

Custody and Sentence Planning – a Throughcare Model for 'AA' Inmates

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EXECUTIVE SUMMARY

This project team recommends:

1. The development of a behaviour-based pathway from AA classification to mainstream classification;
2. Clear guidelines for AA case management officers for seeking real-time assessments of an inmate's risk to national security;
3. The development and eventual introduction of a de-radicalisation program for AA inmates.

Category AA and Category 5 inmates are "inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment."⁷

At present, there is no specific documented practical pathway for AA inmates to progress to a mainstream management program, since to do so they must no longer "represent a special risk to national security". Whilst a law enforcement agency might advise the Department of an *increased* risk to national security posed by a particular AA inmate, it may not be the case that the Department will be so informed if an AA inmate's risk to national security decreases or dissipates. Consequently, there is a real risk that a Category AA inmate, once so classified, will remain so classified regardless of his *actual* "special risk to national security", contrary to the policy of applying the least restrictive security level appropriate to an inmate's level of risk.

Our project documents a risk-based and behaviour-based progression pathway for AA inmates from receipt into custody to discharge from custody and post-custody supervision, using existing systems and processes, so that the management of AA inmates complies with the Department's mission and vision statements and the Through Care offender model. It addresses the safety and security threat posed by AA inmates by ensuring their management is matched to their actual national

security risk level and refined in light of any changes to this level, AND matched to their risk to the good order and security of the correctional system.

Under our model:

- Regular reviews of an AA inmate's special risk to national security (required to be conducted within the case management review process) will address the need for the provision of real-time current information from police and law enforcement agencies;
- If the inmate's actual "special risk to national security" permits, he may be returned to the mainstream inmate population and managed with an appropriate classification according to his risk to the good order and security of the correctional centre (ie, the same as any other inmate);
- If the inmate then demonstrates behaviour that may pose a risk to national security or to the good order and security of the correctional system (such as recruiting other inmates to a terrorist cause), he may be either be returned to AA classification or managed within the Security Threat Group model of managing security threats and associated behaviours or within the HRMU program.

Our model:

- Includes all procedures for assessment and management of AA inmates in an easy-to-read graphic form, showing a whole-of-custody pathway and demonstrating long-term strategic planning;
- Shows clear links between assessment and management strategies and allows clear scrutiny of AA management procedures;
- Ensures that interventions along the pathway are behaviour-driven within parameters of criminal behaviour, and not ideological parameters; and
- Consolidates existing procedures, maximizes the application of existing management systems and is therefore cost-neutral.

GROUP REPORT

The New South Wales Government has responded to the world-wide threat of terrorism by several pieces of legislation since 2002. Some anti-terrorism legislation is part of a national scheme, whilst some legislation applies to New South Wales only.

