

Terms of reference for a Royal Commission into the attack on the Christchurch Mosques on 15 March 2019

Background

1. On 15 March 2019 fifty people were killed and over fifty others injured, some seriously, when an individual attacked the Al Noor Mosque and the Linwood Islamic Centre in Christchurch while worshippers were at prayer. An individual has been charged with offences in relation to the attack and awaits trial.
2. The Government has announced a Royal Commission will be appointed to inquire into what relevant state sector agencies knew about the individual's activities before the attack, what, if anything, they did with that information, what measures agencies could have taken to prevent this attack, and what measures agencies should take to prevent such attacks in the future.
3. The Inquiry needs to report on these matters urgently, so Government has an independent and authoritative report on these matters to reassure the New Zealand public, including its Muslim communities, that all appropriate measures are being taken by state sector agencies to ensure their safety and protection.
4. Government expects the Inquiry to connect with New Zealand's Muslim communities on these matters.
5. Government has received assurances and expects that all relevant state sector agencies, officers and employees will do their utmost to cooperate with the Inquiry given the importance of the issues it is charged with examining and reporting on.

Purpose and matter of public importance

6. The matter of public importance which the Inquiry is directed to examine is what relevant state sector agencies knew about the activities of the individual who has been charged with offences in relation to the 15 March 2019 attack on the Al-Noor Mosque and the Linwood Islamic Centre in Christchurch, before that attack; what actions (if any) they took in light of that knowledge; whether there were any additional measures that the agencies could have taken to prevent the attack, and what additional measures should be taken by relevant state sector agencies to prevent such attacks in future.

Scope of inquiry

7. In order to achieve its purpose the Inquiry will inquire into:
 - 7.1 The individual's activities before the attack, including:
 - 7.1.1 Relevant information from his time in Australia;
 - 7.1.2 His arrival and residence in New Zealand;

- 7.1.3 His travel within New Zealand, and internationally;
- 7.1.4 How he obtained a gun licence, weapons and ammunition;
- 7.1.5 His use of social media and other on-line media;
- 7.1.6 His connections with others, whether in New Zealand or internationally;
- 7.1.7 What relevant state sector agencies knew about this individual and his activities before this attack; what actions (if any) they took in light of that knowledge; and whether there were any additional measures that the agencies could have taken to prevent the attack;
- 7.1.8 Whether there were any impediments to relevant state sector agencies gathering or sharing information relevant to the attack, or acting upon such information, including legislative impediments, and
- 7.1.9 Whether there was any inappropriate concentration or priority setting of counter terrorism resources by relevant state sector agencies prior to this attack.

Matters upon which findings are sought

- 8. The Inquiry will report its findings on the following matters:
 - 8.1 Whether there was any information provided or otherwise available to agencies that could or should have alerted them to this attack, and, if such information was provided or otherwise available, how the agencies responded to any such information and whether this response was appropriate;
 - 8.2 The interaction amongst relevant state sector agencies including whether there was any failure in information sharing between relevant agencies;
 - 8.3 Whether agencies failed to anticipate or plan for this attack due to an inappropriate concentration of counter terrorism resources or priorities on other terrorism threats;
 - 8.4 Whether any agency failed to meet required standards or was otherwise at fault, whether in whole or in part; and
 - 8.5 Any other matters relevant to the Inquiry purpose, to the extent necessary to provide a complete report.

Matters upon which recommendations are sought

- 9. The Inquiry will make any recommendations it considers appropriate on the following:
 - 9.1 Whether there is any improvement to information gathering, sharing and analysis practices by relevant state sector agencies that could

have prevented this attack or could prevent future such attacks including, but not limited to, the timeliness, adequacy, effectiveness, and coordination of information disclosure, sharing or matching between agencies;

- 9.2 What changes, if any, should be implemented to improve agency systems or operational practices to ensure the prevention of future such attacks; and
 - 9.3 Any other matters relevant to the above, to the extent necessary to provide a complete report.
10. For the avoidance of doubt, recommendations may concern legislation (but not firearms legislation), policy, rules, standards, or practices relevant to the terms of reference, maintaining consistency with the widely accepted values of a democratic society.

