaining government support. Through broader engagement with Muslim communities we learned about frustrations with the Public sector that go back many years. Muslim communities talked candidly about racism, discrimination and experiences of being suspected of being, or treated as, terrorists as well as their fear of being the targets of hate speech, hate crime and terrorism.
>
> Communities we spoke with wanted to see greater social cohesion and told us about their wish for closer community connections to help all people feel safe and welcome. Social cohesion has direct benefits including people leading happy, rewarding and participatory lives, with increased productivity. Importantly, it also means that people are less likely to become radicalised towards extremist and violent behaviours, including terrorism.

[135] Part 3 of the Royal Commission's Report was entitled *"what the communities told us"*. There were chapters in other volumes entitled *"questions asked by the community"*, and the Royal Commission also published a separate volume entitled *"What we heard from affected whānau, survivors and witnesses"*. The Royal Commission Report included chapters devoted to the direct and indirect impacts of the attack, life in New Zealand as a Muslim, questions raised about the terrorist and what was known about him, and solutions proposed by affected whānau.

[136] Without seeking to diminish the reported experiences of immediate families, some of the submissions that immediate families were effectively excluded from the Royal Commission process are difficult to reconcile with the steps that the Royal Commission sets out that it took in order to ensure that its process achieved

[109] Royal Commission's Report, vol 1 at 10.

transparency and next-of-kin involvement notwithstanding the need to conduct the inquiry in private. The level of next-of-kin involvement described by the Royal Commission far exceeds that in *Amin, Edwards* or in the IPCA investigation in *Wallace.* While the need to protect classified material meant families could not be involved in gathering or directly scrutinising evidence, the Royal Commission's Report indicates they were consulted throughout the process, and wherever possible their concerns and questions were recorded and addressed.

The test for effectiveness

[137] Mr Rasheed submitted the Royal Commission was not an effective inquiry. He submitted it failed to provide "robust" answers to the critical question of why the State remained unaware of Mr Tarrant. He referred to various aspects of the evidence about Mr Tarrant's actions, all addressed in the Royal Commission's Report which, in his submission, might have led to Mr Tarrant's plan being uncovered before the attack took place.

[138] Mr Rasheed argued that a number of the Royal Commission's conclusions were the product of a hurried and inadequately resourced investigation, including the "Harry Barry Tarry" issue, Mr Tarrant's travel overseas, the granting of a firearms licence, the actions of the user of a Dunedin based IP address in 2017, lapses in Mr Tarrant's operational security and the possibility that red flags were missed by the intelligence and security agencies. Mr Rasheed submitted that although the Royal Commission had made express findings on all these matters, its conclusions "cannot be adopted by the Coroner without further inquiry".[110] He submitted a deeper and more reflective investigation might have yielded different answers, but had been impossible due to time pressures and resourcing constraints the Royal Commission was subject to.

[139] While this may be the impression of some Interested Parties, there is no evidence before me to support these submissions. The Royal Commission's Report includes a detailed analysis and consideration of each issue. In addressing its first request for a reporting extension, the Royal Commission explained its approach as follows:[111]

> Due to a number of factors including the nature of the inquiry process, that the Royal Commission was awaiting some information from relevant State sector agencies, being conscious of the Government's desire for an authoritative report to be produced that takes a "no stone unturned" approach, the strong public interest in our submission process, and the time needed to allow for a fair and robust natural justice process to be undertaken, the Royal

[110] Written submissions of Mr Rasheed, 8 February 2022, at para [67].
[111] Second Quarterly Report of the Royal Commission (July-September 2019), at para 23. Available at https://christchurchattack.royalcommission.nz/assets/Quarterly-Reports-/Second-Quarterly-Report.-July_September-2019.pdf.

> Commission sought an extension from the Minister of Internal Affairs to the reporting deadline from 10 December 2019 to 30 April 2020.

[140] I can accept that the Royal Commission did not have unlimited time and resource, but no inquiry does, and in any event the Royal Commission was well-resourced and worked full time for more than 18 months. There is no evidence it ran out of time to meet its Terms of Reference effectively.

[141] As to the test for effectiveness, Ellis J in *Wallace* adopted a passage from *Edwards v UK* in describing effectiveness as meaning:[112]

> capable of leading to a determination of whether the force used was or was not justified in the circumstances...and to the identification and punishment of those responsible. **This is not an obligation of result, but of means**... [emphasis added]

[142] The Court in *Edwards* observed the requirement as being that authorities take "the reasonable steps available to them to secure the evidence concerning the incident." In another decision referred to by Ellis J, *Nachova and Others v Bulgaria*, the Court held the effectiveness standard requires the investigation's conclusion be based on a thorough, objective, and impartial analysis of all relevant elements.[113] Having considered these cases, Ellis J held that an investigation must be capable of leading to a determination or a "firm conclusion" as to responsibility or potential liability. [114]

[143] As I have previously made clear, this court is not a court of appeal or judicial review with respect to the Royal Commission's work. The Royal Commission's processes were well capable of obtaining the evidence to allow it to make necessary determinations on the issues before it. The submissions before me fall well short of demonstrating its investigation was not effective. It had the means and capability to meet its Terms of Reference and did so.

Approach to assessing the issues submitted for inclusion

[144] My assessment of each issue begins with whether the issue would ordinarily form part of this Inquiry. That involves an assessment of whether inclusion of the issue (and the investigation of it) is necessary, desirable and proportionate for the discharge of my statutory functions, and in particular the purposes of an inquiry under s 57. Specifically, I will consider whether the issue:

(a) is relevant to the cause or circumstances of a death under inquiry;

(b) is too remote from the death(s) to be regarded as sufficiently causative;

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[112] *Wallace*, above n 47, at [397].
[113] *Wallace*, above n 47, at [401]; referring to *Nachova and Others v Bulgaria* [2005] ECHR 465. (Grand Chamber) at [113].
[114] *Wallace*, above n 47, at [398].

(c) 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; and

(d) otherwise lends itself to a potential comment or recommendation within the parameters of s 57A.

[145] Assuming this analysis favours inclusion of the issue, the second question will be whether the issue was within the Terms of Reference of the Royal Commission, and the extent to which it was addressed in the Royal Commission's Report. If it was, I will consider whether the Royal Commission's findings establish the relevant question to the standards required by s 57. Specifically:

(a) Am I satisfied that the rights-compliant investigation standards, as interpreted and applied in *Wallace*, have been met in relation to the Royal Commission's consideration of the issue?

(b) A finding that a rights-compliant investigation has not occurred will weigh strongly in favour of including the issue within the scope of this Inquiry;

(c) If I am satisfied that a rights-compliant investigation has occurred in relation to an issue, are there compelling reasons to nonetheless exercise my discretion in favour of investigating the issue? In addressing that question, I will consider whether:

i. investigation in this Inquiry would be likely to materially advance the issue in terms of findings, recommendations or next-of-kin participation?

ii. the issue is captured by an existing recommendation that has been made and adopted at least in principle by the New Zealand government?

iii. excluding the issue would be contrary to the public interest or would serve to frustrate the purposes of the Coroners Act in preventing deaths and promoting justice.

[146] I will approach my assessment at the second stage on the basis that, for the reasons discussed, duplication will generally not be in the public interest. That is especially so where it is unlikely that my Inquiry would be able to materially advance the issue in terms of findings, recommendations, improving next-of-kin participation, furthering the necessary degree of public scrutiny or achieving effectiveness.

[147] Importantly, any determination I make on an issue does not purport to determine the question of whether or not a breach of the NZBORA or the State's protective or procedural human rights obligations is disclosed. My assessment of the Royal

Commission's investigation on any given issue is solely for the purposes of determining what reliance and weight I give to it on any issue as part of the exercise of my discretion.

[148] With this approach in mind, I turn now to address the provisional issues (or group of issues) and the decision as to inclusion or exclusion from the Inquiry I make with respect to each.

Decision on: the events on 15 March 2019 that culminated in the masjidain attack and the emergency response to those events

[149] The first group of issues relate to the events on 15 March 2019 that culminated in the attack, and the emergency response, including the initial Police investigation.

[150] Mr Tarrant's actions during the attack on 15 March 2019 and the emergency response were provisionally assessed as falling within the scope of this Inquiry. There has been no challenge to that assessment.

[151] These matters are directly relevant to the cause and circumstances of the 51 deaths. The response of public sector agencies once the attack began was specifically excluded from the Royal Commission's Terms of Reference and is a matter on which there may well be scope for recommendations. Further, as I have indicated above, Mr Tarrant's guilty pleas meant that evidence about the events that took place during the attack itself did not receive the extent of public hearing that would have occurred in the course of a criminal trial. As I have recorded earlier, for a number of Interested Parties the lack of a full trial has left them feeling deprived of the chance to see or consider the evidence underpinning the prosecution, or witness it being formally tested in court.

[152] I accept that the events of 15 March 2019 are relevant to the circumstances of death and would ordinarily be for a Coroner to inquire into. No question of remoteness arises. Exploration of these issues has the potential to lead to comments or recommendations with a prevention focus. I am also satisfied it is in the public interest that I inquire, to the extent I explain below, into these issues.

Information response category issues

[153] The central submission advanced by the immediate families on the information response category issues was that the information provided to date had not been sufficient to address their concerns related to these issues. In submissions, and in discussion with me in the course of the Scope Hearing, the close alignment or connection that many of the information response issues have with provisionally in-scope issues related to the attack and emergency response was disclosed. Ms Dalziel submitted that a number of the issues were not discrete issues themselves but rather evidential or factual points to be explored within the broader context

about the attack itself and the emergency response.[115]

[154] I agree. The events of the attack and the emergency response will be within the scope of the Inquiry. To the extent that provisional issues, including those in the Information Response category, arise from the events of the attack, or the emergency response on 15 March 2019, those matters will also be within scope as issues that will be taken forward in this Inquiry.

Direct assistance from associates

[155] A number of Interested Parties submitted I should investigate whether Mr Tarrant received direct assistance from any other person on 15 March 2019.

[156] The Police investigation underpinning the criminal prosecution and the Royal Commission concluded that Mr Tarrant acted alone.[116] However, some Interested Parties remain concerned about this issue and consider it to have been insufficiently investigated and still unresolved. This may, at least in part, be a result of the lack of source information that has been made available to them up to this point.

[157] I expect considerable source evidence about the events of 15 March 2019 to be available to this Inquiry, some of which may well address the Interested Parties' concerns on this issue. This includes, for example, the CCTV footage from inside Masjid an-Nur, surrounding CCTV footage, and the scientific evidence taken from the weapons used in the attack, none of which has previously been available to Interested Parties. Disclosure of that information, which is already underway, may assist Interested Parties to understand the extent of the investigation into this issue. If, notwithstanding that disclosure, concerns remain then it may be necessary to hear from those Interested Parties as to what other avenues of investigation they would like to see explored.

[158] I note also that one of the factors a Coroner is required to consider under s 63 of the Coroners Act when deciding whether to open an inquiry, is the existence and extent of any allegations, rumours, suspicions or public concern about a death. While extensive investigations have already been undertaken by Police to identify any additional participants in the attack, allaying rumours and suspicions by way of access to information and any other necessary inquiry is a legitimate aspect of a coronial process; it is directly applicable with respect to this issue.

[159] For these reasons, the question of whether Mr Tarrant had direct assistance from any other person on 15 March 2019 will be within scope as part of my inquiry into the events of the attack. Indirect or generalised support from online associates is

[115] Scope Hearing Transcript of Interested Parties' Oral Submissions at 15 – 16. For example, provisional issue 13 (were fingerprints or DNA taken from firearms located at the scene), was said not to be a discrete issue but rather an evidential matter that went to the question of whether Mr Tarrant had direct assistance from another person in carrying out the attack. Ms Dalziel made the same point in respect of issues 12 – 16.
[116] Royal Commission's Report, vol 1 at 12.

a separate issue and is addressed under the decision on Mr Tarrant's radicalisation involving social media heading below.

Relevant timeframe

[160] In terms of the events of the attack itself, the relevant timeframe will start with Mr Tarrant's arrival at Masjid an-Nur. The emergency response commences when Police were first notified of the attack. In light of Mr Tarrant's statements to Police about other active shooters when he was apprehended and interviewed, my examination of the attack will end at the conclusion of Mr Tarrant's formal interview by Police on 15 March 2019.

[161] In setting that timeframe I am mindful of the submission from Mr Hampton and Ms Dalziel that the events of 15 March 2019 should commence from the start of Mr Tarrant's day and cover his preparation and travel to Christchurch (including any possible sharing of his intentions with associates).[117]

[162] As I say, the question of whether Mr Tarrant had direct assistance from any other person on 15 March 2019 will be within scope. Relevant factual matters which bear upon that question may be explored notwithstanding that they fall outside the timeframe I have indicated. Otherwise, however, the focus should remain on the events of the attack itself and the emergency and investigative response once it began. The narrative of Mr Tarrant's movements on the morning of 15 March 2019 has already been set out in the General Evidential Overview as well as the Summary of Facts for the criminal proceeding to which Mr Tarrant has pleaded guilty. Given the events prior to Mr Tarrant's arrival at Masjid an-Nur have not, to date, been disputed, I do not expect that this will need to be a significant area of focus in this Inquiry.

Deployment of Fire and Emergency New Zealand

[163] The New Zealand Professional Firefighters Union submitted that the provisional issues in relation to the emergency response should be extended to include whether Fire and Emergency NZ (**FENZ**) resources should have been deployed on 15 March 2019.[118] FENZ also filed written submissions in which it accepted that as the Inquiry progresses this Court may decide to explore whether deployment of its resources could or should have occurred. However, FENZ submitted that "the Coroner is not required … to conduct a wide scale emergency services review" and that inclusion of issues such as FENZ's interagency planning, procedures and training would be an undue extension of scope at this stage.[119]

[164] The question of whether FENZ resources could and should have been deployed to assist with the emergency response is a matter that can properly be explored as

[117] Written submissions of Mr Hampton (supplementary), 24 February 2020.
[118] The provisional issues specifically highlighted were issues 23, 26, 35 and 39.
[119] Written submissions of Fire and Emergency New Zealand, 18 February 2022. at [12].

part of assessing the co-ordination of emergency services on the day. At the same time, a wide-ranging investigation into FENZ and its interagency planning, procedures and training is unlikely to be warranted, certainly at this stage. Plainly FENZ was not deployed in response to the attack. There may well be questions that can be productively explored about whether additional responders from FENZ would have materially assisted Police and/or St John on the day, and some evidence about the training and expertise held by firefighters may be relevant to that question. But, as a non-deploying agency, a generalised review of FENZ services does not have the requisite nexus with the cause and circumstances of death to warrant inclusion in this Inquiry.

Framing of issues to be taken forward for Inquiry

[165] With these comments in mind, I propose to structure this aspect of the Inquiry and issues as follows:

(d) **Issue 1:** the events of 15 March 2019 starting from the commencement of the attack through to the completion of the emergency response and Mr Tarrant's formal interview by Police;

(e) **Issue 2:** the response times and entry processes of Police and ambulance officers at each mosque;

(f) **Issue 3:** the triage and medical response at each mosque;

(g) **Issue 4:** the steps taken to apprehend the offender;

(h) **Issue 5:** the role of, and processes undertaken by, Christchurch Hospital in responding to the attack;

(i) **Issue 6:** co-ordination between emergency services;

(j) **Issue 7:** whether Mr Tarrant had direct assistance form any other person on 15 March 2019; and

(k) **Issue 8:** if raised by an immediate family, and to the extent it can be ascertained, the final movements and time of death for each of the deceased.

[166] To assist the Interested Parties, the table attached as **Appendix A** compares the issues (and factual matters within each) that I will take forward in this Inquiry, to the issues addressed in the provisional assessment.