Legislative basis

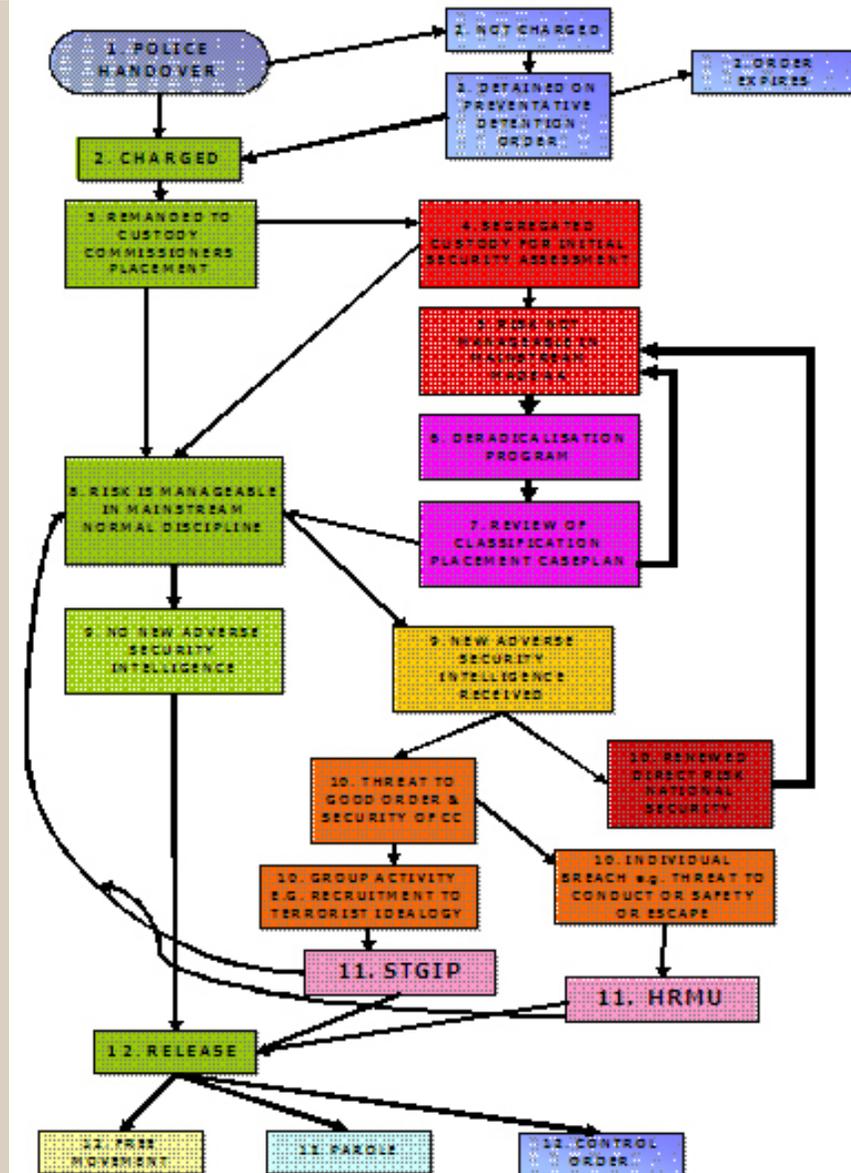
In New South Wales, the *Crimes (Administration of Sentences) Amendment (Category AA Inmates) Regulation 2004* introduced a new classification category of inmates: Category AA (male) and Category 5 (female), who are each prescribed as:

*"being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment."*⁸

It should be noted that the above provision requires both separate classification *and* placement from most inmates – the words "special facilities" are used only in respect of AA, A1, Category 5, Category 4 and E1. The legislation contains no definition or prescription for such "special facilities".

Category AA and Category 5 inmates are both prescribed to be serious offenders.⁹

The *Terrorism (Police Powers) 2002* was amended in December 2005 to provide for preventative detention orders to be made by which a person may be detained (including in a correctional centre) to prevent a terrorist act occurring or to preserve evidence of terrorist acts that have occurred.



⁸ Clauses 22(1) and 23(1) *Crimes (Administration of Sentences) Regulation 2001*

⁹ Clauses 22(3) and 23(3) *Crimes (Administration of Sentences) Regulation 2001*.

Note that the Serious Offenders Review Council (SORC) only has responsibilities for convicted inmates.

Preventative detainees may well fall within the category of inmates to whom Category AA¹⁰ applies, since the preventative detainee will have been detained as a result of a clear risk to national security – ‘preventing a terrorist act occurring’ or ‘preserving evidence of a terrorist act that has occurred’ cannot be described as otherwise.

What is terrorism?

Section 23.1 of the Operations Procedures Manual (OPM) provides definitions of national security and terrorist activities, taken from Commonwealth legislation.

Academic literature provides more extended descriptions of terrorism rather than definitions. For instance, one paper¹¹ states “There is no generally accepted definition of terrorism (but) by comparing terrorism with various forms of violence, it is plausible to construe terrorism as crime and demonstrate why terrorism cannot be morally justified.” This paper described three main form of terrorism: ethnic terrorism, ideological terrorism and state-based terrorism; and included within ideological terrorism several sub-forms: political terrorism, religious terrorism and eco-terrorism. In particular, it characterised ideological terrorism as political violence enacted against persons or property to achieve ideological objectives such as radical economic, political and social transformation.

