

## **REPORT OF THE POLICE COMPLAINTS AUTHORITY ON THE FATAL SHOOTING OF TERENCE KEHOMA THOMPSON AT HASTINGS ON 24 JUNE 1996**

### **Introduction**

At about 1716 hrs on Monday 24 June 1996 Terence Kehoma Thompson (43), (name on birth certificate David Charles Rangiharuru Ropiha), was shot dead by a member of a Police Armed Offenders Squad (AOS) in an orchard at 225 Te Mata Road, Havelock North, Hastings. Thompson had been sought by Police in connection with the death by shooting of Constable Glenn Arthur McKibbin on Sunday 21 April 1996 in Yarmouth Road, Flaxmere, Hastings. Investigations into the death of the Constable led Police to believe that Thompson was responsible for the Constable's death and he was keenly sought for questioning. The Police were also concerned for the public that an armed offender was at large and on the run.

Extensive searches for Thompson over wide areas of the Hawkes Bay region had been unable to locate him until his presence in the area of Arataki and Te Mata Roads, Havelock North, was reported to the Police at about 0900 hrs on 24 June 1996. This report was made by the owner of a property where Thompson had spent the previous night, slipping away at about 0630 hrs. As a result of this report an AOS operation was mounted. In response to a further report received by the Police at 1646 hrs of Thompson's presence in the Te Mata Road orchard, AOS staff were deployed to that locality.

Thompson had been sighted by the owner of the orchard to which a number of Police AOS members had deployed. About 1710 hrs he was encountered there by members of the AOS. He failed to comply with instructions from one of them to get down and instead raised a firearm and appeared to be pointing it at the officer confronting him. In light of Thompson's failure to comply and the imminent danger to the Police officer's life from Thompson's raised firearm, the officer fired one pistol shot at Thompson. The shot was immediately fatal.

In this report the circumstances leading to and surrounding Terence Thompson's death are addressed and findings in respect of the death and the actions of the Police are reached.

### **Report to Police Complaints Authority and Subsequent Action**

The death of Terence Thompson was first reported to me in a telephone call I received from Inspector Lou Bennett of Internal Affairs Section at Police National Headquarters. Inspector Bennett called me at home at 1823 hrs on Monday 24 June 1996 to inform me that at approximately 1730 hrs that day Terence Thompson had been encountered and shot by AOS Police personnel. At that early stage details were sketchy, and the time of the shooting given proved to be approximate.

Some time later that evening I spoke on the telephone to Assistant Commissioner Colin Wilson, Police Region 3 Commander, who was speaking from Palmerston North, and who supplied some further detail that had by then emerged and been reported to him. Mr Wilson advised me that Thompson had been challenged and that a single shot had been fired by a Police officer. Thompson was hit and fell, and he was subsequently confirmed as dead by a paramedic who was called to the orchard.

During our telephone conversation Mr Wilson also informed me that he had appointed Superintendent John Kelly to take charge of the Police/PCA part of the enquiry into the circumstances leading to the death of Thompson. Detective Inspector Doug Brew was in charge of the homicide aspect of the enquiry. Detective Inspector Pinkham was the officer heading the investigation into the fatal shooting of Constable G McKibbin in Yarmouth Road, Flaxmere, Hastings, on 21 April 1996. That investigation, in which the enquiries that had been made, pointed to Terence Thompson as being the most likely perpetrator of the shooting of the Constable, is closely linked to the circumstances leading to the fatal shooting by the Police of Thompson. For that reason those enquiries, code-named Operation Yarmouth (McKibbin shooting) by the Police, will receive attention in this report.

I informed Mr Wilson that Mr John Roberts, a senior investigating officer from the PCA, would travel to Hawkes Bay next day to gather further information and to establish contact with Superintendent Kelly for the purposes of a joint enquiry by the Police and PCA.

The notification to the Authority was given pursuant to Section 13 of the Police Complaints Authority Act which requires that the Commissioner advise the Authority of any serious bodily harm or death caused by a member of the Police acting in the course of the member's duty.

In the circumstances a joint investigation was conducted into the incident in accordance with the above by the Authority and the Police officer named.

During the course of the enquiries made by Superintendent Kelly into the circumstances surrounding the death of Thompson copies of all reports and other correspondence generated during those enquiries were forwarded at regular intervals to my office so that an ongoing awareness of the progress of the enquiries, and their results, was able to be maintained.

On Thursday 4 July 1996 I went to Palmerston North to confer with the Regional 3 Commander, Assistant Commissioner Colin Wilson, and other Police officers. Beside Mr Wilson there were present at this briefing Superintendent John Kelly and with him Inspector Russell Gibson, both of whom were engaged on the PCA/Police enquiry. Also present were Detective Inspectors Doug Brew and Ross Pinkham. At the meeting I identified a number of issues, several of which were already being addressed, which I considered warranted attention for the final report.

On Monday 22 July 1996 I went to the Hawkes Bay and was present at the second interview by Detective Senior Sergeant Nicholls of the officer who fired the shot which resulted in the death of Thompson. I was given the name of this officer although the officer is referred to throughout the Police reports and indeed throughout this, my own independent report, as AOS 28. I put a series of questions of my own to AOS 28 at the conclusion of Detective Senior Sergeant G A Nicholls' interview. All my questions were answered to my satisfaction in that no detail I sought was avoided. I provide a full account of this interview hereafter.

No complaint against the conduct of the Police arising out of this incident has been made.

### **Narrative of Events - Beginning with the Death of Constable McKibbin**

In order to maintain a progressive flow of events and developments culminating in the death of Thompson it is appropriate, as well as assisting an appreciation of the events, first to briefly address the circumstances surrounding and leading to the fatal shooting in Yarmouth Road, Flaxmere, on Sunday 21 April 1996 of a Police officer, Constable G McKibbin. The death of Constable McKibbin is inextricably related to the search for Thompson in that the circumstances of the Constable's death indicated that Thompson was the person responsible.

The details of this tragic preliminary event were that, at about 1058hrs on the morning of Sunday 21 April 1996, Constable McKibbin (25) was on duty alone in uniform in a marked Police car in the Flaxmere area of Hastings and was shot.

At 1041 hrs Constable McKibbin left the Flaxmere Community Policing Centre to attend a family violence incident, arriving at the scene at 1046 hrs. At 1051 hrs Constable McKibbin returned to the Police car and informed Flaxmere Watchhouse of the result of the incident. At 1056 hrs the Constable requested a computer check on a Toyota Corolla motor car, his location being given as outside 50 Yarmouth Road, Flaxmere. Constable McKibbin advised via his car radio of his intention to talk to the driver of this vehicle, however he also communicated that he believed the vehicle driver may *'do a runner'*. Constable McKibbin reported his location as *'in Yarmouth and Margate'*. At 1058hrs Constable McKibbin called via his portable radio *'10/10 I've been shot'*. (10/10 is Police code for 'emergency')

When shot, Constable McKibbin was standing on Yarmouth Road adjacent to the driver's door of the Police car, facing the driver of the Corolla who had accompanied Constable McKibbin back to the Police car. The Police car was parked on Yarmouth Road, 1.8 metres from and somewhat parallel to the left kerbing. The Corolla was parked in front of the Police car, more adjacent to and parallel with the left kerbing. The driver of the Corolla had seen one person sitting in a Ford Falcon station wagon at the intersection of Yarmouth Road and Margate Avenue, watching the proceedings between Constable McKibbin and himself. This person, later identified by the Corolla driver as Terence Thompson, then drove the Falcon to a position almost parallel to the Police car, facing in the same direction, and at an approximate distance of 1 metre from the Constable. The driver of the Corolla stated that this person stared at Constable McKibbin, raised a rifle to chest height, and fired a single shot at Constable McKibbin, the projectile passing through the open front passenger's window of the Falcon before striking the Constable. At this the Corolla driver fled the scene and took cover behind a nearby fence.

The perpetrator then drove the Falcon along Yarmouth Road until the intersection with Fleetwood Road, negotiated a U-turn and returned back along Yarmouth Road. He then stopped the Falcon beside the Police car, either partially or fully alighted from the vehicle, and propped the rifle against the open driver's door, firing two more shots which struck the Police car above Constable McKibbin who was at this point lying fatally injured on the roadway. The perpetrator then left the scene in the Falcon and drove to the point on Anaroa Road where the Falcon was later that day found abandoned.

Constable McKibbin died a short time after as a result of one fatal shot fired from a .223 calibre firearm. The bullet, a fully copper jacketed projectile, first struck the Constable's A4 size notebook and then entered his body 10mm below his bottom rib and approximately 45mm to the right of the centre line of his body. It came to rest in his spine. It is worth commenting that the bullet which killed Constable McKibbin could not have been fired from the M1 carbine found later in Thompson's possession when he was shot. However .223 calibre rounds were found in his possession. See Examination of Firearms by Police Armourer.

A resident of a nearby property had heard the first, single, shot and with his daughters went to assist Constable McKibbin. The Constable was able to make a radio call reporting to Control that he had been shot. The Constable was lying face down in what was described by the resident as a "semi-recovery" position. The resident called out to his wife to call for help and she dialled 111 and remained on the telephone. Meanwhile the resident attempted to locate a pulse in order to ascertain the Constable's condition.

Other witnesses had seen the Ford Falcon driven off at speed, turning left from Yarmouth Road into Margate Avenue. It was then seen travelling in several places in the Hastings area, in Portsmouth Road, Raukawa Road and at an address in Anaroa Road where a witness spoke to the driver who claimed to have lost his way. The station-wagon was later that day found parked abandoned on a property in the Raukawa Valley at the end of Anaroa Road. The journey from Yarmouth Road to the point of abandonment, about 18kms distant, would have taken 15 to 20 minutes depending on the speed at which the vehicle travelled.

