

Decision to shoot Tangaru-Noere Turia not justified

Summary of the Incident

1. On the evening of 25 February 2021, Police received a 111 call from neighbours of Tangaru-Noere Turia in Papatoetoe saying he had shot through a window at their address.
2. Mr Turia remained at his address afterwards. Police set up cordons around the area and formulated a plan to arrest him. Officers positioned near the address heard Mr Turia speaking incoherently and saw him periodically handling the firearm.
3. Police tried to contact Mr Turia on several phone numbers, but he would not answer. They then appealed to him to give himself up through a loudspeaker. Shortly after, Mr Turia left his address with a firearm. An officer instructed him to put down his firearm before firing three times at Mr Turia.
4. First aid was provided at the scene by officers and a paramedic. Mr Turia was then taken to Middlemore Hospital, but he died later that evening from his injuries.
5. Police investigated the incident and took legal advice from the Crown Solicitor. They decided not to lay charges against the officer because they could not exclude the possibility the officer's shooting of Mr Turia constituted reasonable force in defence of himself or others (section 48 of the Crimes Act 1961).
6. Police also notified the Authority of this incident, which we independently investigated. The Authority's investigation is not for the purpose of determining whether an officer is criminally liable for their actions. Our task under section 27(1) of the Independent Police Conduct Authority Act 1988 is to:

“form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable”.

7. In forming our opinion, we adopt a standard of proof that is lower than the criminal standard. That is because our task relates to oversight of Police conduct, not the application of the criminal law. In matters alleging serious misconduct by officers, we are always mindful that the strength of the evidence upon which we base that opinion must be high. That said, we use the same standard of proof applied in the civil courts in New Zealand – the balance of probabilities (which means more likely than not).
8. As the law currently stands, the Authority’s opinion is not binding, nor can the Authority take any action in respect of its findings other than to make recommendations to the Commissioner of Police.

The Authority’s Findings

Issue 1: Was the initial Police response to the incident appropriate?

The initial response to the incident was appropriate and well-managed.

Issue 2: Was command and control of the incident sound?

There was good awareness of command roles and good communication between commanders, and the cordon and contain strategy was well-executed. However, the command team did not adequately consider the need to at least notify neighbours of the risk posed by Mr Turia.

Police were aware of Mr Turia’s mental health issues from the start of the incident and continued to consider this as part of their risk assessment. However, it would have been desirable for Police to consider the implications of intelligence concerning Mr Turia’s mental health passed on by a relative (Mr Y) before proceeding with the use of the loudspeaker. Police should consider whether standard operating procedures should require an officer to turn their mind to a person’s mental health before using a loudspeaker.

Issue 3: Was Officer A justified in shooting at Mr Turia?

Officer A was not justified in firing at and killing Mr Turia.

Issue 4: Were Police actions following the shooting well managed and appropriate?

Mr Turia received appropriate and timely medical assistance.

Officer A should not have been allowed to retain possession of his firearm after the incident. This is contrary to current policy and not best practice evidentially.

Analysis of the Issues

ISSUE 1: WAS THE INITIAL POLICE RESPONSE TO THE INCIDENT APPROPRIATE?

9. At 5.45pm on 25 February 2021, Ms Z called Police and said a neighbour (Mr Turia) had just fired a shot through her living room window at Avis Avenue in Papatoetoe. She had earlier seen him carrying a gun. Ms Z's partner also called Police.
10. Public Safety Team (PST) officers were initially sent to the incident. Police records show that the first unit was sent to attend the incident at 5.48pm and arrived at 5.55pm. The Police helicopter, Eagle, was contacted at 5.57:31pm and arrived overhead at 6pm.
11. The Incident Controller¹ received a call at 5.47pm from the District Command Centre (DCC)² advising of a firearms incident at Avis Avenue. Several minutes later he also received a call from the Northern Communications Centre (NorthComms) advising him of the same incident. The Incident Controller arrived at the scene where a safe forward point (SFP) had already been set up at the intersection of Allenby and Carruth Roads.³ He:
 - ensured that cordons were in place to prevent entry into Avis Avenue and that PST staff were armed;
 - retrieved his co-ordination board and directed a sergeant to complete the necessary information;
 - deployed two officers into Avis Avenue in their vehicle to observe the target address and be ready to drive forward if required;
 - directed another Police car to Allenby Avenue and directed that road spikes be prepared to provide a contingency in case Mr Turia left his house in a vehicle; and
 - moved workers who were undertaking significant road works on Avis Avenue away from the area.
12. The Incident Controller was aware Mr Turia, who was still holding a gun, was on current active criminal charges, including for firearms offending. He therefore assessed that the occupants of neighbouring properties and roadworkers were at risk of grievous bodily harm or death if Mr Turia decided to fire on them, either from his address or if he decided to walk out onto the street. Police deployed in close cordons were also exposed to this risk. He decided the Police response would be to cordon the scene to contain Mr Turia and to request the deployment of the Armed Offenders Squad, which he did through the NorthComms Shift Commander. The

¹ The Incident Controller is responsible for managing an entire incident so that appropriate planning occurs, resources are effectively deployed, and risks are properly assessed. Where specialist teams like AOS are involved, the Incident Controller remains responsible for the general duties/PST staff in attendance and coordinates initial actions.

² The DCC has access to all communications information and maintains an overall view of policing within a Police District with a focus on crime prevention. The DCC may also act in an incident response capacity and is able to deploy a wide range of staff and resources, including staff that would not normally be deployed in response to an incident.

³ An SFP is a safe location near an incident, from which the forward operations can be supported.

Incident Controller directed the officers who had moved forward towards Mr Turia's address not to verbally appeal to Mr Turia, but to be prepared to challenge him if he appeared.

13. We find that the initial Police response was appropriate and well managed.

FINDING ON ISSUE 1

The initial Police response to the incident was appropriate and well managed.

ISSUE 2: WAS CONTROL AND COMMAND OF THE INCIDENT SOUND?

14. The NorthComms Shift Commander called the AOS Commander at 6.35pm, who decided AOS officers needed to be called to the incident.⁴ At the time, members of the Special Tactics Group (STG), who were also members of the AOS, were training at Ardmore. Their proximity to the incident meant that they attended more quickly than on-call AOS members. AOS began arriving at 7.15pm and received a briefing from the Incident Controller and the AOS Commander. Officer C was designated the AOS Forward Commander and put his team into various groups, each assigned to a different side of the address.⁵
15. At 6.45pm the NorthComms Shift Commander called the on-call team leader for the Auckland Police Negotiation Team (PNT), who was designated the PNT Commander. By 7.19pm members of the PNT had started arriving at the SFP.
16. All officers were clear that the Incident Controller had overall command of the incident at the scene, while the AOS Commander was responsible for AOS members and tactics.

Was the cordon, contain and appeal strategy appropriate and well executed?

17. The AOS Commander arrived at about 7.15pm and after briefing AOS staff in conjunction with the Incident Controller, he began to coordinate the execution of a cordon, contain and appeal tactic. He says this is a core operating model for the AOS and involves surrounding a location with AOS staff so the offender cannot readily escape, then using phone or loudspeaker to appeal to the offender to leave their location so they can surrender to pre-positioned Police.
18. At about 7.56pm the AOS Commander received confirmation from the AOS Forward Commander that cordon and containment had been achieved, with officers on all sides of the property. It was at this time that PNT began trying, unsuccessfully, to contact Mr Turia by phone. At 8.05pm the AOS Commander tasked a member to find an appropriate place to put a loudspeaker to use to appeal to Mr Turia.
19. The cordon and containment strategy was appropriate and well executed.

