

29 April 2024

### **Complaint regarding recent counterterrorism policing events in Sydney**

1. The Australian Muslim Advocacy Network (AMAN) is a law-based advocacy organisation that works to secure the psychological and physical safety of Australian Muslims.
2. We write to raise concerns and seek your review of the matters contained in the attached Briefing Note. The events described illustrate different approaches from the NSW police. Mental illness has been used to justify why something was not terrorism in one case, while in another, police designated an event as terrorism before the attacker could be assessed for mental health issues. Punishing terrorists does not take into the same account factors such as young age, mental health, and rehabilitation.
3. If you have any questions, please email [advocacy@aman.net.au](mailto:advocacy@aman.net.au).

Yours faithfully,



**Australian Muslim Advocacy Network Ltd**

# BRIEFING NOTE

## Chronology of events

4. The **Botany petrol bomb incident** occurred on 5 January 2024. A man left a petrol-filled bomb on a car in Botany with a note saying, "Enough! Take the flag down" on his neighbour's car, which was flying the Palestinian flag. The police were informed, but they did not involve the counterterrorism unit, and the man responsible was charged with five non-terrorism offences. The accused had also attended the site to deliver a verbal tirade of 'Zionist' rhetoric.
5. On Thursday, 28 March 2024, police executed a search warrant and seized the mobile phone, computer and laptop of a 69-year-old disability pensioner, Muslim and artist. The action was taken after a public post on X, formerly Twitter, where the artist wrote, "You're lucky no one left a petrol bomb at your family home #alexryvchin" with reference to the Botany incident. The warrant was issued under section 93Z of the Crimes Act 1900 (NSW), for the offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. The pensioner described the action as "weaponizing the police to terrorise citizens".<sup>1</sup> He alleged that NSW police ransacked his home and pinned him against the wall. Finally, one detective explained that there had been an accusation that he had made a bomb, and they then produced a copy of the tweet.<sup>2</sup>
6. The **Bondi stabbing incident** occurred after 3:30 pm on Saturday, 13 April, at the Bondi Junction Westfield centre and was ruled out as terrorism that evening by the NSW Police Commissioner during a press conference as the person was known to him and suffered mental illness. Six people were killed. The person of interest was killed by a police officer and was a white adult male with schizophrenia.
7. The **Wakely stabbing incident** occurred at about 7:10 p.m. on Monday, 15 April, and it was designated at 1:35 a.m. on 16 April as a religiously motivated terrorism incident, according to the police Statement of Facts. Two people received non-life-threatening injuries. The person of interest was arrested by police. He was an Arab Muslim 16-year-old boy with a history of mental health concerns and potential undiagnosed

---

<sup>1</sup> <https://www.dailytelegraph.com.au/news/nsw/petrol-bomb-tweet-from-sydney-propalestinian-artist-sparks-police-investigation/news-story/5095146f2cc3d23881204cf3b53cca0a>

<sup>2</sup> <https://www.sydneycriminallawyers.com.au/blog/nsw-police-officers-raid-pro-palestinian-man-over-misunderstood-tweet/>

disabilities/ disorders. Despite his troubled history, he had never undergone a psychiatric or pediatric diagnosis.<sup>3</sup>

8. On Wednesday, 24 April 2024, a counterterrorism operation involving 400 police officers conducted 13 search warrant raids and arrested seven children aged between 14 and 17 years old.<sup>4</sup> Five of the children were charged, two with violent extremist material offences and three with terrorism conspiracy. Australian Federal Police (AFP) Deputy Commissioner Krissy Barrett said investigations had revealed a “network” of people who share a “similar violent extremist ideology.” This common “ideology” was not named, but clearly, the accusation was directed at identification with Islamic belief. Lawyers for two of the children immediately applied for bail, and the application for the first was granted with the judge finding ‘comfort in that the young person’s intention is not to support terrorism.’ This young person has Autism Level 2. It was subject to immediate appeal by police and the decision was stayed. The second application was then heard and failed.
9. It is also reported that police are investigating some of the youths for ‘religiously motivated terrorism’ in relation to alleged assaults against LGBT persons.<sup>5</sup>
10. On Wednesday, 24 April 2024, ASIO Director-General Mike Burgess told the National Press Club that ‘Sunni Islamic violent extremism’ remained the principal concern. and warned there was a 50 per cent chance that someone would plan or conduct an act of terrorism in the next 12 months.”<sup>6</sup>

### Mental illness

11. In one case, mental illness was assumed to explain why someone did something wrong and why it is wasn’t terrorism (**see Background Material ‘Police reasoning’**).
12. In another, the person had mental health issues, but they weren’t assessed yet. The police jumped to designate the event as terrorism at 1:35 am in the morning before the hospital could assess the Wakely attacker for mania (**see Background Material – ‘Designation before psychiatric assessment’**)

---

<sup>3</sup> <https://www.abc.net.au/news/2024-04-29/parents-of-teenager-who-stabbed-bishop-give-first-interview/103767910>

<sup>4</sup> <https://www.afp.gov.au/news-centre/media-release/five-charged-following-joint-counter-terrorism-team-operation>

<sup>5</sup> <https://www.dailytelegraph.com.au/truecrimeaustralia/police-courts-nsw/major-antiterror-raids-across-sydney-after-church-stabbing-attack/news-story/bd1488cec612b9598f1fe4156ada7de1>