Police went to the scene of the shooting in Yarmouth Road in response to the emergency call for assistance that Constable McKibbin had managed to make. He was found to be unconscious and unresponsive and was immediately conveyed to Hastings Memorial Hospital where life was found to be extinct.

### **Operation Yarmouth**

An intensive police investigation, titled Operation Yarmouth was then mounted into the shooting of Constable McKibbin. The officer appointed to head Operation Yarmouth was Detective Inspector R. Pinkham of the Napier Police. During the investigation many members of the public were interviewed by officers assigned to Operation Yarmouth. Two .223 cartridge cases were found at the scene of the shooting in Yarmouth Road. After the station-wagon was located that day a further .223 cartridge case was found in the vehicle. These three cartridge cases were examined by an expert from ESR and by matching through

firing pin impression and extractor marks concluded they were fired by the same firearm. Information was gleaned from witnesses who had observed aspects of the events which took place in Yarmouth Road, or who had sighted the Ford Falcon station-wagon after the shooting.

The enquiries being made led to the identification of Terence Thompson as the driver of the Ford Falcon station-wagon in Yarmouth Road, and as the person who had probably shot Constable McKibbin. Interviews and other evidence then gradually affirmed this identification and it became imperative that Thompson be located and interviewed to establish what he knew of the shooting incident, and what was his own involvement in it. To that end exhaustive enquiries were made and wide publicity given of the Police need to speak to Thompson about the shooting of Constable McKibbin.

These enquiries were supplemented by Police following up the numerous reported sightings of Thompson that they received in the course of the next 9 weeks, but the sightings did not yield success by apprehension. The only positive sighting was that at a property in Havelock North on the evening of Sunday 23 June 1996 which was relayed to Police next day. Some of the reported sightings may not have been of Thompson. In light of the nature of the investigation, being a murder enquiry, and the fact that the suspected offender, Thompson, was believed to be in possession of a firearm or firearms many of these sightings warranted the deployment of the Hawkes Bay AOS. By the time that Thompson was eventually located there had been no less than 55 days of AOS deployments together with two other AOS call-outs.

### **Knowledge by Police of Facts About Terence Thompson**

At this juncture it will be useful to recapitulate on the events and developments that have been very briefly touched upon so far in this report in order to convey an understanding of why the Police were anxious to locate and speak to Thompson.

The facts were that Constable McKibbin had been shot dead by the driver of a Ford Falcon station wagon. Police enquiries had established that Terence Thompson had been using that vehicle shortly before the shooting. He had evidently borrowed the Falcon on the previous day, Saturday 20 April 1996, to go and visit an acquaintance in Mangaroa Prison. Thompson failed to return the Falcon to its owner the same day as arranged.

The description of the driver given to the Police by some witnesses resembled that of Thompson, although the descriptions given varied in details. It had been established from

witnesses who knew Thompson that he was skilled in the use of firearms and possessed firearms. He was also known to be a person who had some military experience and bush survival skills. Finally, despite wide publicity that the Police wished to locate him, he had not come forward or got in touch with the Police. The Police also had knowledge of his criminal record which contained crimes, the last four of which were for violence against persons between 1982 and 1989. He had no convictions after that latter date.

### **Positive Identification of Terence Thompson**

On Monday 24 June 1996 at about 0900 hrs Police received information of a positive sighting and identification of Thompson on the previous evening in the Arataki and Te Mata Road area of Havelock North.

The owner of a property at Arataki who knew Thompson had been approached by him at about 1900 hrs on the previous evening, Sunday 23 June 1996. The owner knew Thompson by sight from visits made by Thompson to a person who lived in an accommodation unit on the property. Prior to 23 June the owner had seen Thompson in March or early April of 1996 when Thompson had made such a visit. On that occasion the owner spoke to Thompson for some time, although Thompson is said by the owner to have done most of the talking on a variety of subjects without, in the owner's opinion, making much sense. Thompson's surname was not known to the witness at that time, merely the first name, Terence. Police realised immediately the identification was reliable.

From this earlier contact with Thompson the owner knew him to favour military camouflage clothing. A few days after the shooting of Constable McKibbin and the broadcasting of the description of the person suspected of the killing the owner went to the Police and identified a photograph of Thompson as the person known as Terence who had been a caller to the property.

On the evening of 23 June 1996 the owner was outside on his property working on a car when at about 1900 hrs a dark figure emerged from one of the buildings nearby. The buildings on the property are about 120 metres in a straight line in a southerly direction from the eastern boundary of the orchard where Thompson was ultimately shot. The owner recognised him as Thompson. There was no indication of how Thompson had arrived, on foot or by means of some form of transport. After offering some advice to the owner on the car problem, Thompson asked if he could wait somewhere until the person he had been used to visiting returned. The owner told Thompson he could wait on the property in a rather dilapidated motel-type unit.

There Thompson took some of his clothing off, seeming to have a lot of outer garments on, mostly black in appearance. He had with him a bag of some sort that seemed to be quite heavy, and a black polythene poncho. Other clothing Thompson was wearing comprised heavy duty black denim pants and a dark blue sweatshirt.

The owner offered Thompson a cup of tea and Thompson had several. He also ate half a loaf of bread, some spaghetti and soup. The owner felt that Thompson was very hungry. The owner became concerned at Thompson's presence and when Thompson asked if he could have a bath the owner told him that the hot water system was faulty. When Thompson hinted he wanted somewhere to sleep the owner told him there was a vacant and unfurnished room which he could use. Thompson was provided with a duvet and some biscuits, chocolate and packets of soup. At 0630 hrs the next morning when the owner got up, he found that Thompson had gone, leaving the duvet and the key to the room he had occupied.

During their earlier conversation Thompson was said by the owner to have talked a lot about religion having apparently embraced a religious ethic and, without elaborating, expressed remorse for things he had done in the past. He appeared to the owner to be quite intelligent and discussed the current political scene, places where he had recently been and episodes from his family and personal past. The owner had been anxious not to alarm Thompson into taking flight. Thompson had given no indication as to his planned movements or whether he intended to return to the property. Not wishing to arouse Thompson to anger, and anxious not to risk danger, the owner had been uncertain what to do whilst Thompson was on the property. The safety of the other occupants of the property concerned the owner.

With Thompson having left, at about 0900 hrs the owner then went to a relative's address in Ritchie Place, Havelock North, and telephoned the Police, as there was no telephone on his property. Thompson's presence overnight on the property was reported to the Police and a comprehensive description of Thompson's appearance and the clothing he was wearing was given. The owner told the Police that he did not see any firearms or ammunition in Thompson's possession. The owner had not contacted the Police earlier in case Thompson had been watching the property to see if he left.

Having received and considered this information the Police felt that it was possible that Thompson might return to the same place again that night, Monday 24 June 1996. Arrangements were accordingly set in train to station Police on and in the vicinity of the

owner's property. The intention was to secure, observe, cordon and control the area to identify, locate and arrest Thompson should he return there.

Accordingly an AOS group was called out at about 1530 hrs and at about 1640 hrs they assembled at Havelock Police Station to be briefed by Detective Inspector Pinkham on the situation and on the most recent developments of the preceding evening and night which had been reported by the owner. The briefing began at 1645 hrs and the group were advised that the Hastings Scene of Crime Officer had examined the room in which Thompson had spent the night but had been unable to confirm that it was Thompson. The planned course of action referred to above was briefed to the assembled officers.

Whilst the briefing was in progress it was interrupted at 1650 hrs when Detective Inspector Pinkham was notified that a further more recent sighting of Thompson had been made by the owner of an orchard at 225 Te Mata Road, Hastings. The focus of the narrative here turns to the actual sighting of Thompson by the orchardist.

### **Further Sighting of Terence Thompson**

The orchardist, who later reported sighting Thompson, was walking his dog through the orchard in a northerly direction and at about 1630 hrs encountered Thompson. The directions I have used, and now use are not navigationally precise, but it is satisfactory for this report to refer mostly to the four cardinal points of the compass. The orchard extended from Te Mata Road at its southern end to Brookvale Road at its northern boundary. Seeing some smoke in a small pine plantation to the north and western edge of the orchard the orchardist went to investigate its source. He came across a person who turned out to be Thompson cooking sheep meat over an open fire.

At first hesitating, the orchardist then got into conversation with Thompson, who seemed pleased to have someone with whom to talk. The orchardist recognised Thompson from photographs he had seen in newspapers and from the camouflage jacket he was wearing. There were no firearms, or other possessions of Thompson's in his view. After five or so minutes the orchardist went on his way with his dog. Fearing for his safety he did not return to his own house at the southern end of the orchard property but instead made his way to a neighbouring property and telephoned the Police to report that he had seen Thompson. He passed a description of Thompson and his clothing to the Police adding that he had seen no firearms. This was the telephone call conveyed to Detective Inspector Pinkham at about 1650 hrs.

## **Police Response and Events leading to the Shooting**

Returning now to the Police and their response to this latest information about the whereabouts of Thompson. On its receipt Detective Inspector Pinkham immediately set aside the planned cordon and surveillance of the property where Thompson had spent the previous night. Instead the AOS group deployed to the vicinity of the orchard close by that property in which Thompson had been seen.

From this point on I will deal in some close detail with the events which unfolded and culminated in the death of Thompson and the immediate aftermath.

The local area within which the orchard was located was cordoned off. Between 1648 hrs and 1700 hrs uniformed Police staff deployed to the Havelock North area for that purpose. Non-AOS Police took up positions at a series of intersections and strategic points in the vicinity of the orchard in an outer cordon to contain Thompson and to prevent members of the general public from entering the area and unwittingly thereby placing themselves at risk.

