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# ***Coordinated Review***

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*of the Management of the  
LynnMall Supermarket Attacker*

## Acknowledgments

We begin by acknowledging the survivors of the terror attack at the LynnMall Countdown supermarket on 3 September 2021.

This report is unavoidably focused on the person responsible for committing the attack, but we must also recognise the devastating and profound impact of that attack on the survivors, witnesses, whānau and emergency responders. The events of 3 September 2021 changed lives and caused long-lasting physical and psychological damage. We hope that all affected receive the support and care they need to recover and find peace.

We also wish to thank all the people who gave us their time and helped us to understand the events that preceded the attack.

We intend that our review will help people to understand what happened and why, and what may be done to improve New Zealand's ability to manage and decrease the risk of violent extremism.

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# Contents

<b>Glossary of terms</b> .....	<b>5</b>
<b>Summary of our findings</b> .....	<b>7</b>
<b>Introduction</b> .....	<b>13</b>
Who are the oversight bodies and what do they do?.....	13
What were the terms of reference for the Coordinated Review?.....	14
How did we conduct our enquiries? .....	15
What does this report cover? .....	16
<b>PART 1: The NZSIS, Police, and Corrections</b> .....	<b>17</b>
What is each agency’s role?.....	17
What were New Zealand’s counter-terrorism arrangements from 2016-2021?.....	18
How did the inter-agency arrangements work in this case? .....	20
<b>PART 2: Mr Samsudeen’s background</b> .....	<b>25</b>
Growing up in Sri Lanka.....	25
Obtaining refugee status in New Zealand.....	25
Living in New Zealand .....	27
Differing views on Mr Samsudeen .....	28
<b>PART 3: Overview of events leading up to 3 September 2021</b> .....	<b>29</b>
Timeline of key events .....	29
<b>PART 4: Events leading up to Mr Samsudeen’s first arrest</b> .....	<b>36</b>
What happened when Mr Samsudeen first came to the attention of the NZSIS and Police?.....	36
What happened when the NZSIS and Police discovered that Mr Samsudeen was continuing to post graphic and disturbing material? .....	37
What happened in the months leading up to Mr Samsudeen’s first arrest? .....	40
<b>PART 5: Mr Samsudeen’s first period in custody (May 2017 – June 2018)</b> .....	<b>50</b>
Were the charges Police laid against Mr Samsudeen appropriate and dealt with in a timely way? .....	50
Were Mr Samsudeen’s needs appropriately addressed in prison? .....	58
<b>PART 6: Events relating to Mr Samsudeen’s release, period on bail and second arrest</b> .....	<b>63</b>
Were adequate preparations made for Mr Samsudeen’s release?.....	63
What happened while Mr Samsudeen was on bail from 29 June 2018?.....	65
<b>PART 7: Mr Samsudeen’s second period in custody (August 2018 – July 2021)</b> .....	<b>69</b>
Were the charges Police laid against Mr Samsudeen appropriate and dealt with in a timely way? .....	69
Should Mr Samsudeen’s bail have been opposed when he was sentenced in September 2018?.....	78
Why was Mr Samsudeen kept in custody on remand for so long?.....	80
Were Mr Samsudeen’s needs appropriately addressed in prison? .....	84
Did Corrections respond appropriately to Mr Samsudeen’s behaviour in custody?.....	89
<b>PART 8: Events after Mr Samsudeen was released on bail on 13 July 2021</b> .....	<b>98</b>
Were adequate preparations made for Mr Samsudeen’s release?.....	98

Was the surveillance of Mr Samsudeen after his release on bail appropriate and effective? .....	105
Was Corrections’ monitoring and supervision of Mr Samsudeen after his release adequate? .....	111
What triggered the attacks on 3 September 2021?.....	114
Was the press statement issued by the National Commissioner of Corrections after the attack appropriate?.....	117
<b>PART 9: The way forward .....</b>	<b>119</b>
Our key findings .....	119
Concluding comments.....	127

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## Glossary of terms

<b>Extremism</b>	Religious, political or social belief systems that primarily exist outside of more broadly accepted belief systems, and are often seen as objectionable to large parts of society. Extreme ideologies may seek radical changes in the nature of government, religion or society or to create a community based on their ideology. <sup>1</sup>
<b>Violent extremism</b>	The justification of violence with the aim of changing the nature of government, religion or society. The violence is often targeted against groups seen as threatening violent extremists' success of survival, or undermining their world view. <sup>2</sup>
<b>Terrorism</b>	Under New Zealand legislation, a terrorist act is defined as an ideologically, politically or religiously motivated act – including, but not limited to, those causing death or serious injury – intended to intimidate a population, or to compel the government to do or not do certain things. <sup>3</sup>
<b>Radicalisation</b>	The process by which an individual comes to see violence as a feasible tool to address their grievances. <sup>4</sup> The radicalisation process spans from the early stages of developing radical beliefs to adopting a violent extremist mindset.
<b>Mobilisation to violence</b>	The process by which a radicalised individual moves from extremist intent to preparatory steps to engage in terrorist activity (such as researching potential targets, training, or increased use of concealment behavior). <sup>5</sup>
<b>Disengagement</b>	Reducing a person's commitment to and engagement with violent extremism through behavioural change. A rejection of using violence to express grievance or pursue a goal. Disengagement does not necessarily change the person's beliefs.
<b>Deradicalisation</b>	Changing a person's beliefs or ideology so they reject violent extremism and embrace more mainstream values.
<b>Reintegration</b>	Providing support to people who have been in prison to help them successfully and safely re-join the community.
<b>Intervention</b>	Providing a range of support services to people at risk of engaging in violent extremism to address their wider problems and divert them away from violence.
<b>Threat assessment</b>	Analysis of the threat an individual or a group poses to a specific target, based on their intent (desire, resolve and planning to inflict harm to advance an ideological goal) and capability (access to knowledge and resources).

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<sup>1</sup> The Department of Prime Minister and Cabinet New Zealand's countering terrorism and violent extremism strategy (June 2021), p 7 [www.dpmc.govt.nz](http://www.dpmc.govt.nz).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> The Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (see Part 2: Chapter 5).

<sup>5</sup> Ibid.

**Risk assessment**

Evaluates the likelihood of a particular event occurring alongside the impact this would have.

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## Summary of our findings

1. Following the 3 September 2021 terror attack at the LynnMall Countdown supermarket in Auckland, the Inspector-General of Intelligence and Security, the Independent Police Conduct Authority and the Office of the Inspectorate decided to work together to review how the New Zealand Security Intelligence Service (NZSIS), Police and Corrections dealt with the person responsible for the attack in the years leading up to it.
2. Ahamed Aathil Mohamed Samsudeen committed the attack, and died on 3 September 2021 after he was shot by Police.<sup>6</sup> Mr Samsudeen had been released from prison in July 2021 after being convicted of two charges of possessing objectionable material relating to ISIL,<sup>7</sup> and one charge of failing to assist a Police officer exercising a search power. Because he had already spent almost three years in custody on remand, he received a 12-month sentence of supervision. He was also awaiting a further trial on assault charges. Police and the NZSIS were surveilling him after his release from prison.
3. This report covers:
  - Part 1 – the roles of NZSIS, Police and Corrections.
  - Part 2 – Mr Samsudeen’s background.
  - Part 3 – the timeline and overview of events leading up to 3 September 2021.
  - Part 4 – events leading up to Mr Samsudeen’s first arrest in 2017.
  - Part 5 – Mr Samsudeen’s first period in custody (May 2017 – June 2018).
  - Part 6 – events relating to Mr Samsudeen’s release, period on bail and second arrest.
  - Part 7 – Mr Samsudeen’s second period in custody (August 2018 – July 2021).
  - Part 8 – events after Mr Samsudeen was released on bail on 13 July 2021.
  - Part 9 – our view on the way forward for managing people who have adopted a violent extremist ideology and pose a risk of committing an attack.
4. Although limited by our respective jurisdictions over NZSIS, Police and Corrections, we approached the review from a broad perspective and with a view to identifying lessons to be learned.
5. We spoke to the people who were involved in dealing with Mr Samsudeen, and generally found that the agencies and individuals were doing their best to deal with an extremely difficult situation. Mr Samsudeen was a very challenging person for them to engage with, and we were told that they faced problems they had never before experienced to that degree. The agencies invested significant time

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<sup>6</sup> The Independent Police Conduct Authority has investigated, and published a report on, the fatal Police shooting of Mr Samsudeen separately from this review.

<sup>7</sup> Islamic State of Iraq and the Levant (also sometimes referred to as ISIS or Daesh/Daish/Da'ish/Da'eesh). We use this term throughout the report to avoid inconsistency and confusion.

and effort to work together to manage the risk posed by Mr Samsudeen throughout the years, and considered they had strengthened their relationships with each other in the process.

6. Our comments and findings in this report are not intended to direct criticism at any particular individual or government agency. For the most part, the agencies and individuals did what they were expected to do within the current system and believed they were working well together to explore all options for reducing the risk Mr Samsudeen posed.
7. However, we have identified some areas where we believe the interventions and actions, and at times the inactions, of *“the system”* as a whole fell short and did not produce a good outcome in this case. We think a different way of approaching this issue is required, as discussed further in Part 9 of this report.

#### EVENTS LEADING UP TO MR SAMSUDEEN’S FIRST ARREST

8. Mr Samsudeen entered New Zealand in 2011 on a student visa. He subsequently applied for and was granted refugee status. He first came to the attention of the NZSIS in September 2015, and Police in March 2016. Police visited him in April and May 2016 to warn him against posting objectionable material (images and videos of graphic violence) on Facebook.
9. In October 2016, the NZSIS and Police discovered that Mr Samsudeen was again posting graphic and disturbing material online. The NZSIS began collecting intelligence on Mr Samsudeen, and discovered that he wanted to travel to Syria and join ISIL. Mr Samsudeen travelled to Samoa in November 2016, and the NZSIS assessed that this trip was a test to see whether the authorities would stop him from travelling.
10. In April 2017, Mr Samsudeen’s former flatmate reported that Mr Samsudeen said he wanted to fight for ISIL in Syria, and that if he was prevented from travelling there, he would commit a knife attack in New Zealand. In May 2017 Police discovered that Mr Samsudeen had bought a plane ticket to travel overseas. They arrested Mr Samsudeen at Auckland Airport, as he was preparing to fly overseas, and charged him with knowingly distributing objectionable material.

#### **Findings**

The Police’s visits to Mr Samsudeen in April and May 2016 were an appropriate intervention.

An opportunity for intervention to support Mr Samsudeen and address his needs was missed after Police discovered in October 2016 that he was continuing to post graphic material.

Police were justified in arresting Mr Samsudeen at the airport on 19 May 2017.

Mr Samsudeen’s arrest did not result from an undue focus on the threat of violent extremism by people associated with the Muslim community.

#### MR SAMSUDEEN’S FIRST PERIOD IN CUSTODY

11. Mr Samsudeen was remanded in custody from May 2017 until June 2018. During this time his case was transferred to the High Court, and the material he was charged with distributing was submitted to the Classification Office.



12. No disengagement programmes were available for Mr Samsudeen while he was in prison. His violent extremist beliefs did not change, and he became increasingly aggrieved and alienated.
13. In April 2018, the Classification Office determined that the material his charges were based on was restricted rather than objectionable. The decision was appealed, but confirmed in June 2018. This greatly reduced Mr Samsudeen's likely sentence, and he was released after pleading guilty to charges of knowingly distributing restricted material, fraud, and failing to assist a Police officer in the execution of a search warrant.

### **Findings**

The Police should have approached the Chief Censor as soon as practicable after Mr Samsudeen's arrest to have the material which was the subject of the charges classified.

Because they did not do so, Mr Samsudeen was detained on remand for an unduly lengthy period.

While programmes for those on remand in custody are not generally practicable, Mr Samsudeen was not a typical prisoner. He was recognised as a national security risk and as presenting a high risk of violent extremism. The engagement with him while in a correctional facility should have been more extensive as a result. In particular, there should have been a more concerted effort to offer effective case management and develop a holistic plan to help address his needs. Instead, he was largely treated like any other remand prisoner.

Corrections should have specifically designed disengagement programmes for those individuals presenting a high risk of violent extremism. Such a programme needs to be developed using a multi-agency approach with community involvement.

### **EVENTS RELATING TO MR SAMSUDEEN'S RELEASE, PERIOD ON BAIL AND SECOND ARREST**

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14. While Mr Samsudeen was released on bail awaiting sentencing, Police and the NZSIS were surveilling him because they assessed that it was "*probable*" he would commit an attack.
15. There was no long-term, coordinated plan in place for disengaging Mr Samsudeen from violent extremism. He resumed his consumption of pro-ISIL and violent extremist content, and the NZSIS assessed that it was "*highly likely*" he intended to obtain weapons to commit an attack.
16. Police arrested Mr Samsudeen in August 2018 for possession of an offensive weapon after he bought a hunting knife and arranged for it to be couriered to his bail address.

### **Findings**

The preparations for Mr Samsudeen's release on 29 June 2018 were inadequate, fragmented and ad hoc. While the Police's and NZSIS's focus on surveillance was warranted, it was to the virtual exclusion of disengagement and reintegration. As a result, a further opportunity for early intervention was lost.

Police were justified in arresting Mr Samsudeen on 9 August 2018.

17. Mr Samsudeen was initially charged with knowingly possessing objectionable material, possessing offensive weapons, and failing to assist a Police officer exercising a search power. The material was on this occasion referred promptly to the Classification Office. The Office's decision some nine months later reduced the charges from five to three, and the High Court dismissed two of three possession of an offensive weapon charges. Police and the Crown Solicitor also applied to the High Court in February 2020 to charge Mr Samsudeen with an offence under the Terrorism Suppression Act 2002, but the High Court declined the application.
18. Mr Samsudeen was remanded in custody for almost three years, from August 2018 until July 2021. During this period, he changed lawyers several times, his case was transferred to the High Court, and the COVID-19 pandemic caused delays in the justice system. Police and Mr Samsudeen also discussed the option of him voluntarily leaving New Zealand, but ultimately Mr Samsudeen decided to stay and proceed with his trial.
19. Mr Samsudeen was in segregation for a considerable part of his second period in custody. For about 8 months, he was not subject to the oversight and attention required when a person is segregated for their own protection.
20. As with his first period in custody, there was no long term plan for disengaging Mr Samsudeen from violent extremism and he continued to support ISIL. His behaviour markedly deteriorated towards the end of his time in prison, and in September 2020 he was charged with assaulting two Corrections officers. Mr Samsudeen was placed in the Prisoners of Extreme Risk Unit (PERU) from May 2021 onwards.
21. In May 2021 a High Court jury found Mr Samsudeen guilty of two of the possession of objectionable charges, and the charge of failing to assist a Police officer. Due to the amount of time he had already spent in custody on remand, he received a sentence of 12 months' supervision. He was granted bail for his remaining assault charges and released on 13 July 2021.

### **Findings**

Police were justified in bringing seven of the nine charges that were laid against Mr Samsudeen.

Two of the charges were dismissed due to lack of evidence. In this respect there was a degree of over-charging, but it did not make any difference to the process that was followed or the outcome.

Mr Samsudeen was detained in custody on remand for an unduly lengthy period of time. This was primarily due to delays caused by the classification process and the COVID-19 pandemic lockdown.

During his second period in custody, there was no comprehensive long-term disengagement and rehabilitation plan.

Corrections did not meet their statutory obligations to make adequate provision for Mr Samsudeen's religious, cultural and mental health needs.

Although Mr Samsudeen's segregation for about 17 months is highly likely to have exacerbated his mental health difficulties during this period, the decisions to segregate him were reasonable. When a

prisoner is segregated for their own safety (and they have not requested segregation) then a formal segregation direction should be made. For the period March to December 2019 such a direction should have been, but was not, in place, and would have triggered increased oversight of Mr Samsudeen, including visits from management and health staff and three-monthly reviews of the segregation direction.

#### EVENTS AFTER MR SAMSUDEEN WAS RELEASED ON BAIL IN JULY 2021

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22. Police and the NZSIS again surveilled Mr Samsudeen after his release from prison, assessing that he posed a high threat of committing a violent extremist attack.
23. No comprehensive plan for disengagement and rehabilitation was in place, and the people at Mr Samsudeen's bail address (Masjid e Bilal) were not fully informed about the risks he posed.
24. Police received information that Mr Samsudeen was considering committing an attack on random people in public using a knife or a vehicle.
25. Mr Samsudeen fired his immigration lawyer in August, and subsequently repeatedly called the lawyer and a Police detective and sent them a large volume of unwanted messages. As a result, on 2 September 2021, the day before the attack, he was issued with non-association orders.
26. Although it was a condition of his sentence of supervision, Mr Samsudeen did not attend or engage in a rehabilitative assessment (including a psychological assessment) before he committed the attack on Friday 3 September 2021.
27. After the attack, the National Commissioner of Corrections issued a press release that detailed Mr Samsudeen's behaviour in custody and included personal and medical information.

#### **Findings**

The release and management plan prior to Mr Samsudeen's release was inadequate. Agencies appear to have discounted any chance of disengagement and rehabilitation, and were not focused on developing a systematic and coordinated plan, with a timeframe and measurable goals.

The surveillance operation was appropriate and the reduction in its scope over time was properly considered and proportionate to the perceived risk.

Apart from delayed efforts to arrange a psychological assessment for Mr Samsudeen after his release, there was no subsequent disengagement or rehabilitation plan.

Masjid e Bilal was not given sufficient information to support Mr Samsudeen.

Police and/or Corrections should have requested the NZSIS declassify some material, so that it could be shared more widely, especially with frontline staff from both agencies.

While there were triggering events before the attack took place, we do not think that any agency could have done more at that time to prevent it.

The National Commissioner of Corrections' press release on 7 September 2021 was unhelpful and premature.

28. As we have acknowledged above, it was very difficult for government agencies to deal with Mr Samsudeen and address the risk he posed. He presented particular challenges in respect of his behaviour, his strong aversion to *“the authorities”*, and the lack of a locally based family network to support him.
29. We are satisfied that all avenues for law enforcement were pursued, and there was no basis on which to imprison him further.
30. However, we found some deficiencies in the way Mr Samsudeen was managed. In particular:
  - 1) There were missed opportunities for disengagement to be attempted and support provided when Mr Samsudeen first came to the attention of the authorities and during his first period in custody. This needed to be provided by an agency or agencies that were not NZSIS, Police, or Corrections.
  - 2) There were some gaps in the inter-agency arrangements, as demonstrated by the lack of a long-term plan to address Mr Samsudeen’s needs and begin the process of disengaging him from violent extremist behaviour.
  - 3) In some instances, there was reluctance to share all relevant classified information with frontline staff and the community who were dealing with him on release.
  - 4) Mr Samsudeen spent an unduly long time in custody on remand, and this greatly exacerbated his risk of causing harm.
31. These are significant findings that have implications for the wider government system. It is beyond our remit to suggest what the solutions to these issues may be, but we hope that all relevant agencies will consider them as lessons to be learned from this tragic event.

## Introduction

32. On 3 September 2021, Ahamed Aathil Mohamed Samsudeen committed a terror attack with a knife at the LynnMall Countdown supermarket in Auckland. Police from the Special Tactics Group shot him within minutes of the attack beginning, and he died at the scene. Police and the New Zealand Security Intelligence Service (NZSIS) had been surveilling Mr Samsudeen since his release from prison seven weeks earlier, because they considered him a terrorist threat who wanted to carry out an attack in support of ISIL.<sup>8</sup>
33. Mr Samsudeen seriously injured four women and one man with the knife during the attack. One man sustained a minor wound, and another man suffered a dislocated shoulder while trying to stop Mr Samsudeen from harming others.
34. The attack also caused nationwide shock, concern, and distress and attracted international attention.
35. The NZSIS, Police, and the Department of Corrections were the primary agencies involved in assessing and mitigating the threat Mr Samsudeen posed before the attack. The relevant oversight bodies, namely the Inspector-General of Intelligence and Security, the Independent Police Conduct Authority, and the Office of the Inspectorate, decided to work together to review the actions of these agencies in what we call our 'Coordinated Review'.
36. We took this approach because it was likely the agencies had made joint or inter-dependent decisions in their efforts to manage Mr Samsudeen and counter the terrorist threat. We wanted to ensure we could properly examine the collective decision-making as a whole and coordinate our investigations more efficiently.
37. The Coordinated Review does not preclude any of the oversight bodies from undertaking their own broader enquiries and making independent findings as they see fit. Each retains its own legislative powers and functions.
38. The Independent Police Conduct Authority has accordingly investigated, and published a report on, the fatal Police shooting of Mr Samsudeen separately from this review. The Office of the Inspectorate and the Inspector-General of Intelligence and Security have also undertaken separate inquiries into the actions of the agencies they oversee.

### WHO ARE THE OVERSIGHT BODIES AND WHAT DO THEY DO?

#### **Inspector-General of Intelligence and Security**

39. The Office of the Inspector-General of Intelligence and Security provides independent oversight of the intelligence and security agencies, to ensure those agencies act with propriety and operate lawfully and effectively.<sup>9</sup> The Inspector-General has the power to conduct inquiries into particular activities of the NZSIS.<sup>10</sup>

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<sup>8</sup> Islamic State of Iraq and the Levant (also sometimes referred to as ISIS or Daesh/Daish/Da'ish/Da'eesh).

<sup>9</sup> Intelligence and Security Act 2017, s 156.

<sup>10</sup> Intelligence and Security Act 2017, s 158(1)(d).

### **Independent Police Conduct Authority**

40. The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct. Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

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

### **Office of the Inspectorate**

41. The Office of the Inspectorate was established under the Corrections Act 2004 as a dedicated complaints resolution, investigation and assurance function, operationally independent from the Department of Corrections. The powers and functions of its Inspectors are set out in the Corrections Act 2004, and include but are not limited to:

- examining the treatment and conduct of persons who are or were under control or supervision, including by way of non-compellable interviews;<sup>11</sup> and
- reporting in writing to the chief executive on any matters outlined above, or any other matter relating to any prison, community work centre, probation office, or any other place (including a dwellinghouse) at which a person under control or supervision is required to attend, work, or live, as often as he or she sees fit, and whenever he or she is requested to do so by the chief executive.<sup>12</sup>

### **WHAT WERE THE TERMS OF REFERENCE FOR THE COORDINATED REVIEW?**

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42. On 16 September 2021 we published terms of reference for the review, which stated:

#### **Aims and Scope of the Coordinated Review**

The Coordinated Review will examine whether the decisions and actions taken by Police, Corrections and the NZSIS to assess and mitigate the threat posed by Mr Samsudeen were appropriate and adequate, given their mandates, functions, powers and resources.

The Coordinated Review will examine:

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<sup>11</sup> Corrections Act 2004, section 29(1)(c) and Subpart 6 of Part 2.

<sup>12</sup> Corrections Act 2004, section 29(1)(g).

- a) the collective decisions and actions of the relevant agencies; and
- b) any individual operational actions of the relevant agencies, whether in response to the collective decisions or independently.

The Coordinated Review will be confined to looking at the actions and decisions taken:

- a) during Mr Samsudeen's most recent period in custody, and in particular the period leading up to his release; and
- b) since his release seven weeks before the attack on 3 September 2021.

The Coordinated Review will therefore exclude:

- a) decisions and actions taken before Mr Samsudeen's most recent period in custody;
- b) all decisions relating to refugee status, immigration, and deportation;
- c) the legislative parameters within which the agencies were operating; and
- d) the justification for the Police shooting – the IPCA will report on this separately.

43. We received feedback suggesting that these terms of reference were too narrow. We came to agree with that view, because we needed to look at what had happened before Mr Samsudeen's most recent period in custody (following his arrest in August 2018) to understand how the agencies were dealing with him. We also found it necessary to consider how the various actors interacted with the Court system, due to the large amount of time Mr Samsudeen spent in custody on remand. The legislative parameters and the refugee status/immigration decisions also repeatedly came up in our discussions with the people involved in deciding how to manage Mr Samsudeen.
44. We therefore did not fully restrict our review to the limits set out in the terms of reference. We include information on some matters outside the terms of reference in this report, primarily to provide context for our view on the events leading up to the attack.

#### HOW DID WE CONDUCT OUR ENQUIRIES?

45. We requested information from the agencies and received thousands of pages of documents to review. This included Police files, prison files, planning and risk assessment documents, operation orders, psychologist reports, surveillance and intelligence reports, correspondence, inter-agency meeting records, and ministerial briefings. Some of this involved classified material, which we have drawn on but not directly used in this report unless we received the required permission, and the material was declassified.
46. We also obtained and reviewed court documents, the Immigration and Protection Tribunal decision, Classification Office records, intervention models and community submissions.
47. We viewed CCTV footage of an incident when Mr Samsudeen was in custody in June 2020 that led to him being charged with assaulting two Corrections officers.

48. We interviewed about 85 people, including Police, Corrections staff, NZSIS staff, lawyers, psychologists, independent experts, community leaders and members of Mr Samsudeen's family.
49. Some lawyers we spoke to were concerned about their professional obligations to keep information about Mr Samsudeen, their former client, confidential. We therefore obtained a waiver from Mr Samsudeen's family of any legal professional privilege and rights of confidentiality in respect of Mr Samsudeen. However, we also told people they could ask us to keep certain information they gave us confidential, and we would not include it in our report. We have honoured that undertaking and do not think it has hindered our ability to report our findings.
50. As a general rule, we do not name any of the people we interviewed in this report. We focus on the actions and decisions of the agencies involved, rather than individuals. We also focus on learning the lessons from this case and identifying improvements that can be made to the system, rather than assigning blame to any particular person or people.

#### WHAT DOES THIS REPORT COVER?

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51. In Part 1, we explain the counter-terrorism arrangements the NZSIS, Police and Corrections were working under while they were dealing with Mr Samsudeen.
52. In Part 2, we describe Mr Samsudeen's background.
53. In Part 3, we provide an overview of events leading up to the attack on 3 September 2021.
54. In Parts 4-8, we detail what happened and discuss our findings on how the NZSIS, Police, and Corrections managed Mr Samsudeen.
55. In Part 9, we discuss our view on a way forward to improve the way New Zealand manages people who pose a risk of committing violent acts due to extremism.



# PART 1: The NZSIS, Police, and Corrections

## WHAT IS EACH AGENCY'S ROLE?

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### NZSIS

56. The NZSIS:
- collects, analyses and reports on intelligence relevant to New Zealand's national security, and may pass it on to authorised domestic agencies including Police and Corrections;
  - investigates potential threats to New Zealand's national security, including terrorism and violent extremism; and
  - advises the government and other agencies on national security matters.
57. The Combined Threat Assessment Group (CTAG),<sup>13</sup> hosted by the NZSIS, is responsible for setting the national terrorism threat level as well as the provision of assessments to government regarding threats to New Zealanders and New Zealand interests. CTAG is mandated to primarily focus on terrorism (including violent extremism in advance of any terrorist act), threats from violent protest and from violent crime that occurs offshore.
58. When investigating individuals suspected of planning or preparing to undertake an act of terrorism or violent extremism, the NZSIS may conduct many activities and investigations without the need for an intelligence warrant.<sup>14</sup> However, as investigations require more intrusive means to collect information a warrant to permit activities that would otherwise be unlawful is required.
59. The NZSIS does not have its own powers to arrest and prosecute people. It is mainly left to Police to determine how to act on intelligence the NZSIS provides. In respect of a counter-terrorism threat, a Police investigation can, and often does, occur simultaneously with a separate NZSIS investigation. Police focus on crime prevention, or evidential collection and prosecution, and the NZSIS focus on intelligence collection, investigation and reporting for the protection of national security.
60. The NZSIS is a part of the broadly described National Security System and it engages with agencies involved in the criminal justice system. However, it is important to understand the limitations of the role of the NZSIS. As a security intelligence service, NZSIS functions are focused on intelligence collection, investigation and analysis and protective security services. It is not mandated to provide rehabilitation programs or social services.

### Police

61. New Zealand Police are responsible for maintaining public safety and enforcing the law. This includes:

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<sup>13</sup> CTAG is an independent inter-agency group responsible for assessing terrorism threats to New Zealand. It is comprised of several government agencies, which can include: NZSIS; Government Communications Security Bureau; New Zealand Defence Force; New Zealand Police; Civil Aviation Authority/Aviation Security Service; Department of Corrections; and Ministry of Foreign Affairs and Trade.

<sup>14</sup> With an intelligence warrant the NZSIS can undertake surveillance (visual surveillance or electronic tracking), intercept private communications, search and seize items, and undertake other human intelligence activity to collect intelligence.

- leading the response to any terrorism events;
  - investigating potential terrorist activity; and
  - preventing or disrupting violent extremist and terrorist activity through preventive interaction, warnings, arrest and prosecution as appropriate.
62. Police also have established relationships with communities, which sometimes helps them to detect people at risk of violent extremism and provide early intervention.

### **Corrections**

63. The Department of Corrections works with people in prison and in the community. Its role is to:
- protect the public;
  - provide advice to the courts and the Parole Board to assist in their decision-making;
  - enforce court-imposed sentences and orders;
  - take care of the people in their custody;
  - provide rehabilitation programmes, education, and job training to help reduce re-offending and prepare people for a return to the community.

### WHAT WERE NEW ZEALAND'S COUNTER-TERRORISM ARRANGEMENTS FROM 2016-2021?

64. The Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (the Report of the Royal Commission) provides a detailed overview of New Zealand's counter-terrorism effort in recent years (see Part 2: Chapter 4 and Part 8).<sup>15</sup>
65. Many public sector agencies play a role in countering terrorism and violent extremism, including: the Department of the Prime Minister and Cabinet, the Government Communications Security Bureau, the NZSIS, Police, Corrections, Customs, Immigration, the Department of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Transport, the New Zealand Defence Force, and the Ministry of Defence. The Royal Commission said that, by about 2015:

*"... the subjects of counter-terrorism, intelligence and security had become politically and publicly toxic. There was little political ownership. Public sector leadership was fragmented through a decentralised national security system with the public sector agencies involved in the counter-terrorism effort acting in ways that were only loosely coordinated."*

66. There were also problems with under-resourcing, the quality of risk and threat assessments, and intelligence information not being properly analysed and assessed. Efforts to rebuild the intelligence and security system began in mid-2016, which is about the time Mr Samsudeen was identified as a

<sup>15</sup> <https://christchurchattack.royalcommission.nz/the-report/>

person of interest.<sup>16</sup> The Royal Commission found there had been progress, but more improvements were still needed (see Part 9 of this report for some of the Royal Commission’s recommendations).

67. New Zealand’s national security approach is based on the “4Rs”:

Proactive:

Reduction – identifying and mitigating risks.

Readiness – developing national security capabilities before they are needed.

Reactive:

Response – acting to prevent or disrupt an imminent threat.

Recovery – coordinating efforts to recover from an event.

68. Police are the lead agency for ‘Response’ activities. However, the Royal Commission found there was no consensus on public sector leadership in the areas of ‘Reduction’, ‘Readiness’ and ‘Recovery’. In this report, we mainly focus on the ‘Reduction’ element, in which the NZSIS, Police, and Corrections all had varying parts to play with Mr Samsudeen.

69. We note the Royal Commission’s comments on the Police’s early intervention work, which is of particular relevance to the findings in our report:<sup>17</sup>

*“Those in the National Security Investigations Team were described by New Zealand Police as experienced and capable investigators who had sufficient training in counter-terrorism investigations. Alongside investigation and prosecution, they also worked with individuals to identify what support they required to reduce their risk of engaging in violent extremism. They saw this as often more beneficial than waiting for arrest opportunities. This is consistent with international best practice, which prioritises early intervention by providing at-risk individuals with a range of support services to address their vulnerabilities.*

*International experience has also highlighted challenges with early intervention activities, as they target people who are seen as being at risk of engaging in criminal behaviour but who have not actually engaged in any criminal behaviour. The role of law enforcement agencies in early intervention therefore needs to be carefully managed to ensure that these activities are perceived by those involved as genuine efforts to safeguard and prevent harm, and not as an enforcement tool. New Zealand Police appeared to understand these challenges.*

*Through their early intervention work, New Zealand Police provided at-risk people with the structure and support needed to move them off the path towards violent extremism. They provided individually-designed case management plans or referred people to the Young Person’s Intervention Programme. This programme was a*

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<sup>16</sup> A ‘person of interest’ is someone who has come to the NZSIS’s attention but is not under formal investigation.

<sup>17</sup> Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 - Part 8, Chapter 6, paras 11-14.

*multiagency scheme designed to divert young people (aged 14–20) from violent extremism, which was supported by community groups. New Zealand Police involved in the programme felt that it was a useful early intervention tool, but that it was hampered by a lack of funding and limited involvement by community groups.*

*We were told that, before 15 March 2019, the National Security Investigations Team’s workload was ‘do-able’, but a ‘stretch’. The workload made it difficult at times to devote resources to early intervention and risk Reduction activity. Taking action when specific individuals were identified as a presenting threat took precedence. This was particularly noticeable in resource-intensive operational phases (such as surveillance), during which the National Security Investigations Team had to draw on resources from other parts of New Zealand Police. Pressure of work meant that the National Security Investigations Team did not have the capacity to develop a formal operating model and there was no leads case management system. While their way of operating offered flexibility, such as allowing a focus on early intervention, it also meant that processes, such as assessing risk, prioritising leads and investigations or closing cases, were inconsistent.”*

70. While in this report we have been critical of aspects of the individual case management and early intervention undertaken by the Police National Security Investigations Team, those criticisms ought to be seen in the context of the capacity constraints existing at the time, as highlighted in the final paragraph of the above quote.
71. In 2018, additional funding was approved for Police to build better counter-terrorism investigations capability. The Security and Intelligence Board also agreed to a *High-Level Framework for the Prevention of Violent Extremism*, leading to the development of a multi-agency intervention programme for adults and wider promotion of social inclusion and diversity. After 15 March 2019, Police created a dedicated role for a national prevention coordinator, who leads the newly created intervention programme (discussed further in Part 9 of this report).

#### HOW DID THE INTER-AGENCY ARRANGEMENTS WORK IN THIS CASE?

72. The NZSIS, Police, and Corrections met regularly throughout their dealings with Mr Samsudeen.
73. The Police’s National Security Investigations Team works closely with the NZSIS. During the period relevant to this case, they held regular briefings on investigations into potential threats to New Zealand’s national security, including Mr Samsudeen. After Mr Samsudeen’s release from prison in July 2021, Police and the NZSIS met daily to share intelligence and to plan for mitigating the risk Mr Samsudeen posed to the public.
74. Additionally, from the period leading up to Mr Samsudeen’s arrest in 2017 and through to 2021, Police, NZSIS and Corrections held regular Operational Coordination Group meetings in which they shared information, and discussed and agreed on overall strategies, resourcing, risks and threats for the operation.<sup>18</sup> On some occasions, other agencies were present.<sup>19</sup> These meetings are tactically focused

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<sup>18</sup> For completeness, we have included the Operational Coordination Group in the diagram below on page 22. While the Operational Coordination Group is not part of the National Security System, in this instance it fed into the system, and including it in the diagram helps explain the information flow.

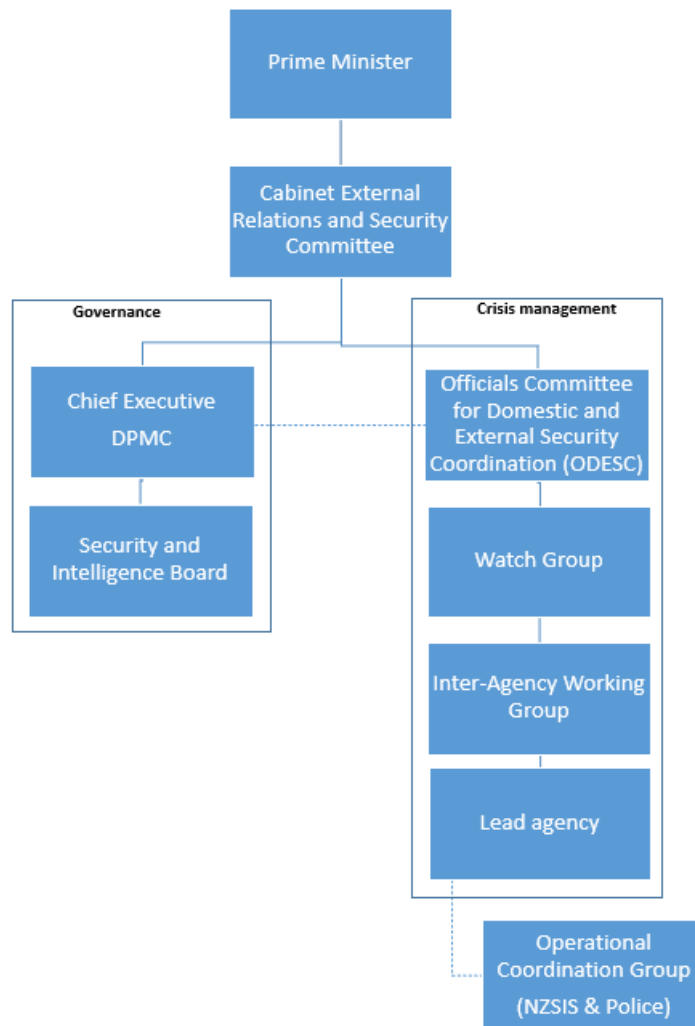
<sup>19</sup> For example, the Department of Prime Minister and Cabinet (DPMC) was invited to attend some meetings.

and attendance is limited to the staff working on the investigation, such as the counter-terrorism investigators and managers, surveillance staff, collection staff and detectives. From 2018 there were at least 28 Operational Coordination Group meetings that discussed Mr Samsudeen. In addition to these meetings, the NZSIS, Police and Corrections occasionally discussed Mr Samsudeen at their regular fortnightly Combined Counter-terrorism Leads and Investigations meetings.