⁴ The AOS Commander is the AOS officer responsible for overseeing the AOS officers and tactical response during an operation or incident.

⁵ The AOS Forward Commander is the AOS officer responsible for controlling the AOS tactical response in the field and ensuring that the tactics planned by the tactical commander are implemented. The Forward Commander reports to the AOS Commander.

Was the threat to people in surrounding houses managed appropriately?

20. The Incident Controller was aware of members of the public in the area, as outlined in paragraph 12.
21. We asked the Incident Controller whether any evacuation plans were in place for surrounding houses. He said that he considered the evacuation of certain addresses in the immediate vicinity if it became a protracted operation, and that he would have done this by asking NorthComms to make phone calls to the surrounding houses. He explained that checking surrounding properties and asking people to evacuate can be time consuming, especially if Police meet any resistance, for example from people who do not wish to cooperate with Police.
22. The NorthComms Shift Commander says that at 7.05pm he called the Incident Controller and discussed the need to evacuate surrounding houses.
23. As part of their investigation into the incident, Police interviewed people from surrounding houses. None of the neighbours say Police notified them of the incident or asked them to remain in a safe room in their house. One neighbour says they were warned by another neighbour that Police had told him to go inside and lock his door. Eagle footage shows a next-door neighbour standing outside during the shooting. Other neighbours state they came outside at various times to see what was going on. One family of three who live in the house adjacent to Mr Turia's and behind the one into which Mr Turia shot, say they have direct line of sight from their bedroom window into Mr Turia's bedroom and frequently went to that window during the incident to try and ascertain what was happening. They estimate the distance from their window to Mr Turia was between 25 and 40 metres, and they were close enough to hear him groaning on the driveway after he had been shot. Neighbours across the road were also close enough to be able to see Mr Turia when he was standing on the driveway just before he was shot.
24. In short, there were several members of the public who were close enough to see and hear Mr Turia, and therefore close enough to be at real risk of grievous bodily harm or death if Mr Turia were to begin shooting. Mr Turia had direct line of sight to one household even when he was still in his bedroom. The threat to neighbours is acknowledged by the Incident Controller, the AOS Commander, Officer A and the AOS Forward Commander, although he was under the impression that most of the occupants of surrounding houses had been evacuated (see paragraph 28).
25. The Incident Controller says that he *"believed multiple members of the public were at risk, and there was a high potential for an active shooter situation to develop that could cause casualties"*. When considering the necessity of response under the Police threat assessment framework, he says *"given the situation, the necessity for Police to act immediately was incredibly high"* and when considering the appropriate response, the adoption of a close cordon would *"effectively deny the offender the ability to shoot at members of the public from the street"*.
26. Officer A, who ultimately fired shots at Mr Turia, *"knew there were still members of the public in neighbouring properties"* in a general sense but not with any specificity of location. We surmise this weighed into his threat assessment to some extent when making his tactical decisions.

27. The AOS Commander, when analysing the situation to formulate the most effective strategy, says:

“Cognisant that it was an emergency incident within a residential area with close proximity of neighbours I determined the best mitigation at this time was to prevent the movement of [Mr] Turia through containment.”

28. The AOS Forward Commander who had direct control over the AOS members who were stationed immediately around Mr Turia’s house, said that when considering his threat assessment *“exposure-wise, although the occupants of the surrounding addresses had mostly been evacuated as far as I was aware I was still unsure that they all had been”*.
29. The proximity of neighbours therefore featured prominently in officers’ threat assessments, yet it appears from the evidence that the command team did not do all they could to mitigate that risk. The Incident Controller notes that *“Police teams at the front and rear would be able to warn other occupants nearby, ensuring they stayed indoors”*. This was not done. The AOS Forward Commander thought it had been done, at least in part. We accept the view that evacuating the neighbours may have increased the risk to them by placing them in the open. However, we believe it would have been viable to at least inform the neighbours in the immediate vicinity to remain inside their houses in a room furthest from Mr Turia’s house. This would have lessened the risk of people coming outside to take a look or going to their window where they were exposed to the threat. It would have lowered the risk that Mr Turia posed if he continued to be contained on the property. We believe that removing the public from that immediate risk by at least keeping them out of the line of sight of the property would have been an achievable and prudent option.

Did AOS appeal tactics adequately consider Mr Turia’s mental health?

30. There was no alert on the Police database in relation to Mr Turia having mental health issues and we understand that commanders did not have any details of Mr Turia’s mental health challenges at this point.

31. However, the NorthComms Shift Commander says in his statement:

“as a result of the information I had already received, via unit updates and NIA⁶ occurrences and alerts...I formed the opinion the suspect was likely affected by mental health issues or under the influence of drug(s).”

32. The AOS Commander also recalls the NorthComms Shift Commander calling him at 6.35pm to advise of the incident and telling him *“[Mr Turia] has mental health issues and that is possibly compounded by drugs and alcohol”*.
33. The Incident Controller also says in his Police statement that a factor in his continuing risk assessment of the situation was that he had immediate concern for Mr Turia’s mental state.

⁶ NIA is a Police database

34. The Incident Controller gave the first part of the formal briefing⁷ to the AOS/STG staff, which included information that Mr Turia had a mental health history.
35. While concerns with Mr Turia's mental health were based only on the NorthComms Shift Commander's observations and not any specific information in the Police database, those concerns were passed to AOS/STG officers in briefings, so all staff involved in the deployment to the address were aware Mr Turia had mental health issues.

Was the use of the loudspeaker appropriate in the circumstances?

36. Further information regarding Mr Turia's mental health became available when Mr Y, the close relative with whom Mr Turia lived, left the house at about 7.53pm. Officer D states that when Mr Y walked out of the house and was escorted away, Officer E spoke to him while Officer D passed back important information over the radio to the NorthComms Shift Commander and other units. The chronology of radio communications shows Officer D communicating over the radio at 7.53pm that Mr Y had told them Mr Turia had been hearing voices lately. Officer K states that at 7.59pm she drove Mr Y back to the SFP where she asked him some questions. Her notebook describes Mr Y as being a bit confused about what was happening, but forthcoming and cooperative. Officer K's statement to Police records the information that Mr Y gave her, including his statement that:

"Noere [Mr Turia] did not speak to me and I did not talk to him at all throughout this time. The reason I didn't say anything was because I did not want him to mistake my voice for the ones in his head and turn on me. He has had breakdowns like this before so I know to just leave him to do his own thing. When he is like this, he usually yells and talks to himself until he falls asleep".

37. Mr Y also told Officer K that Mr Turia had been deported from Australia and that while he had previously taken medication for his mental illness, Mr Y was not sure whether he had taken it recently. The impression from the statements of those who spoke to Mr Y is that he was calm, not having had any idea of the Police presence outside until his daughter rang to say she had been stopped at a Police cordon. Mr Y did suspect that Mr Turia kept a gun in his room, but he believed the earlier sound of a gunshot to have been a door slamming in the wind.
38. The PNT Commander says he spoke to Mr Y at the SFP at 8.20pm. This was one minute before Police began to appeal to Mr Turia using the loudspeaker. Based on the evidence of Officers E and K, it appears that by the time the AOS Commander decided to begin appealing to Mr Turia over the loudspeaker at 8.20pm, Police were aware that Mr Turia had mental health concerns, had been hearing voices and may not have been taking his medication, and that Mr Y's experience of previous episodes (albeit not involving a firearm) had led him to believe that trying to talk to Mr Turia at such times was counterproductive. It is not clear whether all the information collected by Officer K was passed onto the AOS Commander or Incident Controller. In his statement the AOS Commander says that staff speaking to Mr Y relayed that Mr Turia had *"been on a 3-day bender and out of control"*. If the debriefing did all occur at the SFP there is no

⁷ Police conduct GSMEAC briefings (Ground, Situation, Mission, Execution, Administration and Communication).

reason why the commanders should not have had access to Mr Y's advice on what techniques to use to avoid escalation of Mr Turia's episode.