It is clear that the AA inmates held by the Department are exponents of ideological terrorism comprising both political terrorism and religious terrorism. It must be recognised, however, that all AA inmates have been imprisoned for criminal actions rather than ideological beliefs; and they must not be given recognition as being anything other than criminal inmates.

10 For the remainder of this paper, the generic term “Category AA” should be taken to include Category 5 inmates.

11 Stevens, Michael J: *What is Terrorism and Can Psychology Do Anything to Prevent It* (2005), Wiley .

Who are AA inmates?

The AA category was a political imperative introduced in response to an immediate need to establish a security classification appropriate to a threat of terrorism. The remainder of the enabling regulation concerned security-related matters: high-security classification for interstate leave permits, visits, correspondence, access to Official Visitors, and prohibited goods. The enabling regulation did not address correctional management of AA inmates in any further detail. Consequently, this responsibility falls on the Department.

There is no legislative requirement that an AA classification can only be applied to an inmate incarcerated for a terrorism-related matter. The classification could be applied to any inmate about whom the Department receives intelligence information of a threat to national security or any inmate who converts to or adopts a terrorism-related ideology and is assessed by the Commissioner to represent a special risk to national security on that basis.

Some research subjects for this project reported that, to their knowledge, some inmates regard an AA classification as a conferral of status – an indication that they are imprisoned for ideological reasons and not as a result of criminal actions, and are therefore political prisoners rather than criminals. At the same time, some mainstream inmates are reported to view AA inmates as having a ‘target’ status (ie, inmates who may be targeted for assault) simply because of an apparent connection to terrorism, and should therefore be kept separate from mainstream inmates for their own safety. Other research subjects opined that DCS staff conferred status on AA inmates by treating them so differently to and separately from mainstream inmates.

It must be borne in mind that there is always a ‘status hierarchy’ in a correctional centre based in part on an inmate’s criminal history. For most inmates who strive for status, the motivation is power of one sort or another – for instance, power of intimidation or power to gain financial advantage; and status is gained by physical toughness or financial wealth.

By contrast, the status hierarchy among AA inmates is earned by respect for strength of belief, and is gained by an inmate's presentation as a true believer¹².

Initial classification process

On 25 May 2007, the Department housed 1 sentenced AA inmate and 9 remand AA inmates who have been committed for trial, as well as 2 inmates charged with terrorism related matters who are not classified as AA/Category 5.¹³ This latter fact demonstrates clearly that the Commissioner exercises a real discretion with regard to forming his opinion as required by the Act, and does not automatically classify as Category AA every inmate incarcerated in relation to a terrorism-related matter.

In practice, the Commissioner does not form his opinion with respect to a special risk to national security in isolation. He forms his opinion on the basis of a security rating and placement recommendation made by the Assistant Commissioner, Security, on the advice of the Executive Placement Group¹⁴, which bases this rating and recommendation on a security assessment profile conducted by the Security Assessment and Evaluation Team (SAET), which consists of officers appointed by the Assistant Commissioner Security. If the Commissioner's opinion is to change, it is likely to be on the basis of a security placement and recommendation made as a result of a similar assessment.

Section 23 of the Operations Procedures Manual (OPM) provides for the Management Regime of Category AA and Category 5 inmates.

The OPM¹⁵ provides that the SAET, *in consultation with relevant law*

- 12 Advised by the A/ Deputy Superintendent, Office of the Commissioner, who advised that of the 10 AA inmates, only 1 is overtly physical and threatening, while the remaining 9 are quiet and respectful.
- 13 Another one-time AA inmate is no longer in custody.
- 14 Consisting of himself and one other Regional Assistant Commissioner
- 15 Section 23.3.3(2) "Initial classification"

enforcement agencies, will conduct an initial security assessment within 48 hours of the arrival of an inmate charged with or convicted of an offence connected with terrorism; and is to develop a full security assessment profile within 2 weeks or as soon as practicable. This security assessment is to be informed by *information both internal and external to DCS*.¹⁶

The OPM also provides¹⁷ that "The AA or Category 5 classification may be varied by the Commissioner following subsequent assessments and classification reviews." Our project examines ways that classification review process may happen, and the options available for reconsideration or review of AA classification.