<sup>6</sup> <https://www.theaustralian.com.au/nation/politics/nsw-police-operation-amid-teen-terror-seven-threat/news-story/a748bccd3823433b2e3f8d12e5d15333>

### Significance of terrorism charge

13. When it comes to punishing terrorists, young age, mental health, and rehabilitation are not taken into account as they are in other crimes.<sup>7</sup> Specific and general deterrence is the overriding consideration<sup>8</sup> and the penalty is far more severe – life imprisonment.
14. Throughout Australian prosecution history, only one Australian white male has been prosecuted for terrorism (terrorism conspiracy).<sup>9</sup> Numerous Australian white males with underlying mental health conditions, troubled schooling marred by bullying and disabilities (especially autism) has been charged and prosecuted using non-terrorism offences, leading to much smaller penalties and, in some cases, even home detention (**see Background Material – ‘Mental Illness and Disabilities in terrorism and non-terrorism cases’; ‘The Sentencing Framework in Terrorism’; ‘Relevant law’**).

### Inconsistencies in Terrorism designation process and reasoning

15. The Bondi and Wakely incidents highlight inconsistencies in reasoning that should be reviewed.

*What is the ideological or religious movement proposing to change the system through violence?*

16. Professor Greg Barton stated, “Basically, it boils down to whether these violent actors think they’re part of a political or religious movement that’s going to change the system, or whether they are simply angry men projecting loathing and driven by personal demons. The two, of course, are not mutually exclusive.”
17. Here, for NSW police to designate and then charge the boy with terrorism, they would need to identify the broader religious movement that is going to change the system by violently attacking people who insult the Prophet. This religious system certainly cannot be called Islam or Sunni Islam, and our community will robustly oppose any effort by the Prosecution to brand our religion in this way.
18. In *R v Elomar* (2010), Justice Whealy attempted to spell out the ‘religious content of the convictions held by the defendants’ as an example of their ideology (2021: 807):
  - (a) First, each was driven by the concept that the world was, in essence, divided between those who adhered strictly and fundamentally to a rigid concept of the Muslim faith, indeed, a medieval view of it, and those who did not.

---

<sup>7</sup> Weinberg, M, 2021, “Sentencing Terrorist Offenders – The General Principles.” Australian Law Journal 95:766.

<sup>8</sup> Ibid.

<sup>9</sup> Philip Galea.

- (b) Secondly, each was driven by the conviction that Islam throughout the world was under attack, particularly at the hands of the United States and its allies. In this context, Australia was plainly included.
- (c) Thirdly, each offender was convinced that his obligation as a devout Muslim was to come to the defence of Islam and other Muslims overseas.
- (d) Fourthly, it was the duty of each individual offender, indeed a religious obligation, to respond to the worldwide situation by preparing for violent Jihad in this country, here in Australia. ([56]–[57]).<sup>10</sup>

19. Reflecting on this passage, Jabri Markwell writes,

This is not a definition of religious cause but evidence of its application, in which a judicial officer has sought to explain the motives declared by the defendants. Whealy J could have provided such an explanation if the law only referred to an ideological cause. Primarily, what Whealy J explained is an ideology, or worldview, to justify violence. It does not equate with orthodox Islam.<sup>11</sup>

20. We would add that this argument could be made if the law only referred to political causes, as the description above is ostensibly about political action.

21. The core of terrorism definitions worldwide is politically motivated violence<sup>12</sup>, and the legitimate end sought by the incredible incursion on human rights posed by counterterrorism laws is to discourage non-democratic and violent challenges to power; or, as Barton says, ‘to change the system.’

22. It is yet to be made out with evidence about what ideology either the Bondi or Wakely attackers subscribed to (if any at all).

### *Social process*

23. Professor Barton speculated that “Having identified the attacker, they would have been studying his social connections and examining his digital footprint.”<sup>13</sup>

---

<sup>10</sup> R v Elomar (2010) 264 ALR 759

<sup>11</sup> Jabri Markwell, R. (2023) “Religion as a Motive – Does Australian Terrorism Law Serve Justice?”, International Journal for Crime, Justice and Social Democracy. doi: 10.5204/ijcjsd.2686.

<sup>12</sup> Vaughan, Katy (2022) Interoperability of terrorism definitions between the law and tech platforms. Report to the Global Internet forum to Counter Terrorism.

<sup>13</sup> <https://theconversation.com/why-is-the-sydney-church-stabbing-an-act-of-terrorism-but-the-bondi-tragedy-isnt-227997>

24. The research underlines that radicalisation to the point of violence is, most of all, a social process (**see Background Material –‘Social Process’**). In the case of the Bondi and Wakely attackers, they would be looking for a social history, online and offline, that showed how they began to accept public violence as necessary to ‘change the system’ as part of a broader ideological or religious movement.
25. When the perpetrators are white men, police tend to deploy a degree of extensive care and thoroughness (see **Background Material – ‘Police reasoning’**).
26. In relation to the Wieambilla incident, QPS took more than two months to determine that the incident was terrorism, stating: “We've had an opportunity to go through all the phone message texts, emails, the social media postings. I can tell you our investigators at this point in time have taken over 190 statements or recorded interviews. We've gone through body worn camera footage and also CCTV.”
27. We are yet to see evidence from either the Bondi or Wakely incidents that show that *social process*. ASIO has said the Wakely attacker acted alone.<sup>14</sup>

