

TRANSCRIPT OF PROCEEDINGS

Copyright in this transcript is vested in the State of Queensland (Department of Justice & Attorney-General). Copies thereof must not be made or sold without the written authority of the Executive Manager, Support Services, Queensland Courts.

SUPREME COURT OF QUEENSLAND

CRIMINAL JURISDICTION

ATKINSON J

Indictment No 806 of 2018

Indictment No 955 of 2018

THE QUEEN

v.

AGIM KRUEZI

BRISBANE

10.00 AM, TUESDAY, 31 JULY 2018

SENTENCE

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: Agim Kruezi, you are to be sentenced on your own plea of guilty on one count of preparations for incursions into a foreign state contrary to section 7(1)(a) of the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth) and one
5 count of acts in preparation for or planning a terrorist act contrary to section 101.6(1) of the *Criminal Code Act 1995* (Cth). The maximum penalty for count 1 is 10 years' imprisonment. The maximum penalty for count 3 is life imprisonment.

10 You have also been convicted on your own plea of guilty on three summary charges, being one charge of unlawful possession of weapons, category D, H, R weapon, one charge of possessing shortened firearms and one charge of breach of authority required to possess explosives. The maximum penalty on the first charge is 300
15 penalty units or seven years' imprisonment. The maximum penalty on the second charge is 200 penalty units or four years' imprisonment. The maximum penalty on the third charge is 400 penalty units or six months' imprisonment. I accept your defence counsel's submission that those three summary charges are particulars of count 3.

20 Count 1 is that on 9 March 2014 at Brisbane you did an act preparatory to the commission of an offence against section 6 of the *Crimes (Foreign Incursions and Recruitment) Act 1978*, namely, you attended at the Brisbane International Airport in preparation for you to enter the foreign state of Syria and with intent that you engage in a hostile activity therein.

25 The statement of facts of your offending is taken from the prosecution document, agreed to except where noted by the defence.

30 You obtained an Australian passport in December 2013 and an airfare from Brisbane to Pristina, Kosovo in March 2014 in order to board a flight intending to travel from Australia to Pristina and on to Turkey and enter the Republic of Syria with the intention of engaging in hostile activities in the Syrian conflict.

35 Count 3 relates to your conduct between 28 August 2014 and 10 September 2014 during which you acquired a .22 calibre rifle in Sydney and transported it from Sydney to Logan and obtained or attempted to obtain 10 litres of petrol in a plastic jerry can, corks and glass bottles, the ingredients to make improvised explosive devices known as Molotov cocktails, those acts being done in preparation for or
40 planning a terrorist act.

40 You were born in September 1992 and are an Australian-born citizen of Albanian descent. You are of the Muslim Sunni faith. These offences were committed in connection with the manifestation of your religious and ideological beliefs influenced by your adherence to a radical strain of Islam.

45 All of the offences committed by you occurred in the context of the ongoing Syrian civil war and armed conflict. That conflict is of course complex and involves numerous actors pursuing a diverse range of objectives.

Essentially, it involves the Syrian Government fighting against numerous opposition forces who seek to overthrow the government and replace the regime led by President Bashar al-Assad. At the time the offences were committed, the civil war and armed conflict in Syria had been ongoing for some time and numerous groups and organisations were involved in the armed hostilities.

Those various groups and organisations were acting in pursuit of a wide range of objectives. Some of the opposition groups and organisations were motivated by ideals of nationalism and sovereignty and were seeking the removal of the Assad regime and the establishment of democratic governance within Syria. Others were motivated by more fundamentalist religious and ideological beliefs and sought to replace the Assad regime with a state governed by Islamic law or a caliphate.

One of the opposition groups involved was the proscribed terrorist organisation Jabhat al-Nusra which was an Al-Qaeda affiliated militant Islamist group, operating as an opposition force in Syria with the goal of establishing a state in Syria governed by Islamic law. When Jabhat al-Nusra first entered the conflict in late 2011 the group had been formed and was operating as the Syrian wing of the Iraq-based militant jihadist group, Islamic State in Iraq (ISI). ISI had itself begun as an organisation with allegiance to Al-Qaeda. ISI later established a self-proclaimed caliphate and identified itself as an entity distinct from Al-Qaeda.