[167] The matters outlined in **Appendix A** are necessarily a non-exhaustive list of the factual matters and questions that may be relevant to the eight overarching issues. I fully expect that the factual questions within these issues will need to be further developed and refined as the Inquiry progresses and as Interested Parties receive and review the evidence. Having said that the focus must always be on matters

that are sufficiently proximate to the events of the attack and emergency response on the day. For example, while aspects of provisional issue 19 (concerning what is known about the deceased's movements) now fall to be explored under 'Issue 8', this would not extend to matters such as the movements of victims before their arrival at the mosques unless those could be shown to have a particular bearing on the cause or circumstances of death.[120] Again, I anticipate it may be necessary to refine and/or make further rulings on whether particular factual matters are within scope as the Inquiry progresses.

Decision on: Issues about cause of death and survivability

[168] The cause(s) of death will always fall to be an issue for inquiry.[121] While the cause(s) of each of death was addressed in the criminal prosecution through the pathologist evidence, neither the criminal prosecution or the Royal Commission were required to consider whether any of the deceased could potentially have survived if the emergency response had been different.

[169] An inquiry into the emergency response on 15 March 2019 will necessarily give rise to questions about whether any of those who lost their lives sustained potentially survivable injuries. This was an issue provisionally assessed as being within scope.

[170] While in a broad sense the question of survivability of each person who died as a result of the attack is interwoven with questions about the adequacy of the triage and medical response at each mosque framed as Issue 3 above, this issue is more closely focussed on whether different or faster triage and medical treatment might have altered the outcome.

[171] The cause(s) of death for each person who died in relation to the attack on 15 March 2019, and whether any of the deceased sustained injuries that might have been survivable had alternative triage and/or medical treatment been administered, will be taken forward as an issue for Inquiry.[122]

Decision on: Issues about Mr Tarrant's firearms licence and related issues

[172] The third substantive group of issues relate to the granting of Mr Tarrant's firearms licence and his acquisition of firearms, ammunition and other equipment used in the attack. Also within this issue group is the regulation of gun club

[120] Another example is the factual point raised in relation to provisional issue 39 (co-ordination of emergency services) around "what kinds of security systems had been advised by security agencies to Mosques following steadily increasing risk to them over the proceeding years". Issues in relation to security and intelligence agencies are discussed at under a separate heading below. But for present purposes I record that this issue is not sufficiently connected to co-ordination between emergency services on the day of the attack.
[121] Coroners Act 2006, s 57(2)(d); see also in Minute re Next Steps to Determine Scope, 2 December 2021, at footnote 7.
[122] Bringing provisional issue 19 within scope.

memberships, and why the hospital did not report a firearm injury Mr Tarrant presented with in July 2018.

[173] In the Scope Minute each of these issues were provisionally treated as outside the scope of the Inquiry on the basis that each was considered by the Royal Commission.[123]

[174] The following sets out:

(a) my assessment of each issue against the fundamental considerations: whether these issues are relevant to the cause or circumstances of the 51 deaths, too remote to be regarded as sufficiently causative, and otherwise appropriate issues for a coronial inquiry;

(b) the basis upon which I consider the Royal Commission constituted a rights-compliant inquiry into these issues, and that I am entitled to rely on its findings;

(c) the reasons why, nonetheless, I have decided to exercise my discretion to include aspects of the issue of Mr Tarrant's firearms licence in this Inquiry.

The issue of Mr Tarrant's firearms licence

[175] The criminal prosecution established that the attack by Mr Tarrant was committed using military style semi-automatic (**MSSA**) firearms (which Mr Tarrant was not licensed to possess) that had been fashioned from rifles, magazines and ammunition that Mr Tarrant was licensed to possess. The Police had granted him a standard firearms licence in 2017. There is no dispute that whether and to what extent the Police firearms licensing process contributed to the attack, and therefore to the 51 deaths, would ordinarily be amenable to consideration in this Inquiry.

[176] In light of this context, the submissions of Interested Parties have focussed upon the assertion that this part of the Royal Commission's investigation, which looked extensively at the firearms licensing process, was not rights-compliant. As a result, they submit I can and should consider the firearms licensing and related issues afresh.

Royal Commission's investigation, findings and recommendations on firearms licensing (and related issues)

[177] Volume 2, Part 5 of the Royal Commission's Report contains eight chapters dedicated to issues arising from the decision to grant Mr Tarrant a firearms licence. It focussed on how Mr Tarrant was able to legally acquire both rifles and large

[123] Minute of Judge Marshall Re Scope of Inquiry, above n 22, at Appendix A issues 5 to 7.

capacity magazines with his standard firearms licence which he then fashioned into semi-automatic firearms that he was not entitled to possess.

[178] The Royal Commission's examination of the licensing process included a detailed consideration of the 'fit and proper person' test, the usual information available to Police in assessing an application, and the process for the nomination and acceptance of referees – an issue of particular contention here.[124] It set out its evaluation of the firearms licensing system and the constraints that operate within it,[125] along with a detailed examination of the process by which Mr Tarrant obtained his firearms licence. It closely examined the application he made.[126]

[179] Extracts from the notes of Mr Tarrant's vetting interview were reproduced as were extracts from the interviews with his referees. The Royal Commission noted that it would have also reproduced a copy of Mr Tarrant's licence application, but for the fact that the redactions it would have needed to make to his personal information would have meant that it contained "no useful information that goes beyond the description that now follows", as to what was in the application.[127] The Royal Commission interviewed all Police District Arms Officers across New Zealand to ensure that the processes for their respective Districts, which varied, were captured. It also held a hearing with the firearms licensing staff who dealt with Mr Tarrant's licence application, interviewing each of them on same day. Central to this analysis was a close examination of the process Police followed that led to the acceptance of Mr Tarrant's "gaming friend" and that person's parent as suitable referees for the purposes of the licence application, in circumstances where Police had rejected Mr Tarrant's sister as a suitable near relative referee because she lived in Australia.

[180] The Royal Commission was critical of a number of aspects of the Police process. Firstly, it was critical of the Police's failure to interview a near relative.[128] Secondly, it concluded that the gaming friend was not an appropriate referee due to his "episodic" relationship with Mr Tarrant and the fact a detailed examination of the relationship between he and Mr Tarrant was not undertaken.[129] Thirdly, the relationship between the gaming friend's parent, the second referee, and Mr Tarrant was too limited for that person to have served as a referee.[130] This meant there were serious deficiencies in the way Mr Tarrant's application was dealt with.

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[124] Royal Commission's Report, vol 2 at 256-270.
[125] Royal Commission's Report, vol 2 at 271-286.
[126] Royal Commission's Report, vol 2 at 287-302.
[127] Royal Commission's Report, vol 2 at 187.
[128] Mr Tarrant's sister had been determined by Police not to be an appropriate referee because she lived in Australia. As the Royal Commission set out, this was in accordance with Police policy at the time, and it led to a replacement referee being requested. The practical effect of this was that the gaming friend, in effect, became the "near relative" referee, and their parent the substitute referee.
[129] Royal Commission's Report, vol 2 at 309.
[130] Royal Commission's Report, vol 2 at 308-309.

[181] The failures identified by the Royal Commission can broadly be described as failures to provide appropriate guidance and training to Police firearms licensing staff to equip them to assess Mr Tarrant's application properly.

[182] The Royal Commission went on to consider the counter-factual scenario; what might have happened had the licensing process been appropriate, and whether it may have disrupted or otherwise meant the attack on 15 March 2019 would not have occurred. The Royal Commission, while noting that such counterfactual analysis was hypothetical, concluded:[131]

(a) Had Mr Tarrant's sister been interviewed and supported his application a decision to grant the application would have been "difficult to fault".

(b) If the Police had recognised that the gaming friend or the gaming friend's parent did not know Mr Tarrant well enough to serve as referees, the application would not have been granted at that time.

(c) If the application had not been granted, it is uncertain how Mr Tarrant would have responded. It was possible, indeed likely, that he would have been able to arrange a means for a licence to be granted, perhaps by arranging his sister to come to New Zealand to be interviewed. The Royal Commission concluded this may have delayed the preparation for the attack, or Mr Tarrant may have formulated a plan to carry out the attack using different means or abandoned his planning for an attack in New Zealand altogether.

[183] The Royal Commission's analysis culminated in a finding that Police had failed to meet the required standard in the administration of the firearms licensing system in three different respects; namely that:[132]

(a) the key Police documentation[133] did not provide coherent and complete guidance as to how applications for a firearms licence should be processed where an applicant cannot provide a near-relative referee able to be interviewed in person;

(b) Police did not put in place arrangements to ensure that firearms licencing staff received systematic training and regular reviews of their practice;

[131] Royal Commission's Report, vol 2 at 314-315.
[132] Royal Commission's Report, vol 2 at 316.
[133]Including the Arms Manual 2002 (The New Zealand Police's primary policy document on the administration of the Arms Act; the Master Vetting Guide (2005) (New Zealand Police's training notes for firearms licensing staff); and The Firearms Licence Vetting Guide (2011) (New Zealand Police's operational document for Vetting Officers).

(c) Police did not adequately address whether gaming friend and gaming friend's parent knew Mr Tarrant well enough to serve as referees.

[184] The table attached at **Appendix B** sets out the recommendations made by the Royal Commission on firearms-related issues. Underneath each recommendation is the publicly available information as to the progress made on each issue since the recommendation was made, which is an important consideration in the exercise of my discretion as to how I treat this issue.

[185] The key issue raised by Interested Parties with the Royal Commission's Report on the firearms and related issues is the absence of any direct causative link being drawn between the firearms licensing failures and the attack. A number of Interested Parties argue that 'but for' the granting of the firearms licence the attack would not have occurred. They have asked that I consider this issue afresh. I turn now to consider the relevant aspects of the s 8 procedural obligation as it relates to this issue.

Effectiveness

[186] As I have set out above, the test for effectiveness is one of assessing the means available to the Royal Commission to properly assess an issue. It is not an assessment of the result. The test for effectiveness is particularly pertinent to the firearms licensing issue, given the submissions from the Interested Parties make clear that it is principally the Royal Commission's conclusions that the Interested Parties take issue with.

[187] For example, Ms Toohey, in submissions on behalf of Ms Aya Al Umari, submitted that there was a conflict between the finding that Mr Tarrant was able to "take advantage of New Zealand's semi-lax firearms laws, and a contrasting finding that there was no plausible way that Mr Tarrant could have been detected".[134]

[188] This submission assumes that if the licensing process did not suffer the deficiencies the Royal Commission identified then Mr Tarrant would have been detected, or (although Ms Toohey did not put it this way) the attack would have been thwarted. But this submission says nothing about the Royal Commission's investigation not being effective, it simply asserts the outcome should have been different on this issue.

[189] Similarly, on behalf of FIANZ, Mr Razzaq submitted that "Whilst the [Royal Commission] did find that New Zealand's security agencies could not have detected the terrorist it certainly did not find that the Police's failures did not contribute to the attack". FIANZ submitted that "but for the New Zealand Police's failures in issuing the terrorist with a firearms licence, the attack would not have occurred" and "so that the Police's failures can justifiably be said to have resulted

[134] Written submissions of Ms Toohey on behalf of Ms Al Umari, 8 February 2022, at [10].

in the attack". Whilst Mr Razzaq is right to say that Royal Commission did not rule out the Police failures as contributing to the attack, it also did not expressly draw the causative link that Mr Razzaq urges upon me.

[190] The fact no direct causal link was drawn by the Royal Commission was also central to Mr Hampton and Ms Dalziel's submissions, which described the issuing of the firearms licence as a "crucial element in the chain of events causing the attack". But, like other Interested Parties, those submissions did not address why it is safe to assume the outcome of the counter-factual assessment. Mr Hampton and Ms Dalziel also allege there was a failure to meet the public scrutiny aspect of the obligation, which I address below.

[191] Mr Rasheed was direct in his urging that I further consider this issue afresh in order to reach a different conclusion. He said: "The absence of causation found between the firearms licence and the attack is untenable. This is a highly controversial issue which, in order to avoid wholesale disrepute to the report and the inquiry, must be revisited and corrected".[135] Of course, as I have set out above this Inquiry is not an appeal from or review of the Royal Commission's findings. But, for present purposes, these submissions demonstrate that the Interested Parties focus on this issue was less on whether the Royal Commission's investigation was a rights-compliant one, and more that my Inquiry ought to consider the issue afresh because they strongly disagree with the Royal Commission's conclusion (or, to be more precise, the Royal Commission's refusal to say whether it considered the licensing failures to be causally linked to the attack).

[192] In assessing the effectiveness of the Royal Commission's investigation, I must focus on the means used by the Royal Commission to reach its conclusions. It had a clear mandate to examine how Mr Tarrant obtained his firearms licence and to make findings and recommendations (other than Arms Act reform) with a prevention focus. I am satisfied it did that through the process I have summarised above.

[193] The Royal Commission assessed the licence application process in detail, both generally and specifically to Mr Tarrant. It also examined the operational policy documents in use by Police at the time; it interviewed those who made the decisions in Mr Tarrant's case, as well as those involved in making licensing decisions within Police on firearms licensing nationally. This was against the backdrop of having examined the applicable legal provisions and how they had come to develop.

[194] Moreover, it is difficult to conceive of what else the Royal Commission could have done to address these issues. None of the Interested Parties suggested that

[135] Written submissions of Mr Rasheed, 8 February 2022, at [106].

any additional analysis was required and did not point to any steps the Royal Commission failed to take.

[195] Accordingly, I conclude that the Royal Commission constituted an effective investigation on this issue.

Public scrutiny and next-of-kin participation

[196] I have already addressed the extent to which Interested Parties rely on a lack of sufficient public scrutiny and next-of-kin participation in relation to the Royal Commission's investigation overall. That applies equally to their position on this issue. For example, Mr Hampton and Ms Dalziel submitted that "[the evidence relating to the issuing of the firearms licence] needs to be tested and subjected to public scrutiny", and "…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".[136] By "direct challenge", I take these submissions as meaning the lack of ability for the Interested Parties to challenge the evidence on that issue themselves. As I have already noted, Interested Parties have sought to elevate the test for sufficient public scrutiny and next of kin participation higher than that set out in *Wallace*.

[197] The Royal Commission's Report sets out in detail the evidence it assessed on this issue and reproduced a number of the primary documents. It went on to make findings critical of the Police and recommendations for change. The results of its investigation have accordingly been subject to sufficient public scrutiny, despite the fact that its hearings were in private and the Interested Parties were unable to see and test the evidence themselves.

[198] On the latter point, Chapter 8 of Part 5 of the Royal Commission's Report sets out the questions asked by the community on firearms issues. A series of 20 questions from the community ranging from Mr Tarrant's history with guns, to aspects of the content of his licence application, to checks made of his background, and well as a number of questions regarding his referees and how he came to be approved as a fit and proper person (among other questions), were recorded and answered by the Royal Commission.

[199] Accordingly, I consider that the Royal Commission's investigation met the requirements of public scrutiny and next-of-kin participation in relation to this issue.

Should the firearms licensing issue nevertheless be an issue for inquiry?

[200] Given my view that the Royal Commission investigation into this issue was sufficient to satisfy the requisite standards for a rights-compliant investigation, it is open to me to rely on its findings for the relevant s 57 matters in this Inquiry.

[136] Written submissions of Mr Hampton and Ms Dalziel, 8 February 2022, at [28].

Under the consolidated approach I set out earlier, the question now becomes whether there are compelling reasons for me to nonetheless include this issue as part of the Inquiry.

[201] Central to that assessment is whether a *de novo* inquiry in this jurisdiction which would largely replicate the investigation already undertaken by the Royal Commission is in the public interest, or put another way, would its exclusion serve to frustrate the purposes of the Coroners Act in preventing deaths and promoting justice?