#### *Content on phones*

28. The mere presence of content on a phone has been found to not warrant concerns about radicalisation or terrorism concern in a case involving a man who had bomb chemicals in his garage, had practised making a ‘mother of satan bomb’ and 60 images relating to "anti-Islamic and patriotic style ideology" as well as footage of the Christchurch mosque attacks on his phone.<sup>15</sup> Other cases of non-Muslim offenders found not to be terrorists are catalogued<sup>16</sup>, and seem to fall down in not meeting the threshold of ‘intended to advance an ideological cause’. Like in the case above, being anti-Muslim or racist in general was not deemed an ideology.
29. Case law of Muslim individuals tried for terrorism conspiracy, on the other hand, shows acceptance of content on the phone as probative of ‘radicalisation’ in religious cause/ideology. This extrapolation poses particular concern where
  - (a) the accused has circumscribed special interest arising from autism;

---

<sup>14</sup> <https://theconversation.com/why-is-the-sydney-church-stabbing-an-act-of-terrorism-but-the-bondi-tragedy-isnt-227997>

<sup>15</sup> <https://www.abc.net.au/news/2019-05-17/alleged-explosives-maker-is-granted-home-detention/11118662>

<sup>16</sup> [Islamophobia Report 3 2022 LR Spreads RA.pdf \(csu.edu.au\)](#), pp125-128

- (b) the decision is made by police or a jury likely subject to the same bias that is prevalent in society, including cognitive barriers to moderating bias about Muslims presented where terrorism concern is elevated.<sup>17</sup>

#### *Identity of victims*

30. Professor Barton also stated, “the police assessment would have also given attention to the particulars of the church targeted. Assyrians (people from northwest Iraq, northeast Syria and southeast Turkey) are almost exclusively Christian, belonging to one of the oldest churches in existence, living in precisely that part of the world in which the Islamic State established its brutal caliphate.”<sup>18</sup>
31. The Bondi attacker targeted women. If the victim’s background was the basis for designation, why was the Bondi attacker’s targeting of women<sup>19</sup>, not a reason to designate it as terrorism, unlocking full investigative powers (**see Background material – ‘Police reasoning’**).
32. The victim's identity is highly relevant to a hate crime prosecution. Hate crimes are directed against the target group to send a frightening message to the broader community that the victim belongs to.
33. The victim’s identity is not always relevant to terrorism.
34. The police’s consideration of assaults on LGBTQI community members as another example of religiously motivated terrorism seems to expand the definition of hate crime to terrorism.

#### Prejudice arising from terrorism designation

35. Where the accused is still alive, it stands to reason that a terrorism designation leads to irreparable prejudice at trial, as all Commonwealth offences must be before a jury.

#### ‘Religiously motivated terrorism’ is not a neutral term.

36. Finally, we make it clear that “religiously motivated terrorism” is not a neutral term. White supremacist or Incel-inspired terrorism is “ideologically motivated”, yet where the offender is Muslim, a whole religion and community are demonised. It also glamorises

---

<sup>17</sup> Vergani, Matteo & Mansouri, Fethi & Orellana, Liliana. (2022). Terrorism concern and persistence of negative attitudes towards Islam and Muslims. *Journal of Community & Applied Social Psychology*. 32. 10.1002/casp.2633.

<sup>18</sup> Ibid.

<sup>19</sup> <https://www.news.com.au/national/nsw-act/obvious-killer-targeted-women-nsw-police-commissioner-karen-webb-says/news-story/a4cddd03d396d7dafdb4edc9c83824c1>

violent acts as religious<sup>20</sup>, playing directly into the hands of politically motivated groups like ISIS<sup>21</sup>. Racist groups also seize upon the terminology used by public officials to promote the scapegoating and dehumanisation of Muslims.

37. Individuals or groups that self-declare as Islamist or white supremacist, for example, can be called 'self-declared' advocates of that ideology, but presuming an ideology is highly prejudicial and unreliable. In other areas of law, there is no focus on motive in the definition of the crime or public labelling of crimes according to motive.<sup>22</sup>
38. We acknowledge that the legislative distinction between religion and ideology is peculiar to the UK, Australia, Canada and New Zealand, following Tony Blair's invention of the religious category.<sup>23</sup> It is not in line with international legal conventions.<sup>24</sup> and has been criticised by a former Australian High Court judge<sup>25</sup> and Independent National Security Legislation Monitor<sup>26</sup> as prosecuting a religion and being extremely counterproductive to the qualities that protect society against terrorism. The former INSLM advocated for the removal of the motive element.
39. AMAN continues to urge the removal of the 'ideological or religious' cause from the terrorist act definition, and the broader Muslim community leadership has urged for 'religious' to be removed at least from the definition.<sup>27</sup> AMAN believes that the decision to maintain this category is politically intentional.
40. The public needs to be educated on the political origins, context and agendas of various groups designated as terrorists under Australian law rather than associating the drive to violence as a result of religion. The latter approach has the misleading effect of making any Muslim in Australia a terrorism suspect, which is likely to exacerbate uncertainty and extreme fear in the public. According to research, this association with religion also makes it impossible to overcome prejudice, regardless of how much the

---

<sup>20</sup> Walker, B SC, 2012, INSLM (Independent National Security Legislation Monitor Annual Report), <<https://www.inslm.gov.au/reviews-reports/annual-reports/independent-national-security-legislation-monitor-annual-report-2012>>.

