

# The effect of terrorism and terrorist trials on Australian prison regimes

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# Overview

- Context: The politicisation of criminal justice
- Effects on Penal regimes
- Potential for the spectre of terrorism to revalorise the role of the supermax prison
- Potential checks: right to a fair trial – *Benbrika* – and ratification of OPCAT
- ‘Conversions’ and ‘radicalisation’
- Conclusion

# Context: The politicisation of criminal justice

- Politicisation of the law making processes
- of the content of criminal law offences –eg include reference to political motives, and drive potential culpability back towards “pre-crime”
- of investigative processes -*Ul Haque*
- of the trial process –bail ;security clearances; withholding evidence from defence
- in executive responses to judicial decisions adverse to the government -*Haneef*

# Context: The politicisation of criminal justice

- judicial submission to the claims of terror, security and risk – *Thomas* control order
- of correctional processes – *Benbrika; Ul Haque*

# Context: The politicisation of criminal justice

- *Summary: the spectre of terrorism and the technologies of risk and the politics of fear it engenders, have distorted domestic criminal justice processes through a profound hyper-politicisation, overreaching claims of executive sovereignty, lack of respect for the separation of powers, political trumping of judicial decisions and the use of the criminal process, the courts and the correctional system, as a form of political theatre.*

# Effects on Penal regimes

- Classification;
- Separation and segregation;
  - Design and regime features which minimise human contact, limit exercise and time out of cells, limit association between prisoners.
  - more frequent and intrusive strip searching, the use of orange jumpsuits ;
  - upgrading of security and installation of high tech security devices.
  - Restriction on access to communications, visitors, reading matter

# Effects on Penal regimes

- Prison design - “target hardening”;
  - Increased militarisation of prison regimes;
  - strengthening of special armed sections or units;
  - increased liaison between AFP and state Corrections –MOU, Liaison officers, information exchange;

# revalorise the role of the supermax?

- Danger of obscuring long history of “secondary punishment”, “trac”, “punishment” and “segregation” sections from the penal colonies on –Port Arthur, Morton Bay, Norfolk Island, through Grafton, Katingal, the HRMU, Pentridge, Jika Jika, Barwon Acacia unit;
- danger that practices at the ‘hard end’ of the penal system will spread more deeply into the whole maximum security sector.

# Revalorise role of supermax? CCL criticisms

- NSW CCL criticism of Goulburn HRMU - “the conditions in the HRMU are having an adverse impact on the mental health of its inmates;
- mentally ill prisoners are being placed in the HRMU under segregation conditions rather than in the specialist acute psychiatric wing of the prison hospital at Long Bay - Scott Simpson case;
- those held on terrorism related charges are not permitted to see the Official Visitor.

# Revalorise role of supermax? CCL criticisms

- no mechanism for HRMU inmates to challenge their placement and continued detention in the facility.
- allegations of political interference in the running of the HRMU - selective government and departmental leaks from the HRMU to the popular media.

# Potential checks: right to a fair trial

- “the oppressive conditions in which they are currently incarcerated and transported is having such an effect on their capacity to attend to their own interests in defence of the charges against them that the trial they are currently engaged in is unfair and will become more so as time passes.” *R v Benbrika* [2008] VSC 80 para 80.

# Potential checks: right to a fair trial: Bongiorno ruling

- They be incarcerated for the rest of the trial at the Metropolitan Assessment Prison, Spencer Street.
- They be transported to and from court directly from and to the MAP without any detour.
- They be not shackled or subjected to any other restraining devices other than ordinary handcuffs not connected to a waist belt.
- They not be strip searched in any situation where they have been under constant supervision and have only been in secure areas.

# Potential checks: right to a fair trial : Bongiorno ruling

- That their out of cell hours on days when they do not attend court be not less than ten.
- That they otherwise be subjected to conditions of incarceration not more onerous than those normally imposed on ordinary remand prisoners, including conditions as to professional and personal visitors. (para 100).