[202] Despite the extensive investigation undertaken by the Royal Commission, for the following reasons I have decided it is appropriate for this Inquiry to examine aspects of this issue afresh.

(a) Causal link undetermined

[203] First, the Royal Commission was not obliged to draw a causation conclusion. The Royal Commission – appropriately in light of its mandate – simply canvassed certain counter-factual possibilities if the licence had been refused without making any firm finding. But, particularly in light of the importance of this issue, I need to assess whether I can do so in this jurisdiction.

[204] We will never know, for certain, what might have happened if Mr Tarrant's licence application had been declined. But, in order to decide whether there is a logical inference which I can draw on the balance of probabilities on this issue, I need to consider the available evidence. Drawing inferences as to causation is a task every coroner is well-used to performing; a central question in many coronial inquiries is whether death could have been avoided if alternative actions or inactions had taken place.

(b) Facilitating access to relevant licencing process evidence

[205] Second, re-examination of this issue will improve the participation of immediate families. That is particularly appropriate where the issue is as important as this one. The documents relevant to Mr Tarrant's licence application do not raise security issues, although any disclosure of them may require redactions of personal information. But, with any necessary redactions, there is no reason that Interested Parties could not have access to those documents. I am conscious that providing that access may not, in practical terms, provide Interested Parties with information much beyond that which they have already learned about, albeit in a different format, through the detail set out in the Royal Commission's Report. But, even so, given the importance of this issue, and the fact the Royal Commission's task did not require it to make findings on causation, I am satisfied it is in the public interest that immediate families and other Interested Parties have the opportunity to see the source evidence themselves and consider what, if any, issues it raises that can properly be advanced in this jurisdiction.

[206] It is by no means certain that any inquiry undertaken in this jurisdiction will be able to take this issue further than the Royal Commission did. But I cannot conclusively assess whether there is something more that this Inquiry is able to achieve on this important issue without considering the documents that underpin it, and hearing from Interested Parties on them. The first step is to allow an examination of the documents underpinning the application for the licence.[122] Once that has occurred, I can hear from Interested Parties on what (if any) further inquiries ought to be undertaken and whether, in discharging the purposes of the Inquiry, evidence ought to be heard and tested under oath in the forum of an inquest hearing.

(c) Investigating amendments made to firearms licensing process

[207] Subject to the evidence disclosing a sufficient causal nexus between Mr Tarrant's firearms licence and the 51 deaths, the second aspect where I consider this Inquiry can potentially advance the issues relevant to Mr Tarrant's firearms licensing is by investigating the progress made on the Royal Commission's firearms licensing recommendations. Five of the Royal Commission's recommendations directed Police or another relevant entity to make changes aimed at a more efficient and effective risk-based firearms licensing system.

[208] As set out in **Appendix B**, there have been amendments to firearms application forms, an interim electronic firearms licence application system has been implemented, and work has been initiated on standardised performance measures for firearms licensing staff. The new processes for applicants who have lived outside of New Zealand for substantial periods of time appear to yet have been developed, but that is also something this Inquiry could look further at.

[209] Given the importance of this issue to the Interested Parties, and its significance within the context of the Royal Commission's Report, this Inquiry would be well placed to garner a full understanding of the amendments that have now been made to the firearms licensing regime, and those that are yet to be made. I consider it to be in the public interest to ensure preventative outcomes are optimised and implemented. To that end, this Inquiry could seek to assemble a full picture of the practical changes that have now been implemented in an effort to guard against the deficiencies in the processes identified by the Royal Commission, along with what (if anything) remains to be done and why. Understanding that progress is a tangible way in which this Inquiry can complement, and augment, the investigation of the Royal Commission, whilst at the same time retaining a proper and necessary focus on preventative measures related to factors sufficiently implicated in the deaths.

(d) Investigating the extent to which issues raised have been addressed by legislative amendments

[210] Subject again to the evidence disclosing a sufficient causal nexus between Mr Tarrant's firearms licence and the attack, the third area where I consider this

Inquiry may be able to advance issues relevant to firearms licensing is by investigating the extent to which the issues raised by the Interested Parties have been addressed by recent legislative amendments. As I have set out above, the Royal Commission was precluded from inquiring into or making recommendations about firearms licensing legislative amendments. In addition, the Royal Commission noted that Arms Act amendments had been passed in 2019 and 2020 following the attack. The Royal Commission noted this made the scope for recommendations in relation to firearms more limited than would have otherwise been the case.

[211] This Inquiry would be well placed to draw together the strands of work that have been undertaken since the Royal Commission's Report, including amendments to the licensing process and legislative amendments, and to assess what more, if anything, can and should be done.

[212] For these reasons I will inquire into whether the Police firearms licensing process followed by Police in granting Mr Tarrant's firearms licence can be causally connected to the attack and to the deaths, and if so, whether any identified deficiencies in that process have now been addressed by way of legislative amendments or any Police (or other relevant entity) process changes.

Other firearms related issues: Mr Tarrant's acquisition of firearms, ammunition and other weaponry

[213] In assessing Mr Tarrant's acquisition of the firearms, ammunition and other equipment used in the attack, I am satisfied this issue is relevant to the cause or circumstances of the 51 deaths, is not too remote, and is otherwise an appropriate issue for a coronial inquiry to examine.

[214] That said, this issue was investigated and reported on by the Royal Commission. Each of those purchases is described in Part 4 of the Royal Commission's Report. Each item of weaponry purchased by Mr Tarrant, where it was purchased from, on what date, how much it cost, and whether he kept or later sold the item, is set out in detail, as are the modifications he later made to them.

[215] Interested Parties did not press this issue as one where the Royal Commission's investigation was in any way deficient. To the extent the general concerns about the Royal Commission constituting a right-compliant investigation attach to this issue, for the reasons I have already set out I consider the Royal Commission's investigation was rights-compliant. On that basis it is open to me to rely on its findings. I am not persuaded this Inquiry can materially advance the investigation on these issues. On that basis this issue will be excluded from the scope of this Inquiry.

Other firearms related issues: regulation of gun club memberships

[216] In applying the fundamental considerations to regulation of gun club memberships, I do not consider this issue sufficiently causally connected to the attack. Whilst Mr Tarrant clearly practised firing the types of weapons used in attack at these clubs, there is no evidence that might credibly have led the relevant clubs to refuse Mr Tarrant's membership,[137] nor is there any evidence that different actions by the clubs may, somehow, have altered the course of events that occurred. There is, in any event, no basis to believe my Inquiry could take this issue further than the Royal Commission, which spoke to members of the clubs Mr Tarrant joined. It follows this issue is too remote to make inquiry in this jurisdiction that is necessary, desirable and proportionate in the discharge of my statutory functions. On that basis this issue will be excluded from the scope of this Inquiry.

Other firearms related issues: failure of hospital to report Mr Tarrant's 2018 firearm injuries

[217] In its report the Royal Commission addressed the fact Mr Tarrant sustained an injury to his eye and thigh in an incident with a firearm in July 2018. He presented to hospital for treatment. This issue is too remote from the attack to inquire into. While it may be arguable that such injuries ought to prompt involvement from Police arms officers to assess whether the licence holder is sufficiently safety conscious and remains a 'fit and proper person' to hold a firearms licence, the suggestion it may have meant Mr Tarrant's plans were detected or otherwise disrupted is extremely tenuous.

[218] Even if I were to accept such a tenuous causal link, Mr Tarrant's injuries were not reported by the relevant hospital to Police because, as the Royal Commission's Report explains, there was no requirement for it to do so. That is the simple answer to this issue as far as it goes. As to whether there should be a mandatory reporting requirement, the Royal Commission has squarely addressed this issue by way of its recommendation that mandatory reporting of firearms injures to Police by health professionals is introduced.[138] I do not consider there to be more that this Inquiry can reasonably achieve on that issue. On that basis this issue will be excluded from the scope of this Inquiry.

[137] Even if unlicensed Mr Tarrant would have lawfully been permitted to use a non-prohibited firearm at a gun club provided he was under the immediate supervision of a licence holder.
[138] Royal Commission's Report, vol 1 at 29.

Decision on: Issues about Mr Tarrant's radicalisation to violence through social media, online digital platforms and his overseas travel

Mr Tarrant's radicalisation to violence through social media and other online digital platforms

[219] While the Royal Commission's Terms of Reference asked it to investigate Mr Tarrant's use of social media and other online media as part of its inquiry into his background, the actions of non-government agencies, such as digital media platforms, were expressly excluded from its inquiry.

[220] A number of Interested Parties have asked me to examine the role social media played in causing or contributing to the attack. The inquiry they seek would include an examination of the extent to which online platforms contributed to Mr Tarrant's radicalisation, whether they emboldened him and provided him with practical guidance which he then used in the attack, and whether the platforms he used could or should have identified the likelihood he would engage in a violent attack. They have also asked that I conduct a more general inquiry into the conduct of social media platforms, including the algorithms they use to attract and retain users, with a view to making recommendations about the way platforms might be regulated to ultimately minimise the risk of a similar attack taking place in the future.

[221] In effect, those Interested Parties, and the IWCNZ in particular, ask me to pick up where the Royal Commission left off in its scrutiny of the role of the internet in leading to the attack. They seek to link the platforms to the attack by submitting that Mr Tarrant was (or may well have been) radicalised online. They also argue that the platforms' presumed failure to monitor his online activity meant an opportunity to stop him may have been missed.

[222] The Royal Commission attempted to reconstruct Mr Tarrant's use of social media, and the internet more broadly, in the years before the attack. It noted that, along with extreme right-wing discussion boards on platforms like 4chan and 8chan, Mr Tarrant made extensive use of YouTube, and it found that platform a significant source of information and inspiration to him.[139]

[223] Mr Tarrant also used Facebook, albeit in a manner the Royal Commission described as "erratic" – he used Facebook only sporadically and went long periods without using it at all. That said, Mr Tarrant was a member of a Facebook group called The Lads Society (and a more extreme private Facebook group called The Lads Society Season 2), and he authored a number of posts in which he espoused right-wing views. Occasionally he indicated he thought violence might be necessary if "victory" was to be possible; the Royal Commission described his remarks as "an implied call to violence". He left the Lads Society Season 2 a little

[139] Royal Commission's Report, vol 2 at 193.

under a year before the attack, then abstained from Facebook altogether for the following six months.

[224] In addition, the Royal Commission recorded it had no doubt Mr Tarrant's internet activity was considerably greater than it was able to reconstruct.

[225] An inquiry of this nature would face formidable obstacles. First, and most significantly, I am constrained by the Coroners Act and the fundamental considerations set out above. In seeking to examine the role a factor may have played in the deaths of those who lost their lives as a result of the attack, a sufficient causal nexus must be clearly anticipated. Coroners' comments and recommendations must also be "clearly linked to the factors that contributed to" the death.[140] In other words, I could not embark upon an inquiry into the way social media platforms operate, or are regulated, in the abstract. There would need to be evidence that the acts or omissions of one or more online platforms (which would encompass any relevant algorithm in use at the relevant time by the platform(s)), can be clearly linked, in a causal sense, with the attack. An application of the "common sense" test of causation referred to in caselaw gives rise to obvious questions of remoteness, in other words whether a causative link between any online platform and Mr Tarrant's radicalisation to violence could ever be more than a speculative and tenuous assertion.

[226] There is no doubt Mr Tarrant had become severely radicalised at some point in the years prior to the attack. There is also no doubt that his radicalisation was a decisive factor in the attack; it can clearly be linked, in a causative sense, with the deaths.

[227] However, it is difficult to see how much further this can be taken. At best, the most that could ever be said is that some combination of online influences may have contributed to Mr Tarrant's radicalisation. Even then, those elements operated in conjunction with every other aspect of Mr Tarrant's life, including his psychological makeup, upbringing in provincial New South Wales, his family life, his experiences at school and his extensive international travels. It would be very difficult to isolate and quantify any individual factor – let alone any individual online platform – and conclude that it played a decisive role in the attack.

[228] I also wish to guard against the suggestion that Mr Tarrant's radicalisation was something that "happened to" him, and that he may have been caught up by external forces. From the time Mr Tarrant reached adulthood, the evidence suggests he made his own choices at every point. The Royal Commission observed that he began expressing racist sentiments from a young age and was twice dealt with at school for expressing anti-Semitic sentiments.[141] It noted that the evidence pointed to Mr Tarrant having become radicalised in the course of his travels – his

[140] Coroners Act 2006, s 57A(3)(a).
[141] Royal Commission's Report, vol 2, at 168.

mother suggested "the more [he] travelled, the more racist he became."[142] His sister observed he was "a changed person" when he returned to Australia for a month in June 2016 after nearly two years away. They, and the Royal Commission, describe him as essentially radicalised by early 2017.

[229] It follows that trying to discern more precisely the circumstances that led Mr Tarrant to became radicalised to violence is unlikely to be a straightforward or necessarily productive exercise. He was the product of a unique set of influences. That is not to say his radicalisation should be regarded as a one-off, or that others are unlikely to follow a similar path. On the contrary, recent evidence shows that the far right is as intent upon radicalising members of the community, and inciting violence, as it ever was. As I discuss below, it would be highly desirable if its influence, its tactics and it use of online platforms, were the subject of an appropriately wide-ranging examination in an appropriate forum. But a coronial inquiry is confined to the events which led to the death or deaths in front of it. That combination of circumstances will be difficult to determine and is unlikely to be repeated.

[230] On the material presently before me about Mr Tarrant's online activity, there is no evidence that even platforms like YouTube and the Lads Society Facebook groups – which, of the mainstream platforms, may have provided Mr Tarrant with the greatest level of access to far-right content – played a decisive role. The calls to violence the Royal Commission observed are consistent with Mr Tarrant using the internet to reflect and share his pre-existing views, rather than the platforms playing a material role in his descent into radicalisation. Nor is there any evidence to suggest that without their influence the attack would have been avoided.

[231] Notwithstanding the evidence does not appear to demonstrate a decisive role played by social media and other online platforms in Mr Tarrant's radicalisation, this Inquiry might be able to ensure the evidence on this issue is more complete by examining the period between 2014 and 2017, which the Royal Commission did not explore. Because there may be more evidence to find, I am unable to exclude the possibility that Mr Tarrant's online activity during that earlier period played a demonstrable and material role in his radicalisation, and ultimately the attack.

[232] I must also determine whether I should re-examine, as part of this Inquiry, the Royal Commission's investigation into Mr Tarrant's online activity as far as it went. Although the relevant Interested Parties have sought to persuade me the Royal Commission did little to ascertain Mr Tarrant's online influences, his use of social media was among the matters it was expressly directed to investigate. The fact it was only able to uncover a subset of his online activity appears to have reflected Mr Tarrant's effectiveness at covering his tracks rather than any evident failure on the Royal Commission's part. As the Royal Commission noted, Mr Tarrant sought to minimise his digital footprint, and took active steps (including

[142] Royal Commission's Report, vol 2 at 178.

removing the hard drive – which has never been recovered – from his computer) to prevent investigators from obtaining a full understanding of his internet activity.[143]

[233] I am satisfied that the Royal Commission's investigation into this aspect, as far as it went, was effective and rights-compliant. I am therefore entitled, in principle, to rely on its findings.

[234] That said, I have given careful consideration to whether I should attempt to re-examine Mr Tarrant's internet use, whether with a view to inquiring into the role online platforms might have played in his radicalisation and planning, or more generally in terms of their algorithms and the extent to which they actively monitor users and extremist content.

[235] I am mindful that the Royal Commission, with its extensive resources and all the forensic expertise available to it, had only limited success in reconstructing Mr Tarrant's online life between 2017 and 2019. It is difficult to see how this Inquiry might undertake the same exercise and produce a different result.