75. It is important to note that inter-agency liaison through agency-to-agency contacts and the formation of Operational Coordination Groups is part of the ordinary engagement for all agencies concerned. That “*business as usual*” engagement does not always, or even often, trigger the broader National Security System, which is led by the Department of the Prime Minister and Cabinet (DPMC).
76. The National Security System is activated if the impact of a national security situation is sufficiently complex, significant or imminent that the attention of the broader system is deemed necessary to tackle it. If the National Security System is activated, designated coordination mechanisms occur. These may include convening a meeting of the Officials Committee for Domestic and External Security (ODESC),<sup>20</sup> a Watch Group, and/or forming an Inter-Agency Working Group. Below we briefly explain the respective roles of these groups and set out the relevant parts of the National Security System in a chart.
77. ODESC is a committee of chief executives who meet to provide strategic direction on matters of national security. They operate as a collective, to provide all-of-government coordination on issues and resources, provide strategic advice on priorities and the mitigation of risks beyond the lead agency’s control, and advise Ministers on national security matters related to their portfolio. ODESC reports to the Cabinet External Relations and Security Committee, who report to the Prime Minister. ODESC is chaired by the Chief Executive of DPMC.
78. The Watch Group sits below ODESC and comprises senior officials who can commit resources and agree to actions on behalf of their agency. A Watch Group is a tool to enable situational clarity, ensure high-level coordination between agencies occurs, and ensure that systems are in place to enable effective management of complex issues. The Watch Group provides coordinated advice to the Chair of the ODESC. The Watch Group is usually chaired by the Deputy Chief Executive, National Security Group, DPMC.
79. Below the Watch Group sits the Inter-Agency Working Group (IAWG) which comprises senior officials from relevant agencies. An IAWG is used to maintain consistent situational awareness, discuss emerging risks, and consider appropriate activities in light of risks. After a meeting of any level, a note is sent from the meeting Chair to the Chair of the next level’s group (i.e. Chair IAWG to Chair Watch Group) to keep them informed.

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<sup>20</sup> For more information see: [www.dPMC.govt.nz/our-programmes/national-security-and-intelligence/new-zealands-national-security-system-during-a-crisis/governance-during-crisis/odesc](http://www.dPMC.govt.nz/our-programmes/national-security-and-intelligence/new-zealands-national-security-system-during-a-crisis/governance-during-crisis/odesc).



80. The diagram above also notes the existence of the Security Intelligence Board,<sup>21</sup> which sits alongside the other groups and focuses on the governance of internal or external security threats and intelligence issues, including: holding the system to account for delivery; remaining alert to current threats and opportunities; and building system capabilities and capacity. The Security Intelligence Board is made up of chief executives from a number of agencies and reports to the Cabinet External Relations and Security Committee.<sup>22</sup> In relation to Mr Samsudeen, the Security Intelligence Board discussed strategic-level counter-terrorism issues, in which he was used as an example of perceived legislative gaps within the system and how the management of him was complex due to these gaps.
81. DPMC activates the National Security System on the instruction of, in priority order, the Chief Executive or the Deputy Chief Executive National Security Group, or the Director National Security Systems. Activation is usually done at the request of and/or in consultation with the lead operational agency (in this case Police).

<sup>21</sup> For more information, including membership, see: [www.dpmc.govt.nz/our-programmes/national-security-and-intelligence-oversight/national-security-governance-structure/odesc-governance-boards](http://www.dpmc.govt.nz/our-programmes/national-security-and-intelligence-oversight/national-security-governance-structure/odesc-governance-boards).

<sup>22</sup> Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019, Volume 1: Part 2, p 89-90.

82. From a relatively early stage in the investigation of Mr Samsudeen's activities, his potential to travel in support of ISIL or to commit a domestic act of terror was identified as a matter of national security concern. This led the agencies to consider involving the broader National Security System.
83. In mid-2017 Police briefed DPMC on the arrest of Mr Samsudeen and the threat he posed (details of which are discussed in Part 4 below). This led to DPMC activating the National Security System and convening a Watch Group. The Watch Group met and recommended that an Inter-Agency Working Group be formed.<sup>23</sup>
84. This Working Group was chaired by a senior official from the National Security Systems Directorate (part of DPMC), and included representatives from the Ministry of Justice, Ministry of Foreign Affairs and Trade, and Immigration New Zealand, as well as Police, Corrections and the NZSIS. This Group first met in December 2017 and identified certain trigger points for the calling of further Watch Group or Working Group meetings (such as Mr Samsudeen's pending release from prison).
85. At a meeting in March 2018 an Operational Coordination Group meeting determined there was a risk of Mr Samsudeen being released earlier than appreciated. DPMC subsequently convened a Watch Group meeting on 20 April 2018.<sup>24</sup>
86. ODESC also met in May 2018 to discuss how to manage the risk Mr Samsudeen and others posed when they were to be released into the community, in particular what this meant for the national terrorism threat level and the resources required to deal with a potentially heightened threat level.
87. The Working Group and/or the Watch Group met thereafter when necessary to ensure consistent situational awareness, communicate recent developments, and consider risks and their implications. For example, the Working Group met to discuss the outcomes and next steps of Mr Samsudeen's immigration issues, including the risks or issues this posed to New Zealand's national security. Attendees were sometimes tasked with finding out specific information related to the management of Mr Samsudeen and reporting back to the Working Group to enable decision making.
88. Overall, the Working Group met on nine occasions and the Watch Group on four occasions between 2018 and 2021. These meetings are primarily strategic (tactical and/or operational conversations being held at the Operational Coordination Group). However, conversations occasionally delved into the tactical or operational details to support high-level discussions, mainly because not all attendees were across the details of the investigation, often due to turnover and inconsistency of attendees, the long duration of the case, and the complexity of the issues.
89. Common themes were discussed in all meetings. To varying levels of detail, these included:
  - engaging with Mr Samsudeen's family (this was dismissed in 2018 and never discussed again);
  - seeking the help and involvement of the Muslim community (this was also raised once in 2018 and never fully explored);

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<sup>23</sup> For more information see: [www.dPMC.govt.nz/our-programmes/national-security-and-intelligence/new-zealands-national-security-system-during-a-crisis/governance-during-crisis/working-groups-and-specilast-groups](http://www.dPMC.govt.nz/our-programmes/national-security-and-intelligence/new-zealands-national-security-system-during-a-crisis/governance-during-crisis/working-groups-and-specilast-groups).

<sup>24</sup> For more information see: [www.dPMC.govt.nz/our-programmes/national-security-and-intelligence/new-zealands-national-security-system-during-a-crisis/governance-during-crisis/watch-groups](http://www.dPMC.govt.nz/our-programmes/national-security-and-intelligence/new-zealands-national-security-system-during-a-crisis/governance-during-crisis/watch-groups).

- updates on the progress of Mr Samsudeen's court and immigration hearings;
- intelligence gathered by the NZSIS and Police;
- risk assessments and risk factors for Mr Samsudeen;
- updates from Corrections on Mr Samsudeen's behaviour in custody;
- New Zealand's international obligations to prevent the travel of, and to share information about, foreign terrorist fighters;
- negotiations with Mr Samsudeen for him to leave New Zealand voluntarily;
- the possibility of detaining Mr Samsudeen for the purpose of deporting him;
- the lack of legislation and policy to prevent terrorist acts, and the possibility of charging Mr Samsudeen under the Terrorism Suppression Act 2002;
- the national security threat level;
- the status and implementation of surveillance warrants;
- planning for if Mr Samsudeen was released on bail (primarily accommodation and surveillance issues);
- the extent of Police surveillance; and
- Mr Samsudeen's behaviour while on bail.



## PART 2: Mr Samsudeen’s background

90. In this part, we describe Mr Samsudeen’s background to provide some context for the issues we discuss later in the report.

### GROWING UP IN SRI LANKA

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91. Mr Samsudeen was born in Kattankudy (current population ~49,000) on 16 April 1989, the youngest of four children in a Tamil Muslim family.
92. Although his father was a principal at a Muslim school, Mr Samsudeen attended a Christian primary school and then a Hindu secondary school in Colombo. Mr Samsudeen’s family said he grew up in a mixed-culture environment and had non-Muslim friends.
93. Sri Lanka had been undergoing a civil war since 1983. On Friday 3 August 1990, over 140 Muslims were killed in attacks on mosques in Kattankudy. We were told that Mr Samsudeen would have grown up with the traumatic legacy of that event, but we do not have any evidence of its impact on him specifically.

### OBTAINING REFUGEE STATUS IN NEW ZEALAND

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94. Mr Samsudeen applied for a student visa on 13 July 2011, which was approved on 1 September 2011. The visa process did not require a national security check. He was 22 years old when he arrived in New Zealand on 21 October 2011. His brother had funded his ticket and the course he was going to take, a diploma in Electronics and Telecommunications. While his flight was on the way to New Zealand, the NZSIS conducted a routine scan of Immigration New Zealand’s Advance Passenger Processing data. This check did not identify any national security concerns because at this stage he was not a known counter-terrorism threat.
95. On 7 November 2011, Mr Samsudeen made a refugee and protection claim. He withdrew from study on 23 November, so his student visa was replaced with a work visa for his asylum claim.
96. A Refugee and Protection Officer interviewed Mr Samsudeen in January 2012, and issued a decision declining his claim for refugee status on 19 April 2012. Immigration New Zealand said the claim was found to be *“lacking in credibility due to a number of inconsistencies in his account and a medical report that was considered unreliable”*.<sup>25</sup>
97. Mr Samsudeen appealed to the Immigration and Protection Tribunal on 27 April 2012. He told the Tribunal that the civil war had directly impacted him and his family, and that he and his father had been kidnapped, detained and tortured in 2011.<sup>26</sup>

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<sup>25</sup>[www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist](http://www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist)

<sup>26</sup> For a full description of Mr Samsudeen’s account, see Immigration and Protection Tribunal New Zealand [2013] NZIPT 800347. [https://forms.justice.govt.nz/search/Documents/IPTV2/RefugeeProtection/ref\\_20131220\\_800347.pdf](https://forms.justice.govt.nz/search/Documents/IPTV2/RefugeeProtection/ref_20131220_800347.pdf)

98. On 20 December 2013, the Tribunal issued a decision granting Mr Samsudeen refugee status. As part of their assessment of his case, the Tribunal considered the political situation in Sri Lanka at the time and a psychologist's report dated 7 June 2012.
99. The psychologist had met with Mr Samsudeen twice, for a total of six hours. She concluded that he was suffering from major depression and post-traumatic stress disorder (PTSD), and found there was strong evidence of him persistently re-experiencing traumatic events. She noted that his psychological state was exacerbated by his isolation in New Zealand, his relative immaturity and the absence of a secure sense of self and self-confidence. She concluded that it would be very difficult to fabricate the degree of disturbance he presented.
100. The psychologist said Mr Samsudeen was vulnerable to coping poorly under pressure, and his mental state *"increase[s] the risk of him presenting as inconsistent, vague or suggestible in the face of repeated and multiple questioning from parties in positions of power and authority"*.
101. Ultimately the Tribunal found that Mr Samsudeen was *"credible"*, and was in danger of being seriously harmed if he returned to Sri Lanka. He was therefore entitled to be recognised as a refugee under section 129 of the Immigration Act 2009, and could not be deported from New Zealand except in very limited circumstances (including posing a danger to the community after being convicted of a *"particularly serious"* crime, and/or being reasonably regarded as a danger to national security).<sup>27</sup>
102. However, the account Mr Samsudeen provided to the Immigration and Protection Tribunal of his experience in Sri Lanka was brought into question years later (in 2017-2018), when he was in prison on remand. The Refugee Status Branch reviewed his refugee status and determined that he had *"manufactured written statements from family members in support of his claim"* and *"embellished a medical report"*.<sup>28</sup> Police also questioned members of Mr Samsudeen's family, and they did not corroborate his claims.<sup>29</sup>
103. While we acknowledge that Mr Samsudeen's account of his time in Sri Lanka was deemed to be unreliable, it does not seem to have been in question that he suffered some trauma from growing up in a conflict zone and that it had some impact on his mental health.
104. Whatever the nature of his mental health difficulties and his upbringing in Sri Lanka, there is no clear evidence that they caused him to become radicalised. Rather, we have considered these aspects of his background as part of the picture of who he was when he arrived in New Zealand and who he later became. His mental health and his (contested) status as a refugee were significant factors that needed to be addressed in the process of trying to disengage him from violent extremist behaviour.
105. The psychologist who assessed Mr Samsudeen in 2012 advised the Tribunal to follow up with him within two weeks and refer him to Refugees as Survivors (RASNZ), a mental health and wellbeing

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<sup>27</sup> See Articles 32.1 and 33 of the 1951 Refugee Convention.

<sup>28</sup> [www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist](http://www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist).

<sup>29</sup> The Refugee Status Branch served Mr Samsudeen with deportation liability notices, and Mr Samsudeen appealed. The Immigration and Protection Tribunal decided the appeal could only be heard after Mr Samsudeen's criminal charges were resolved. The Tribunal was due to hold a hearing on Mr Samsudeen's refugee status in September 2021.

service. However, RASNZ said they had no record of a referral for Mr Samsudeen. Immigration New Zealand advised us that Mr Samsudeen:<sup>30</sup>

*“...would have been able to access social services and the health system, including mental health support, on the same basis as residents but there was nothing provided by [Immigration New Zealand] to link him with those services post recognition of his status as a refugee. At that time it was up to a person’s own initiative, or their rep or ad-hoc community connections to do this.”*

106. Medical records show Mr Samsudeen was prescribed medication for depression by a GP from early December 2013. Mr Samsudeen later said he had also been referred to a psychologist but only attended one or two appointments.

#### LIVING IN NEW ZEALAND

107. From February 2014, Mr Samsudeen lived in a one-bedroom apartment on Queen Street in Auckland, provided by Housing New Zealand. On 2 April 2014, he was granted a permanent residence visa. This process required a Police check and a NZSIS national security check, which did not identify any concerns.
108. Mr Samsudeen worked in a few short-term jobs, but did not find long-term employment. Work and Income New Zealand provided him with a jobseeker benefit, and his family overseas helped with his finances. In 2014/2015 he enrolled at Auckland University of Technology to take papers for an engineering degree, but was recorded as being on leave from November 2015. He did not complete his studies.
109. Throughout this period, Mr Samsudeen attended local mosques and Sri Lankan community functions. He joined in some activities, but was described as a loner who spent a lot of time online. He would not talk about his past.
110. Mr Samsudeen did not have a strong understanding of Islam from his childhood or his schooling. He later said that he started searching online to find out about Islam. We were told it is not unusual for young people with an Islamic background who move away from their family and safety net to want to find out more about their religion. We were also told that people searching terms related to Islam online are easily led to violent extremist material through search algorithms.
111. The Report of the Royal Commission noted that violent extremists had been “*adept at exploiting digital technology*”, and that ISIL had launched a massive online campaign in 2014 to recruit people in Western nations to their cause.<sup>31</sup> ISIL encouraged lone actors to instil widespread public fear in their countries by committing ‘low tech’ attacks on people doing everyday activities, and were skilled in attracting disaffected young males.
112. Due to a lack of evidence, we are unable to say exactly how Mr Samsudeen came to sympathise with and support ISIL. Although he was clearly strongly influenced by their ideology and wanted to share it

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<sup>30</sup> Immigration New Zealand has subsequently created the Navigator programme to link Convention Refugees with services and support post-recognition, with the Red Cross currently being the provider. Convention Refugees, and what support they need for settlement, will also be looked at as part of the Refugee Resettlement Strategy Refresh.

<sup>31</sup> Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019, pp 407, 409.

with others, we found no evidence that he was in direct contact with anyone linked to ISIL or any other violent extremist organisations. However, we know that he searched for keywords associated with ISIL and navigated directly to extremist websites (many of which he bookmarked). We are satisfied that he was actively seeking out and immersing himself in ISIL-related material due to his support of that entity and not because of algorithmic direction.

113. From early 2015, knowledge of ISIL's brutality and atrocities was widespread. Mr Samsudeen's ongoing attraction to and support for the group despite this was a serious cause for concern.

#### DIFFERING VIEWS ON MR SAMSUDEEN

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114. During our review, we received varying accounts of Mr Samsudeen's behaviour and personality.
115. His family told us he had come to New Zealand "*with so many hopes*", and that he was an "*innocent, fresh boy*". This was the first time he had lived on his own and he missed his family terribly. He feared the dark and *jinn* (spirits), and had trouble sleeping alone. He would call his sister to have her on the phone while he fell asleep. He was also adjusting to living without immediate family oversight and testing out the limits of his freedom, including his freedom of speech.
116. Mr Samsudeen's family and others who knew him acknowledged that he could be stubborn and difficult. They also said that, in some contexts, he was funny and easy-going. While all confirmed that Mr Samsudeen became deeply hostile to "*the authorities*" (primarily Police and Corrections staff), some we spoke to said he was comfortable being directed by leaders in the Muslim community.
117. In contrast, many of those who work for "*the authorities*" told us Mr Samsudeen was openly hostile and antagonistic, not only to them but also to people who tried to help him (including members of the Muslim community). They say Mr Samsudeen:
- alienated friends and associates with his extreme views and disdainful, threatening and harassing behaviour;
  - isolated himself by refusing to engage in pro-social activities, including withdrawing from study; and
  - regularly engaged in duplicitous, deceitful, and at times, fraudulent conduct.
118. There is further discussion of Mr Samsudeen's behaviour throughout this report. We acknowledge that different people experienced different sides of his personality, and that his behaviour and attitude towards the authorities (in particular, Police and Corrections staff who dealt with him) made it very difficult for them to meaningfully engage with him.

## PART 3: Overview of events leading up to 3 September 2021

119. In this part, we set out a brief overview of the key events that happened from the time the New Zealand authorities first became aware of Mr Samsudeen up until the attack on 3 September 2021.
120. We discuss these events in more detail and explain our findings in Parts 4-8 of this report.

### TIMELINE OF KEY EVENTS

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#### 2015

**September** The NZSIS discovered Mr Samsudeen was researching how to travel to Turkey. The NZSIS initiated a lead investigation which found no security concerns as he was not travelling to Syria.

#### 2016

**March** Police and the NZSIS were alerted to Mr Samsudeen's Facebook account, which had posted photographs and videos of graphic violence against Muslims on its public page, along with comments supporting violent extremism and ISIL terrorist attacks overseas. Concerns about this account had already been raised with authorities in the United Kingdom and Australia.

**April** Police visited Mr Samsudeen to warn him that his Facebook posts contained objectionable material. He was defensive and argued that he was trying to make people aware of the persecution of Muslims throughout the world.

**May** Police visited Mr Samsudeen again, and he apologised for the posts. He said he had researched New Zealand law and closed the Facebook account. Mr Samsudeen became a person of interest to the NZSIS and they checked his social media accounts to determine if he had stopped posting ISIL-related material.<sup>32</sup>

**October** Police and the NZSIS discovered Mr Samsudeen had reopened his Facebook account and created another one. They found images and videos they considered to be objectionable. Police and the NZSIS decided to continue monitoring his online activity. The NZSIS started collecting intelligence on Mr Samsudeen which suggested he might travel offshore soon.

**November** Mr Samsudeen travelled to Samoa for five days. The NZSIS later assessed that this trip was a test to see whether authorities would stop him from travelling, noting his desire to travel to Syria in support of ISIL. Based on the assessment, the NZSIS formally commenced an investigation into Mr Samsudeen as a subject of investigation.<sup>33</sup>

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<sup>32</sup> A 'person of interest' is someone who has come to the NZSIS's attention but is not under formal investigation.

<sup>33</sup> A 'subject of investigation' is someone who is under formal investigation by the NZSIS.

**December** The NZSIS obtained their first intelligence warrant into Mr Samsudeen. They produced their first Security Intelligence Report on Mr Samsudeen which highlighted his intention to depart New Zealand and likely travel to a conflict zone.

## 2017

**April** Mr Samsudeen's former flatmate reported to Immigration that Mr Samsudeen said he wanted to go to Syria to fight for ISIL, and if prevented from doing so, he would commit a knife attack in New Zealand. Immigration alerted Police. The NZSIS collected intelligence to corroborate the former flatmate's allegation and assessed it was "*highly likely*" Mr Samsudeen would attempt to travel offshore to fight alongside ISIL and gain martyrdom.

**May** First arrest

Police and the NZSIS discovered Mr Samsudeen was about to travel, and believed he would attempt to reach Syria to join ISIL. They arrested him at Auckland Airport for knowingly possessing objectionable material. He pleaded not guilty, and Police successfully opposed bail.

The NZSIS renewed their intelligence warrant into Mr Samsudeen.

Mr Samsudeen was remanded in custody at the Mt Eden Corrections Facility.

**June** Police charged Mr Samsudeen with:

- 18 charges of knowingly distributing objectionable material;
- one charge of possessing an offensive weapon;
- one charge of failing to assist Police with executing a search warrant; and
- two charges of using a document for pecuniary advantage (fraudulent use of credit cards).

**August** Police found some letters on Mr Samsudeen's laptop that seemed to relate to his refugee and protection claim. Immigration New Zealand began reviewing Mr Samsudeen's status because he might be a threat to security and therefore could be deported under section 163 of the Immigration Act 2009.

**October** The High Court determined that the 'objectionable material' should be referred to the Classification Office. Police decided to withdraw nine of the objectionable material charges.

**December** Mr Samsudeen applied for, and was denied, bail.

The Inter-Agency Working Group met.

## 2018

- January** Mr Samsudeen was transferred to Waikeria Prison.
- March** Mr Samsudeen was transferred to Rimutaka Prison. An Operational Coordination Group meeting was convened to discuss current threats. Mr Samsudeen's potential release from custody was of sufficient concern to warrant the convening of the Counter-terrorism Watch Group.
- April** The Classification Office classified all nine of the publications Mr Samsudeen was charged for as restricted, not objectionable. Police appealed this decision.
- A Police review of their investigation recommended discussions with the Crown Prosecutor about whether a charge was available under the Terrorism Suppression Act 2002.
- Police and Mr Samsudeen began discussing the option of him voluntarily leaving New Zealand.
- A Watch Group met to discuss the latest developments in the Samsudeen investigation.
- In preparation for his release, the NZSIS sought a third iteration of the intelligence warrant on Mr Samsudeen.
- May** The Refugee Status Branch notified Mr Samsudeen that they intended to cancel his refugee status due to fraud (relating to fabricated evidence in support of his original refugee and protection claim).
- ODESC met for the first time to discuss Mr Samsudeen due to the threat he posed upon release into the community and the strategic risks he posed to New Zealand's national security system.
- June** Mr Samsudeen was transferred back to the Mt Eden Corrections Facility.
- The Film and Literature Review Board agreed with the Classification Office that the nine publications were restricted, not objectionable. This greatly reduced the potential sentence Mr Samsudeen would face if convicted.
- A Watch Group meeting was held.
- First release on bail
- Mr Samsudeen appeared in the High Court and pleaded guilty to:
- two charges of knowingly distributing restricted material;
  - two charges of using a document for pecuniary advantage; and
  - one charge of failing to assist an officer in the execution of a search warrant.

He was released on bail awaiting sentencing.

Police assessed it was “*probable*” that Mr Samsudeen would commit an attack. They and the NZSIS immediately began surveilling him.

**July** The High Court made an order prohibiting the publication of Mr Samsudeen’s name and identifying details, which was to remain in place until his status as a refugee had been finally determined.<sup>34</sup> The High Court accepted there was “*a real and appreciable possibility that, in the event Mr Samsudeen’s refugee status is revoked and he is deported to Sri Lanka, his safety could be in danger*”.

The Security and Intelligence Board (SIB) met to discuss the counter-terrorism system, and Mr Samsudeen was used as a case study to highlight issues within it.

**August** Second arrest

Police discovered Mr Samsudeen had bought a hunting knife and arranged for it to be delivered to him. They believed he was preparing to commit an attack, and arrested him at his bail address for possession of an offensive weapon.

Police examined Mr Samsudeen’s electronic devices and found evidence of him possessing material they believed would be classified objectionable.

Police charged Mr Samsudeen with:

- three charges of possessing an offensive weapon;
- five charges of knowingly possessing objectionable material; and
- one charge of failing to assist a Police officer exercising a search power.

Police opposed bail. Mr Samsudeen was denied bail and remanded in custody at the Mt Eden Corrections Facility.

Police submitted the ‘objectionable material’ to the Classification Office.

**September** Mr Samsudeen was sentenced to 12 months’ supervision for the five charges he pleaded guilty to following his first arrest.

The sentence of supervision included a requirement that Mr Samsudeen participate in a community-based rehabilitation programme. However, this never happened because Mr Samsudeen was back in custody and the sentence expired.

## 2019

**February** The Refugee Status Branch cancelled Mr Samsudeen’s refugee status because of fraud.

The Inter-Agency Working Group first met to discuss Mr Samsudeen’s immigration issues.

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<sup>34</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20180703-2021-NZHC-1632.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20180703-2021-NZHC-1632.pdf)



- April** The Classification Office found that three of the videos submitted for classification were objectionable and two were unrestricted.
- Immigration New Zealand's Resolution Branch served Mr Samsudeen with two deportation liability notices: the first based on his criminal convictions under section 161 of the Immigration Act 2009; and the second based on his cancelled refugee status under section 162 of the Act.
- Mr Samsudeen appealed to the Immigration and Protection Tribunal against the second deportation order. The Immigration and Protection Tribunal decided that the appeal could only be heard after Mr Samsudeen's criminal charges were resolved, because the outcome of those charges could affect how the Tribunal would assess his case.
- The Inter-Agency Working Group met to discuss the potential deportation of Mr Samsudeen.
- May** The Inter-Agency Working Group met to discuss the implications of the Easter bombings in Sri Lanka, the current threat environment in Sri Lanka and any impacts this may have on the deportation of Mr Samsudeen.
- June** The Inter-Agency Working Group met to discuss the latest immigration developments – Mr Samsudeen had laid a new refugee and protection claim which was rejected, as new claims cannot be considered when an existing appeal is ongoing.
- July** Mr Samsudeen's trial date in the High Court was set for 20 July 2020.
- October** The Inter-Agency Working Group met to discuss laying Terrorism Suppression Act charges, his immigration tribunal hearing and his upcoming court case.
- November** After discussions with Police during the previous year about whether he would voluntarily leave New Zealand, Mr Samsudeen decided not to do so.

## 2020

- February** The Crown Solicitor applied to charge Mr Samsudeen with engaging in a terrorist act under section 6A of the Terrorism Suppression Act 2002.
- Corrections referred Mr Samsudeen to the Persons of Extreme Risk Directorate (PERD). From this point he was managed with support and advice from PERD staff.
- The Inter-Agency Working Group met to discuss any risk or implications of Police laying charges under the Terrorism Suppression Act. The Working Group suggested a Watch Group should be held.
- The Watch Group was convened to *“ensure senior officials had a consistent understanding of the latest developments, and to test the risk/implications surfaced by*

*the Working Group [in relation to the Terrorism Suppression Act charges] to ensure they have been appropriately identified and are being appropriately managed”.*

- March** The Inter-Agency Working Group met to discuss Mr Samsudeen’s reconsideration of voluntarily leaving New Zealand.
- May** Mr Samsudeen’s trial date was adjourned to 17 May 2021, which according to the Office of the Chief Justice was due to the impact of the COVID-19 pandemic.<sup>35</sup>
- June** Mr Samsudeen had two altercations with Corrections officers and allegedly assaulted two of them. Corrections officers restrained him, and during the second altercation he sustained a broken arm. He was taken to hospital for surgery.
- July** Mr Samsudeen was transferred to Auckland Prison.
- The High Court declined the application to charge Mr Samsudeen under the Terrorism Suppression Act.
- September** Police charged Mr Samsudeen with assaulting the two Corrections officers.
- November** The High Court dismissed two of the three charges of possessing an offensive weapon, but sent the third charge to trial.

## 2021

- April** The Inter-Agency Working Group met to discuss the likelihood of Mr Samsudeen’s release into the community after his trial in May 2021 and the risk this posed to the community.
- May** The Watch Group met to consider potential risks and mitigations should Mr Samsudeen be released following his hearing beginning 17 May 2021.
- A High Court jury found Mr Samsudeen guilty of two possession of objectionable material charges, and the charge of failing to assist a Police officer exercising a search power.
- Corrections transferred him to the Prisoners of Extreme Risk Unit (PERU) when his trial began, and he remained there until he was released on bail.
- The NZSIS obtained their fourth intelligence warrant into Mr Samsudeen.
- June** CTAG assessed the New Zealand terrorism threat level remained at medium.
- July** Mr Samsudeen was sentenced to 12 months’ supervision.
- The Inter-Agency Working Group met to discuss the outcome of his sentencing and his upcoming release into the community, including agencies plans to mitigate the risk he posed to the public.

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<sup>35</sup> <https://www.courtsofnz.govt.nz/assets/cases/2021/R-v-S-summary.pdf>

### Second release on bail

Mr Samsudeen was granted bail in respect of the remaining assault charges on 13 July 2021.

Police and the NZSIS immediately began surveilling him.

**September** On 3 September, Mr Samsudeen attacked shoppers at the LynnMall Countdown supermarket. Police shot him and he subsequently died.

121. In the following Parts 4 – 8 of this report, we have split the narrative of events and the discussion of our findings into five different time periods:

- PART 4: Events leading up to Mr Samsudeen's first arrest.
- PART 5: Mr Samsudeen's first period in custody (May 2017 – June 2018).
- PART 6: Events leading up to Mr Samsudeen's second arrest.
- PART 7: Mr Samsudeen's second period in custody (August 2018 – July 2021).
- PART 8: Events after Mr Samsudeen was released on bail on 13 July 2021.

## PART 4: Events leading up to Mr Samsudeen's first arrest

### WHAT HAPPENED WHEN MR SAMSUDEEN FIRST CAME TO THE ATTENTION OF THE NZSIS AND POLICE?

122. In September 2015, intelligence gathered during an unrelated counter-terrorism investigation revealed that Mr Samsudeen had expressed an interest in travelling to Turkey and had researched visa requirements to support his travel. The NZSIS recorded this as a counter-terrorism intelligence lead because foreign fighters were known to use Turkey as a gateway to Syria. After an initial investigation, there was no further reason to be concerned about Mr Samsudeen as there was no indication he was interested in travelling to Syria, and the NZSIS took no further action at that time.
123. On 23 March 2016, the NZSIS and the National Security Investigations Team within Police were alerted to a Facebook account under the name of Aathill Al-Ceyloni Al-Moori. This account had posted photographs and videos of graphic violence against Muslims on its public page, along with comments supporting violent extremism and ISIL terrorist attacks overseas (Paris in November 2015 and Brussels on 22 March 2016). Police discovered that concerns about this account had already been raised with authorities in the United Kingdom and Australia. Police identified Mr Samsudeen as the account user. His account had fewer than 50 'friends'.
124. About this time, the NZSIS received overseas intelligence and two reports from members of the public, via their website, alleging that Mr Samsudeen had made Facebook posts supportive of ISIL and had quoted Al Qa'ida aligned cleric Anwar Al-Awlaki. The NZSIS assessed that Mr Samsudeen held anti-Western beliefs and it was a "*realistic possibility*"<sup>36</sup> he supported ISIL, and passed this assessment on to Police.
125. Police take a preventive and "*educational*" approach when they are alerted to a person whose online behaviour is causing alarm. Their usual practice is to intervene at a low level by visiting the person (and their family or guardian in the case of youths), discussing their concerns, and issuing a warning if necessary. That is what they did with Mr Samsudeen.
126. On 29 April 2016, Police officers visited Mr Samsudeen to warn him that his Facebook posts contained material they considered to be 'objectionable' under the Films, Videos, and Publications Classification Act 1993.<sup>37</sup> Police say Mr Samsudeen admitted he had made the posts and was defensive about his freedom of speech. He said his posts were reacting to other people who were anti-Muslim and who ignored all the damage 'the West' caused in war-torn countries. He also spoke about the impact of British colonialism in Sri Lanka. Police noted that Mr Samsudeen was not physically aggressive, but was "*antagonistic*" and had a "*nonchalant attitude*" towards them.
127. Police visited Mr Samsudeen again on 25 May 2016 to follow up on the warning, and discussed a photograph on his Facebook page showing him posing with an air rifle. This time Mr Samsudeen was apologetic and told them he had closed the Facebook account, did not mean to cause trouble and would respect New Zealand's laws. He said he had problems with depression and had not taken his medication when Police last visited him. He also said he was alone in New Zealand, and had few friends

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<sup>36</sup> 'Realistic possibility' is described as a scenario that has a realistic chance of occurring or being currently accurate, but which does not outweigh all other alternative possibilities.

<sup>37</sup> Section 3 of the Act says: "(1) For the purposes of this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good."

and no work. He explained that the photograph of him with an air rifle was from when he went hunting for the first time with some friends.

128. We were told that, in most cases, this low-level intervention is enough to deter the person from continuing to access and post violent extremist material. There did not appear to be any need for further action by Police at this stage. We find that these early intervention attempts were appropriate.

#### WHAT HAPPENED WHEN THE NZSIS AND POLICE DISCOVERED THAT MR SAMSUDEEN WAS CONTINUING TO POST GRAPHIC AND DISTURBING MATERIAL?

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129. After the second Police visit in May 2016, Mr Samsudeen officially became a person of interest to the NZSIS.<sup>38</sup> The NZSIS continued to monitor whether he had disengaged from posting ISIL-related content.
130. In July 2016, Mr Samsudeen reopened the Facebook account and created another under the name Aathill Ahmed. The NZSIS discovered these accounts on 20 October 2016 and alerted Police. Police found several images and videos they considered to be potentially objectionable.
131. The NZSIS also collected intelligence from Mr Samsudeen's discussions with an acquaintance. During those discussions, Mr Samsudeen provided travel and security advice, and offered insights into his daily life and his future travel intentions. The travel and security advice focused on departing New Zealand without coming to the authorities' attention. Based on this material, the NZSIS considered he might travel offshore to support ISIL.
132. There is no record of any discussions between the NZSIS and the Police about what the response to this information should be. It may well be that informal conversations occurred, but we would have expected a formal record of any agreed plan.
133. Whether or not there were informal conversations, Police at this point decided that they should continue to independently monitor Mr Samsudeen's online activity. Presumably they did so because the NZSIS have no enforcement powers and are constrained in what they can provide as evidence to support criminal proceedings, so Police needed to gather evidence independently.
134. Police say they found it unusual and concerning that Mr Samsudeen had not been deterred by the warnings they gave him in April and May. However, they did not visit him to discuss their concerns again.
135. Given the apparent escalation in Mr Samsudeen's concerning online activity, we think this was a missed opportunity for a more extensive intervention by Police and social service agencies. As far as we can tell, Police did not attempt to obtain a full profile of him at this time to identify what may have been causing his behaviour and what support he needed.
136. Mr Samsudeen had told Police he suffered from depression, had no employment, and was isolated in New Zealand. Police also should have known he was a refugee raised in a war-torn country, with mental health problems (depression and post-traumatic stress disorder) that were diagnosed in the

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<sup>38</sup> A 'person of interest' is someone who comes to the NZSIS's attention in relation to matters of national security concern but are not under formal investigation.

psychologist's report prepared for the Immigration and Protection Tribunal in 2012. These problems were exacerbated by his loneliness.

137. Police told us Mr Samsudeen did not present as being in mental distress or otherwise suffering from mental health conditions when they spoke to him. They do not accept there was a missed opportunity to intervene or provide support after they discovered he had resumed posting in October 2016 because:

- *“A preventative intervention in relation to an already radicalised and likely mobilising violent extremist is much more challenging than one in relation to an individual in the early stages of a radicalisation process, carrying much higher risks and other complications.*
- *Any intervention could have alerted Mr Samsudeen to the fact that his online behaviour at least had been discovered, with uncertain results.*
- *Much of the information in the early stages was classified and the situation was far from certain. This necessitated gathering more information. Possibilities ranged from him taking no further action through to the potential that he might pivot to a domestic attack.*
- *There were no immediately available prevention programmes or resources for someone Mr Samsudeen's age and potential level of mobilisation. There were reasons to believe that Mr Samsudeen was antagonistic towards authorities.*
- *Given Mr Samsudeen's age and the lack of protective factors, there were no immediate avenues of pro-social support and personal relationships that would offer a degree of restraint.*
- *Earlier informal Police engagement had not been effective and his response was to try to conceal his activity.*
- *Successes with mobilised adult extremists had been achieved by Police and the Department of Corrections post-conviction, utilising sentence conditions as a means of managing risk and providing structure to the rehabilitation. Personal Police engagement, the options available to Corrections and invaluable contributions from community leaders and mentors had been utilised in the absence of more formal resources.”*

138. While we accept that the opportunity for Police alone to intervene would have been limited by some of these factors, our point is a broader one. We think that, in order to manage and reduce risk, processes to enable the provision of wrap-around support should be in place. It may be that in most instances Police need to be the catalyst for the mobilisation of that support, but as we make clear later in this report, we do not suggest that responsibility for providing it should rest with them.

139. When Mr Samsudeen was showing warning signs of radicalisation, he needed proactive and positive wraparound support. This would have been more consistent with the 'Prevention First' model of policing. Instead, the warning signs only triggered increased surveillance by Police and the NZSIS. Police

considered him ignoring the warnings they gave him about his posting of 'objectionable' content to be "really worrying", and seem to have believed that he had passed the point of intervention without some enforcement response.