# Potential checks: ratification of OPCAT

- UN Committee Against Torture : “concerned over the harsh regime imposed on detainees in “supermax” prisons” and in particular “over the prolonged isolation periods detainees, including those pending trial, are subjected to and the effect such treatment may have on their mental health.” (p8, para 24)
- The Committee recommended that the “State Party should review the regime imposed on detainees in supermaximum prisons , in particular the practice of prolonged isolation” (Rec 24).
- the Aust government should advise on what they done about this within one year

# Potential checks: ratification of OPCAT

- Proposed ratification by the Rudd ALP government the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) entails obligation on State Parties to:

“set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment –national preventive mechanisms (NPMs)”. ( CAT, *First Annual Report Of The Subcommittee On Prevention of Torture* 29 April-16 May 2008 para 6).

# Potential checks: ratification of OPCAT

- A preliminary guideline requirement for NPMs is that:
  - the NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, involving civil society.” (ibid, para 28ii)
- Cf recent NSW developments :
- –privatisation of 2 prisons without public debate;
- abolition of Office of Inspector of Custodial Services;
- removal of investigative or auditing functions from official visitors –*Crime (Admin of Sentences) Legislation Amendment Bill 2008*

# 'conversion' and 'radicalisation'

- 'Hard Men Turn to Islam to Cope With Jail, Goulburn's super mosque', Stephen Gibbs *SMH* Nov 19 2005.
  - 'NSW Corrective Services and the super-max jihadis' *Crikey* 23 April 2007.
  - 'Authorities fear prisoners plotting jail break during prayers' *ABC* 23 April 2007.
  - 'Inmates studying al-Qaeda manual' *SMH* Dec 2007
  - 'Prisons 'terrorist breeding grounds' *The Age* July 2006.

# ‘conversion’ and ‘radicalisation’

- US - debate about the role of religion in prisons, restrictions on access to the Koran in various states and a moratorium on the hiring of Muslim chaplains in some. (*Columbia Human Rights Law Review*, 2005-6).
- Some UK research –beneficial effect of conversion on inmate behaviour :cf ‘Richard Reids’
- Australian context cynicism over ‘conversions’, linked to gangs, ethnic streaming and the “radicalisation” of prisoners.
- “radicalisation in prison not yet a significant problem in Australia” –AFP Comm Keelty

# **‘conversion’ and ‘radicalisation’**

- “an important issue that prison reformers all over the world have begun to face is how to prevent prisons from becoming breeding grounds for violent extremism and terrorist recruitment centres. Increasingly, sophisticated extremists have managed to devise ways to turn prisons into training camps under their control. The question here is whether to separate violent extremists from other inmates or to integrate them and let them mix freely.

# ‘conversion’ and ‘radicalisation’

- “Allowing violent extremists to mix freely has carried serious costs in allowing them to seek out and successfully recruit fellow prisoners; but evidence also shows that segregating extremists in separate blocks has allowed them to maintain an organizational hierarchy and hone their operational skills” –Counter Terrorism Implementation Task Force, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programs* (2008) p8 (Australia contributed)