[236] It follows I am doubtful that re-examining the role online digital platforms played in Mr Tarrant's radicalisation, at least in the two years immediately preceding the attack, would materially advance the findings or recommendations beyond that achieved by the Royal Commission. Beyond the fact Mr Tarrant was radicalised to violence, any effort to substantiate a causal link between the attack and any specific online digital platform is likely to involve a high degree of speculation and assumption.

[237] Having said all that, I am conscious that until recently Interested Parties have not had access to the source information Police obtained about Mr Tarrant's online activity in the two years prior to the attack. In addition, initial Police redactions are currently being revisited with a view to providing greater access to relevant content in that material. As I have noted, it appears his extremist beliefs became particularly intense over the three years before that – between 2014 and 2017, and as such there may be more information about the "online component" of his radicalisation that has not yet been examined.

[238] Acknowledging the monumental hurdles an inquiry into Mr Tarrant's use of online digital platforms will face, it may well be that, as with the 2017 to 2019 period already investigated by Police and the Royal Commission, it may not be possible to isolate any online platform or influence which can be causally linked with Mr Tarrant's radicalisation (and therefore with the attack). I cannot, however, rule that possibility out without first making appropriate inquiries.

[239] Accordingly, I will take forward for inquiry the issue of whether Mr Tarrant's online activity can be shown to have played a material role in his radicalisation

[143] Royal Commission's Report, vol at 188.

with a particular focus on the period between 2014 and 2017 which has, as yet, not been examined. It may be that in the absence of preservation orders that were available to facilitate the Police investigation the extent of Mr Tarrant's online activity information that is available has been compromised by the passage of time.

[240] In addition, this jurisdiction has the benefit of being an inquisitorial forum. While the Police could not compel Mr Tarrant to provide information, I can. As noted above, when Police found the computer tower at Mr Tarrant's address the hard drive had been removed. I understand that to date Mr Tarrant has declined to answer questions about what became of it. In an effort to further this line of inquiry I have now served a s 120 notice on Mr Tarrant requiring him to disclose the whereabouts of the hard drive, and to answer questions about any copies of the information it held, including whether any part of it has been uploaded to a cloud storage provider.

[241] As will be already apparent, I have reservations as to whether these inquiries will yield sufficient information to allow a focused examination of the role one or more social media platforms played in Mr Tarrant's radicalisation and the attack. I do however seek to ensure I have as full a picture of his internet use as possible.

[242] My approach to this aspect of the Inquiry will also involve an iterative and progressive investigation. The first stage will be to seek relevant information that may still exist about Mr Tarrant's online activity between 2014 and 2017. A review of that material will seek to identify whether any causative nexus with Mr Tarrant's radicalisation to violence is disclosed. If no sufficient nexus is demonstrated in that material, or in the material obtained by Police in relation to the 2017 to 2019 period, it is unlikely this Inquiry can take the role the internet played in Mr Tarrant's radicalisation any further. In the event there is evidence of a causal link between Mr Tarrant's online activity on a specific platform and his radicalisation, this may reasonably lead to further questions as to the extent and nature of the platform's monitoring of its users in relation to extremist content both at the time relevant to Mr Tarrant's online activity, and now.

[243] For the avoidance of doubt, the possible use of algorithms to attract and retain users and provide them with access to extremist content does not arise for inquiry at this initial stage. Unless and until there is an evidential foundation that Mr Tarrant's online activity was a material source and influence of his radicalisation, the use of algorithms will not be a relevant avenue for investigation.

Mr Tarrant's radicalisation to violence through overseas travel

[244] Some Interested Parties have submitted that Mr Tarrant's extensive overseas travels ought to be examined in this Inquiry to identify where, and to what extent, he received the inspiration that radicalised him to violence and, more specifically,

to commit the attack.[144] In addition, some submitted he must have received training overseas.

[245] I again note the Royal Commission's observation that Mr Tarrant had expressed racist sentiments from a young age the evidence pointed to his having become radicalised in the course of his travels.[145] The Royal Commission set out in detail Mr Tarrant's travel to the extent it could be reconstructed.[146] It found no evidence he had engaged in any training overseas. It concluded:[147]

> 25 … we see the primary significance of the individual's travel as being that it provided the setting in which his mobilisation to violence occurred rather than its cause. It may be that the individual's experiences while travelling had some role to play in his mobilisation to violence. But of far more materiality was his immersion during this period in the literature, and probably the online forums, of the far right and the social isolation of his solo travel. And, as will be apparent, we do not accept the individual's account of when and why he decided to engage in terrorism – an account that we see as propaganda.
>
> 26 We see the individual's travel between 2014 and 2017 as largely a function of his circumstances and personality. He had the money to travel and no employment, personal relationships or other purpose in life that precluded it. The purpose of the travel was not to meet up with extreme right-wing people or groups or engage in training activities or reconnaissance of possible targets. Put simply, he travelled widely because he could and had nothing better to do.

[246] I am satisfied I am entitled to rely on the Royal Commission's findings on this issue, to the extent they are relevant to s 57 matters. Some Interested Parties consider the role Mr Tarrant's overseas travel played in his radicalisation requires further exploration in this Inquiry. It is also evident that some Interested Parties continue to suspect Mr Tarrant must have received training overseas although no evidential basis for this assertion has been identified.

[247] In considering whether I should nevertheless pick up where the Royal Commission left off, it is not clear how I might materially advance this issue in this Inquiry, beyond the point reached by the Royal Commission. To do so would require an ability to ascertain all the places he travelled, what exactly he did, and who he met. Such an exercise is inherently discursive and not, in my view a feasible exercise capable of reasonable inquiry to resolve. I do not consider further investigation in this way to be necessary, desirable or proportionate in the exercise of my statutory functions.

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[144] Submissions that Mr Tarrant's travel history should have made him ineligible for an entry visa are addressed under the 'Immigration checks for Australian citizens emigrating to New Zealand' heading.
[145] Royal Commission's Report, vol 2, at 168.
[146] Royal Commission's Report, vol 2, Chapters 3 and 4.
[147] Royal Commission's Report, vol 2, at 183.

[248] I am not persuaded this Inquiry could advance the Royal Commission's investigation or findings on this issue in any material respect. On this basis, the extent to which Mr Tarrant's overseas travel operated to radicalise him to violence and to commit the attack will be excluded from further consideration in this Inquiry.

Decision on: Issues about the community's ability to detect and respond to violent extremism risk in others

[249] The Royal Commission's discussion of radicalisation has led to one further aspect which, while not raised as a provisional issue, is one I consider would be appropriate to develop and examine in more detail as part of this Inquiry.

[250] For the reasons discussed above, we may never understand the exact combination and weight of factors that led to Mr Tarrant's radicalisation but there is no doubt he had become severely radicalised in the years prior to the attack and his radicalisation can clearly be linked, in a causative sense, with the deaths.

[251] As the Royal Commission noted, the ready availability of encrypted communication channels, VPNs, Tor browsers and the dark web have made the task of detecting the online activities of violent extremists difficult for intelligence and security agencies. Purging the internet of misinformation and closing it down as a forum for those who seek to inflame hatred and prejudice, is far beyond what any coronial proceeding (or indeed any individual country) can hope to achieve. On the other hand, those who are becoming, or have become, radicalised continue to live in the "real world". They will often have families, friends and associates who might, if equipped with proper skills and insights, recognise the changes that can point towards a descent into radicalisation.

[252] The Royal Commission described New Zealand's counter-terrorism framework, but noted that violent extremists, especially where they are operating alone, are much more likely to come to the attention of family, friends, teachers, doctors and associates before they are detected by intelligence and security agencies.[148]

[253] While I accept and adopt (to the extent it is necessary to do so and as discussed in the following section) the Royal Commission's finding that New Zealand's intelligence and counter-terrorism agencies and other public sector agencies could not reasonably have been expected to detect Mr Tarrant's planning and prevent the attack, better community understanding of the signs of radicalisation, and an appropriate range of interventions, may have made a difference. The Royal Commission noted that one of the (relatively few) ways Mr Tarrant might have been stopped was if someone had noticed the signs he had become violently radicalised and had intervened. In order to do so, however, Mr Tarrant's family and associates would have needed to understand that his conduct, utterances and

[148] Royal Commission's Report, vol at 389.

attitude had strayed so far from the mainstream that they posed a significant and likely imminent danger to the community.

[254] This is not to suggest the community bears any responsibility for this or any other attack. Similarly, ongoing vigilance from our intelligence and counter-terrorism agencies will continue to be necessary. But the vigilance of the community provides another potential line of defence. Greater awareness of what changes might indicate that a friend or relative is at risk, and some practical guidance about what to do if that occurs, may help make that line of defence stronger.

[255] It may be possible, by assembling and analysing the current state of research both in New Zealand and overseas, to make recommendations that will help families and communities acquire the skill and insight to detect the signs of radicalisation. Rather than seeking to attribute blame to the people or platforms that may have contributed to an unquantifiable extent to Mr Tarrant's radicalisation, this is an opportunity to conduct a forward-looking inquiry which is designed to ensure the community gives itself the best chance of identifying those at risk of radicalisation, and has the tools to help prevent that process from escalating into violence. This aligns also with Mr Rasheed's submission that "In the case of T, there were enough incidents or issues that came or should have come to the attention of third parties in the community and thus, in turn, to the authorities, had the state been at all effective in establishing social cohesion and a sense of literacy around RWE risks in NZ."[149]

[256] As I have said, every person who becomes radicalised is different and is subject to a different cocktail of influences. Even so, my understanding is that there has now been extensive work across a range of agencies, including academic research, studies by Government agencies in New Zealand and overseas, and by non-governmental organisations, which seek to understand and address the processes of alienation and estrangement from mainstream society which lead a small minority of people to embrace extremist ideologies and, in some cases, to take extreme action. In this regard I note, in particular, recent media reporting that the New Zealand Security Intelligence Service (**NZSIS**) is working on a public version of its own indicators of violent extremism to help people identify signs an individual could be mobilising to violence. The reporting indicates that guidance is expected to be released in coming months.[150]

[257] Given a causal nexus exists between the attack and the fact that Mr Tarrant was radicalised to violence, and that he was in contact with his family and lived amongst the Dunedin community in the years before, it would be in the public interest for this Inquiry to examine, with a focus on preventing further deaths in similar circumstances, the following questions:

[149] Written submissions of Mr Rasheed, 8 February 2020 at [134]. This is also addressed below under the 'Issues about social cohesion' heading.
[150] Michelle Duff "Online threats 'concerning'" *The Dominion Post* (New Zealand, 11 April 2022).

(a) What do we know of radicalisation as a process, drawing on global experiences and research in relevant disciplines?

(b) At a practical level, what are the signs and/or symptoms of actual or impending radicalisation, as it might affect an individual or an identifiable group?

(c) What practical advice, support and resource could be made available for people and community groups dealing with radicalisation of someone they know?

[258] The preventative potential of this aspect of the Inquiry will be best served by an intensely practical and forward-looking focus. I agree with IWCNZ that it is important it not become an "open-ended academic fishing expedition".[151]

[259] It may also be the case, as media reporting suggests, that developing community capability in this area is already within a dedicated programme of work by a Government agency or agencies and is in train. In this regard, I note the publicly available Department of Prime Minister and Cabinet's (**DPMC**) Progress Tracker as at January 2022, under the theme of Countering Terrorism and Violent Extremism reports that the following are complete under "work to date":[152]

(a) *Recommendations 12 & 13:* Scoping work on development of a single reporting tool for concerning behaviour, and development of indicators of engagement in violent extremism and terrorism.

(b) *Recommendation 13:* Applications open for master's research on countering terrorism and countering violent extremism. Scholarships have been awarded for the start of the 2022 academic year.

[260] The following aspects of the work programme for Countering Terrorism and Violent Extremism are listed under "First half of 2022":

(a) *Recommendation 4:* Development of a strategic approach to preventing and countering violent extremism.

(b) *Recommendations 7 & 8:* Establishment of an advisory group on counter terrorism.

(c) *Recommendation 12:* Cabinet decisions on options for a single reporting tool for concerning behaviour.

(d) *Recommendation 14:* Formal establishment of the National Centre of Research Excellence on preventing and countering violent extremism.

(e) *Recommendation 14:* Appointment of a Director and General Board for the National Centre for Research Excellence on preventing and countering violent extremism.

[151] Written submissions of the IWCNZ , 8 February 2022 at [47].
[152] Royal Commission of Inquiry Response Progress Tracker, DPMC, January 2022.

(f) *Recommendation 15:* Strategic approach to counter-terrorism publication of information and communication developed.

[261] The Progress Tracker also states that in the second half of 2022 *He Aranga Ake* is expected to be underway at full capacity. *He Aranga Ake* is to be a multi-agency co-ordinated intervention programme to provide early interventions to support individuals at risk of radicalisation. In 2023 and onward the Progress Tracker states there will be a review of New Zealand's counter-terrorism and violent extremism strategy.

[262] Given the measures outlined that are said to be in progress already, or imminent in the DPMC's work programme, it may be that exploration as part of this Inquiry will highlight work already underway. Evidence about what has been done, and continues to be done, to address this issue may mean I do not need to recommend any significant new initiatives in this area, but it would be appropriate to review the evidence on this question in any event.

Decision on: Issues about whether opportunities to disrupt the attack were missed by the New Zealand's Intelligence and Counter-Terrorism Agencies or other public sector agencies

[263] The Scope Minute proposed to treat the issue of whether opportunities to disrupt the attack were missed by New Zealand's Intelligence and Counter-Terrorism agencies[153] and other public sector agencies as outside the scope of the Inquiry as it was considered by the Royal Commission.[154]

[264] I have concluded:

(a) this issue would ordinarily be one for coronial inquiry: it is relevant to the cause or circumstances of death, not too remote to be regarded as sufficiently causative, and has the potential to lend itself to recommendations under s 57A.

(b) the Royal Commission conducted a rights-compliant and effective investigation into this issue; I am therefore entitled to rely on its findings on this issue to the extent it is necessary to do so in relation to s 57 matters.

(c) I am not persuaded otherwise that the exercise of my discretion requires that this issue should nevertheless be an issue for this Inquiry. A *de novo* inquiry in this jurisdiction would not improve on the investigation, findings or the recommendations made by the Royal Commission. Nor would it afford Interested Parties greater access to

[153] "Intelligence and security agencies" are defined under the Intelligence and Security Act 2017 as the GCSB and the NZ Security and Intelligence Service. "Public sector agencies involved in the counter-terrorism effort" are the DPMC, the GCSB, Immigration NZ, NZ Customs Service, NZ Police, and NS Security and Intelligence Service.
[154] Minute of Judge Marshall Re Scope of Inquiry, above n 22, at Appendix A issues 4 and 52.

key information (assuming it would even be made available to the Inquiry) than the Royal Commission was able to provide.

[265] Whether opportunities to disrupt the attack were available but missed by the intelligence and counter-terrorism agencies or any other public sector agency has a clear causal connection to the attack. I am therefore satisfied this would ordinarily be an issue for a coronial inquiry to consider, albeit not without the difficulties I explain below. This issue is obviously complicated by the fact an effective investigation requires consideration of sensitive, and often classified, material.

Did the Royal Commission constitute a s 8 rights-compliant investigation on this issue?