At about 1653 hrs a group of nine AOS members approached 225 Te Mata Road, to be joined shortly after 1700 hrs by a tenth member. The AOS group were dressed in tactical uniform and, in addition to each member carrying a personal Glock pistol, the members of the group had with them shotguns, AR15 rifles and a .762 rifle. This is standard AOS equipment and is carried on all call-outs. Contact was made with the orchardist on the approach driveway from Te Mata Road. The form that this contact took is of note.

It comprised a person unknown to the AOS members, who later turned out to be the orchardist, being sighted by AOS members at some distance down the entrance drive of the orchard property. A routine AOS procedure was then followed in which the orchardist was asked to raise his hands and move to a position where he could be approached in safety by an AOS member and it could be ascertained that he was unarmed. This procedure having been followed, the orchardist was then spoken to and his information regarding his surprise encounter with Thompson was noted by the AOS members. This confirmed the information already conveyed to the Police by the orchardist at 1646 hrs.

I feel it is of significance to observe that the AOS members followed this procedure in respect of the orchardist. The same procedure was adopted a few minutes later in another part of the orchard when AOS members came across a youth in dark coloured clothing who was carrying what appeared to be a firearm which proved to be an air rifle. More detail of this particular encounter is given later in its context. The same procedure was followed in the

interests of safety until such time as the identity of, first the orchardist, and secondly the youth could be confirmed and the possibility of either of the two being Thompson eliminated.

I have spent some time in the preceding two paragraphs of this report addressing this routine procedural aspect of the AOS operation and their method of ascertaining the identity of persons encountered during the course of an AOS deployment. My reason for doing so is because there has been some public and media comment to suggest that the AOS displayed a *'shoot first and ask questions afterwards'* approach to the capture of Terence Thompson. The careful procedures the AOS applied to identify first the orchardist and, later, the youth go some way to discount this suggestion.

I believe the routine procedural nature of this aspect of the AOS deployment governed the response made when Thompson was eventually located and challenged, and to which I will turn shortly in more detail.

Returning now to the AOS encounter with the orchardist, he enlarged on the telephone report he had made when first reporting Thompson's presence on the orchard. He told the members that the place he had seen Thompson was in a pine plantation on the edge of the orchard well to the rear of the house and divided from the fruit trees by the track along which the orchardist had walked with his dog.

The orchardist had seen some smoke in a gully known as the Karituwhenua Stream, and had gone to investigate. The orchardist saw a person he subsequently realised was Thompson in the pine plantation near the orchard towards its northern boundary. Thompson, whose head was covered by a hood, had his back towards the orchardist, and was crouched over a fire turning over part of a sheep.

The orchardist went to back away but Thompson looked round and saw him, then stood and came over to him. The orchardist described Thompson as a dark skinned Caucasian, about 28 years old, six feet in height with long black hair tied in a pony tail. He was quite tidy in appearance and was wearing a camouflage jacket and black flannel trousers.

The orchardist greeted Thompson and asked what he was doing there. Thompson said he was down on his luck. Thompson said that he thought the orchardist must be psychic and that he had been seen by Thompson earlier in the day, apparently looking straight at Thompson at that time. The orchardist had in fact noticed nothing. Thompson told him that people who are psychic are attracted to each other and that was why the orchardist was looking around.

Thompson invited the orchardist over to the fire for a chat saying he was lonely and wanted someone to talk to. Thompson seemed very keen about this.

At about this point the orchardist, recalling newspaper photographs and Thompson's reported camouflage mode of dress, realised that the person he was with was Thompson. The orchardist continued chatting for about five minutes and moved on. Thompson, who appeared calm and relaxed, bidding him to come down later for a chat. The orchardist, instead of then returning to the house on the property, continued in an easterly direction and Thompson walked back to the fire. The orchardist made his way to a neighbour's house about 400 metres away and used the telephone to report Thompson's presence in the orchard to the Police.

### **Tactical Deployment of AOS**

On arrival at the entrance to the orchard from Te Mata Road, it was decided by the Police to search the orchard by placing three AOS officers at the far, northern end of the orchard at Brookvale Road and have them move through the orchard in line abreast. At the same time other AOS officers would make their way in single file along the orchard track in a south to north direction towards the pine plantation on the western edge of the orchard where Thompson had been seen by the orchardist cooking the sheep. This plan placed the AOS officers in a tightening cordon, one group moving into the orchard from the south and the other group from the north.

AOS members 17, 12 and 83 went by road to the northern end of the orchard and entered the orchard on foot from Brookvale Road. The three members spread out across the width of the orchard at distances of about 25 metres from each other and prepared to move slowly forward southwards through the orchard. No precise instructions regarding the possible apprehension of Thompson were given to the three members at this stage; the AOS had been committed to the search for Thompson for 65 days and the members were well aware of their tasks.

The other group comprised five members and a Police dog, AOS 14, 23, 28, 55 and 97, and they moved into the orchard from the Te Mata Road end. The officer in charge of the group, AOS 46, remained at a point designated the Safe Arrival Point which was located at the Te Mata Road entrance to the orchard property. With him shortly after the commencement of the deployment was AOS 72 who was a recent inductee to the AOS. AOS 72 took no part in the search for and apprehension of Thompson in the orchard, instead remaining with AOS 46 until detailed to guard the scene of the shooting after it had happened.

At a point in the search for Thompson the Safe Arrival Point and AOS 46 and 72's position were relocated into a position on Te Mata road concealed by trees and bush from the view of anyone in the orchard. All of these AOS members carried personal radios and were in constant radio contact with all other AOS members in the orchard and with AOS 46 who remained at the Safe Arrival Point.

Once AOS 46 heard by radio that AOS 17, 12 and 83 had entered the orchard from what was to AOS 46 the far end he used his radio at about 1700 hrs to remind all AOS members of the requirements of Police General Instructions with regard to the use of firearms. These are known as fire orders and are referred to hereafter. The instruction issued by AOS 46 over the radio to the AOS members deployed and about to deploy in the orchard took the following form:

*"The fire orders are General Instructions, F61 applies. You may shoot an offender if you fear death or grievous bodily harm to yourself or another person. To make an arrest, where it's reasonably believed that a delay in effecting that arrest would be a danger to life, and the arrest cannot be effected in a less violent manner."*

This was the form of words used by AOS 46 on any AOS call-out and it was used by the member on a daily basis throughout Operation Yarmouth, or prior to any AOS tasks undertaken. This instruction had been issued to AOS personnel a number of times during the 65 days which had elapsed since the shooting of Constable McKibbin and during which the AOS had deployed on numerous occasions. Because of the immediacy of the information reported to the Police by the orchardist there had been no practical opportunity to issue briefings or to refer to the Police General Instructions before that time.

AOS 46 received an acknowledgment by radio from the leaders of each of the two groups of AOS deployed in the orchard that the fire orders were understood. I am satisfied that the AOS members deployed in this operation were conversant with the requirements of Police General Instruction F61. I refer in more detail to F61 hereafter. AOS 28 confirmed he had received fire orders whilst on the orchard property.

At this point in the incident the two groups of AOS members had entered the orchard on foot from opposite directions. AOS 12, 17 and 83 from the North or Brookvale Road end and AOS 97, 55, 28, 23 and 14 from the Te Mata Road end to the South.

The group which entered from the North end of the orchard at Brookvale Road spread out with about a 25 metre gap between each of them. They moved on foot slowly into the orchard. When the line of three members had moved about 200 metres into the orchard AOS 83, who was on the right hand western side of the three-man extended line, saw a movement to his right, from the direction of the pine plantation in which Thompson had been seen by the orchardist. AOS 83 then saw a person dressed in dark camouflage clothing 200 metres in front of him.

This person looked briefly in the direction of AOS 83 and walked off across the line of advance of the three man AOS group towards AOS 83's left. AOS 83 reported this on his personal radio to the remainder of the AOS group in the orchard. The person he had seen was carrying what appeared to him to be a firearm. Although he could not identify the firearm as such, AOS 83 was sure it was a rifle because of the way and the position in which it was held and the way it was brandished. The manner in which the person was moving put AOS 83 in mind of a soldier on patrol from the walk and the way the firearm was positioned. The firearm was held exactly as does a soldier on patrol, parallel across the body with the barrel slightly low.

AOS 83 continued relaying what he was seeing, and he noted that the person had on a camouflage pack. He was losing sight of the person from time to time as he moved away in an easterly direction.

At this point AOS 83 came across another person in the orchard other than the person he had sighted moving away and whose presence he had reported by radio. This other person, who was also dressed in dark clothing but wearing white sand shoes and carrying what turned out to be an air rifle, proved to be a youth of 15 who was in the orchard for some casual shooting.

On encountering the youth AOS 83 carried out the procedure followed by AOS in such circumstances and to which I have already drawn attention. He told the youth to put down his gun and to advance to AOS 83 with his hands in the air. AOS 83 then satisfied himself as to the identity of the youth. The youth told AOS 83 that a few minutes earlier he had been briefly spoken to by a person he had taken to be a policeman. AOS 83 spoke to the youth and formed the opinion that the person to whom the youth had spoken was probably Thompson. Thompson was the person whose movements he had, moments before, observed and reported.

The youth was sent out of the orchard and the extended line of AOS 12, 17 and 83 continued to move forward into the orchard in a southwesterly direction. AOS 83 again caught sight of the person believed to be Thompson some 200 metres ahead. He saw that Thompson appeared to be making his way to an implement shed and was now moving in a southerly direction amongst the fruit trees and he reported this observation by radio to the other AOS members. AOS 83 then heard over the radio from AOS 28 that he could see a person heading towards the shed.

I will pause here to address the topography of the orchard and the position of the shed mentioned the better to describe the relative movements of Thompson and the AOS members deployed in the area.