<sup>21</sup> Hardy, K, 2011, "Hijacking Public Discourse: Religious Motive in the Australian Definition of a Terrorist Act." University of New South Wales Law Journal 17(1) : 333-350.

<sup>22</sup> McSherry, B, 2004, "Terrorism Offences in the Criminal Code: Broadening the Boundaries of Australian Criminal Laws," UNSW Law Journal 27 (2): 354.

<sup>23</sup> Jabri Markwell, R. (2023) "Religion as a Motive – Does Australian Terrorism Law Serve Justice?," International Journal for Crime, Justice and Social Democracy. doi: 10.5204/ijcjsd.2686.

<sup>24</sup> Walker, Hardy, Jabri Markwell, Vaughan, op cit.

<sup>25</sup> Brennan CJ, G, 2007, "Liberty's threat from executive power." Sydney Morning Herald, July 6, 2007. <https://www.smh.com.au/national/libertys-threat-from-executive-power-20070706-gdqjxj.html>.

<sup>26</sup> Walker, B SC, 2012, INSLM (Independent National Security Legislation Monitor Annual Report), <<https://www.inslm.gov.au/reviews-reports/annual-reports/independent-national-security-legislation-monitor-annual-report-2012>>.

<sup>27</sup> [Joint-Statement-on-behalf-of-the-Australian-Muslim-Community-to-PJCIS-01.09.23.pdf \(aman.net.au\)](https://www.aman.net.au)



public learns about Islam or how many personal relationships they may form.<sup>28</sup> Religiosity in Islam does not cause terrorism<sup>29</sup>, nor does Islam support it<sup>30</sup>.

Vilifying and prejudicial commentary by the media and the Australian Prime Minister

41. On 13 April 2024, Prime Minister Anthony Albanese said about the Bondi incident:<sup>31</sup>

**BEN FORDHAM, HOST:** Prime Minister, I wanted to give you the chance to share your thoughts with everyone because I'm sure, like everyone else in Sydney and around Australia, you're heartbroken about what's happened this afternoon.

**ANTHONY ALBANESE, PRIME MINISTER:** Look, this is just extraordinarily heartbreaking for Australians. Australians will be shocked, as I am, by an incident such as this in our peace-loving country. Westfield Bondi Junction will be familiar to many Sydneysiders. And the fact that this news came through, very quickly, really, while it was still happening, is of great shock. And I do want to pay tribute to the brave police, not least of which is this Inspector who, she attended the scene by herself and took this guy out, which obviously saved further lives. And her bravery and the bravery of others, people will have seen some of the footage of one gentleman grabbing a bollard to stop the assailant getting up the escalator onto the next level at Westfield there. An extraordinarily brave thing to do. And to all of the first responders, this is a reminder, at a time of crisis like this, police and first responders rush to danger, not from it, and we should give thanks to them each and every day.

42. On 17 April 2024, Prime Minister Anthony Albanese said about the Wakely incident:<sup>32</sup>

**O'KEEFE:** So the belief that this was religiously-motivated clearly was the catalyst for determining and declaring that it was a terrorist attack. Are you concerned that this teenage boy has been radicalised by people who are still living in Sydney, or is this a matter that he may have well been radicalised online?

---

<sup>28</sup> Vergani, Matteo & Mansouri, Fethi & Orellana, Liliana. (2022). Terrorism concern and persistence of negative attitudes towards Islam and Muslims. *Journal of Community & Applied Social Psychology*. 32. 10.1002/casp.2633.

<sup>29</sup> Aly, A, Striegler, J, 2012, "Examining the Role of Religion in Radicalization to Violent Islamist Extremism." *Studies in Conflict & Terrorism* 35(12): 849–862.

<https://doi.org/10.1080/1057610X.2012.720243>; Beller, J, and Kröger, C, 2018, "Religiosity, religious fundamentalism, and perceived threat as predictors of Muslim support for extremist violence." *Psychology of Religion and Spirituality* 10(4), 345–355. <https://doi.org/10.1037/rel0000138>

<sup>30</sup> [Australian Islamic groups calls for revision of national terrorism laws, as sixth teenager charged - ABC News](https://www.abc.net.au/news/2024-04-13/australian-islamic-groups-calls-for-revision-of-national-terrorism-laws-as-sixth-teenager-charged/1057610X)

<sup>31</sup> <https://www.pm.gov.au/media/radio-interview-2gb-0>

<sup>32</sup> <https://www.pm.gov.au/media/radio-interview-2gb-drive-1>

**PRIME MINISTER:** Well, I am concerned about his radicalisation. I'll leave any declarations, if you like, information to the police to release at an appropriate time. I don't want to say things that interfere with their ongoing investigations. I can assure your listeners, though, that the police are very focused on this, as are our security agencies, in particular ASIO, using powers at their disposal.

**O'KEEFE:** And what are they telling you? Are they telling you that there is potentially still some sort of a threat that is alive here in Sydney?

**PRIME MINISTER:** They are saying that this person acted alone, is what they have found. But they are, of course, going through this gentleman's media with all of his phone conversations, with people who he's been in contact with. There will be a full and comprehensive investigation into this and they will, when it is appropriate, ensure that that information is made public in a transparent way. I want to, my job as Prime Minister is to give every support to our police officers and to our security agencies, and that's what I'll continue to do.

**O'KEEFE:** Now, there's been some suggestions that this was religiously motivated from the Muslim faith. Clearly, Bishop Mar Mari is an Assyrian Christian. Are you worried where this heads?