39. The PNT Commander states that while face-to-face communication is good practice when negotiating with people affected by mental health conditions, this was considered unsafe in this incident because Mr Turia had a firearm. He states that the next preference is a phone call, but that PNT had tried and failed to contact Mr Turia this way, leaving them with a loudspeaker as the only option. He says the appeal over the loudspeaker commenced by AOS is a standard procedure for dealing with a firearms incident even when the person has a mental health condition.
40. The officers who were able to observe or hear Mr Turia in his bedroom universally state that when AOS began their voice appeal using the loudspeaker, Mr Turia instantly became more agitated. It was only between one and two minutes after the start of the voice appeal that Mr Turia left the house and was subsequently shot in the driveway.
41. Observation of Mr Turia by Eagle and AOS officers showed him to be alternating between pointing his firearm out the window, swearing loudly, smoking at the window (without his firearm) and resting on the bed. Officers also observed him loading a round into his firearm at 7.51pm. His behaviour appeared to be erratic but not a steady escalation. We accept that in deciding to use the loudspeaker, Police were following standard procedure for dealing with firearms incidents. However, given their access to the knowledge and experience of Mr Y in dealing with Mr Turia's episodes of hearing voices, we believe it would have been desirable for Police to take stock and further assess the intelligence gained from Mr Y. With that intelligence it was foreseeable that appealing to Mr Turia using a loudspeaker would escalate the situation.

FINDINGS ON ISSUE 2

There was good awareness of command roles and communication between commanders.

The command team did not adequately consider the need to at least notify neighbours of the risk posed by Mr Turia.

Police were aware of Mr Turia's mental health issues from the start of the incident and continued to consider this as part of their risk assessment.

It would have been desirable for Police to consider the implications of Mr Y's intelligence before proceeding with the use of the loudspeaker.

Police should consider whether standard operating procedures should require an officer to turn their mind to a person's mental health before using a loudspeaker.

ISSUE 3: WAS OFFICER A JUSTIFIED IN SHOOTING AT MR TURIA?

42. Mr Turia had been deported from Australia in 2017 due to his criminal offending. At the time of the incident, he was on electronically monitored bail for, among other charges, unlawfully possessing a firearm and aggravated burglary. There was a warrant for his arrest for breaching his electronic bail conditions.

43. Eagle footage and Police records show that Mr Turia exited the front door of his home at 8.21:46pm, one to two minutes after the appeal over the loudspeaker commenced. Officer A would have heard radio commentary just before leaving the house that Mr Turia was “marching” around with the shotgun over his shoulder. As Mr Turia left the house, Eagle said “out the front door, out the front door”. Mr Turia walked from the front door towards the driveway (about 10 steps) to the left of the address, then onto the driveway (two to three steps) at 8.21:50pm. He moved slightly over to his right once on the driveway. From his vantage point, Officer A would not have sighted Mr Turia until he stepped onto the driveway. Officer A challenged him to put down his firearm. When he did not do so, Officer A fired a shot at 8.21:52pm and then two more shots. All three bullets hit Mr Turia. He was alive at the scene but died at 10.29pm that night in hospital. From our observation of CCTV footage, approximately two seconds elapsed from the time Mr Turia would have become visible to Officer A to the time he was shot. Although it is not clear from footage, it must have been within this time period that Officer A challenged Mr Turia to put his gun down, since he would not have issued the challenge until Mr Turia came into view.
44. Officer A relies on section 48 of the Crimes Act 1961 to justify his shooting of Mr Turia. Section 48 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. For the officer to rely on this, his actions must be assessed against the following three questions:
- What did the officer believe the circumstances were at the time he fired?
 - Was the officer acting in defence of himself or others?
 - Were his actions reasonable in the circumstances as he believed them to be?

What did Officer A believe the circumstances were at the time he fired his M4 rifle at Mr Turia?

45. Officer A tells us that during the time he was in position he could hear Mr Turia yelling and was receiving commentary from Eagle and other members. At one point another AOS officer reported that Mr Turia was loading a round into his firearm. Officer A describes Mr Turia’s behaviour over the previous hour or so:

“He’d been quiet early on and again the whole time we’d had a running commentary from people what he was doing in the bedroom. He’d loaded the firearm. He hadn’t tried to leave the address. He hadn’t made any attempts to talk to police. So that moment when ... the loudhailer was started to voice appeal him to come out, he just started yelling, more or less saying: “What are you going to do? Come on,” as if he was like wanting to fight. He’s then come to the window and I’ve seen the end of the barrel come out pointing directly towards number 19.”

46. Officer A described to the Authority his assessment of the threat posed by Mr Turia:

“I’m constantly assessing the situation, formulating my [perceived cumulative assessment⁸] from the commentary from Eagle, other AOS members, his behaviour, his actions and like I said earlier when he pointed the firearm

⁸ See paragraph 132 for an explanation of perceived cumulative assessment

outside the bedroom window, I thought he was going to discharge it towards [the neighbouring house], the way he's become aggressive and yelling, the words he's used and the swearing."

47. Officer A says that he had radioed an AOS team member who he knew to be in the neighbouring house, and that member confirmed he and another team member were in the room opposite Mr Turia's bedroom, into which Mr Turia had previously shot. Records show that communication happened at about 8.08pm – approximately 14 minutes before the first shot. Officer A explains that at that time he was very concerned Mr Turia might shoot towards that house, which was separated by two 180-centimetre-high wooden fences.
48. Mr Turia then withdrew from the window but continued to yell. Shortly after AOS commenced appealing to Mr Turia over the loudspeaker, Eagle reported that Mr Turia had come out the front of the house and still had his firearm. Officer A, who was at the rear of the house on the right-hand side, then saw Mr Turia come out onto the driveway at the front of the house on the right-hand side.
49. Officer A and other officers state that, when they saw Mr Turia come outside, they believed he was heading towards the location of the loudspeaker, which had been set up on the boundary of the neighbouring house towards the rear left corner, about 10 metres from where Officer A was standing, and separated by two 1.8metre-high fences.
50. Officer A states that his recollection is that when Mr Turia became visible to him on the driveway, he was holding his firearm in a ready-to-shoot position:

"He had come from the front of the address and was slowly walking across the driveway towards a neighbouring address where the other team members were. I could clearly see he was holding a shotgun. He was holding the firearm in the low ready position as he walked and continued to yell out abuse and challenges... As soon as I challenged [Mr] Turia he didn't look directly at me, but I was in no doubt that he had heard me. [Mr] Turia did not comply with my directions to drop the shotgun...He began to raise his shotgun up towards other AOS members and started to turn towards me as he raised the firearm. This all happened real fast. My assessment at the time was that [Mr] Turia was about to discharge a firearm... at my team members or me. I assessed there was immediate threat of death or grievous bodily harm to myself and my team members."