The orchard so far considered is bordered on its eastern boundary by another orchard property of similar size. The two orchard properties lie side by side and are divided along their north-south length by an irrigation pipe. This pipe is supported at intervals along its length at a height of about a metre above the ground. It makes a rudimentary fence with chicken wire which had become largely overgrown with grass and weed growth and afforded a degree of concealment, having the appearance of a low, light hedge. The shed towards which Thompson had been seen heading by AOS 83 was on the eastern side of this irrigation pipe in the adjoining property of the orchardist who had first reported Thompson's presence. It must not be overlooked that throughout the orchard operation the Police faced a mobile fugitive never in a static siege situation. A primary obligation of the AOS was to cordon and contain the suspect.

On receiving the radio report that Thompson was heading towards the shed the other group of AOS including the Police dog were at the western edge of the orchard approaching the position where Thompson had been seen cooking the sheep. The group fanned out to their right with the intention of intercepting Thompson. AOS 28 then saw a figure in dark clothing, dark trousers and a coat with a hood up carrying a dark back pack about 150 metres in front and to the right. The sighting was along an avenue between two lines of fruit trees which at this time of the year were largely devoid of foliage. The light was dull but it was not yet dark and AOS 28 had a good view.

AOS 28 reported his sighting and that the suspect was moving towards Te Mata Road. Signalling with his arm to AOS 14 to follow, AOS 28 began moving in the same direction as Thompson towards the shed. AOS 28 moved up against the irrigation pipe fence line which

was about one metre in height and crawled along it, using it as cover. Thompson was moving parallel to it at a distance of about 100 metres from AOS 28.

AOS 28 watched Thompson approach the shed. Thompson was looking from side to side scanning the area ahead of him as if looking for people. It is a reasonable inference that Thompson might have expected an encounter with Police in view of the two recent meetings with men in the area, and one only a matter of minutes before. Thompson was then seen to pause, enter the shed but to emerge 10 or 15 seconds later. AOS 28 reported these movements by radio. When Thompson reached a break in the trees he paused and appeared to AOS 28 to be deciding which way to go. Suddenly Thompson set off in a westerly direction towards the fence behind which AOS 28 was taking cover. Thompson's hands were hooked toward his pack straps as he strode purposefully along. As he came nearer to the fence AOS 28 was unable to move without giving away his position and was unable to speak into his radio without being overheard by Thompson.

At this point AOS 28 was some distance away from other AOS members with AOS 14 nearest some 25 metres behind. The intention was formed to allow Thompson to reach the fence and for a Police dog to be released to apprehend him. The height of the fence obstructed the dog's view and it could not be released until it had a clear view of Thompson as its quarry.

When Thompson reached the fence he paused about 15 metres from AOS 28's position and looked round. This allowed AOS 28 a clear view of his face and enabled him to positively identify Thompson from photographs he had seen a number of times during the searches for Thompson. At this point the dog was released and went over the fence to where Thompson was standing. It seized Thompson and he staggered back under its weight. The dog appeared to have seized Thompson's back pack. There is a difference of opinion amongst AOS members on the point at which the dog seized Thompson, but that is dealt with hereafter.

AOS 28 then rose from his position behind the fence at the same time drawing his Glock pistol. The officer ran towards Thompson, shouting to Thompson to get down and repeating this three or more times. The member's purpose in drawing his pistol was to cover Thompson and to effect his arrest, being also conscious of the risk to his own safety. Other AOS members heard the clearly shouted challenge, to the effect that Police were present and that Thompson was to get down.

Thomson seemed oblivious of the dog and turned to AOS 28 shouting '*Shoot me, shoot me*'. His hands were free and his gaze was fixed on AOS 28. Thompson was then seen to reach under his clothing and AOS 28 saw a protrusion directed at him. AOS 28's immediate reaction was that Thompson had a gun and was about to use it to shoot him. Thompson made no indication that he was going to surrender. He turned to square off to AOS 28 staring at him in a way AOS 28 thought was aiming and that he was about to be shot.

At this AOS 28 feared for his own life and, taking up a two handed standing stance with the pistol, he fired a shot at Thompson. He saw Thompson fall to his left which was the direction that the dog was pulling him. AOS 28 jumped over the pipe fence and took hold of Thompson's right arm, pulling it around behind his back. AOS 83 had by this time come up and assisted in the handcuffing of Thompson. AOS 83 and AOS 97 then searched Thompson for firearms or explosives. After checking Thompson for a pulse and finding none, AOS 97 believed him to be dead.

During the time that AOS 28 was observing and reporting on the movements Thompson made, AOS 97 had moved to position that also allowed him to sight Thompson at a distance of about 150 metres. To watch Thompson properly AOS 97 had lain down and, through the telescopic sight on his rifle, had continued to observe Thompson's movements. When Thompson reached the end of a row of trees and turned towards the pipe-fence, AOS 97 had risen and climbed the fence out of Thompson's view to put himself in the same side of the fence as Thompson. AOS 97 later described seeing Thompson moving at a slow deliberate walk. Thompson's hands were low, both hands holding a firearm. This was in a black polythene bag but the butt was visible to AOS 97. Thompson was seen by AOS 97 to be on the other side of, but walking towards, the irrigation pipe fence.

AOS 97, who had identified the person as Thompson from the pictures he had seen of him, kept Thompson in eye sight as the latter moved towards the pipe fence. AOS 97 knew that AOS 28 and 14 were near the pipe fence in the area towards which Thompson was walking. AOS 97 was unable to report his positive identification of the person as definitely being Thompson to the other AOS members by radio because by this stage AOS 97 was within 15 metres of Thompson and would have risked being overheard speaking by Thompson.

As Thompson, who was still moving towards the pipe fence, came within 10 metres of AOS 97, AOS 28 was on the other side of the fence from Thompson. AOS 97 saw AOS 28 confront Thompson. AOS 97 saw the dog seize Thompson's back pack or left arm, accounts differing on this particular detail and are referred to later. AOS 97 heard AOS 28 shout to

Thompson to get down. He then saw Thompson who was still holding the firearm swing around to face AOS 28. He then heard Thompson shout '*Go on, shoot me shoot me - fucking shoot me*' and at the same time pivoting his hips and lifting his hands holding the rifle in the black polythene bag in the direction of AOS 28.

Subsequent examination of Thompson's clothing and the effects on his person at the time of the fatal shooting revealed that the Police dog had in fact first seized Thompson's pack when it attacked him. Witnesses accounts were varied on this point. However, no injuries consistent with dog bites were discovered on Thompson's body. On careful examination the pack carried by Thompson was found to bear puncture damage possibly consistent with a penetration by the dog's tooth. It also seems most likely from Thompson's relatively unhampered movements that the dog seized part of the pack that Thompson was wearing on his back. The evidence favours the conclusion the dog had seized the pack and not Thompson's arm.

Thompson was seen by AOS 97 who was close to Thompson to be holding the firearm with one hand in the bag and one hand out. The hand in the bag was in the butt and trigger area. AOS 97 had an unobstructed view looking at the scene through the telescopic sight of his rifle. When he saw Thompson moving his firearm into a position threatening AOS 28, AOS 97 began gradually to squeeze the trigger of his rifle to shoot Thompson. Before he could do so AOS 28 shot Thompson with a single shot from a pistol. Thompson was seen by AOS 97 to fall onto his left side and then onto his stomach.

AOS 14 had been in a position approximately 15 metres to the rear of AOS 28 at the pipe fence in the moments prior to the confrontation and shooting of Thompson. AOS 14 saw the dog run towards Thompson and AOS 28 stand up. Thompson was about 25 to 30 metres from AOS 14. AOS 14 heard AOS 28 shout to Thompson and Thompson shout '*Shoot me, go on, shoot me*'. AOS 14, who was armed with a shotgun ran towards Thompson with the gun trained on him. AOS 14 saw Thompson turn, the dog having little effect on him, and formed the impression that Thompson was presenting a firearm. AOS 14 then heard the single shot and at first was not sure who had fired as AOS 28 had his back to AOS 14. As AOS 14 came up to AOS 28 Thompson was seen by him to fall to the ground.

AOS 14 assisted in the restraint of Thompson by training his shotgun on Thompson as he was handcuffed. AOS 14 saw Thompson's firearm lying on the ground next to Thompson's prone figure. It was a cut down single-action bolt operated weapon and magazine. An armourer's report on the condition and serviceability of this firearm appears later in this report

under *Examination of Firearms*. He then reported by radio to AOS 46 that Thompson had been shot and that an ambulance was required. On arrival the prone body of Thompson was checked by an ambulance officer who located the entrance wound of the shot. The ambulance officer established that signs of pulse and respiration were absent and that Thompson was dead. Nevertheless a heart monitor/defibrillator was applied to Thompson's body. No heart activity was detected. All members of the AOS were interviewed on 25 and 26 June 1996 and their accounts of what had occurred recorded.

### **Post Mortem Examination**

A post mortem examination revealed that Thompson's death had resulted from a single gunshot wound to the chest. The bullet had entered the top of the left chest, travelled directly through the third left rib breaking it, passed through and nicked the left lung, through both the left and right ventricles of the heart, through the lower lobe of the right lung and then came to rest in the ninth rib of the lower rib cage on the right side of the back and cracked this rib. The bullet took a downward path and caused very serious internal injuries that would almost certainly have caused instantaneous death.

An ESR analysis of Thompson's blood was made to detect the possible presence of alcohol and cannabis. No trace of these substances was found.

### **Coroner's Finding on Death of Terence Thompson**

Following the death of Terence Thompson an inquest into the death was held at Hastings on 15 October 1996. The Coroner found that the cause of death was a single medium range gunshot to the chest fired by a member of the AOS. I turn now to the Inquests in more detail.

### **Overview of Inquests**

The purpose of this report is to place before the public the result of the joint investigation carried out by the Police and the Police Complaints Authority of the shooting of Terence Thompson on 24 June 1996. On a strict analysis the death of Constable Glenn McKibbin by gunshot wound on 21 April 1996 by itself is not within jurisdiction of the PCA but to draw a veil over that event would not be consistent with revelation of all material facts concerning the Thompson shooting.