**PRIME MINISTER:** Look, I want to see a de-escalation here. It's important that people don't take things into their own hands.

43. In one case, there is the complete erasure of the perpetrator and focus on the victims and in the other, there is the vilification of an entire religious community and prejudicial assumptions against a living accused person before the courts about radicalisation.

#### Alternative Diversion options

44. The Youth Justice NSW's Countering Violent Extremism Unit aims to identify and divert young people from violent extremism. However, there are no clear guidelines for referral to the unit, which could lead to bias and double standards in the treatment of youth.

#### Violent Extremism Assessment Tools scrutinised

45. Reviews have raised serious concerns with tools used to determine risk of violent extremism.<sup>33</sup>

---

<sup>33</sup> <https://www.theguardian.com/australia-news/2023/aug/11/home-affairs-tried-to-water-down-report-critical-of-extraordinary-counter-terror-powers-documents-reveal>

A principled and consistent approach is key

46. AMAN understands why these recent events cause immense and legitimate grievances within the Australian Muslim community, especially at a time when there is already widespread suffering due to the Australian Government's non-adherence with international law in relation to Gaza.
47. Further, consistency and fairness in the investigation process, labelling, and charges laid are imperative to our liberal democracy. A person convicted of violent offending may attract five years in prison.<sup>34</sup>, whereas a person convicted of terrorist acts may be imprisoned for life<sup>35</sup>. Whether they are children or not doesn't matter under terrorism laws. We must hear from more experts on this issue to assist this area of law and policing to become more aligned with standing criminal law and justice principles.

---

<sup>34</sup> Kelty, S. F., Hall, G., & O'Brien-Malone, A. (2012). You Have to Hit Some People! Endorsing Violent Sentiments and the Experience of Grievance Escalation in Australia. *Psychiatry, Psychology and Law*, 19(3), 299–313. <https://doi.org/10.1080/13218719.2011.561769>

<sup>35</sup> Criminal Code Act (Cth) 1995 s100.1, s101.1

# BACKGROUND MATERIAL

## RELEVANT LAW

The criminal offences used by police in relation to the chronology of facts referred to in this latter include the following.

*Commit terrorist act s101.1*

Penalty: Life Imprisonment

Mitigations: General and specific deterrence is paramount, mitigating factors given little to no weight.

*Terrorism conspiracy s106.1*

Conspiring to engage in any act in preparation for, or planning, a terrorist act. Terrorism sentencing law operates very differently from other criminal sentencing (**see Background Material – Sentencing Framework in Terrorism**)

Penalty: Life Imprisonment

Mitigations: General and specific deterrence is paramount, mitigating factors given little to no weight.

*Violent extremist Material offences (possessing or controlling violent extremist material obtained or accessed using a carriage service)*

Penalty: Five years

Mitigations: New offences so unknown degree to which these will be considered.

*Terrorism designation powers*

The *Terrorism (Police Powers) Act 2002 (NSW)* carries the special powers the JCTT are now applying to the case of the teenager.

## POLICE REASONING

### Bondi incident

Police told the media that the incident was not terrorism the evening of the incident (it had occurred a few hours before).

- While police are still waiting to identify him formally, Webb said police knew enough to classify the attack as a non-terror event. “If he is the person we believe, then we don’t

have fears of that person holding an ideation. In other words, it's not a terrorism incident," Webb said.<sup>36</sup>

- "The videos speak for themselves, don't they? That's certainly a line of inquiry for us. It's obvious to me, it's obvious to detectives that it seems to be an area of interest that the offender had focused on women and avoided the men," Ms Webb told ABC News Breakfast.<sup>37</sup>

### Wakeley Incident

Police designated the incident as terrorism within hours of it occurring. The incident occurred at about 7:10 p.m. on 15 April, and it was designated at 1:35 a.m. on 16 April, according to the JCCT Statement of Facts.

- NSW Police Commissioner Karen Webb said she had declared the incident a "terrorist act".  
"The things that influenced my decision to declare this a **terrorist incident** was the actions of the individual who attended, we will allege attended that church ... armed with a knife and stabbed the bishop and priest."  
"We believe there are elements that are satisfied in terms of **religious-motivated extremism**."<sup>38</sup>

### Wieambilla incident

Three white individuals shot at police and a neighbour, killing all of them.

Date of shooting - 12 Dec 2022.

Date of Press Conference to designate as terrorism - 16 Feb 2023

Extract from the Press Conference (16 February 2023)

DEPUTY COMMISSIONER LINFORD:

So that involves it's been led by our Ethical Standards Command, our Security and Counterterrorism Command and our Crime and Intelligence Command, and there are a range of other specialists that are assisting us in the investigation. We are working with our partners.

---

<sup>36</sup> [Bondi Junction stabbing: It was mass murder, not terrorism, says police commissioner \(smh.com.au\)](https://www.smh.com.au/news/nsw/bondi-junction-stabbing-it-was-mass-murder-not-terrorism-says-police-commissioner-20221212)

<sup>37</sup> <https://www.news.com.au/national/nsw-act/obvious-killer-targeted-women-nsw-police-commissioner-karen-webb-says/news-story/a4cddd03d396d7dafdb4edc9c83824c1>

<sup>38</sup> [https://www.abc.net.au/news/2024-04-16/nsw-wakeley-church-bishop-stabbing-attack-police-minns/103728120?utm\\_campaign=abc\\_news\\_web&utm\\_content=link&utm\\_medium=content\\_shared&utm\\_source=abc\\_news\\_web#live-blog-post-83907](https://www.abc.net.au/news/2024-04-16/nsw-wakeley-church-bishop-stabbing-attack-police-minns/103728120?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web#live-blog-post-83907)

We certainly we have working with us members from ASIO, from the AFP, we've been working with the New South Wales Police. We've been working with police overseas.