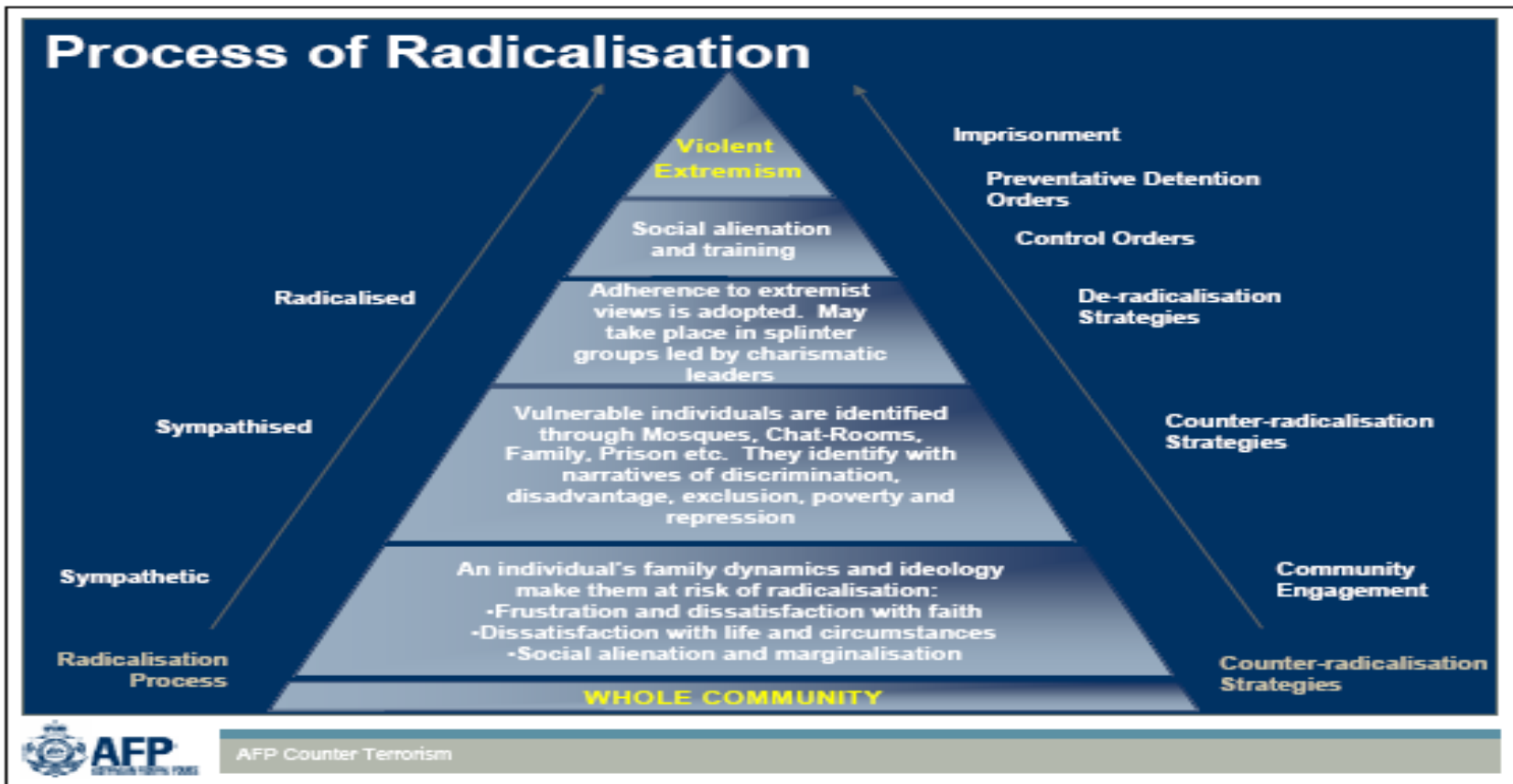
# **‘conversion’ and ‘radicalisation’**

- AFP –major seminar Canberra July 2006
- Leadership in Criminal Intelligence Program (LCIP)
- Theme: “home grown terrorism-process of radicalisation or why some people go on the journey to being prepared to act in a way that endangers others and themselves, and how law enforcement agencies can reduce that threat”