Sensibly the two deaths must be examined together so as to ensure all known facts are fairly placed before the public.

Before continuing some general observations must be made first. There is no dispute at all that the death of Terence Thompson was the result of a single shot fired by a Police officer in the course of an AOS turnout in circumstances already described. That event must remain the central focus of this report which is to examine Police conduct to ensure all proper procedures were followed by Police officers as are required in the circumstances revealed by the facts. Furthermore the public must know whether the death of Terence Thompson was within the law.

The report following the investigation has its limitations, and it is well for them to be conceded.

The death of Constable McKibbin, also by a single gunshot in circumstances previously described, and which has such compelling relevance to the ultimate fate of Thompson, does not have the same certainties. It is not for the PCA to examine the known facts and make a pronouncement as to who was responsible for Constable McKibbin's death. So far in this report I have not avoided stating it was from the day of the Constable's death that the evidence available to the Police led them to believe his death was caused by Thompson. The official attitude of the Police is that they have closed the homicide file, and absenting new evidence, will not continue to search for the perpetrator of Constable McKibbin's death.

Notwithstanding the foregoing there have been two separate Inquests into the two deaths. An Inquest is a judicial enquiry presided over by a Coroner to ascertain the cause of a death. The Coroner's Court examines the facts relating to an incident and delivers findings. In New Zealand the Coroner sits alone to hear the evidence, and he, or she, makes the pronouncement. It is of importance to emphasise that the Coroner's Court conducts hearings open to the public, and to which interested parties are able to gain audience and advance evidence, or submissions to assist the Coroner. For the Inquest into the death of Terence Thompson this course was adopted by the family of the deceased, and they were represented by Mr Les Atkins QC in the manner set out hereafter.

### **Inquest into the Death of Constable Glenn Arthur McKibbin**

The McKibbin Inquest took place in the Coroner's Court at Hastings on 24 September 1996 and was presided over by the Hastings Coroner, Mr Peter Dennehy. The Inquest into the death of Terence Thompson took place on 15 October 1996 before the same Coroner.

The dates for Inquests are set by the Coroner after consultation with known interested parties, or their counsel. Enquiries have established that Mr Dennehy and Detective

Inspector Pinkham conferred with counsel for the Thompson family, Mr Atkins QC, over both dates for the Inquests to ensure their suitability. Mr Atkins, for the family, knew of the date for the McKibbin Inquest, but gave no notice to the Coroner whether he would appear at the hearing or not. In fact he did not appear at the McKibbin hearing although it was known that members of Thompson's family were present, but no person recorded a formal appearance. An officer of the Police Complaints Authority was present as an observer only.

The carriage of the proceedings at Inquests is usually the task of Police officers, but on this occasion the Police were represented by the Napier Crown Solicitor, Mr Graham Lang. The evidence of the Police was directed to establish that McKibbin's death was the result of a single shot fired by Terence Thompson. The Inquest took the form of oral evidence given by six witnesses which encompassed all the evidence the Police intended to advance to the Court. Witnesses had their depositions prepared by Detective Inspector Pinkham from their statements and each deposition was then read to the Coroner by the witness and signed. The Crown Solicitor asked a few questions to clarify matters but in essence what was prepared in the depositions was the evidence given. Mr Pinkham gave evidence which was an account of a number of witnesses to the investigation, and he gathered together portions of statements and job sheets taken from witnesses and presented them to the Court as a synopsis. There was no cross-examination of the witnesses.

At the conclusion of the hearing on 24 September 1996 the Coroner made the following finding which I reproduce in its entirety:

*"The purpose of inquests as set down in S.15 of the Coroners Act and there it says that the Court is charged with establishing as far as possible (1) that a person has died; (2) the person's identity; (3) where the person died; and (4) the cause of death. Now I can find conclusions to all those matters from the evidence I have heard today so I accordingly officially state that GLENN ARTHUR MCKIBBIN of Hastings, Police Constable, died on 21 April 1996 as a result of acute haemorrhage resulting from a single bullet entering the right upper abdomen, while exercising lawfully his duties as a Police Officer.*

*Section 15 goes on to say that this Court is also charged with making any recommendations or comments on the avoidance of circumstances similar to those in which the death occurred, or the manner in which any person should act in such circumstances. I prefer to leave my comments on that until the conclusion of the next inquest into the death of a person who is suggested to be a Mr Thompson.*

*However, I do indicate at this stage, and again I refer to S.15 where, if this Court chooses to make any adverse comments about any dead person, it is necessary to indicate that intention and to notify every member of the person's immediate family, who during the adjournment request the Coroner to do so of the proposed comment. Now I give that notice in advance as far as the Thompson inquest is concerned because I do not want to be faced with a seven day adjournment when the next*

*matter is dealt with. I trust the family take that in the way it is meant. So the Thompson inquest will be some time in October. I think there is a date.*

*Today however, this Court has heard all sorts of evidence from eyewitnesses to the shooting from the driver of the motor vehicle that was initially stopped by Constable McKibbin and placed him at the scene, and also evidence as to the character of a Mr Thompson and a reference to the evidence that was produced from the body of Mr Thompson. All this does convince the Court that if a charge had been made against Mr Thompson alleging that he was responsible for the death of the deceased, Constable McKibbin, that he, Thompson, would have been found guilty of such charge.*

*The Police always do a very thorough job in their investigations and this Court is indebted to the Police on this particular occasion. It is hard to say that they have not been more efficient in this case than they would have been in another case, but that is not meant to mean that they are not efficient in all their cases. The evidence has been well presented and covered all the aspects that this Court would have chosen to have commented on if in fact this Court had been in charge of the investigation.*

*Accordingly, this particular inquest is adjourned in the meantime until such time as the Thompson one comes before the Court in October.*

*P DENNEHY  
CORONER"*

### **Inquest into the Death of Terence Kehoma Thompson**

As stated earlier the Thompson Inquest was held at Hastings on 15 October 1996. The Coroner at the conclusion of the McKibbin Inquest had indicated that the Inquest was adjourned to the Thompson Inquest in October. He also gave notice to the family of Thompson of his right to make any adverse comment about any dead person and of the requirement of prior notice.

The Thompson Inquest was conducted on 15 October 1996 and the Police were represented by Mr Graham Lang. The purpose of the Inquest was basically to provide evidence to enable the Coroner to make his findings pursuant to Section 15 of the Coroners Act 1988. The exercise in relation to death, identity, but particularly where the person died and cause of death were not really in any dispute. The Police conceded that Thompson met his death in the orchard as a result of a Police shooting.

Mr Les Atkins QC represented the family at the Thompson Inquest. Most attention was paid by Mr Atkins to the evidence of the pathologist, Dr Lesley Unity Joblin, who was called by the Police to establish the cause of death. Dr Joblin was cross-examined by Mr Atkins as to the position of Thompson at the moment the bullet entered his body. Probably the fairest way of explaining Mr Atkins' questioning, and the proposition he was seeking to establish is to reproduce his letter to the Authority when a request was made of him of the intentions of the Thompson family in regard to further proceedings:

*"10 January 1997*

*Police Complaints Authority  
P O Box 5025  
**WELLINGTON***

**ATTENTION:** *John Roberts*

Dear Sirs

**DEATH OF TERENCE THOMPSON**

*Thank you for your letter of 19 November. Members of the family have concerns arising out of the evidence of the pathologist at the Inquest. You may recall that the pathologist demonstrated the angle of the bullet wound and the angle she believed Thompson would have been at for such a wound to occur. That demonstration, I understand, was caught on video by the television people at the Inquest. The position that she demonstrated appeared consistent with a person preparing to lower himself to the ground, as he had been ordered to do. The other possibility would be that it was consistent with a person preparing to fire a rifle. However, against that must be set the consideration that there would be no need for him to adopt such a position in order to fire. That is particularly so when the magazine and the breach contained no ammunition. [NOTE: It is incorrect to say the magazine contained no ammunition. See Examination of Firearms hereafter, and Finding of Coroner]*

*Members of the family remain deeply disturbed by the circumstances of Mr Thompson's death. It is not, however, intended to initiate any proceedings that could properly delay the completion of the Authority report.*

*Yours faithfully*

*(signed)*

**L H ATKINS"**

After the Inquest and for clarification of this point the Police sought the opinion of the Region 3 forensic adviser - Dr K J Thomson, who is an experienced pathologist, to review the post mortem results and pathology evidence given at the Inquest. The essential question that arose concerned the body position at the moment of shooting in view of the path of the bullet through the body. Dr Thomson reported:

*"Having read the statements of Officers 28, 14 and 97, I do not see a major discrepancy between their statements and the degree of forward inclination which I believe could be consistent with the bullet's track through the body."*

At the conclusion of the Thompson Inquest the Coroner asked if he could be provided with the statements of members of the AOS deployed in the orchard, including that of Officer 28 who had shot Thompson. Mr John Roberts of my office was at the Inquest as an observer and he conveyed this request to me in Wellington and I instructed him to make available to the Coroner any statement or document he requested from the Police and PCA files. Mr Atkins knew of this request and agreed to the documents being given to the Coroner. The Coroner reserved his decision and his findings were published on 29 October 1996.

I now summarise in this part of the report what appears to me to be his principal Findings, but I also attach to this report as Annexure A the decision in its entirety. As far as I am aware no step has been taken to challenge the Coroner's Findings.

