

been a three-and-a-half-hour delay in Police attending, but once the AOS arrived tactical options were executed in fairly quick succession. We have formed the view that the lack of a clearly identified Incident Controller may have contributed to the AOS escalating those options with more urgency than was necessary. This is the third case in the past three years where we have concluded that a lack of a clearly identified Incident Controller has had a negative impact on the tactical decisions the responding AOS team has made during a critical incident.³

9. We have also examined the decision-making of the officers who shot Mr Lyttle, and make no criticism of the actions they took in the circumstances they faced.

The Authority's Findings

Issue 1: Was the initial plan for responding to the threat posed by Mr Lyttle appropriate?

The initial plan for responding to the threat posed by Mr Lyttle was appropriate, but Police should have attended the scene earlier on 23 April 2023 in order to ensure the safety of the public.

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

In our view Police command and control of this incident was inadequate.

Insufficient information was provided to the AOS Commander regarding how long the PST had been attempting to engage with Mr Lyttle prior to the AOS arriving.⁴

It was not sufficiently clear during the incident which officer had command as Incident Controller. An Incident Controller was required to ensure all aspects of the incident were adequately considered and factored into the Police response.

Police should have ensured the occupants in the house next-door to Mr Lyttle were in a safer position within the house.

Cordons should have been further back to ensure the safety of members of the public.

Issue 3: Were the tactical options used by Police appropriate?

The tactical options available to the AOS were used in quick succession and prematurely escalated the situation.

While it was reasonable for the AOS to use gas to force Mr Lyttle out, it was unnecessary for them to approach the house as early as they did on the first occasion to breach the door and then on the second occasion to place the robot inside. It would have been prudent to have allowed Mr Lyttle more time to surrender.

³ A critical incident is an event which requires an immediate Police response due to a real threat to life or property or an event which involves death or serious injury or where Police may have to resort to the use of force to resolve.

⁴ The Public Safety Team (PST) perform general policing duties to ensure the safety of members of the public.

Once inside we accept the officers found themselves in a position where they had to remain in the house to determine Mr Lyttle's position in order to be able safely to retreat.

Issue 4: Were Officers A and B justified in shooting at Mr Lyttle?

Officers A and B were justified in their decision to shoot Mr Lyttle in order to defend themselves and each other.

Analysis of the Issues

HOW DO WE ASSESS CONDUCT?

10. The Authority's role is to oversee Police. Its jurisdiction is set out most clearly in sections 27 and 28 of the Independent Police Conduct Authority Act 1988. What those provisions say about our role in relation to investigations we undertake and those undertaken by Police is that the Authority:

"... shall form an opinion on whether 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."

11. Having formed its opinion, the Authority must convey that – together with reasons – to Police, and may, in doing so, make recommendations to Police, including that disciplinary or criminal proceedings be considered or initiated against any Police employee.
12. In reaching a view as to whether to recommend disciplinary proceedings, the Authority makes its assessment having regard to the civil standard of proof (on the balance of probabilities), whereas, in reaching a view as to whether to recommend criminal proceedings, it does so having regard to the criminal standard (beyond reasonable doubt), and the Solicitor-General's Prosecution Guidelines, the primary focus of which is the public interest.
13. In a use of force case such as this, very often the central issue is whether an officer who has used force can rely on one of the defences in Part 3 of the Crimes Act 1961, or one of the remaining common law defences such as necessity, to justify his or her actions which might otherwise be unlawful.
14. In our reports, we use the terms 'justified', 'not justified' and 'unjustified'. The term "*justified*" is defined in section 2 of the Crimes Act 1961 as meaning "*... not guilty of an offence and not liable to any civil proceeding*".
15. Although it is not necessarily the case that the term "*justified*" carries the same meaning in the Crimes Act as it does in our legislation, to avoid confusion we employ the Crimes Act definition.
16. When we conclude that a Police officer's actions are "*justified*" we are concluding that in our assessment they do not constitute an offence or civil wrong (effectively misconduct of one sort or another). However, when we conclude that an officer's actions are "*not justified*" or

“unjustified”, we may be finding that in our assessment they constitute either a civil wrong alone, or both a civil wrong and an offence. In such cases, we will go on to assess whether or not we recommend that Police consider or initiate disciplinary or criminal proceedings.

ISSUE 1: WAS THE INITIAL PLAN FOR RESPONDING TO THE THREAT POSED BY MR LYTTLE APPROPRIATE?

17. In this section we describe what happened in the lead up to this incident and whether Police responded appropriately to earlier concerns raised about Mr Lyttle. We then consider the initial Police response after receiving the 111 call on 23 April 2023.

Were Police responding appropriately to Mr Lyttle’s actions leading up to this incident?

18. Mr Lyttle had come to the attention of Police several times in the 12 months prior to 23 April 2023. He had reportedly fired his air rifle at neighbouring houses, interfered with a neighbour’s vehicle, and damaged property. Police seemed to have concluded that Mr Lyttle’s mental health had been deteriorating in the months leading up to this incident.

19. Mr Lyttle’s behaviour escalated significantly from 18 April 2023, when he threatened a neighbour who lived opposite him with a piece of wood and scissors. He then fired his air rifle out the window of his house, hitting the neighbour’s garage.

20. On 21 April 2023, two days prior to the incident under consideration, Mr Lyttle’s next-door neighbour reported that he had thrown or shot something through her kitchen window. The attending officer thought the damage looked unlikely to be caused by a bullet. When the officer attempted to speak with Mr Lyttle, neighbours saw Mr Lyttle come to the window with an air rifle.

21. The same day, Police provided local staff with an information document indicating:

- Police had been called to the houses of Mr Lyttle and his neighbour on three recent occasions between 18 and 21 April 2023;
- Mr Lyttle reportedly fired an air rifle out of his window after Police attended his address on 18 April;
- Mr Lyttle’s neighbour saw him at the window with an air rifle while Police were present on 21 April;
- Mr Lyttle does not usually engage with Police;
- he has a “*fascination with medieval weapons*” and had several weapons of opportunity positioned throughout his house; and
- there were three dogs at the property which appeared to be aggressive.

22. Police drafted a plan to deal with Mr Lyttle’s behaviour. They also prepared a search warrant for Mr Lyttle’s property, though this had not yet been executed by 23 April.

23. On balance, we are satisfied that Police were taking appropriate steps in preparing to respond to any threat posed by Mr Lyttle.

Was the initial plan appropriate?