[266] The Royal Commission's Terms of Reference were squarely focussed on what information, if any, public sector agencies had that could or should have alerted them to the attack, along with the appropriateness of their response to any such information, and whether there was any failure in information sharing.[155] In its report the Royal Commission observed: "Underlying these issues is a concern that the relevant public sector agencies may have missed opportunities to disrupt the 15 March 2019 terrorist attack and were therefore at fault."[156]

[267] As noted above, Mr Mansfield on behalf of Mr Tarrant, characterised the Royal Commission as driven by matters of interest and benefit to the government.[157] In oral submissions Ms Toohey on behalf of the immediate families she represents, said the Royal Commission was "set up to answer a completely different sphere of concern"[158] than this Inquiry. As I have said, I do not accept the two inquiries seek to achieve materially different ends. But even if that were correct, it is beside the point. The Royal Commission was asked to, and did, make detailed findings on this very issue.

[268] The Royal Commission's Report set out the backdrop of the national security system, intelligence function and the counter-terrorism effort in New Zealand, and in particular how public sector agencies might detect potential terrorists and preparatory activities.[159] It set out in detail what public sector agencies knew about Mr Tarrant before 15 March 2019 and what they did with the information they had. It squarely addressed whether any more could or should have been done by any public sector agency, or more broadly the New Zealand Intelligence Community,[160] to disrupt the attack.

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[155] Royal Commission's Terms of Reference, above n 9, at 4(a) and (b).
[156] Royal Commission's Report, vol 2 at 327.
[157] Scope Hearing Transcript of Mr Mansfield's Oral Submissions (excerpted) at 12.
[158] Scope Hearing Transcript of Interested Parties' Oral Submissions at 71.
[159] Royal Commission's Report, vol 1 from 74.
[160] The term **New Zealand Intelligence Community** was used by the Royal Commission in reference to the GCSB, the NZ Security and Intelligence Service, the National Security Group of the DPMC (including the National Assessments Bureau), Glossary, Royal Commission's Report, vol. 3 at 646.

[269] The Royal Commission described its process for gathering information as iterative and inquisitorial.[161] 217 agencies from the wider public sector were asked to furnish any information they held about Mr Tarrant and his activities before 15 March 2019. This went well beyond the five public sector agencies stipulated in the Terms of Reference. The Royal Commission reported: "We did this to ensure that we had a complete picture of what was known by all public sector agencies about the individual and his activities before the terrorist attack."[162] Ten agencies were found to have relevant information holdings, and of those only three of the agencies were involved in the counter-terrorism effort[163] (Police, Immigration New Zealand, and New Zealand Customs Service). The Royal Commission reported: "We assessed and tested this information against that received from other sources, including from submissions and our community engagement process, and meeting with experts".[164]

[270] The Royal Commission's Report details the information held by the ten relevant agencies and what each of them did with it. In addition, its report includes chapters that detail its inquiries into four specific matters related to actual or potential information holdings by public sector agencies:

(a) Reports of suspicious behaviour at masjid in August and September 2017 (Part 6, chapter 2);

(b) A November 2018 intelligence report received by the NZSIS that detailed an IP address that had been identified as Dunedin-based and accessing suspicious file content between 24 August 2017 and 4 September 2017 (Part 6, chapter 3);

(c) Whether an employee of the NZSIS saw social media posts made by Mr Tarrant before 15 March 2019 (Part 6, chapter 4); and

(d) Whether reports were received by Police about Mr Tarrant's conduct at the Bruce Rifle Club before 15 March 2019 (Part 6, chapter 5).

[271] The Royal Commission assessed and tested the information it received against the evidence it received from the Police criminal investigation, and through other mechanisms which relevantly included:

(a) A hearing on the issue of the IP address 122.61.118.145. The Royal Commission reported: We summoned relevant officials from the

[161] Royal Commission's Report, vol 1 at 52.
[162] Royal Commission's Report, vol 2 at 379.
[163] The Royal Commission used the term "the counter-terrorism effort" to refer to all activities undertaken by Public sector agencies to prevent, mitigate, respond to and disrupt actual or potential terrorist threats.
[164] Royal Commission's Report, vol 2 at 327.

NZSIS to attend and provide evidence under oath or affirmation";[165] and

(b) An interview with Mr Tarrant. While at the time of interview the information relating to the IP address had not been declassified, the Royal Commission reported it asked him some related questions, the answers to which informed some of its conclusions.[166]

[272] The Royal Commission undertook a detailed evaluation of what public sector agencies did with the information they held about Mr Tarrant and reached conclusions about the appropriateness of agencies' actions or inactions. The Royal Commission's critical analysis and transparency of reasoning is evidenced from the discussion of factors identified as weighing in favour of and those weighing against relevant propositions and ultimate conclusions, together with the stated basis upon which any assumptions proceed.

[273] The Royal Commission concluded that public sector agencies were not aware of Mr Tarrant's plan to carry out the 15 March 2019 attack and, other than the email sent to Parliamentary Services immediately before the attack, none of the information that was known could or should have alerted them to the attack.[167] While some of that information related, or may have related, to Mr Tarrant's planning and preparation, the Royal Commission concluded this could not have been known by the public sector agencies at that time.[168] The Royal Commission found the effect of this as being that there were no interactions amongst the relevant agencies before 15 March 2019 that were relevant to the attack.[169]

Effectiveness

[274] As to the effectiveness of the Royal Commission's investigation on this issue, Mr Rasheed submitted that "while many useful aspects have been addressed by the [Royal Commission], there are significant gaps on issues which the Royal Commission itself raised which it either did not have enough time or resource (or both) to address in full, or did not have mandate in the required areas to be able to exhaust the relevant factors; instead the Royal Commission was able to come to conclusions within the limited timeframe and information and mandate it has." He relayed a perception that many issues were drawn to "abrupt conclusions [which was] seemingly testament to the increasing rush and time pressures the Royal Commission was under." He asserted the Royal Commission had to "telegraph to the ultimate question … whether or not any issues would have made a difference to the outcome … without the time or luxury to break down and analyse the individual different components of its conclusions or alternatives within its logical

[165] Royal Commission's Report, vol 2 at 331.
[166] Royal Commission's Report, vol 2 at 343.
[167] Royal Commission's Report, vol 1 at 87 and vol 2 at 376-377.
[168] Royal Commission's Report, vol 2 at 328.
[169] Royal Commission's Report, vol 2 at 377.

analysis that led to the conclusion that, essentially, all failures were inconsequential; that no failures would have impacted a lone actor".[170]

[275] Mr Rasheed submitted these constraints and limitations meant the Royal Commission:

(a) accepted the NZSIS's evidence on leads, which could be presumed to be biased and self-serving, without input from overseas counterpart agencies;

(b) failed to recognise or minimised the significance of Mr Tarrant accessing the Oslo manifesto in the context of a specific warning having been issued about the risks of such attacks occurring using firearms;

(c) erroneously focussed on what information state agencies had rather than where there were information gaps;

(d) did not bring in any relevant expertise or technological resource in a range of areas, and any expert input was impaired by the breadth of the Royal Commission's focus and time constraints;

(e) was constrained by some material being classified at the time of interviewing Mr Tarrant; and

(f) failed to address why apparently unencrypted ominous emails Mr Tarrant sent himself, for example on 20 December 2018 referencing killing an invader, were not picked up by public sector agencies, in particular when he entered and re-entered New Zealand.

[276] There can be no question the Royal Commission had a clear mandate to inquire into whether there were missed opportunities by the New Zealand Intelligence and Counter-Terrorism Agencies or other public sector agencies to disrupt the attack. As set out above, the various means and standards of investigation engaged by the Royal Commission are extensively detailed in its Report. As I have noted, in the context of seeking its first reporting extension the Royal Commission expressly recognised the expectation that it take a "no stone unturned" approach. The NZSIS's own 'Arotake' internal review, led by an external and experienced intelligence expert in counterterrorism from a Five-Eyes partner also details the scale of the forensic search of NZSIS's information repositories to look for any reference to Mr Tarrant or anything that could have uncovered his plans.[171]

[170] Written submissions of Mr Rasheed, 8 February 2022, at [86].
[171] 'The 2019 Terrorist Attacks in Christchurch: A review into NZSIS processes and decision making in the lead up to the 15 March attacks', June 2019, available at: https://www.nzsis.govt.nz/assets/Uploads/Arotake-internal-review-public-release-22-March-2021.pdf. See also the discussion of the mock investigative exercise conducted by the review below under the 'Issues about institutionalised bias in key State agencies' heading.

[277] There is no evidence to support Mr Rasheed's assertions. Moreover, in every inquiry, including those in this Court, there will be additional investigative steps that could theoretically be taken to exhaust every avenue. But exhausting every avenue is not the test for an effective investigation. The Royal Commission's processes were reasonable and amply capable of determining whether opportunities to disrupt the attack were missed. It follows that I consider the Royal Commission conducted an effective investigation on this issue.

Public scrutiny and involvement of next-of-kin

[278] The Terms of Reference required the Royal Commission to ensure the information it received from State sector agencies remained confidential, where necessary, to protect public safety and the security and defence interests of New Zealand. Information supplied in confidence from international partners was also subject to this requirement. The Royal Commission recognised the need and value of current and former public sector employees and contractors being able to engage openly and frankly without the fear of repercussion, and the risk that the absence of confidentiality agreements would deter participation. Privacy interests of affected whānau, survivors, witnesses and others were also an express consideration in adopting a private process.

[279] By directing the Royal Commission to ensure that sensitive information was protected, that operational tradecraft of intelligence and security agencies remained confidential and the fair trial rights of Mr Tarrant were preserved, the Royal Commission noted it considered its Terms of Reference "practically required our process to be conducted in private."[172] Even when fair trial rights were no longer a pressing concern following Mr Tarrant's guilty plea on 26 March 2020, the Royal Commission noted: "the ongoing requirement to protect confidentiality in respect of the practices of intelligence and security agencies would have continued to limit the potential scope of public hearings."[173] At the same time the Royal Commission expressly recognised that limiting public participation in the face of significant public interest and a need to provide public reassurance that all appropriate measures were being taken to ensure their safety and protection meant there was a need to provide transparency in other ways. The Royal Commission's Report records: "Connecting with the public was a necessary part of providing this reassurance".[174]

[280] I have discussed above how the Royal Commission's Report sets out in extensive detail and in a publicly accessible form, the results of its investigation. The Royal Commission's Report including its findings and recommendations, provides a clear mechanism for public accountability. Its ability to publicly report information relevant to this particular issue was a matter of specific concern to the

[172] Royal Commission's Report, vol 1 at 51.
[173] Royal Commission's Report, vol 1 part 52.
[174] Royal Commission's Report, vol 1 at 51.

Royal Commission and was addressed when it set out its due diligence process as follows:[175]

> 43 Our Terms of Reference precluded the disclosure of sensitive information in our report. We have been anxious throughout our inquiry to provide a report that can be published in full without redactions or suppressed sections. Accordingly, as part of our due diligence process, we asked the intelligence and security agencies to identify any sensitive information in the draft report content.
>
> 44 Broadly speaking, sensitive information relates to the operations of the intelligence and security agencies that, if it was released, would prejudice the security, defence, or international relations of New Zealand or would endanger the safety of any person. We undertook a comprehensive process to ensure the report did not contain any sensitive information. That process involved agency nominees reviewing the report for sensitive information and providing us with advice, asking Public sector agencies for their comments on sensitive information issues and holding a hearing to determine any outstanding issues. We decided how the sensitive information issues raised at the hearing should be resolved, including by sanitisation.
>
> 45 Sanitisation requires a restatement of information so as to limit the potential for harm to national security. Very little information required sanitisation. Such sanitisation as has occurred has not altered the substance of what we wanted to say.
>
> 46 Our Terms of Reference did not prevent the publication of classified information. Instead, we had discretion whether to publish such information. We asked Public sector agencies to identify any classified information contained in the draft report during the due diligence process and explain why they thought this should not be published. Some Public sector agencies considered that the report contained classified information that should not be published, at least in the way it was set out in the draft report.

[281] As these passages show, the Royal Commission went to considerable lengths to make as much information public as it could without compromising national security. I am not persuaded that the limitations that operated on public reporting mean that the Royal Commission's Report on this issue is incapable of securing accountability in practice.

[282] Similarly, I have noted that the level of next-of-kin participation may vary from case to case depending on the requirements of a proceeding and have rejected the submission that a rights-compliant investigation requires next-of-kin to have the opportunity to receive the evidence, attend any hearings that relate to it, and the ability to test the evidence themselves.

[283] Again, I do not seek to minimise the perceptions that were expressed in both written and oral submissions. The question is whether this approach by the Royal Commission, at least in relation to this particular issue, amounts to involvement

[175] Royal Commission's Report, vol 1 at 59.

of next-of-kin sufficient to safeguard their interests. And, in the circumstances of this case, how could I improve on the processes the Royal Commission was obliged to follow? Any fresh attempt to investigate this issue in this jurisdiction will encounter the same issues involving national security and classified information that dictated the Royal Commission's approach. Some Interested Parties appeared to share my reservations in this regard.[176] I do not understand any Interested Party to be contending that their interests in such information would prevail over the interests of national security to the point where they should have direct access to security sensitive information.

[284] As I have also noted in my general comments about the Royal Commission, some of the Interested Parties sought to draw comparisons with other overseas public inquiries into terrorist events which they assert engaged mechanisms to provide for both greater public scrutiny of the evidence that was before the inquiry, and greater participation by next-of-kin in the inquiry. The suggestion being that such mechanisms could be adopted in this Inquiry and could sufficiently accommodate any security-sensitive materials while also providing for next-of-kin participation.

[285] Some of the Interested Parties referred to the State Coroner for New South Wales' inquiry into the Lindt Café siege, and to the United Kingdom's Manchester Arena Inquiry into the 22 May 2017 bombing. The nature and context of each requires some comment to assess the degree to which they might be comparable to this Inquiry and how they might inform my decision on scope.

(a) Inquiry into the Lindt Café siege

[286] The deaths of two of the 18 hostages and the hostage taker, Man Monis, in the Lindt Café siege in December 2014 in Sydney were the subject of an unprecedented large-scale investigation and inquest by the State Coroner for New South Wales. The inquest opened just six weeks after the siege and proceeded by way of an issue-based segmented approach. The inquest took more than two years to complete and had two principal tasks: to investigate the circumstances of the deaths of the two hostages and the hostage-taker, and to examine the actions of law enforcement and security agencies before and during the siege to assess whether they could be improved.

[287] Significantly, and unlike the present situation, there had been no preceding criminal prosecution or any form of independent state inquiry akin to the Royal Commission. The Inquest Report acknowledged that a key characteristic of all inquests is their public and participatory nature, however, State Coroner Barnes reported that while the inquest was a public inquiry, not all of the evidence could be heard in public. The potential to compromise the effectiveness of intelligence, security and law enforcement agencies meant caution was required.

[176] Mr Mansfield observed: "The government agencies through their own counsel might apply for orders that prevent the Coroner hearing evidence at all", Scope Hearing Transcript of Mr Mansfield's Oral Submissions (excerpt) at 13.

[288] The challenge for the inquest was to enable the actions of the Police and the Australian Security Intelligence Organisation (**ASIO**) to be examined in sufficient depth to reassure the public, without at the same time compromising future efforts to keep the public safe. The families understandably wished to know as much of what contributed to the deaths of their loved ones as possible, but they also accepted that there would be times they could not be made privy to certain material. In the end, various mechanisms were used to provide that balance ranging from a protective regime for sensitive documentary evidence, hearings with varying degrees of exclusion, including closed hearings, and what was described as an "extreme measure" when particularly sensitive material with national security ramifications was being dealt with, of excluding even those with leave to appear.

[289] The Inquest Report recorded that by these various means, the inquest was able to look closely at confidential Police methodology and matters of national security importance without compromising the future effectiveness of the agencies involved. No secret Police techniques were publicly disclosed. The inquest was denied access to some material, and the parties did not have the opportunity to examine all the evidence. Public reporting of some parts of the inquiry process was also restricted. However, the Inquest Report recorded that none of these limitations prevented the inquest from effectively examining the issues central to its purpose.