Classification reviews

The *Crimes (Administration of Sentences) Regulation 2001* ("the CAS Regulation") requires¹⁸ that case plans are to be regularly reviewed; but makes no provision for regular classification reviews¹⁹. Nevertheless, it provides that "a case plan is to be prepared and adopted for *each inmate* in a correctional centre"²⁰, and it is clear that a classification review is undertaken as an integral part of case management review²¹. Since there are no exceptions listed, it is also clear that this requirement must apply to AA inmates²².

In respect of both convicted and unconvicted AA inmates, the

- 16 See also clause 28A *Crimes (Administration of Sentences) Regulation 2001*: "For the purpose of making any decision with respect to a person's classification under this Division, consideration must be given to any advice received from NSW Police or from any other public authority (whether of this or any other State or Territory or of the Commonwealth) established for law enforcement, security or anti-terrorist purposes."
- 17 Section 23.3.3(1)
- 18 Clause 12(3)
- 19 Other than clause 22(2) and 23(2): "Subject to clause 27, the Commissioner *may at any time* vary or revoke a classification under this clause."
- 20 Clause 12(1)
- 21 OPM Section 23.3.4 "Classification review process"
- 22 It is also a legislative requirement: clause 12(1) *Crimes (Administration of Sentences) Regulation 2001*: "A case plan is to be prepared and adopted for each inmate in a correctional centre."

OPM states²³: "In preparation for the six monthly review, (or at other times as required), the SAET will review the SAET's earlier security assessment report and update where necessary. *Any new identified threats will be assessed and if required subjected to a comprehensive risk analysis.*" The pathway for forwarding an updated report and subsequent risk analysis report is then stated.²⁴

"Any new identified threats" may come from intelligence or information provided by the Department's Security and Intelligence Division or external agencies such as police or ASIO. The Director, Inmate Classification and Case Management advised us that the Corrections Intelligence Group receives information from external law enforcement agencies in real time, including instances where an existing threat level has decreased or dissipated (for instance, due to a terrorist cell being broken up). He advised that one reason external agencies provide such information, and not only information of an increased threat, is because they have come to appreciate the value of corrections-based information in their own intelligence-gathering.

It is conceivable that an AA inmate could have numerous classification reviews over the course of many years and never have his AA classification varied, for the sole reason that the Department received no updated information as to his risk to national security, and therefore took no action to vary his classification²⁵. There is considerable potential for harm to the Department's reputation – and enhancement to an AA inmate's self-estimation as 'special' – should this be allowed to happen, without a demonstrable behaviour-based pathway for the AA inmate to eventually progress through²⁶.

The Deputy Superintendent, Office of the Commissioner, advised us that one inmate was removed from AA classification when acquitted of

23 Section 23.3.4(2) and (6)

24 The remainder of section 23 of the OPM deals with other aspects of the management of AA and Category 5 inmates, and is not relevant to this discussion.

25 This situation is not unique to AA offenders. Serious offenders serving very long sentences may already spend over a decade as an A1 or A2 before their sentence length enables them to progress to B.

26 There will also be considerable extra resources spent on the management of the inmate as AA instead of a less restrictive security classification

terrorist-related offences, and placed into the mainstream population whilst still incarcerated on other non-terrorist charges. This inmate reportedly could not cope in mainstream as an "inmate not terrorist", attacked a correctional officer and completed his incarceration in segregation. This inmate may be atypical of terrorist inmates: he was ostracised by his own terrorist group because he drew too much attention to them.

Risk / threat factors and AA inmates

The Deputy Superintendent, Office of the Commissioner, advised us that all existing AA inmates are designated Extreme High Risk (EHR) under clause 25(2) of the *CAS Regulation*.²⁷ As EHR inmates, they are subject to oversighting by the High Risk Inmate Management Committee (HRIMC) of the Serious Offenders Review Council (SORC).