24. Following the 111 call on 23 April, a senior sergeant in the District Command Centre began preparing a briefing document for responding staff, in consultation with the sergeant supervising the early shift of the Public Safety Team (PST). The AOS Commander was also consulted.
25. The briefing document said that Mr Lyttle had shot at the neighbour's window with what appeared to be an air rifle, that he needed to be arrested, and that: *"action needs to be taken today before someone is injured – cannot be reasonably delayed until Monday"*.
26. The briefing document stated factors to be considered were that Mr Lyttle:⁵
- was likely to be uncooperative and not let Police into his house;
 - had medieval weapons/weapons of opportunity inside his house;
 - had aggressive dogs at his property, one of which had previously bitten a child;
 - had previously undergone a mental health assessment; and
 - had 15 previous convictions for assault/threats/possession of offensive weapons.
27. The briefing document outlined the plan that armed PST officers would knock on Mr Lyttle's door. If Mr Lyttle was cooperative, he would be arrested, and the house would be searched for firearms. If Mr Lyttle refused to engage with officers, the PST would withdraw, cordon and contain the address, and call the AOS. Police negotiators would be unavailable initially, so staff would have to conduct any required negotiations with Mr Lyttle.
28. We consider that the initial plan was appropriate.

Did Police respond in a timely manner?

29. Given Mr Lyttle's recent escalating behaviour, it was appropriate for Police to take the necessary time to formulate the briefing document and develop the plan to arrest Mr Lyttle following the 111 call.
30. However, there was an almost three-and-a-half-hour delay between when the next-door neighbours first called 111 at 12.56pm, and when the first Police officers arrived at the scene at 4.23pm.
31. While the next-door neighbours waited for Police, people came and went from their home to pick up the six children present (2 to 11 years old). Police rang the next-door neighbours at

⁵ The information Police had was based on previous interactions Mr Lyttle had with Police.

1.56pm and again at 3.55pm asking for more information and telling them that they were formulating a plan.

32. In our view, having regard to the acknowledged risk posed by Mr Lyttle, following the 111 call, general duties officers should have been dispatched immediately to ensure the safety of Mr Lyttle’s neighbours while the plan was being developed.

FINDING ON ISSUE 1

The initial plan for responding to the threat posed by Mr Lyttle was appropriate, but Police should have attended the scene earlier on 23 April 2023 in order to ensure the safety of the public.

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

33. In this section we describe how command and control was maintained during this incident and consider whether it was appropriate.
34. The Police ‘Command and control’ policy states:
- *“In all cases where Police deploy, there is an element of command and control required. Someone must be responsible for assessing known information, formulating a response plan and directing its execution.”*
 - *“There must be a clear chain of command and control. All units in the chain of command and control must be aware of their immediate superiors, subordinates and inter-agency counterparts.”*
 - *“Any changes in command and control must be communicated to all members involved in the operation as soon as practicable.”*

Who had overall command of the incident?

35. In incidents such as this, Police policy and practice call for the appointment of an ‘Incident Controller’. The Incident Controller has overall responsibility for the management of risks and coordination of the Police response during an incident. This includes the control and coordination of those attending the incident, such as the AOS. Where time allows, decisions relating to the execution of tactical plans need to be approved by the Incident Controller. Sometimes the Incident Controller role is performed by someone ‘on the ground’, and at other times it is maintained by the Emergency Communications Centre Shift Commander.
36. A ‘Forward Commander’ differs from an Incident Controller in that they are focused on performing specific tasks at the scene. They are not required to have wider oversight of an operation, nor concern themselves with other elements such as crowd control. A Forward Commander reports to the Incident Controller.
37. It appears to us to be important that an Incident Controller is established for every critical incident to which Police respond, and that all attending officers are aware of who this is.

38. It is unclear who the Incident Controller was during this incident once the AOS arrived. Neither the AOS Commander nor the PST Supervisor (Officer C) believe they were in the role.

Who did Officer C think had overall command of the incident?

39. Officer C was the supervisor of the late-shift Public Safety Team (PST) who responded to the incident. He arrived at the property with his PST team at 4.23pm. Officer C says, as the senior officer on the ground, he assumed the role of Forward Commander. He says that, from his perspective, 'Forward Commander' and 'Incident Controller' are the same thing, and the terms can be used interchangeably.
40. There is no disputing that Officer C was the Incident Controller while PST were the only Police in attendance. Officer C understood that he had decision-making authority to do what was required at the scene. He gave regular updates to the Northern Emergency Communications Centre and says he did not receive any instructions from anyone else during this stage of the operation.
41. Officer C says he briefly updated the first members of the AOS team to arrive and, upon the arrival of the full team, he relinquished the Incident Controller role to the AOS Commander. He told us: *"... essentially when the AOS team turn up they take, they take control of the job..."*
42. Officer C recalls having a couple of *"very brief"* face to face interactions with the AOS Commander behind the AOS van. He recalls asking the AOS Commander what he would require him to do once Mr Lyttle was apprehended but says they did not discuss the AOS plan and he did not have any input into it.
43. Once Officer C relinquished control to the AOS Commander, an AOS team leader instructed him to assist with crowd control and to put further cordons in place. Officer C also conducted some of the loudspeaker appeals to Mr Lyttle at the request of the AOS.

Who did the AOS Commander think had overall command of the incident?

44. The AOS Commander says he received a call from the senior sergeant at the District Command Centre requesting AOS attend the incident. He then spoke to Officer C who briefed him over the phone.
45. In this exchange the AOS Commander gained the incorrect impression that PST had been at the scene for longer than they actually had, and had been appealing to Mr Lyttle since 3pm. This affected his decision-making, as discussed in paragraph 86.
46. The AOS Commander says that, during the call, Officer C confirmed he was Incident Controller and gave him the impression he would see him at the Safe Forward Point when he arrived at the incident.⁶

⁶ A Safe Forward Point (SFP) is a safe location near the incident used mainly as a meeting place for personnel.

47. The AOS Commander says he was responsible for the AOS and dealing with the tactics used within the tighter cordon, directly around Mr Lyttle's house. He believed Officer C retained the role of Incident Controller and was responsible for maintaining control of the wider incident.
48. Upon arrival, the AOS Commander positioned himself in the AOS truck at the Safe Forward Point further along Seddon Street. His recollection is that he twice requested Officer C come to the Safe Forward Point during the incident, however, Officer C did not come. The AOS Commander believes he and Officer C did not communicate during the incident until after Mr Lyttle had been shot. At this point, the AOS Commander updated the District Command Centre and discussed how the scene would be managed. He then rung Officer C to relay the plan to manage the scene.
49. The AOS Commander says that, ideally, the Incident Controller would have been with him at the Safe Forward Point throughout the incident so they could communicate directly with each other. He admits that he did not seek Officer C's permission before executing any tactics, such as using the gas, and acknowledges this was contrary to best practice.