140. We note that the Royal Commission observed that the Police's National Security Investigations Team had a heavy workload before 15 March 2019, which "*made it difficult at times to devote resources to early intervention and risk reduction activity. Taking action when specific individuals were identified as a presenting threat took precedence.*"<sup>39</sup>
141. Mr Samsudeen might well have been resistant to attempts to engage with him in an ongoing and supportive way. However, at that stage Police had little reason to believe that he would refuse to engage. We will never know what might have happened, because it was not attempted. Some people in the Muslim and Sri Lankan communities who knew Mr Samsudeen told us they would have been willing to help if they had been asked. There was nothing to prevent Police attempting to set up support for Mr Samsudeen at the same time as they and the NZSIS were monitoring him to gather intelligence and evidence.
142. We acknowledge there was no existing early-intervention support programme to which Police could refer Mr Samsudeen. Beyond the practice of conducting low-level visits to discuss their concerns and give warnings, the Police's counter-terrorism interventions in 2016-2017 were ad hoc and, unsurprisingly, tended to focus on law enforcement. Police had successfully worked with the community to provide support for and disengage people from violent extremist sympathies in other cases. That had been largely confined to youth under the umbrella of the multi-agency Young Persons' Intervention Programme (YPIP), although as we discuss in more detail in Part 6 (at paragraph 273 below), individualised case management plans had been developed for a very small number of older people. This usually occurred only after they had already charged the person with an offence.
143. Police have told us that they were not aware of Mr Samsudeen's early diagnosis of PTSD. However, we have found reference to the 2012 psychologist's report in a 2017 risk assessment prepared by a psychologist for Police, which shows that his mental health problems were known by some within Police at that time. Even if they had not known a few months earlier, it would have been prudent for Police to obtain all relevant material about his background and circumstances, given the emerging level of concern about his behaviour.
144. Police have also pointed out that the 2012 diagnosis may well have been made on the basis of fraudulent documents presented by Mr Samsudeen in support of his refugee status (see paragraph 102). However, that fraud had not been identified in 2016, and in any event the existence of significant mental health difficulties was not called into question in subsequent reports by psychiatrists (see paragraphs 295 and 594).
145. We are not suggesting that Mr Samsudeen's mental health or social difficulties caused his radicalisation or that, if they had been addressed, the radicalisation would have disappeared. However, as we were advised by the psychologists we spoke to, addressing these issues is the starting point for disengaging someone from extremist behaviour.

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<sup>39</sup> Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 - Part 8, Chapter 6, para 14.

146. In our view, therefore, Police did not sufficiently consider Mr Samsudeen's situation and what was driving his behaviour. They were (rightly) concerned about his online activity and his interest in travel, and determined that he had begun taking steps to join ISIL overseas. However, this should not have prevented them from considering interventions to try to divert him from this behaviour. They did not proactively try to engage other agencies to work with him at this early stage (when they would have had a greater chance of successful disengagement), but quickly moved to monitoring him and gathering evidence until they had sufficient evidence to charge him and detain him in custody.
147. By doing so, they seem to have ignored the long-term implications of concentrating their efforts solely on using surveillance and law enforcement to deal with Mr Samsudeen. Without a holistic plan to help address Mr Samsudeen's problems and reduce his susceptibility to violent extremist ideology, the risk that he posed was highly likely to continue and to escalate, and Police and NZSIS resources were going to be required to monitor him whenever he was not in custody.
148. This should not be seen predominantly as a Police failure. It resulted from the fact that there was, and continues to be, an inadequate understanding of violent extremism and what is required to counteract it, and a consequent absence of standard operating procedures within the inter-agency mechanisms that had been established to deal with this type of case. The system instead relied upon the Police to deal with the problem, and tended to see the problem as one that required a coercive response.
149. Ideally responsibility should not rest primarily with Police to develop and implement the early intervention that was required in this case. While they rightly regard prevention as a major focus of their business, they are not a social service agency and do not necessarily have the capability, expertise or resources to put the right sort of intervention in place. We discuss further in Part 9 what inter-agency arrangements need to be in place. However, the reality is that until now, Police have been taking the lead by default, and they must bear a share of the responsibility for failures to seize the opportunity for proactive interventions when they arose.

#### WHAT HAPPENED IN THE MONTHS LEADING UP TO MR SAMSUDEEN'S FIRST ARREST?

##### **Mr Samsudeen travelled to Samoa**

150. Mr Samsudeen travelled to Samoa for five days in November 2016, and did not take his phone. Nor did he inform his family or associates of his travel. While he was away, there was a large earthquake in Kaikōura. Mr Samsudeen's family became worried when they were unable to contact him for several days, and asked some people from his mosque to help find him. These people reported to Police that he was missing.
151. The New Zealand Customs Service stopped and questioned Mr Samsudeen when he returned on 18 November. Mr Samsudeen said he had been on holiday and, upon further questioning, gave vague answers about his trip. After Customs noted some irregularities with his story, Mr Samsudeen became angry, complained that they were targeting him as a Muslim and made threatening comments towards the Customs officers. He made an aggressive social media post about this interaction, and subsequently made a complaint to Customs about his treatment. He also visited the Auckland Central Police Station to assure them he was not missing.



152. The NZSIS assessed that Mr Samsudeen's travel to Samoa was *"highly likely"*<sup>40</sup> to have been for the purpose of determining the New Zealand government's interest in him before undertaking further travel to Syria in support of ISIL, and in particular, of seeing whether authorities would stop him from travelling. Mr Samsudeen later confirmed this to a third party.
153. Police told us that Mr Samsudeen taking these steps to prepare to join a terrorist group overseas was evidence that he was not just in the early stages of radicalisation or exploring ideas:<sup>41</sup>

*"At this point, both Police and the NZSIS had to be concerned about the possibility that Mr Samsudeen was not just radicalised but was mobilising in a very serious way."*

#### **Police and the NZSIS continued monitoring Mr Samsudeen's online behaviour**

154. Following his trip to Samoa, the NZSIS continued to monitor Mr Samsudeen. Intelligence reports outlined his ongoing desire to leave the country and highlighted his cautiousness when discussing his future travel intentions. For instance, the NZSIS discovered that he told another person that to travel overseas he needed to *"stay clean inside New Zealand... so they can't stop you."* Further, he explained the importance of not doing anything that would break the law, and (in what was likely to be a veiled reference to ISIL members) not to *"add anyone from 'you know where'"* and *"don't be in chat with them."* Mr Samsudeen also mentioned that being in contact with ISIL was against the Terrorism Suppression Act 2002.
155. On 23 November 2016, Mr Samsudeen became a subject of investigation<sup>42</sup> by the NZSIS when they commenced an operation to determine if he intended to *"travel to a country of security concern"* to fight alongside ISIL. The key intelligence objectives of the investigation were to monitor and assess Mr Samsudeen to:
- comprehend his travel to a country of security concern to fight alongside a designated terrorist entity;
  - assess his ideology and identify any features of ongoing security concern;
  - establish his online activities and identify anything of security concern; and
  - determine if he was facilitating others to travel to a country of security concern.
156. On 8 December 2016, the NZSIS obtained their first intelligence warrant for Mr Samsudeen. The NZSIS assessed it was *"likely"*<sup>43</sup> he intended to travel to a conflict zone and it was a *"realistic possibility"* this would be Syria or Iraq. At this stage of the investigation, the NZSIS did not have any intelligence on his intended actions if he reached his destination. However, they assessed it *"likely"* he would undertake activities in support of a terrorist entity. The NZSIS concluded that this support could be fighting

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<sup>40</sup> A scenario that has only a small chance of not occurring or not being currently accurate. Alternative unlikely scenarios will remain, but the highly likely scenario is dominant.

<sup>41</sup> See the glossary of terms at the beginning of this report for explanations of *"radicalisation"* and *"mobilisation to violence"*.

<sup>42</sup> A subject of investigation is someone who is under formal investigation by the NZSIS.

<sup>43</sup> A scenario that is more likely than not to occur or be currently accurate. In such cases, alternative scenarios remain, but do not outweigh the likely scenario.

alongside a designated terrorist entity or facilitating or engaging in terrorist acts (as defined in section 5 of the Terrorism Suppression Act 2002).

157. At the same time the NZSIS released their first Security Intelligence Report on Mr Samsudeen, which discussed his intention to depart New Zealand and likely travel to a conflict zone. This report was distributed to relevant government agencies and international partners.
158. From January to April 2017, intelligence reports covered Mr Samsudeen's online activities, his interest in firearms, tasers and hunting bows, and his ongoing plans to depart New Zealand. Analysis of the collected intelligence led the NZSIS to conclude that he was getting his affairs in order and preparing to depart New Zealand. Notably, the NZSIS's holdings included credible intelligence indicating that Mr Samsudeen intended to pay people smugglers to get him across the Turkish border to Syria.
159. Meanwhile, Police continued monitoring Mr Samsudeen's social media posts throughout 2016 and into 2017. Police noted an *"escalation in his animosity towards Western culture, non-Islamic faith and policing authorities"*, as well as comments advocating martyrdom.
160. The material Mr Samsudeen posted came from various sources, and much of it was 'shared' rather than created by him. Police recorded a list of graphic images and videos they considered objectionable, including links to videos:

*"1. Link uploaded on 28 October 2016 showing multiple victims with graphic injuries as a consequence of extreme violence.*

*2. Link uploaded on 22 November 2016 showing a person with a pickaxe embedded in their head.*

*3. Link uploaded on 23 November 2016 showing multiple victims with graphic injuries including a beheaded child and a female as a consequence of extreme violence.*

*4. Link uploaded on 16 December 2016 showing a male who has been set on fire with another male warming himself close to the body.*

*5. Link uploaded on 22 July 2016 showing a group of soldiers shooting a person at close range who is trapped under masonry.*

*6. Link uploaded on 13 August 2016 showing males self-mutilating by swinging swords over the shoulders onto their backs.*

*7. Link uploaded on 15 October 2016 showing a male who appears recently deceased bleeding from a number of stab wounds to the chest and abdomen.*

*8. Link uploaded on 18 October 2016 showing an infant (being held) receiving a number of knife lacerations to its head.*

*9. Link uploaded on 19 October 2016 showing a male being beaten about the body with a large hammer.*

*10. Link uploaded on 12 November 2016 showing a youth being dragged to a nearby tank, where he is shot and the tank runs over his body.*

11. Link uploaded on 18 December 2016 showing a group of restrained prisoners being beaten about the head and body with batons.

12. Link uploaded on 21 December 2016 showing a group of soldiers severely beating, kicking and stomping on a youth.

13. Link uploaded on 23 April 2017 showing military personnel shooting and killing civilians including a young male who is shot in the head and killed.

14. Link uploaded on 24 April 2017 showing military personnel shooting and killing a lone male.”

161. Some of these videos and images included warnings that they were graphic, but others did not and were automatically shown or played to the viewer. Police did not note the context of these videos and images – namely that they were of violence committed against Muslims around the world. This is relevant because, as discussed further below, the issue of whether this amounted to “objectionable” material arose when Police later laid charges against Mr Samsudeen.
162. In March 2017, about 10 months after Police first visited him, Mr Samsudeen opened a third Facebook account under the name Aathill Al-Qahtani Al-Moori and changed both his existing accounts to operate under that name. Police and the NZSIS discovered he was operating a fourth account under the name ‘For Allah’.
163. Also in March 2017, Mr Samsudeen posted comments in response to an article discussing Jon Stephenson and Nicky Hager’s book *Hit & Run*, about the New Zealand Special Air Service (NZSAS) allegedly killing innocent civilians in Afghanistan. He wrote:

*“One day I will go back to my country and I will find kiwi scums in my country (its very easy to find) and I will show them.. what will happen when you mess with Aathill while I’m in their country. If you’re Tough in your country.. we are Tougher in our country scums.”*

164. Shortly afterwards he posted:

*“I WILL FILL THE ENEMIES WITH STABBING AND CUT OFF THEIR HEADS VIOLENTLY....”<sup>44</sup>*

165. In April 2017, Mr Samsudeen invited several people to join an online group he had created called “Islamic Knowledge”. He posted material supporting violent extremism, and most people who joined the group left immediately. He also re-posted the photograph of him holding an air rifle.

#### **Flatmate volunteered information about Mr Samsudeen**

166. On 27 April 2017, a man who was seeking asylum in New Zealand (Mr A) asked to speak to a Refugee and Protection Officer about Mr Samsudeen. Mr A had arrived in New Zealand in January 2017, and had been staying with Mr Samsudeen for about two months after someone at the Auckland University of Technology masjid introduced them.

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<sup>44</sup> This is from an ISIL co-opted nasheed (hymn), used by ISIL supporters online.

167. Mr A reported that Mr Samsudeen had told him he wanted to go to Syria to fight for ISIL, and if he was prevented from doing so he would *“make trouble in New Zealand”*. He said Mr Samsudeen was planning to travel to Syria through Qatar or Turkey on 23 May 2017. Mr A also said he was going to leave Mr Samsudeen’s apartment as he did not feel safe.
168. Mr A spoke to the Refugee and Protection Officer again on 11 May. He offered more information about Mr Samsudeen, saying he had had contact with Al-Shabaab (a Somali Islamic militant group).<sup>45</sup> Mr A also said he had moved out partly because Mr Samsudeen had realised he was Kurdish, and did not like that they were fighting against ISIL.
169. Police arranged to get a statement from Mr A on 14 May 2017. Mr A told them:
- Mr Samsudeen watched videos *“to make you excited about Islamic State”* and believed all non-Muslims and Muslims who are not part of the Islamic State should be killed.
  - Mr A tried to discuss his attitude towards non-Muslims and what is the *“true Muslim way”*, but he would not listen.
  - Mr Samsudeen’s brother was visiting and *“when his brother leaves he will try to do something”*. Mr Samsudeen told Mr A his brother did not hold the same views as him.
  - When Mr Samsudeen found out Mr A was Kurdish, he began asking how he could get into Syria to join ISIL.
  - Mr Samsudeen had used his recent trip to Samoa to test if he would be stopped from travelling. He said he would travel from Malaysia to Qatar or Turkey. Mr A tried to discourage him, saying he might not be allowed to travel there.
  - Mr Samsudeen said if he was not allowed to travel, he would use a knife to kill someone in the street. He would choose a time when a lot of people were around and try to do as much damage as possible. He told Mr A that if he killed ‘true’ Muslims, they would be martyrs, and if a child died it would be the parents’ fault.
  - Mr Samsudeen kept a big knife under his bed. This scared Mr A, so he spent most of his time away from the apartment.
  - Mr Samsudeen said he had seen a video on the internet and knew how to make a bomb.
  - He had last seen Mr Samsudeen on 12 May 2017 (about two weeks after moving out), and asked about his plans. Mr Samsudeen said he would leave a few days after his brother left, but might wait longer because he was having health problems.
  - Mr Samsudeen had told him it was okay to steal from rich people in Onehunga, and suggested kidnapping and ransoming someone. He also talked about making money by using fake credit cards, or taking out a loan and then running away.

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<sup>45</sup> We have not seen any evidence to support this particular claim.

- Mr Samsudeen had unsuccessfully tried to get help from Al-Shabaab in New Zealand, and told Mr A there were a lot of people in New Zealand who wanted to go to Syria.
  - Mr Samsudeen told him he had not previously been an “active” Muslim and had limited knowledge of Islam. Mr A was not sure why Mr Samsudeen had changed.
170. The transcript of Mr A’s conversation with Police on 14 May 2017 records that Mr A told them he was a Kurdish fighter, and “*did very bad stuff in France*”. He said New Zealand had treated him very well, but he did not intend to come back. Mr A left New Zealand that day, as he had already planned to do before Police asked to speak with him.
171. Police told the NZSIS about Mr A’s evidence. Separately, the NZSIS learned from another person that Mr Samsudeen allegedly planned to conduct a domestic attack and that he had a knife. From the NZSIS records it is unclear if this was passed on to Police.
172. The Police’s acceptance of the information reported by Mr A and their consequent belief in the claim that Mr Samsudeen intended to travel to Syria and fight for ISIL shaped their subsequent actions. It was a major factor in their decision to arrest him a week later and to continually oppose bail. We considered whether Police had sufficiently assessed Mr A’s credibility, and whether they had failed to consider the alternative: that Mr Samsudeen was not going to attempt to travel to Syria to join ISIL.
173. There are some reasons to doubt Mr A’s assertions, including that:
- Mr A was arguably an unreliable witness. He was applying for asylum and had reason to make up a story about Mr Samsudeen to try to gain favour with the New Zealand authorities. He was subject to an Interpol notice and wanted for document fraud. He used several different names, and had damaged his own fingers, possibly deliberately with the intent of ensuring that fingerprints could not be taken so that his true identity could be concealed. He volunteered the information about Mr Samsudeen on the same day Immigration had obtained a useable set of prints, which he would have known was likely to reveal his true identity.
  - It might seem unlikely Mr Samsudeen would have openly discussed his desire to travel to Syria and join ISIL with Mr A, who was a Kurd (although it is unclear when Mr Samsudeen became aware of that). The Kurds were fighting ISIL in Iraq and Syria.
  - Mr Samsudeen would not have been able to travel to Turkey on a Sri Lankan passport without a visa, although we note that it would have been relatively easy for him to obtain a visa online after he left New Zealand.
  - There is no evidence that Mr Samsudeen was in direct contact with ISIL.
174. Some people we spoke to questioned whether Mr A was a ‘plant’ to gather intelligence on Mr Samsudeen, and whether he had accessed Mr Samsudeen’s laptop to post on Mr Samsudeen’s Facebook page during the time he was living in his apartment. However, most of the material that led to Mr Samsudeen’s ‘objectionable material’ charges was posted months before he met Mr A. The NZSIS has also confirmed they did not ‘plant’ Mr A.
175. There were also undoubtedly good reasons for taking seriously Mr A’s statement, particularly his claim that Mr Samsudeen intended to travel to Syria. These included:

- By the time Police interviewed Mr A, he was leaving New Zealand and seemed to have given up his asylum claim. So there was little reason for him to lie about Mr Samsudeen to gain favour for his claim.
- Even if Mr A did offer the information to gain favour, that does not mean he was lying. Other aspects of Mr A's statement were corroborated, including the trip to Samoa, the knife under the bed and Mr Samsudeen's brother's visit.
- The fact that Mr Samsudeen would have faced difficulties travelling to Syria did not necessarily call into question the suggestion that he was determined to try.
- The NZSIS assessed it was "*highly likely*" that Mr Samsudeen would attempt to travel offshore to join ISIL, engage in combat and obtain martyrdom. Intelligence to support this assessment included Mr Samsudeen's observed interest in firearms, tasers and hunting weapons, and that he possessed a knife which he reportedly used to imitate a beheading. The NZSIS also learned that he had told an associate (separate to the former flatmate) that he would conduct a domestic attack if he could not leave New Zealand and, if caught, he would use mental impairment as a defence to the crime. The Police were informed of his defence strategy.
- Mr Samsudeen reportedly told an acquaintance that he felt it was his obligation to try to get to Syria, even though he might not succeed.

176. We therefore find that the NZSIS and Police had reasonable grounds to believe that Mr Samsudeen likely intended to travel to Syria to join ISIL.

177. We note in passing that other witnesses later confirmed that Mr Samsudeen had expressed an interest in ISIL and a desire to travel to Syria, and one said Mr Samsudeen had given him the key to his apartment and asked him to sell his belongings if he did not return from his trip (see paragraph 201). Mr Samsudeen later told people he had tried to get to Syria but was arrested before he could do so. However, this information was not available as corroboration of Mr A's statement at the time when the statement was taken.

#### **Police found out Mr Samsudeen was planning to travel and decided to arrest him**

178. In response to the flatmate providing information in late April 2017, Police began making enquiries about Mr Samsudeen including where he lived, his dealings with New Zealand authorities, his medical and travel history and so on. They also began surveilling him.

179. On 18 May, Police obtained a surveillance device warrant.<sup>46</sup> This increased their ability to monitor Mr Samsudeen and gather evidence.

180. The next day, an off-duty NZSIS officer saw Mr Samsudeen at a local travel agency holding a piece of paper and looking "*very happy*". The NZSIS checked with Immigration New Zealand, who confirmed Mr Samsudeen had booked last-minute return tickets to Singapore via Malaysia and was departing that evening. The NZSIS assessed it was highly likely he intended to travel from Singapore to Turkey

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<sup>46</sup> The Search and Surveillance Act 2012 defines "*surveillance device*" as "*a device that is any 1 or more of the following kinds of devices: (a) an interception device; (b) a tracking device; (c) a visual surveillance device*".

and eventually Syria, and that he had “almost certainly”<sup>47</sup> booked return tickets to disguise the purpose of his travel. Credible intelligence revealed that he had also investigated flying from Malaysia to Turkey and had checked flight times and prices between Kuala Lumpur and Istanbul. According to NZSIS reporting, Mr Samsudeen chose Singapore as it was one of the few countries he could travel to, or transit through, on his Sri Lankan passport without obtaining a visa prior to arrival.

181. Mr Samsudeen bought the ticket at short notice, using cash. Police viewed this as corroboration of the information Mr A had given them and the NZSIS’s intelligence reporting, and also believed Mr Samsudeen was intending to travel to Syria and join ISIL.
182. The Ministry of Foreign Affairs and Trade (MFAT) advised Police that New Zealand had international obligations to stop the flow of foreign fighters joining ISIL, and that they must prevent Mr Samsudeen from travelling. Police were also concerned about allowing someone they believed to have “terrorist motives” on a plane.
183. New Zealand had no law that criminalised travel to join terrorist groups in 2017.<sup>48</sup> So Police decided to stop Mr Samsudeen from leaving the country by arresting him for knowingly possessing objectionable material, an offence under section 131A of the Films, Videos, and Publications Classification Act 1993. These charges related to the Facebook postings that they had identified in October 2016. The offence has a maximum sentence of 10 years’ imprisonment, but the expected sentence for Mr Samsudeen would have been much less than this.<sup>49</sup>
184. Mr Samsudeen’s brother had been visiting from Qatar with his wife and child for about three weeks from the beginning of May. They had obtained a residency visa for two years (selected from the Refugee Family Quota pool and sponsored by Mr Samsudeen), and were thinking about moving to New Zealand. They had stayed with Mr Samsudeen, and worried that he was lonely, missing family and seemed directionless. Mr Samsudeen’s family wanted him to get married, and he had discussed with them the idea of finding someone to marry overseas.
185. Mr Samsudeen’s brother says Mr Samsudeen surprised him by buying a ticket to travel with him as far as Kuala Lumpur on his way back to Qatar. Mr Samsudeen told him he would then travel on to Singapore for a holiday. Mr Samsudeen’s brother says he planned to buy their mother a ticket from Sri Lanka to Singapore, so she could meet up with Mr Samsudeen there. He also says Mr Samsudeen wanted to catch up with a friend who lived in Singapore. The NZSIS and Police found no evidence to support the claim he was going on holiday. Based on the classified material we have seen, and Mr Samsudeen’s subsequent assertions that he intended to travel to Syria, we are satisfied that the NZSIS’s and Police’s assessment of the purpose for his trip is most likely to have been accurate.

#### **Police arrested Mr Samsudeen at the airport**

186. In view of the MFAT advice, Police arrested Mr Samsudeen at the airport on the evening of 19 May on a charge of knowingly possessing objectionable material (a charge relating to the images that had been

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<sup>47</sup> A scenario that has only a remote chance of not occurring or not being currently accurate. In such cases, alternative scenarios are highly unlikely.

<sup>48</sup> The Terrorism Suppression Act 2002 was amended in October 2021 to prohibit travel to, from or through New Zealand with the intention of committing an offence under the Act.

<sup>49</sup> Imran Patel, who was convicted of similar but more serious offending in June 2016, received a sentence of three years and nine months.

discovered in 2016). Police say they waited until Mr Samsudeen had gone through security screening at the airport because that decreased the risk of him carrying a knife.

187. We have considered whether the evidence at that stage was strong enough to prevent Mr Samsudeen from leaving the country.
188. The offence, created in 2021, of attempting to travel to, from, or through New Zealand with the intention of committing an offence under the Terrorism Suppression Act, was not available to Police at the time. But even if it had been, it is arguable whether there would have been sufficient evidence to prove that offence beyond reasonable doubt. A prosecution would not have been able to draw on the NZSIS's classified intelligence, and it is not clear whether a separate Police investigation would have been able to gather sufficient evidence to support a conviction.
189. However, we are satisfied that, at the least, there were reasonable grounds to believe that Mr Samsudeen was leaving the country with the ultimate intent of joining ISIL. It would therefore have been remiss for Police not to act on MFAT's advice if they had the legal means to do so. The images they had discovered in October 2016 and regarded as objectionable provided those means.
190. Enforcement authorities under the Films, Videos and Publications Classification Act are entitled to take enforcement action on the basis of their own reasonable assessment as to whether they believe the material is objectionable. Accordingly, our view is that Police were entitled to arrest Mr Samsudeen at the airport on the basis of their own assessment of whether the publications were objectionable. It was also appropriate for them to rely upon that to prevent him from leaving the country. However, having done so, we think they had an obligation to ensure that the objectionability of the publications was tested as soon as practicable, and that Mr Samsudeen's time on remand in custody was kept to a minimum. The then Chief Censor told us that when he finally assessed the material, he felt it raised some quite novel and significant issues. His view was that it would have been desirable for Police to have referred the material to the Classification Office for a classification as soon as practicable. We address this issue further in Part 5.
191. As noted by the Royal Commission and some of those we interviewed, Police and the NZSIS were at that time unduly focused on the threat of violent extremism by people associated with the Muslim community. Some thought that because of this Mr Samsudeen was unfairly targeted, and pre-determination and bias meant that innocent explanations for his behaviour were never considered. However, the evidence does not support that assertion. The risk assessments undertaken by the NZSIS and the Police were soundly based and there was really no scope for an innocent explanation. Mr Samsudeen certainly required intervention, and by the time of his arrest a coercive response was justifiably part of that intervention.
192. The problem in our view is that it was essentially the only intervention, and thus precluded the adoption of a broader, integrated multi-agency response, supported by other community-led actions, that may well have averted the risk. As we discuss in more detail in Part 9, the adoption of such a broader approach was hampered by the fact that there was little understanding of what was required to counteract violent extremism, especially ISIL-related.

#### **PART 4 – FINDINGS**

The Police's visits to Mr Samsudeen in April and May 2016 were an appropriate intervention.



An opportunity for intervention to support Mr Samsudeen and address his needs was missed after Police discovered in October 2016 that he was continuing to post graphic material.

Police were justified in arresting Mr Samsudeen at the airport on 19 May 2017.

Mr Samsudeen's arrest did not result from an undue focus on the threat of violent extremism by people associated with the Muslim community.

Confidential

## PART 5: Mr Samsudeen's first period in custody (May 2017 – June 2018)

WERE THE CHARGES POLICE LAID AGAINST MR SAMSUDEEN APPROPRIATE AND DEALT WITH IN A TIMELY WAY?

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### Evidence collected and charges laid after arrest

193. Mr Samsudeen was compliant and cooperative as Police arrested him, and again said his Facebook posts were to make people aware of atrocities against Muslims. Police interviewed Mr Samsudeen's brother, and seized a laptop that Mr Samsudeen had given him. Mr Samsudeen's brother said:

*"I think he thought that by spreading this stuff he was doing good but [he] lost sight of the fact it was offensive.... Before coming over I had talked with my brothers and father and we were all concerned. Concerned that when he was alone and on the internet that it was not good for his mind. We wanted him to concentrate on something else."*

194. Mr Samsudeen told Police he had a knife hidden under his mattress. Police searched his apartment and found a hunting knife with an 18-centimetre-long blade.<sup>50</sup> Mr Samsudeen said he bought the knife to protect himself after men came to his apartment when he was not at home and moved his passport. He said he had researched the law and it was okay if the knife was kept at home.

195. Police also found a laptop, three cellphones, SIM cards, USB sticks, Secure Digital (SD) cards, six credit cards and a large amount of financial documentation in Mr Samsudeen's apartment.

196. Mr Samsudeen had almost \$4000 in cash on him when arrested. Police subsequently discovered that Mr Samsudeen had made seven cash withdrawals on fraudulently obtained credit cards in the time leading up to the trip. Police and the NZSIS knew he had told associates he was intending to use this money to pay for people smugglers and living expenses in Syria.

197. Mr Samsudeen spoke to a lawyer and declined to make a statement after his arrest. He also refused to give Police the passwords for his electronic devices.

198. Police initially laid one charge of knowingly possessing objectionable material against him. This was a 'holding' charge that they later withdrew after filing more charges (see paragraph 202 below).

199. On 20 May 2017, Mr Samsudeen appeared in the District Court. He pleaded not guilty and was denied bail. The Judge suppressed the details relied upon by Police in their opposition to bail and the summary of facts, but declined name suppression.

200. On 29 May 2017, the Police's Digital Forensic Unit examined some of the devices found in Mr Samsudeen's apartment. They found that the hard drive of one of his laptops had been completely erased. One of the SD cards held about 55,000 files, including 46 videos Police described as "extremist propaganda", and a video about the "Fall of Islam" which contained graphic images and footage of war-related violence. The card also had 24 images of Mr Samsudeen posing with an air rifle, one of

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<sup>50</sup> ISIL recommended this type of knife to its followers.

which included the embedded text: *"Always keep your foes confused, if they don't know who you are... or what u want, they cannot know what you Plan to do Next"*.

201. Police interviewed some people in Auckland who knew Mr Samsudeen and were aware of his interest in ISIL and violent extremist ideologies. One said Mr Samsudeen had told him in February 2017 that he wanted to go to Syria to fight for ISIL, and would travel there from Qatar. This person said Mr Samsudeen did not mention harming anyone in New Zealand. Police also found out that Mr Samsudeen had given someone a key to his apartment and asked him to sell his belongings if he could not come back to New Zealand.
202. Police ultimately filed the following charges against Mr Samsudeen:
- 18 charges of knowingly distributing objectionable material;
  - one charge of possessing an offensive weapon (the knife found at his apartment);
  - one charge of failing to assist Police with executing a search warrant (by failing to provide the password for his devices); and
  - two charges of using a document for pecuniary advantage.

#### **Classification of the 'objectionable material'**

203. When Mr Samsudeen appeared in Court on those amended charges on 12 June 2017, he pleaded not guilty and was remanded in custody.
204. There was no further substantive progress in the proceedings until August 2017, when the prosecution applied for Mr Samsudeen's case to be transferred from the District Court to the High Court due to the nature of the objectionable material charges. That application was granted on 10 August 2017.
205. Mr Samsudeen first appeared in the High Court on 23 August 2017 and was allocated a trial date of 9 July 2018. We were told that this was the standard *"time to trial"* in the High Court, although that appears not to have taken account of the time that he had already spent in the District Court system.
206. Section 3(1) of the Films, Videos, and Publications Classification Act 1993 defines 'objectionable' as:

*"For the purposes of this Act, a publication is **objectionable** if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good."*

207. It goes on to say that:

*"(2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support – ...*

*(f) acts of torture or the infliction of extreme violence or extreme cruelty.*

*(3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in*

*accordance with section 23(2) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—*

*(a) describes, depicts, or otherwise deals with—*

*(i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty: ...*

*(d) promotes or encourages criminal acts or acts of terrorism....”*

208. Mr Samsudeen’s lawyers met with the Crown Solicitor after the case had been transferred to the High Court and argued that the objectionable material charges were not appropriate because:

- Some of the charges were based on Mr Samsudeen posting publications from media sites that were freely available online.
- The focus of the material was violence against Muslims, and Mr Samsudeen said he was trying to bring attention to the injustice and discrimination they faced around the world. Classifying this material as ‘objectionable’ was an unreasonable restriction on the right to freedom of expression.
- None of the material reached the level of being ‘recruitment videos’ or pro-ISIL material (which had been found objectionable in another recent case – *R v Patel* [2017] NZCA 234).

209. Police had informal discussions with the Classification Office.<sup>51</sup> Following that, a trial callover memorandum from the Crown on 18 October 2017, five months after Mr Samsudeen’s arrest, stated that *“the defendant has today, through his counsel, confirmed that he will not admit the publications...are objectionable. Consequently the publications will need to be referred to the Classification Office for classification”*. On 1 November 2017, the Crown prosecutor advised the Court that they intended to withdraw nine of the objectionable material charges because the material in question likely fell short of being classified ‘objectionable’ (and the High Court subsequently dismissed those charges on 22 November 2017). However, the Crown prosecutor refused to drop the other nine charges, and the Court ordered a referral under section 29(1) of the Films, Videos, and Publications Classification Act 1993.<sup>52</sup> The defence did not make a further application for bail at this time.

210. On 24 November 2017, the Classification Office received the nine publications (6 videos and 3 images) relating to the remaining charges of knowingly distributing objectionable material. On 30 November 2017, the Classification Office notified the Crown prosecutor and Mr Samsudeen’s lawyer of their right to make submissions about whether the material should be classified as objectionable. Written submissions were due by 11 January 2018.

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<sup>51</sup> <https://www.classificationoffice.govt.nz/>

<sup>52</sup> Section 29 (1) says: *“Except as provided in subsections (2) and (3), where in any civil or criminal proceedings before a court (including any proceedings under section 116 but not including proceedings under section 67) a question arises whether any publication — (a) is objectionable; or (b) is objectionable except in any 1 or more of the following circumstances: (i) if the availability of the publication is restricted to persons who have attained a specified age: (ii) if the availability of the publication is restricted to specified persons or classes of persons: (iii) if the publication is used for 1 or more specified purposes,— the court shall refer the question to the Classification Office for decision, and the Classification Office shall have exclusive jurisdiction to determine the question.”*

211. Following this, another application for bail was made on 18 December 2017, but declined due to the risk of violent offending. The High Court was satisfied that the time Mr Samsudeen would spend in custody on remand was not an issue, given the charges before the Court and his potential sentence.
212. On 11 April 2018, the Classification Office classified all nine of the publications Mr Samsudeen was charged for as restricted (R18), not objectionable. They said:

*“Of the nine publications, eight (5 videos and 3 images) depicted real-life acts of violence or the aftermath of such events. They appeared to have been captured in regions of conflict most likely in the Middle East and Asia. The publications were linked by the possibility that they represented the persecution of Muslims in those regions. The titles of four publications reflected this impression – Kashmir – Indian Army execute Kashmiri civilian, Myanmar Muslim Massacre, Burmese Muslims and Young Syrian Beaten. The remaining video depicted acts of self-flagellation during the Shia festival of Ashura. This activity commemorates the martyrdom of Hussein, a grandson of the prophet Muhammad, and is considered a legitimate part of Shiite religious practice.*

*Whilst the publications were undoubtedly records of distressing real-world violence, the Classification Office concluded that there was no promotion or support of the events depicted within any of the publications themselves for them to be deemed inherently objectionable under s3(2)(f) of the FVPC Act. There was also nothing in the publications that promoted or encouraged others to carry out acts of violence, crime or terrorism that would warrant them being made objectionable under s3(3).*

*Records of real-life events, especially those from war zones and regions of conflict or recording a crime, can have value in multiple ways, ranging from evidential value in pursuing justice to social value in raising awareness of heinous acts. A recent well-known and widely publicised publication of this kind was the phone video recording of the killing of George Floyd. An approach to classification that meant that all such content was illegal would necessarily mean that the creation and distribution of this kind of content would also be illegal, potentially limiting the ability for victims to verify their claims.*

*However, the Classification Office also recognises that publications recording actual real-world killing and violence can also easily be misappropriated by extremists seeking to promote their own illegitimate agenda. The Classification Office is highly attuned to signs that extremists may be endorsing or using such material to promote their cause, but there was no evidence of this that the Classification Office could see at the time the publications were classified. In particular, the publications under consideration did not carry recognisable markers, branding or promotional text.”*

213. This classification meant Police were only able to charge Mr Samsudeen with knowingly distributing restricted material, which greatly reduced the potential sentence Mr Samsudeen would face if convicted. The maximum term of imprisonment for knowingly distributing objectionable material is 14

years' imprisonment,<sup>53</sup> but the maximum term for knowingly distributing restricted material is only 3 months' imprisonment or a fine not exceeding \$10,000.<sup>54</sup>

214. The Crown immediately appealed to the Film and Literature Board of Review.<sup>55</sup> At this point Mr Samsudeen had been kept in custody on remand for almost 11 months.
215. On 26 June 2018, the Film and Literature Review Board issued its decision. The Board agreed with the Classification Office that the nine publications were restricted.
216. Consequently, the Crown had to withdraw the nine objectionable material charges and instead filed two representative charges of knowingly distributing restricted material. The Crown also withdrew the charge of possessing an offensive weapon (the knife found under Mr Samsudeen's mattress) "*without prejudice*". This meant they could later re-file that charge (see paragraph 305).
217. At this stage, it became clear that any sentence of imprisonment Mr Samsudeen might receive would not be longer than the time he had already spent on remand.
218. On 29 June 2018, Mr Samsudeen appeared in the High Court and pleaded guilty to:<sup>56</sup>
- two charges of knowingly distributing restricted material;
  - two charges of using a document for pecuniary advantage; and
  - one charge of failing to assist an officer in the execution of a search warrant.
219. We find the approach taken by the Police and prosecution throughout this period troubling. We have concluded above (at paragraph 190) that it was appropriate for the Police to arrest Mr Samsudeen. It follows that it was also open to them to lay the charges they did.
220. However, the objectionable publications charges were potentially problematic. Given the absence of precedents in this area it should have been apparent that there was at the least uncertainty about whether they met the definition of 'objectionable'. Mr Samsudeen undoubtedly posted images and videos of graphic violence, and Police seem to have believed this was enough. But their assessment ignored the context of that violence and Mr Samsudeen's stated intention to highlight the unjust treatment of Muslims around the world (for example, in Myanmar, Palestine, Pakistan and Syria). As it turned out, the Classification Office found that they lacked evidence that the posts were meant to promote or support the violence and were therefore "*likely to be injurious to the public good*", or that they were promoting criminal or terrorist acts (see paragraph 212 for the Classification Office's assessment). Police also do not seem to have taken into account that he was reposting material easily available elsewhere online, including via news organisations.
221. We were told that Police were relatively inexperienced in the classification of violent extremist material, as opposed to other more common publications (such as child abuse material). About this time, Police were having discussions with the Muslim community about their interpretation of the

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<sup>53</sup> Films, Videos, and Publications Classification Act 1993, ss 123 and 124.