One of our priorities in the investigation is to understand if the Train members acted alone, and to understand what the motivation was behind this event. Last time I talked about the extensive evidence that we had to collect, and I can tell you, we have now had opportunity to go through many, many documents. One of those being a diary that Stacey Train maintained. We've had an opportunity to go through all the phone message texts, emails, the social media postings. I can tell you our investigators at this point in time have taken over 190 statements or recorded interviews. We've gone through body worn camera footage and also CCTV.

REPORTER:

How do you differentiate that from someone just being mentally ill and committing these sorts of acts?

DEPUTY COMMISSIONER LINFORD:

Well, we quite often do see in our terrorist investigations people who are impacted by mental health, because they are easily radicalised. This one's unusual, because we're talking about three different people. You know, so... we are certainly looking at whether or not mental health plays an issues with all three of them. But when you've got three acting together, it's challenging to say that it was a mental health issue in this instance, particularly when we look at all the material that we've examined.

### Raghe Abdi incident

A Muslim young man was shot by police when found on a highway with a knife. He was later linked by police to a double homicide.

Date of incident – Thursday morning, 17 December 2020.

In the coronial inquest, his father gave evidence about how Queensland police declined to provide mental health assistance for his son.<sup>39</sup>

Date of press conference designating as terrorism - 18 December 2020<sup>40</sup>

---

<sup>39</sup> [Queensland police declined father's requests for help before son was shot dead, inquest told | Queensland | The Guardian](#)

<sup>40</sup> <https://www.theguardian.com/australia-news/2020/dec/18/queensland-police-say-alleged-brisbane-double-murder-investigated-as-terrorism-event-raghe-abdi>

- Deputy Commissioner Linford told reporters police were “trying to understand what Mr Abdi’s motivation is”.

When asked to justify the classification of “terrorism”, she said: “It is a whole combination of things”.

“Yesterday we detailed to you the history of counter-terrorism investigations into that individual.

“Whilst he was not charged with any counter-terrorism offences he was awaiting charges on some more minor offences.

“Clearly the police shooting yesterday gave us indications he wanted to harm police, and then of course today we’ve got the next matter of the investigation into the double homicide, of which we think he is linked.

“So when you put all those things together I think it’s pretty clear we need to treat this as a terrorism event.”

## **WAKELY INCIDENT - DESIGNATION BEFORE PSYCHIATRIC ASSESSMENT**

The following is provided by the JCTT NSW Statement of Facts:

- At the time of admission, the Wakely attacker was scheduled under Section 22 of the Mental Health Act 2007 (NSW) by the hospital in order to assess whether his actions were a result of a manic episode
- At 3:24 pm on 16 April 2024, Wakely's attacker was cleared by mental health staff. It was assessed that he was not manic and was not suffering from any psychiatric disorders.

The Wakely accused’s legal representation told the Court on Friday, 20 April 2024, that it was seeking a full diagnostic assessment of the accused as there was a history of mental health concerns.

## **MENTAL ILLNESS AND DISABILITIES IN TERRORISM AND NON-TERRORISM CASE LAW**

It remains very unclear how police determine that mental health drives the individual to commit a crime in one case above and that in another, it is apparently immaterial to designate terrorism.

In 2019, Ihsas Khan, a diagnosed schizophrenic at the age of 22, ceased his medication after his mother, who was his primary carer, passed away. He left a pharmacy degree at university and was radicalised online, resulting in him stabbing an innocent man with non-fatal wounds. After being charged with terrorism offences, he pleaded not guilty due to mental illness. After three mistrials, including one trial where he apologised to the victim in court and a second where the court could not proceed due to him having a psychotic episode, Ihsas Khan received a 36-year sentence.

In another case involving a Muslim child with autism and schizophrenia, his emotional and erratic behaviour in court was used against him as a sign of contempt<sup>41</sup>, and he was allowed to dispose of his legal representation and seek to represent himself, even though he was clearly not representing himself. He was ultimately convicted of terrorism conspiracy on the third trial (the first two being mistrials) and sentenced to 16 years (12 years non-parole) prison.<sup>42</sup>

In relation to non-Muslims, Court treatment is vastly different as mental health and psycho-social disabilities such as autism are considered mitigating factors in non-terrorism charges.

For example, an Adelaide offender had post-traumatic stress disorder, which was considered. Convicted of a non-terrorism offence, manufacturing an explosive device. Non-parole 1 year and seven months.<sup>43</sup>

Poor mental health marred by bullying at school was highlighted in *R v Homewood* [2023] NSWDC 3: The offender received a non-parole period of 1 year 11 months for advocating terrorism (as opposed to terrorism conspiracy that comes with life imprisonment)... The judge notes that he has not resiled from his beliefs. He advocated acts of terrorism against Africans, Muslims and Jews, was in possession of Nazi materials. At his house, police found

- 8 firearms (being 5 bolt action shotguns, 2 break-action shotguns, and a .22 calibre pump action rifle)
- 8,312 rounds of assorted calibre ammunition which were not stored in accordance with the ammunition storage provisions of the Firearms Act (unlawful).