Who did attending officers think had overall command of the incident?

50. The Police Negotiation Team Commander arrived at the scene at the same time as the AOS and believed the AOS Commander took over as the Incident Controller upon his arrival.
51. When speaking with PST and AOS officers, it was apparent that they had a sound understanding of who they directly reported to and who provided their instructions. However, some thought Officer C had overall command of the incident, whereas others thought the AOS Commander assumed the role.

Conclusion

52. The confusion around who was Incident Controller meant no member of Police had oversight of the entire incident. In our view, an Incident Controller was necessary during this incident to ensure every aspect was sufficiently considered from a wider perspective before tactical plans were executed. This is discussed further below.
53. Given the AOS Commander believed Officer C was the Incident Controller, he should have ensured he communicated with him to discuss significant plans, such as setting off the gas in Mr Lyttle's house.

Should the immediate neighbours have been evacuated?

54. No-one was evacuated from the houses nearest Mr Lyttle's during this incident. In fact, several neighbours stood outside their homes and on the street observing matters unfold.
55. Mr Lyttle's home was a single level, 1950s wooden home on a property approximately 760m² in size, in a residential cul-de-sac. The house had three large sets of windows facing the street.

56. The next-door neighbour's house (the house Mr Lyttle had shot at that day) was about 10 metres away. There were two sets of bedroom windows in Mr Lyttle's house, which faced this next-door neighbour's back deck and their dining and kitchen windows.⁷
57. The property that Mr Lyttle had shot at on 18 April was across the street, directly opposite his house. Pellet damage was visible in their garage.
58. Officer C told us: "*... we can't evacuate neighbouring addresses. We can't expect to say, 'hey you guys need to get the hell out of here'.*" He said there was a general consensus that Mr Lyttle was using an air rifle, which Police obviously considered posed less risk than a more potent firearm.
59. The AOS Commander said the initial indication was that Mr Lyttle had used an air gun to shoot at the neighbour's window. PST were then given the pellet fired by Mr Lyttle, which supported this belief. The AOS Commander says at that stage he believed there was a "*likelihood of that weapon not being a high-powered rifle or anything of that nature*". Given this, he said: "*contact had been made with those people to stay inside, stay away from windows... I was comfortable that that was sufficient to keep them safe at the time.*" The AOS Commander subsequently told the Authority that he believed PST officers were with the occupants of the neighbouring house, supporting his assessment that they were safe.
60. The AOS Commander told us he would have evacuated the occupants "*if further shots had been fired and there was clearly a heightened risk*". He was unaware the next-door neighbours believed Mr Lyttle had fired towards their property again during the incident, as described below.

Did Mr Lyttle fire again at the next-door neighbour's property during the incident?

61. At least six people were inside the house next to Mr Lyttle's.⁸ At about 7pm, they saw Mr Lyttle pointing his gun through an open bedroom window, towards their window. They then heard a 'bang' which made them take cover for several minutes.
62. Footage captures a sound nine seconds before Police set off the second set of gas inside Mr Lyttle's house.
63. It is possible Mr Lyttle did fire towards the next-door neighbour's again, though there is no evidence he hit their property. Some of the occupants wondered whether Mr Lyttle was firing at Police on that side of his property, which is also possible.
64. However, the occupants did not tell Police they believed Mr Lyttle had fired at them again, and Police were unable to factor this risk into their assessment.
65. Police should have maintained a greater awareness of where the occupants of neighbouring properties were in order to ensure their safety.

⁷ The house on the other side of Mr Lyttle's was largely unseen from his house due to a large tree.

⁸ The occupants were all adults as the children had left by this time.

Conclusion

66. Police did not determine it necessary to evacuate the nearby neighbours based on believing the air rifle did not pose a threat of serious harm at that distance. In our assessment, it would have been appropriate for Police staff to ensure the occupants in the next-door neighbour's house were safe, given the propensity of M4 high-velocity rounds used by Police to penetrate walls, as occurred when officers later encountered Mr Lyttle (see Issue 4).
67. It is apparent that, in the absence of an Incident Controller, no-one took responsibility for making a full assessment of the risk posed to neighbours.

Were appropriate cordons in place?

68. Police policy says that, when establishing perimeter control, care should be taken to avoid unnecessary inconvenience to the public. However, it also states: *"The safety and welfare of Police and public is paramount. Plan to maximise safety and minimise risk."*
69. Officer C explained that, while only PST officers were at the scene, he placed cordons around Mr Lyttle's house as best he could with the officers he had available, with officers on all sides of the house. Once the AOS arrived, the focus of PST shifted to cordoning and controlling the wider area. Members of the public were pushed back to a safe distance and instructed to go back inside their homes and to remain there for their safety. Officers were positioned five houses along from Mr Lyttle's property to stop traffic coming into the street.
70. However, accounts and footage captured by multiple members of the public indicate several members of the public remained outside and in close proximity to Mr Lyttle's house throughout the operation. Some stood on the road, in yards, and others stood on the footpath directly behind where officers took cover behind vehicles.
71. Officer C says it is quite difficult to cordon off an address in a situation such as this, and that the limited numbers of PST officers available did their best to keep people as far away as possible and to ensure the crowd was controlled. He said that if it had been apparent that Mr Lyttle was in possession of a weapon more powerful than an air rifle, he may have given consideration to cordons a greater distance from Mr Lyttle's house.
72. The AOS Commander said he was comfortable with the cordon positions based on his belief the air gun was unlikely to be high-powered, as discussed in paragraph 59. He also indicated he would have considered pushing the cordons back if further shots were fired or a heightened risk identified.

Conclusion

73. In our assessment, Police should have ensured members of the public were kept further away from Mr Lyttle's property throughout the incident. Police were aware Mr Lyttle was prepared to fire his air gun at neighbours and this obviously created a risk of injury to them.

74. Mr Lyttle was agitated, had previously fired upon neighbours with an air gun powerful enough to smash their window, and AOS officers were surrounding his property with M4 rifles. The close proximity and presence of multiple members of the public required the oversight and consideration of an Incident Controller.

FINDINGS ON ISSUE 2

In our view Police command and control of this incident was inadequate.

Insufficient information was provided to the AOS Commander regarding how long the PST had been attempting to engage with Mr Lyttle prior to the AOS arriving.