51. Officer A then yelled "*put the gun down*" as loudly as he could. He tells us that he was concerned that by yelling out, he had identified his position to Mr Turia. Officer A describes it as being dusk, so while it was getting dark there was still some ambient light. He says that he was standing behind a ballistic shield which only covered from his chest down because he had to look over the top of a one-metre-high wooden fence and vegetation at the rear of the property in order to have a clear view of the driveway.⁹ There was also a motor vehicle parked in the rear corner of the property, immediately in front of the cabbage trees and between where he told us he was standing and Mr Turia's location in the driveway.

⁹ This was a different fence to the 1.8-metre-high fence running down the side of the property.

52. Other officers at the scene have verified that Officer A did challenge Mr Turia to put his gun down, and that there was still enough light to see.
53. In assessing whether we accept that Officer A genuinely believed the circumstances to be as he describes them, we considered the evidence of other officers who were stationed near the house. Officer G was one of two officers positioned inside the neighbouring property, into which Mr Turia had earlier fired. In his statement he says:

“... I believed [Mr Turia] was thinking about firing a shot towards [the back of the house]. This stemmed from [his] body actions more than position of the firearm. [Mr Turia] appeared extremely aggressive and was fixated on the direction of the loud hailer. I was expecting [him] to raise the firearm and take a shot in the direction of the loud hailer where staff [at the rear of the property] were in close proximity. I was constantly assessing the situation and was aware that I may have to discharge my weapon at [Mr Turia] if he took any steps to discharge his weapon at nearby staff.”

54. Officer J, the AOS dog-handler who was standing to the left of Officer A, said:

“Leading up to it obviously I heard he had put a bullet in the gun, he’d loaded the gun, he’d picked the gun up. He was, when the karaoke came on he was shouting, angry, holding the gun leaving that room. When I heard that he had come out... with the gun in his hand, I was scared.”

He also said Mr Turia was not standing front on, but was “*bladed*”, or angled, towards him.

55. It is clear that Officer A, like the other officers nearby, genuinely believed Mr Turia could at some point shoot at him, the officers in the house next door, or other members of the public in neighbouring houses or the street. In his statement and interview, Officer A paints a picture of that threat being imminent; a focussed gunman who had some hours earlier shot through the wall of a neighbouring house and who was turning towards either Officer A or AOS officers in the neighbouring house and preparing to shoot.
56. Before examining the credibility of Officer A’s picture in detail, we make the preliminary observation that, on the evidence, Mr Turia did not present as a focussed gunman who was intent on causing harm. While he was indeed armed and agitated, and therefore dangerous, he presented as a mentally unwell man who for two hours vacillated between sitting on his bed, smoking, holding his firearm out the window, yelling abuse about Australians and showing generally unfocussed aggression. Officer A sought and received clarification from the AOS Commander that the neighbours were not Australian, so the threats were part of his often-incoherent ramblings rather than any specific threat against specific people. This lack of focus and specific intent did not take away the threat Mr Turia posed as an armed, mentally unwell man, but it did somewhat reduce the likelihood of the threat eventuating.
57. In the light of that general observation, we turn to consider whether Officer A could genuinely have believed that the threat posed by Mr Turia was as he portrays.
58. First, we note that the picture created in Officer A’s description outlined in paragraph 50 is of Mr Turia turning towards Officer A or the neighbouring house, with his firearm raised and

preparing to shoot. However, Eagle footage shows that when Mr Turia exited his address he was holding his firearm in his right hand, down by his side, with the barrel directed at the ground. His movement as he walked onto the driveway was described by Officer A himself as a “*slow walk*”. By Officer A’s own admission, it was evident that Mr Turia was headed towards the loudhailer, because it was towards that communication that his aggression was now focussed. Eagle footage and CCTV footage show that after exiting the house and before Mr Turia reached the driveway he lifted the firearm so that by the time he came into Officer A’s line of sight, he was holding the stock resting on his shoulder in his right hand with the barrel directed upwards and behind him. Indeed, when Mr Turia was still in the house, seconds before he appeared on the driveway, the officer in Eagle can be heard saying “*he’s got the shotty again, marching out of the room with it over his shoulder, bro*”, which Officer A must have heard. It is not possible to tell whether Mr Turia had his finger on the trigger, but he did not begin to raise his firearm up towards other AOS members; it was already pointing upwards and behind him.

59. We are aware of statements of several other officers at the scene describing Mr Turia’s agitated state as he left the house, and of one officer who said Mr Turia was ‘*moving fast*’. This contradicts Officer A’s observation of a slow walk and what we see on the CCTV footage.
60. When we put to Officer A that Mr Turia was not holding the firearm in a ready-to-shoot position, he said:

“That’s how I remember it and it wasn’t until I saw that CCTV footage that it was the first time I knew how he was, how he was carrying it...his carriage makes no difference to the threat. He was in possession of a firearm. His – the way he could use it from the low-ready or from the shoulder is [neither] here nor there in my mind because his reaction, his action will always beat my reaction to his use – discharging it and again with a shotgun he just has to discharge it in the general direction to hit what he’s trying to hit.”

61. Officer A says that when he first saw Mr Turia on the driveway he was facing on an angle between Officer A and the fence, and that after the challenge to drop his gun Mr Turia turned to face more directly toward him, although still at a slight angle. Officer A knew at that stage Mr Turia had not identified his position, as he observed Mr Turia “*didn’t look directly at me, but I was in no doubt that he had heard me*”. There is no movement towards Officer A discernible in Eagle or CCTV footage. The location of the bullet entry and exit wounds on Mr Turia’s body suggest that he must have been angled towards, but not facing, Officer A, when one of the shots was fired, and facing side on to Officer A when two of the shots were fired. Eagle and CCTV footage show he continued to hold the firearm with the stock-grip at shoulder level, barrel facing over his shoulder, up until the moment he was shot.
62. Police and Officer A say that movement towards Officer A is discernible in both Eagle and CCTV footage. They also say that analysis of the bullet entry and exit wounds on Mr Turia’s body is consistent with Officer A having fired his first shot when Mr Turia was facing towards Officer A on a 20-degree angle from him. However, the estimate of 20 degrees was not derived from any expert forensic analysis, and in any event the acuteness of the angle does not affect our conclusion. As described in paragraph 49 we accept that Mr Turia was angled towards the location of the loud hailer, which was about 10 metres from where Officer A was standing. We

believe this angle, without further movement towards Officer A, allows for the first bullet entry and exit wound, before Mr Turia doubled over and turned towards the front of the house (away from Officer A). Even if there was some slight movement in the direction of Officer A (which we cannot discern from footage), neither that nor the location of the bullet wounds changes the conclusion we reach at paragraph 76.

63. Officer A says that he had “grave concerns” for the safety of himself, his fellow officers and members of the public, thus implying that the risk to some, or all of them, was high.

What was the perceived risk to fellow officers?