<sup>54</sup> Films, Videos, and Publications Classification Act 1993, ss 125 and 126.

<sup>55</sup> Under section 31(d) of the Films, Videos, and Publications Classification Act 1993, the Classification Office's decision was of no effect until the Film and Literature Board of Review reached its decision on the appeal.

<sup>56</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20180629-2018-NZHC-1597.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20180629-2018-NZHC-1597.pdf)

Films, Videos, and Publications Classification Act. Some people we spoke to asked how a person is supposed to know what is objectionable when the authorities are unsure, and it can take months for a classification to be made. In this case, Police had warned Mr Samsudeen about objectionable content before prosecuting him, but the material was later deemed to be only restricted rather than objectionable. There is evidence that this fed his sense of grievance against Police.

222. In the light of this background, we think the Police (either themselves or through the Crown prosecutor) should have taken immediate steps to seek the Classification Office's definitive view of the status of the publications. Mr Samsudeen had pleaded not guilty on 20 May 2017 and 12 June 2017 which, although not specifically a denial that the publications were objectionable, implied that this would be an issue at trial. Notwithstanding that, it was only once Mr Samsudeen appeared in the High Court five months after his arrest that his charges were referred to the Classification Office. It took a further eight months for the decision to be made (including an appeal). Although Police followed the process set out in legislation, we think they should have consulted the Classification Office much sooner, given their relative lack of familiarity with the types of publications in question. We note that Police have since developed a closer relationship with the Classification Office and are more likely to consult them at an early stage (as they did following Mr Samsudeen's second arrest).
223. We acknowledge that this might not have been expected of Police at that time, or even now. In the absence of a request from the defence, it is not unusual for the prosecution to lay charges and then wait for the court system to take its course. But in this case the length of time Mr Samsudeen was kept on remand while the classification process took its course was contrary to the interests of justice.

#### **Police continually opposed bail**

224. The failure of the Police and prosecution to expedite the classification of the material may not have been a significant issue if Mr Samsudeen had been remanded on bail into the community to await trial. However, he was not. His arrest led to a prolonged period on custodial remand.
225. Indeed, even before Police arrested Mr Samsudeen on 19 May 2017, they asked for a Crown prosecutor to be involved in the prosecution. This was on the basis that Mr Samsudeen was believed to be intending to commit a terrorist act if he was prevented from travelling to Syria, and Police needed a Crown prosecutor to ensure he did not get bail.
226. On 24 May 2017, Mr Samsudeen's brother emailed Police. He wrote that:
- Mr Samsudeen had suffered "*dreadful and painful incidents*" and "*many traumatic experiences*" in his past life in Sri Lanka, which he believed led to Mr Samsudeen becoming insecure and mentally unstable.
  - Mr Samsudeen was afraid of dark places and loneliness. He may have tried to overcome this by spending so much time online, which led him "*unknowingly*" to the extremist material.
  - Mr Samsudeen was comparing the suffering of other Muslims with his own, and trying to do what he could to protect them: "*We think this is what might have happened and we strongly believe that there isn't any other cause behind this.*"
  - "*Anybody suffering from a disturbed mindset deserves another chance to remake their future on track with the help of good human beings around.*"

- *“We also undoubtedly believe that he will never be a threat to your community at any time, so please let him rejoin the society and lead a normal life like every other man.... you could ask him to report to your office in person every month solely for monitoring purposes. He will be able to occupy himself by continuing his studies again and we also could check on him everyday by pushing up on him. When he is released, our parents will speak to him sternly about all this. He will surely adhere to the law and order of your respective country and treat all the people in the community as brothers and sisters.”*

227. Mr Samsudeen’s brother asked Police to consider releasing Mr Samsudeen as soon as possible, under the condition that he receive psychiatric assessment and counselling. He also asked that New Zealand impose a five year travel ban on Mr Samsudeen until someone from his family could join him.

228. These requests were beyond the Police’s remit. Police responded to this email by putting Mr Samsudeen’s brother in touch with Mr Samsudeen’s lawyer at the time.

229. On 2 June 2017, a psychologist completed an assessment for the National Security Investigations Team of the risk Mr Samsudeen posed to others. He did not interview Mr Samsudeen. His assessment was based on reviewing the Police file (including Mr A’s statement and Mr Samsudeen’s social media posts) and completing the Terrorist Radicalization Assessment Protocol-18 (TRAP-18) risk assessment tool.<sup>57</sup>

230. The psychologist noted Mr Samsudeen’s *“poorly treated mental health problems, social isolation, and immersion in material devoted to violence and death”*, and said there were few positive and meaningful aspects in his life to deter him from his current intentions. He also noted that: *“Police have ended up in the invidious situation where they had to intervene, but their intervention may have reinforced [Mr Samsudeen]’s sense of alienation and persecution.”*

231. He commented that Mr Samsudeen’s focus had been on travelling to Syria to join ISIL, and he did not seem to have thought much about his *“Plan B”* to cause harm in New Zealand. However, because Police had stopped him from travelling overseas: *“it is quite likely he will now invest his thoughts and energy in a plan B scenario whereby imminence is almost impossible to predict.”*

232. He found that Mr Samsudeen was at high risk of harming others and recommended that Police:

- oppose bail;
- if bail was granted, ask for strict bail conditions to *“mitigate his risk of harming others”*; and
- seek a psychiatric assessment of Mr Samsudeen.

233. On 12 June 2017, Police, represented by a Crown prosecutor, attended a Court hearing and opposed an application by Mr Samsudeen for bail with electronic monitoring, on the grounds that he would pose a serious risk of offending if he was not in custody. The evidence for this included aggressive statements Mr Samsudeen had made on Facebook, and Mr A’s statement to Police that Mr Samsudeen wanted to fight for ISIL in Syria and would attack people in New Zealand if the authorities stopped him from travelling. As noted above, classified NZSIS intelligence was not used in this hearing. The District Court declined the application.

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<sup>57</sup> Meloy, J. R., & Gill, P. (2016). The lone-actor terrorist and the TRAP-18. *Journal of Threat Assessment and Management*, 3(1), 37-52.



234. The High Court heard a further bail application from Mr Samsudeen on 18 December 2017. Bail was declined the next day, with the judge saying: *“I consider there is a real risk that the defendant will offend if granted bail, either by distributing further objectionable material or even by committing an offence of violence.”*<sup>58</sup> He noted that:
- Mr Samsudeen had not been deterred after Police warned him about posting objectionable material, and opened other Facebook pages under different names. He also refused to provide the password to his phone, which could suggest there was further material he did not wish the authorities to see.
  - Mr Samsudeen’s lawyer had questioned the former flatmate’s reliability as a witness, but his evidence had been *“borne out”* by Mr Samsudeen’s actions and his possession of the hunting knife.
  - There were issues with the proposed bail address (a mosque), including the large number of people visiting each day – any of whom could provide Mr Samsudeen with an electronic device to operate his Facebook page again.
  - He did not accept Mr Samsudeen’s lawyer’s submissions that: (i) it was unlikely the material relating to the remaining charges would be classified objectionable, and (ii) *“by the trial date the defendant will have spent more time in custody than the likely sentence.”*
235. On 25 June 2018, the High Court again denied Mr Samsudeen’s application for bail.<sup>59</sup> The judge said that the situation had not changed from the last time the Court declined bail and again noted that the time served versus the potential sentence was not at that point an issue.
236. However, the next day the Film and Literature Review Board released its decision agreeing with the Classification Office decision that the nine publications were restricted. Several days later, Mr Samsudeen pleaded guilty to these reduced charges. As a result, Police decided they could no longer justify opposing bail, since Mr Samsudeen had already been detained on remand for 13 months. This was longer than his sentence would be for the offences of which he had now been convicted.<sup>60</sup>
237. Police opposition to bail was based primarily on the information provided by Mr A. At least some aspects of his information was supported by other intelligence information, and it was reasonable for Police to be concerned about what he might do if released into the community. Their initial opposition to bail was therefore appropriate.
238. However, the Police failure to take steps to have the classification process expedited led to his detention on remand for a disproportionate amount of time. This may well have exacerbated rather than mitigated the long-term risk and accelerated Mr Samsudeen’s path towards extremist violence.

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<sup>58</sup> <https://www.courtsofnz.govt.nz/assets/R-v-S/20171219-2017-NZHC-3229.pdf>

<sup>59</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20180625-2018-NZHC-1522.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20180625-2018-NZHC-1522.pdf).

<sup>60</sup> The average time spent on remand for male prisoners at that time was about 71 days.

239. Mr Samsudeen was remanded to the Mt Eden Corrections Facility on 23 May 2017. He told staff he had a history of back pain but did not disclose any mental health issues.
240. Mr Samsudeen had no criminal history, and this was his first time in custody. He was assigned Level 2 remand status: the lesser of two security levels for remand accused prisoners. He expressed concerns about his safety and was accordingly segregated from the main remand population.<sup>61</sup> While he was segregated, he did at times share a cell with other prisoners who were similarly segregated (after being assessed for compatibility).
241. On 24 May 2017, the NZSIS provided an intelligence briefing to Corrections Intelligence who, prior to the arrest, were aware of the investigation from inter-agency meetings but had not read the classified intelligence reports produced by the NZSIS. Corrections queried the threat Mr Samsudeen posed while in custody and was informed that he could be verbally aggressive, had grievances against a number of government agencies and threatened to take issues to a higher authority. The NZSIS said they had no information to suggest any specific threats of violence, although he claimed he would conduct an opportunistic attack with a hand-held weapon.
242. Corrections records show that on 1 August 2017, staff intervened after Mr Samsudeen's new cell mate reportedly pushed and punched him. Mr Samsudeen said he punched his cell mate back, defending himself. No injuries were recorded, and Mr Samsudeen declined to make a complaint to Police. The cell mate was relocated and charged with misconduct.
243. On 8 August 2017, the Corrections Intelligence assessed (based on the information they had available to them) that it was "likely" Mr Samsudeen had an interest in radical faith-motivated ideology, and "possible" that this included acts of violent extremism.<sup>62</sup> The report noted that:
- Mr Samsudeen claimed to have been set up by Police, and that a Syrian friend had told him to put things on his Facebook page.
  - *"It is possible that this feeling of persecution by New Zealand Police may enhance his radical views and fuel his resentment towards authority."*
  - Mr Samsudeen was not openly displaying an interest in violent extremism, but nor was there any *"information to demonstrate that he is effectively engaging with a pro-social interpretation of Islam"*.
244. Mr Samsudeen remained in the Mt Eden Corrections Facility on remand throughout the rest of 2017. He continued to deny the charges he was facing and told people he did not understand why he was in custody or how he was breaking the law.
245. Corrections' records show that on 8 December 2017, another prisoner assaulted Mr Samsudeen by punching him in the head. Mr Samsudeen was referred for an X-ray of his jaw, which showed no

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<sup>61</sup> Section 59(1)(a) of the Corrections Act 2004 provides that a prison manager may direct a prisoner have their association with other prisoners restricted or denied if the prisoner requests it and the prison manager considers that it is in the best interests of the prisoner to give such a direction.

<sup>62</sup> "Likely" means "The event will probably occur in most circumstances." "Possible" means "The event might occur."

fracture, so he required no follow up care. The other prisoner was relocated and charged with misconduct.

246. On 5 January 2018, Corrections intelligence recorded information that Mr Samsudeen was “preaching” about ISIL to a fellow Muslim prisoner, said that he wanted to “kill infidels” and would try to get to Syria when released, and if unable to do that he would “do something in New Zealand”. Corrections shared this information with NZSIS and Police.
247. On 26 January, Mr Samsudeen was transferred to Waikeria Prison. He met with a case manager<sup>63</sup> on 19 February and chose to remain in segregation rather than move to mainstream accommodation.
248. On 20 March, he was involved in a fight with his cell mate and afterwards told the Corrections officers his back was “broken”. He was referred to Waikato Hospital’s emergency department for an assessment, and was discharged later that day, having been diagnosed with a contusion (bruise or soft tissue injury) of his back and prescribed pain relief. Both he and the other prisoner faced misconduct charges. After this incident his supervision was increased from level 2 (low) to level 1 (high). It remained there for the rest of his time in custody.
249. On 27 March, Mr Samsudeen was transferred to Rimutaka Prison. Records show that he was received and regarded as a mainstream remand accused prisoner and accommodated accordingly. There was no record of Mr Samsudeen requesting Voluntary Protective Segregation at Rimutaka Prison.
250. Mr Samsudeen had previously been in contact with a volunteer from the Muslim community while at the Mt Eden Corrections Facility, but on 12 April he asked to see an Imam at Rimutaka Prison for religious support. This did not happen as none was available. On 14 April, he requested and was given a Muslim prayer timetable.
251. Mr Samsudeen was transferred back to the Mt Eden Corrections Facility on 7 June 2018 in advance of the hearing at the High Court in Auckland. He requested and was granted voluntary segregation because he feared for his safety in the mainstream remand population. He remained there until his release on bail at the end of June.
252. We found that Corrections generally treated Mr Samsudeen like any other remand prisoner during his time in custody. But the reality is that he was different from most other prisoners. Police were arguing in court that he was a high-risk potential terrorist, and he ended up staying in custody on remand for over five times as long as the average male prisoner.
253. We think this was another missed opportunity to begin addressing his needs and trying to steer him away from the path of extremism. Police had intervened to disrupt the threat they believed Mr Samsudeen posed, but he was then left in custody for 13 months, with nothing being done to try to reduce any risk he might pose when he was inevitably released.

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<sup>63</sup> A case manager provides specialist end-to-end case management of prisoners based on regular meetings in person, and assessments of individual needs. They facilitate services and prepare plans and responses to individualised risks. The aim is to support the prisoner in taking responsibility for completing activities directed at addressing their specific needs (including rehabilitation and reintegration) and to ultimately reduce the likelihood and seriousness of any offending in the community. For remand prisoners, case managers typically focus on reintegration needs such as accommodation or community support for transition back into society.

254. Mr Samsudeen did not disclose any mental health issues to Corrections. However, his immigration record revealed that he was diagnosed with major depression and post-traumatic stress disorder (see paragraphs 99), and a psychologist who did a risk assessment shortly after Mr Samsudeen's arrest recommended that Police seek a psychiatric assessment (see paragraphs 229-232). It seems Corrections were unaware of this, and Mr Samsudeen did not receive any mental health support during his first period in custody.
255. As for religious and cultural support, Corrections are required by law to provide for the various religious, spiritual, and cultural needs of prisoners, so far as is reasonable and practicable in the circumstances.<sup>64</sup>
256. While Mr Samsudeen was at the Mt Eden Corrections Facility, an approved volunteer from the Muslim community visited to provide cultural and religious support. In May 2018, Corrections suspended the volunteer's approval for six months and he was no longer deemed suitable to visit prisoners. Attempts to identify and confirm a suitable replacement to continue prison visits for Muslim prisoners throughout 2018 were unsuccessful.
257. Mr Samsudeen first asked to see an Imam when he was at Rimutaka Prison on 12 April 2018, but none was available. He later complained about the Prison Chaplaincy Service and accused them of being biased, racist and prejudiced against Muslim prisoners. Members of the Muslim community we spoke to, and even some Corrections staff, reported that Corrections' lack of religious support for Muslim prisoners, and more generally lack of support for people belonging to cultures other than European or Māori, is a longstanding problem that needs to be addressed as a priority. It also arose during Mr Samsudeen's second period in custody (see paragraphs 425-435).
258. For the reasons we have outlined above, Mr Samsudeen's unjustifiably lengthy first period in custody led to him becoming increasingly aggrieved and alienated. A Police officer who dealt with Mr Samsudeen told us he "*morphed*" into a completely different person, and became overtly anti-authority. One of Mr Samsudeen's lawyers told us Mr Samsudeen had a terrible experience in prison, and was bitter and resentful about the way Police and the judicial system had treated him. By the time he was released, his attitude had hardened and any attempts at intervention from this point were far less likely to succeed.
259. We acknowledge that prolonged detention does not necessarily exacerbate the risk posed by someone who has adopted a violent extremist ideology. We were given examples of other people who have been successfully disengaged from violent behaviour after being convicted and imprisoned. However, we think there is compelling evidence that Mr Samsudeen's lengthy time on remand did increase the risk he posed.
260. Police and Corrections told us they wanted to set up rehabilitation for Mr Samsudeen, but he repeatedly refused to engage. They could not force rehabilitation on him, and it would not work if they did force it. However, the records show only sporadic attempts by Corrections to try to engage with Mr Samsudeen during his first period in custody:
- On 1 September 2017, Mr Samsudeen declined to meet with a case manager.<sup>65</sup> As Mr Samsudeen refused to meet with them, he was unable to be considered for any programmes or

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<sup>64</sup> Corrections Act 2004, ss 78 and 80.

<sup>65</sup> See the footnote in paragraph 247 for a definition of 'case manager'.

activities. This was about three months after he was first remanded in custody. Standard practice is that a case manager should visit a prisoner within 20 days of their arrival, but the Mt Eden Corrections Facility was exempt from this standard due to it being a remand prison with a high turnover of remand prisoners.

- About nine months later, on 25 May 2018, Mr Samsudeen attended a drop-in clinic for remand prisoners at Rimutaka prison. A file note recorded that he was not interested in any courses while on remand. By this time the Classifications Board had issued its decision (though Police were appealing it), and his trial was due to begin on 9 July 2018. It is likely Mr Samsudeen thought he would not be in custody for much longer. He said he had no address and asked to be referred to the Prisoner Aid and Rehabilitation Service (PARS) when he returned to Auckland for his trial, but it is not clear whether this happened.

261. Mr Samsudeen was transferred to different prisons twice, for the purpose of "*muster management*" (transferring prisoners to another site to relieve prison population pressures for the sending site). It meant he was constantly dealing with different Corrections staff and there was no real chance for anyone to build up a relationship with him and convince him that he should engage. Case management was minimal for remand prisoners.
262. In any event, if Mr Samsudeen had expressed interest in any activities or courses, we found there were no suitable disengagement programmes available to address issues with violent extremism.<sup>66</sup> Even if there had been such a programme, it would not have been available for him as a remand prisoner. This reflects a wider issue with a shortage of programmes for remand prisoners.
263. We were told that some see it as impracticable for remand prisoners to attend programmes to address behaviour they have not yet been convicted of, and that it could compromise their defence and their right to a fair trial. Additionally, their length of stay is generally unpredictable, so that programme planning and delivery is very difficult. The fact that they have not yet been convicted also means that they frequently have no incentive to participate.
264. Others argue that it is inhumane not to offer such programmes when prisoners are increasingly spending more time on remand.<sup>67</sup> In our view, it should be possible for people who are willing to address their issues to receive support in custody, even if the courts have not yet determined their criminal liability for any offending. This is especially so when the increasing backlogs in the court system mean that remandees are being detained for long periods and, if sentenced to imprisonment, sometimes released immediately because they have already served the time.
265. But even if the delivery of programmes to remandees is generally impracticable, Mr Samsudeen was not a typical prisoner. He was recognised as a national security risk, and as presenting a high risk of violent extremism, and the engagement with him should have been more extensive as a result. Instead, he was largely treated like any other remand prisoner.
266. Mr Samsudeen may well have refused to participate in a disengagement programme while on remand (if such a thing existed), given his views that Police had set him up and laid "*fake*" charges against him.

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<sup>66</sup> By 'programme' we mean a tailored plan for an individual, rather than a group-based approach.

<sup>67</sup> The average time on remand for a male prisoner is now about 79 days.

And even if he had participated in such a programme, there was no guarantee it would be effective and successfully moderate his views.

267. However, we think Corrections should have been more proactive and more options should have been available to help Mr Samsudeen while he was in their custody. Transfers between prisons should have been avoided to the extent possible, and there should have been a more concerted effort to offer effective case management and develop a holistic plan to help address his needs and reduce his susceptibility to violent extremist ideology. In the absence of that plan, it was inevitable that Police were still going to consider him a high risk once he was released.
268. In summary, there is no evidence of a long-term plan by any individual agency, or by agencies collectively, to reduce the risk Mr Samsudeen posed to others. It was inevitable that he would be released at some point. Ideally, while he remained in custody, a support programme would have been developed and implemented to reduce the risk he posed and enable him to be released more safely back into the community. But that did not happen, and ultimately he was released a few days after the High Court had deemed him too great a risk to be granted bail.

## **PART 5 – FINDINGS**

The Police should have approached the Chief Censor as soon as practicable after Mr Samsudeen's arrest to have the material which was the subject of the charges classified.

Because they did not do so, Mr Samsudeen was detained on remand for an unduly lengthy period.

While programmes for those on remand in custody are not generally practicable, Mr Samsudeen was not a typical prisoner. He was recognised as a national security risk and as presenting a high risk of violent extremism. The engagement with him while in a correctional facility should have been more extensive as a result. In particular, there should have been a more concerted effort to offer effective case management and develop a holistic plan to help address his needs. Instead, he was largely treated like any other remand prisoner.

Corrections should have specifically designed disengagement programmes for those individuals presenting a high risk of violent extremism. Such a programme needs to be developed using a multi-agency approach with community involvement.

## PART 6: Events relating to Mr Samsudeen's release, period on bail and second arrest

### WERE ADEQUATE PREPARATIONS MADE FOR MR SAMSUDEEN'S RELEASE?

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269. During Mr Samsudeen's first period in custody, there was always a possibility, albeit perhaps a remote one, that the Court would grant him bail at any point. Agencies therefore needed to develop a detailed plan for managing Mr Samsudeen on his release into the community at an early stage after his initial remand in custody.
270. However, preparations only began after the initial classification decision was made and it became clear that Mr Samsudeen might not be kept in custody for as long as expected.
271. On 30 April 2018, the NZSIS renewed their intelligence warrant in preparation for Mr Samsudeen's potential release on bail. The NZSIS assessed (based on information from Corrections) that he had not de-radicalised or moderated his views while in prison, saying he "*almost certainly ... maintains his support for [ISIL]*". Throughout May and June, the NZSIS and Police (along with other agencies, such as Immigration New Zealand, Corrections and CTAG) met weekly to discuss Mr Samsudeen's upcoming release on bail. Topics of conversation included: his bail location and release conditions; his immigration status and New Zealand's international obligations to prevent foreign fighters from joining ISIL; that he presented a terrorist risk even if abroad and therefore repatriation could be difficult; and agencies' operational plans once he was released.
272. About this time, efforts were directed to the possibility that Mr Samsudeen would give up his refugee status and permanent resident visa and leave New Zealand. Discussions to that end began between his lawyer and Police in April and May 2018. In late April, Mr Samsudeen himself even requested that his refugee status and permanent resident visa be revoked, although he refused to discuss this request when a Refugee and Protection Officer visited him on 25 May 2018. Ultimately, Police and Mr Samsudeen could not agree on terms for him leaving the country.
273. Plans for Mr Samsudeen's release were developed at a late stage in some haste, and largely fell to the Police to organise. Police told us their usual role with people on bail is just to enforce bail conditions – they do not normally engage in making wider arrangements for the welfare and rehabilitation of an individual who is yet to be sentenced, and they do not have specific resources or remit to do so. However, in this case they had to try and fill the empty space in this area to provide for Mr Samsudeen's immediate needs and prevent harm.
274. We acknowledge that success with disengagement is difficult if the person is anti-authority and not interested in addressing their issues. Police told us they could only "*work around the edges*" with Mr Samsudeen. While we accept that, it reinforces our view (discussed more fully at paragraphs 148-149 and Part 9) that responsibility for early intervention to address potential violent extremism should not rest primarily with Police. By the same token, it was beyond the jurisdiction of Corrections, since he was not subject to a sentence and was not under Corrections' supervision while on bail. It is laudable that Police stepped into the resulting vacuum and did what they could in a short time to put some release plans in place. But they were ill-equipped to deal with Mr Samsudeen's broader issues, and it was never likely that he was going to engage with them.

275. In May 2018, a Police officer from the National Security Investigations Team met with members of the Muslim and Sri Lankan community to discuss options for accommodating Mr Samsudeen.
276. As noted above at paragraph 69, the Police at that time had an organised process for referring youths (aged 14-20) at risk of violent extremism to the multi-agency Young Person's Intervention Programme, which was supported by community groups. However, Mr Samsudeen was too old to be referred to that programme, and it was not designed for high-risk people believed to be at imminent risk of committing an act of violence. Police therefore had to develop their own individualised case management plan for Mr Samsudeen, as they had done in a small number of other cases.
277. Police told us that such plans usually focus on working with the family and community to build up "*protective factors*" for the person, including cultural and religious support, employment, housing, and positive social connections. In Mr Samsudeen's case, however, he did not have any family or strong existing community links in New Zealand to help with this process. Some members of the Muslim and Sri Lankan community were nonetheless willing to help and wanted to steer him in the right direction.
278. Efforts in preparing for Mr Samsudeen's release were directed to placing him in a mosque that would help provide for his religious and cultural needs, and be able to educate him to have a more mainstream perspective on Islam than he had taught himself online. Police liaised with Mr Samsudeen's lawyers and the Muslim community, and after considering a number of options determined that Masjid Al Maktoum (a mosque in Mangere) could provide accommodation and was a suitable bail address (although it is a little difficult to see how he could have been educated in mainstream Islam there when the teachings were in Indian which he did not understand – see paragraph 294).
279. However, we have not found evidence of any long-term, coordinated disengagement plan addressing the full range of "*protective factors*" for Mr Samsudeen. Most of the support offered focused on changing his religious beliefs, rather than providing him with social support, helping him to find paid employment and his own accommodation, and addressing his mental health needs.
280. Nor was there enough effort to involve Mr Samsudeen's family in designing a proper support programme. His family knew him better than anyone in New Zealand, and would have been able to recommend strategies for engaging with him. His brother had emailed Police and was clearly interested in finding ways to help Mr Samsudeen (see paragraph 226).
281. Police and the NZSIS believed Mr Samsudeen posed a high risk of committing an attack in New Zealand because they had stopped him from travelling to join ISIL. Therefore, their preparations for Mr Samsudeen's release mainly focused on trying to mitigate the risk he posed by surveilling and monitoring him, and managing his evident risk by identifying any offending that would enable him to be put back in custody. Although Police say disengagement was their first preference, there is little evidence of this. Their approach was primarily driven by security concerns, and the plan to address his needs was fragmented and ad hoc. As we describe in more detail below, the dominant strategy after his release revolved around surveillance and monitoring.
282. Police have pointed out that disengagement plans do not always work, because:
- 'Protective factors' can be unstable, and the person's behaviour may escalate again if they are removed (for example, if the person loses their job or their relationship breaks up).



- There have been cases overseas where people have attacked those providing them with disengagement or reintegration services.<sup>68</sup>

283. In this case, Police did not believe a community-based plan would be effective with Mr Samsudeen because he was hostile and would not genuinely engage with them.

284. However, this is not surprising. Mr Samsudeen saw Police as the law enforcement body which had been responsible for the fact that he had spent over a year on remand in custody for charges that were ultimately withdrawn or downgraded. He was thus hostile to them at an early stage and unlikely to genuinely engage with them or participate in a programme organised by them.

285. In the absence of earlier disengagement attempts, the period leading up to and after his release in 2018 was the best potential opportunity to change the path Mr Samsudeen appeared to be on and reduce his risk. That opportunity was unfortunately lost.

#### WHAT HAPPENED WHILE MR SAMSUDEEN WAS ON BAIL FROM 29 JUNE 2018?

286. On 29 June 2018, after Mr Samsudeen pleaded guilty to the reduced charges, he was bailed to Masjid Al Maktoum awaiting sentencing for these convictions on 7 August 2018. He consented to bail conditions including:

- surrendering his passport to Police and not applying for any travel documents;
- operating only one Facebook account, on a public setting;
- allowing Police to check his personal devices on demand; and
- attending *“any interviews required for the purposes of preparing a pre-sentence report or a psychiatric report under s38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003”*.

287. Police and the NZSIS were ready to begin monitoring Mr Samsudeen on the day he was released on bail. Corrections reports indicated that Mr Samsudeen had not changed his views while in custody, and a Police threat assessment completed on 5 July 2018 found it was *“probable”* that Mr Samsudeen would commit an attack. A CTAG threat assessment concluded that he had the intent and capability to *“carry out a low sophistication attack using bladed or other improvised weapons”* or a vehicle. They did not think his release conditions would prevent this from happening.

288. The Police’s monitoring strategy was focused on managing the risk that he would commit an attack, by having physical surveillance teams nearby to respond as soon as possible. Police also focused on intelligence gathering, and taking any opportunities to disrupt Mr Samsudeen by identifying any offending he did and taking enforcement action. Meanwhile, the NZSIS would collect intelligence to support Police’s efforts and provide analysis on Mr Samsudeen’s mindset and indicators of mobilisation towards violence.

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<sup>68</sup> For example, the Fishmongers’ Hall attack in London on 29 November 2019: [www.fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/11/Fishmongers-Hall-Inquests-PFD-Report-Final.pdf](http://www.fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/11/Fishmongers-Hall-Inquests-PFD-Report-Final.pdf).

289. While one of Mr Samsudeen's bail conditions enabled Police to check his phone on demand, they found he would delete all the information on his phone before handing it over for inspection.
290. Mr Samsudeen was reportedly antagonistic during his time at Masjid Al Maktoum, and played violent extremist videos and nasheeds (hymns) at high volumes.<sup>69</sup> He was suspicious of others at the mosque, and thought they could be working for Police.
291. From July 2018, he was operating multiple social media accounts in violation of his bail conditions. He accessed pro-ISIL and violent extremist content online, and indicated that he still aspired to travel to Syria. In early July, the NZSIS judged that his baseline behaviour indicated he *"almost certainly"* adhered to an extreme ideology. The NZSIS noted they had not seen this manifest itself in any imminent real-world indicators that he was planning overseas travel or planning an act of ideologically motivated violence (such as seeking to purchase a weapon).
292. On 11 July, the Security Intelligence Board (SIB) met to discuss Mr Samsudeen and the wider counter-terrorism system. The agencies acknowledged some of the key risks with the investigation, including that only *"partial assurance"* around public safety could be provided; direct engagement with Mr Samsudeen may lead him to conceal his activities; and long-term surveillance would be ineffective as surveillance staff would be exposed to discovery. The minutes record that *"significant community-based prevention effort is underway, including working with mosques and the Muslim community"*. As discussed above, we have seen little evidence to support this statement. It is unclear which agency made this comment at the meeting. Police did take steps to place Mr Samsudeen in a mosque with a supportive community, but neither they nor any agency went beyond that. What was done did not constitute a significant effort in terms of providing the full wraparound support needed for effective disengagement to begin.
293. A few days later, the NZSIS received credible intelligence that Mr Samsudeen had been browsing websites selling firearms. He also expressed an intention to acquire a gun from an associate of a former cellmate, who was allegedly linked to a gang. According to one person, Mr Samsudeen purchased a throwing star and was learning how to use it. The NZSIS considered it was *"highly likely"* he intended to obtain weapons to conduct a domestic attack. The NZSIS also learned that he subsequently said that the Police surveillance officers would be the first people he killed.
294. Meanwhile, on 16 July 2018, a probation officer met with Mr Samsudeen and prepared a Provision of Advice to Courts report for his sentencing. The report assessed him as being a low risk of harm given the nature of his offending, and said therefore *"no rehabilitative needs have been identified"*. However, his isolated lifestyle was a concern and his sentence should aim to *"reintegrate him with mainstream society"* to ensure his risk of harm to others remained low. The report also noted:

*"Although he is staying at Masjid Al Maktoum, he does his own teachings. The teachings and readings at Masjid Al Maktoum are in Indian which he does not understand therefore he teaches and reads himself. He does this through 'authentic' websites and the Quran.*

*... there are no violence-prevention or anger management programmes run by Community Corrections to address any propensity for violence."*

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<sup>69</sup> Some of these were known to be nasheeds co-opted by ISIL.

295. Mr Samsudeen's lawyers arranged for a psychiatrist to assess Mr Samsudeen and provide a report to the court. The psychiatrist noted that Mr Samsudeen:
- experienced symptoms of anxiety and depression, and suffered from insomnia, which contributed to his sense of isolation;
  - denied thoughts of suicide or self-harm, but said his loneliness once led to him presenting at the Auckland Hospital emergency department;
  - denied advocating for violent extremism or terrorist activities;
  - believed that the summary of facts for his case contained "*lies*", deliberately left out non-violent explanations for his actions, and included material to give a false impression of him; and
  - said falsely representing his employment details (which led to his fraud-related charges) was not something that would be considered a criminal offence where he grew up, and he did it to help a friend.
296. The psychiatrist concluded that Mr Samsudeen posed a low risk of serious reoffending, and said his mental health concerns meant home detention would not be an appropriate sentence. To be successfully reintegrated into the community, he needed personal support, stable housing, appropriate employment and medical care.
297. The views of both the probation officer and the psychiatrist in this respect are remarkably at odds with all other assessments of him at this point. For example, the psychologist in June 2017 (see above, paragraph 229) viewed Mr Samsudeen as being at high risk of harming others, and Corrections' own records classed him as a "*High Risk Offender*" of national security interest. There was therefore a disconnect between the two sets of assessments, arising at least in part from the fact that the latter were based on more comprehensive and classified information than was available to the probation officer and the psychiatrist.
298. Mr Samsudeen also met with a lawyer from the Muslim community who was asked by Mr Samsudeen's lawyer to help plan for a disengagement programme that could be implemented as part of his upcoming sentencing (see paragraph 373). This lawyer provided Mr Samsudeen with access to an Islamic library and education material. He told us he found Mr Samsudeen was willing to engage with him and to learn. Together with an Australian academic with some expertise in the development of deradicalisation programmes, the lawyer subsequently developed that programme in rudimentary form for presentation to the Court.
299. On 30 July 2018, Police assessed that Mr Samsudeen remained a high risk to the public and to them. They were becoming increasingly concerned about his behaviour, based on the information collected by the NZSIS (see paragraph 293).
300. Although the NZSIS already had a warrant in place, Police obtained a Surveillance Device Warrant on 3 August 2018, based on a potential Terrorism Suppression Act 2002 offence. It authorised the use of visual surveillance devices, interception and tracking of any mobile phone attributable to Mr Samsudeen. Police needed their own warrant to gather evidence that could be used in court.

301. On 6 August 2018, Mr Samsudeen replaced his criminal lawyer. The new lawyer was granted an adjournment of the sentencing hearing until 6 September 2018 (later extended to 19 September).
302. On 8 August 2018, Mr Samsudeen visited a shop that sells hunting equipment. Police were surveilling him. Mr Samsudeen bought a hunting knife that was the same model as the one Police had found under his bed after his arrest in May 2017. He asked that it be couriered to him and left the shop.
303. Police questioned the shopkeeper and found out about the purchase. They intercepted the courier package, removed the knife, and put the empty package back in the post because Mr Samsudeen had paid for 'track and trace'.
304. Police were extremely concerned that Mr Samsudeen had taken steps to acquire the knife, and by his online activity. They believed he was preparing to commit an attack imminently.
305. They considered the situation and, after consulting a Crown prosecutor, ultimately decided they had grounds to arrest Mr Samsudeen for possession of an offensive weapon under section 202A of the Crimes Act 1961. They also decided to refile the charge relating to Mr Samsudeen's possession of the knife in May 2017.
306. That evening and the following morning, Mr Samsudeen kept checking the track and trace function, awaiting delivery of the knife. He also viewed violent extremist content, including a video featuring live demonstrations of ISIL killing captives with knives.
307. On the afternoon of 9 August, Mr Samsudeen left the Masjid Al Maktoum on foot and Police arrested him. Police searched his room and found a throwing star.
308. When Police arrested Mr Samsudeen on 9 August 2018, they knew he:
- had talked about committing an attack in New Zealand (according to his former flatmate, the NZSIS intelligence and a fellow prisoner);
  - was regularly watching pro-ISIL and violent extremist content online;
  - had purchased a hunting knife and arranged for it to be delivered to him; and
  - that same night, watched a video with live demonstrations of how to kill people with a knife.
309. We accept that Police reasonably believed Mr Samsudeen was likely to be preparing to commit an attack, and that it was appropriate to arrest him in the circumstances.

## **PART 6 – FINDINGS**

The preparations for Mr Samsudeen's release on 29 June 2018 were inadequate, fragmented and ad hoc. While the Police's and NZSIS's focus on surveillance was warranted, it was to the virtual exclusion of disengagement and reintegration. As a result, a further opportunity for early intervention was lost.

Police were justified in arresting Mr Samsudeen on 9 August 2018.

## PART 7: Mr Samsudeen's second period in custody (August 2018 – July 2021)

WERE THE CHARGES POLICE LAID AGAINST MR SAMSUDEEN APPROPRIATE AND DEALT WITH IN A TIMELY WAY?