It was not sufficiently clear during the incident which officer had command as Incident Controller. An Incident Controller was required to ensure all aspects of the incident were adequately considered and factored into the Police response.

Police should have ensured the occupants in the house next-door to Mr Lyttle were in a safer position within the house.

Cordons should have been further back to ensure the safety of members of the public.

ISSUE 3: WERE THE TACTICAL OPTIONS USED BY POLICE APPROPRIATE?

75. In this section, we consider whether the tactical options used by Police to take Mr Lyttle into custody were reasonable in the circumstances.
76. Police policy states:

“Police must use physical force only when the exercise of persuasion, advice, and warning is found to be insufficient to obtain public co-operation to the extent necessary to maintain law and order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.”

Were the initial tactics used by the PST appropriate?

77. Mr Lyttle’s front porch was on the side of his house. It had six large glass panes facing the street, which allowed visibility into it. The small porch led to a door with four frosted glass panes, which led into the house.⁹
78. Shortly after their arrival at 4.23pm, Officer C repeatedly knocked on the door, asking Mr Lyttle to come and speak to him. Mr Lyttle yelled incoherently but would not communicate with Officer C.

⁹ Photos taken after the incident show one of the top panes has a round hole which is consistent with a projectile being fired out of the property. We have been unable to definitively ascertain whether the hole was there *prior* to this incident or *during* it, however, there is no evidence to indicate it occurred while Police were present on the 23 April 2023.

79. At 4.35pm, Mr Z, a family member, came outside. Mr Lyttle locked the door behind him. Officer C went to speak with Mr Z. He told Police Mr Lyttle was the only person remaining in the house and that there were three dogs inside.
80. Animal Control were called to attend to assist with securing Mr Lyttle's dogs, if needed. They told Police the three dogs were known to them and were considered to be aggressive in nature.
81. Officer C made ongoing attempts to communicate with Mr Lyttle over a loudhailer, repeatedly appealing for him to secure his dogs and come to the front door. However, Mr Lyttle did not respond.
82. Officer C requested AOS attend as Mr Lyttle was locked inside his house, refusing to come out.
83. PST followed the agreed plan and the tactics used by them were appropriate.

Were the tactics used by the AOS appropriate?

What understanding did AOS officers have of the situation and risk posed by Mr Lyttle?

84. The AOS Commander met with the AOS team, briefing them before travelling to the scene. They were provided with the same information given to the PST. In addition, they were updated with what had been learned from Mr Lyttle's family member and saw photographs of the property.
85. Several AOS officers told us that from the start of the operation, they were mindful that a few years prior to this incident an officer had been killed by a man using an air gun. Clearly the AOS at least factored this into their assessment of risk.
86. The AOS Commander's incorrect belief that Police had been at the scene and appealing to Mr Lyttle since about 3pm was significant.¹⁰ It seems the AOS's sense of urgency arose partly because they believed that PST had been attempting to resolve the situation for longer than was actually the case.
87. The AOS Commander says he had to consider what could be done to encourage Mr Lyttle to surrender to Police so the situation could be resolved, and which tactical options were available to help progress the matter. He explained to us that in circumstances such as this, if one tactic proves ineffective, the AOS progress with another tactic to encourage the person to come out in order to resolve the situation. He said the person should be provided with a reasonable period of time for each of the tactical options to have an effect.

What did the AOS team do upon their arrival?

88. By 6pm the AOS had arrived at the scene and relieved the PST of their cordon positions. The AOS split into two teams, each with their own team leader and a dog handler. Officer D was the Forward Commander and the team leader responsible for cordoning the front of Mr Lyttle's

¹⁰ See paragraph 45.

property. The other AOS team cordoned the back and sides of Mr Lyttle's property. As it became dark, they set up two floodlights.

89. Mr Lyttle's windows were mostly covered with curtains, boards and flags. At the rear of the house, officers had an unhindered view into a kitchen window. There were a number of occasions where officers at the back of the property saw Mr Lyttle's head and shoulders through the kitchen window. At other times, Mr Lyttle drew back curtains at the front or sides of his house and looked out of his windows. However, the officers often had no indication where Mr Lyttle was in the house as he was moving around, and he only occasionally turned the lights on. No officers reported seeing Mr Lyttle with any weapons.

Did Police communicate effectively with Mr Lyttle to attempt to resolve the situation?

90. PST staff initially conducted the appeals to Mr Lyttle using a loudhailer. Upon the arrival of the AOS and members of the Police Negotiation Team (PNT) at 6pm,¹¹ a loudspeaker system was set up.¹²
91. PST continued to conduct the appeals using the loudspeaker while the Police negotiators tried ringing Mr Lyttle twelve times between 6.10pm and 7.27pm. Mr Lyttle answered on one occasion but did not engage before hanging up. Other attempts were unsuccessful. A Police negotiator took on the appeals role just before 8pm, shortly before Police entered the house for the final time.
92. The 'Police negotiators' policy says that, as a matter of course, a negotiator will not replace a non-PNT member who is successfully communicating or engaging with a person during an incident but will provide expert advice and assistance.
93. It is evident that Police made several attempts to communicate with Mr Lyttle throughout the entire incident to resolve the situation peacefully. However, Mr Lyttle was determined not to communicate with Police.
94. We are satisfied Police made appropriate efforts to communicate with Mr Lyttle.

Could Police dogs have been used to take Mr Lyttle into custody?

95. While Mr Lyttle's dogs remained inside the house with him, Police believed they were not under control, and were often barking aggressively. The decision was made for the two AOS dogs to remain in their vehicles to avoid potential fights between them and Mr Lyttle's dogs. The strategy was that the AOS would only use the Police dogs if Mr Lyttle came at least one metre away from his front step as this would likely enable them to be used safely and successfully.
96. We agree that the presence of Mr Lyttle's dogs limited how Police could deploy their dogs, and have concluded that the plan around the use of dogs was appropriate.

¹¹ The Police Negotiation Team is a specialist squad who are used to help other operational staff to resolve situations successfully by using specialist negotiating tactics and techniques.

¹² The loudspeaker system consisted of a microphone and two large speakers.

What happened when Mr Lyttle came to the front door?

97. At 6.43pm, Mr Lyttle came out the front door, through the small porch, and sat on the outside doorstep looking at the officers for about 20 seconds. Police could see Mr Lyttle had no weapons in his hands. However, they did not approach him due to the possibility he may have a hidden weapon.
98. Officer E stood less than ten metres from Mr Lyttle, speaking to him, asking him to move towards Police to speak with them. However, Mr Lyttle did not engage with Officer E before going back inside, locking the door behind him.
99. Officer D and another AOS officer then heard Mr Lyttle making noises in the house that suggested to them that he may be moving large furniture to barricade himself in.