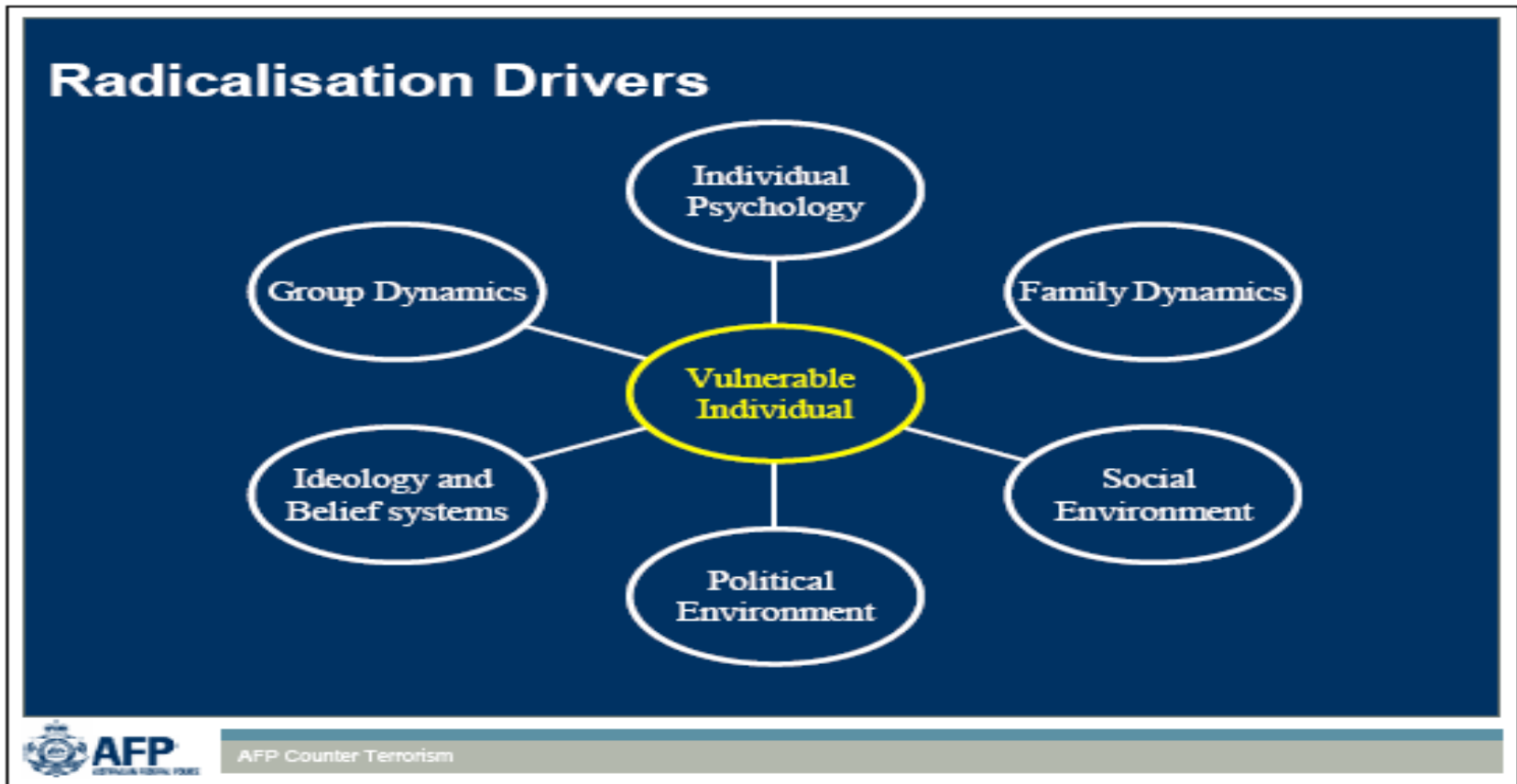
# **‘conversion’ and ‘radicalisation’**

- Establishment of prison liaison between AFP and state Corrective Services
- Training –Graduate Certificate in Intelligence Management Development and Graduate Diploma in Intelligence Executive Leadership –APF and Australian institute of Police Management