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### Evidence collected and charges laid after arrest

310. After arresting Mr Samsudeen on 9 August 2018, Police forensically examined his devices and found evidence of material they believed was likely to be classified as objectionable.
311. Police laid the following charges against Mr Samsudeen:
- three charges of possessing offensive weapons, relating to the two knives and the throwing star;
  - five charges of knowingly possessing objectionable material; and
  - one charge of failing to assist a Police officer exercising a search power.
312. Mr Samsudeen appeared in the Auckland District Court on Friday 10 August 2018. He was remanded in custody until the following week for a bail hearing. He became very agitated and had to be removed from the dock.
313. Police opposed bail because they believed Mr Samsudeen was preparing to commit a terrorist attack when they arrested him. The court declined Mr Samsudeen's bail application.
314. On this occasion, Police took appropriate steps to determine the status of the five videos that were the subject of the new 'objectionable material' charges and on 28 August 2018 submitted them to the Classification Office under section 13(1)(ab) of the Films, Videos and Publications Classification Act 1993. The Classification Office received submissions from Police on 27 September 2018 and from Mr Samsudeen's lawyers on 12 November 2018.
315. In the meantime, the Auckland District Court adjourned case review hearings several times between October and December 2018 at the request of defence counsel while awaiting a decision from the Classification Office.
316. On 9 April 2019, the Classification Office found that three of the videos submitted for classification were objectionable and two were unrestricted. The Classification Office said:<sup>70</sup>

*"The five publications were nasheeds or anashid with accompanying visual imagery. Nasheeds are Islamic religious hymns that are comparable to Christian hymns. In addition to their legitimate role in Islamic culture they have also been co-opted by Islamic extremist organisations as promotional tools. ISIS is known to create its own*

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<sup>70</sup> The statutory time limit for an appeal of this decision lapsed, but on 17 May 2019 Mr Samsudeen's lawyer asked for leave to submit the three videos that were classified objectionable for reconsideration. The Chief Censor declined this request on 28 May 2019.

*nasheeds or repurpose historical ones that deal with conflicts such as the Soviet occupation of Afghanistan.*

*In assessing these publications the Classification Office consulted with Dr Anne Aly, an Australian counter-terrorism expert who specialises in radicalisation, and several learned scholars in the Muslim community to better understand the role that nasheeds play in the daily lives of New Zealand Muslims. The consultees were invaluable in giving the Classification Office an understanding and insight into the cultural significance of nasheeds and their use by extremists.*

*Of the five videos, three were classified objectionable. All three were considered objectionable under s3(3)(d) of the FVPC Act for promoting and encouraging terrorist acts as they combined clear and unambiguous ISIS branding with nasheed lyrics that dealt with violence and war. One video contained depictions of graphic and gruesome violence and was therefore also deemed objectionable under s3(2)(f) for promoting and supporting the infliction of extreme violence on the basis of the visual imagery alone.*

*The remaining two videos were classified as unrestricted. These videos did not contain any recognisable ISIS branding unlike the three videos that were made objectionable, and the visual imagery seen in them could be comparable to that seen on an army recruitment poster. The nasheed lyrics in both videos referred to the infliction of violence but in a generalised way and to no greater extent than might be encountered in a national battle hymn, wartime poetry (or some forms of Western popular music). Therefore any promotional link with modern day extremism or terrorism could not be supported in either the visual imagery or the nasheed lyrics for those two videos.”*

317. We note that, even though Police swiftly submitted the material to the Classification Office, it still took nine months to reach a decision. This is another example of delays in the classification process that prolonged Mr Samsudeen’s second period in custody (see paragraph 381 for further discussion).
318. Also in April 2019, the Refugee Status Branch served Mr Samsudeen with two deportation liability notices: the first based on his criminal convictions under section 161 of the Immigration Act 2009; and the second based on their decision to cancel his refugee status due to fraud (see paragraph 102) under section 162 of the Act. Mr Samsudeen appealed to the Immigration and Protection Tribunal against the second deportation order. The Immigration and Protection Tribunal decided that the appeal could only be heard after Mr Samsudeen’s criminal charges were resolved, because the outcome of those charges could affect how the Tribunal would assess his case.<sup>71</sup>
319. On 6 May 2019, Mr Samsudeen replaced his criminal lawyer. The next day, the Crown Solicitor filed a protocol notice recommending that his case be transferred to the High Court for trial. The trial callover date of 15 May 2019 was adjourned twice, awaiting that decision.
320. On 20 June 2019, the High Court determined that Mr Samsudeen’s case would be transferred to it because:

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<sup>71</sup> The first procedural teleconference took place on 10 October 2019. The appeal hearing was later scheduled for 9 August 2021, and then 13 September 2021. The date was pushed back again after Mr Samsudeen fired his immigration lawyer in August 2021.

- Mr Samsudeen’s charges related to knowingly possessing material that *“glorifies the cause of Islamic State and encourages sacrifice in its name”* and he had previously been prosecuted for *“not dissimilar”* offending;
- the subject matter would be of wide public concern; and
- Mr Samsudeen’s lawyer accepted that the issues of law were *“complex and novel”*.

321. A Trial Review Hearing took place on 10 July 2019. Prior to that hearing, the Criminal Scheduler at the Auckland High Court offered a trial date of 30 March 2020 for the anticipated eight days, and then subsequently indicated that 10 February 2020 was also available if the trial could be concluded within five days. Both counsel responded that 30 March was suitable. Notably, the prosecutor said that *“a 30 March trial creates some difficulty for a number of Crown witnesses, [but] none of these are insurmountable...[and] I am of course conscious that the defendant is in custody and it is in everyone’s interests to get this matter to trial as soon as possible.”*
322. However, defence counsel told us that Mr Samsudeen wished to challenge the decision of the Classification Office that three publications were objectionable, and she had missed the 20 day period for appealing to the Board of Review against that decision. Having had an application to appeal out of time refused in May 2019, she advised the judge that Mr Samsudeen wished to rely upon section 41(2) of the Films, Videos, and Publications Classification Act 1993 to challenge the decision of the Classification Office that three publications were objectionable and have the matter referred back to the Office by the Court for reconsideration under section 41(3). However, that may only be done if at least one year has elapsed since the classification decision was made. Since the Classification Office decision was made in April 2019, a referral for reconsideration was not possible until April 2020. A trial date of 30 March 2020 was therefore inconsistent with Mr Samsudeen’s instructions. We are unaware if he realised or was made aware of the implications of his instructions.
323. No doubt mindful of the length of time Mr Samsudeen had already been in custody, the Judge recorded in a Minute allocating a trial date of 20 July 2020 that the *“delay”* was the result of advice from defence counsel that *“classification of the material as objectionable is or has been appealed and the result of that will not be known for some time”*. That was not strictly correct, since no appeal had been or would be forthcoming. We do not know how that misunderstanding arose.
324. In any event, the apparent confusion is not important, because it is clear that Mr Samsudeen wished to make the objectionability of the publications an issue at trial; that his only route to challenge the decision of the Classification Office was through section 41(2) of the Act; and that a trial date much sooner than July 2020 was therefore impracticable.
325. This reason for the selection of trial date seems to have been forgotten in subsequent proceedings, by which time Mr Samsudeen had new counsel. There is no evidence of any request for a referral back to the Classification Office for reconsideration at any time during or after April 2020.
326. We are unaware why section 41(3) allows for a referral for reconsideration following charge only if 12 months has passed since classification. The (perhaps) unintended consequence is that a person who does not appeal a classification decision within the stipulated 20 working days, but is then subsequently charged, must wait for 12 months before reconsideration. If this is integral to the trial, it results in unnecessary delays to the court process and potential prejudice to the person charged. We suggest that this provision should be reconsidered.

327. The lockdown arising from the COVID-19 pandemic that began on 27 March 2020 then resulted in the adjournment of all jury trials over that period. As a result, a generic Minute by a High Court judge in Auckland, dated 9 April 2020, was sent to all counsel appearing in adjourned jury trials from mid-May 2020 to the end of July 2020 (including Mr Samsudeen's) seeking feedback by memorandum on matters the Court needed to be aware of in setting a new trial date. Counsel told us that there were discussions about whether Mr Samsudeen would be willing to change his election so that the trial could be heard at an earlier date before a judge alone, but he was adamant that he wished to be tried by jury. Defence counsel also recalled that there was an informal discussion, perhaps with the Registrar, about possible trial dates. But no formal response to the invitation in the generic Minute was filed by either the prosecution or defence counsel. As a result, a new trial date of 17 May 2021 was set at a teleconference on 22 May 2020.
328. We appreciate the profound impact of the pandemic on the operations of the Court system as a whole, and jury trials in particular. At first sight, however, it is not clear why the lockdown (which in 2020 resulted in a total period of approximately five months when no jury trials took place) resulted in 12 month delays. We have gained the impression that this was because, outside lockdown, other jury trials generally proceeded as scheduled and those postponed were slotted in behind them unless counsel drew attention to any feature of the case that required it to be given higher priority. It is not for us to comment on whether this was the appropriate approach to scheduling in the circumstances. Given the length of time Mr Samsudeen had already been in custody and the nature of the charges he was facing, it is regrettable that neither counsel responded to the invitation in the 9 April Generic Minute. However, we appreciate that the pandemic caused a high degree of scheduling uncertainty, and it is understandable that counsel may have thought that formal submissions would be unlikely to result in an earlier trial date.
329. In November 2020, Mr Samsudeen sought to be discharged under section 147 of the Criminal Procedure Act 2011 in relation to the three 'possession of an offensive weapon' charges, which related to:
- Mr Samsudeen briefly having in a public place the knife he bought and arranged to be couriered to him, leading to his second arrest (section 202A (4)(a) of the Crimes Act);
  - the throwing star Police found when they searched Mr Samsudeen's room after his second arrest (section 202A (4)(b) of the Crimes Act); and
  - the refiled charge for the knife Police found under Mr Samsudeen's mattress after his first arrest (section 202A (4)(b) of the Crimes Act).
330. Section 202A of the Crimes Act 1961 states:
- “(4) Every one is liable to imprisonment for a term not exceeding 3 years—*
- (a) who, without lawful authority or reasonable excuse, has with him or her in any public place any knife or offensive weapon or disabling substance;*
- or*
- (b) who has in his or her possession in any place any offensive weapon or disabling substance in circumstances that prima facie show an intention*



*to use it to commit an offence involving bodily injury or the threat or fear of violence.*

(5) *It is a defence to a charge under subsection (4)(b) if the person charged proves that he or she did not intend to use the offensive weapon or disabling substance to commit an offence involving bodily injury or the threat or fear of violence."*

331. On 12 November 2020, the High Court dismissed two of the charges: the charge relating to the throwing star found in August 2018 and the charge relating to the knife found under his bed in May 2017 (that had been re-filed). The charges were dismissed due to a lack of evidence that Mr Samsudeen possessed the throwing star and the knife *"in circumstances that prima facie show an intention to use it to commit an offence involving bodily injury or the threat or fear of violence"*.

332. This ruling calls into question whether Police should have laid these charges in the first place. We note that Police had additional intelligence from the NZSIS which supported their belief that Mr Samsudeen intended to use the knife to commit violence, but they never intended to use that intelligence at trial and should not have based their charging decision on it. Without that, the charge did not withstand scrutiny and should not have been laid.

333. The High Court found there was sufficient evidence for the remaining 'possession of an offensive weapon' charge (which prompted his second arrest) to go to the jury:<sup>72</sup>

*"The evidence that is currently available could support a finding that Mr Samsudeen had the knife with him, at least for a short period of time, whilst in the shop which was a public place, and that there was no lawful authority or reasonable excuse for him having the knife. Of course, Mr Samsudeen could advance an innocent explanation for possessing it, but that would be for trial."*

334. The remaining High Court charges were:

- three charges of knowingly possessing objectionable material;
- one charge of possessing an offensive weapon; and
- one charge of failing to assist a Police officer exercising a search power.

335. In March 2021, Mr Samsudeen was assigned a new criminal lawyer as the previous one had moved to a new role.

336. On 13 and 14 May, the High Court heard and dismissed applications for a discharge under section 147 of the Criminal Procedure Act 2011, and for a stay of the objectionable material charges.

337. Mr Samsudeen's trial in the Auckland High Court began on 17 May 2021. On 27 May, the jury found Mr Samsudeen guilty of two possession of objectionable material charges, and the charge of failing to assist a Police officer exercising a search power.

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<sup>72</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20201112-2020-NZHC-3006.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20201112-2020-NZHC-3006.pdf)

338. The objectionable material charge he was found not guilty of related to a video he had 'bookmarked' but viewed only once,<sup>73</sup> after seeing it mentioned in a Police opposition to one of his bail applications during his first period in custody. Police had provided it as an example of something he might view. Mr Samsudeen said that, out of curiosity, he had looked it up and bookmarked it to show to his new lawyer. He was very angry and frustrated that Police had charged him in relation to this video, which he would not have known about if Police had not provided the link.
339. The jury also found Mr Samsudeen not guilty of the possession of an offensive weapon charge (which related to the knife he bought on 8 August 2018 and arranged to be couriered to him), presumably on the basis that he had not actually possessed the knife in a public place at any time.
340. In summary, we have concluded that the charges relating to the knife and throwing star that were the subject of the section 147 discharge should not have been laid. However, there was sufficient evidence to justify the laying of the three remaining objectionable material charges and the other possession of an offensive weapon charge, even though two of those charges resulted in acquittal at trial. Police actions in laying them were appropriate.

#### **Terrorism Suppression Act 2002 charge**

341. The Police officers we spoke to often expressed frustration at their lack of legal tools to address Mr Samsudeen's behaviour. At the time there was no clear provision for preparatory offences in the Terrorism Suppression Act 2002, but soon after Mr Samsudeen's second arrest, Police sought advice and began preparing a case for filing a charge against Mr Samsudeen of 'engaging in a terrorist act' under section 6A.<sup>74</sup> It was uncertain whether 'engaging in a terrorist act' included preparing to carry out a terrorist act, as it had not been tested in the courts.
342. Police told us they wanted to lay the Terrorism Suppression Act charge because if a conviction was secured, the maximum sentence of life imprisonment gave the possibility that Mr Samsudeen would remain in custody for longer and enable Corrections to place him in a suitable programme as a sentenced prisoner.
343. On 21 February 2019, at the Inter-Agency Working Group, a discussion on the use of the Terrorism Suppression Act occurred. Police said the charges were a "*last resort*" and would only be explored once all other options (primarily deportation) had been considered. There were also several factors to consider, such as:
- if he was liable for deportation, public interest in deportation could outweigh charges being laid;
  - the Act required the Attorney-General's consent to prosecute; and
  - no one had been prosecuted under the Act and there were no guarantees how the offence would be interpreted by the Court.
344. On 29 February 2019, Police submitted their file to the Auckland Crown Solicitor. The Crown Solicitor said they would support the Police's submission and would formally seek the necessary consent from

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<sup>73</sup> Bookmarking online content is enough to prove possession of that material.

<sup>74</sup> In October 2018.

the Solicitor-General (who may by law perform the functions of the Attorney-General) to file a charge under section 6A of the Terrorism Suppression Act.

345. In the meantime, after his second arrest, Mr Samsudeen again said he might be willing to give up his permanent residency and leave New Zealand voluntarily. In that case, the charges against him would be withdrawn. His immigration lawyer withdrew from representing him for a brief period in early 2019, believing that Mr Samsudeen would be tortured if he returned to Sri Lanka, and that it would therefore be unethical to participate in these discussions.
346. His Sri Lankan passport expired on 31 October 2018. Police said he needed to initiate the process to renew his passport before they could seriously discuss this option. Immigration took some steps to assist in that process, including providing Mr Samsudeen with the required paperwork, but he did not complete it and did not cooperate with them.
347. Police were concerned that filing a charge under the Terrorism Suppression Act would make it more difficult for Mr Samsudeen to leave, so they delayed their application to the Solicitor-General.
348. On 2 May 2019, the Inter-Agency Working Group noted that the “*prospects for deportation are declining*”. The Working Group discussed whether laying the Terrorism Suppression Act charges should be more actively pursued, given he might not be deported. Police said that “*effective lawful and appropriate deportation*” should continue to be pursued instead of laying the charges. There was further discussion that prosecuting under the Act was “*uncertain*” and success in court was still needed.
349. After discussions in June 2019, the Crown Solicitor sent a letter to Mr Samsudeen’s lawyer on 22 July 2019 with a proposal of terms for him to leave New Zealand voluntarily. Police believed Mr Samsudeen was seriously considering that proposal, which said Police would:
- withdraw the charges and not re-file them if he left New Zealand immediately (and did not return);
  - fund his travel if necessary; and
  - not contact the Sri Lankan authorities.
350. However, the proposal also set out that international protocols meant Police would have to:
- issue an Interpol ‘Green notice’ (which warns that a person is a possible threat to public safety); and
  - escort him on the plane (in plain clothes, no restraints), as carriers would not otherwise take him.
351. His sentence of one year’s supervision for the offences from his first arrest (see paragraph 373) still applied at this time, so if Mr Samsudeen were to leave within the next few months he would also have needed to apply under section 54 of the Sentencing Act 2002 for that sentence to be cancelled. Police said they would support such an application.
352. In October 2019, the Inter-Agency Working Group noted that “*time was running out to lay [Terrorism Suppression Act] charges and a decision was needed*”, as it was unlikely the immigration issues would

be dealt with in time. There was concern that, if he was charged under the Terrorism Suppression Act, he would no longer be deportable as he would likely be found to be a Protected Person in New Zealand due to his likely treatment should he be deported to Sri Lanka after being charged under the Terrorism Suppression Act.<sup>75</sup>

353. On 6 November 2019, the Crown Solicitor received a voice message from Mr Samsudeen saying he had fired his criminal lawyer and wanted to accept the proposal for him to leave New Zealand. The Crown Solicitor arranged a meeting.
354. A new criminal lawyer for Mr Samsudeen was in place by 13 November 2019. A week later, this lawyer advised the Crown Solicitor that Mr Samsudeen no longer wanted to leave due to a change in government in Sri Lanka. This change increased his fear that he would be persecuted on his return.
355. Since the option of Mr Samsudeen leaving the country voluntarily seemed to be closed, Police sought consent from the Solicitor-General to file a charge under section 6A of the Terrorism Suppression Act. This was formally granted by the Deputy Solicitor-General, Criminal, acting under a standing delegation from the Solicitor-General on 10 February 2020.
356. On 18 February 2020, the Inter-Agency Working Group met to discuss again any risks and implications of the Police decision to lay charges under the Terrorism Suppression Act. In the meeting, MFAT said New Zealand had met its international obligations relating to managing terrorism, in particular that New Zealand *“endeavours to intervene where risk is seen, all individuals are treated according to the same process, efforts were made to rehabilitate through community and other interventions, and [Mr Samsudeen] has had his due rights addressed.”* Further, MFAT noted a successful prosecution under the Terrorism Suppression Act would remove a degree of complexity from the management of and communication about the case and how New Zealand manages terrorists, especially between New Zealand and Sri Lanka.
357. Days later, a Police update to the Watch Group said the decision to proceed with Terrorism Suppression Act charges had been a *“last resort”*, and that all other avenues had been explored and options exhausted. They reported that the decision was taken in close consultation with Crown Law. The minutes record that Mr Samsudeen had *“shown no inclination to moderate his world view and Police have been conscious of the risk he presents. Prior efforts by Police and agency and community partners to engage with him have been unsuccessful.”* While it was true that Mr Samsudeen had shown no inclination to moderate his world view, it is difficult, in the light of our analysis below in paragraphs 349-382, to ascertain why Police thought that all other options had been exhausted. This was manifestly not so. It may be that Police were referring to the absence of other options to keep him in custody, but if so, that was an unduly narrow view of the potential response to the problem.
358. On 21 February, the Crown Solicitor requested leave from the Court to file an amended charge notice, including the charge of engaging in a terrorist act under section 6A of the Terrorism Suppression Act. The *“terrorist act”* in question was Mr Samsudeen researching terrorism-related material online and buying a hunting knife on 8 August 2018, which the prosecution would argue was preparation to commit an attack.

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<sup>75</sup> Eligible people in New Zealand can apply for refugee and protected person status. They must show that they fear being seriously harmed or tortured or that they risk inhuman or degrading treatment or punishment if they return to a country. A protected person cannot be deported back to a country that poses danger to them.

359. On 27 February 2020, Mr Samsudeen’s lawyer told Police that Mr Samsudeen had asked whether the proposal for him to leave New Zealand was still on the table.
360. An Inter-Agency Working Group convened on 10 March 2020 to discuss this. The minutes reflect a level of scepticism from the agencies about this request, as he had “*previously changed his mind*” about this. It was noted that a number of issues would have to be worked through, including that:
- consultation with Corrections staff was required, as seeking travel documents without approval would trigger an alert within Corrections;
  - a Judge would have to release him from remand so he could depart the country;
  - Terrorism Suppression Act charges were about to be laid, so a decision needed to be made before then;
  - if he voluntarily departed, his Tribunal appeal would be dismissed and Immigration could serve him with a deportation order; and
  - If he were to return to Sri Lanka, New Zealand would be obliged to produce a Green notice and advise the Sri Lankan authorities of his detention in New Zealand, which could have an impact on his treatment in Sri Lanka.<sup>76</sup>
361. Further negotiations about the details of this proposal took place, but ultimately Mr Samsudeen’s lawyer advised on 17 April 2020 that he would not leave and they would proceed with the trial.
362. The High Court heard the Crown Solicitor’s application on behalf of Police to add the Terrorism Suppression Act charge on 9 July 2020, and declined it on 16 July 2020.<sup>77</sup> This judgment clarified that a charge of planning or preparing to commit a terrorist act was not available under section 6A of the Terrorism Suppression Act.<sup>78</sup>
363. We note that, after Police applied to lay the Terrorism Suppression Act charge, Mr Samsudeen began referring to himself as a terrorist (see paragraphs 460 and 468).

#### **Assault charges**

364. On 23 June 2020, Mr Samsudeen was involved in assaults on Corrections officers (see paragraphs 458-467 below for more detail on this).
365. On 5 September 2020, Police charged Mr Samsudeen with:
- one charge of injuring with reckless disregard; and
  - one charge of assault with intent to injure.

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<sup>76</sup> A ‘Green notice’ is a type of INTERPOL notice to provide warning about a person’s criminal activities, where the person is considered to be a possible threat to public safety.

<sup>77</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20200716-2020-NZHC-1710.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20200716-2020-NZHC-1710.pdf).

<sup>78</sup> The Act was amended in October 2021 to include section 6B: “*Terrorist act: planning or other preparations to carry out*”.

366. Mr Samsudeen pleaded not guilty and was remanded in custody. These were District Court charges, separate from the High Court trial. We were told that Mr Samsudeen was looking forward to having his 'day in court' on these charges, but they had not yet come to trial when he died in September 2021.

#### **Other options for detaining Mr Samsudeen explored**

367. In the weeks leading up to Mr Samsudeen's impending release in July 2021, Immigration New Zealand looked at whether they could arrest and detain Mr Samsudeen under the Immigration Act on the basis that he was liable for deportation. They also considered certifying him as a national security risk under section 163 of the Immigration Act, which would strengthen their case for detaining him. However, by the time Mr Samsudeen was about to be released, Immigration New Zealand had determined that he was highly likely to qualify as a protected person, and therefore unlikely to be deported. They accordingly said they could not support his detention for deportation when that was not a realistic outcome.<sup>79</sup>

368. Consequently, they did not go ahead with this option.

369. Some later questioned whether Police could have sought to detain Mr Samsudeen for compulsory treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992. However, there are strict criteria for involuntary detention under the Act, which we are satisfied Mr Samsudeen did not meet.

#### **Concluding comments**

370. Of the ten offences Police attempted to charge Mr Samsudeen with after his second arrest (not including the unresolved assault charges), he was only convicted of three.

371. However, two of the initial five objectionable material charges were withdrawn only after classification by the Chief Censor, and Police were justified in laying those charges before that determination. Two other charges that resulted in acquittals had sufficient evidence to go to trial. Police were therefore justified in bringing the vast majority of the charges.

372. There was insufficient evidence for the 'two possession of an offensive weapon' charges that resulted in dismissal under section 147 of the Criminal Procedure Act. In this respect there was a degree of over-charging, but it did not make any difference to the process that was followed or the outcome.

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SHOULD MR SAMSUDEEN'S BAIL HAVE BEEN OPPOSED WHEN HE WAS SENTENCED IN SEPTEMBER 2018?

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373. On 19 September 2018 Mr Samsudeen was sentenced to 12 months' supervision for the five charges he pleaded guilty to following his first arrest.<sup>80</sup> The sentencing judge considered the psychiatrist's report (see paragraph 295), and a report from an Australian criminologist who was engaged to help design a community-based programme for Mr Samsudeen. The criminologist had not met Mr

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<sup>79</sup> [www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist](http://www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist)

<sup>80</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20180919-2018-NZHC-2465.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20180919-2018-NZHC-2465.pdf)

Samsudeen himself, but was briefed by the lawyer from the Muslim community who had met him. The judge noted that the criminologist:

*“is of the opinion that you do not fit the usual profile of a typical young Muslim person who has been deemed radicalised because of his or her extreme religious views and political ambitions. He says that you do not fit the characteristics of a person that seeks to commit violent acts against others. He considers that you have a poor understanding of Islam and that while you claim to be a devout Muslim, you neither show nor claim any sophistication or background in your knowledge of Islam. He considers that you would be an ideal candidate for a carefully designed, culturally sensitive and closely supervised intervention programme in the Auckland Muslim community.”*

374. The Court imposed conditions on the sentence of supervision *“to assist in [Mr Samsudeen’s] rehabilitation and reintegration”*, including:

- “a) You are to attend an assessment for any programme as directed by a probation officer, and you are to attend and complete any counselling, treatment or programme as recommended by the assessment, and as directed by and to the satisfaction of a probation officer.*
- (b) You are to attend a psychological assessment with a departmental psychologist as directed by a probation officer, and complete any treatment and/or counselling as recommended by the assessment to the satisfaction of a probation officer.*
- (c) You are to participate in such rehabilitation programme as shall be offered to you by [a community provider] and as shall be approved by a probation officer.*
- (d) You are to attend and complete any such rehabilitation programme to the satisfaction of a probation officer.*
- (e) You are to operate only one social media account on a public setting and provide the name/identifying details of that account to a probation officer.*
- (f) You are not to possess or use any electronic device capable of accessing the internet or capturing, storing, accessing or distributing images, including without limitation, any personal computers or cellphones, without prior written approval from a probation officer.*
- (g) You are to immediately inform the probation officer of any electronic device in your possession or control and upon direction, to surrender any devices for the purposes of checking the internet capability of the devices and/or to analyse the content on the device. The probation officer is not entitled pursuant to the special condition to access legally privileged material.”*

375. However, because Mr Samsudeen was back in custody on the new charges and was ultimately kept there until July 2021, the sentence of supervision with conditions was suspended and never implemented. Consequently, Mr Samsudeen was unable to participate in the proposed rehabilitation programme.
376. Some we spoke to suggested that the fact this community programme was not put in place was another missed opportunity to turn Mr Samsudeen away from the path of extremism and reduce the risk he posed.
377. Police told us they considered this sentence of supervision to be “*redundant*”, as Mr Samsudeen had reoffended and was back in custody. They could not agree to him being released for the sentence of supervision and the proposed community-based intervention programme to take place, because they believed he had been preparing to commit an attack and the danger to the public was too great. Therefore, they had to continue to oppose bail. They also felt the proposed plan was still quite “*loose*” and would have needed a lot more work before it was put into action.
378. Police say their options in order of preference were for Mr Samsudeen to:
- disengage from his violent extremist views through rehabilitation and increasing the ‘protective factors’ (such as employment, friends, a relationship);
  - have his refugee status cancelled and be deported from New Zealand;
  - be kept in custody “*for as long as the law would allow*” and engage in Corrections programmes as a sentenced prisoner;
  - be monitored as closely as possible if he was released.
379. However, as earlier discussed, there is not much evidence that Police’s first preference of disengagement ever received much attention in practice, perhaps because they regarded it as unrealistic. Their focus was always on protecting the public through law enforcement, and this took priority over everything else. Both the Police and the NZSIS thought that “*the ship had already sailed*” and that he would remain a high risk, even if he did participate in a disengagement programme.
380. Whether or not this was true, we agree with Police that the proposed community programme had little substance to it at the time of his court appearance. Indeed, the community groups that would have been an integral part of its implementation had not even been approached. Given that, and the circumstances in which Mr Samsudeen had been arrested, it was reasonable for the Police not to regard that as a realistic option.

#### WHY WAS MR SAMSUDEEN KEPT IN CUSTODY ON REMAND FOR SO LONG?

381. Mr Samsudeen spent almost three years on remand during his second period in custody. This was about 14 times the average for male prisoners.
382. We were told that several different factors contributed to the delay in resolving Mr Samsudeen’s charges, including that:
- Mr Samsudeen frequently changed lawyers.



- There were delays in the classification process and the setting of an initial trial date.
- The case was transferred to the High Court.
- COVID-19 impacted on the court schedule.
- Police were side-tracked by the possibilities that: i) they could lay a Terrorism Suppression Act charge; ii) Mr Samsudeen would be deported; or iii) Mr Samsudeen would leave New Zealand voluntarily.

#### **Mr Samsudeen changing lawyers**

383. Police said the “*primary reason*” for the delay was that Mr Samsudeen repeatedly fired his criminal lawyer, often just before key hearing dates, and it took time for the new lawyers to familiarise themselves with Mr Samsudeen’s case.
384. Mr Samsudeen changed lawyers once just before his second arrest, and five times during his second period in custody. We were told that he could be quite inflexible, and became frustrated and angry when he thought his lawyer had broken promises, or was not listening to him and doing what he wanted.
385. The first time he changed lawyers was on 6 August 2018. A second change occurred shortly thereafter in October 2018, during the period he was awaiting the Classification Office’s decision on the objectionable material that was the subject of the charges resulting in his arrest. He then changed counsel again in May 2019, just before the Crown Solicitor filed a protocol notice recommending that his case be transferred to the High Court for trial. The fourth and fifth times he changed lawyers were in July and November 2019 – after his trial date had already been set for July 2020. Although these changes sometimes resulted in a short deferral of a scheduled Court hearing (for example, the adjournment of his sentencing hearing from August to September 2018 – see paragraph 301), there is nothing to suggest they unduly impacted on the time he spent on remand in custody.
386. Mr Samsudeen had the same lawyer from November 2019 to March 2021. He did not fire that lawyer, but was assigned a new one after the lawyer moved to a new role. So, Mr Samsudeen could not have been personally responsible for any delays after November 2019, about half the time he was remanded in custody. In any event, his trial date was already set for May 2021 by this point and was not moved due to this change.
387. Thus, while we accept that Mr Samsudeen changing lawyers contributed to delays in scheduled pre-trial court hearings, we reject the argument that it significantly contributed to delays in setting trial dates and resolving his charges. The overall impact on the length of time he spent in custody was minimal.

#### **Delays in the classification process and setting a trial date**

388. Police promptly referred the possession of objectionable material charges to the Classification Office in August 2018, but it then took nine months for the final decision to be issued in April 2019. During this time, since any trial was dependent upon that decision, case review hearings were adjourned several times and no trial date was set.

389. This was clearly beyond the control of the court system, and we do not regard it as a satisfactory process. If a person is being charged with possession of objectionable material, it seems unconscionable that they be kept in custody for an extended period while a decision is being made by the Chief Censor as to whether it is in fact objectionable and without a trial date being able to be set. We make no criticism of the then Chief Censor in this respect; he was simply following the legislative process. However, that process was clearly a contributing factor to the initial delay before a trial date was set. This was recognised by the presiding District Court Judge on 4 April 2019, who declined to further adjourn for another Case Review Hearing and instead set the matter down for trial callover.<sup>81</sup> The Classification Office's determination was issued five days later.
390. We also note that, after an initial trial date was set, it was again the classification process that resulted in the setting of a date 12 months away. That is because defence counsel on Mr Samsudeen's instructions indicated that she wished to apply for the classifications to be referred for reconsideration, and this could not occur until April 2020 (see paragraphs 322-326).

### **Transfer of the case to the High Court**

391. On 7 May 2019, after the classification decision had been made, the Crown Solicitor at the request of Police filed a protocol notice recommending that Mr Samsudeen's case be transferred to the High Court for trial.<sup>82</sup> This occurred almost nine months after his initial arrest and remand in custody. The original trial callover date of 15 May 2019 in the District Court was adjourned twice, awaiting that decision. Once the case had then been transferred, in June 2019, a trial date was not set until 10 July 2019.
392. Since all the factors that formed the basis for the protocol application and decision were known at the time of Mr Samsudeen's original arrest and remand in custody, it may be questioned why there was such a delay before the Police requested that this application be made.
393. It has been pointed out to us that, while the offence with which Mr Samsudeen was charged (possession of an objectionable publication with knowledge under the Films, Videos, and Publications Classification Act) is a designated protocol offence, possession of a restricted publication is not. If the Chief Censor had decided that all of the publications were merely restricted, transfer to the High Court would not have been available. We do not regard this as a good reason for the delay. Given that the offence charged *was* a protocol offence, an application for transfer could have been made shortly after arrest, and even if the classification had subsequently downgraded the charge, there is nothing in law that would have prevented a trial from continuing in the High Court. In our view, that would have been the preferable course of action for the prosecution to take.
394. We have not been able to find any other good reason for the delay. However, given that as discussed above no trial date in the District Court had been set before the protocol notice was filed, and the High Court trial date was set only two months later, the delay in bringing the protocol application made little or no difference to the length of Mr Samsudeen's detention. Indeed, given that the District Court

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<sup>81</sup> A Case Review hearing is a pre-trial hearing to manage the progression of cases, whereas a Judge-alone trial callover is primarily designed to set a trial date.

<sup>82</sup> A protocol notice is a notice of application for the transfer of a case from the District Court to the High Court, on the grounds that the offence makes the case eligible for transfer under a protocol established by the Chief High Court Judge and the Chief District Court Judge under section 66 of the Criminal Procedure Act 2011.

may well have had a greater backlog at the time than the High Court, the transfer could conceivably have shortened the proceedings.

#### **Impact of COVID-19 on court schedule**

395. When the first trial date of 20 July 2020 was set in July 2019, that was well before the effects of the pandemic. However, as we have discussed in detail above (see paragraphs 327-328), all jury trials scheduled during the pandemic lockdown were adjourned. That included Mr Samsudeen's trial. A generic Minute by a High Court judge, dated 9 April 2020, was sent to all counsel for trials in Auckland High Court that were impacted by the suspension seeking feedback from counsel by memorandum on matters the Court needed to be aware of in setting a new trial date. Although it is possible that informal discussions were held with the Registrar, no response from either the prosecution or defence counsel was filed. As a result, a new trial date of 17 May 2021 was set at a teleconference on 22 May 2020. Given the length of time Mr Samsudeen had already been in custody and the nature of the charges he was facing, it is regrettable that neither counsel responded to the invitation in the 9 April generic Minute, although this is understandable given the high degree of scheduling uncertainty created by the pandemic lockdown.

#### **Side-tracked by other possibilities**

396. Police began working on the Terrorism Suppression Act charge in October 2018, and eventually applied to lay the charge in February 2020. The High Court declined the application in July 2020.

397. As with the protocol application, all of the evidence that formed the basis for the application to lay this charge was known at the time of Mr Samsudeen's original arrest and remand in custody and it may be questioned why there was such a delay before the application was made.

398. The reason appears to lie in the fact that periodically, from the time Mr Samsudeen was arrested in August 2018 until April 2020, there were negotiations about the possibility that he would surrender his permanent residency and voluntarily leave New Zealand. Although Mr Samsudeen's first arrest was to prevent him leaving the country to join ISIL in Syria, Police were later willing to escort him back to Sri Lanka and pay for the trip, despite believing he retained his violent extremist views. Ultimately Mr Samsudeen decided not to leave, due to a change in Government in Sri Lanka and a perceived fear he would be tortured on his return. The option of trying to deport him was also considered, but was unable to be progressed because he had an active appeal against deportation with the Immigration and Protection Tribunal that was likely to be affected by the outcome of the criminal proceedings.

399. The laying of the Terrorism Suppression Act charge was therefore a back-up option that was only pursued when these other options failed. That is implicit in the Crown memorandum accompanying the application, which stated that "*[t]he Crown acknowledges the delay in the filing of the application. A delay is explicable by reference to the extensive efforts made by the Crown to resolve this matter. It is, however, now clear that resolution is no longer possible.*"

400. If this delay had significantly affected Mr Samsudeen's time in custody, there would be cause for concern. Initial decision as to residency and deportation are executive functions that should not interfere with or delay a parallel judicial process. If the laying of the terrorism charge had been successful and had resulted in the trial date being vacated and a later date set, that would likely have further prolonged Mr Samsudeen's period in custodial remand.

401. However, it is clear from the sequence of events that the delay before Mr Samsudeen's trial date was set, and the time that then elapsed before the trial itself, were not affected by either the discussions as to deportation or the laying of the terrorism charge. They therefore did not delay the resolution of Mr Samsudeen's charges in a timely manner.

### **Concluding comments**

402. It is concerning that Mr Samsudeen was kept on remand in custody for almost three years after his second arrest, on charges that, if they had all resulted in a conviction, would in our estimation have resulted at most in a sentence of imprisonment of equal or lesser duration.

403. Our analysis above suggests that the major contributing factor was the inherent delay occasioned by the classification process.

404. This was compounded by the fact that, when the pandemic further delayed the trial, neither prosecution nor defence pushed for the case to be given higher priority in the light of the period already spent on custodial remand (although we cannot say whether it would have been given priority in light of any submissions made). This is not to suggest that prosecution or defence left the case to drift. Rather, they let it take its normal course, when there was a case for it to be treated differently. We return to this issue in Part 9.

### **WERE MR SAMSUDEEN'S NEEDS APPROPRIATELY ADDRESSED IN PRISON?**

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#### **Case management and access to treatment and programmes**

405. Mr Samsudeen was remanded to the Mt Eden Corrections Facility after his arrest on 9 August 2018.

406. Mt Eden Corrections Facility is primarily a remand prison and, consistent with usual practice in relation to remand prisoners, offers few rehabilitation opportunities. As we outlined earlier (see paragraph 263), that is because remand prisoners are often detained for only short periods and their length of detention is generally unpredictable. There is also a view that they cannot, or have no incentive to, receive rehabilitative interventions since they have not admitted to or been found guilty of the alleged offending.