Disabilities such as autism: For example, two offenders had their autism considered. Patmore's ASD, the court ruled, had resulted in "concrete thinking" that aided his radicalisation and fuelled his refusal to denounce his "abhorrent, disturbing and distasteful"

---

<sup>41</sup> *R v WE* (2022) NSWSC 4.

<sup>42</sup> *R v WE* (No.19) [2020] NSWSC 1569.

<sup>43</sup> [Adelaide man arrested as police blow up 'mother of Satan' explosives | SBS News](#)



ideology<sup>44</sup>. He was allowed on bail from the beginning and eventually sentenced to home detention.

### *Treatment of Autism*

AMAN notes that autism is only a mitigating factor where the person is not Muslim and is being tried for non-terrorism offences. Muslim boys with autism have been targeted by AFP and ASIO<sup>45</sup> and have ended up in high-security jail while awaiting trial<sup>46</sup> leading to an exacerbation of behaviour that is then used against them in court, and have, in other cases, been convicted for terrorism conspiracy following undercover operations<sup>47</sup>. AMAN continues to advocate for more consistent treatment of individuals with autism<sup>48</sup>, noting this topic has been subject to Australian parliamentary inquiry in relation to criminal justice more broadly<sup>49</sup>, and also specific attention in the 'terrorism' context in the UK.<sup>50</sup>

### *Mental health impairment or Cognitive impairment defence*

Note that Section 23A Crimes Act 1900 provides a partial defence to murder of substantial impairment because of mental health impairment or cognitive impairment. It was previously termed substantial impairment by abnormality of mind but was amended with effect from 27 March 2021 by the Mental Health and Cognitive Impairment Forensic Provisions Act 2020.

## **SOCIAL PROCESS**

Research highlights that radicalisation to violence is a social process.<sup>51</sup>

The Australian Psychological Society writes,

Achieving this task requires an understanding of the radicalisation process. The pathway to radicalisation is different for every individual,

---

<sup>44</sup> <https://www.dailytelegraph.com.au/news/south-australia/nine-sa-criminals-blamed-autism-for-their-crimes-expert-says-autistic-community-less-likely-to-commit-crime/news-story/5b8c808d9bbcf5d9c726e7b0f838c7>

<sup>45</sup> [Reviews under way after 13-year-old autistic boy with Islamic State fixation targeted in undercover operation | Australia news | The Guardian](#)

<sup>46</sup> [Adelaide teen overheard saying he 'would do something' at Anzac service, court hears - ABC News](#)

<sup>47</sup> R v WE (No.19) [2020] NSWSC 1569.

<sup>48</sup> <https://www.aman.net.au/wp-content/uploads/2023/08/Sub-117-AMAN.pdf> pp13-14.

<sup>49</sup>

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Autism/autism/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Autism/autism/Submissions)

<sup>50</sup> Zainab Al-Attar, 'Autism spectrum disorders and terrorism: how different features of autism can contextualise vulnerability and resilience', *The Journal of Forensic Psychiatry & Psychology* (2020), 31(6), 926, 937.

<sup>51</sup> Cherney, A, Belton, E, Norham, S.A.B and Milts, J (2022) Understanding youth radicalisation: an analysis of Australian data, *Behavioral Sciences of Terrorism and Political Aggression* 14(2): 97-119. <https://doi.org/10.1080/19434472.2020.1819372>.

comprised of highly complex and nuanced issues and motivations (Jensen, Atwell, Seate & James, 2018).<sup>52</sup> At a broad level, there are three key domains of which to be aware:

- Social relations – withdrawal from friends and/or family and engagement with a group.
- Ideology – holding aggressive, hostile views that are ideologically founded.
- Criminal activity – engagement in low-level crime justified by political, religious or ideological views.

Client behaviours in each of these categories will inform the level of concern, treatment target and referral pathways. The Behavioural Indicators Model (Attorney-General's Department, 2015) can provide guidance in identifying, understanding, assessing, and responding to these domains. The model, adapted from Barrelle's Pro-Integration Model (2015), identifies three levels of concern in each domain: notable, concerning and attention.<sup>53</sup> An understanding of the types of behaviours a client might demonstrate at each of these levels is critical for adequate risk assessment and intervention.

The Australian Government's material on radicalisation states,

"In Australia, people are most vulnerable to involvement in violent extremism through the influence of close personal relationships. This is especially true for young people. As people start to become radical, they will often pull away from normal, mainstream activities and friendship groups. There may be conflict with family and friends over political or ideological views. At the same time, some people will start to interact more often with smaller, tight-knit networks of people who share their specific beliefs. Some extreme groups may even require a person to go through an initiation or take an oath of allegiance to prove their commitment. Radicalisation is most often led by personal face-to-face relationships, but there are some examples of recruitment into radical groups over the internet. A person

---

<sup>52</sup> Jensen, M. A., Atwell Seate, A., & James, P. A. (2018). Radicalization to violence: A pathway approach to studying extremism. *Terrorism and Political Violence*, DOI: 10.1080/09546553.2018.1442330

<sup>53</sup> Barrelle, K. (2015). Pro-integration: disengagement from and life after extremism. *Behavioral Sciences of Terrorism and Political Aggression*, 7, 129-142.