Was it appropriate for Police to release CS gas in Mr Lyttle's house?

100. Police policy on the use of CS gas says the AOS may use it when a person is believed to be armed or otherwise potentially dangerous and the situation and perceived risk is serious enough to warrant its use. Policy provides the example of: *"Where there are reasonable grounds to believe an offender is in an address, but there is an unacceptable risk to staff (and others) in entering or approaching that address to search for that offender."*¹³
101. In deciding to release gas into the house, the AOS Commander proceeded on the incorrect understanding that the incident had started at 1pm and that voice appeals had been made since 3pm. He says that Police had reached a stalemate and the matter needed to be resolved. He was mindful of the impact the incident was having on members of the public, with the road being blocked.
102. At 6.59pm, the AOS began launching about ten 40mm CS gas rounds through Mr Lyttle's windows from different sides of his house to force him to come out.¹⁴
103. Four minutes after the first ten rounds of gas had been set off in Mr Lyttle's house, and after Mr Lyttle may have fired at the next-door neighbour's property, a further seven rounds were launched. After the last round had been fired, an AOS officer saw Mr Lyttle open a window at the rear, briefly open the back door then slam it shut, and heard him slamming internal doors closed. However, Mr Lyttle still did not leave the house.¹⁵
104. Police used the gas with the intention of forcing Mr Lyttle to surrender, after communication proved ineffective. It was a tactical option available to them and it was used in accordance with Police policy. We are satisfied it was reasonable to use the gas to force Mr Lyttle to come outside.

¹³ Police policy does not stipulate how much gas can be used, though AOS officers are specifically trained in how to use it appropriately.

¹⁴ CS gas rounds contain o-chlorobenzylidene malonitrile powder which can cause irritation to the eyes, throat and skin.

¹⁵ Officers later told us they believe Mr Lyttle created pockets of air that were not affected by the gas by closing doors.

Was it appropriate for the AOS to breach Mr Lyttle's front door?

105. The AOS Commander told us that, with most windows covered, the only knowledge he had of Mr Lyttle's movements was based on brief sightings of him, reported over the radio by the officers cordoning the house.
106. After the gas failed to force Mr Lyttle to come out, the AOS Commander and Officer D decided to breach Mr Lyttle's front door. Even if the breach did not force Mr Lyttle out, it would enable the AOS to have direct access into his house. An access way would also allow the AOS to deploy a remote-controlled robot inside the door to locate Mr Lyttle and show them what he was doing. This would assist in planning their next tactical options, such as potentially using 517 CS gas, which disperses a greater volume of gas than the 40mm rounds. Officer D told us he was mindful that an access way would also enable Police to provide Mr Lyttle with medical assistance, if required.
107. At about 7.26pm, an AOS team of six officers approached Mr Lyttle's front door, with a shield for cover. A ram was used to force the door open. Mr Lyttle was told the door had been opened and that he needed to come out with his hands up.
108. Of note, during the breach, Officers A and B both recall noticing an object sitting on a chair further down the entrance hallway. Officer A described it as a wooden handle which he believed may have been from a medieval weapon. Officer B believed it was the wooden butt of a rifle.¹⁶
109. In our assessment, the decision to breach the door to create direct access was premature and created unnecessary risks at this point, given the likelihood of a confrontation with Mr Lyttle and/or his dogs:
- to the best of their knowledge, Mr Lyttle had not done anything to suggest he was posing any heightened risk requiring an urgent response;
 - Police were unsure of the location of the three dogs;
 - they were unsure exactly where Mr Lyttle was located inside the house;
 - they knew Mr Lyttle had weapons available to him and that he had used an air rifle to fire towards neighbouring properties;
 - given Mr Lyttle's history of actively avoiding engaging with Police, it is reasonable for Police to proceed on the basis that he was unlikely to comply with their instructions to come out when they alerted him to the fact they were coming to his door;
 - it was likely that breaching the door would antagonise Mr Lyttle, elevating the situation, rather than de-escalating it; and

¹⁶ We note that at the time of the breach, the AOS did not know the floor plan of the property, though Officer C had been told the layout when Mr Lyttle's family member first came out. Officer D says it was at 8.02pm when he received a text with a sketch of the floor plan. He says this was the first time he had an appreciation of the likely layout of the house.

- officers cordoning the house had caught glimpses of Mr Lyttle after the gassing, which indicated he was not in urgent need of medical attention.

Did Police act appropriately in shooting Mr Lyttle's dog?

110. While standing in the porch doorway, one of Mr Lyttle's dogs, a large Bull-Terrier X, rushed at Officer A. Officer A fired four shots. The dog collapsed just inside the house doorway, about one metre away from Officer A. Before the team retreated, Officer D euthanised the dog by firing one shot, to ensure it did not remain in any unnecessary pain.
111. After Police retreated from the house, Mr Lyttle was heard to yell "No!". This led Police to believe he had discovered his dog had been killed.
112. It was the unnecessary decision to breach the door which placed the officers in a situation where they were confronted by an aggressive dog (see paragraph 109). However, in assessing the appropriateness of shooting the dog, we have considered the situation that the officers faced.
113. According to section 57 of the Dog Control Act 1996, a person may destroy a dog if it is attacking them. The accounts of every team member who saw the dog are that it launched itself at Officer A while barking aggressively.
114. Given the limited amount of time and space Officer A had to act, we are satisfied that shooting the dog was the only reasonable option available to him to defend himself and the officers behind him to prevent serious injury. We also agree that the decision to euthanise it was appropriate.

Should Police have used family members to speak with Mr Lyttle?

115. Following the first breach, Police negotiators recorded two messages from the family member who had left the house. At about 8.15pm, they played the message on loop over the loudspeaker for about 20 minutes. This did not appear to have any impact, although officers reported that Mr Lyttle became more vocal, shouting for the Police to leave.
116. Other members of Mr Lyttle's family lived within an hour of his home. We considered whether Police should have asked them to assist by speaking with him. PNT explained that using friends or family members to assist in negotiations in critical situations requires a very controlled process, and that they did not have enough time or staff available to arrange this.¹⁷
117. It was appropriate for PNT to use the available family member to speak with Mr Lyttle in a controlled manner by recording him. Given the speed at which this incident unfolded after PNT arrived, we accept they did not have sufficient time or resources to consider using other family members to assist them.