The Coroner made the following principal Findings which are precisely as they appeared in the decision:

- *"I officially find that TERENCE KOHEMA THOMPSON with a birth name of DAVID CHARLES RANGIHARURU aged 43 died at Havelock North on the 24th day of June 1996. The cause of death was a single, medium range gun shot wound to the chest fired by a member of the Armed Offenders Squad.*
- *the Armed Offenders Squad members were fully trained and equipped, both mentally and physically, to carry out their duties at that time.*
- *TERENCE THOMPSON was to be approached primarily to obtain his or her cooperation in the investigation of the death of Constable MCKIBBIN and further it was emphasised repeatedly, that only force was to be used against TERENCE THOMPSON if and only if the lives or safety of any members of the Squad were threatened.*
- *The evidence of the Squad members, and there is no evidence to conclusively refute their version of the events, indicates that shortly before THOMPSON was shot, he had both his hands on his right side and on the weapon that he was carrying.*
- *The evidence of the Squad members indicate that a police dog was set upon THOMPSON and that THOMPSON was challenged verbally by one of the Squad members who shouted "Police get down, get down, get down" or words to that effect and in actual fact the evidence is that THOMPSON responded with the words "Shoot me, shoot me, or words to that effect.*
- *There were many theories put forward but the overall evidence indicates to this Court that THOMPSON'S manner was such that he was not, before he was shot, cooperating with the order from the Police Squad member to get down.*
- *The second Squad member could easily have fired a second bullet but he did not do so which is consistent with the Squad's prime purpose being that of immobilisation rather than killing.*
- *The evidence also given suggests that while consideration is given to the intervention of third persons including family to mediate with the offending party this could only be considered after the offending party is confronted and contained and this is a much lesser priority. It is the opinion of this Court that no opportunity was given to the Squad members to even consider such a possibility in this particular case. In simple terms there was a confrontation and TERENCE THOMPSON was given an opportunity to surrender but conducted himself in such a way that Squad members who had him under observation were not given the slightest impression that he was going to cooperate, but in fact were given the impression that he was wanting to do battle. They accordingly acted in the interests of self preservation.*
- *THOMPSON was carrying a weapon in an orchard environment with residences in the vicinity which would have only taken a fraction of a second to load from the magazine with a bullet in the breach. The best reason that can be offered as to why THOMPSON*

*was carrying a weapon was to defend himself. The worst is that he intended to use it again to kill somebody.*

- *This Court is normally not required normally to investigate in great detail into deaths where there is an element of criminality but in this particular case this became necessary because the alleged offender was in fact killed so no criminal proceedings resulted.*
- *In the present case, the Court is of the opinion that on the evidence presented that the Police Squad acted in accordance with accepted normal procedure for such exercises and that if a Squad member had not shot at TERENCE THOMPSON then in all probability TERENCE THOMPSON would have shot at the Squad member.*
- *The Court further finds that TERENCE THOMPSON was responsible for the killing of Constable McKIBBIN and that he was the only person involved in that shooting.”*

### **Was the Shooting of Terence Thompson a Revenge Killing in any Shape or Form?**

A Police officer whilst on duty was shot dead in a City suburban street on a Sunday morning by an unidentified gunman who fled. Within the day the Police had assembled enough information to strongly suggest to them that the gunman was Terence Thompson who thereafter became the prime suspect in a widely publicised manhunt that lasted 65 days.

It is appropriate here that I mention the frequent communication Detective Inspector Pinkham and other officers had with members of the Thompson family after the shooting of Constable McKibbin and after the shooting of Terence Thompson.

One of the phases of the inquiry known as Operation Yarmouth was to search addresses of family members. Detectives on the investigative team went to various addresses throughout the Hawkes Bay. A number of detectives spoke with family members in an effort to locate Terence Thompson and also to ascertain as much information about him and his background as may assist the inquiry.

In Porongahau there was an intensive search for Terence Thompson because this was one area where he lived. Detectives liaised with the family and many conversations took place between them. Mr Pinkham following a hui went to Porongahau and held a meeting with members of the Porongahau community. It was explained why Police needed to locate Thompson.

When a sighting was thought to have been made of Thompson in the Gwavas Forest an uncle of Thompson’s was called in to act in an “*appealing role*” to Thompson should he be located.

On Wednesday 26 June 1996 Mr Pinkham again went to Porongahau to have another meeting with the Thompson family to explain to the family the reasons why it was suspected that Thompson was the offender for the shooting of Constable McKibbin. At that meeting the five family members present were represented by the family solicitor.

Thompson was found in an orchard and after a confrontation that has been described in detail was shot by a Police officer. He died almost instantaneously.

Any independent inquiry must not flinch from asking the questions: was the inquiry carried out by the PCA always bearing in mind the question, was there any credible evidence whatsoever that the established shooting of the main suspect by a Police officer exhibited any aspects, or elements of a revenge killing?

I am able to give an assurance that from the commencement of the investigation I kept this issue to the forefront. Furthermore I found no evidence at all to support a conclusion that the shooting had any elements of revenge.

To begin with I have found elsewhere in this report, and confirmed also by the Coroner's findings on the death of Terence Thompson, that the Police followed at all times established procedures for an armed offenders call out and followed the General Instructions governing use of firearms. Those procedures were used for the two prior encounters at the orchard on late afternoon of 24 June 1996 (one actually armed), and for the principal encounter with Thompson. There can be no doubt several oral challenges plus a dog attack would have fully informed Thompson of the presence of armed Police which I think he might reasonably have expected.

Engaged in the actual pursuit of Thompson by then in a quite small area were nine members of the AOS any one of whom could have been the one to confront and challenge Thompson. That it was AOS 28 had a strong element of chance. The very detailed analysis of the movements of each member recorded earlier in the report demonstrates this.

Each of the three principal investigators who have been engaged in the investigation, (Superintendent John Kelly and Detective Inspector Doug Brew and Inspector Russell Gibson) have been asked directly by me: did any of you detect at any stage of the separate enquiries you have carried out any elements, aspects or even suggestions of revenge for the killing of a Police officer. All three emphatically denied such a discovery. It might be said that

is what one would expect them to say, but nevertheless it was never taken for granted by me and the question was put and answered in the negative.

AOS 28 was the Police officer who shot Thompson. He was interviewed by Detective Senior Sergeant Grant Nicholls on two occasions. For the second occasion of 22 July 1996 I travelled to Hastings and was present at the second interview. At the conclusion of the interview I then addressed questions to Officer 28 and reproduce here omitting only the first two questions which are background ones not related to the incident:

### **Interview by the PCA (Sir John Jeffries) of Officer 28 at Hastings on 22 July 1996**

This interview followed the one conducted by DSS Nicholls before which Officer 28 had been given his usual rights which he acknowledged. Officer 28 acknowledged those rights before answering a series of questions for the PCA.

Have you ever taken part in an armed manhunt before this one?

*Yes, (He identified 2 offenders whose names I have deleted)*

Have you ever shot at a person before?

*No*

Have you ever had to confront an armed man before?

*Yes, once. (Details if you wish)*

Have you ever had to discharge a firearm in the course of your professional duties as a Police officer in an actual AOS operation or other operation?

*No*

Do you hold an ordinary firearms licence?

*Yes*

Do you presently own a firearm for recreational use?

*Yes*

Do you use firearms recreationally in any way?

*Yes. .22 to shoot possums at home. I also own and use a shotgun to shoot ducks.*

Did you know of TT before the GMcK. Incident?

*Did not know before*

How much of your time had been devoted to engagement in the TT manhunt?

*Full time from 21 April 1996 as rostered*

Were you a personal friend of GMcK?

*Known Glenn since High School age. No social contact outside work*

Do you personally now recall your overall attitude to TT when you first heard you were being deployed to the orchard after a confirmed sighting of TT?

*Excited. First confirmed sighting. This could be time going to get him.*

At that point what was your central purpose?

*To capture Thompson.*

Do you personally remember the last time receiving your fire orders?

*Yes*

Where and in what circumstances were they given to you?

*Running down driveway towards informant's property and received through radio communication to ear.*

When you were deployed in the orchard did you expect to be the one who would confront TT?

*No I didn't. Thought of myself as one of a group.*

When you first confronted TT what was your purpose?

*To arrest him with least possible fuss.*

Do you now personally remember the approximate wording of your challenge?

*90% sure put Police in first. I kept repeating "Get down Get down" as I was running in.*

When you first made the challenge do you now recall what you expected?

*I expected with dog on him and the yelling he would surrender. At this point my firearm drawn.*

How many times did you repeat your challenge?

*It could be as many as 4/5 times. The time it took me to run about 8 metres closing gap.*

What lapse of time passed, as far as you can recall, between sighting and the challenge after you engaged his attention?

*Matter of seconds.*

Do you accept that the approximate wording of the challenge by you was - Get down you cunt, Get down - or words very close to those?

*Not recall obscenity but don't deny that word may have been used.*

Are you able to give an approximate lapse of time between the first confrontation or sighting and the challenge itself?

*Not longer than 6-7 minutes.*

Before the challenge or at the time of first sighting of TT did you recognise positively that he was carrying a firearm ?

*No.*

What would you have done if in fact he had dropped his firearm?

*Still challenged same way. Had information he had two firearms.*

Did you personally see TT make any movement with the firearm or what you suspected was a firearm?

Yes

What was the movement with the firearm or suspected firearm?

*Hands coming underneath the kit (clothing) and then what appeared to be something coming up in my direction - protruding underneath the clothing.*

Was that after the challenge?

Yes

What is your personal recall as to the actions or words of TT after the confrontation and challenge by you?

*"Shoot me Shoot me" 2 or 3 times spoken by him.*

Did he exhibit any other reaction that you can now recall that made an impression on you?

*Biggest thing that made an impression on me is that his eyes never left my eyes. What was surprising to me was that he was oblivious of dog and kept his eyes locked onto me.*

D/I Pinkham has stated publicly that a sense of deflation and disappointment was experienced by those engaged in the hunt for TT that he was not arrested and charged over the shooting of GMcK. Do you personally share those views?

*Yes I do.*

As far as you knew did they generally reflect the views of the other officers with whom you had worked on the case?