may become part of an online community of people who share their views and radicalise in a virtual environment.”<sup>54</sup>

## **VIOLENT OFFENDING AND INSULT**

It is reported that the Bishop, who was the victim of the Wakely stabbing, had also said Mohammed would “not greet” people at the gates of heaven and that he “rotted in a grave” and was dead.<sup>55</sup>

Studies have shown that personal grievance escalating to violence often involves insult as a trigger.<sup>56</sup> Data were collected during interviews with 18 men, all of whom had been convicted of serious violent offences (Including serious assault, excluding sexual assault – all serving sentences at maximum security prison). It provides that young males commit roughly 85% of all reported violent offences in Australia, especially the most serious ones. Most of the grievances were male-on-male disputes which appeared to commence over a minor matter yet escalated into serious acts of violence, for example, a public accusation of stealing two eggs led to the accuser being stabbed.

Despite claims that the grievance was primarily between themselves and their harmdoer, it is evident that significant others played an important role in why the grievances escalated. Significant others appeared to play one of three roles:

- (1) they offered direct support for the escalation;
- (2) the participant took on the role of protector or enforcer on behalf of the significant other [which, in this case of inquiry, would be the messenger of his religion]; or
- (3) the significant other was a witness to the altercation and the aggressor engaged in managing the impressions of the significant other. Association with peers who support criminal behaviour, or support violence and revenge is known to be one of the highest risk factors for criminal behaviour and violent behaviour. What the data from this study suggest is that support from non-criminal others, especially family members, can play a role in escalating or preventing violence.

---

<sup>54</sup> <https://www.livingsafetogether.gov.au/Documents/understanding-the-radicalisation-process.pdf>

<sup>55</sup> <https://www.theaustralian.com.au/nation/dont-blame-me-for-bishop-mar-mari-emmanuel-terror-attack-says-radical-sydney-preacher-abu-ousayd/news-story/fcb68e1d4a40629c4b9d50381d214d20#:~:text=Bishop%20Emmanuel%20has%20an%20ultra,faith%20of%20the%20Islamic%20world.%E2%80%9D>

<sup>56</sup> Kelty, S. F., Hall, G., & O'Brien-Malone, A. (2012). You Have to Hit Some People! Endorsing Violent Sentiments and the Experience of Grievance Escalation in Australia. *Psychiatry, Psychology and Law*, 19(3), 299–313. <https://doi.org/10.1080/13218719.2011.561769>

Three types of harm underpinning the grievances were discussed by the men:

1. physical harm (injury, pain, or threat of)
2. psychological harm (broken promises, insults, lack of respect); and (19 commenced with psychological harm)
  - 6 psychological harm was ‘being insulted.’
    - o “This idiot cleaner asked me why I don’t clean my area, I showed him my area, then he gets lippy and says in public that some guys are pigs. He wanted to look important, like a hard man. I felt humiliated in front of my work mates”.
  - 5 grievance developed after ‘acts of betrayal.’
  - 2 grievances developed after feeling ‘taken advantage of’
  - 4 grievances developed due to ‘Lack of courtesy.’
  - 3 grievances developed directly after promises were broken; ‘being let down’.
  - 2 grievance occurred due to ‘Being falsely accused’
3. political harm (such as the violation of rights by an employer).

## THE SENTENCING FRAMEWORK IN TERRORISM

The following passage outlines the difference in this area of law<sup>57</sup>:

In terrorism sentencing, the absence of a victim or harm has been found to not be a mitigating circumstance (*Lodhi v The Queen* (2007) 179 A Crim R 470; Weinberg 2021: 770). The amateurish nature of a conspiracy has been found to not reduce the moral culpability of offenders (Weinberg: 770), standing in ‘stark contrast in which judges ordinarily deal with sentencing for attempt’ (770).

Reviewing Victorian and NSW cases, Weinberg noted that:

principles of general deterrence and protection of the community had to be given paramount weight. Personal circumstances which, in other circumstances, might be regarded as powerfully mitigating would be afforded far less weight. (775)

---

<sup>57</sup> Jabri Markwell (2023) (n19).

Youth is not a significant mitigating factor, and the interests of rehabilitation are outweighed by the need for general deterrence, denunciation and retribution (DPP (Cth) v Besim [2017] VSCA 158 [116]).

Justice Peter Johnson (2020: 58–59) summarised the principles for sentencing terrorist offenders:

In considering the nature and gravity of terrorist offences, courts in Australia have utilised a number of factors referred to by the UK Court of Appeal ... [which] are:

- (a) the degree of planning, research, complexity and sophistication involved, together with the extent of the offender's commitment to carry out the act(s) of terrorism;
- (b) the period of time involved, including the duration of the involvement of the particular offender;
- (c) the depth and extent of the radicalisation of the offender as demonstrated (inter alia) by the possession of extremist material and/or the communication of such views to others; and
- (d) the extent to which the offender has been responsible, by whatever means, for indoctrinating or attempting to indoctrinate others, and the vulnerability or otherwise of the target(s) of the indoctrination, be it actual or intended.

A judge's interpretation of the defendant's commitment to terrorism and the depth and extent of their radicalisation are salient features of that list. How researchers in the field of countering terrorism, psychologists and judges would make judgements on these features are very different. Judges weigh the evidence and make judgements of character and credibility.

It is noted that radicalisation remains an empirically unverified concept, which makes it prone to ingroup and outgroup bias.