64. There are three different groups that need to be considered in this respect.

Perceived risk to Officers A and J

65. Officer A and the dog handler (Officer J) were standing near each other, and about 25 metres away from Mr Turia. Officer A was positioned right beside the 1.8-metre-high boundary fence running along the driveway and was partially obscured by a one-metre-high fence (perpendicular to the boundary fence), cabbage trees standing around 1.8 metres tall, and a hatchback car that was parked immediately in front of the low fence. Officer J was partially obscured by a shed. It was dusk and neither of them would have been easily visible. Until Officer A issued his challenge although there was still some ambient light, it is unlikely Mr Turia knew they were there.
66. We accept that after Officer A issued his challenge to Mr Turia to drop his weapon, the perceived risk became significantly higher because Officer A had drawn attention to his approximate location, if not precise position. However, this could not have been relevant to his decision-making and must therefore be discounted, since Officer A had decided to fire before issuing the challenge. We have reached this conclusion for two reasons. First, Officer A says that his threat assessment had been that, if Mr Turia came out of the house armed his only tactical option was to use his firearm against him (Officer A's words are set out in full at paragraph 86). Secondly, the time between the issue of the challenge and the firing of the shot was so short that Mr Turia's reaction to his challenge could not possibly have been a factor in his decision-making (see further below, paragraph 93).
67. At the time Mr Turia came into view on the driveway (which is when his decision to fire was clearly made), Officer A must have known that the probability that he or the dog handler would be injured or killed if Mr Turia fired the shotgun was very low. Officer A had Mr Turia in his gun-sight and was ready to pull the trigger as soon as he came into view, while any view Mr Turia had of Officer A was obscured by a car, a fence and trees, as well as by the low light conditions. Moreover, Officer A must have known that having a car parked immediately in front of him would, at the very least, have added to his cover from Mr Turia.

Perceived risk to officers in house next door

68. In his statement to Police, Officer A said that Mr Turia “had earlier shot at a neighbouring house causing a bullet hole through the exterior wall into a TV inside the address for no apparent reason”. In his interview with us, he stated that part of his perceived cumulative assessment was

that Mr Turia had earlier shot through a wall, implying that if a round had made it through a wall into a television, then it must be powerful enough that the fence separating the neighbouring property would provide no protection. However, the shot had not passed through an exterior wall but rather through a window. All other attending officers acknowledge they were briefed on this when they arrived at the scene. At about 7.33pm Officer A would also have heard the AOS officer positioned in the neighbouring house refer over the radio to a 'large hole in the window' and the 'pellet marks in the TV'. Officer A must therefore have been aware of that fact.

69. The AOS officers in the house next door were in the kitchen, which was adjacent to the living room, the room where the shot first fired by Mr Turia had gone. At two different points those officers said over the radio that they were set up with shields. Mr Turia's original shot had been fired from a bedroom that was slightly elevated on piles. When Mr Turia was shot, he was on the driveway at a lower elevation. The 1.8-metre-high fence ran the length of the driveway. Officer A was aware that the fence made it impossible to see into the neighbouring house from ground level because he told us that his own view was blocked by it. Consequently, Officer A was aware Mr Turia would not have been able to see any person in or on the neighbouring property. Mr Turia was 174 centimetres tall and unless he had held the shotgun above his head, any shots he fired would need to have passed through two parallel fences, each constructed of close fitted wooden palings approximately 25 millimetres thick and 1.8m high, as well as the brick wall of the house. In our interview with Officer A, he told us that he was aware of the high fence running the length of the driveway of the house Mr Turia was in, but that he was not aware there was a second 1.8-metre-high fence running parallel to it, on the other side of the neighbour's driveway and separating Mr Turia's house from the neighbouring house.
70. However, we have visited the site and find it implausible that Officer A would not have seen both those fences from where he was standing. We think his stated lack of awareness of the second fence is a consequence of his faulty recollection rather than a misperception at the time. Once he was at the scene, he had 50 minutes to develop his situational awareness, which necessarily would have included observation of that boundary, because he knew there were officers inside the neighbouring house on that boundary. From where he was standing, he must have seen both the fences, even if he does not recall having done so.
71. Officer A did not know the composition or size of the pellets in the shotgun being used by Mr Turia, but as Mr Turia was unable to see through the window of the neighbouring house from the driveway and had no way of knowing where to aim, Officer A must have realised that the chances of any officer being hit were remote. He knew the officers in the house were experienced AOS officers and must have known they would take measures to reduce their exposure. We are therefore satisfied that, while Officer A believed Mr Turia posed at least a theoretical threat to the officers and that threat was relatively imminent, he knew the threat of death or grievous bodily harm was highly unlikely to materialise.

Risk to officers on the street in front of the property

72. The officers out on the street were on the footpath at the front of the house, about 10 to 15 metres away from Mr Turia. He was not facing in their direction. There was clearly a risk to them if he turned around, and a relatively high probability that they would be injured or killed if he

did so and discharged his shotgun. However, that was not an immediate risk and there would have been time to take action if circumstances had changed. Officer A must have known that. Significantly, Officer A did not mention these officers when outlining the basis for his grave concerns.

What was the perceived risk to members of the public

73. As outlined in paragraph 26, Officer A knew there were still members of the public in surrounding houses, so this probably also factored into his decision making. He presumably was also concerned that if Mr Turia eluded the Police cordon, he would potentially pose a risk to other members of the public. No members of the public were in the line of fire when Mr Turia came out onto the driveway, and Officer A could not have thought they were, given where Mr Turia was standing and the direction in which he was moving. There was a potential risk to other members of the public if Mr Turia escaped into the wider environment. However, Officer A knew that there was a Police cordon in place to prevent this and would have known that there was time to act if there was any risk that this cordon would be breached. The risk to the public at the time the shot was fired was therefore virtually non-existent. We conclude that he must have known of the remote nature of this risk, which may be the reason he did not refer it in justifying his shooting under section 48.

Conclusion

74. Following their investigation, Police have said that Officer A's statement that Mr Turia's first shot had gone through a weatherboard wall, rather than a window (summarised in paragraph 68), as well as his mistaken recollection of the way Mr Turia was holding a firearm, were no more than mistaken recollections of events typical of many witnesses interviewed after a traumatic event. However, these were not mere inaccurate recollections, but were factors Officer A said he relied on when assessing the risk and deciding whether to shoot Mr Turia. We accept that people have mistaken recollections after a traumatic event. However, an assertion that someone in their decision-making was relying on facts that are shown to be false recollections lacks credibility.
75. We accept that Mr Turia appeared agitated after the loudspeaker appeal started, but the CCTV and Eagle footage of Mr Turia walking out onto the driveway is in stark contrast to the circumstances as Officer A and others describe. Officer A had been standing in position at the end of the driveway for approximately 50 minutes and was well placed to assess the risk Mr Turia posed, both before and after he left the house. This leads us to the view that Officer A's perception of the circumstances at the time could not have been as he now portrays.
76. We believe that Officer A's view of the circumstances was that Mr Turia was armed, mentally unstable and at risk of firing further shots. The most serious risk he perceived was to Officer A himself, the dog-handler positioned nearby, and the AOS officers in the house next door. However, we do not believe Officer A could have thought the risk was as imminent and likely to eventuate as he portrayed in his interviews with us and Police. Officer A had already decided to shoot Mr Turia if he emerged armed, meaning concern that he had exposed himself through his verbal challenge could not have formed part of his threat assessment. Further, he must have known the likelihood of rounds passing through two high fences into the house next door and

hitting anyone was remote, in circumstances where Mr Turia had no visibility of that house and the people inside were highly trained, alert AOS officers.