407. But as during his first period in custody, Mr Samsudeen was treated like any other remand prisoner. That does not mean that nothing was done. Some attempt was made to identify what his needs might be. A case manager tried to meet with Mr Samsudeen on 12 September 2018, but he declined, apparently because (according to a Corrections intelligence report) he viewed Corrections as working alongside Police and did not trust them. The case manager did complete an initial "*needs assessment*" without his input but did not schedule any programmes or activities for him, noting that he was a remand prisoner.

408. Nearly three months later, on 4 December 2018, Mr Samsudeen agreed to participate in the case management process and met with another case manager. He said he was interested in a driver's licence programme, was willing to work in custody, and needed support with obtaining a bank account, ID, and accommodation upon release.

409. The case manager then completed a plan on 31 December 2018 and met with Mr Samsudeen again on 16 and 17 January 2019, and they discussed his support networks outside custody. He said he had lived

in New Zealand for about seven years, but had little support apart from the Masjid Al Maktoum in South Auckland. He said that mosque would be his preferred address if he was released, and that he wished he had better access to resources related to his faith in Islam as a Muslim. He asked for a copy of the 'Hadith', a religious book similar to the Quran. The case manager subsequently spoke to the Prison Chaplain at the Mt Eden Corrections Facility who provided a copy to him.

410. The December 2018 plan noted that Mr Samsudeen said he had been diagnosed with depression, and briefly mentioned a period of trauma he went through before coming to New Zealand. He said he had previously engaged with counselling services and a psychologist, and had been on anti-depressants before his arrest but stopped because of the side effects. The case manager said unit staff reported that Mr Samsudeen was quiet, compliant and would be employed as a unit cleaner soon (which occurred but ceased when he was moved to another unit on 26 March 2019).
411. Mr Samsudeen was wait-listed for the driver's licence programme and the Learning Pathways course, but was never put on them, although he remained in custody for another two and a half years. In fact, the only programme he attended in Mt Eden was in October and November 2019, when he attended four Problem Gambling Foundation education workshops. It is not known what motivated him to participate in this programme, as we have no information to suggest he had a gambling problem. He also undertook a literacy/numeracy assessment on 11 December 2019, but again this did not lead to placement on any programme.
412. The only evidence of any other actions in the Mt Eden Corrections Facility to address his particular needs related to his mental health issues. These were confined to addressing his presenting symptoms rather than underlying causes. When he arrived in custody in August 2018, he told staff his physical and mental health was stable. As he had recently seen a psychiatrist (for the purposes of a pre-sentencing report to court), Corrections referred him for a mental health screening. However, the referral was declined due to "*no mental health needs*". The next time the issue of his mental health came up was in March 2019 and the following months, when he reported a "*PTSD flare up*" and "*high depression*", and requested a single cell due to anxiety and panic attacks. He was prescribed antidepressants and referred for a mental health assessment, although the referral was again declined due to "*no evidence of current major mental illness*". He continued to report problems with depression and anxiety, and Corrections staff monitored him and reviewed his medication several times during 2019 and into 2020.
413. Although a psychologist also visited Mr Samsudeen in prison seven times throughout June to August 2019, this was at the request of his immigration lawyer rather than a Corrections initiative. The psychologist was asked to assess his psychological and emotional state. The psychologist recalled that Mr Samsudeen was an "*intense*" man and could express himself openly and clearly. They often discussed the choice Mr Samsudeen had to make between staying in New Zealand to fight the charges (which Mr Samsudeen believed were "*fake*") and returning to Sri Lanka. They also talked about his family, education, and experience growing up in Sri Lanka. The psychologist said they did not discuss the circumstances that led to him being in prison, and he did not know Mr Samsudeen had any interest in travelling to Syria to join ISIL.
414. On 1 July 2020, Mr Samsudeen was transferred from the Mt Eden Corrections Facility to Auckland Prison, due to concerns about the risk he posed to others. Auckland Prison should have been a better place than Mt Eden for him to receive support, as it houses convicted prisoners as well as remand

prisoners. However, there was confusion over how he was managed.<sup>83</sup> A case manager should have been assigned to him within 10 working days, but although he specifically requested a case manager on 14 July, he was not assigned one until six months later. This meant he had no direct or consistent point of contact for his case management needs, and over that period no management plans were prepared for him.

415. This did not meet the requirements of prison policy on the delivery of case management to prisoners, and of section 51 of the Corrections Act 2004, which applies to every prisoner who is in custody for a continuous period of more than two months on remand. Under that section, Corrections must ensure an individual management plan is devised for every prisoner. Those plans must be “*revised at regular intervals*” and must:

- be based on an assessment of the needs, capacities, and disposition of the prisoner;
- make provision for the safe, secure, and humane containment of the prisoner;
- outline how the prisoner can make constructive use of his or her time in the prison (including, in the case of a person sentenced to imprisonment, ways of addressing offending behaviour and preventing reoffending);
- outline how the prisoner may be prepared for eventual release from the prison and successful reintegration into the community; and
- include any prescribed matter or other matter required to be included in the plan by instructions issued under section 196; and
- be consistent with the resources available to the chief executive to manage the prisoner.

416. Additionally, from the time he was transferred to Auckland Prison to the time he was released into the community over a year later, he did not have any Medical Officer review his mental health medication as part of a face-to-face review. Nor was there any attempt to consider the underlying causes of his mental health issues. This was a failure to provide an appropriate standard of care. There is no clear evidence as to why this failure occurred. Mr Samsudeen also did sometimes refuse to engage with Corrections’ mental health specialists. But the fact is that the first recorded mention of his mental health after he was transferred to Auckland Prison was on 30 April 2021, when staff noticed that he seemed stressed and he then declined to speak with the Intervention and Support Team. On 10 June 2021, when he reported that his depression level was high and he wanted to increase his medication, he was booked to see a nurse on 18 June, but was not seen due to “*time constraints*”. By that time, Mr Samsudeen was a high-risk prisoner in the Prisoners of Extreme Risk Unit and about to be released into the community, but even then priority does not seem to have been given to addressing his mental health needs. It is difficult to understand why, on the occasions when he was willing to engage, extra effort was not made to ensure that he received support.

417. Corrections had plans for managing Mr Samsudeen in segregation, but there was no individual prisoner management plan that addressed how he could make constructive use of his time in prison or outlined

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<sup>83</sup> Some of this confusion was due to the fact he was being managed with support from the Persons of Extreme Risk Directorate – see paragraphs 454-455 and 469-470 below.

how he might be prepared for release and successful reintegration into the community. Consequently, no other rehabilitative interventions were planned or delivered.

418. As Mr Samsudeen was constantly dealing with different people in custody, there was little opportunity for anyone to build up knowledge or establish a relationship of trust and confidence with him. The lack of a case manager from July 2020 to January 2021 also meant there was no dedicated link between custodial staff and Community Corrections, and potential opportunities to create proper pathways for his eventual reintegration into the community were lost.
419. Apart from efforts in May 2020 to find an Imam to visit Mr Samsudeen (see further below), there also does not seem to have been much of an attempt to begin disengaging him from his violent extremist beliefs while he still remained in custody. There needed to be a plan that focused not only on changing his perspective of Islam, but also on other factors that are relevant to all prisoners who will need to return to the community at some stage, such as:
- wellbeing/health;
  - family and community support;
  - education/life skills; and
  - employment.
420. Overall, very little was done to rehabilitate Mr Samsudeen, even though he was deemed to be a high-risk person of national security interest. Agencies collectively should have invested in proactively making the most of this time to try to reduce the risk he posed. But no one seems to have taken responsibility for developing a solid, long-term plan to achieve this as soon as possible.
421. The deficiencies in this regard during Mr Samsudeen's first period in custody (see paragraphs 260-267) were thus repeated over a longer period during his second period on remand. He was initially treated like any other remand prisoner, notwithstanding that he was regarded as a high-risk potential terrorist. As his behaviour deteriorated (see paragraphs 472-478 below), Corrections simply responded with increasing coercion and control.
422. We acknowledge that his behaviour deteriorated over time, and his risk profile accordingly increased. This meant rehabilitation options were more limited than they might have been for low-risk prisoners, since more resources and risk assessments were required to assess the feasibility of any particular rehabilitative measure. However, this does not explain the inadequacy of initial assessments and plans, and is not sufficient reason to have little or nothing in place at all.
423. In mid-2020 Police and Corrections prepared a report that said Corrections had been *“unable to formally engage Mr Samsudeen in disengagement due to his remand-accused status”*. However, we do not think that his remand status was an impediment to the provision of the type of support that he needed, especially given his particular profile and the length of time he was projected to be in custody.
424. Police and Corrections also told us they were hamstrung because Mr Samsudeen was *“anti-authoritarian”* and frequently rebuffed any attempts to engage with him. But there were indications that he would have participated in the right circumstances. For example, the lawyer from the Muslim community who met with him while he was on bail had found him open to learning more about Islam.

The fact is that during his second period on remand, there simply appeared to be little recognition of the pressing need to intervene to reduce the risk that he was agreed as presenting upon his eventual and inevitable release.

425. The inadequacies in the provision of rehabilitative and reintegrative support were mirrored in Corrections' response to his requests for religious support. Throughout 2020, Mr Samsudeen regularly asked to see an Imam and made complaints about the Prison Chaplaincy Service not adequately supporting Muslim prisoners. He said he suffered from anxiety and depression and needed some spiritual help, and that the Prison Chaplaincy Service was racist because no Muslim chaplain had been made available. A fellow prisoner we spoke to confirmed that Mr Samsudeen was desperate for religious support.
426. The Prison Chaplaincy Service met with Mr Samsudeen in January 2020 and acknowledged that he had received inadequate support from the Mt Eden Corrections Facility chaplaincy in the past year. They told Mr Samsudeen they had been working with Muslim leaders towards having Muslim volunteers available to meet with prisoners in the next few months. In March, Mr Samsudeen complained that nothing had been done, and he was told that ten new Muslim volunteers were about to be inducted and should be able to assist Muslim prisoners in the next few weeks.
427. Shortly after this, New Zealand had its first COVID-19 lockdown. Mr Samsudeen complained again in May, and was told the volunteers were unable to visit due to the pandemic restrictions. Mr Samsudeen was transferred to Auckland Prison before these visits commenced.
428. Mr Samsudeen again asked to see an Imam, but none was available at Auckland Prison. From the end of July 2020, Police and Corrections staff were working towards finding an Imam for him, as it was thought this would "*create a protective factor upon release*". However, it took until 3 December for an Imam to visit Mr Samsudeen (after a meeting discussed below at paragraphs 499-501). He had first asked to see an Imam two and a half years earlier, on 12 April 2018.
429. Mr Samsudeen was highly frustrated about this issue, and it is understandable that he interpreted the delay in providing access to an Imam as further evidence of mistreatment and bias against him as a Muslim. Each time the question of support was raised by a staff member or Mr Samsudeen, there was a lack of available options and coordinated follow-up. The reasons given for the significant delay in Mr Samsudeen's initial access to an Imam included:
- restrictions associated with his risk and segregation status;
  - case management issues;
  - internal communication breakdowns amongst Corrections staff;
  - the impact of COVID-19; and
  - resource availability.
430. It is unknown what the impact on Mr Samsudeen's cultural and religious psyche while in custody might have been if he had been able to engage with an Imam much sooner. While there is no evidence of bad faith on the part of Corrections' staff, this was another missed opportunity to provide him with positive influences.



431. Corrections' records noted that the Imam thought the visit in December 2020 went well and there was a chance of redirecting Mr Samsudeen towards a more moderate and pro-social view of Islam. Mr Samsudeen asked to see the Imam again shortly after the first visit and Corrections saw this as a positive response.
432. However, there was a lack of coordinated follow-up by Corrections to ensure any subsequent visits were facilitated promptly. There is some evidence that Mr Samsudeen kept changing his mind about wanting to see the Imam again, and that there was confusion about whether the Imam was willing to return. There was also uncertainty about who was ultimately responsible for the issue, as well as delays in correspondence with members of the Muslim community and a lack of consistent case management for Mr Samsudeen.
433. An intelligence report dated 29 March 2021 recommended that the best chance at disengaging Mr Samsudeen from his violent extremist views was through reintegrative support and rehabilitative programmes, and that an appropriate cultural advisor or group could assist him with added support, education and a sense of belonging in the community.
434. A second and final visit by the Imam took place on 29 April 2021. Mr Samsudeen told his Residential Manager that it went "all good" and that he had discussed the possibility of the Imam supporting him when he was released into the community. Mr Samsudeen indicated that he would like to see the Imam again, but would wait until Ramadan was over and it was convenient for the Imam. The Imam observed that Mr Samsudeen was different from his last visit in December 2020, and appeared to be building up anger and frustration. He described Mr Samsudeen as articulate but aggressive, and his religious views as "extreme".
435. We note that, as we discuss in more detail below, Mr Samsudeen's behaviour in custody deteriorated towards the end of 2020 and throughout 2021. Corrections told us that he was much less engaged by the time the Imam visited for the second time on 29 April 2021. However, the New Zealand Muslim Association who arranged the Imam visits disagree with this view and maintain that they could have helped Mr Samsudeen further if given the opportunity.
436. Section 78 of the Corrections Act requires that Corrections must ensure that in every prison, so far as is reasonable and practicable, appropriate provision is made for the various religious and spiritual needs of prisoners. As Mr Samsudeen met the definition of a "prisoner" under the Act, it was incumbent upon Corrections to make reasonable efforts to meet his religious and spiritual needs.
437. Section 80 also mandates that so far as is reasonable and practicable, appropriate provision must be made for the various needs of prisoners arising because they belong to a particular culture. In Mr Samsudeen's case, the two obligations overlapped, since his religious practice and faith appear to have stemmed from his cultural upbringing in Sri Lanka.
438. We have concluded that Corrections failed to comply with either of these requirements.

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#### DID CORRECTIONS RESPOND APPROPRIATELY TO MR SAMSUDEEN'S BEHAVIOUR IN CUSTODY?

##### **Segregation**

439. Upon being remanded to the Mt Eden Corrections Facility after his arrest on 9 August 2018, Mr Samsudeen was segregated from the mainstream remand population. This was consistent with his

request during his first period in custody and the subsequent direction under section 59(1)(a) of the Corrections Act that he be placed on 'voluntary protective segregation'.<sup>84</sup> A voluntary protective segregation direction ceases to have effect once a prisoner withdraws their consent to the direction under section 59(2).

440. Mr Samsudeen began his second period in custody as a relatively compliant prisoner, but his behaviour and the nature of his interaction with staff and other prisoners progressively deteriorated over time. The first formal record of this deterioration is on 16 February 2019, when Mr Samsudeen and another prisoner were given warnings after they had an altercation.
441. Mr Samsudeen was moved to a different unit on 26 March 2019, after he alleged that he had been threatened and insulted by other prisoners because of his Muslim faith. This was shortly after the Christchurch mosques attack had taken place.
442. From 26 March 2019, the basis of Mr Samsudeen's segregation is unclear. He had been in the voluntary protective segregation area of Mt Eden Corrections Facility, but after this incident he asked for a "super segregation". This is a colloquial term for 'directed protective custody' under s 59(1)(b), which provides that a prison manager may segregate a prisoner because they have been put at risk by another person and there is no reasonable way to ensure that prisoner's safety other than segregation. Unlike voluntary protective segregation, directed protective custody does not require the prisoner to consent to being segregated. Accordingly, there are strict rules for a prisoner's management under directed protective custody: the direction must be approved and reviewed by the Chief Executive at set intervals; the health centre manager must be notified; 'special attention' must be paid to that prisoner by health staff (in practice, this means the prisoner receives a daily wellbeing check); and the prisoner must be visited daily by the prison director (or their delegate).<sup>85</sup>
443. Some Corrections records indicate that at this point Mr Samsudeen was in fact placed on directed protective custody due to a threat to his safety. It is clear that Mr Samsudeen did move units and from 26 March 2019 was managed as though a direction had been made under s 59(1)(b). From this point on, Mr Samsudeen did not share a cell with anyone. His cell was unlocked for one hour each day, but he did not associate with other prisoners.
444. We have not seen any evidence that a s 59(1)(b) direction was made. There is no record of Mr Samsudeen requesting an opportunity to associate with any other prisoner, or raising any issue about his placement, during this time. However, there was a risk that, assuming he was not formally made subject to a directed protective custody direction, his segregation was not managed in line with s 59(1)(b) requirements, including the Chief Executive's review of the segregation direction. There is no evidence that Mr Samsudeen was visited by health for any wellbeing checks associated with segregation during this period.
445. In the following months, Corrections noted that Mr Samsudeen told staff:

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<sup>84</sup> Corrections Act 2004, s59(1) says: "The prison manager may direct that the opportunity of a prisoner to associate with other prisoners be restricted or denied if – (a) the prisoner requests that his or her opportunity to associate be restricted or denied and the manager considers, having regard to any information supplied by the prisoner or otherwise available to the manager, that it is in the best interests of the prisoner to give that direction; or (b) the prison manager is satisfied that— (i) the safety of the prisoner has been put at risk by another person; and (ii) there is no reasonable way to ensure the safety of the prisoner otherwise than by giving that direction."

<sup>85</sup> Corrections Act 2004, s 59; Corrections Regulations 2005, regs 55, 56 and 76; and POM at M.07.01.02.

- he was happy about the news of the Easter Sunday attacks in Sri Lanka on 21 April 2019, despite many of the people killed being Sri Lankan, saying: *“they are not Sri Lankan, they are infidels”*;
  - he was very happy to hear that Abu Bakr Al-Baghdadi (a ISIL leader) was alive and had come out of hiding; and
  - if he was deported back to Sri Lanka, he would make his way to Iraq.
446. On 26 November 2019, Corrections noted intelligence that Mr Samsudeen was reportedly sad to hear of the death of Abu Bakr al-Baghdadi, but *“was sure someone stronger would come along”*.
447. In December 2019, the Mt Eden Corrections Facility Prison Director made a direction to shift Mr Samsudeen’s custodial status from voluntary protective segregation to directed protective custody under s 59(1)(b). The reasons provided for this were that he was a high-risk offender, and the Police believed he held violent extremist ideology and beliefs. It is unclear what triggered this, since nothing had changed in this respect since he had been remanded in custody 16 months earlier.
448. This direction was revoked on 22 January 2020, and Mr Samsudeen’s status reverted back to voluntary segregation. From this time, he could associate with other segregated prisoners.
449. On 24 February 2020, Corrections Intelligence said Mr Samsudeen was actively encouraging other prisoners to become Muslim and: *“Given his known extremist views, this engagement presents a potential risk as those he engages with may also be encouraged to adopt his extremist interpretation.”*
450. On 26 February, Corrections reinstated the directed protective custody based on new intelligence that other prisoners posed a risk to Mr Samsudeen’s safety. This continued as it emerged that Police intended to lay the Terrorism Suppression Act charge against him (see paragraph 358).
451. On 7 May, a non-association alert was added to Mr Samsudeen’s file to keep him separate from another prisoner with whom he was sharing his extremist views.
452. On 26 June 2020, after an incident in custody three days earlier (see paragraph 458 below), the Prison Director at Mt Eden Corrections Facility directed that Mr Samsudeen be subject to non-voluntary segregation under section 58(1)(b) of the Corrections Act, due to the danger he posed to staff (as opposed to the previous basis for segregation, which was the risk others posed to him).<sup>86</sup> He requested that the segregation order be reviewed by the ‘Visiting Justice’.<sup>87</sup> The order was reviewed and renewed every three months from this point on.
453. In summary, from 9 August 2018 to 7 December 2019, and from 22 January to 26 February 2020, Samsudeen was segregated for approximately 17 months at his own request. For at least six months of that period, he should have been subject to a non-voluntary segregation direction. From 7 December 2019, and 26 February to 23 June 2020, he was in non-voluntary segregation because of the risk to his own safety, and from 29 June 2020 until his release on 13 July 2021, he was in non-voluntary segregation for the safety of Corrections staff. It is obviously undesirable that Mr Samsudeen spent such a long period in segregation, especially given the overall length of his detention as a remand

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<sup>86</sup> Corrections Act 2004, s 58(1)(b) says: *“The prison manager may direct that the opportunity of a prisoner to associate with other prisoners be restricted or denied if, in the opinion of the manager, — the safety of another prisoner or another person would otherwise be endangered.”*

<sup>87</sup> Corrections Act 2004, s 19.

prisoner.<sup>88</sup> It is highly likely to have exacerbated his mental health difficulties. However, given the custodial environment, his periodic expression of his violent extremist beliefs and his deteriorating behaviour, we have concluded that the decisions to segregate him were reasonable. For the majority of this period, we are satisfied that Mr Samsudeen was appropriately informed about the procedure and implications of a segregation direction, had the opportunity to obtain related advice and assistance, and knew of the process for applying to the chief executive and/or a Visiting Justice to review the justification for continuing a segregation direction. The exception is the period of March – December 2019, where Mr Samsudeen was treated as being involuntarily segregated, but no appropriate direction had been made and he was not subject to the care and oversight that type of direction required.

### Classification as Person of Extreme Risk

454. For the same reasons, on 28 February 2020 the Regional Commissioner for the Northern Region referred Mr Samsudeen to the Persons of Extreme Risk Directorate (PERD).<sup>89</sup> The PERD manages the highest risk prisoners, including those who pose an ongoing risk of serious violence and those who are at a very high risk of being harmed by others.

455. The PERD uses a 3 tier model:

Tier 1	Decision-making for the management of Tier 1 prisoners is the Regional Commissioner’s responsibility. The PERD provides support, consultation and advice.
Tier 2 – Directorate Governance	The Regional Commissioner and the PERD Commissioner jointly approve all material decisions about the management of Tier 2 prisoners. The Regional Commissioner retains full accountability.
Tier 3 – Directorate Management	Tier 3 prisoners reside in the Prisoners of Extreme Risk Unit (PERU) at Auckland Prison. The PERD Commissioner is responsible for managing them. This tier of service is the highest level of intensity and intended for a very small number of prisoners posing the very highest risks, which require a bespoke approach.

456. In March 2020, the PERD panel decided to manage Mr Samsudeen as a Tier 2 prisoner due to current intelligence information, his charges and concern about his “*high extremist risk*”. Although he was under the purview of the Mt Eden Corrections Facility staff for day-to-day case management, he was also subject to joint PERD governance and oversight. In practice, this meant that the PERD was involved in all key decision-making regarding his treatment and management.

457. Again, we find the decision to refer Mr Samsudeen to the PERD reasonable.

<sup>88</sup> We note that the Inspectorate is currently conducting a review into the use of segregation in prisons – see [https://inspectorate.corrections.govt.nz/news/news\\_items/review\\_initiated\\_into\\_use\\_of\\_segregation\\_and\\_use\\_of\\_force\\_in\\_prisons](https://inspectorate.corrections.govt.nz/news/news_items/review_initiated_into_use_of_segregation_and_use_of_force_in_prisons).

<sup>89</sup> The PERD was established after the Christchurch mosques attack on 15 March 2019.

### Incidents in custody where Mr Samsudeen and two Corrections Officers were injured

458. On 23 June 2020, Corrections officers were escorting Mr Samsudeen to an exercise yard when he became argumentative and refused to follow orders. Mr Samsudeen wanted to go to a different exercise yard with more sun, but it was not his turn to use that yard (which was booked for another prisoner).
459. After Mr Samsudeen failed to follow a lawful order to move back to his cell, non-threatening physical contact (an open palm on Mr Samsudeen's back) was used to move him. Mr Samsudeen resisted and Corrections officers took hold of him in an attempt to restrain him. Mr Samsudeen backed himself into a corner and threw clenched fists towards staff. Corrections officers restrained him and placed him on the ground where handcuffs were applied behind his back. Two Corrections officers sustained minor injuries in the incident. Mr Samsudeen was escorted to a medical room where he was assessed by a nurse. During the assessment, Mr Samsudeen accused staff of breaking his wrist. Mr Samsudeen was found to be medically fit to be moved to the management unit.
460. Following this medical assessment, and about 30 minutes later, Mr Samsudeen was escorted to the prison management unit, where his handcuffs were removed and he was placed in a cell. Mr Samsudeen remained agitated and allegedly threatened the officers by saying: *"You know what I am here for, I am on (a) terrorism charge, I will fuck you, mothers fuckers"*. Two Principal Corrections Officers (PCOs) remained in the cell and encouraged Mr Samsudeen to talk about what had happened. At this point Mr Samsudeen lunged towards one of the PCOs, punching him in the face with a closed fist. Responding Corrections officers entered the cell and restrained Mr Samsudeen. The responding staff and Mr Samsudeen went to the floor and, during the resulting melee, he sustained a broken arm.
461. Mr Samsudeen was assessed by health staff and arrangements were made for him to be taken to Auckland Hospital for further examination and treatment.
462. Later in the day, Mr Samsudeen returned to the prison where Corrections staff carried out a Review Risk Assessment. As a result of this, Mr Samsudeen was placed in the Intervention and Support Unit on medical oversight on 15 minute observations, before returning to Auckland Hospital the following day for surgery.
463. Mr Samsudeen later said he felt the Corrections officers were provoking him. He believed the Corrections officers' use of force was excessive and made a complaint.
464. Corrections staff are permitted to use force on prisoners in certain situations, including if a Corrections officer has reasonable grounds to believe it is *"reasonably necessary... in the case of active or passive resistance to a lawful order"*.<sup>90</sup> They must not use *"any more physical force than is reasonably necessary in the circumstances"*.
465. Corrections reviewed the use of force in this case and found it to be justified. The Inspectorate monitored the complaint about staff made by Mr Samsudeen following the incident. Further, the Inspectorate reviewed the internal Corrections investigation material pertaining to Mr Samsudeen's complaint (including footage and audio of the incidents). The Inspectorate was satisfied that prison management had appropriately investigated the incident and the allegations made by Mr Samsudeen.

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<sup>90</sup> Corrections Act 2004, s 83(1)(c)(ii).

The injury sustained by Mr Samsudeen was considered to be unintentional and resulted during his violent resistance to staff who were attempting to restrain him.

466. The incident led to Mr Samsudeen being transferred to Auckland Prison. At the time of his death, charges had been filed against Mr Samsudeen in connection with the alleged assault, and he was remanded on bail pending trial, but the Police investigation into his parallel complaints against Corrections officers at Mt Eden Corrections Facility remained incomplete.
467. From this point on, Mr Samsudeen's medical record shows he had ongoing issues with pain and nerve damage to his arm up until March 2021.

#### **Further deterioration in Mr Samsudeen's behaviour and transfer to Prisoners of Extreme Risk Unit (PERU)**

468. On 1 July 2020, Mr Samsudeen was transferred to Auckland Prison. About this time, he reportedly told other prisoners he was associated with ISIL. Corrections noted the concerns raised by other prisoners about Mr Samsudeen's behaviour, but said there was no information to suggest that he was linked to ISIL and it was unlikely he was recruiting for them while in custody.
469. From the date he was transferred, Mr Samsudeen was formally regarded as a Tier 2 PERD prisoner at Auckland Prison but was managed by Auckland Prison staff with support from the specialised PERU (Tier 3) staff. This appears to have been a hybrid arrangement more akin to Tier '2.5', although we understand that no such formal service level exists. The PERD Practice Director told us that when Mr Samsudeen arrived at Auckland Prison, Corrections recognised that he was very high risk, and he would ordinarily have been Tier 3. However, the Prisoners of Extreme Risk Unit (PERU) at that time had limited cell capacity. The perpetrator of the Christchurch mosques attack was also in the PERU, and it was decided Mr Samsudeen should be managed separately.
470. In practice, Tier 2.5 was an arrangement where Auckland Prison staff received more support from the PERD for Mr Samsudeen than a standard Tier 2 case ordinarily would. The PERD/PERU staff assisted with Principal Corrections Officer checks, supervised his movements within the prison and chaired the multidisciplinary team meetings in respect of his treatment and management.
471. In August, Corrections staff reported that Mr Samsudeen was generally a quiet, compliant prisoner.
472. However, by late 2020, Mr Samsudeen's behavioural incidents in custody had escalated significantly, as had his risk profile. This is demonstrated by the fact that, between 8 November 2020 and 28 June 2021, Mr Samsudeen was involved in 35 recorded incidents of misconduct at Auckland Prison. For comparison, he had been involved in about 10 recorded incidents from May 2017 – October 2020.
473. Corrections staff we spoke to described his behaviour as volatile and erratic. On occasion he could be pleasant to engage with and compliant; at other times he would threaten staff and antagonise other prisoners. Towards the end of his time in custody, Corrections noted that:

*"[Mr Samsudeen] continues to portray a high sense of entitlement when interacting with custodial staff, frequently demanding his needs are met, challenging any management decisions, and attempting to cause general disruption in his unit. [Mr Samsudeen] continues to accompany any demands with threats of physical violence or*

*verbal abuse including misogynistic, racist, and homophobic slurs. Recent file notes of interest include:*

*(i) Challenging staff to a fight.*

*(ii) Abusing the prisoner intercom system with abuse and threats.*

*(iii) Homophobic, misogynistic, and racial slurs towards staff.*

*(iv) Dirty protests.”<sup>91</sup>*

474. Mr Samsudeen received misconduct sanctions for this behaviour, including confinement to his cell and loss of privileges.
475. We note that Mr Samsudeen made a total of 132 complaints during his time in custody. The nature and frequency of these increased as he spent longer in custody, appearing to reflect his growing anger, frustration and sense of alienation. For example, Mr Samsudeen made 104 complaints during his last year in custody, compared with 28 complaints between 23 May 2017 and 30 June 2020. Of the 20 complaints that concerned allegations against staff, 15 were made at Auckland Prison following his transfer there in July 2020. Many of these later complaints reflected unhappiness about his placement and how he was being managed at Auckland Prison.
476. An example of Mr Samsudeen’s increasing hostility is his meeting with a case manager and a probation officer in early 2021, which had to be ended due to his aggressive behaviour when the subject of his potential release conditions arose. Mr Samsudeen was described as “kicking off” suddenly: “(he) became just very rapidly angry and started... kicking at the doors, screaming and yelling and threatening ....”
477. Records of a Multidisciplinary Team meeting on 8 June 2021 recorded that, since the conclusion of his High Court trial on 27 May: “[Mr Samsudeen] has been elevated, hostile, aggressive and abus[ive] towards staff. This has included throwing urine and being verbally abusive.” It was also noted that Mr Samsudeen had recently received 60 days of lost privileges from the Visiting Justice and had made it clear he harboured grievances towards several Corrections staff.
478. It is therefore clear that, over at least the last nine months of Mr Samsudeen’s incarceration, his behaviour was causing concern. It was compelling evidence of his mounting sense of alienation, isolation and grievance, and of the fact that his potential for violent extremism was being substantially enhanced by his long period in custody.
479. We acknowledge there were several attempts to arrange assessments that met resistance. For example, in mid-April 2021, a meeting between a psychologist and Mr Samsudeen which had been arranged to discuss his release plan was cancelled because his immigration lawyer raised concerns that his behaviour and paranoia escalated when professionals came to visit him. On 30 April, Corrections staff asked a nurse from the Intervention and Support Team to assess Mr Samsudeen as he appeared to be stressed, but he declined to talk to a specialist. On 30 June and 2 July, he was asked to meet with a Corrections psychologist, but refused.

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<sup>91</sup> A ‘dirty protest’ is when a prisoner deliberately urinates or defecates in their cell, not using the facilities provided.

480. Overall, however, as we have outlined above (paragraphs 405-435) and below (paragraphs 529-538), relatively little was done in this respect. There was an assumption that Mr Samsudeen was resistant and would not engage, and no attempt to build on the occasions when he had in fact done so. For example, before his release no thought seems to have been given to enlisting the assistance of the external psychologist with whom he had earlier developed some rapport (see above, paragraph 413).
481. Instead, in May 2021, Corrections reassessed Mr Samsudeen's PERD status and rated his risk to others as very high and assigned him to Tier 3 (the highest level – see paragraph 455). This was prompted by an escalation in his behaviour; his impending High Court trial which necessitated higher security operational measures (such as his movement to and from court each day); and an increase in capacity in the Prisoners of Extreme Risk Unit (PERU), which meant he could be managed in a separate wing from the perpetrator of the Christchurch mosques attack.
482. On the day Mr Samsudeen's trial started, 17 May 2021, he was moved into the PERU. The PERU is a small, separate custodial operation located in the secure perimeter of the maximum security part of Auckland Prison. It was established in late 2019 for the relatively small subset of prisoners requiring additional measures to be safely managed. Generally, this is due to the ongoing risk of serious violence that they present, but it can also be due to their capability to influence others to engage in serious violence or threats to the prison.
483. All prisoners in the PERU are required to have a comprehensive, individualised day-to-day management plan, covering day-to-day custodial operations. These plans ensure all minimum entitlements are met. Due to the very high risks presented by Tier 3 prisoners, they are physically separated from others, although they may be provided with opportunities, based on risk, for social contact.
484. Mr Samsudeen stayed in the PERU on directed segregation until his release on bail 57 days later, and was unable to interact with other prisoners.
485. A PERU staff member told us Mr Samsudeen's isolation in that Unit limited opportunities for rehabilitation, as the only people he had face-to-face contact with were staff members. Staff members spoke about how frustrating it was that any request by Mr Samsudeen needed to be considered by senior management due to the PERD oversight. One staff member said: *"I understand why everything has to be cleared but ... he doesn't ... and of course we'd pay for it."*
486. The case manager who was allocated to Mr Samsudeen in January 2021 told us the PERU was not an easy place to visit to provide case management, as the Prison Director's approval was required. She also said that after the incident on 3 September 2021, she was astounded at how much information she did not know about Mr Samsudeen: *"I felt as though I could have managed him and supported him in a whole different way"*.
487. In one sense, the lack of effective case management at this time simply continued the pattern that had been evident from the time of his initial incarceration. In another sense, however, it was a more critical failure by Corrections to address his evident needs: his inevitable release into the community was drawing closer; and as early as July 2020 Corrections intelligence staff had already identified the need for an effective release plan with community support, which arguably needed to be preceded by a period of engagement within prison.



488. After his trial concluded on 27 May 2021, Mr Samsudeen was remanded in custody for sentencing. He remained in the PERU due to the nature of his most recent convictions and an escalating pattern of non-compliant, aggressive, and abusive behaviour towards prison staff and what was described as “*antagonistic and verbally abusive*” behaviour towards other prisoners. Additionally, we understand that he supposedly remained under the PERD’s direct oversight to ensure a comprehensive release plan was prepared and implemented on his release date.
489. Mr Samsudeen’s antipathy towards the authorities and his feelings of injustice, victimisation and persecution only worsened over the almost three years he was in custody on remand. As one of those we interviewed put it, he had a “*sackful of grievances*” that the authorities kept adding to. He became increasingly institutionalised and was kept in increasingly restrictive conditions because of his escalating alienation and anti-authority attitude.
490. The likelihood he would willingly participate in disengagement activities decreased further, and the risk he posed to others upon release (including people like his probation officer, his lawyers and anyone from the community trying to help him) increased. His lengthy detention on remand also meant that, by the time he was sentenced, Police and Corrections did not have much leverage in demanding stronger supervision conditions.
491. Having been detained in the most restrictive environment the prison system had to offer, he was then released directly into the community. We recognise that the precise timing of release was beyond the control of Corrections. However, there was general recognition, at least from late May, that his release was imminent, and there should have been some graduated process to take that into account. We are not aware of any other case in which a prisoner has been released directly from PERU into the community, and it was not good practice to do so here. At the least, it did not set him up well for successful reintegration.

## **PART 7 – FINDINGS**

Police were justified in bringing seven of the nine charges that were laid against Mr Samsudeen.

Two of the charges were dismissed due to lack of evidence. In this respect there was a degree of over-charging, but it did not make any difference to the process that was followed or the outcome.

Mr Samsudeen was detained in custody on remand for an unduly lengthy period of time. This was primarily due to delays caused by the classification process and the COVID-19 pandemic lockdown.

During his second period in custody, there was no comprehensive long-term disengagement and rehabilitation plan.

Corrections did not meet their statutory obligations to make adequate provision for Mr Samsudeen’s religious, cultural and mental health needs.

Although Mr Samsudeen’s segregation for about 17 months is highly likely to have exacerbated his mental health difficulties during this period, the decisions to segregate him were reasonable. When a prisoner is segregated for their own safety (and they have not requested segregation) then a formal segregation direction should be made. For the period March to December 2019 such a direction should have been, but was not, in place, and would have triggered increased oversight of Mr Samsudeen, including visits from management and health staff and three-monthly reviews of the segregation direction.