¹⁷ Police would have first needed to identify, locate, and speak with potential family members to ascertain their relationship with Mr Lyttle and suitability in assisting with negotiations.

Should Police have entered the house the second time?

118. The AOS Commander says:

“It had been an hour and eight minutes since the door had been breached and it had been an hour and 33 minutes since gas was first deployed into the house. There had been no positive responses to any of those actions.”

“[While the appeals were continuing]... we could do nothing further and continue to wait or we could action the robot plan and get some visuals inside the house... to assist in further planning.”

119. The AOS Commander and Officer D made the decision to place the robot inside Mr Lyttle’s entranceway. The plan was that the team of six would approach the entrance, place the shoebox-sized robot inside, then immediately retreat.

120. In our view, it was unnecessary for the AOS to enter the house to place the robot inside at this time. The likelihood of officers encountering Mr Lyttle or one of his aggressive dogs was high. The risk posed to all involved outweighed the need to locate Mr Lyttle inside the house to assist with planning, and outweighed the likely effectiveness of a robot, which would likely have further antagonised Mr Lyttle had he seen it. Further, we are not satisfied that the AOS gave sufficient consideration to the obstacle posed by the deceased dog in the doorway, which led to the need to enter the house (see below paragraph 123).

121. In our view, it would have been prudent instead to allow Mr Lyttle more time to comply with instructions.

Did Police make appropriate tactical decisions upon entering the house?

122. At 8.33pm, the team approached Mr Lyttle’s house for the second time with Officer A entering the porch first. Mr Lyttle began yelling “fuck off!” and telling Police not to enter his house. Officer A says it sounded as though Mr Lyttle was deep within the house. He yelled out to Mr Lyttle, telling him they were armed Police and that he was under arrest and should come out.

123. Officer B moved to place the robot but realised that the dog’s position, along with other objects in the hallway, would prevent the robot from moving into the house. Officer A stepped over the deceased dog lying in the doorway to provide cover so other officers could safely remove the body.

124. Meanwhile, officers say it sounded as though Mr Lyttle then moved towards the kitchen, around the corner from where they were. At this point, Officer D believed his team could not safely retreat without first establishing where Mr Lyttle was.

125. Officer A moved forward through the short entrance hallway to look around the corner into the kitchen.¹⁸ He reported that Mr Lyttle was not in the kitchen.

¹⁸ The entrance hallway was short (about 1.5 metres long), allowing very little space in which the officers could safely move.

126. Officer D decided the team would retreat. However, he then thought he heard Mr Lyttle in the lounge, behind a door immediately to his right. Officer A maintained cover by the corner to the kitchen while Officers D and B and another team member went into the lounge. Mr Lyttle was not in there.
127. The AOS team were in a vulnerable position when Mr Lyttle's yelling indicated he was approaching them in an aggravated manner. Given this, we accept they needed to determine where Mr Lyttle was before retreating.

Conclusion

128. The AOS Commander told us: *"Once we've exhausted all of our tactical options we are only left with a stalemate and at that point literally... we would then sit it out."*
129. In our view, it was unnecessary to exhaust all of the tactical options before resorting to 'sitting it out', given Mr Lyttle was contained in his house and Police were unaware of any risk other than the potential use of an air rifle. In our assessment, the used tactics unnecessarily antagonised Mr Lyttle. A more patient approach may have allowed him time to calm down and made the prospect of his surrender more likely.
130. On 27 March 2023, Police surrounded a house in Stratford for fourteen hours before a man who had fired at them eventually surrendered. Our independent investigation into this incident found that actions taken by Police during this siege indicated *"a well-executed operation, showing the benefits of a patient and planned approach to a potentially dangerous situation."*¹⁹
131. In submissions to the Authority, the AOS Commander indicated that he was also the AOS Commander at the time the Stratford incident was resolved. We accept that this was the case but are satisfied that another AOS Commander was responsible for managing the initial AOS response to the Stratford event, remaining in command for approximately 12 hours before handing over to the AOS Commander in this matter.²⁰ We do acknowledge that the man involved in the Stratford incident demonstrated a willingness to engage with Police and this may go some way to explain the contrast between events.
132. In conclusion, it was reasonable for Police to use the gas to force Mr Lyttle to come out. However, breaching his door and then entering the house to place the robot was not necessarily the best course of action to secure Mr Lyttle's surrender.
133. In our view, the lack of an Incident Controller was evident in the Police response to this incident. This meant that there was no officer with overall command and control with whom the AOS Commander could discuss the deployment of tactical options. As already said, this is the third case in three years where we have found there has been a lack of a clearly identified Incident Controller during a critical incident.²¹

¹⁹ [29-FEBRUARY-2024-IPCA-PUBLIC-REPORT-Non-fatal-shooting-in-Stratford-justified.pdf](#)

²⁰ The man involved in the Stratford event surrendered a little over four hours following this handover.

²¹ One of these cases: [14-MARCH-2024-IPCA-PUBLIC-REPORT-Fatal-shooting-Mr-Witika-Auckland-justified.pdf](#).

FINDINGS ON ISSUE 3

The tactical options available to the AOS were used in quick succession and prematurely escalated the situation.

While it was reasonable for the AOS to use gas to force Mr Lyttle out, it was unnecessary for them to approach the house as early as they did on the first occasion to breach the door and then on the second occasion to place the robot inside. It would have been prudent to have allowed Mr Lyttle more time to surrender.

Once inside we accept the officers found themselves in a position where they had to remain in the house to determine Mr Lyttle's position in order to be able safely to retreat.

ISSUE 4: WERE OFFICERS A AND B JUSTIFIED IN SHOOTING AT MR LYTTLE?

134. In this section we assess whether the force used by officers was justified.

How did the shooting unfold?