77. In their submissions on our draft report, both Police and Officer A reiterate the view that Officer A was constantly reassessing the circumstances and Mr Turia's risk profile. Officer A argues that the fact that he issued a warning first and waited until the last possible moment to shoot was evidence of this. As we set out in paragraph 43, about two seconds elapsed between Mr Turia coming into Officer A's view and the first shot hitting him. Officer A issued the challenge within these two seconds. We are satisfied that there was no time for Officer A to reassess the risk within this time, and that he must have been acting on the view he had earlier formed that Mr Turia should be shot if he came out of the house carrying the shotgun. We also reiterate that he did not, as he submits, wait until the last possible moment. Mr Turia was not facing Officer A (paragraph 61) and Mr Turia had not moved his firearm from its position over his shoulder (paragraph 58).

Was the officer acting in defence of himself or others?

78. Officer A told the Authority that once he called to Mr Turia to put down his weapon, Mr Turia turned slightly toward him and he thought he was going to walk toward him or shoot him. Officer A was also concerned about the safety of his colleagues. Officer A told the Authority his legal justification for his use of force was primarily:

"...at that moment in time I had grave concerns for my safety and other members in [the neighbouring house]... as well as ... other information ... there was still members of the public in neighbouring properties."

79. Officer A says in his statement:

"I was particularly concerned for the safety of these team members given their proximity to an armed and dangerous offender."

80. We are satisfied that in shooting Mr Turia Officer A was acting for the purpose of defending himself and others.

Was Officer A's use of force reasonable in the circumstances as he believed them to be?

81. We have considered whether Officer A's shooting to defend himself and others was reasonable in the light of our conclusions about his perception of the threat that he confronted, as outlined in paragraphs 74 to 77. Force is reasonable if it is proportionate to the threat, taking into account the consequences if the risk materialises, the imminence of that risk and the likelihood of it occurring. Even if a risk is imminent, it may not be likely to occur.

82. The reasonableness of the force used requires the balancing of four factors:

- a) What was the nature/seriousness of the perceived risk?
- b) How imminent was the risk and were there other less forceful options?

- c) What was the perceived likelihood of the risk materialising?
- d) What was the nature/seriousness of the likely harm resulting from the use of force to avert the risk?
83. In this case, the consequence if Mr Turia discharged his firearm and hit someone was death or serious injury. In relation to all the groups potentially exposed to that consequence, the perceived probability that it would materialise was, at the time of the shooting, low to negligible. The likely harm from the use of force to avert the harm was very serious – a high probability of Mr Turia’s death. The risk, although relatively imminent, was not so immediate that other options were not available as we discuss from paragraph 93 below.
84. As discussed above, we accept that Officer A genuinely thought that there was a possibility that Mr Turia could shoot him or the officers in the neighbouring house. We also note that, if the threat materialised, death or serious injury was a possible consequence. However, Officer A knew that Mr Turia was not in a position to fire a shot immediately. He also knew that, even once Mr Turia was in that position, the chances that he would hit the officers in the neighbouring house or other members of the public and cause harm were very low in the circumstances. The use of lethal force to avert this remote and speculative, albeit serious, risk was unjustified.
85. In relation to the risk confronted by Officers A and Officer J, we have concluded that Officer A knew that this risk was extremely unlikely to materialise before he issued the voice challenge and that there was therefore time to consider other options. We spoke with Officer A about the other tactical options he had available to him. The Tactical Options Framework is a training and operational tool that assists constables to appropriately decide when, how, and at what level to use a tactical option(s). It guides constables to use force that is necessary and proportionate, given all the circumstances known at the time.
86. Officer A had earlier considered other tactical options and had also had a conversation with Officer J about the possibility of using a dog. While Officer A stated to Police that if Mr Turia came out of the house armed, “we’d make a [threat assessment] and use a minimal force to effect the arrest”, he told us:
- “It all depended on Mr Turia’s actions, whether he was compliant, non-compliant, if he was still armed with a shotgun. The only option really if he was still armed with the shotgun would be to use my – to use firearms against him.”*
- Officer A himself therefore acknowledges that he had formed a view that if Mr Turia emerged from the house carrying his shotgun, his only option would be to shoot him, so that it is apparent he had closed his mind to other options.
87. Further, Officer A told us that he would have shot Mr Turia in the bedroom if he had been able to get a clear shot at the time when Mr Turia was pointing his shotgun out the window just after the voice appeal started, even though all he could see was the barrel of the shotgun. Officer A’s admission that he was prepared to shoot Mr Turia while he was still in the bedroom, at which point the only people to whom he posed any threat were the armed AOS members in the neighbouring house (who had clear visibility of the threat and capacity to act) suggests to us that Officer A had formed a fixed view that he would use his firearm to neutralise the threat as soon

as he had the opportunity, regardless of its imminence or likelihood. Submissions of Police and Officer A in response to this direct us to Officer A's comment that his options depended on whether Mr Turia was compliant (paragraph 86). However, in the two seconds from when Mr Turia became visible to when the first shot was fired, Officer A did not give Mr Turia any opportunity to comply (for example, by dropping his weapon).

88. This contrasts with one of the AOS members, Officer G, who was stationed inside the neighbouring house, directly opposite Mr Turia's window. He describes the threshold points at which he would have fired at Mr Turia as being:
- if Mr Turia raised his firearm to shoot at the windows of the house he was in;
 - if Mr Turia raised his firearm in the direction of staff to the rear of the property; or
 - if Mr Turia exited through what he thought was a door in the left of the house and raised his firearm to staff on the cordon.
89. In our view, the fact that Officer A had formed the view that he was entitled to shoot as soon as Mr Turia came into sight carrying the shotgun, in itself made the shooting unjustified.
90. However, for the sake of completeness we turn to consider whether other tactical options were available to Officer A in the circumstances as he believed them to be.
91. Officer A had requested sponge rounds from the AOS Commander but these had not yet been provided to him. He says that even if he had had sponge rounds and the grenade launcher to fire them, they would not have been effective if Mr Turia had come out from the front of the property because they only have an effective range of 20 metres. In his Police interview, Officer A estimates he was standing about 25 metres from Mr Turia. Similarly, we accept that the distance between Mr Turia and any other officer meant the use of options other than dogs or voice appeal were not appropriate.
92. We consider the use of dogs as the only remaining tactical option.

Dog

93. Officer A was accompanied by an AOS dog handler and dog who were standing nearby, and there was another AOS dog with its handler at the front of the property. Officer A says that he discussed the potential use of the dog with the dog handler, Officer J. Both Officers F and J say they only discussed deploying the dog if Mr Turia were to come out of the house unarmed.
94. At about 7.30pm the AOS Forward Commander sought permission over the radio from the AOS Commander to release a dog to engage Mr Turia if he presented himself, regardless of whether he was armed. The AOS Commander gave permission, on condition that it was safe to do so.
95. Although the AOS Commander and dog handlers tell us that dogs are not a viable option against armed offenders, the planning during the incident outlined at paragraph 94 suggests that at the time they believed there may have been an opportunity to deploy them even if Mr Turia came out of the house armed. Our view is that a coordinated release of dogs from the front and rear

of the house where they were stationed may have, at a minimum, provided enough distraction to allow for alternative non-lethal tactical options to be used. We acknowledge, however, that this option would have required the dog handlers to agree to the release of their dog, and that Officer J (the dog handler at the rear of the property) would have had to lift the dog over the one-metre-high fence that separated their position from the driveway. This would have potentially exposed him further to the threat from Mr Turia, although the cover provided by the parked car would have reduced this exposure.