(b) Manchester Arena Inquiry

[290] In the United Kingdom Manchester Arena Inquiry (**MAI**) the statutory public inquiry was established *in place of inquests* on advice from the Coroner (Hon. Sir John Saunders) to the Secretary of State. That advice concerned valid public interest immunity applications in respect of sensitive material about what intelligence agencies or Police knew about the offender and whether those agencies could have prevented the attack, issues which the Coroner considered to be not just relevant but of central importance to the inquests. The Coroner considered that an Article 2 compliant inquest would be impossible; inquests must be held in public. The public inquiry, on the other hand, allowed for closed hearings which allowed those questions to be examined in full.

(c) Relevance of these inquiries to this case

[291] The issue that arises is not whether there is a mechanism for closed hearings to take place in the coronial jurisdiction in New Zealand (again assuming security sensitive information would even be furnished to this Inquiry in the first place). The more fundamental question is whether a preceding independent state inquiry, which had a mandate to look at issues that might ordinarily also rest with this Court, but which adopted a private process, is nonetheless a rights-compliant investigation on which a coroner can rely.

[292] Neither the Lindt Café inquiry nor the MAI assist in answering that question. Neither involved a coronial inquiry which was preceded by a Royal Commission that examined some of the same issues. For that reason, insofar as setting the scope of this Inquiry, I derive little assistance from comparisons with these overseas inquiries other than illustrating the practical difficulties and challenges in seeking to balance the need for open justice and next-of-kin involvement with the protection of security-sensitive information.

[293] Ms Toohey suggested that the process adopted in the Government inquiry into Operation Burnham might provide a practical alternative means in this jurisdiction by which to cure the participation concerns of the immediate families on this issue.[177] Ms Toohey explained that at the end of that inquiry formerly classified information was made available to the public through a process involving two independent counsel who reviewed the classified material and tested the relevant agencies' classification categories. Ms Toohey acknowledged several difficulties with this suggestion. Most fundamentally, it would only help if critical material had been misclassified, despite the lengths the Royal Commission stated it went to publicly report as much as possible. Unless there had been wholesale over-classification Ms Toohey's proposal would not cure the participation concerns. Moreover, I apprehend jurisdictional obstacles (including the likelihood that the Commissioners are now *functus officio*) will present immediate difficulties with pursuing such an avenue. But, as with rights of judicial review of the s 15 orders, that recourse is open to any Interested Party to pursue separately to this Inquiry.

[294] Ultimately, I am satisfied the Royal Commission met the required standards for public scrutiny and next-of-kin participation in its investigation of this issue. There is no obvious basis upon which I could afford Interested Parties greater access to the most pertinent security-sensitive information (assuming it was disclosed to this Inquiry), than the Royal Commission's process permitted.

Should this nevertheless be an issue for inquiry?

[295] Having found the Royal Commission's investigation into this issue satisfied the requisite standards for a rights-compliant investigation, it is open to me to rely on its findings to the extent necessary in relation to s 57 matters. The further question I must consider is whether I should nonetheless inquire into this issue in the exercise of my discretion.

[296] There is no basis to suppose that an inquiry in this Court could materially advance or augment the Royal Commission's work. I do not accept that the Royal Commission suffered from the deficiencies asserted by Mr Rasheed. As already noted, all inquiries, including coronial inquiries, will have constraints that require a principled focus and prioritisation of effort and resource.

[177] Scope Hearing Transcript of Interested Parties' Submissions, at 71.

[297] In addition, and as already noted, there is no basis to believe inclusion of this issue in this Inquiry would afford immediate families (or any other Interested Parties) greater access to security sensitive information central to this issue than the Royal Commission was able to provide. In those circumstances it is difficult to see how the legitimate interests of the next-of-kin would be advanced.

[298] It is also relevant to note that the Royal Commission made 18 recommendations about countering terrorism and violent extremism, and the implementation of a national security system.[178] Those recommendations are set out in the table attached at **Appendix C** along with a summary of the publicly available information as to the progress on each.

[299] The Royal Commission's recommendations on this issue were broad, including new legislation, increased information sharing, and the creation of a new agency. In all the circumstances, I do not that consider that this Inquiry could do more.

[300] Having weighed these factors, I do not consider exclusion of this issue from the scope of this Inquiry to be contrary to the public interest or serve to frustrate the purposes of the Coroners Act in preventing deaths and promoting justice.

Mr Tarrant's steroid use as a potential red-flag to public sector agencies

[301] Some Interested Parties submitted that Mr Tarrant's use of steroids ought to have alerted public sector agencies to the possibility that Mr Tarrant posed a threat to New Zealand's national security.[179] Mr Rasheed submitted that had Mr Tarrant's firearm injury been reported, his medical notes would have indicated his use of steroids. As firearms training and the use of steroids to "bulk up" were part of the Oslo manifesto, he submitted the injury effectively represented a red flag that went unnoticed and a missed opportunity by public sector agencies to disrupt the attack.

[302] As discussed above,[180] Mr Tarrant's presentation with a firearm injury in July 2018 was not reported by the hospital as, at that time, there was no requirement mandating it do so.[181] Even if advice of this injury had been disclosed to Police, it is by no means apparent that presumably illicit steroid use would have featured in that notification, or, that it would have resulted in an interrogation of this event and re-assessment of Mr Tarrant's 'fit and proper person' status as a firearms licence holder. Even if a chain of causation implicating steroid use could be stretched that far, what this may have then meant in terms of Mr Tarrant's preparation and training for the attack involves such a degree of speculation that issues of remoteness are plainly engaged. Even if I was satisfied that there was an arguable causal link with that incident, the issue, to my mind, is not so much one

[178] Royal Commission's Report, vol 4 from 730.
[179] Written Submissions of Mr Hampton and Ms Dalziel's, 8 February 2022, at [34] and Written Submissions of Mr Rasheed, 8 February 2022, at [81].
[180] At [237]–[239] above.
[181] A discussion paper on options for implementing reporting of firearms injuries to New Zealand Police by health professionals was published on 22 March 2022. Public submissions on that proposal are due by 6 May 2022.

of steroid use as one about mandatory reporting of firearms injuries. That issue, as I set out above, has been squarely addressed by the Royal Commission's recommendation and is not one I consider that this Inquiry can reasonably advance or augment.

[303] Other submissions have suggested that Mr Tarrant's acquisition of steroids indicates he was assisted by others in his preparation for the attack.[182] Police investigated how Mr Tarrant obtained the steroids and have been unable to determine that.[183] At the scope hearing, Mr Zarifeh, for Police, submitted:

> Another issue was steroids. I don't know how far that can take us. I understand the point behind it but as I understand it it's too – that it could possibly suggest some kind of assistance that hadn't been uncovered. But if there's no indication of a legitimate purchase where there's a record say on the internet then yes steroids could have been bought illegally or illegitimately from someone in a gym or who knows. I don't think it can be found. … what more can you do if the police do a forensic search of his home, his car, his person and where he's been in so far as it can be ascertained, what more can you do and where do you look?

[304] As Mr Zarifeh identifies, a fundamental problem with inquiring further into this issue is that Police, in the course of the extensive criminal investigation, were unable to discover how Mr Tarrant obtained the steroids. But even if evidence of supply could be discerned, this of itself does not disclose evidence of aiding and abetting a terrorist act. I do not consider this issue to be one capable of further reasonable inquiry in this jurisdiction, and on that basis, I do not consider it to be necessary, desirable or proportionate in the discharge of my statutory functions.

Decision on: Issues about institutionalised bias in key state agencies

[305] The Scope Minute proposed to treat the issue of institutional bias within New Zealand's intelligence agencies as outside the scope of this Inquiry on the basis it had been considered by the Royal Commission.[184]

[306] A number of Interested Parties alleged there was institutional bias on the part of New Zealand's intelligence agencies, including a disproportionate focus on Islamic terrorism, and that this was an issue that I should examine.

[307] This point was most comprehensively pursued by Mr Rasheed, who submitted that such phenomena would, if true, call for comment and recommendations. He submitted they must therefore be inquired into.[185] The Interested Parties who wished to pursue this issue submitted it could be causally linked with the attack

[182] Written submissions of Mr Hampton and Ms Dalziel, 8 February 2022, at [34] and written submissions of FIANZ, 8 February 2022, at 6 and 27.
[183] Royal Commission's Report, vol 2 at 212.
[184] Minute of Judge Marshall Re Scope of Inquiry, above n 22, at Appendix A.
[185] Written submissions of Mr Rasheed, 8 February 2022, at [121]-[122].

and deaths on the basis that the outcome of this disproportionate focus enabled an environment where right wing extremism (**RWE**) and other forms of terrorism went undetected or unreported, and other suspicious activity was not considered a priority where the risk of harm was thought to be low.[186] The institutional bias that manifested in a disproportionate focus was submitted to be the product of a failure of key state agencies to enlist and retain a diversity of thought, personnel and approach, that would have diversified their priorities objectively and according to risk to the public, rather than in accordance with pre-existing systemic biases.[187]

[308] In relation to the submitted shortcomings of the Royal Commission Mr Rasheed added: "The Royal Commission does not find this discrepancy of prioritisation between white and Islamist terrorism to [be] consequential, but any such conclusion of this gravity requires investigating the internal componentry to be inquired into in full."[188] While the Royal Commission acknowledged there was inappropriate concentration of resources on the Muslim community, in Mr Rasheed's submission, "the Royal Commission omits the corollary which is that due to such inappropriate concentration, the resources were not used where they needed to be and accordingly, real and imminent threats were not addressed or addressed very superficially, such as in the case of the leads from Operation Gallant Phoenix (Operation Solar)."[189]

[309] Broadly similar points were advanced by the HRC, which submitted:[190]

> Despite the [Royal] Commission concluding that the inappropriate concentration of resources did not contribute to the terrorist attacks being detected, the Commission considers that residual issues remain, including the potential existence of systemic discrimination within the intelligence and security agencies prior to the attacks.

[310] On the type of residual issues that should be addressed, the HRC contended that a number of questions from the community "were answered only in general terms", for example "whether cultural competency and unconscious bias training is provided to public sector agencies".[191] The HRC submitted that the lack of specific findings in relation to institutional bias left immediate families and the broader Muslim community "unclear on whether, if institutional bias was found to exist, any efforts to tackle such bias could have prevented ... racially or religious-fuelled attacks".[192] The HRC also raised concerns about the fact that "the Royal Commission narrowed their inquiry" into the counter-terrorism effort "to refer specifically to the terrorist attacks carried out on 15 March 2019", and therefore that no investigation had occurred into whether factors such as institutional bias,

[186] At [128].
[187] At [133].
[188] At [132].
[189] At [135].
[190] Written submissions of the Human Rights Commission, 8 February 2022, at [60].
[191] At [67].
[192] At [68].

"if addressed, could have prevented *any attack* by identifying an increase in the prevalence of right-wing extremism". [193]

[311] I have explained above why I do not intend to inquire into whether there were missed opportunities in the intelligence and counter-terrorism effort to disrupt the attack. I have carefully considered whether the submissions made on institutional bias change that position. I am not persuaded that they do.

[312] Institutional bias and lack of proportionate focus on RWE were not overlooked by the Royal Commission. The Royal Commission's assessment of the counter-terrorism effort approached institutionalised bias as an important part of its inquiry. It asked questions, for example, in relation to how many full-time equivalent staff were dedicated to RWE compared to Islamist extremism in the 10 years before 15 March 2019.[194] Specific findings in relation to institutional bias included that "inconsistent use of assessment criteria can create risks that decisions are influenced by unconscious bias" and that "this risk would have been greater given that the New Zealand Police had limited knowledge and understanding of recent strands of right-wing extremism."[195] The Royal Commission also gave specific consideration to institutionalisation of anti-Muslim bias at the New Zealand Customs Service.[196] These are just some of the many examples within the Royal Commission's Report which demonstrate the Royal Commission was attuned to and gave attention to systemic issues.

[313] The Royal Commission's concern with institutional bias is ultimately, and importantly, reflected in its finding that the concentration of counter-terrorism resources on the threat of Islamist extremist terrorism prior to 2018 was "inappropriate" and "not based on an informed assessment of threats from other ideologies".[197] A number of recommendations made by the Royal Commission seek to address different aspects of this concern (see also **Appendix C**):

(a) *Recommendation 4*: to develop and implement a public facing strategy for countering terrorism and violent extremism (**CTVE)**;

(b) *Recommendation 7*: to establish an advisory group on counter-terrorism;

(c) *Recommendation 14*: to establish a programme to fund independent New Zealand specific research for preventing violent extremism;

(d) *Recommendation 16*: to establish an annual hui on countering violent extremism and counter-terrorism;

(e) *Recommendation 17*: to require in legislation publication of the National Security and Intelligence Priorities and publication of an annual Threatscape Report; and

[193] At [70].
[194] Royal Commission's Report, vol 3 at 638.
[195] Royal Commission's Report, vol 3 at 492.
[196] Royal Commission's Report, vol 3 at 513- 638.
[197] Royal Commission's Report, vol 3 at 605.

(f) *Recommendation 33*: to direct the chief executives of Public sector agencies involved in the counter-terrorism effort to continue focusing efforts on significantly increasing workforce diversity, including in leadership roles.

[314] The progress made to date on the Royal Commission's recommendations is outlined in the DPMC progress tracker report published in January 2022[198] (and reflected against relevant recommendations in **Appendix C**). This includes, for example, initial changes to enhance diversity and inclusion within counter-terrorism agencies and to require reporting on progress;[199] the public launch of New Zealand's CTVE strategy in February 2021; the convening of the inaugural annual hui on CTVE issues in June 2021;[200] and development of a new centre for funding independent research due to be established in the first half of 2022.[201]

[315] As these features of the Royal Commission's Report demonstrate, the Royal Commission's finding that the inappropriate concentration of resources "did not contribute to the individual's planning and preparation … not being detected" did not overlook the risk that institutionalised bias created. Rather, it was based on a detailed and comprehensive assessment of the actual opportunities that arose to detect and disrupt Mr Tarrant's plans, which included a detailed analysis of the Operation Solar lead referred to in Mr Rasheed's submissions.[202]

[316] The submissions made by Mr Rasheed and the HRC challenge this conclusion by asserting that further consideration is needed to determine what the result might have been had earlier steps had been taken to address institutional bias.

[317] An obvious difficulty is that such an exercise inherently engages a high degree of speculation. By way of example, I do not see a realistic pathway to assessing and measuring the impact that unconscious bias training or more diverse hiring would have had on the chain of events that led to the deaths. As I have said in relation to social media issues, I am mindful not to unduly foreclose factual lines of inquiry before they have been fully explored. At the same time, the issues for inclusion must be capable of being answered in a meaningful way that assists me to make findings or recommendations within the scope of ss 57 and 57A of the Coroners Act.