135. For the purposes of our analysis, we have discussed what happened in detail. However, it is important to note that this part of the incident unfolded quickly, with the shots being fired over a period of eight seconds. The officers had to make split second decisions in a threatening situation.
136. Officer A called for non-lethal cover, so Officer E moved to stand shoulder to shoulder with him, Taser drawn. The entranceway leading from the doorway to the kitchen was about 1.5 metres in length, with very little space for the officers to move in. There were no lights on in the kitchen. However, it was dimly lit from lighting in other areas and Officer A says he could see clearly.
137. Officer A leaned around the corner to look into the kitchen. At the same time Mr Lyttle moved from the hallway to stand at the other end of the kitchen.²² Officer A got a fright seeing Mr Lyttle so close, and suspects Mr Lyttle also got a fright seeing him as he flinched, ducked, and moved away. Officer A saw that Mr Lyttle was holding something with a 30cm long black pipe, so ducked and moved back behind the corner, in case it was a firearm. Officer A yelled out to Mr Lyttle: *"Put your fuckin hands out or I'll shoot you!"*
138. Officer A says he was unsure whether Mr Lyttle was holding a firearm or some other type of steel weapon. He says he thought that, if Mr Lyttle did not have a firearm, they could use the non-lethal option of Officer E's Taser if necessary. Officer A says he was conscious he was in a poor position, as Mr Lyttle could approach him without him knowing. He decided to lean out around the corner again and attempt to improve his line of sight.
139. However, unbeknown to Officer A, Mr Lyttle had moved through the kitchen, closer to him. When Officer A moved around the corner, he encountered Mr Lyttle with his arm outstretched,

²² An AOS officer who was at the back of Mr Lyttle's property saw Mr Lyttle (head and chest) moving through the kitchen, towards the front door. He attempted to tell the other AOS officers over the radio however was unable to transmit before Officer A encountered him.

pointing what appeared to be a pistol at him. There was about a metre between Officer A's firearm and Mr Lyttle's gun. Officer A knew the firearm was not the air rifle Mr Lyttle was known to have, but did not know what sort of pistol it was.

140. Officer A vividly recalls Mr Lyttle was holding the pistol in a position where it looked like his finger was on the trigger and he thought: *"He's shooting me..."*
141. Although footage is taken from outside the house and does not show what occurred inside, Officer A can be heard yelling for Mr Lyttle to put his hands up, and warning him that if he did not comply he would shoot him.
142. Officer E could not see Mr Lyttle as he was around the corner behind Officer A. However, he recalls hearing a noise that sounded like a shot and says Officer A suddenly fell back against him. He believed Officer A had been shot.
143. Meanwhile, Officer B made his way towards Officer A to assist. He moved past Officer E who was in the process of putting his Taser away and bringing his firearm into position.
144. Officer A stepped out and fired four shots at Mr Lyttle, while walking through the kitchen.
145. Officer B recalls seeing that Mr Lyttle was pointing two guns towards Officer A while about two metres away from him. Officer B dropped his Taser and drew his Glock pistol.
146. Mr Lyttle retreated backwards towards the other end of the kitchen, then moved into the hallway.
147. Officer A stopped near the doorway at the end of the kitchen which led into the well-lit hallway, with Officer B stopping behind him. They were unable to see Mr Lyttle. Officer A recalls thinking that he had missed Mr Lyttle with the shots he had fired.
148. Officer A then saw a hand coming around the corner, about one metre from him. In the hand was a black gun which was pointing directly at him. Officer A recalls thinking that he had already been shot at and now *"I'm gonna die."*
149. From Officer B's position he could see the barrels of both Mr Lyttle's firearms protruding past the doorframe. He recalls thinking: *"If I don't do something now I'm going to watch my friend die..."*
150. Both officers fired; Officer A fired four shots through the wall/door jamb, aiming at where he presumed Mr Lyttle must be positioned, and Officer B fired one shot through the cupboard next to the doorframe.
151. Officer A then moved into the hallway and saw Mr Lyttle sitting on the ground, slightly raised (on a box). Mr Lyttle continued to hold the firearm Officer A had already seen. However, Officer A now also saw he had a long, black rifle next to him. Officer A recalls seeing Mr Lyttle doing something with his hands. Officer A fired four more shots, stopping only when he saw Mr Lyttle fall back from his seated position, clearly incapacitated.

152. Meanwhile, Officer B recalls moving through the kitchen doorway and into the hallway where he saw Mr Lyttle sitting, pointing both his firearms towards him. Officer B says he was now exposed to harm himself and he believed Mr Lyttle may also shoot at him. He fired two shots at Mr Lyttle.
153. The Institute of Environmental Science and Research (ESR) conducted a scene examination and analysed the shots fired. The trajectory of Officer B's shots indicate he was, in fact, at the end of the kitchen when he fired the second shot. He then moved quickly into the hallway where he saw Mr Lyttle sitting down pointing his firearm towards him, before firing his third shot.²³ These shots were in quick succession.
154. Although Officer B's recollection of firing one shot from the kitchen, then two shots while in the hallway is incorrect, we have no doubt as to his genuine belief that the events unfolded as he recollected. The Clinical and Police psychologist, Alexis Artwohl, says:
- "...as multiple researchers have pointed out, memory impairment is an inherent part of critical incidents. The memory of a highly stressful event can often be fragmented, disorganized, out of order, or contain gaps where the person has no memory at all."*
155. The shots were fired about three minutes after the AOS team approached the house to place the robot inside. In total, Officer A fired twelve of the shots and Officer B fired three.

What are the possible justifications for the officers' uses of force in these circumstances?

156. The relevant provision here is section 48 of the Crimes Act 1961. Section 48 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. The assessment under section 48 has both subjective and objective components.
157. This assessment involves three questions:
- a) What were the circumstances as the officers believed them to be (a subjective test)?
 - b) Were the officers' uses of force against Mr Lyttle for the purpose of defending themselves or another (a subjective test)?
 - c) Were the officers' uses of force against Mr Lyttle reasonable in the circumstances as the officers believed them to be (an objective test)?

²³ Our assessment of this is based on the trajectory of shots and audio indicating the speed at which the shots were fired. Of note, the sound of Officer A's and Officer B's shots can be distinguished on the footage due to the difference in sound between an M4 rifle and a Glock pistol.

What did the officers believe the circumstances to be?

What did Officer A believe the circumstances to be?

158. Officer A described three distinct moments where he made the decision to fire at Mr Lyttle. We will address each of these in turn.

159. Officer A initially made the decision to step into the kitchen and fire at Mr Lyttle after seeing Mr Lyttle pointing a gun at him, as described in paragraphs 139 and 140. Officer A believed Mr Lyttle may have already shot him. Although he did not feel any pain, he recalls later checking his arms to see whether he had been shot and going through his ballistic vest to locate any potential projectiles.

160. Officer A believed if he did not respond to the threat Mr Lyttle posed:

“I’m shot dead... and he probably shoots dead the person behind me because they probably look to see what happens and if it’s a gun that can fire multiple [rounds] they’re probably getting shot too, that’s what I figured that the two of us would have been shot dead then and there.”

161. After firing his first four shots, Officer A paused at the end of the kitchen. Although aware others in his team would generally be somewhere behind him, he was focused on what Mr Lyttle was doing and cannot recall knowing that Officer B was near to him.