## PART 8: Events after Mr Samsudeen was released on bail on 13 July 2021

### WERE ADEQUATE PREPARATIONS MADE FOR MR SAMSUDEEN'S RELEASE?

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492. The Inter-Agency Working Group met in mid-February 2020 and a Watch Group met days later. The Watch Group considered that, when Mr Samsudeen would be released, the key risks included:
- the complex operating environment (the trial of the Christchurch attacker, the Royal Commission of Inquiry report and counter-terrorism legislation changes); and
  - managing publicity, especially if this created hostility towards the Muslim community or raised questions about New Zealand's ability to manage terrorism.
493. Agencies agreed to update their respective Minister and ODESC.
494. By mid-2020, there was general recognition that Mr Samsudeen would be released after his High Court trial in May 2021 (and might be granted bail in the meantime if he applied for it), because any sentence he received for the 2018 charges would likely be shorter than the time he had already spent in custody on remand.
495. Police and the NZSIS met in June 2020 to coordinate their operational plans and activities should Mr Samsudeen be released from prison. During this meeting:
- Although it was within the mandate of Corrections rather than Police or NZSIS, the NZSIS nevertheless queried what pro-social or reintegration assistance would be given to Mr Samsudeen upon release. Police stated there was *"no intelligence to indicate [he] or the threat has changed"*. Mr Samsudeen had not positively engaged with Police previously, so their intention was to identify any possible criminal charges. Both agencies *"agreed this was a sensible approach to deal with the threat"*.
  - Both agencies *"recognised this was largely a [Police] operation"* and the NZSIS offered support where possible, noting issues around the collection of evidence.
  - It was agreed that the NZSIS would obtain an intelligence warrant so they could intercept Mr Samsudeen's communications and potentially other activities for intelligence purposes only.
496. Corrections and Police began looking at what type of bail address would be appropriate, considering the need to monitor Mr Samsudeen after his release. During that process they received input from the NZSIS.
497. Police told us they tried to liaise with Mr Samsudeen to see what support they could provide when he was released from custody. However, he instructed them not to contact him and that any future contact needed to be through his lawyer.
498. In late September 2020, Police contacted the New Zealand Muslim Association seeking its assistance.
499. In response, the New Zealand Muslim Association invited Corrections staff to a meeting on 12 October 2020 at the Avondale Islamic Centre. Police also attended. Corrections Intelligence prepared a

proposed disengagement and briefing document for the meeting, which appears to have been the first documented proposal to assist with Mr Samsudeen's unique rehabilitation, disengagement, and reintegration needs. This centred on utilising a community initiative that had been developed in rudimentary form by the Countering Violent Extremism Forum (a group of government agency and community representatives).

500. At the meeting, they discussed organising an Imam to provide religious instruction for Mr Samsudeen while he was in custody, in the hope this would assist with moderating his interpretation of Islam (see paragraph 428). They also talked about preparing him for his longer-term release into the community. They did not discuss specific information about his identity, but noted he would need a social network when released, due to the absence of any family or community support for him in Auckland.
501. The New Zealand Muslim Association pointed out that if they agreed to provide support for Mr Samsudeen, there would be potential risks to their reputation and the community's wellbeing, and it would be a drain on the Association's resources. They said they would be willing to create a reintegration programme for Mr Samsudeen (as they had in other cases), but sought financial support and a detailed plan including a risk assessment and defined roles and responsibilities. While it appears to have been agreed that Corrections would draw up such a plan for later agreement, this never happened.
502. Corrections' Manager National Intelligence and the New Zealand Muslim Association's President did exchange emails in November 2020 about the risks involved in supporting the rehabilitation process, but no further progress was made in creating a plan. We were told there was some confusion within Corrections about who would assume responsibility for following up with the Association, and the absence of any minutes or action points from the October 2020 meeting means that we have been unable to confirm what actions were agreed, who they were assigned to, and the agreed dates for completion. In any event, precious time was lost in progressing the plans for community support for Mr Samsudeen. It was not until 3 December 2020 that Mr Samsudeen was visited by an Imam for the first time, by which point Mr Samsudeen's behaviour had escalated.
503. Thus, apart from organising that Imam visit, Corrections effectively had no further engagement with the Association until 13 May 2021 when they advised the Association of his forthcoming trial.
504. However, this does not mean that no further thought was being given to release arrangements. As early as February 2021, Police notified the Northern Special Tactics Group (STG) commander that they would request STG assistance with monitoring Mr Samsudeen after his trial and impending release from custody. The plan was to monitor Mr Samsudeen 24/7 for the first three days and then review the situation.
505. Corrections also referred Mr Samsudeen to the High and Complex Needs Panel.<sup>92</sup> At a meeting on 18 March, they decided:
- Multidisciplinary Team meetings were to commence weekly from 15 March 2021 and involve key stakeholders including Police, Corrections Intelligence, Departmental Psychologists, the

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<sup>92</sup> High and Complex Needs panels have responsibility for ensuring the oversight of and supporting the management of "high risk" cases (where the person presents as being at high risk of harm to others) and "complex needs" cases (people who, due to the risks they present and the complexity of their individual needs, require more intensive management than others).

Senior Advisor to the Prison Director for Auckland Prison, Regional Accommodation Manager, and Mr Samsudeen's probation officers.

- Probation officers who had experience in dealing with other persons of interest with similar risk profiles had been identified to manage Mr Samsudeen once he was released.
- A joint visit with a probation officer, case manager and Mr Samsudeen was to be arranged to build rapport and to discuss release accommodation/applying to Housing New Zealand. Police were noted as being available to assist with this process.
- Draft special conditions for Mr Samsudeen's release were being circulated for input and feedback.

506. In late March, Mr Samsudeen's immigration lawyer asked whether Police and Corrections would engage with Mr Samsudeen on his upcoming release, and arranged a meeting. However, on 6 April the immigration lawyer advised that Mr Samsudeen had instructed them not to speak with Police anymore, and the meeting was cancelled. Police later noted that Mr Samsudeen had "rebuffed" their attempts at engagement. The Inter-Agency Working Group agreed that attempts to "reintegrate, as well as disengage [Mr Samsudeen] should continue even if he rebuffs these" and engagement should be made via his counsel. We have not seen any evidence of these attempts or follow up from the Working Group to ensure these were made.

507. Meanwhile, Police and Corrections were considering the issue of where Mr Samsudeen would stay when he was released. They decided that Masjid Al Maktoum was not suitable as a bail address because Mr Samsudeen had got into conflict with others when he was there previously; there were no permanent rooms available; it was quite crowded; it was not suitable for surveillance; and it was close to the airport.

508. At an Inter-Agency Working Group meeting in mid-April, it was acknowledged that Muslim groups had previously raised concerns about public backlash they might face if they chose to support his reintegration and he went on to reoffend. An action point noted that agencies "will explore how to approach and support the Muslim community" and that the Police's Muslim Reference Group might be an avenue for this. We have not been able to find evidence, from the meeting minutes or other documentation, of what agencies did in response, if anything. It was agreed that a threat and risk assessment was required, and Police would lead the risk assessment while NZSIS and CTAG would discuss a threat assessment.<sup>93</sup> It is unclear whether the agencies had to report their assessments back to the Working Group, and if so, whether they did.

509. On 15 April, Police representatives visited Masjid e Bilal, a small mosque in Glen Eden, to assess its suitability for accommodating Mr Samsudeen. Mr Samsudeen had previously met with the former president of this mosque. Records indicate that Police preferred this as a bail address because there were fewer people, and it would be more suitable for surveillance and monitoring of Mr Samsudeen.

510. Correspondence between Police and Corrections recorded that the Masjid e Bilal president was given minimal background on Mr Samsudeen, but was told his charges related to a "skewed view of Islam

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<sup>93</sup> In this context, a 'risk assessment' was an individual assessment of the risk posed by Mr Samsudeen, while a 'threat assessment' was an assessment of the extent to which the national threat assessment was impacted by that individual risk assessment.

*and involved the use of the internet*". When asked whether Masjid e Bilal would be open to accommodating Mr Samsudeen, the president said they likely would be, subject to a meeting with Mr Samsudeen in person first. If Mr Samsudeen was to stay, he would not be required to participate in any programmes, but they would try to encourage him to attend prayers and group events.

511. On 4 May, the Ministry of Social Development confirmed to Corrections that Mr Samsudeen was eligible for public housing. However, the Ministry made clear that he would need to be placed on the list and be prioritised in the usual way, and that they were not in a position to offer immediate accommodation. After initially refusing to discuss any planning for his release, Mr Samsudeen agreed to apply for housing.
512. On 5 May, the Residential Manager of Mr Samsudeen's prison unit wrote to the Imam who had visited Mr Samsudeen. The Residential Manager asked if the Avondale Islamic Centre would be willing to consider supporting Mr Samsudeen after his release in the form of accommodation and community support. The Imam replied that the Avondale Islamic Centre would be happy to assist with mental and academic support, but recommended the Masjid Al Maktoum as potential accommodation (which as noted above had already been rejected as unsuitable).
513. On 10 May, the Watch Group met to discuss Mr Samsudeen's likelihood of release after his trial. At this meeting, a key discussion was around the risks of the local Muslim community not being appropriately informed of his release, as well as the possibility of a rise in online hate speech. Police, the Office of Ethnic Communities and Corrections agreed to liaise with one another to ensure the relevant Muslim community was informed appropriately and in a timely manner. It was noted that the fact that Mr Samsudeen's interim name suppression would still be in place until his immigration matters were dealt with would have an impact on the nature of any communication.
514. Given that liaison and communication with the Muslim community was raised as a key risk, we are surprised that no communication with representatives of this community occurred between May and his release in July (further discussed at paragraph 531). It is unknown if the Watch Group was appraised of the lack of communication. We are also surprised that there was no attempt to communicate with his family overseas, and in particular his sister with whom he was known to have been in frequent telephone contact.
515. Furthermore, it is particularly concerning that neither Corrections nor the Watch Group appear to have focused on the fact that Mr Samsudeen was being detained as a remand prisoner in the highly restrictive Prisoners of Extreme Risk Unit (at that time an unprecedented situation) and was likely to face particular challenges in moving from that Unit directly into the community. Given his pending and inevitable release, consideration should have been given to whether some transitional arrangements were desirable.
516. On 1 June, a meeting with Kāinga Ora was rescheduled due to Mr Samsudeen's aggressive behaviour.<sup>94</sup> On 6 June, Mr Samsudeen told staff he was no longer interested in residing in a mosque. On 10 June, the Ministry of Social Development advised that Mr Samsudeen was now on the housing register, but was not eligible for emergency or transitional housing. They could not guarantee when they would be able to offer him a house.

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<sup>94</sup> 'Kāinga Ora – Homes and Communities' is a Crown agency that provides rental housing for New Zealanders in need.

517. On 14 June, one of Mr Samsudeen’s probation officers reported that, after initially rejecting the idea of living at a mosque, Mr Samsudeen was willing to be bailed to Masjid e Bilal. Two weeks later the probation officer and the Masjid e Bilal president visited him. Mr Samsudeen was noted to be looking forward to his release and living at the mosque, and those arrangements were accordingly put in place. Corrections documents indicate that they viewed the Masjid e Bilal as short-term accommodation, with a view to confirming a longer-term option via Creating Positive Pathways,<sup>95</sup> Kāinga Ora, or Kāhui Tū Kaha.<sup>96</sup>
518. Some members of the Muslim community we spoke to said they believe Masjid e Bilal was ill-equipped to deal with a person like Mr Samsudeen. It is a very small mosque, with no fulltime Imam, few resources and limited support to offer. We think that this is unfair. Mr Samsudeen in the event did not cause any particular difficulties at the mosque, and it appears never to have been intended that the mosque would be responsible for his broader integration into the community. Corrections at least still saw it as a short-term option.
519. However, at the same time it is true that no other reintegration plan was in place. The focus of the planning for his release was almost exclusively on organising accommodation and putting in place surveillance, monitoring of internet use and broader intelligence gathering. In view of his alienation and level of assessed risk, it is understandable that this was a major focus. But that should not have been to the virtual exclusion of rehabilitative and reintegrative initiatives. We discuss this in more detail below at paragraphs 529-538.

#### **Sentencing and release conditions**

520. On 6 July 2021, the High Court sentenced Mr Samsudeen to 12 months’ supervision for each of the three charges (to be served concurrently).
521. We note that the Judge’s starting point for the sentencing, with which prosecution and defence agreed, was 7 months’ imprisonment. Mr Samsudeen had been remanded in custody for about 35 months (about 14 times the average for male prisoners), so it was not considered appropriate to imprison him further.
522. The sentencing judge declined to sentence Mr Samsudeen to intensive supervision or electronic monitoring, saying:<sup>97</sup>

*“I am of the view that the risk of you reoffending in a similar way to the charges upon which you were convicted remains high. Your rehabilitation is accordingly key. The real contest between the Crown and the submissions made on your behalf by [your lawyer] is whether I should impose a sentence of supervision or intensive supervision. A sentence of intensive supervision would permit me to impose conditions for a longer period of time than a sentence of supervision. That may help support your rehabilitation. It would also permit electronic monitoring. Nevertheless, I am very conscious of the lengthy time you have already spent in custody, and that I must impose the least restrictive sentence that is appropriate. In those circumstances, I propose to*

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<sup>95</sup> Creating Positive Pathways is a Corrections release planning initiative, staff liaise with the Ministry of Social Development to assess a prisoner’s eligibility criteria and source potential accommodation in the community.

<sup>96</sup> Kāhui Tū Kaha is a not-for-profit provider of housing and mental health services.

<sup>97</sup> [www.courtsofnz.govt.nz/assets/R-v-S/20210706-2021-NZHC-1669.pdf](http://www.courtsofnz.govt.nz/assets/R-v-S/20210706-2021-NZHC-1669.pdf)

*sentence you to one year of supervision, rather than intensive supervision. In a sense, and given your present attitudes, I do not consider that, say, 18 months of conditions will have any material and different effect than 12 months of conditions. The substance of your compliance with these conditions over a 12-month period will be key to your rehabilitation.”*

523. The conditions were to live at the approved bail address and:

- “a) Not to possess or use any electronic device capable of accessing the internet, other than a device approved in writing by your Probation Officer;*
- b) To disclose all of your social media accounts to your Probation Officer, and to provide access to them on request;*
- c) On request, to surrender to your Probation Officer any electronic device in your possession capable of accessing the internet or storing data, for the purpose of checking and/or cloning the device or the material contained on it, by the Police or another relevant agency (for the avoidance of doubt, the Probation Officer, or any other agency to whom the device is provided by the Probation Officer, is not entitled pursuant to this special condition to access legally privileged material); and*
- d) To attend and engage in a rehabilitative assessment, including a psychological assessment, and to attend any subsequent recommended treatment or programme as directed by the Probation Officer or your treatment provider, including your own private treatment provider.... In this context and while a matter for your Probation Officer, I record that it would likely be of assistance for Probation to engage with or at least speak with [your own private treatment provider] in this context.”*

524. Suppression of Mr Samsudeen’s name and details was still in place, as his refugee status appeal was ongoing.

#### **Bail granted for District Court charges**

525. Mr Samsudeen remained in custody as he was remanded on the District Court assault charges.

526. However, Police believed they would not succeed (and would not be justified) in opposing bail because Mr Samsudeen had been remanded in custody on the District Court charges for 10 months by this point. Again, this was a longer period than the sentence he would likely have received if convicted of the assault charges.

527. Accordingly, at his next appearance on 13 July 2021, Police consented to bail as long as Mr Samsudeen:

- obeyed the conditions of his sentence of supervision;
- did not contact the Corrections officers he had allegedly assaulted; and

- did not threaten violence to anyone.

528. Mr Samsudeen was granted bail and released. There were some discrepancies between his supervision conditions and his bail conditions which were to be reviewed, and a trial date for the assault charges was to be set on 20 October 2021. Mr Samsudeen refused the Police's offer to drive him to Masjid e Bilal, and left Auckland Prison in a taxi.

### **Rehabilitation and Reintegration Plan**

529. Prior to his release, when Corrections were developing a *"Release / Management Plan"*, there was some attempt to engage with the New Zealand Muslim Association, with whom a meeting had been held the previous October. In particular, the Manager National Intelligence at Corrections emailed the president in May, informing him that Mr Samsudeen's High Court trial was approaching and there was likely to be media coverage. He noted that Mr Samsudeen would remain in custody until mid-June, they were continuing to work on finding him suitable accommodation, and it was *"a shame he was not willing to engage with the religious and cultural support as we had hoped. At this stage we are not sure of his intent to engage with the Muslim community"*. The president acknowledged the email and added: *"Please let us know if we can be of any further assistance."*
530. It is not clear why the Manager National Intelligence said Mr Samsudeen was *"not willing to engage with the religious and cultural support"*, when he had said that he would like to see the Imam again after the second visit in prison (see paragraph 434).
531. The New Zealand Muslim Association told us they did not hear anything further from Corrections after that exchange of emails. They maintain they would have been willing to devise a programme for Mr Samsudeen if asked, but they did not even know Mr Samsudeen had been released until they heard about the attack on 3 September 2021. They told us they had consequently lost trust in the government agencies involved. They suggested that the breakdown in communication may have happened because the initial meeting in October 2020 was arranged by Police Iwi and Communities Group (then known as Māori, Pacific and Ethnic Services), but at the time of the planning for his release Mr Samsudeen was being managed by officers from the National Security Investigations Team and, unlike other cases in which the New Zealand Muslim Association had been involved, the Iwi and Communities Group did not play a significant role. However, the reality is that Corrections rather than Police had been tasked to follow up with the development of a plan after the October 2020 meeting, and failed to do so.
532. It has to be acknowledged that recognised programmes and systems to provide effective disengagement and rehabilitation services for those going down the path of violent extremism do not exist in New Zealand. However, the New Zealand Muslim Association thought they had the infrastructure to develop an effective programme if the government agencies properly supported them. In our view, there was some possibility that this may have occurred if there had been better follow-up and interaction with the New Zealand Muslim Association after the October meeting. It would have required a clearly developed plan, with the assignment of the respective roles and responsibilities of government agencies and the community, and the provision of appropriate funding. That is what they asked for after the October meeting. Otherwise, as the Association pointed out, a huge burden is placed on communities in these situations if Government agencies expect that they can tap into them for free support and advice. There is no equal partnership and corresponding funding, but there are expectations that the community will take on the risk of trying to effectively socialise and



rehabilitate people who are interested in extremism. If the community does so, most of the work is done by volunteers using their own time and money. If the worst then happens, some people will unfairly blame the community for it.

533. The Association expressed their grievance at the fact that their offer of assistance in October was essentially ignored, leaving them feeling disrespected rather than valued as a partner. They are unable to understand why Masjid e Bilal was chosen over their more structured approach, which had been successful in other cases.
534. We think that, in view of the positive meeting in October 2020 that was not adequately followed up, there should have been further attempts to engage with, and enlist the support of, the Association. However, any release and management plan developed as a result would have required a significant period of consultation and planning. The approach by the Manager National Intelligence of Corrections in September 2020 was arguably too close to Mr Samsudeen's release to enable the development of an effective plan. Steps should have been taken at a much earlier stage.
535. Instead, while the "*Release / Management Plan*" that was circulated to Corrections stakeholders in draft form on 9 July 2021 contained proposed measures for Mr Samsudeen's release date, an assessment of his risks in the community and the special conditions of his sentence, his "*reintegrative needs (identification, food, parcel, transport etc)*" were still outstanding items. Nor was there any section describing what rehabilitation programmes or measures were proposed to be undertaken, other than repeat attempts to have Mr Samsudeen engage with a psychologist (see above, paragraph 478).
536. The Corrections' draft release and management plan, which appears never to have been finalised, therefore focussed primarily on managing Mr Samsudeen's risk to public safety and Corrections staff, rather than taking proactive steps to address his rehabilitative and reintegration needs. For this reason, it was in our view manifestly deficient.
537. As discussed above (see paragraph 280), we also think more effort should have been made to involve Mr Samsudeen's family in preparing him for his release. He was in regular phone contact with his sister in Canada, and occasionally spoke to his mother in Sri Lanka. Police said they considered bringing a family member to New Zealand for Mr Samsudeen's release in July 2021 as a "*protective factor*", but COVID-19 prevented that possibility. Nonetheless, neither Police nor Corrections seem to have consulted his family at all about whether they could assist by encouraging Mr Samsudeen to engage with the support that was available.
538. It appears that Police and Corrections had mostly discounted any chance of disengagement and rehabilitation for Mr Samsudeen. They were not focused on developing a systematic and coordinated plan, with a timeframe and measurable goals.

WAS THE SURVEILLANCE OF MR SAMSUDEEN AFTER HIS RELEASE ON BAIL APPROPRIATE AND EFFECTIVE?

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#### **Surveillance and intelligence gathering**

539. Police and the NZSIS believed Mr Samsudeen still posed a high risk of committing an attack. They did not have specific information about his intentions, but did not think his ideology and his commitment to undertake an act of violence had changed since his arrest in 2018.

540. On 10 May 2021, Police assessed that Mr Samsudeen presented a 'High' threat of a *"lone-actor violent extremist attack"* on the Australia-New Zealand Counter-Terrorism Committee's Operational Threat Assessment framework. 'High' means that an attack is expected, and there is credible and specific intelligence that the person currently has an intention, capability, and a plan to attack. Police acknowledged that they did not actually have intelligence about a current attack plan, so Mr Samsudeen did not meet all the criteria for a 'High' threat level.
541. The risk assessment said:
- "This result is primarily attributed to his intent which entails his ongoing interest in extremist Islamic ideology, lack of social relationship outside of phone contact with his family, anti-social behaviours, grievance toward government agencies and therefore the public for his situation and absence of mitigating factors including positive relationships and interests."*
542. In June 2021, the NZSIS assessed Mr Samsudeen *"almost certainly"* held a faith-motivated violent extremist ideology and surmised it was a *"realistic possibility"* he would mobilise towards violence upon release. The NZSIS held no intelligence regarding any actual mobilisation plans, and were aware that he could quickly acquire capability with no prior warning or indication. A Corrections intelligence report dated several days before Mr Samsudeen's release recorded that he was interested in passages from the Quran and Hadith relating to martyrdom and the afterlife.
543. Once Mr Samsudeen was released into the community, Police and the NZSIS immediately began surveillance operations. Police said their operation was focused on:
- maintaining public safety and managing the risk Mr Samsudeen posed;
  - preventing and rehabilitating his *"previous ideology and behaviour"*; and
  - investigating and gathering any evidence of criminal offending (if any was suspected).
544. Police acknowledged that surveilling Mr Samsudeen in public did not mean they could prevent him from committing an attack. However, they believed it would enable them to respond more quickly and reduce the harm if an attack happened. They also wanted to gather as much information as possible about his behaviour to help them assess the level of risk he posed, and determine what their response should be on an ongoing basis.
545. Police considered openly watching and following Mr Samsudeen, but decided that was not appropriate because:
- it could be unlawful harassment;
  - he was likely to be hostile to any Police; and
  - it might provoke him to violence against Police or members of the public.
546. Therefore, they decided to monitor him covertly. The NZSIS also conducted covert monitoring of Mr Samsudeen using their unique warranted collection abilities to support the Police's surveillance and provide insight into his mindset and early identification of indicators of mobilisation to violence.

547. Police knew that physical surveillance was not sustainable in the long term, as it took up a large amount of resource and heightened the chance of compromise and a subsequent attack on the surveillance officers. But they also felt they had to continue trying to keep the public as safe as possible.
548. Police planned to closely monitor Mr Samsudeen for an initial period following his release and to regularly review the situation. Planning also envisaged potential scenarios and contingencies depending on Mr Samsudeen's behaviour. Along with this Police also planned to collect evidence and investigate any potential offences by Mr Samsudeen as part of the operation.

What physical surveillance was in place?

549. We reviewed records of the surveillance that took place, including daily reports.
550. The physical surveillance was done in shifts by Police surveillance teams, supported by tactical teams made up of Special Tactics Group (STG) members.
551. Mr Samsudeen initially spent a lot of time at his immigration lawyer's office, and used public transport to travel to and from Queen Street (where he used to live) to buy food.
552. From an early stage Police adjusted surveillance coverage to ensure it was sustainable and to match it to higher risk periods.
553. Mr Samsudeen was seen to attempt counter-surveillance measures from an early stage. Due to these and the complexities of such operations, surveillance teams occasionally lost sight of him for short periods. Mr Samsudeen also told others that he thought he was subject to surveillance, and was aware that he had been surveilled in 2018 given his arrest and prosecution. It can therefore be assumed that he believed he was being followed.
554. In late July, Police continued to adapt the surveillance operation to ensure it was sustainable and reflected Mr Samsudeen's behaviour. Police also decided to continue this aspect of the operation, including the tactical support, for another defined period, subject to periodic review.
555. On 5 August, Police assessed that Mr Samsudeen continued to pose a high threat of committing a lone-actor attack. The assessment noted: *"Based on current information if an attack was to occur, it would likely be of low sophistication (e.g. use of a knife or a vehicle) and could occur with little to no warning."* The NZSIS (using a different methodology) assessed that Mr Samsudeen posed a *"Medium"* threat. On the same day, the Combined Threat Assessment Group assessed that the national terrorism threat remained at *"Medium"*.
556. Throughout August, Police continued to adjust the surveillance aspect of the operation, such as taking steps to manage the risk of detection (given that this increases as the duration of the operation goes on). They also continued to review whether to continue the operation, and decided to maintain it until his next appearance at the Immigration and Protection Tribunal on 13 September, a point identified as a key milestone for Mr Samsudeen, at which point it would be reviewed again. During this time, the NZSIS continued to provide intelligence to support surveillance activities.
557. Auckland's COVID-19 Level 4 lockdown on 18 August 2021 meant that Mr Samsudeen spent less time in public, but it also caused problems for the surveillance teams because:
- there were no longer crowds of people for them to hide in; and

- sourcing staff from around the country became more difficult.

558. On 25 August, Police reduced their surveillance coverage to three days a week (Wednesday, Thursday and Friday) to reflect Mr Samsudeen's activities and intelligence in relation to a potential high risk time (see paragraph 563 below). The surveillance teams and STG remained on call for other times in the event they were needed.

What other efforts were made to gather intelligence?

559. In addition to the physical surveillance teams, Police and the NZSIS attempted to collect information and intelligence about Mr Samsudeen in other ways, including:

- checking his phone (as set out in his supervision conditions);
- utilising the NZSIS's warranted capabilities;
- monitoring his purchases and social media;
- covertly engaging with Mr Samsudeen online;
- intercepting Mr Samsudeen's communications (under warrant);
- agencies sharing all collected information and intelligence sourced from various surveillance methods and sources;
- conducting daily reviews and assessments of his behaviour and activities to determine his risk and threat level, including if this meant he was mobilising towards violence or acquiring attack capability;
- discussing and planning how to coordinate NZSIS and Police collection resources and activities to avoid duplication of effort;
- requesting information from other government departments (such as Corrections) and businesses; and
- Police obtaining a Surveillance Device Warrant.

560. One of the conditions of Mr Samsudeen's sentence of supervision was that he could not possess or use "any electronic device capable of accessing the internet" unless it was approved by his probation officer. Another condition required Mr Samsudeen to disclose his social media accounts to his probation officer, and to provide access to them on request.

561. On 22 July, Mr Samsudeen was allowed to have an internet-capable cellphone. He spent a lot of time online from that point and used encrypted chat applications. He opened a Facebook account under the name 'Aathill Al-Qahtani', and posted religious quotes and comments which justified violence and praised the status of those who fought in combat and died as a martyr. Police and the NZSIS identified that he had opened this Facebook account, but it is not clear whether Mr Samsudeen advised his probation officer as required by his sentencing conditions. Information collected by the NZSIS highlighted Mr Samsudeen's ongoing consumption of ISIL-related media, for instance: a lecture by Anwar al-Awlaki which incites his followers to fight; ISIL-produced nasheeds glorifying fighting and

martyrdom; news stories related to Afghanistan, Syria and ISIL; and images of the ISIL flag and ISIL-related websites. In late August 2021, Facebook suspended his account as the material he was posting breached their terms and conditions.

562. Police regularly checked Mr Samsudeen's phone during his meetings with the probation officers. But as happened the last time he was on bail, Mr Samsudeen appeared to have 'factory reset' or deleted data from his phone before the meetings. On 29 July, Police noted that Mr Samsudeen had downloaded a voice recording app and activated it before handing his phone over to be checked.
563. A few weeks after his release, Police had intelligence that Mr Samsudeen:
- was thinking of committing an attack on random people in public using a knife or a vehicle;
  - said he had hidden a knife at another mosque when he was last out on bail;
  - was considering various locations for the attack, including a ferry or train, or a Managed Isolation and Quarantine (MIQ) hotel;
  - had a list of foods he wanted to eat before the attack;
  - if he was not killed, wanted to eventually be deported back to Sri Lanka and then go and fight with ISIL;
  - if he was killed, believed he would go straight to "*Jannah*" (heaven);
  - said he stayed in prison for three years on purpose to build up courage to do the attack;
  - said he knew that the Terrorism Suppression Act was going to be amended soon and Police might charge him, so there was "*no point leaving a civilian because they are going to fuck me up anyway*"; and
  - said he would carry out the attack on a Friday, but wanted to take some time to enjoy his freedom and so would not attack until the end of August.
564. The NZSIS assessed that it was "*likely*" Mr Samsudeen would attempt to commit a violent attack in New Zealand, but noted that there were no indications he had acquired weaponry, his time frame was non-specific (he had not identified a date) and he had to plan and prepare for an attack without the authorities noticing. Alternatively, it was "*a realistic possibility*" that he would conduct a spontaneous attack without prior warning.
565. On 17 August 2021, Police applied for and were granted a surveillance device warrant. The application set out evidence supporting their belief Mr Samsudeen intended to commit "*an act of extreme violence*" (murder, attempted murder and/or grievous bodily harm) before 13 September 2021, the date of his next Immigration Protection Tribunal hearing.
566. Police continued to look for evidence that Mr Samsudeen was breaking the law, while the NZSIS continued to gather intelligence on his mindset and mobilisation towards violence.
567. Police also tried to find out if Mr Samsudeen had acquired any weapons or a vehicle that he could use in an attack. They did not find any evidence of this.

### Concluding comments

568. The Police's surveillance operation was primarily focused on managing the risk to public safety and gathering evidence of any further suspected offending by Mr Samsudeen, so he could be charged and returned to custody. Although Police identified rehabilitation as one of the goals of their operation, once again there was little evidence of this in the way Mr Samsudeen was managed on release (as discussed further below). While this reflected an ongoing narrow focus on law enforcement and surveillance, it was in any event not the responsibility of Police at that point; he was under the supervision of Corrections, and the most that could be expected of Police was that they did not unnecessarily cut across or undermine any action Corrections was taking. As we have demonstrated, there was not much chance of that, given Corrections' efforts in that regard.
569. Overall, however, we are of the view that the surveillance operation was appropriate and that the reduction in its scope after the first three days and then after lockdown was also properly considered and proportionate to the perceived risk. We also think that, on balance, covert surveillance was a better option than overt surveillance for the reasons set out in paragraph 545 above. While Police recognised that they were unlikely to be able to prevent an attack altogether, they reasonably considered that close surveillance might minimise the extent of any harm if an attack occurred.
570. There were times when the effectiveness of the surveillance could be called into question, as the surveillance teams lost sight of Mr Samsudeen on several occasions. But for the vast majority of the period between his release and the attacks on 3 September, the Police knew where he was and what he was doing. While he clearly suspected that he was under surveillance, we do not know whether he actually identified any of the surveillance team. However, we are satisfied that he did not do so on the day of the attack, and was not prompted to take the action he did in response to the surveillance.
571. The purpose of the NZSIS's warranted surveillance activities were twofold: (i) to gather intelligence to assess Mr Samsudeen's intent, capability and mobilisation towards a violent extremist attack and (ii) to support Police operational activities. While we cannot discuss the particulars of the NZSIS's surveillance activities, we consider that their approach was effective, proportionate and measured. Consideration was given to Mr Samsudeen's privacy, legal and medical privilege and caution taken to avoid intrusion on third parties. We also note that their activities were well within the bounds of the intelligence warrant and therefore all activities were legal. The NZSIS's approach was well coordinated to support Police's physical surveillance and evidential collection. Intelligence was shared with Police in a timely manner.
572. However, Police were so focused on their belief that an attack was inevitable that they appear to have given virtually no thought to any longer-term plan. Surveillance requires a significant amount of resources and is only a short-term solution. Police were gradually reducing their surveillance as it was and, if the attack had not occurred, they would have had to step back entirely.
573. We also observed no medium or long-term plan to mitigate the risk posed by Mr Samsudeen and for an end point to the NZSIS's involvement in this intelligence operation. Although the Director-General and senior staff considered this a drain on resources, operational staff noted they would have continued the operation until Mr Samsudeen no longer posed a risk. It appeared to us that mitigation strategies were largely focused on gathering intelligence which could be used as evidence for, or to support, enforcement action.

574. We acknowledge that, when all the agencies met and discussed Mr Samsudeen regularly before and after he was released from custody, they did discuss various possibilities for dealing with him. However, our impression from the written record and from interviews is that the discussions were fragmented and sometimes far-fetched. In any event, ideas were not followed up. We also observed that agencies did not draw on their knowledge of successful international examples of deradicalisation or reintegration to inform interventions by Corrections, the Ministry of Social Development and other social-based organisations, including relevant and willing Muslim bodies. While there was no identified end point for the surveillance operations, we did not see evidence of an agreed plan for what would happen in the medium or long-term if they had to stop the surveillance but still believed Mr Samsudeen posed a risk of committing an attack. It is also not clear what would have convinced them that he no longer posed a risk, when not much was being done in the way of disengagement and rehabilitation. Their belief that an attack was inevitable meant that, as one interviewee put it, they were *“at battle stations... until you got that slight decrease of risk”*.

#### WAS CORRECTIONS’ MONITORING AND SUPERVISION OF MR SAMSUDEEN AFTER HIS RELEASE ADEQUATE?

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575. Section 5 of the Corrections Act 2004 identifies that the purpose of the Corrections system is to improve public safety and contribute to the maintenance of a just society by, amongst other things, ensuring that community-based sentences and related orders that are imposed by the courts are administered in a safe, secure, humane, and effective manner. This includes assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, through the provision of programmes and other interventions.
576. Corrections, via the assigned probation officers, was ultimately responsible for enforcing Mr Samsudeen’s sentence of supervision and fulfilling the obligation to assist in his rehabilitation and reintegration.
577. Mr Samsudeen stayed at Masjid e Bilal in Glen Eden, which had an attached basic accommodation block for single males consisting of four bedrooms, a kitchen and a bathroom. He paid for his board from his Jobseeker benefit. The Masjid e Bilal president told us Mr Samsudeen was excited at the time of his release, that he was his *“go-to guy”* in the mosque and kept the other residents together, and that he was a willing worker. However, as discussed above, no disengagement or rehabilitation programme was in place. Mr Samsudeen told people that no one at the mosque was watching him closely or trying to enforce his release conditions.
578. Mr Samsudeen met with his probation officers either at a Corrections office or by phone, generally about once a week. After 17 August, a COVID-19 Level 4 lockdown in Auckland meant that Mr Samsudeen mainly stayed at Masjid e Bilal. He no longer met with his probation officers in person, and they only had phone contact.
579. Corrections staff never visited Masjid e Bilal while Mr Samsudeen was staying there. We believe they should have done so, to assess its suitability as Mr Samsudeen’s ongoing accommodation. We note that Mr Samsudeen was due to meet with Kāhui Tū Kaha in mid-August to discuss housing, but he postponed the meeting and no subsequent meeting occurred due to the COVID-19 Level 4 lockdown.
580. Corrections staff did not meet with the Masjid e Bilal president in person to discuss any plans for finding employment for Mr Samsudeen outside of the mosque, or for wider reintegration activities such as

linking him up with the local Muslim and Sri Lankan community. Their weekly calls were limited to discussing generally how Mr Samsudeen was doing. As we have noted above, Mr Samsudeen was an exceptional case and extra effort should have been made in trying to successfully reintegrate him through employment, pro-social activities and contacts.

581. It appears that concerns for the safety of Corrections staff overrode the importance of this. The concerns were such that the meetings at the office between Mr Samsudeen and his probation officers were monitored by cameras, and Police staff were present in the room next door to mitigate the risk of any potential attack on Corrections staff. We find this difficult to reconcile with the fact that at the same time Police and Corrections were content to place Mr Samsudeen at the Masjid e Bilal without advising the president and other people staying or worshipping there of the full extent of the risk Mr Samsudeen posed (see paragraph 589 below). Indeed, there was no systematic risk assessment ever undertaken before he was released to the mosque.
582. In response, NZSIS say the risk Mr Samsudeen posed to Police and Corrections staff was assessed to be very different to any risk he posed to those at his accommodation. We do not agree. Admittedly he was clearly hostile to the authorities, which put them at high risk. But equally, the risk to those at the mosque should have been assessed, especially as Mr Samsudeen had reportedly said that Muslims who did not agree with his views on ISIL should be killed (see paragraph 169). The Muslim community were greatly concerned that they had been put at risk, and told us they felt let down.
583. Although significant parts of the release and management planning were conducted as a joint exercise with Police, there were material aspects of Mr Samsudeen's monitoring that Community Corrections staff were not privy to. The most notable of these was that Police and the NZSIS had Mr Samsudeen under surveillance from the date of his release. Community Corrections were not apprised of the operational details of this. In addition, most Community Corrections staff involved with Mr Samsudeen in the community did not have the full details of his risk profile because they did not have the appropriate security clearance. However, they could and should have been given general information at the restricted level, which would have provided them with the details they required without breaching national security requirements.
584. We also note that the NZSIS writes its classified intelligence reports to a particular audience. However, when that audience is broader than anticipated by the NZSIS, it is up to the agency (in this case Police or Corrections) to request that the intelligence is made available at a lower classification for the purpose of sharing with relevant stakeholders. NZSIS have processes in place to declassify or share intelligence further and, given the priority of the investigation, would have done so where possible. We acknowledge that not all NZSIS intelligence could be declassified or shared with certain people; however, we did not find any reluctance from NZSIS to share their intelligence with the appropriate agencies.
585. We were told that the declassification process can take time and can be somewhat onerous, and there seems to have been a reluctance from Police and Corrections to request material be declassified for wider distribution within their agencies. While the Police told us the classification of material did not hinder the investigation, we believe that if declassification had occurred Police and Corrections may have been able to pass on more intelligence on Mr Samsudeen's mindset and activities to the frontline surveillance officers, Community Corrections, and even certain members of the community, without breaching national security.