Yes

Did you ever hear of, partake in, or become involved in any discussion on revenge in any shape or form against TT for the alleged killing of GMcK?

*Not at all*

Do you know of any view expressed formally, or informally, in Police circles that suggested a revenge killing of TT?

*No I don't.*

Is there any point you want to make to me about the questions?

*No"*

The record of the interview was recorded by me during questioning and returned some days later to a lawyer, acting on behalf of Officer 28, to have his client confirm the accuracy of the record and sign it, which he did in the presence of his lawyer, and it was returned to me.

### **Use of Firearms by Police and Fire Orders**

The statutory authority entitling Police to use force is to be found in ss 39, 40, 48 and 62 of the Crimes Act 1961. Other than statutory provisions and the Manual of Best Practice, the controlling document of most importance at the scene of an armed offenders incident, is General Instruction F61 which I now set out:

#### **"F61 Use of Firearms by Police**

- (1) *Members must always be aware of their personal responsibilities in the use of firearms. Under Section 62 of the Crimes Act 1961 a member is criminally liable for excess force. An overriding requirement in law is that minimum force must be applied to effect the purpose. Police should not use a firearm unless it can be done without endangering other persons.*
- (2) *Police members shall not use a firearm except in the following circumstances:*
- (a) *To defend themselves or others (Section 48 Crimes Act 1961) if they fear death or grievous bodily harm to themselves or others, and they cannot reasonably protect themselves, or others, in a less violent manner.*
- (b) *To ARREST an offender (Section 39 Crimes Act 1961) if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting his arrest;  
AND  
the arrest cannot be reasonably effected in a less violent manner;  
AND  
the arrest cannot be delayed without danger to other persons.*
- (c) *To PREVENT THE ESCAPE of an offender (Section 40 of the Crimes Act 1961) if it is believed 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  
he takes to flight to avoid arrest, OR he escapes after his arrest;  
AND  
such flight or escape cannot reasonably be prevented in a less violent manner.*
- (3) *In any case an offender is not to be shot:*
- (a) *Until he has first been called upon to surrender, unless in the circumstances it is impracticable and unsafe to do so.  
AND*
- (b) *It is clear that he cannot be disarmed or arrested without first being shot.  
AND*
- (c) *In the circumstances further delay in apprehending him would be dangerous or impracticable.”*

Para. 1 is a general direction and speaks for itself. Para. 2 forbids use of a firearm except in named circumstances and they are there set out and do not require extensive analysis. Para 2(b) relates most closely to this actual situation on the knowledge possessed by the AOS which has been detailed earlier and it would appear all three prerequisites were present. The AOS had been in a state of constant alert for 65 days. Para. 3 is of central importance and opens with a prohibition against shooting unless three conditions exist. Paragraphs 1 and 2 are more general in direction but para.3 seems to take instructions to the point that was revealed by the circumstances of this case when Thompson was confronted in the orchard. The three conditions must be present at about the time a shooting is imminent. It is usually no longer speculative, or simply a possibility for the future, but a present likelihood. In my view the facts revealed by the investigation and outlined earlier in the report establish the

three conditions were fulfilled. Para 3(a) required a call to surrender which as a matter of fact I am satisfied took place. The facts of this case are special and unique. Thompson had been on the run for 65 days as the prime suspect in the killing of Constable McKibbin. The publicity surrounding the manhunt was widespread, and there had been several suspected sightings in the area which had themselves been publicised. Thompson at the moment he was shot was in possession of a firearm with live ammunition in the magazine. A warrant had been issued out of the Hastings District Court for the arrest of Thompson on a charge of possession of cannabis. Para 3(b) & (c) are matters of judgment by the deployed AOS on the ground in the light of the circumstances they faced and the information they had.

The General Instruction F61 does set out the general written directions and thereafter whether to shoot or not to shoot is a matter of judgment based on the existing circumstances at the moment of confrontation which has been fully explored earlier in this report. The central issue, as I have stressed in previous reports on Police shootings, is timing. It cannot be assumed that it would be better to wait because it is thought that may be the safer way out. It cannot be assumed that time is on the side of the law enforcers and particularly is that applicable to the facts of this case. The AOS at the point of the final minutes of confrontation did not know the nature of the firearm they suspected Thompson carried. It could have been a military style semi-automatic weapon capable of causing extensive damage and injury, if not death. The actual weapon is defined under the Arms Act as a pistol. See Examination of Firearms.

References have been made in this report to Fire Orders. General Instruction F62 states:

*“Every sworn member of Police who is issued with a firearm in the course of duty shall ensure that he or she is thoroughly conversant with the provisions of GI F61.”*

GI F61(2) and (3) are generally referred to as ‘Fire Orders’.

Implementation of this General Instruction is carried out by constantly reminding AOS members of the provisions of GI F61 and on this occasion AOS 46 (leader) gave the last Fire Orders only minutes before Thompson was shot. At interview all officers claimed knowledge of GI F61 and the Fire Orders given as just described

### **Examination of Firearms by Police Armourer**

The Police Armourer, Mr R. Ngamoki, was called to Hastings on 27 June 1996 to assist with Operation Orchard.

Mr Ngamoki’s main task was to examine the two firearms involved in the shootings, namely the cut down M1 carbine in Thompson’s possession when shot and the Glock pistol used by Officer 28 and with which Thompson was shot. Examination of the M1 carbine when recovered from Thompson revealed no round in the firing chamber but 11 rounds in the magazine in the carbine. Thompson would have been required to work the bolt of the rifle backwards, raising a cartridge into the firing chamber and to close the action to render the weapon ready to fire. Mr Ngamoki also examined the magazine attached to the M1 carbine and another fully loaded magazine found among Thompson’s possessions together with a further 20 rounds. The series of numbers 200 to 399 (up to 253 were used) were for exhibits from the body of Terence Thompson. The series of numbers given to exhibits found in the orchard were from 001 to 199. The following are extracts from Mr Ngamoki’s report:

*“The following morning I conducted a preliminary inspection of a cut down M1 carbine in an attempt to locate a serial number, the original being obliterated with a centre punch, however without success.*

*At 1130 hrs I received a Glock pistol, serial number ALP 459 (Exh 024) being the pistol used by the Police in Operation Orchard.*

*I set up an area to test fire the pistol in order to measure the ejection pattern of the shell cases.*

*I used the magazine and ammunition (Exh 025) used in Operation Orchard.*

*The magazine contained fourteen rounds and I used five in the tests.*

*I also handed one round to Insp. Gibson.*

*The shell cases landed between .7 and 1.35 metres from the firer at approximately 90 degrees to the direction of fire.*

*I retained the pistol at the conclusion of the test for further examination in Upper Hutt.*

*Later that day at 1225 hrs I received the following exhibits;*

*005 1 x M1 carbine*

*006 1 x loaded M1 magazine*

*023 1 x fired shell case*

*025 1 x loaded Glock magazine*

*201 2 x live rounds (originally this exhibit included 3 x .223 rounds but these were given to Operation Yarmouth)*

*212 1 x plastic bag containing two more bags containing ammunition*

*252 1 x projectile*

*Further examinations of all exhibits were conducted at the Armoury.*

*Exh 024*

*The Glock pistol is a Model 17 semiautomatic and is standard issue with the Police Armed Offenders Squad.*

*The calibre is 9mm.*

*The magazine has a capacity of seventeen rounds.*

*Tests on the trigger mechanism proved that the pistol operates normally.*

*When test fired the pistol operated normally.*

*Exh 005*

*The M1 Carbine was manufactured by the Inland Division of General Motors.*

*The Carbine was designed as a light military weapon to fit between the service pistol and the full power service rifle in effectiveness, and to be used by officers, ncos and rear echelon troops of the US armed forces during WWII.*

*The calibre is .30 Carbine.*

*Compared to other rifle calibres, .30 Carbine is toward the bottom end of the scale in power and effectiveness.*

*The serial number had been obscured by using a centre punch, however I was able to recover most of the six digit number.*

*The first four digits are 1792 and the last two figures are most probably 92, 82, or 32.*

*The butt has been sawn off.*

*The carbine weighs 2.061 kg and is 672mm long.*

*Externally the carbine is in poor condition.*

*Basic cleaning and maintenance has been neglected.*

*The barrel is 455mm long and has four groove right twist rifling.*

*The barrel contained moisture, rust, soil and other debris and had not been properly cleaned.*

*The trigger mechanism functions normally.*

*I emptied the loaded magazine (Exh 006) found in the carbine.*

*The magazine is capable of holding fifteen rounds.*

*It contained eleven rounds, all with soft point projectiles.*

*I reloaded the magazine with the rounds in the same order.*

*I test fired the carbine using the magazine and the first five rounds.*

*It functioned normally.*

*This means that the carbine was fully operational on the night of Mr Thompson's death.*

*In its original form the carbine would have been a military style semiautomatic under the Arms Amendment Act 1992.*

*In its present form the carbine is a pistol under the Arms Act.*

*Exh 201*

*Originally this consisted of five rounds but three (.223 calibre) were given to Operation Yarmouth.*

*The remaining two rounds are .30 Carbine rounds, both with soft point projectiles.*

*Exh 212*

*The bag contained a further two bags.*

*One contained eighteen rounds of .30 Carbine rounds, all of which are soft points.*

*The second bag contained a fully loaded M1 carbine magazine, that is the magazine contained fifteen rounds and again all were soft points.*

*Exh 023*

*The cartridge case is 9mm calibre, the same calibre as the Glock pistol.*

*Exh 252*

*The projectile is 9mm calibre and has deformed as intended when fired into flesh."*

Nothing else directly material to this Report need be mentioned.

**Hawkes Bay AOS Training**

Superintendent John Kelly asked that the operation of the Hawkes Bay AOS be examined with particular reference to Operation Orchard by Inspector A G Edwards, Officer in Charge of the Auckland AOS, and an acknowledged expert in AOS procedure and deployment. The examination was thorough and concluded with a report to Superintendent Kelly dated 25 July 1996.