Clauses 22(1) and 23(1) of the *CAS Regulation* provide examples of why the Commissioner may decide an AA inmate represents a special risk to national security: "for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities".

In a correctional environment, the perceived risk that an inmate may engage in actual terrorist activities is minimal. Most of the special risk arises from the perceived risk that they may incite other persons to engage in terrorist activities, or utilise criminal networks to facilitate terrorist actions outside the correctional system. Such 'other persons' may be persons outside the correctional system (visitors, staff, telephone or mail contacts), or other inmates within the correctional system (whom he may also incite to escape).

AA inmates also represent several different types of terrorist inmates; and to manage and categorise the special risk to national security posed by an AA inmate, the Department must correctly categorise the particular AA inmate. Some are true believers in their cause whose motivation will not

27 "The Commissioner may designate an inmate as an extreme high security inmate if of the opinion that the inmate constitutes: (a) an extreme danger to other people, or (b) an extreme threat to good order and security."

be overcome by the inconvenience of imprisonment; while others have been recruited / indoctrinated by the true believers and may eventually lose their fervour. Some are recruiters to a cause and continue to seek recruits, while others, once recruited, are commanded to study a religious text or reflect on ideology, or work towards escaping, or become 'sleepers' to await further instructions.

It must be stressed that conversion to Islam, per se, is not conversion to terrorism; but it can be used as a pathway of conversion to terrorist ideology through the use of radical Islam.

The pathway from AA to mainstream

It is incumbent upon the Department in its rehabilitation role to steer inmates through the classification system where practicable, and not rely on inmates to negotiate the pathway under their own initiative. Under this principle, programs are recommended to inmates in the case management process; and it should be possible to plan a pathway for individual AA inmates under their case management plans.

The Deputy Superintendent, Office of the Commissioner, strongly recommended to us that a **de-radicalisation program** should feature in the AA-to-mainstream pathway; and the sooner in an inmate's incarceration that the de-radicalisation process can start, the better. The development of a de-radicalisation program and its introduction to convicted AA inmates would make it the only program available to AA inmates at this stage.

In addition to assisting AA inmates to modify their belief systems and attitudes, a de-radicalisation program could provide radicalisation indicators that would assist correctional and program staff to identify behaviours indicative of a risk to national security or a threat to the security of the correctional system.

AA inmates to date have obeyed their commanders, in the same way that inmate converts to a religious (non-terrorist) ideology follow the prayer-leader. In fact, the Al Qaeda Training Manual contains a chapter formalising the behaviour expected of an imprisoned member whilst in a correctional centre. We were advised²⁸ that where there is a strong prayer-leader, the converts stay devout; but when they are transferred to a correctional centre without a strong prayer-leader, they revert to their pre-conversion ways. In the same way, it can be expected that where there is an influential terrorist leader in a correctional centre, his followers will remain strongly committed to the ideology.

We were also advised that the starting point for an AA inmate's pathway to mainstream classification is to identify where the inmates fit in the AA inmate hierarchy, and to separate leaders from followers. This process is similar to the process followed in the identification of inmates for placement in the Security Threat Group Intervention Program (STGIP).

Having identified leaders and followers, an appropriate de-radicalisation program could be required for each group. If an AA inmate completed the program, he could be placed in the mainstream inmate population with an appropriate classification such as A2 or lower if two conditions were met: (1) the advice from external law enforcement agencies was that his risk to national security had dissipated, and (2) his behaviour exhibited clear proof that he was not recruiting other inmates or inciting people outside the correctional system to commit terrorist acts. This behaviour could include repudiation of his ideology and rejection of contact with other AA inmates, and reciprocal ostracism of the inmate by his AA ideological peers²⁹ (and should be confirmed by information from external law enforcement agencies).

²⁸ Deputy Superintendent, Office of the Commissioner

²⁹ AA inmates are not homogenous – some terrorist groups radically oppose other terrorist groups. Currently, 9 inmates are Sunnis and 1 inmate is not; it may be necessary in future to distinguish Sunnis, Shiites, Wahabis etc.