96. The National Coordinator for the Police dog section tells us there is no fixed policy on the use of dogs against armed offenders. He pointed out to us that the difficulty is that when a dog is released there is a high risk that the dog will be shot and injured or killed before officers can apprehend the offender, which puts Police back in the position they were to start with. We accept the risk to the dogs but believe this argument against release could only withstand scrutiny if either the dog was never going to be effective or the release of the dog would likely make things worse. Neither of those applied in this instance, particularly given two dogs were on the scene.

Police view

97. Police argue that there is insufficient evidence to support a criminal prosecution of Officer A. Despite the fact that we have found that the shooting was unjustified, we agree. That is because, under the Solicitor General's prosecution guidelines, there should be sufficient evidence to provide a reasonable prospect of proving the charge beyond reasonable doubt, and we do not think that threshold is met.
98. However, the Police position appears to be, not just that there is evidential insufficiency for a criminal prosecution, but that Officer A's decision to shoot Mr Turia was justified, and therefore there should be no employment consequences. Our differences go beyond the different standard of proof we are applying, and it is those other differences to which we are responding here.
99. In assessing Officer A's overall perception of the situation, Police found:
- "there is no evidence that [Officer] A's belief in relation to how Mr Turia was holding the weapon, his account of how the events unfolded, and the imminent risk he assessed Mr TURIA posed are not honestly held".*
100. In contrast, we have set out from paragraph 58 why we have not found Officer A could genuinely have believed that the threat posed by Mr Turia was as he portrays.
101. By way of specific example, Police found that Officer A had an *"incorrect but honestly held belief"* that the earlier shot Mr Turia fired had gone through a wall rather than a window. For the reasons set in in paragraph 68 we do not accept that Officer A honestly believed the round went through a brick wall.
102. The Police assessment of the circumstances Officer A faced is:

“the evidence has established that once Mr TURIA entered the driveway, moving towards the audible presence of Police, in a way that clearly indicated his intention to confront Police aggressively with a loaded shotgun Mr TURIA posed an extremely serious and imminent threat to Constable A, other Police and, to a lesser extent, the wider public. Mr TURIA’s actions meant the only option Constable A had to neutralise the imminent threat was to discharge his firearm.”

103. The Police report paints a picture of a focussed and determined gunman. For the reasons we give in paragraph 56 we do not agree with this depiction of the situation.

104. Referring specifically to other tactical options available to Officer A, Police say:

“When other tactical options are considered (Police/dog/taser/spray) none of them could reasonably be expected to neutralise the imminent threat Mr TURIA presented. Under the circumstances, it was not reasonable to use anything other than a firearm to neutralise the threat.”

105. The Police view appears to be that the probability of an armed offender shooting at an officer is irrelevant; that they need to intervene to avert the risk, no matter how unlikely that risk is to occur.

106. In their investigation report, Police refer to a statement provided by a sergeant at the Royal New Zealand Police College, which describes an experiment which he says establishes that in a situation such as that faced by Officer A, an officer aiming a firearm at an offender whose shotgun is not in a ready-to-fire position, would not be able to react fast enough to shoot before that offender brought his shotgun to a ready position and fired it. His experiment and findings appear to rely heavily on a study done in the United States on action versus reaction times, the results of which are published in a peer reviewed journal.¹⁰

107. Police appear to rely on this statement to support their position that Officer A was justified in shooting Mr Turia. They acknowledge that Officer A does not refer to this study when justifying his actions, although he did mention *“action versus reaction”* when talking to us, implying at least an awareness of training associated with the study. We have reviewed the findings of the original United States study and note that, while it is useful in assisting to determine the reasonableness of an officer’s actions, several factors distinguished the circumstances in the study from those faced by Officer A. Specifically:

- In the study, the offender and officer were standing *“10 feet”* apart and the officer was facing away from the offender until they issued the warning to drop the weapon, while Officer A was about 25 metres from Mr Turia and had his eyes on him from the time Mr Turia came around the side of the house. The officer in the study would necessarily have taken longer to react than Officer A.
- The lighting in the study was good and the officer had no cover or concealment, while at the time Mr Turia was shot only a small amount of daylight remained and Officer A was

¹⁰ J Pete Blair, J Pollock, D Montague, T Nichols, J Curnutt and D Burns, ‘Reasonableness and Reaction Time’ (2011), *Police Quarterly* 14(4) 323-343

largely concealed by a fence, a tree and a car. The offender in the study would necessarily have taken less time to act than Mr Turia.

108. Taking the statement of the Police College sergeant at face value, it would appear that whenever an officer is faced by an armed offender they are justified in shooting. However, the article drawn from the original study explicitly states that the results should not be used for such a justification, rather:

“it means they should, if at all possible, take the steps necessary to avoid the situations where they are without cover and distance when facing a suspect with a gun.”

109. Here, Officer A did have the benefit of both concealment and distance. Even accepting that the fence and tree did only provide concealment and not cover from any rounds fired by Mr Turia, we do not find that either the Police College sergeant’s statement or the original United States study on reaction times provide justification for Officer A’s actions in shooting Mr Turia.

Our conclusion

110. There is no case law on how the factors set out at paragraph 82 should be weighed up in the self-defence context. Courts have repeatedly noted that these considerations cannot be judged to a nicety after the event. A detailed analysis of how an individual officer perceived events and determined his or her justification for acting needs to be undertaken with caution and with due allowance for the volatility and stress of the moment and the need for the officer to make instant decisions. We generally agree with and endeavour to apply those observations. However, we think a planned operation by AOS and STG officers ought to be approached a little differently.
111. The Authority is confronting a number of cases where these difficult issues arise, so we have developed the framework set out at paragraphs 81 and 82 to provide a basis for analysis of Police use of force under section 48. Police have expressed concern that there is no clear legal basis for this framework. We agree that the law is largely silent on how section 48 applies to the use of force by trained officers, as opposed to members of the public who find themselves needing to defend themselves. However, our role in undertaking this investigation is to form an opinion whether Officer A’s actions and conduct were *“contrary to law, unreasonable, unjustified, unfair or undesirable”* (see paragraph 6). In forming that opinion, the fundamental question that needs to be addressed in assessing reasonableness is a policy one – to what seriousness of probability of risk should officers be exposed before they are justified in pulling the trigger?
112. Police criticise the Authority’s view of the degree of risk posed to Police by Mr Turia. They also argue that if there is a risk of death or serious injury to an officer, that justifies the deployment of lethal force. The law is silent on that issue. On one view, any risk to an officer’s safety is enough to justify deployment of lethal force. At the other end of the spectrum, some would argue that Police are not justified in deploying lethal force unless and until there is a high probability of an offender deploying lethal force themselves. In our view, the threshold lies somewhere between these two extremes. It is our strong belief that an issue of this significance, which is presenting with increasing regularity, requires robust policy debate and greater legal

clarity. It should not be a matter for Police to determine, because this would lead us inexorably down the path that some other jurisdictions have taken, with a permissive approach to the use of lethal force by officers.

113. AOS and STG officers are generally, and in this case were, in a position to make considered decisions after a full appraisal of competing considerations. Officer A had been in position for a considerable period of time and had clearly determined his course of action. His was not a sudden reaction to an unexpected threat; it was a deliberative course of action that resulted in death.
114. Our view on the balance of probabilities is that Officer A's actions constituted an excessive and unreasonable use of force, so the defence of self-defence was not open to him. He was not justified in using almost certain lethal force to avert a low to negligible risk, albeit that the consequences, if that risk had materialised, might well have been very serious. To be abundantly clear, we accept that the evidence in this case would not meet the threshold for a criminal prosecution of Officer A because of the difficulty in establishing Officer A's state of mind at the time beyond reasonable doubt. Our finding therefore relates to his conduct, not to his criminal culpability. This is consistent with our function under the Act (see paragraphs 6 and 7).
115. We accept that circumstances could have quickly changed, and the threat posed by Mr Turia could have easily become imminent and required a lethal response, but at the point when Officer A fired that was not the case; Mr Turia had walked slowly out onto the driveway with his firearm over his shoulder, most likely to investigate the source of noise from the loudspeaker. Officer A had the tactical option of waiting for a response from Mr Turia and attempting to verbally engage him further and he should have done so.