Limits to Inquiry's scope of power

11. In accordance with section 11 of the Inquiries Act 2013 the Inquiry has no power to determine the civil, criminal or disciplinary liability of any person but may, in exercising its powers and performing its duties, make findings of fault or recommendations that further steps be taken to determine liability.
12. The Inquiry may not and will not inquire into the guilt or innocence of any individual who has been or may be charged with offences in relation to this attack.
13. The Inquiry is not to inquire into, determine, or report in an interim or final way, on any of the following matters:
 - 13.1 Amendments to firearms legislation (as the Government is separately pursuing this issue);
 - 13.2 Activity by entities or organisations outside the state sector such as media platforms; or
 - 13.3 How relevant agencies responded to the particular attack, once it had begun.

Other investigations or reviews may be considered by Inquiry

14. The Inquiry may take account of the outcome of any other investigation or review into matters relevant to its terms of reference, but is not bound in any way by the conclusions or recommendations of any such investigation.

Inquiry may consult other entities or persons

15. The Inquiry may consult with other entities or persons, including the Inspector-General of Intelligence and Security, if it considers such consultation will assist it to perform its duties.

16. Government expects that the Inquiry will appoint a suitably qualified person or persons to assist the Inquiry in its dealings with New Zealand's Muslim communities, and that the Inquiry will consult those communities whenever it needs to do so in order to discharge its responsibilities.

Conduct of Inquiry

17. In conducting its inquiry the Inquiry is expected to consider:
 - 17.1 Evidence of relevant agency officers and employees; and
 - 17.2 Evidence of other relevant persons; including evidence from Muslim communities.

Principles of Inquiry

18. Subject to the need to report effectively on the matters set out in these terms of reference, the Inquiry is directed to exercise its powers and perform its duties and report in such a way as to minimise the possibility that Inquiry processes or its report, or any part of it, is used by any individual or group (including the individual who has been charged with offences in relation to the attack) to promote unlawful activities, or otherwise to damage the public interest.
19. The matters the Inquiry is charged with investigating directly concern the operational practices of state sector agencies, including intelligence and security agencies, which are and must remain confidential in the public interest in order to ensure public safety, to avoid prejudice to the international relations of the Government of New Zealand and the entrusting of information to the Government of New Zealand on a basis of confidence, and the maintenance of the law.
20. Accordingly, the Inquiry will, wherever it considers it necessary to preserve such confidentiality, hold the Inquiry, or any part of it, in private. The Inquiry will also restrict access to inquiry information (including evidence, submissions, rulings, hearing transcripts and the identity of witnesses or other persons) where it considers such steps are required in order to:
 - 20.1 Protect the security or defence interests of New Zealand or the international relations of the Government of New Zealand;
 - 20.2 Protect the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation;
 - 20.3 Protect the identity of witnesses or other persons;
 - 20.4 Avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences;
 - 20.5 Ensure that individual fair trial rights are protected;
 - 20.6 Ensure that current or future criminal, civil, disciplinary or other proceedings are not prejudiced; or

20.7 For any other reason the Inquiry considers appropriate.

21. The Inquiry report must not disclose sensitive information (as defined in s 202(1) and (2)(a),(b) or (c) of the Intelligence and Security Act 2017).

Definitions

22. Relevant state sector agencies are the New Zealand Security Intelligence Service, the Government Communications Security Bureau, Police, the New Zealand Customs Service, Immigration New Zealand, and any other agency whose functions or conduct, in the Inquiry's view, needs to be considered in order to fulfil its terms of reference.

Appointments

23. The members of the Inquiry are Justice William Young, (who shall act as chairperson of the Inquiry) and one other member.

Consideration of evidence and reporting requirements

24. The Inquiry may begin considering evidence on 13 May 2019.
25. The Inquiry is to present its report, including its findings and recommendations, to the Governor-General in writing no later than 10 December 2019.
26. Having regard to the need to ensure that any steps to ensure public safety are taken without delay, once appointed the Inquiry is directed to consider, with all possible urgency, whether it should make interim recommendations to the Governor-General, and if so when those interim recommendations might be made, and to present those recommendations to the Governor-General at any time before presenting its final report.
27. The Inquiry will, before presenting its final report, determine whether there are any matters arising from its Inquiry:
- 27.1 which it should seek to report to the Intelligence and Security Committee referred to in s 192 of the Intelligence and Security Act; or
 - 27.2 that are operationally sensitive, including any matter that relates to intelligence collection and production methods, or sources of information, that it should report to the Minister responsible for the intelligence and security agencies, and/or the Inspector-General of Intelligence and Security; and

if so, it should seek to report or report accordingly.

Relevant department

28. For the purposes of section 4 of the Inquiries Act, the Department of Internal Affairs is the relevant department for the Inquiry and responsible for administrative matters relating to the Inquiry.