586. Even when material was not highly classified, it seems senior officials within Police and Corrections were unduly reluctant to share relevant information with those who required it.
587. We think the inability to find and implement a coherent long-term disengagement and reintegration plan for Mr Samsudeen was exacerbated by a reluctance to share all the relevant information about him. The development of effective community partnerships to manage risk is very difficult, if not impossible, when it is being undertaken within the cloak of secrecy surrounding activities within the national security framework. Agencies in this sphere are risk averse and only share information on a 'need to know' basis.
588. Police told us they cannot share certain information without vetting people and getting a security clearance for them. They said some may be reluctant to go through this process, out of concern that the rest of the community will think they are too close to Police and no longer trust them. There is therefore a barrier to Police fully divulging all the relevant information to communities who agree to house and/or provide rehabilitation services for people like Mr Samsudeen. However, we were also told that there are people in the community who are willing to get a clearance for this purpose.
589. The Masjid e Bilal president did not have a security clearance. He was given only limited information about Mr Samsudeen's background and offending, and said that he viewed him as someone whose offending was not serious enough for him to be in prison. He said that Corrections told him not to worry, because they were not worried. He saw himself as offering fairly passive support to help Mr Samsudeen make good decisions, rather than providing the sort of wraparound support that was required to address Mr Samsudeen's rehabilitative and reintegration needs. In any event, he had neither the resources nor the capability to do the latter on his own. He was unaware of the close surveillance being undertaken by the Police and the NZSIS in order to mitigate the impact of an attack that they seem to have believed was inevitable.
590. Some in the Muslim community told us they felt that the government viewed them as expendable, because they placed a person they viewed as a high risk in a mosque regardless of:
- the risk that he would attack people there (we note there was intelligence that Mr Samsudeen may attack Muslims that did not conform to his faith-motivated violent extremist views); and
  - the risk he would radicalise more people.
591. Police and Corrections told us they had no other option at that time but to house Mr Samsudeen at Masjid e Bilal. As they could no longer lawfully keep him in custody, it was inevitable that the public would be exposed to him. We accept that, but believe they should have more fully informed the key members of the affected community of the risk involved. Police often cited Mr Samsudeen's risk as a reason why they could not set up a community-based rehabilitation programme for him, but he ended up in the community anyway.
592. We also think more should have been done to ensure that Mr Samsudeen received psychological assessment and began treatment through a suitable programme as soon as possible after his release. Mr Samsudeen's sentence of supervision required him to attend and engage in a rehabilitative assessment, including a psychological assessment, and to attend any subsequent recommended treatment or programme as directed by his probation officer or treatment provider. However, we found that Corrections did not try to implement this condition with enough urgency.

593. About a week after Mr Samsudeen was released, he called the psychologist who had met with him in prison from July to August 2019. The psychologist told us Mr Samsudeen was still angry about the Police laying “fake charges” against him, and had become much more faith-oriented since they last spoke, saying that “God will prevail”. Mr Samsudeen told the psychologist he did not need any further contact. This call did not fulfil his sentencing condition that he receive a rehabilitative and psychological assessment, but Corrections did not follow up on this point until six weeks later (see paragraph 595).
594. In mid-August, after Mr Samsudeen’s immigration lawyer raised concerns about his behaviour (see paragraph 605), Corrections contacted Police to discuss how Mr Samsudeen’s psychological needs could be met. Police asked a forensic psychiatrist to complete a risk assessment of Mr Samsudeen based on information the Police held. The psychiatrist began work on this, but it was not completed before the attack on 3 September 2021. The psychiatrist suggested that this should have been done much earlier, ideally before Mr Samsudeen’s release.
595. Mr Samsudeen’s psychologist said Corrections contacted him towards the end of August, and he told them he believed Mr Samsudeen did not want further contact with him. He messaged Mr Samsudeen to confirm this. The psychologist told us he wondered why it had taken Corrections so long to follow up on arranging a psychological assessment for Mr Samsudeen.
596. On 2 September, one of Mr Samsudeen’s probation officers directed that he must engage with a Corrections psychologist as it was clear that he was not engaging with his own treatment provider. Mr Samsudeen refused and said that he intended to re-engage with his own psychologist.
597. Corrections considered that Mr Samsudeen’s failure to engage with his private psychologist was not enough to enforce a breach of his supervision condition, because such a breach would be considered low-level, and likely only to lead to a warning. This should not have prevented them from taking action on the breach. Community Corrections staff were preparing an application to vary the special conditions of his sentence to compel him to engage in a psychological rehabilitative assessment facilitated by Corrections.
598. It is unclear why it took Corrections so long to act on this key part of Mr Samsudeen’s release. A huge team of people in Police and the NZSIS were exerting great effort to surveil him, while very little was achieved in terms of his potential rehabilitation.

#### WHAT TRIGGERED THE ATTACKS ON 3 SEPTEMBER 2021?

599. Police and the NZSIS told us they did not have any information that Mr Samsudeen had finalised an attack plan or that an attack was imminent. On the information available to us, we agree.
600. On the one hand, the intelligence and information available to agencies clearly indicated that Mr Samsudeen had in mind the possibility of a terrorist attack on New Zealand citizens. This included:
- information about his online activities and ongoing interest in ISIL (see paragraph 561); and
  - other intelligence they had received about his intentions (see paragraph 476).
601. However, there were also some indications throughout late July and August that Mr Samsudeen appeared to be thinking about and planning for the future, including that he:

- made enquiries about getting a Housing NZ property and a variety of jobs;
- took a driving lesson from an associate;
- set up online banking;
- had discussions online about possible marriage and travel plans;
- wanted to sign up with a new doctor, and made a dentist appointment;
- was helping to tidy and clean the Masjid e Bilal; and
- was reportedly eager to have his 'day in court' with the assault charges, and wanted an expert to view the CCTV footage of the incident because he believed it had been edited.

602. It is also clear that in the weeks leading up to the attack, Mr Samsudeen had not formulated any specific plan as to the time, place or method of any attack (although he had talked in general terms about possible locations and methods, and said it would happen on a Friday after the end of August).
603. In our view, therefore, there were likely to have been precipitating events in the days or hours shortly before his attack that hardened his resolve and led to a final decision to act. We obviously cannot determine what was in his mind. But there were a number of aspects of his behaviour in the days leading up to the attack that may provide a clue.
604. First, he became obsessed with getting back the property Police had previously seized from him, including his electronic devices and the knives. He called a detective he had met during his trial, and said he should get the knives back because the charges had been resolved. The detective told him this was a matter for his lawyers to sort out.
605. Secondly, he fired his immigration lawyer in early August. A few days later, he began sending them many messages and repeatedly calling, asking to re-engage them as his lawyer. The lawyer said Mr Samsudeen was agitated and aggressive, and they began to fear for their and their staff's safety. They advised Police of the situation, and on 10 August Police provided them with advice and put additional security measures in place. The lawyer gave Police the details of Mr Samsudeen's psychologist and asked them to ensure Corrections arranged a psychological assessment, as required by his sentencing conditions.
606. Police and the NZSIS were concerned about Mr Samsudeen's behaviour towards his former immigration lawyer, and assessed him to be more likely to target the lawyer than random members of the public. They prepared a specific response plan in the event that he travelled towards the lawyer's office or home.
607. From mid-August, Mr Samsudeen also began repeatedly messaging and calling the detective he had contacted about returning his knives.
608. In response, Corrections prepared non-association orders for Mr Samsudeen in respect of his former immigration lawyer and the detective who Mr Samsudeen had also been repeatedly calling and messaging. On 1 September 2021, one of Mr Samsudeen's probation officers emailed him the non-association order relating to the detective, and on 2 September the probation officer discussed that

order with him on the phone. Later on 2 September, the probation officer emailed Mr Samsudeen the non-association order relating to his former lawyer.

609. Later that afternoon, he said to the Masjid e Bilal president that he wanted to talk to him about something. The president told us that during the brief chat he talked about martyrdom and virgins in Paradise. The president did not attach any significance to the comment, and told him not to be silly.
610. That day Mr Samsudeen also called his criminal lawyer, again asking that he engage a CCTV expert and get his property back from Police. The lawyer told us Mr Samsudeen was “*significantly more elevated*” than usual. He advised Mr Samsudeen that he could not do anything until after the COVID lockdown had ended. On the morning of Friday 3 September 2021, Mr Samsudeen rang his criminal lawyer again, asking if he had done what they discussed the previous day. The lawyer said Mr Samsudeen was yelling during their 30-minute discussion and ended up firing him.
611. On the morning of the attack Mr Samsudeen also had a hostile conversation with one of his probation officers, asking him to pass on a message to his former immigration lawyer, and said he would complain to the Ombudsman if the probation officer did not do so. The probation officer initially said he would pass on the message, but then texted him back to say he could not, as it would breach the non-association order. At about 10.30am, Mr Samsudeen called the Law Society to make a complaint about his former immigration lawyer.
612. It is from this time until about midday that he posted quotes on fighting for Allah’s cause, Paradise, and martyrdom to a Facebook page he had created the day before. He then attended prayers at Masjid e Bilal, talked to his family over the phone, and told them he would call back after he had done his shopping.
613. He left the mosque on foot at about 1.30pm, and made an unanswered call to the criminal lawyer that he had fired earlier in the morning. At 2.14pm he caught the train from Glen Eden to New Lynn, arriving at about 2.20pm. The events of the attack which began at 2.35pm, are addressed in the Independent Police Conduct Authority’s report on the fatal shooting of Mr Samsudeen.
614. We believe that:
- Mr Samsudeen did not have a fixed plan with time and place before 3 September 2021;
  - he was alternating between thoughts of revenge and martyrdom;
  - the events described above added to his feelings of isolation, anger and desperation; and
  - in combination they are likely to have crystallised his resolve to commit the attack.
615. It appears likely that, by the time he set out to the supermarket, Mr Samsudeen had formed the intent of committing the attack: he brought with him a single glove for his right hand, which he would use to wield the knife he obtained from the supermarket during the attack; and he put on some headphones and listened to ISIL co-opted nasheeds that were classified as objectionable and formed part of his charges in 2018. Police believe he did this to build up motivation for the attack. We think that is plausible.

616. Some suggested to us that Mr Samsudeen may have suspected someone was following him, and this caused him to lash out. However, the Police's surveillance team had decided not to follow him into the supermarket that day.
617. Mr Samsudeen's behaviour that led to the non-association orders, the various agitated phone calls and the complaints, although consistent with his baseline behaviour, indicated on-going agitation and deterioration in his mental state. However, we do not think those dealing with him could reasonably have been expected to do anything more than they did to avert the attack. He was already under close surveillance, and had not committed any further offences that would justify arresting him earlier.

WAS THE PRESS STATEMENT ISSUED BY THE NATIONAL COMMISSIONER OF CORRECTIONS AFTER THE ATTACK APPROPRIATE?

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618. On 7 September, the National Commissioner of Corrections issued a press release about Mr Samsudeen's time in custody.<sup>98</sup>
619. Some people we spoke to told us they considered this press statement to be unethical because it detailed Mr Samsudeen's personal and medical information, and his behaviour while in prison.
620. We note that the press release detailed Mr Samsudeen's threats, abuse and use of violence against staff, but did not cover any of the threats, abuse or violence Mr Samsudeen experienced in prison, and did not address the extent to which his aggravated behaviour escalated towards the end of his time in custody.
621. The press release also said that attempts were made to provide Mr Samsudeen with mental health support while he was in prison, but he refused to engage. We think this overstated the extent to which Mr Samsudeen's actions jeopardised the mental health support available to him.
622. We find that this statement was unhelpful and premature, particularly when it would have been well understood that many of the assertions made would be considered subsequently as part of a full independent review.

## PART 8 – FINDINGS

The release and management plan prior to Mr Samsudeen's release was inadequate. Agencies appear to have discounted any chance of disengagement and rehabilitation, and were not focused on developing a systematic and coordinated plan, with a timeframe and measurable goals.

The surveillance operation was appropriate and the reduction in its scope over time was properly considered and proportionate to the perceived risk.

Apart from delayed efforts to arrange a psychological assessment for Mr Samsudeen after his release, there was no subsequent disengagement or rehabilitation plan.

Masjid e Bilal was not given sufficient information to support Mr Samsudeen.

Police and/or Corrections should have requested the NZSIS declassify some material, so that it could be shared more widely, especially with frontline staff from both agencies.

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<sup>98</sup>[www.corrections.govt.nz/news/2021/corrections\\_statement\\_regarding\\_the\\_management\\_of\\_terror\\_attack\\_offender](http://www.corrections.govt.nz/news/2021/corrections_statement_regarding_the_management_of_terror_attack_offender).

While there were triggering events before the attack took place, we do not think that any agency could have done more at that time to prevent it.

The National Commissioner of Corrections' press release on 7 September 2021 was unhelpful and premature.

Confidential

## PART 9: The way forward

### OUR KEY FINDINGS

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623. Mr Samsudeen’s attack on customers in the LynnMall Countdown supermarket on 3 September 2021 and his subsequent death was a tragic event that has had a substantial and lasting impact on the lives of the survivors, witnesses, whānau and emergency responders.
624. Mr Samsudeen had been known to the Police and the NZSIS for more than five years. He had progressively been seen as a potential violent extremist who presented a high risk to New Zealand citizens. Government agencies took that threat seriously and devoted significant resources to managing and mitigating this risk. Their actions included extensive monitoring and surveillance of his activities; bringing a variety of criminal charges against him; opposing bail and keeping him out of the community; and cancelling his refugee status, serving him with deportation liability notices and exploring options for getting him to return to Sri Lanka voluntarily.
625. A number of individuals and community groups that we spoke to, and members of his family, told us that:
- he was a traumatised and alienated individual, a “*lost sheep*” who was angry and frustrated about the unjust treatment of Muslims overseas;
  - he was detached from his cultural roots and socially isolated, which put him at risk of going down the wrong path towards violent extremism; and
  - the actions and inactions of agencies in response to that risk substantially increased the likelihood that it would materialise and eventually created the very event that they were trying to prevent.
626. While that narrative is somewhat true, it does not tell the full story. Mr Samsudeen undoubtedly demonstrated signs of violent extremism as early as 2016, and agencies would have neglected their duty if they had not paid attention to his activities and acted when they believed he was attempting to travel to Syria or about to commit an attack in New Zealand. They would also have been remiss not to take whatever action was lawfully open to them to minimise his escalating risk over time.
627. Mr Samsudeen was a lone actor. He was not engaged in detailed and sophisticated planning for a specific attack, and he was not acting in concert with others. He therefore posed particular challenges which agencies in New Zealand had little experience of dealing with. Even if the risk he presented had been able to be proved beyond reasonable doubt on the basis of admissible evidence (which was not the case), the offences he committed leading up to the attack were relatively low level and would never have justified imprisoning him for a very long period for the protection of the public. In terms of law enforcement, therefore, agencies did all that they could reasonably have been expected to do.
628. However, we have found a number of other deficiencies in the way in which his risk was responded to. These broadly fall into four categories:
- 1) **Missed opportunities to provide support and rehabilitation:** There were a number of missed opportunities, especially in the contacts with Mr Samsudeen between 2016 and 2018, to provide

pro-social support with the purpose of addressing his isolation and mental health difficulties and leading him down a different path. There were also very limited attempts to address his needs during the extended time he spent in custody, and fragmented and inadequate attempts to develop integrated and long-term plans for his two releases.

- 2) **Gaps in inter-agency arrangements to coordinate the actions of individual agencies:** The various inter-agency groups established to ensure an all-of-government response to national security risks worked appropriately to facilitate information-sharing at a high level about the current and planned actions of various agencies engaged with Mr Samsudeen. However, they failed to identify gaps in the overall government response to the risk that Mr Samsudeen posed, and in particular the absence of a long-term plan to address his needs.
- 3) **Barriers to information-sharing:** There was an excessive reluctance to share information about Mr Samsudeen and the risk he posed, both within the Police and Corrections systems (where relevant information relating to Mr Samsudeen held by intelligence staff was withheld from other operational staff), and between those agencies and the community. The issues surrounding the sharing and use of classified material should have been considered and discussions on what could have been shared with a wider audience should have occurred.
- 4) **Time in custody on remand:** The length of time Mr Samsudeen was detained in custody on remand – more than four years between May 2017 and September 2021 – was unacceptably long and undoubtedly greatly exacerbated his risk of causing harm.

629. Before considering each of these deficiencies in detail, we should reiterate that all those who were dealing with Mr Samsudeen were doing what they thought best, with limited experience of the difficult challenge they confronted. We of course do not know whether, if they had acted differently, there would have been a different outcome. Perhaps, given Mr Samsudeen's general reluctance to engage with others, that is unlikely. We therefore draw attention to the areas where a different response would have been preferable, not in order to attribute fault but in the hope that some lessons can be learned that may reduce the potential for a similar occurrence in the future.

#### **Missed opportunities for rehabilitation and reintegration**

630. We have found that Mr Samsudeen's risk justified his arrest and prosecution. However, this took precedence over, and in the event largely precluded, attempts to guide him down a pro-social path. As a result, there were missed opportunities to develop a rehabilitative and reintegrative plan for him in 2016 and 2017. Equally, there were fragmented, uncoordinated and ineffective plans for his releases from prison in both 2018 and 2021. Overall, not enough effort was made at an early stage to provide Mr Samsudeen with wraparound support to address his complex needs and reduce his susceptibility to violent extremist ideology. Although the agencies said disengagement (withdrawal from violent extremism) was the preferred outcome, very little was done to achieve this.
631. We were constantly told that opportunities for engagement with Mr Samsudeen were limited or non-existent, because he was hostile to the authorities and refused to talk to them. However, we do not accept that this was always the case. There were occasions when Mr Samsudeen did engage with people, and times when he sought cultural and religious support, but it was not provided to him. For understandable reasons his antipathy was particularly directed towards Police and Corrections; he was not always resistant to approaches from others.



632. There were a number of reasons why opportunities to attempt rehabilitation and reintegration were missed.
633. First, there was no agreed integrated basis for assessing a person's level of risk. Each agency had their own system. There was also no inter-agency process for determining the time at which, and the extent to which, some intervention was needed in response to the risk posed by a person's violent extremist beliefs. It was suggested to us that, rather than the informal processes that existed and continue to exist, there should be a more systematic process along the lines of the Fixated Threat Assessment Centres that have recently been established to assess, and develop appropriate interventions for, 'fixated' people who threaten public figures. These centres comprise Police and mental health staff (including psychiatrists) who work together to assess the person's level of risk, and share information to implement appropriate interventions (often focused on mental health). As well as reducing the risk of violence to the people who are being threatened, this approach is intended to result in better care and reduced criminalisation of fixated people. We were told that this approach could be expanded to include people at risk of 'lone-actor grievance-fuelled violence' such as Mr Samsudeen, because both groups:
- have a high rate of grievance;
  - tend to suffer significant mental health difficulties;
  - usually show warning signs; and
  - need a multi-agency response with efficient intelligence-sharing networks.
634. Secondly, as the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 found, there was no fully developed multi-agency strategy for countering violent extremism (commonly called CVE). Nor was there much knowledge about what such a strategy might look like. To the extent that proactive preventive measures were put in place (and as we have said they were largely confined to young persons), they were ad hoc, Police-initiated and Police-run. This meant that there were no established disengagement or rehabilitative intervention strategies available to Mr Samsudeen.
635. Thirdly, the particular risks and issues posed by Mr Samsudeen were not given sufficient emphasis by Corrections during both periods when he was in custody. Case management processes were inadequate and poorly implemented; Mr Samsudeen was for much of his incarceration treated like any other prisoner on remand in custody; and when he was given special attention because of his behaviour, he was placed in a more restrictive and coercive environment that was highly likely to exacerbate the risk that he already presented.
636. Finally, any discussion about appropriate interventions for Mr Samsudeen focused on ways of changing his belief system towards mainstream religion. However, although we acknowledge that knowledge about CVE is in its infancy, it does appear to be generally agreed that, especially in relation to lone actors, that should not be the starting point. It is generally the case that violent extremist beliefs result from a range of personal difficulties including social isolation and rejection, the corresponding absence of social networks and support, and mental health issues. If these need to be addressed as the first priority, the person is unlikely to be amenable to attempts to change their belief system.

637. Several recommendations of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 addressed a number of these issues, including:<sup>99</sup>

- Recommendation 4 - Develop and implement a public facing counter-terrorism and countering violent extremism strategy.
- Recommendation 14 – Establish a programme to fund independent New Zealand-specific research.

638. We are pleased to note that since then the government has provided funding for the development of a multi-agency intervention programme called He Aranga Ake, led by Police, that aims to reduce the likelihood of people causing harm through violent extremism. This builds on the Young Persons' Intervention Programme discussed earlier at paragraphs 69 and 142, but is for adults. He Whenua Taurikura, the National Centre of Research Excellence for Preventing and Countering Violent Extremism, was also launched in June 2022.<sup>100</sup>

639. However, we understand that He Aranga Ake is still very much in its infancy, lacks significant involvement by social sector agencies, and is not intended to apply to people who pose a high risk so is not available to people like Mr Samsudeen. We are also of the view that it is inappropriate for Police to lead such an intervention programme for three reasons:

- 1) While Police rightly see prevention as a core function, they are inevitably perceived to be oriented towards law enforcement. They are therefore likely to be viewed with distrust by those who require intervention. That was clearly evident with Mr Samsudeen, who greeted their approaches with increasing antagonism if not outright hostility. As an illustration of that, we were told that, even though the meeting with the New Zealand Muslim Association in October 2020 (see above, paragraph 499) had been initiated by a member of the National Security Investigations Team, no member of that team attended because of their belief that it would fail if Mr Samsudeen knew they were there.
- 2) Leadership by Police risks compromising community trust because Police will naturally wish to engage with the community not simply to enlist community support for any programmes but to collect intelligence about persons of risk. Indeed, we note that the National Security Investigations Team, in the course of exploring accommodation options for Mr Samsudeen, were also gathering intelligence. If this is not made transparent to members of the community, it is likely to lead to a loss of confidence when it comes to light. It is significant that, to the extent that there was preventive work in relation to Mr Samsudeen, it was undertaken by the National Security Investigations Team to the virtual exclusion of Police Iwi and Communities Group, the unit primarily responsible for liaison with the Muslim community.
- 3) As we have noted above, effective CVE programmes must address as the first priority the social and personal factors that are fostering violent extremist beliefs. That requires ownership by social sector agencies, which in our view is unlikely to occur if responsibility continues to sit largely with Police and Corrections.

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<sup>99</sup> See [dpmc.govt.nz/sites/default/files/2022-02/rcoi-response-progress-tracker.pdf](https://dpmc.govt.nz/sites/default/files/2022-02/rcoi-response-progress-tracker.pdf) for a progress report on the Royal Commission's recommendations.

<sup>100</sup> [www.rnz.co.nz/news/political/468441/centre-of-excellence-for-countering-violent-extremism-launched](https://www.rnz.co.nz/news/political/468441/centre-of-excellence-for-countering-violent-extremism-launched)

### Inadequacies in inter-agency coordination arrangements

640. From an early stage in the State's engagement with Mr Samsudeen it became clear he was not an "ordinary" offender. The risk he posed, on many levels, meant his case was complex enough to warrant the activation of National Security System under the leadership of DPMC.
641. Mr Samsudeen was a refugee, with all the special status, protections and obligations that entailed. He also expressed a determination to travel to support ISIL, at the time the highest profile and most sanctioned terrorist entity in the world. And, if he could not do that, he said he would commit an act of terrorism in New Zealand.
642. Issues that arose in considering the threat Mr Samsudeen posed were multi-faceted, and impacted on many government agencies and different communities. The case required consideration of international obligations, application and adequacy of existing legislative provisions and many other difficult and/or novel issues. It was therefore to be expected, and entirely appropriate, that the National Security System was activated. The question for us is how that performed.
643. In considering that question we have taken into account the minutes of all working group and watch group meetings convened from late 2017 through to 2021 (as summarised above at paragraphs 41-57). We have also spoken to many agencies involved in those meetings and senior officials from DPMC. We recognise that our jurisdiction does not extend to a review of the National Security System or the role that DPMC and other agencies played in that context. However, we have some observations that we hope may be helpful in enhancing the effectiveness of these processes.
644. First, we acknowledge that activation of the National Security System occurred as it was designed to. A complex risk to national security was identified by the lead agency (Police) and it was escalated to DPMC.
645. This process was initiated by way of a briefing on the potential threat posed by Mr Samsudeen - a threat that was relatively uncommon for New Zealand at the time. That briefing took place around the time of Mr Samsudeen's first arrest in mid-2017. In response, DPMC authorised activation of the National Security System and formally convened Watch Group meetings and an Inter-Agency Working Group. The purpose stated for the initial meetings was to "*consider the threat posed, risks arising, proposed mitigations, and communications arrangements*". Trigger points for further National Security System engagement were also discussed. Obvious trigger events were: Mr Samsudeen's imminent release from custody; and potential change in his refugee status; or any escalation in the overall risk assessment.
646. DPMC takes the leadership role when a complex threat to national security is identified. Their role in this respect is primarily facilitative: bringing agencies together; ensuring good information flows; fostering coordinated decision-making; and escalating issues. Core attendees at Watch Group meetings were DPMC, CTAG, Police, Corrections, MFAT, Immigration, and NZSIS. In 2020, the Ministry of Justice and Crown Law attended as advisors on potential law reform and legal issues. It was not until 2021, immediately before Mr Samsudeen's final release, that the Ministry of Social Development and the Office of Ethnic Affairs were brought into the Watch Group.
647. This system seemed to work well at a broader strategic level. Among other matters identified and discussed at Watch Group and Working Group meetings were conflicts between the criminal proceedings and the deportation/cancellation of refugee status proceedings; the complexities of a

possible voluntary return to Sri Lanka; potential gaps in Terrorism and Offensive Publications legislation which were referred on to the Ministry of Justice; and the potential for hostility to the Muslim community at a time when the Christchurch attacker was about to face trial and the Royal Commission was about to release their Inquiry into the Christchurch attack. The Groups also ensured relevant Ministers were appropriately informed of the issues surrounding Mr Samsudeen.

648. As well as being appropriate for decision-making at a broad strategic level, the system is obviously also designed to work at its best in a crisis or emergency (or imminent crisis/emergency), where immediate joint or coordinated decisions and actions across government are required.
649. However, in this case, the problem was of a different nature: agencies were managing the risk presented by an individual over a long period at an operational level. Our observation is that the current system is less well suited to manage a risk of this nature. We identified three related limitations.
650. First, an obvious barrier to engaging in operational oversight is that the National Security System dipped in and out of active engagement with Mr Samsudeen's case. For long periods Mr Samsudeen was in custody and not presenting as a current threat. It was only when release was imminent or circumstances had changed significantly that the National Security System was convened. This is perhaps logical for a system set up to deal with the big picture or a developing crisis. However, we consider this leaves a significant gap in the oversight and coordination of the agencies dealing with a threat to national security at an individual level, because their actions in the intervening period were not being communicated or objectively assessed.
651. Secondly, and partly because of the sporadic nature of Watch Group and Working Group meetings, they were effectively limited to considering options on the basis of what agencies told them. However, as a number of examples referred to throughout this report have amply demonstrated, the facts that were presented to the Groups and formed the basis for their deliberations were often incomplete or presented through an unduly narrow lens. Perhaps inevitably, too, that came from a law enforcement and coercive perspective. It is noteworthy that, as noted above, the Ministry of Social Development and the Office of Ethnic Affairs were not brought into the Watch Group until 2021.
652. Finally, even when Watch Group or Working Group meetings identified potential action points, there appeared to be no systematic process for ensuring this occurred. Again, we have given a number of examples throughout the report where minutes of meetings record an agreed action point, but there was no report back and no documentation within the agency suggesting that any action was taken. We note that the DPMC have amended their Standard Operating Procedures to ensure follow-up occurs within a week and is documented.
653. Our discussions with DPMC made clear that DPMC did not see their role as "*marking other agencies' homework*". That is understandable and entirely consistent with the current structure of the National Security System. However, we consider that, in an individual case involving an ongoing risk, effective inter-agency coordination requires that there be some form of independent oversight of the operational side of the case. To some extent, that must entail marking the agencies' homework.
654. An example might help to understand our point. In early 2018 the Watch Group considered the risk assessment and mitigations for Mr Samsudeen, part of that discussion is repeated:

*"Softer' options to potentially mitigate the risks he posed were canvassed:*

- *Intervention via his family – however they all live offshore, and have indicated that they have tried in the past to dissuade him of his views, but have been unsuccessful.*
- *Involvement of the Muslim community – he has reached out to an Imam, but the assessment is that this is more likely to find an acceptable residence and that he would not be susceptible to deradicalisation attempts.”*

655. The detail of what had already been attempted and whether this was adequate was not discussed, and neither of those “softer” options were discussed again. Without much scrutiny, intervention to deradicalise Mr Samsudeen or to provide him with family support dropped off the table and the focus remained on broader strategies.
656. Within the National Security System, there should in exceptional cases such as this be provision for the establishment of an oversight mechanism that would be independent, operationally focussed and with a mandate to provide leadership and facilitate the application of resources. We have no fixed view as to the form that such a mechanism might take: it could be a person or unit within DPMC with a designated coordinating and oversight role; an independent person appointed for the purpose case-by-case; or perhaps a permanent entity that is independent of the operational agencies.
657. Whatever its form, such a mechanism could in this case have stepped back from the enforcement-driven approach largely adopted and given greater consideration to what other options were available to mitigate the risk. As we have discussed elsewhere in this review, this could have involved driving better information sharing with the community, perhaps facilitating the resourcing of an agreed rehabilitation plan with a relevant mosque, discussing with the Ministry of Social Development prioritising housing; or even facilitating getting family members to New Zealand to support Mr Samsudeen. These were not matters that sat comfortably with Police or Corrections. To achieve a more holistic approach there needed to be a responsible independent lead. Equally such a mechanism could have queried Mr Samsudeen’s management in custody and recommended greater priority be given to attending to his requested spiritual needs.
658. Such oversight is obviously an intrusion into individual agencies’ mandate. However, we consider the intrusion is warranted in the rare circumstances of dealing with a person who has been declared a national security threat. If the threat is of sufficient concern and complexity to activate the National Security System, it is critical the system covers all bases.
659. The NZSIS/Police Operational Coordination Group did not have the mandate to direct (or strongly recommend) the application of other agencies’ resources. Nor did it have the independence to self-assess its decisions. The National Security System as it is presently constructed lacked the operational focus and day-to-day engagement to carry out the role we have described.
660. We recognise that the government is considering advice on the design of the National Security System, in response to recommendations from the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019. We hope that our observations will be taken into account in considering these issues.

### Inadequate information sharing

661. We found that the NZSIS lawfully and properly shared all intelligence with the relevant agencies involved with this operation. The sharing of the intelligence was timely, necessary and proportionate to the threat Mr. Samsudeen posed. At no stage was any intelligence withheld from Police or Corrections, and where requested, the Service shared the intelligence at the lowest possible classification and in a useable format. Equally, information from sensitive Service collections was shared in a manner that appropriately did not divulge the Service's capabilities. This is an example of inter-agency cooperation to manage a public safety threat which worked extremely well and was not a siloed approach.
662. The same cannot be said for the approach to information sharing taken by other agencies. Partly as a result of exclusive ownership of the issue by the security sector, it was typically based on a very restrictive interpretation of "*need to know*". We encountered numerous instances where information highly relevant to the management of Mr Samsudeen's risk was not shared because it was restricted to those with the appropriate security clearance.
663. Two examples will suffice to make the point.
664. First, notwithstanding the fact that the information held by the National Security Investigations Team was largely "*restricted*" rather than "*secret*", and therefore able to be shared elsewhere in Police, much of the information known about Mr Samsudeen was withheld from Police Māori, Pacific and Ethnic Services, even when they were asked to convene a meeting with the Muslim community in October to discuss his case.
665. Secondly, we have noted (above, paragraph 486), that the Corrections case manager who was allocated to him in January 2021 told us she was astounded at how much information she did not know about Mr Samsudeen and that, if she had known, she might have been able to manage him and support him in a whole different way.
666. We appreciate that some relevant material was highly classified and could not be shared. However, there are ways in which this can be managed to ensure required information and intelligence is appropriately shared in a form that protects required secrecy. For example, an agency (in this case Police or Corrections) could have shared restricted information with other staff, and could have asked the NZSIS to declassify specific pieces of secret information so that it could be shared with the appropriate people within the agency. It is at the discretion of the NZSIS as to what will be declassified, but usually a discussion between the agencies to determine the purpose and reasoning of this request will enable it to be resolved. If this had occurred, we see no reason why the Corrections staff could not have been provided with relevant material to help manage Mr Samsudeen upon his release.
667. The reluctance to share information with members of the community was even more pronounced. In particular, when the assistance of members of the Muslim community was being sought, they generally received very limited information about Mr Samsudeen's background or the risk he was believed to pose. Although we received conflicting information about the amount of information shared with the President of the Masjid e Bilal mosque to which Mr Samsudeen was released in 2021, we are satisfied that he was unaware of the degree of risk Mr Samsudeen was believed to pose or the detailed information upon which that assessment was based. He was essentially told only that Mr Samsudeen had been accessing some violent extremist material online, expressing support for ISIL, and espousing violent extremist beliefs.

668. We understand the risks involved in releasing material. Even if it is passed on in confidence, there is always the potential that it will be inappropriately shared. For example, the President of the Masjid e Bilal mosque asked Police if Mr Samsudeen was under surveillance and was assured that he was not. Based on that information, he told Mr Samsudeen that his suspicions that he was being followed were unfounded and that he was just being paranoid. He now feels aggrieved that he was lied to and says that this has led to an erosion of his trust and confidence in Police. While that is understandable, there are obvious reasons why it would be undesirable to tell a third party that a person is under surveillance: if that information is passed on, the risk that it will jeopardise the purpose of the surveillance is high.
669. Notwithstanding these difficulties, we think this case demonstrates the problems arising when agencies become too risk averse when deciding what information to share. In particular, since it is accepted that effective CVE programmes depend upon community support, and indeed must be undertaken as a partnership between government agencies and relevant community groups, there must be greater willingness to trust those groups with the information they need in order to participate effectively. This means having a greater tolerance for the risk that information will be wrongly made public. It may also involve a greater willingness to provide security clearance for community members whose support is being enlisted.

#### **Unduly lengthy period on remand in custody**

670. In Parts 5 and 7, we have discussed at length the various reasons we were given for why Mr Samsudeen ended up on remand in custody for such a long time. During his first period in custody, we have concluded that some delays occasioned by the process for the classification of potentially objectionable material and the transfer of the case to the High Court could and should have been largely avoided. During his second period in custody, we have again found there were some delays caused by the classification process, and towards the end there was a further delay caused by the COVID-19 lockdown.
671. Taken together, these factors amounted to a delay of something in the region of 18 months. It is tempting to draw the conclusion that Police and prosecution saw it as in their interests to let the case drift. But that is not supported by the evidence.
672. Rather, the lengthy period in custody resulted from the fact that the case was treated like any other: the classification process essentially worked in accordance with the legislative framework, with the attendant delays during both periods of custody; and when trials were delayed as a result of the pandemic, the case was treated like any other rather than being recognised as unusual.
673. We believe this magnified Mr Samsudeen's sense of grievance against the system, greatly increased his alienation, hostility and risk of increased radicalisation, and precluded agencies from properly considering other options for addressing the problem that he undoubtedly presented. We cannot say whether his attack would have occurred anyway, but his period in custody without the appropriate and necessary interventions and support enhanced the risk that it would.

#### **CONCLUDING COMMENTS**

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674. Regarding disengagement from extremism, it is clear, both from those we interviewed and from the international experience, that:

- It is difficult to steer people away from a violent extremist path if they have already embarked on it, so interventions need to be implemented as soon as possible.
- Interventions have the best chance of success if they are multi-agency and undertaken in partnership with the community. A diverse group of people (that is, a range of men and women of different ages, cultures, ethnicities, and professions) should be involved in providing the support.
- Interventions need to be tailored to the individual, their unique circumstances and their level of risk (as assessed by suitably qualified experts).
- Programmes must focus not only on violent extremist beliefs, but on the provision of wider cultural, social, and mental health support. Indeed, there is a strong argument to be made that attempts to turn people away from violent extremist ideologies are unlikely to be successful unless the personal, social and cultural factors that have generated those ideologies are first addressed.

675. We acknowledge that many people who adopt violent extremist views have highly complex issues, and multi-agency interventions do not necessarily provide a solution in themselves. Efforts to disengage people from extremism may take a very long time, and do not guarantee that the person will no longer pose a risk to the community. We also acknowledge that people may not be willing to engage in any such programmes. This is reflected in the fact that continued oversight by intelligence agencies and law enforcement will often be required alongside efforts to deradicalise. However, the effort needs to be made, because law enforcement and imprisonment alone are very unlikely to reduce the risk of violence once the person inevitably ends up back in the community.

676. Lastly, we acknowledge that disengagement from violent extremism, and in particular deradicalisation efforts, are highly specialist areas of work and require significant training and expertise. There are few people within New Zealand who have the requisite specialist training and expertise in this area. This is an area where New Zealand needs to build its capability. We were told that government agencies are seeking to build community organisations skills, however this is still in its infancy. Recent international experience shows that even with extensive disengagement, deradicalisation and rehabilitation initiatives some people have gone on to commit terrorist acts upon release into the community.

Brendan Horsley

**Inspector-General of  
Intelligence and Security**

Judge Colin Doherty

**Chair of the  
Independent Police Conduct  
Authority**

Janis Adair

**Chief Inspector  
Office of the Inspectorate**