With expansion into Syria, ISI eventually became known as the Islamic State in Iraq and the Levant (ISIL) or the Islamic State in Iraq and Syria (ISIS). Over time, a dispute emerged between Jabhat al-Nusra and ISIS. By April 2013, ISIS had expanded its operations in Syria and attempted to subsume Jabhat al-Nusra. Jabhat al-Nusra refused to submit to ISIS's control and instead reaffirmed its allegiance to al-Qaeda and the objective of establishing an Al-Qaeda-run Islamic caliphate. The ensuing discord or *fitna* eventually led to open conflict and armed hostilities between members of Jabhat al-Nusra and ISIS within Syria.

You supported the overthrow of the Assad regime through armed hostilities and the establishment in its place of a state governed by Islamic law. You believed that you and other Muslims had a religious duty to fight against those who sought to oppress Muslims and this provided part of the motivation for your offending.

At the time you committed count 1 you knew or believed that there were Australians in Syria associating with Jabhat al-Nusra or other Islamist opposition groups and that they shared your religious ideology and views and your support for the establishment of a state in Syria governed by Islamic law. You were aware that those Australians were living in an area of military activity and engaged in armed conflict with the Assad regime forces.

15 In November 2013, the Joint Counter-Terrorism Team, JCTT, commenced Operation Bolton to investigate a vehicle-borne improvised explosive device suicide attack that occurred in the city of Deir Al Zor in Syria on 11 September 2013. The JCTT investigation identified the male suicide bomber to be the Australian citizen Ahmed Succarieh, who was born in 1987. Further JCTT investigations identified Abraham Succarieh, born two years earlier, and Omar Succarieh, born two years earlier than him, as the older brothers of Ahmed Succarieh. The investigation revealed that Abraham Succarieh was in Syria and was suspected to be a member of Jabhat al-Nusra. Those investigations also revealed that Omar Succarieh was in regular
10 contact with his brother Abraham.

15 During 2013 and 2014, you were a close associate of Omar Succarieh, regularly attending at the iQraa Islamic Centre, a bookstore operated at a business premises in Underwood by Omar Succarieh.

15 **Count 1 – preparations for foreign incurions**

20 In late 2013, you travelled to Sydney and met with a group of Muslim men known as the "Shura". The Shura were the subject of a JCTT investigation in New South Wales known as Operation Appleby, and included a person by the name of Ali Al-Talebi. Al-Talebi was an influential figure amongst persons holding extremist Islamic beliefs in Sydney. The Shura agreed to provide finance to enable you to travel to Syria to fight in the civil conflict.

25 In November 2013, you applied for an Australian passport, and that passport was mailed to you in early December 2013. On 15 January 2014, you received a telephone call and an SMS from a telephone number used by Al-Talebi. On 11 February 2014, you sent an SMS from your mobile phone to a telephone number subscribed in a false name, but used by al-Talebi. The SMS was:

30 *Salam alaikum, jus wondering how evrythings going and if you managed to sort out the work yet.*

35 At around the same time, Omar Succarieh became aware that you wished to travel to Syria to support the opposition to the Assad regime. Consequently, through a series of cryptic and coded telephone conversations, Omar Succarieh discussed and made arrangements with his brother Abraham for you to join Abraham's group of fellow Australian Muslims in Syria by travelling to a border-crossing area adjacent to Syria where you could then be met and received by Abraham Succarieh or those associated
40 with him, and taken safely across the border into Syria. On 14 February 2014, Omar and Abraham Succarieh had a telephone conversation in which Omar stated he was making arrangements for "visitors" to join Abraham in Syria.

45 Having secured funding to travel to Syria, you arranged for the money to be deposited into the Commonwealth Bank of Australia account of a Logan-based acquaintance of yours. Under this arrangement, your acquaintance was to receive \$100 for receiving a deposit of money from a third party into his account, and subsequently withdrawing the money and providing it to you. Your friend agreed to the arrangement, unaware of its source or what it was to be used for.