Regression in the mainstream inmate population – STGIP and other options

Once an AA inmate has returned to the mainstream inmate population, he may be managed as a mainstream inmate until his eventual release from custody provided that he does not again exhibit behaviour consistent with a special risk to national security. His escape risk and risk to staff safety can be managed in the mainstream, even if it necessary to do so through the HRMU Program.

The obvious example of such behaviour would be recruitment of other inmates to a terrorist ideology. The threat of terrorist recruitment within the correctional system is real, based on the Madrid bombings in which some of the participants were recruited from within prisons and had no previous terrorist convictions.

The consequences of recruitment activity for the inmate could be either reversion to an AA classification, or transfer to the HRMU Program, or transfer to the STGIP.

The STGIP aims to identify and isolate leaders of security threat groups, reduce inter-group rivalries and provide a pathway to facilitate the reintegration of STG inmates back into the mainstream correctional centre population. It was not designed with terrorist inmates in mind, but could be used or adapted to apply to inmates incarcerated for terrorist offences.

The advantage of the STGIP from an operational and security viewpoint is that it is not viewed as status-enhancing by inmates. In fact, we received advice that inmates who have been transferred to the STGIP hate it, and no inmate discharged from the program has yet been returned to it. For many other inmates, an oral or written warning that they are being considered for transfer to the STGIP has resulted in an improvement in behaviour to the stage where transfer to the STGIP has not occurred.

Recruitment of individuals to a security threat group is an indicator for the STGIP, and recruiting is a behaviour that is specially dealt with in that

program. The transfer of an AA inmate to the STGIP could mean, however, that the inmate would be mixing with inmates of A2, B or C1 classification who are on the STGIP program. Such mixing could be undesirable, and also endanger the safety of the AA inmate if the other STGIP participants were violently disposed towards AA inmates.

A related treatment program is the Violent Offender Treatment Intervention Program (VOTIP) at Lithgow Correctional Centre – a program for inmates who have been placed on protection, and then violently assaulted other protection inmates. These inmates could be comparable to AA inmates as they are not a security threat in the mainstream population but nevertheless are a threat to the safety of inmates and staff when placed in protective custody. Aspects of this program could be adapted for regressed terrorist inmates.

There is also no reason why the STGIP treatment of recruitment behaviour could not be adapted for AA inmates and applied to the regressed inmate.

(It must be noted that section 23 of the OPM distinguishes between convicted and unconvicted AA inmates. The Department has no mandate to address rehabilitation for unconvicted inmates.)

AA inmates and Through Care

When interviewed for this project, the Director of Throughcare advised that the principles of Throughcare apply to every offender, whether in custody or in the community and (in custody) whether sentenced or on remand, from their first point of contact with the Department and through all stages of custody and community management until the completion of their order.

Therefore, Throughcare applies to AA inmates from the point of Intake/ Reception, through other stages of Assessment, Order/Sentence Management and Discharge – all stages of the correctional journey undergone by AA inmates.

The other main component of Through Care is Programs. Programs are available to all inmates *subject to classification and placement*. Programs may therefore be unavailable to some inmates because of their classification and placement, not because of their offence. Currently, programs are the only aspect of Throughcare that does not apply to AA inmates – but only because AA inmates must (by legislation) be held in maximum security facilities where programs are limited or unavailable. In this respect, AA inmates are no different to other maximum security inmates whose access to programs is limited.

If AA inmates were reclassified within the mainstream inmate population subject to sentence length and behaviour, they would eventually be eligible for programs and hence all aspects of Throughcare would apply to them. Alternatively, if programs were developed specifically for AA inmates (such as de-radicalisation or anti-recruitment programs), then all aspects of Throughcare would apply.