Inspector Edwards carefully examined the procedure followed by the AOS after the death of Constable McKibbin and how it proceeded with its task of locating and apprehending the main suspect, Terence Thompson. Mr Edwards' report reiterated much of what is already contained in this report. He then concentrated on the conduct of the AOS after the sighting of Thompson and report of it to the AOS on 24 June 1996. Mr Edwards' opinion was that the patrolling and searching tactics used in the orchard were in accordance with standard operating procedures and he commended the Squad on this aspect of the operation. He said he was satisfied the Immediate Action (IA) drills performed on sighting of the suspect were correct and properly completed by AOS 28 and other Squad members. He concluded by saying:

*“Having critically examined the action taken and procedures followed I conclude this operation was conducted in accordance with the standard operating procedures outlined in the chapter Armed Offenders Squads in the Manual of Best Practice, volume 1, Major Operations. At all times the basic principles were complied with ....”*

The report of Inspector Edwards ranged wider than Operations Yarmouth and Orchard for he took the opportunity to examine the command of the Squad and all training procedures. As would be expected Mr Edwards found and drew attention to some areas that require tightening, but I am satisfied those matters can be dealt with by Police administration and did not affect Operation Orchard. His recommendations will be implemented.

Superintendent Kelly examined the personal file of AOS 28. The member is a well performing officer with nothing adverse whatsoever on his personal file.

### **Commissioner's Decision**

As is customary the full results of the two separate enquiries carried out by senior Police officers as detailed earlier in this Report are sent to Police National Headquarters in Wellington for review and the Commissioner's decision is forwarded to the Police Complaints Authority.

The review of the investigations was carried out by Assistant Commissioner Ian N. Holyoake (Crime and Operations). Mr Holyoake carried out an extensive examination of the material. He had available the report of the operation of the Hawkes Bay AOS by Inspector A G Edwards, Officer in Charge of the Auckland AOS and an acknowledged expert in AOS procedure and deployment. Mr Edwards expressed the view that the Hawkes Bay AOS were to be commended for their dedication to duty during the stressful and dangerous operation. Mr Edwards made several recommendations for improved training and preparation and they will be implemented along with other administrative issues.

Mr Holyoake fully supported the actions of the AOS at the confrontation with Thompson and in particular that of Officer 28. At the same time Mr Holyoake recorded the Commissioner's regrets that deadly force had to be used against an offender but considered in these circumstances there was no alternative.

### **Independent Counsel's Opinion**

The homicide investigation was carried out by Detective Inspector Doug Brew. His finding was that no criminal liability attached to Officer 28 arising out of the shooting of Thompson.

The Commissioner's decision was to accept those views.

Notwithstanding I followed my usual practice of requesting an independent opinion from experienced counsel in criminal law. That opinion was provided by Mr R B Squire QC and he also found there was no criminal liability incurred arising out of the shooting by Officer 28, or any other member of the AOS deployed in the orchard on 24 June 1996.

I think it proper, because of the unusual circumstances surrounding this case, to reproduce in this report the essential reasoning of Mr Squire in reaching the opinion he did.

*"I have already indicated that in terms of information available to them Officer 28 and the other members of the Armed Offenders Squad who set about locating Thompson in the Orchard with the objective of arresting him and taking him into custody were*

*reasonably entitled to expect he would react with violence. Since he was known to be in possession of firearms, a fact confirmed and communicated to squad members after Thompson had been initially located, and was known to be responsible for the earlier shooting of the Police Officer in Flaxmere, it could reasonably be contemplated that violence would involve the use of a firearm. The fact he was seen carrying the firearm in a fashion consistent with what was described as the "low ready" position would naturally and reasonably have confirmed the belief of squad members that Thompson would use it if confronted. At the critical point when the shooting occurred there were a sequence of events of significance. Firstly, Thompson did not respond to the shouted commands to get down or respond in any compliant way to the identification of those present as Police officers. Secondly, it seems clear that the attentions of the Police dog which had been "roused" on to him proved no distraction at all. Instead he reacted with a challenge to shoot him accompanied by movement of his body and hands in a fashion I am satisfied any objective observer in the position of Officer 28 with his knowledge of Thompson and his background, would reasonably regard as preparation for the use of the firearm he carried. Officer 28's perceptions in that respect are supported and confirmed by Officer 97 who it seems clear would have shot Thompson himself had Officer 28 not done so first. The fact that Thompson's firearm was not found to have been cocked for firing and that he would have been required to have worked the bolt to get a round into the firing chamber before he could have shot at Officer 28 is not, in my view, a matter of significance. In the circumstances that is not something that could have been known to Officer 28 nor could he reasonably have been expected to have anticipated it. On the clear evidence available Officer 28 was reasonably entitled in my view to form the conclusion that Thompson was about to shoot him and respond accordingly.*

*The response of the Officer was to use his firearm which, as already noted, he had removed from his holster and had ready for use. In the circumstances and under the threat of being shot himself, as I have concluded, the Officer could not be expected to deliberate over the niceties of alternative courses open to him or shooting with the objective of avoiding fatal consequences. Officer 28 said that he shot at Thompson's "centre" which suggests only a perceived optimum target and in the circumstances I do not think that is a judgment he can be criticised for. Like Dr Thomson I do not regard the trajectory of the bullet through Thompson's body as a matter of significance. It seems to me to be largely consistent with the fashion in which Thompson was described as carrying the firearm and how he brought it into position to fire when the fatal shot was discharged. There is nothing about it which in my view would suggest the critical events occurred other than as described in the evidence outlined.*

*In summary for the reasons given, I believe Officer 28 was justified in using his firearm to shoot Thompson as he did. He was entitled to use such force as was necessary to overcome Thompson's obvious resistance to apprehension and Officer 28 could not reasonably, in the circumstances, have effected the arrest without taking the action he did. In my view he is accordingly protected from criminal responsibility by the provisions of Section 39 Crimes Act 1961.*

*The second aspect of criminal liability on the part of Officer 28 turns on his entitlement to act in self-defence. Under Section 48 Crimes Act 1961 in the situation in which the confrontation with Thompson occurred, Officer 28 was entitled to use in his defence such force as in the circumstances as he perceived them it was reasonable to use. If the shooting of Thompson was justified in those terms Officer 28 is protected from criminal responsibility. The evidence seems indisputable that from his subjective viewpoint Officer 28 shot at Thompson because he believed he was about to be shot at himself. Although it is strictly unnecessary for the purposes*

*of Section 48 that belief on the part of Officer 28 seems, in terms of the other evidence available, to have been well founded and objectively justified. It follows that in shooting at Thompson Officer 28 was clearly acting in his own defence or protection in the face of an immediate threat of serious injury or death. The issue of whether or not his response was reasonable is to be assessed objectively but by reference to Officer 28's own perception of the circumstances and the threat of injury or death he faced. For the various reasons I have canvassed earlier in relation to the use of force under Section 39 of the Act I believe Officer 28's use of his firearm in order to protect himself from being shot was on any objective view of it justified and reasonable. The threat of being shot himself as he confronted Thompson was clearly real and the perception of it justified. The immediate nature of the threat associated with the observed preparation Thompson was making to use his firearm, as I commented earlier, left no time for consideration of the niceties of other options available or using the firearm in a fashion which minimised the possibility of fatal consequences. Officer 28 was faced in my view with a situation in which he believed, and reasonably so, that if he did not utilise the only means then available to him to disable Thompson he would be shot at himself. In those circumstances I believe the use of his firearm was on any objective assessment of it reasonable and he is protected from criminal liability for the shooting by Section 48.*

*I have considered also the position of the other members of the Armed Offenders Squad. No questions of criminal liability on the part of any of them in my view arise."*

## **Conclusion**

The Police and PCA investigations covered a murder and a homicide that were closely linked, for the reasons set out in this report. This generated a very large volume of material which has had to be reduced to a manageable size for the publication of a report. In making decisions relevancy and public interest have been the main controlling factors, but some personal material has been omitted to maintain privacy for the suspect who was shot, and for his family.

In analysing the fatal shooting by Police of Thompson it is necessary for me to establish that the Police officers concerned acted legally, and within the rules and directions laid down by General Instructions and the Manual of Best Practice in Major Operations.

On the question of the legality of the operation I have followed my usual practice of obtaining an independent legal opinion from a lawyer experienced in criminal law and that has been supplied by Mr R B Squire QC. It is Mr Squire's opinion that the shooting of Thompson was within the law, and the action of AOS 28 does not attract criminal liability. I accept his opinion.

On the Police conduct of Operation Orchard I am satisfied General Instructions were properly followed and in particular GI F61 and F62 as I have outlined in the body of the report. Also that safe operating procedures were followed at all times in the final stages at the orchard. The evidence has been critically reviewed by me and of those final stages I am satisfied

Thompson was properly challenged, and that he knew by whom he was being challenged, and to avoid action against himself he had to obey the instructions and surrender. He was at the time an armed fugitive, and chose not to obey the instructions. His actions conveyed to members of the AOS, who had him under direct observation, that he was about to respond violently at the same time he was being verbally defiant. AOS 28 was armed with an automatic weapon but discharged only one shot which indicates restraint. I repeat here as I have done on several prior occasions in previous reports, it is not for the Police Complaints Authority to comment on the final decision to take fatal force action.

The review of the Hawkes Bay AOS was done by Inspector Edwards and his recommendations for improved training procedures and record keeping should be implemented by Police administration.

Finally, I record any loss of life in circumstances such as these is a tragedy, as the shooting of Terence Thompson was, but the Police acted within the law and standard operating procedure.

**Sir John Jeffries**  
**POLICE COMPLAINTS AUTHORITY**  
**7 April 1997**