162. Officer A says:

- he did not know where Mr Lyttle had gone; and
- he thought he had missed hitting Mr Lyttle as Mr Lyttle had been able to move away.

The officers were wearing gas masks which hindered their ability to use their M4 rifle sights.

163. Officer A says that when he saw Mr Lyttle’s hand come around the corner, pointing a firearm at him, his mind ‘flashed’ to a previous AOS incident that he knew of, where three AOS officers were shot at while in a hallway.²⁴ He thought: *“You’re gonna blow us all away in the hallway”* and believed he had to act to prevent that from happening. He already believed Mr Lyttle had either shot him, or tried to shoot him, and did not know the capability of the weapon Mr Lyttle was using.

164. After Officer A fired the four shots through the wall/door, he moved into the hallway, where he saw Mr Lyttle sitting down. It was only at this point that Officer A saw that Mr Lyttle also had a rifle. The rifle was leaning against Mr Lyttle. Officer A did not believe he was touching it. However, he believed Mr Lyttle was *“doing something with his hands”* while still holding the pistol. Officer A says:

²⁴ This refers to the March 2016 Kawerau siege.

“... he’s tried to shoot me twice, he’s still got the gun in his hand, he’s still sitting up, he’s still mobile, as far as I’m concerned... I didn’t wanna give him a third chance to shoot me or someone else.”

165. Officer A says he had no idea if Mr Lyttle had sustained any injuries before firing the last volley of shots. He did not appear incapacitated at that point as he was sitting up and doing something with the firearms, was conscious and had not surrendered.
166. Officer A recalls being aware of Officer B coming through and firing one shot from his Glock pistol as he was firing his final shots from his M4 Bushmaster rifle.
167. We accept that during all three instances where Officer A decided to fire at Mr Lyttle, he genuinely believed Mr Lyttle may be about to kill him or cause grievous bodily harm to him or to other team members who were behind him.
168. Self-evidently, Officers A and B were operating in a highly stressful situation, which no doubt explains why Officer A only saw Mr Lyttle initially carrying the one firearm whereas Officer B recalls seeing him with two. Likewise, it is most likely why Officer A was unaware Officer B was in close proximity to him when he was firing at Mr Lyttle.

What did Officer B believe the circumstances to be?

169. When Officer B entered the kitchen, he told us he believed he saw Mr Lyttle pointing the barrels of two weapons at Officer A. He recalls seeing *“a short, dark firearm, maybe 600mm in length”* in Mr Lyttle’s left hand. He saw a silver knob on the side of a firearm, roughly where the trigger would be. He thought: *“... that’s not an air rifle... that’s a bolt action rifle.”* Officer B did not get a good look at the firearm in Mr Lyttle’s right hand due to the angle at which Mr Lyttle was standing, but recalls seeing its long barrel.
170. When Officer B heard the first set of shots fired, he was unsure whether Mr Lyttle was firing back towards him and Officer A. He was unsure if Officer A had been hit but recalls being aware he was still standing. Officer B believed Mr Lyttle was motivated to kill Officer A.
171. Upon moving nearer the end of the kitchen and seeing the end of both Mr Lyttle’s firearms protruding past the doorframe pointing at Officer A, Officer B believed he needed to act immediately: *“...I thought that if I didn’t do something to help then I would be, in part, responsible for my friend’s death.”* Officer B says: *“instead of dropping the guns or running away he [Mr Lyttle] had slunk back into cover with the firearm still raised at Officer A.”* He says he fired his first shot to defend Officer A.
172. As discussed in paragraphs 152 and 153, Officer B’s incorrect recollection is that he then moved into the hallway and saw Mr Lyttle sitting, pointing the two firearms at him *before* he fired his second shot. He believed he was also now exposed to the risk posed by Mr Lyttle and thought: *“... he just wants to kill Police.”* Officer B says, as well as firing his second and third shot to defend Officer A, he believed he needed to shoot to defend himself.

Were the officers' uses of force for the purpose of defending themselves or another?

173. We accept that all of the shots Officer A fired at Mr Lyttle were to defend himself and other team members who he expected might be behind him.
174. We are satisfied Officer B fired all three of his shots to prevent Mr Lyttle from killing or seriously wounding Officer A. Based on our assessment of the evidence, we conclude Officer B's third shot was also to defend himself.

Were the officers' uses of force against Mr Lyttle reasonable in the circumstances as they believed them to be?

175. Officer A requested non-lethal cover, and Officer B only dropped his Taser and drew his Glock after seeing Mr Lyttle with firearms. It is evident that both Officers A and B were mindful of using non-lethal force if possible. Given the speed at which the situation unfolded, with Mr Lyttle presenting potentially lethal firearms at officers, it was reasonable for both Officers A and B to then use firearms as a means of defence. We accept there was no less violent option appropriate at this point.
176. We have considered whether the officers could have retreated once they knew Mr Lyttle was armed, rather than continuing to engage with him. However, to retreat from the kitchen would have involved the officers moving backwards through a cluttered house, while covering themselves in case they came under fire. Mr Lyttle had moved towards Officer A and shown intent to shoot by pointing his firearms at him. Officer B says, once he and Officer A were in the hallway, he does not believe they could have retreated from their position and: *"The safest option was to go forward and secure him."* Given the threat posed by Mr Lyttle, we accept it was appropriate to do so.

Conclusion

177. We accept that both Officers A and B genuinely believed they were at risk of being killed or seriously injured by Mr Lyttle.
178. In making the decision to fire at him in defence of themselves and others, our view is that neither officer used excessive force.
179. Because we have formed the view that, on the balance of probabilities, the officers did not use excessive force, we do not need to go on to consider the separate issue of whether Police should consider criminal proceedings.

FINDING ON ISSUE 4

Officers A and B were justified in their decision to shoot Mr Lyttle in order to defend themselves and each other.

Subsequent Police Action

180. Police have since provided a drone to the AOS so they can locate occupants and access properties remotely without having to enter the premises.

181. Police have also identified opportunities to reinforce the following with AOS Commanders:

- that they do not assume the role of Incident Controller upon arrival at incidents;
- that they must ask appropriate questions to gain a thorough understanding of the event and inform the tactical response; and
- that tactical patience should be exercised where circumstances permit.

Recommendation

182. We recommend that Police provide further training to staff to ensure they have a sound understanding of the role, responsibilities, and requirements of Incident Controllers. In particular, clarity should be provided around the role of Incident Controllers when the AOS are deployed.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

17 December 2024

IPCA: 23-17828

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 Kenneth Johnston KC.

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