An important component of Throughcare is re-integration into the community. Re-integration, however, occurs not just at the time of an inmate's release; it is a key component of Throughcare in which all family and social contact issues are managed. The Director of Throughcare advised us:

“One of the key aspects of Throughcare is that people in gaol are still part of the community. The Department's mission to ‘manage offenders in a safe, secure and humane manner and reduce risks of re-offending’ extends to the whole community. Humane management is a correctional centre management issue and applies to all inmates throughout their incarceration. The risks of re-offending are reduced when an inmate can maintain family and social relationships at all stages of their imprisonment, not just at release. Whilst physical re-integration into the community does not occur with a small minority of inmates (such as natural life inmates), the sentence management of those inmates should still be carried out under the application

of Throughcare re-integration family contact and social contact principles.”

The difficulty of applying family and social reintegration Throughcare principles to AA inmates is that a true believer fanatical ideologue is liable to confine his family and social contacts to other true believers. Even if his overt ideology is controlled and apparently dormant during his incarceration, it may immediately be revived upon release.

Throughcare and management of the Department's public image

Throughcare provides the Department with an important public relations weapon – a progressive and easily-understood policy designed to maximise an offender's potential for rehabilitation and community reintegration as a law-abiding citizen.

Safe, secure and humane management of the correctional system includes managing the community perception of the Department, since if the community does not have trust and confidence in the Department's capacity to manage the correctional system, it will not have confidence in the administration of justice and the political process. Management of the community perception of the Department can lead to a tension between political influence and actual risk management.

Informed community perception of the Department is generally good. For instance, the Department has earned respect within the criminological academic community for its positive responses to recommendations of the Royal Commission into Aboriginal Deaths In Custody.

Current community demands are heavily influenced by a demand for punishment of offenders. At the same time, the community demands that punished offenders also be rehabilitated during their imprisonment, and views subsequent re-offending as a failure of rehabilitation.

Yet correctional administrators know that a correctional system cannot simultaneously impose maximum punishment and obtain maximum rehabilitation. Correctional systems therefore adopt policies of risk management rather than risk aversion, and accept a certain level of risk eventuality as a necessary consequence. Any policy that replaces risk management with risk aversion will be costly, and eventually will reach a point where it consumes resources excessive to the benefits it hopes to achieve.

As noted above, the AA category was a political imperative introduced in response to an immediate need to establish a security classification appropriate to a threat of terrorism. Having a separate classification increased the community's confidence that the risk to national security from terrorists was being appropriately met by the correctional system.

There is no certainty, however, that the community will continue to believe that the risk to national security from AA inmates should be met with extreme measures. As an example, the public perception of David Hicks and the risk he poses has considerably moderated in recent months. Where he was once almost universally viewed as a terrorist subscribing to a jihad philosophy, there is now a strong community sentiment (though probably not a majority community sentiment) that his risk to national security is manageable. There has been no outcry against his imminent release from custody later this year. Nobody seems to be scared of David Hicks or afraid that he will pose a special risk to national security when he is released.

AA inmates will not necessarily receive very long sentences. Although the only sentenced AA inmate is serving a 20 year sentence, it is possible that others (if convicted) will receive sentences of (maybe) three or five years. The Department will be faced with an imperative to manage these inmates securely to prevent terrorism, and at the same time prepare them for release into the community whilst managing community expectations that they be rehabilitated.

At the same time, short-sentence AA inmates may be more of a risk to national security than long-term AA inmates, since they will again

be useful to their commanders to carry out terrorist activities in the short-term. Longer term AA inmates may be less valuable, since their imprisonment incapacitates them from active terrorist activities.

Throughcare is the bridge between secure inmate management and community reintegration of rehabilitated inmates. Its potential use to the Department's management of its community perception should not be under-estimated.

A documented case management pathway for AA inmates, matched to Throughcare principles, and taking account of the inmate's real-time special risk to national security and behaviour in the correctional system, may provide the Department with the means to answer criticism from those who require more punitive treatment of terrorist offenders and those who require rehabilitation prior to re-integration.

Our project has therefore developed the attached Pathway or Tree to demonstrate the options available for classification review of AA inmates. We recommend the adoption of such a pathway (whether this one or a modified version) and commend it to the Board of Management.

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RESEARCH SUBJECTS:

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