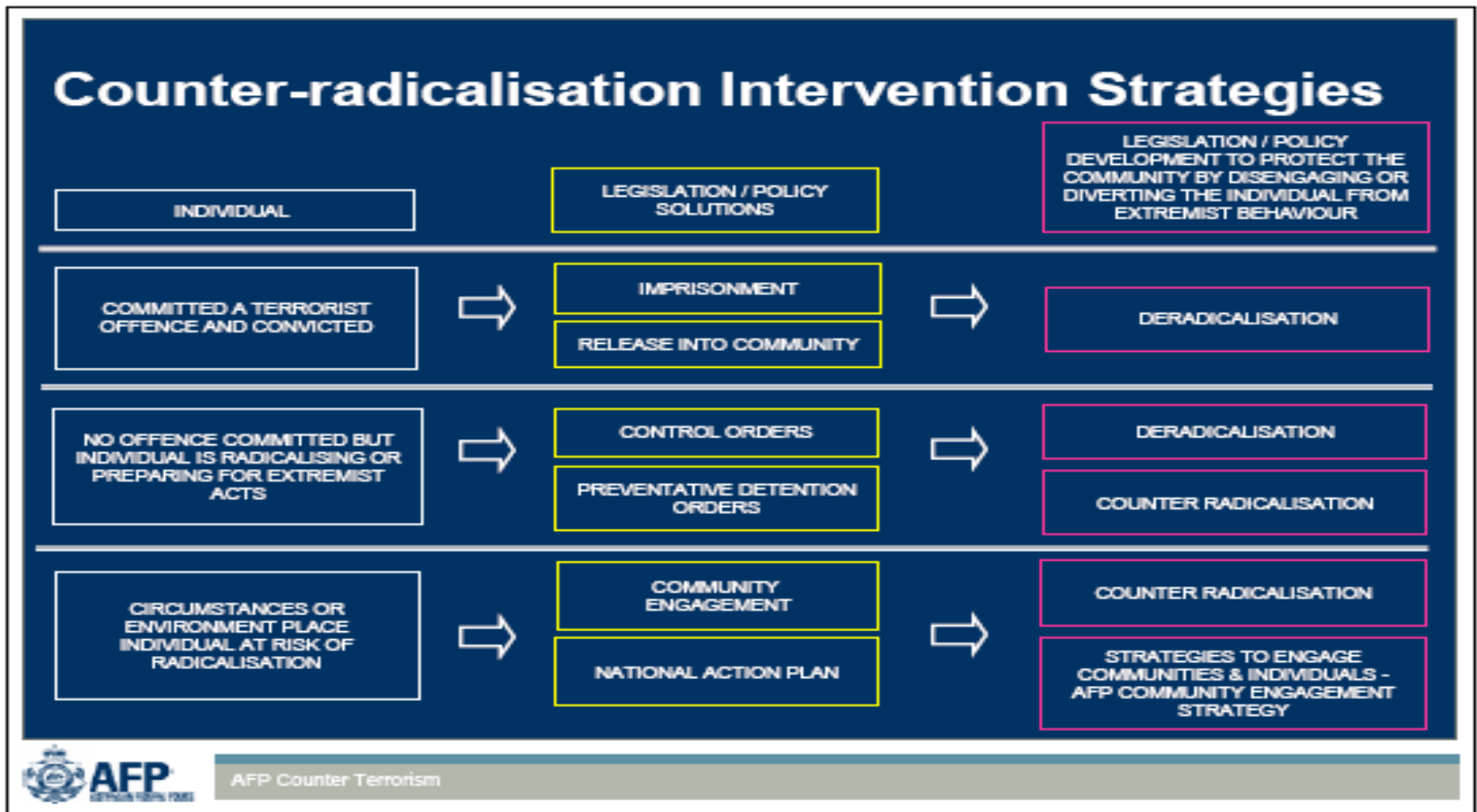
# 'conversion' and 'radicalisation': AFP view



# 'conversion' and 'radicalisation': AFP view



# 'conversion' and 'radicalisation': AFP view



# 'conversion' and 'radicalisation': AFP view: source John Lawler AFP Deputy Commissioner

## AFP Community Liaison



# Conclusion

- spectre of terrorism produced a distorting hyper-politicisation of a range of criminal justice processes;
- has had effects within prisons in terms of classification, prison conditions, prison practices –greater segregation, isolation, security etc, possibly prison design;
- dangers in seeing all these developments as new as against tracing the long history of secondary or super punishment regimes and practices.

# Conclusion

- It seems likely that the presence of charged or convicted of terrorist offences will strengthen political and public support for "supermax", although again, there is a long history of their justification with reference to notions of "monsters", "worst of the worst", "intractables" etc

# Conclusion

- New avenues of challenge opening up:
- Extension of right to a fair trial to prison regimes for remandees –*Benbrika*
- Required responses to UN CAT
- Ratification of OPCAT
- Better NPM regimes required –model of WA Inspector of Custodial Services

# Conclusion

- prisons as ‘terrorist incubators’ and ‘conversion’ to Islam within prisons becoming of increasing concern in the international context, especially in the US, but also in Europe (France, Spain), and to a lesser extent in Australia.
- In the US especially, religion in prison is becoming ideological battleground;
- in Australia increased security and intelligence concern is being devoted to the ‘radicalisation’ of prisoners- liaison; training; research

# Conclusion

- If AFP logic of attention to :
- “narratives of discrimination, disadvantage, exclusion, poverty and repression”; and
- “circumstances or environmental place”
- to be taken seriously then “strategies of community engagement” required which are incompatible with segregation, high security ‘supermax’ regimes.