[318] The NZSIS Arotake review report details a mock investigative exercise[203] that, in my view, represents the most that could be done to assess the outcome of a

[198] Royal Commission of Inquiry Response Progress Tracker, above n 152.
[199] Royal Commission of Inquiry Response Progress Tracker, above n 152, at 28.
[200] At 14.
[201] At 18.
[202] The Royal Commission's Report devoted a full chapter to the Operation Solar lead at vol 2, part 6, chpt 3 at 331-344. The chapter considered all steps taken to investigate the IP address (122.61.118.145) both before and after the 15 March attack. It concluded it remained uncertain whether Mr Tarrant was associated with the IP address, but that if he was responsible for accessing the suspicious files on it, he did so in a way that prevented the activity being linked to him. It was not therefore information that could or should have alerted public sector agencies to the terrorist attack.
[203] Arotake Report, above n 171, at [232] to [239].

counterfactual proportionately-focused scenario. In an effort to test NZSIS's investigative and warrant thresholds, a selection of 'fictious leads' involving primary indicators of security relevant activity by Mr Tarrant in the lead-up to the attack were compiled. These were drawn from information not known to NZSIS prior to the attack, but which were revealed in the post-attack investigation and could have plausibly been shared with or discovered by the NZSIS (albeit requiring high levels of intrusion into privacy, unprecedented levels of investigative resourcing across government, and high levels of international cooperation). The mock investigation considered what the NZSIS would have done in response to each lead in isolation, and also when considered in totality. The review concluded that none of the leads individually would have justified the use of intrusive warranted powers or the provision of substantial intelligence collection assets. When the leads were considered together, the review recorded that at most it would justify the commencement of an investigation but was still well short of generating the intelligence case required for a warrant to be sought. The information was assessed to lack a clear nexus to New Zealand's security, meaning that its priority would be low, as would its priority for targeted collection resources.

[319] It is, as I say, difficult to identify any other way to objectively assess and measure the extent to which institutional bias might have impacted on the course of events leading to the attack. The essential hurdle is that the leads fell short of what would have been required to detect and prevent the attack.

[320] Nor is it open to me to engage in a general review of institutional bias and counter-terrorism uncoupled from the events of 15 March 2019 as the HRC suggests may be required to address what it describes as "residual" issues. That is simply not within the scope of my jurisdiction, which directs a focus on the cause and circumstances of the deaths under inquiry. My power to make comments or recommendations under s 57A similarly requires that they be "clearly linked to the factors that contributed to the death to which the inquiry relates". Unless the institutional bias had some tenable link to the failure to detect and prevent the attack, I cannot inquire into it.

[321] In this regard, the Royal Commission directly addressed the question that is advanced by the HRC – namely "would any plausible allocation of counter-terrorism resources have resulted in anticipation or planning for the terrorist attack".[204] In answering this, the Royal Commission stated:[205]

> 73. We have reviewed at length the individual's background and his planning and preparation for the terrorist attack (see Part 4: *The terrorist*). The indicators of his planning and preparation that might have been noticed by the public or by the counter-terrorism agencies were limited. The strongest indicator was his flying a drone over

[204] Royal Commission's Report, vol 3 at 609.
[205] Royal Commission's Report, vol 3 at 609.

Masjid an-Nur. As well, his internet activity using the Barry Harry Tarry username, his TradeMe username "Kiwi14words" and his shooting style at the Bruce Rife Club could be seen, individually, as indicators, though not particularly strong ones. Further, if there had been different health reporting arrangements that had enabled his steroid and testosterone use and firearms injury to be linked to his status as the holder of a firearms licence, his fitness to hold that licence might, conceivably have come into question. As it turns out, however, none of these indicators came to the notice of the counter-terrorism agencies.

74. Had there been a threat agnostic public facing counter-terrorism strategy that incorporated a "see something, say something" policy, there would have been an increased chance of such signals being reported, perhaps the drone flying incident and possibly his shooting style or his use of the "Kiwi14words" username. The absence of such a public-facing counter-terrorism strategy, however, is unrelated to the general concentration of counter-terrorism resources on Islamist extremist terrorism.

75. Based on the counter-terrorism effort operating as it did before 15 March 2019, the individual's detection by the counter-terrorism agencies depended on chance – that is, the individual deviating from his attempts at operational security, and this coming to the attention of relevant Public sector agencies such as New Zealand Police. We are of the view that detecting the individual would have depended on chance even if there had been a very substantial focus on right-wing extremism by the counter-terrorism agencies.

76. In the absence of a "see something, say something" policy, such increased focus on right-wing extremism by the New Zealand counter-terrorism agencies would not have increased the likelihood of public reporting. It is unlikely that the counter-terrorism agencies would have monitored what was discussed in a private Facebook group associated with an Australian group. Similarly, the counter-terrorism agencies did not have the capability or probably the legal authority to monitor social media activity on the scale necessary to pick up possibly significant usernames such as "Kiwi14words". Even if they had they done so, it is not easy to see how discovering that someone was using that username would have justified collecting the additional information that would have been needed to identify the individual as a national security threat. We have in mind the restrictions created by section 19 of the Intelligence and Security Act 2017 and the necessary and proportionate test (see Part 8, chapter 14).

77. Therefore, we do not see the substantial concentration of counter-terrorism resources on Islamist extremist terrorism in the years

> leading up to 15 March 2019 as having contributed to the individual's planning and preparation for the terrorist attack going undetected.

[322] On this basis, I consider the matters proposed for additional consideration in relation to the institutional bias issue to be simply too remote and incapable of meaningful analysis to be necessary, desirable and proportionate in the discharge of my statutory function.

[323] Even if I was persuaded that this was an issue that might ordinarily be one for consideration in a coronial inquiry, I am satisfied that the Royal Commission's conclusions in relation to the intelligence and counter-terrorism effort adequately establish the matters they address. I am satisfied the Royal Commission's investigation into this issue was rights-compliant and, to the extent necessary, I am entitled to rely on its findings on this issue. This includes the Royal Commission's conclusion that the inappropriate concentration of resources on Islamic extremism did not contribute to the deaths in this case.

[324] The Royal Commission's conclusion that there was an inappropriate concentration of resources on Islamist extremism is understandably an issue of ongoing concern to the immediate families and Muslim community organisations engaged in this Inquiry. Even if not directly implicated in a causal sense to the deaths under inquiry, it is plainly a matter that should be addressed to guard against the future risk of any terrorist attack.

[325] The programme of work that is underway (described in paragraph [314] above) will be an important avenue for improvements to be pursued. As I have noted, this includes opportunities for public engagement. A further avenue by which concerns of this nature could be raised for inquiry is by way of complaint to the Office of the Inspector-General of Intelligence and Security, whose functions include addressing complaints received under s 171 of the Intelligence and Security Act 2017.[206] But in the absence of a substantive causal link with the deaths, institutional bias within the counter-terrorism effort is not a matter for this Court to inquire into.

[206] Sections 4(2)(c) and 57(4) of the Coroners Act provide a coroner with the power to refer the death to another investigating authority to investigate in the performance of their functions, powers, or duties if satisfied it is in the public interest to do so. I do not consider it a function of the IGIS to investigate the link between institutional bias and the deaths *per se*, but it would likely be within the IGIS's mandate to examine the operation of institutional bias, and mitigations, in the intelligence and security agencies. The referral power of a coroner does not permit a referral for examination of an issue uncoupled from the death(s) under inquiry.

Decision on: Issues about the sufficiency of immigration checks for Australian citizens entering or emigrating to New Zealand

[326] Some Interested Parties submit there are deficiencies and discrimination in New Zealand's immigration policy which ought to be investigated in this Inquiry.

[327] This issue, raised by Dr Bastani on behalf of the Interested Parties he represents stems from the fact that some immigrants or visitors enter New Zealand as of right, while others are subjected to scrutiny through the mechanism of a National Security Check (**NSC**). In Dr Bastani's submission, had Mr Tarrant been subject to an NSC when he emigrated to New Zealand in 2017, that may have raised red flags which could have seen him denied entry and thereby disrupted the attack. As this issue was first raised at the Scope Hearing, it was not a provisional issue addressed in Judge Marshall's provisional assessment in the Scope Minute.

[328] Associated with Dr Bastani's submission is Mr Rasheed's submission that Mr Tarrant's travel history should have made him ineligible for an entry visa to New Zealand on the basis there ought to have been reason to believe he was likely to commit an offence, or be a threat or risk to security in New Zealand.[207]

[329] The Royal Commission discussed the nature of the immigration scrutiny that Mr Tarrant was subject to as part of its consideration of what was, could or should have been known by relevant public sector agencies. As an Australian citizen Mr Tarrant was legally entitled to enter and work in New Zealand. This eligibility is founded in the Trans-Tasman Travel Arrangement, which makes Australian citizens eligible for a resident visa on arrival without the requirement to apply for pre-departure approval.[208] At the relevant time, visitors from 61 other 'visa-waiver countries' could also apply for a visitor's visa on arrival in New Zealand.[209]

[330] The Royal Commission's Report explains that Australian citizens and others from visa-waiver countries were screened by Immigration NZ through an automated system when checking-in for an incoming flight.[210] This included automatically checking passenger information provided by airlines to confirm no INTERPOL or border alerts were raised for the passenger or their passport details.[211] Australian citizens were not manually screened at the border unless there was some suspicion or concern about their profile, for example an INTERPOL alert that the passport had been reported stolen.[212] No such concerns or suspicions arose in Mr Tarrant's case. In other words, there were no red flags that existed or were overlooked by New Zealand's border agencies when Mr Tarrant entered New Zealand.

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[207] Pursuant to s 16 of the Immigration Act 2009.
[208] Royal Commission's Report, vol 3 at 506.
[209] Royal Commission's Report, vol 3 at 507. Since 1 October 2019 Visa waiver travellers have been required to complete a NZ Electronic Travel Authority and have it granted at least 72 hours before they depart for New Zealand.
[210] Royal Commission's Report, vol 2 at 378.
[211] Royal Commission's Report, vol 3 at 507.
[212] Royal Commission's Report, vol 2 at 378.

[331] Again, for the reasons I have discussed earlier, I am satisfied that issues related to whether red-flags were missed in by public sector agencies has been adequately established by the Royal Commission and I do not intend to re-examine those issues in this Inquiry.

[332] However, I am mindful that the point at the core of Dr Bastani's submissions was not whether red flags were missed in relation to Mr Tarrant *per se*. Rather it was whether, as a broader matter of immigration policy, Australians emigrating to New Zealand should be subject to the more rigorous NSC scrutiny just as many members of the Muslim community who have emigrated to New Zealand have been. This question was not directly considered by the Royal Commission, and so is not a matter that has already been adequately established in that investigation. However, for a number of reasons it is not one I can take forward in this inquiry.

[333] First, even if Mr Tarrant had been subject to the scrutiny of an NSC, he had no criminal history in Australia and was not, from what is now known, involved with any organisations that used or promoted violence to further their aims. It may be safely assumed that had Mr Tarrant been required to complete an NSC form which asks for details of military service, association with intelligence agencies, and whether the person has committed war crimes, his answers would not have disclosed any issue of concern to New Zealand authorities. Beyond these concrete factors, there are real difficulties in asserting that a hypothetical and counter-factual application of an NSC process may have somehow produced a different outcome in terms of Mr Tarrant being able to enter New Zealand.

[334] Second, even assuming a concrete conclusion could be reached on the likely result of an NSC, significant issues of remoteness arise. In my view these are analogous to the *Harmsworth* prison fire decision to which I have referred, where the Supreme Court of Victoria accepted that the victims would not have died if they were not incarcerated, but held that the sociological factors which contributed to their imprisonment could not be sufficiently proximate in a legal sense to form part of the cause and circumstances of death.[213] I also have regard to Lady Justice Hallett's decision in the London Suicide Bombings inquiry that the actions which allowed one of the attackers to board the bus could not properly and purposively be constructed as an act or omission that caused or contributed to the deaths".[214]

[335] Third, the issue raised by Dr Bastani squarely engages questions about high level government or public policy that are not appropriate for this Court. Decisions about who can immigrate to New Zealand and under what conditions are matters of domestic and foreign policy that engage a broad array of considerations, many of which are not security related. It would not be possible or appropriate for me to embark on such a wide-ranging inquiry into matters that are the purview of the elected government and legislature. In combination with the remoteness issue, I do not consider that an investigation into whether changes should be made to New

[213] *Harmsworth v State Coroner*, above n 36.
[214] *Coroner's Inquests into the London Bombings of 7 July 2005*, above n 40.

Zealand's immigration policy is necessary, desirable or proportionate for my statutory functions to be discharged.

[336] In relation to Mr Rasheed's submission that Mr Tarrant's travel history should have made him ineligible for an entry visa to New Zealand on the basis that there ought to have been reason to believe he was likely to commit an offence, or be a threat or risk to security in New Zealand, I consider this is not consistent with the state of knowledge within and across public sector agencies at the relevant times. As I have noted, the Royal Commission made a clear finding that while some of the information held by individual public sector agencies related, or may have related, to Mr Tarrant's planning and preparation for the terrorist attack, this could not have been known by the public sector agencies prior to the attack, and therefore by inference, at any point Mr Tarrant entered New Zealand.

[337] I note also that the Royal Commission did put questions to Immigration New Zealand around whether additional information could be collected from travellers from visa-waiver countries, including their recent travel history, in order to support additional risk targeting. Immigration New Zealand is reported to have indicated that this would pose practical issues, have costs implications and create significant compliance burdens for applicants. As such, this was not a matter that was pursued in any recommendation.[215]

[338] On this basis I am not persuaded that the rigour of the immigration checks that Mr Tarrant was subject to at any point he entered New Zealand can be demonstrated as having a sufficient causal link with the deaths. The Royal Commission's investigation did not reveal any red-flag that was overlooked by a border agency. Even if Mr Tarrant had been required to complete a NSC, there is no evidential basis to indicate he would have been denied entry to New Zealand. Likewise, there was no obvious basis for border agencies to have reasonably believed Mr Tarrant likely to commit an offence or be a threat or risk to security in New Zealand, and therefore rendered ineligible for an entry visa. Whether the collection of additional information from travellers from visa-waiver countries is a feasible measure has already been considered by the Royal Commission. In any event, in the absence of a causative link to the deaths, I would be precluded from considering the merits or otherwise of making such a recommendation.

[339] I do not consider inquiring into issues related to the sufficiency of immigration checks for Australian citizens entering or emigrating to New Zealand is necessary, desirable or proportionate to the exercise of my statutory functions. These issues will be excluded from the scope of this Inquiry.

Decision on: Issues about social cohesion

[340] Some Interested Parties submitted a wider lack of social cohesion should also be included in this Inquiry. Again, this submission was most developed by Mr

[215] Royal Commission's Report, vol 3 at 514.

Rasheed. In his submission that social cohesion is relevant to the cause and/or circumstances of death in that there were incidents or issues that came or should have come to the attention of others in the community and, in turn, to public sector agencies, had the state been effective in establishing social cohesion and a sense of literacy around RWE risks in the community.[216]

[341] While social cohesion was extensively addressed in Part IV of the Royal Commission's Report, the question of establishing a causative link with the 15 March 2019 attack was not the focus of the Commission's work. Rather it approached the issue as coming within its mandate to make recommendations about how public sector systems should be improved to ensure the prevention of terrorist attacks in the future.[217]

[342] Having regard to all the factors that must inform the exercise of my discretion, issues relating to social cohesion cannot form part of this Inquiry. Social cohesion in New Zealand society is too abstract a concept to be considered in this forum, and too remote in terms of any causal link with the deaths. The hypothetical impact that greater government efforts aimed at social cohesion may have had on the particular chain of events that culminated in the March 15 attack is not one that can be assessed in the concrete way that s 57 of the Coroners Act requires. Nor, as I have said, is it open to me to make recommendations under s 57A that are not directly linked to the factors the evidence establishes as having contributed to the deaths being investigated. It is an issue that is better suited to an ongoing work programme of measures aimed at long term social cohesion improvements.

[343] As discussed above, I intend to examine community's ability to detect and respond to the signs or symptoms of radicalisation. This may provide scope to address aspects of the concerns raised by Mr Rasheed.

[344] I do not doubt that an important connection exists between social cohesion within a community and the occurrence of terrorism or hate crime. The recommendations in the Royal Commission's Report aimed at improving social cohesion are a clear acknowledgement of this, and I note that important work is underway in relation to social cohesion as part of the government response.[218] That ability to take a broader view is one of the advantages of a Royal Commission investigation and process.