FINDING ON ISSUE 3

Officer A was not justified in firing at and killing Mr Turia.

ISSUE 4: WERE POLICE ACTIONS FOLLOWING THE SHOOTING WELL MANAGED AND APPROPRIATE?

116. Police did not immediately approach Mr Turia, as he was still conscious and moving and his firearm was within reach of his arms which were above his head. Officer G moved to the front of the property after hearing the shots. He could see Mr Turia was still breathing but could hear that he was having difficulty doing so. He was not responding to instructions.
117. A team of four officers, including a dog handler, approached Mr Turia from behind a protective shield. Officer G moved Mr Turia's firearm out of his reach. Police say they were unaware whether there was anyone else still in the address and they wanted to take Mr Turia to a safe location before commencing first aid. Officers G and L carried Mr Turia under his arms to the front of the neighbouring property. At this point, he was unresponsive.
118. Both officers noticed a wound in the area of his right hip/pelvis. Officer L applied pressure above the wound to stop the bleeding. Officer G tried to locate any other wounds. He found a small wound on Mr Turia's inner left thigh.

119. The on-call Special Emergency Response Team (SERT) paramedic, who had been on stand-by during the incident, arrived and told Officers G and L to continue their treatment. Mr Turia regained consciousness at this point and, although he did not make sense initially, he eventually spoke clearly and was able to understand questions. The paramedic, with Officer L's assistance, took over administering first aid from this point.
120. An ambulance arrived at 8.43pm. Officer G took over from Officer L in applying pressure to the wound in the hip/pelvis area until another paramedic arrived. Mr Turia was transported by ambulance to Middlemore Hospital.
121. Following the shooting and the provision of medical care to Mr Turia, the AOS Commander implemented a post-shooting procedure in support of the officer in charge of the scene and subsequent investigation. Police left all exhibits at the scene, with the exception of Officer A's firearm and magazine that he used to shoot Mr Turia. Officer A took his firearm and magazine back to Auckland Central Police Station, where he unloaded his rifle and handed it, the magazine and remaining rounds over as exhibits.
122. The AOS Commander and Officer A say that it is standard procedure in their unit for the shooter to hold onto his or her weapon so they cannot be identified.
123. Police 'Investigation of critical incidents' policy, which is set out at paragraph 138, stipulates how a firearm used in a critical incident (which includes an incident involving death or life-threatening injury) should be managed. Under that policy, Officer A should have handed his firearm to the Senior Investigation Officer as soon as reasonably practicable in order to maintain the integrity of the firearm as an exhibit. The policy also requires the Incident Controller or Tactical Commander to take steps to protect the identity of the employee who fired the round.
124. Our view is that the practice of an officer who has fired his weapon retaining that weapon until they have returned to the Police station is in breach of policy and risks the contamination of evidence used in the subsequent investigation of a critical incident. The question of anonymity or operational convenience should not override the importance of evidential integrity. To the extent that it is important to preserve anonymity, Police should find other ways to address that issue.

FINDINGS ON ISSUE 4

Police provided timely medical assistance to Mr Turia.

Officer A should not have been allowed to retain possession of his firearm after the incident. This is contrary to current policy and not best practice evidentially.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

27 April 2023

IPCA: 21-6676

Appendix – Laws and Policies

LAW

Use of force

125. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner”*.
126. Section 48 of the Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances, as he or she believes them to be, it is reasonable to use.”*
127. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICE POLICY

‘Use of force’ policy

128. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
129. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
130. The overriding principle when applying TENR is that of *“safety is success”*. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
131. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
132. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved, and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and

alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA)).

133. A key part of an officer's decision about when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively-resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person.
134. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always takes precedence, and every effort must be taken to minimise harm and maximise safety. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always takes precedence, and every effort must be taken to minimise harm and maximise safety.
135. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
136. 'Fire Orders' are operationally specific instructions on the circumstances in which Police employees may use firearms, including:
 - Principles applying when offenders are armed
 - Conditions to be satisfied before use
 - Making decisions to use.

'Police firearms' policy

137. Before an officer deploys with a firearm or fires at an alleged offender, the officer must refresh him or herself with what are known as the 'fire orders'.

Responsibility for knowing when firearms may be used

Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48 and 62 of the Crimes Act 1961, and all relevant instructions and guidelines contained in this chapter.

Conditions to be satisfied before use

The circumstances justifying Police firing at an offender can change very rapidly. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.

An offender must not be shot without first considering —

<i>Communication</i>	<ul style="list-style-type: none"> • they must have first been asked to surrender (unless it is impractical or unsafe to do so), and
<i>Less violent alternatives (Proportionality)</i>	<ul style="list-style-type: none"> • it must be clear they cannot be disarmed or arrested without first being shot, and
<i>Delay (Necessity)</i>	<ul style="list-style-type: none"> • it must be clear that further delay in apprehending the offender would be dangerous or impractical

Making decisions to use

Police must only use a firearm for these lawful purposes:

Lawful Purpose	Police may use a firearm...
<i>Defending themselves or others</i> <i>(s48 Crimes Act 1961)</i>	<p>to defend themselves or others if:</p> <ul style="list-style-type: none"> • they fear death or grievous bodily harm to themselves or others, and • cannot reasonably protect themselves or others in a less violent manner.
<i>Arresting an offender</i> <i>(s39 Crimes Act 1961)</i>	<p>to arrest an offender if they:</p> <ul style="list-style-type: none"> • believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting their arrest, and • the arrest cannot be reasonably effected in a less violent manner, and • the arrest cannot be delayed without danger to other people.
<i>Preventing escape</i> <i>(s40 Crimes Act 1961)</i>	<p>to prevent an offender escaping if:</p> <ul style="list-style-type: none"> • Police believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person (whether an identifiable individual or members of the public at large), and • the offender flees to avoid arrest or escapes after arrest, and • the flight or escape cannot reasonably be prevented in a less violent manner.

<i>Destroying animals</i>	<i>To destroy animals in circumstances set out in the 'Animals' chapter of the Police Manual.</i>

'Investigation of critical incidents' policy

138. A critical incident is an incident involving death or life-threatening injury to a person during any Police activity or to a person in Police custody or under the care of Police.

Firearm

139. Any firearm used in a critical incident must be made safe as soon as practicable. The integrity of the firearm exhibit must be maintained. The firearm used in the critical incident must be handed to the Senior Investigating Officer (SIO), or a person appointed by them, as soon as reasonably practicable.

140. The state of the firearm must be verified and recorded by a person other than the person who discharged the firearm. Any actions taken to make the firearm safe or any other dealings with the firearm must also be recorded.

141. Where a delay may occur, advice should be sought from the SIO and agreement reached as to how any exhibits will be dealt with.

142. The Incident Controller or Tactical Commander must ensure steps are taken to protect the identity of the involved employee. This may include having them removed from the scene as soon as possible.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