[216] Written submissions of Mr Rasheed, 8 February 2022, at [134].
[217] Royal Commission's Report, vol 3 at 653.
[218] Royal Commission of Inquiry Response Progress Tracker, above n 152, at 24 – 31.

Decision on: Issues about events that occurred after death

[345] An investigation into the cause and circumstances of death is necessarily confined to the events that precede confirmation of death.[219]

[346] A number of provisional issues were advanced that relate to events that can broadly be described as how the information and cultural response to the attack was undertaken, both evidentially (i.e, whether the forensic investigation involved practices that comply with Muslim custom for the treatment of bodies), and from a process and information dissemination perspective (i.e, how information was provided to immediate families and the timing of the release of the bodies of the deceased).

[347] Evidence about investigations or events subsequent to death may of course form part of an inquiry where it is relevant to s 57 matters, for example, how the identity of the deceased was established or the cause(s) of death. To that end, this Inquiry is likely to explore the processes that were used for gathering evidence inside the masjidain after the attack. That evidence may incidentally answer aspects of the questions immediate families have about the treatment of their loved ones' bodies. There is, however, no jurisdiction for me to separately inquire into any issue that relates to an event that occurred after confirmation of death.[220]

[348] I fully acknowledge that these are important issues to the immediate families and the wider community, however they are not ones for this coronial Inquiry. Accordingly, provisional issues that relate to events occurring after death are excluded from the scope of this Inquiry.[221]

Next steps and inquest hearing

[349] Having now decided the issues this Inquiry will investigate, the Inquiry is transitioning into the substantive phase involving identifying existing evidence that is relevant to each issue, and assessing what further investigations and evidence, if any, may be required to address each issue. While I have endeavoured to frame the issues as clearly as possible given the current stage that the Inquiry is at, it may be that as the Inquiry progresses, the issues will require further refining with appropriate input from Interested Parties.

[350] The attack and the emergency response, including the initial investigative response, together with the issue of survivability (comprising Issues 1-9 in

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[219] See for example *R v West Inner London Coroner, ex parte Dallaglio* [1994] 4 ALL ER 19 (EWCA) at 164 where Sir Thomas Bingham MR affirmed that "the treatment of the bodies of the deceased after death could not form part of a properly conducted inquest".

[220] This was acknowledged in oral submission by some counsel. For example, Ms Dalziel accepted that provisional issue 45 (concerning access to the deceased's' bodies), was "outside the scope of the inquiry" while still noting the impact it was having as a concern driving her clients (Scope Hearing Transcript of Interested Parties' Oral Submissions at 21).

[221] In terms of Appendix A to the Minute of Judge Marshall Re Scope of Inquiry, above n 22, issues 44, 45, 46 and 54 fall into this group.

Appendix A) plainly lend themselves to an inquest hearing as part of this Inquiry. I consider there to be a strong public interest in having the evidence on those issues heard and tested in the public forum of an inquest. A date for that inquest hearing will be determined in due course as part of the usual pre-inquest conferencing phase.

[351] Whether the further issues I have decided to inquire into will also require evidence to be heard and tested at an inquest hearing is less certain at present. Once the substantive inquiry work into these issues and further disclosure to Interested Parties is progressed, I will consider whether there is a need for these issues to be explored as part of the inquest hearing. Interested Parties will have the opportunity to make submissions on that.

[352] In the event I decide to include any of those other issues as issues for inquest, I anticipate the inquest will be conducted in thematic blocks rather than a single end-to-end hearing. A common document bundle or bundles (under a thematic approach) will be prepared in keeping with usual inquest practice.

CORONER B WINDLEY

APPENDIX A: Confirmed issues for the Inquiry and relationship to provisional issue(s)

No.	Confirmed issue for Inquiry	Relationship to provisional issue(s)
1	The events of 15 March 2019 starting from the commencement of the attack through to the completion of the emergency response and Mr Tarrant's formal interview by Police.	This issue broadly reflects provisional **Issue 41** which raised concern about "inconsistencies in the timeline of the shooting".
2	The response times and entry processes of Police and ambulance officers at each mosque	Provisional issues that may be explored as factual/ evidential points within this are: **Issue 20** were first responders sufficiently equipped with training and resources; **Issue 21** why did police not arrive faster; **Issue 22** how the attacker was able to exit and re-loaded his weapon at Masjid an-Nur before police arrived; **Issue 23** what caused the delay, if any, in the medical response; **Issue 24** why did first responders prevent civilians re-entering the mosques; **Issue 25** did police prevent ambulance services from entering Masjid-an Nur; **Issue 28** did problems with radio communications contribute in any way to loss of life; **Issue 32** were Police confrontational or aggressive in approach to some survivors; **Issue 35** did high activity congestion on the emergency 111 line contribute to early calls from Linwood Islamic Centre being missed.
3	The triage and medical response at each mosque	Provisional issues that may be explored as factual/ evidential points within this are: **Issue 20** were first responders sufficiently equipped with training and resources; **Issue 26** who triaged injured and deceased persons and how was this done; **Issue 27** what is known about medical assistance given to bullet injured at the scene; **Issue 29** was there sufficient control and direction during the triage/medical response phase.
4	The steps were taken to apprehend the offender	Provisional issues that may be explored as factual/ evidential points within this are: **Issue 30** should police have deployed a team to Linwood Islamic Centre earlier;

		Issue 31 could traffic CCTV have assisted in apprehending the terrorist before he reached Linwood Islamic Centre; **Issue 33** whether police "allowed" the terrorist to escape at Masjid an-Nur; **Issue 34** whether police could have located and stopped the attacker on the way to Linwood Islamic centre.
5	The role of, and processes undertaken by, Christchurch Hospital in responding to the attack	Provisional issues that may be explored as factual/ evidential points within this are: **Issue 36** when/how was the hospital notified of the attack; **Issue 37** were there any issue with the role and processes of Christchurch Hospital following the attack/during the immediate response; **Issue 38** did CDHB appropriately activate and use emergency policies.
6	Co-ordination between emergency services	This issue reflects provisional **Issue 39** "co-ordination of emergency services". Following submissions advanced at the scope hearing it will also include whether deployment of FENZ resources could have assisted in aspects of the emergency response.
7	Did Mr Tarrant have direct assistance from any other person on 15 March 2019	This issue reflects provisional **Issue 11** "did the terrorist have direct assistance from another person present on 15 March 2019". Other provisional issues that may be explored as factual/evidential points within this are: **Issue 12** reported involvement of up to 9 other people initially; **Issue 13** were fingerprints and DNA taken from all firearms located at the scene; **Issue 14** did the terrorist have a hiding place on standby for after the attack; **Issue 15** did the Mr Tarrant have support from online associates and what investigations were completed into his electronic devices and missing hard drive in this regard; **Issue 16** is there any evidence that gaming friend helped with gun modifications.
8	If raised by an immediate family, and to the extent it can be ascertained, the final movements and time of death for each of the deceased.	This issue reflects aspects of provisional **Issue 19** which emphasised the need for more information around when and where victims died and their movements within the mosques. It also encompasses aspects of provisional issue 40 which raised particular issues in relation to Mr Darwish given that mobile communications continued to connect with his phone for a significant period after the shooting.

9	Cause(s) of each death and whether any of the deceased sustained injuries that might have been survivable had alternative triage and/or medical treatment been administered	This issue reflects the aspects of provisional **Issue 19** that focused on whether any who lost their lives could "have been saved with faster medical treatment".
10	(a) Whether the firearms licensing process followed by Police in issuing Mr Tarrant's firearms licence can be causally connected to the attack, and therefore to the deaths; (b) If so, whether any identified deficiencies in that process have now been addressed by way of legislative amendments or any Police (or other relevant entity) process changes	This issue encompasses provisional **Issue 5** "did defective firearms licensing regime contribute to deaths".

11	(a) Whether Mr Tarrant's online activity can be shown to have played a material role in his radicalisation with a particular focus on the period between 2014 and 2017.	This issue will be approached in two potential stages. Issue 11(a) encompasses aspects of provisional **Issue 2** "how was the terrorist radicalised", and provisional **Issue 15** "did the terrorist have indirect support from online associates". It reflects stage one of the proposed investigation into social media and will focus on seeking relevant information that may still exist about Mr Tarrant's online activity between 2014 and 2017, to be considered with material from the 2017 – 2019 period that has already been obtained by Police. A review of the material will then seek to identify whether a causative nexus with Mr Tarrant's radicalisation to violence is disclosed.
	(b) If so, consideration will be given to examining the extent of monitoring of users for extremist content by the relevant platform(s), then and now.	Issue 11(b) reflects stage two of the proposed social media investigation and encompasses aspects of the submissions made at the oral hearing on the role of social media and digital platforms. It will only be taken forward if a sufficient causal nexus between Mr Tarrant's online activity and his radicalisation can be found on the evidence available under issue 11(a). Refinement of the specific questions to be asked will occur if this stage is reached.
12	The community's ability to detect and respond to the risk of violent extremism in others.	This issue reflects an aspect of provisional **Issue 2** "how was the terrorist radicalised and how can this be prevented in the future". This issue focuses on equipping the wider community as another line of defence to detect and respond to the risk of violent extremism in others they might engage with. Specific questions identified for further investigation are: • What do we know of radicalisation as a process, drawing on global experiences and research in relevant disciplines? • At a practical level, what are the signs and/or symptoms of actual or impending radicalisation, as it might affect and individual or an identifiable group? • What practical advice, support and resource could be made available for people and community groups dealing with radicalisation of someone they know?

APPENDIX B: Royal Commission's firearms-related recommendations and stated advancement

Rec. No.	Recommendation summary & stated advancement
19	**Recommendation summary** Make policies and operational standards and guidance for the firearms licensing system clear and consistent with legislation. **Stated advancement** Large programme of work significantly underway including updates to application forms (November 2020) and amendments to Arms Act (December 2020) to clarify fit and proper criteria and give police more compliance tools. Public consultation held in April 2021 on new regulations designed to help specify how police make the law work in practice
20	**Recommendation summary** Introduce an electronic system for processing firearms licence applications **Stated advancement** Interim electronic system in place. Review taking place from June 2021 to further review online application process.
21	**Recommendation summary** Ensure firearms licensing staff have regular training and undertake periodic reviews of the quality of their work. **Stated advancement** New training has been implemented.
22	**Recommendation summary** Introduce performance indicators that focus on the effective implementation of the firearms licensing system. Key indicators should include: Regular performance monitoring of firearms licensing staff to ensure national standards are met; and Public confidence in the firearms licensing system is increased (as measured by New Zealand Police citizens' satisfaction survey reports or similar mechanism). **Stated advancement** Work initiated on developing standardised performance measures.
23	**Recommendation summary** Require two new processes in the case of applicants who have lived outside of New Zealand for substantial periods of time in the ten years preceding the application:

	• Applicants should be required to produce police or criminal history checks from countries in which they have previously resided; and • Firearms vetting officers should interview family members or other close connections in other countries using technology if the applicant does not have near relatives or close associates living in New Zealand. **Stated advancement** Nil stated
24	**Recommendation summary** Introduce mandatory reporting of firearms injuries to New Zealand Police by health professionals. **Stated advancement** Public consultation underway with Discussion Paper released 22 March 2022 on options for implementing reporting of firearm injuries to New Zealand Police by health professionals.

APPENDIX C: Royal Commission's recommendations about countering terrorism and violent extremism, and the implementation of a national security system

Rec. No.	Recommendation summary & stated advancement
1–3	**Recommendation summary** Appointment of a Minister with responsibility and accountability to lead and coordinate the Counter Terrorism (CT) effort. Establish a new national intelligence and security agency (NISA) that is well-resourced and legislatively mandated to be responsible for strategic intelligence and security leadership functions. Investigate alternative mechanisms to the voluntary nature of the Security and Intelligence Board (SIB), including the establishment of an Interdepartmental Executive Board. **Stated advancement** Currently underway. Prime Minister Ardern is the Minister for National Security and Intelligence. Implementation of these recommendations is awaiting a review into New Zealand's national security system, which is due to be presented to Cabinet in June 2022.
4	**Recommendation summary** Develop and implement a public facing CT/Countering Violent Extremism (CVE) strategy. **Stated advancement** Currently underway, CVE strategy launched in 2021. A review of the strategy will begin in the second half of 2022.
5	**Recommendation summary** Amend the Public Finance Act 1989 to require Intelligence and Security Agencies to provide performance information that can be subject of audit by the Auditor-General. **Stated advancement** Currently underway, implementation being considered by Treasury and the Office of the Auditor-General.
6	**Recommendation summary** Strengthen the role of the Intelligence and Security Committee (ISC). **Stated advancement** Currently underway, implementation being considered and to be addressed as part of the independent statutory review of the Intelligence and Security Act 2017.
7–8	**Recommendation summary** Establish an Advisory Group on CT.

	Include a summary of advice from the Advisory Group and actions taken in response, when providing advice on the National Security and Intelligence Priorities and annual threatscape report. **Stated advancement** Not started. The Advisory Group on CT will be established and led by the Co-Directors of the National Centre of Research Excellence (recommendation 14), which will be established in the first half of 2022.
9–11	**Recommendation summary** Improve intelligence and security information-sharing practices. **Stated advancement** Currently underway and expected to be completed in mid-2022.
10	**Recommendation summary** Direct access agreements to provide regular reporting to responsible minister for counterterrorism. **Stated advancement** Currently underway and forms part of the statutory review of the Intelligence and Security Act 2017.
11	**Recommendation summary** Review security clearances and appropriate access to information management systems and facilities. **Stated advancement** Currently underway, with work being led by the GCSB.
12	**Recommendation summary** Develop accessible reporting system for members of public to easily and safely report concerning incidents to single contact point within government. **Stated advancement** Currently underway, with the Minister of Police to report back to Cabinet in the first half of 2022.
13	**Recommendation summary** Develop, publish and keep up to date public guidance on indicators and risk factors that illustrate behaviours indicating a person's potential for engaging in violent extremism and terrorism. **Stated advancement** Currently underway with public release due in early 2022.
14	**Recommendation summary** Establish a programme to fund independent NZ-specific research on causes and prevention of extremism and terrorism. **Stated advancement**

	Currently underway, with the National Centre of Excellence for Preventing and Countering Violent Extremism due to be established in the first half of 2022.
15	**Recommendation summary** Create opportunities to improve public understanding on violent extremism and terrorism in NZ, with ongoing public discussions. **Stated advancement** Currently underway. The national security sector's Long-Term Insights Briefing (LTIB) is expected to be presented to Parliament in the second half of 2022.
16	**Recommendation summary** Establish an annual hui on CVE and CT. **Stated advancement** Complete, the first annual He Whenua Taurikura hui was held in June 2021.
17	**Recommendation summary** Require in legislation publication of the NSIPs and referral to ISC for consideration; publication of an annual threatscape report; and the ISC to receive and consider submissions on the NSIPs and threatscape report. **Stated advancement** Currently underway, the publication of the NSIPs in legislation is to be considered in the independent statutory review of the Intelligence and Security Act 2017.
18	**Recommendation summary** Review all legislation related to the counter-terrorism effort to ensure it is current and enables public sector agencies to operate effectively, prioritising consideration of the creation of precursor terrorism offences in the Terrorism Suppression Act, the urgent review of the effect of section 19 of the Intelligence and Security Act on target discovery and acceding to and implementing the Budapest Convention. **Stated advancement** Currently underway, the independent statutory review of the Intelligence and Security Act was bought forward and is currently in progress. The Counterterrorism Legislation Act 2021 is now in force and reviews of other legislation (the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and the Search and Surveillance Act 2012) are ongoing. The Security Information in Proceedings Legislation Bill was introduced to Parliament referred to the Justice Select Committee, which is due to report to Parliament in June 2022.