On 19 February 2014, \$7,705 was deposited into your friend's account through a deposit made by an unidentified person at a Commonwealth Bank branch in the Westfield Shopping Centre at Parramatta. Although the money was received into his account, your friend did not hand the money over to you as initially agreed. In fact, on 20 February 2014, he withdrew the money from his account. Once you discovered that the money had been received but not handed over as agreed, you contacted your friend and requested the money be provided. He did not comply with this request. You then sought the assistance of Omar Succarieh and others to recover the money.

The relevance of what Succarieh and others did to recover the money is questioned by the defence. It is the case that what happened involved the statements and actions of others which happened as a result of your request. You have not been charged with any offence relating to these actions, so they cannot be used to further punish you, but they are relevant to the factual circumstances of your offending, and so I shall refer to them.

What happened was that by arrangement with you, on 27 February 2014, Omar Succarieh drove to the vicinity of the home of your friend and his family. Succarieh remained in the vicinity, meeting with three other men staking out these premises. Later in that day, Omar Succarieh had a telephone conversation with your friend. During that conversation, he spoke in an aggressive manner and said:

You've taken my money.

You see that red shirt that you were wearing today ... that red shirt is going to be changed with something else if you don't give me my money soon. It's going to be a different sort of red.

Your friend had been wearing a red shirt earlier that day. He continued:

I know you've taken my money. You with two withdrawals, you went to your Commonwealth fricken bank, you've taken two withdrawals out of your account. Where's my money? But I know everything about you. I know where you live. I know where your family is. I know where your friends are. I know everything about you. Where's my money? You think you're gonna take someone's money and nothing's going to happen out of it?

Listen, you dumb shit. Listen, listen, I know you've already taken the money out. I already know this. You took two withdrawals, in two days, last Friday, don't play stupid now.

Listen, you've really stuffed up this time, man. You think that because Agim is the one that told you to put it into the account, that it's his money?

An unidentified man then continued the conversation with your friend on Omar Succarieh's telephone and said:

You fucken stole that money. I'm gunna fucken torch your house. I'm going to fucken torch your brother, your fucken sister-in-law, everyone in the fucken house. I'm gunna torch you. I'm gunna fucken torch you all. I want my fucken money and now, do you understand?

5

I swear, I'm gunna cut your throat. I'm gunna fucken put you on fire. I want my fucken money.

10 Subsequently, Omar Succarieh and Robert Maestracci and an unknown man attended the home where your friend lived with his family. They spoke to his mother. Maestracci did most of the talking. During the conversation with your friend's mother, the men asked where your friend was, using his first name; asked for their money that your friend had used; told your friend's mother that they had put some money into his bank account for their youth service, and that he had taken the money
15 out; told your friend's mother that you had put the money into his account; and gave his mother a telephone number to ring.

20 After attending your friend's home, Omar Succarieh spoke to you to discuss the situation. Mid-morning on 28 February 2014, Omar Succarieh received a telephone call from your friend's parents. He pretended to be "Robbie" and made arrangements to attend at their home and collect the money at 2 pm that day. During that conversation, Omar Succarieh said that the money was definitely sent into their son's account; that they knew for a fact that your friend did take out two transactions last Friday and took the whole amount; and that your friend knew exactly what the
25 money was for; but that he also knew that the money was not for the guy that transferred the money into his account as it was intended for "a better, for something better than that", and that they needed to get this resolved as soon as possible because this money was supposed to be going out very soon.

30 At 11.45 am on 28 February 2014, Omar Succarieh had a further conversation with Maestracci. During this conversation, they discussed the telephone conversation that Omar Succarieh had had with your friend's parents, and that they were meeting up at 2 o'clock.

35 At 12.20 pm on 28 February 2014, Omar Succarieh had a telephone conversation with you, during which you discussed that Succarieh would pick up the money at 2 pm from your friend's parents and that you should not go with them, but rather should be in the vicinity.

40 At 1.47 pm on 28 February 2014, Omar Succarieh received an MMS message from you with an image of a Commonwealth Bank deposit receipt dated 19 February 2014 in the amount of \$7,705 for the account number of your friend. At 1.58 pm on 28 February 2014, you, Succarieh and Maestracci attended your friend's parents' residence. Succarieh and Maestracci arrived in a separate vehicle from yours. They
45 went inside the residence while you waited outside. They met with your friend's mother. She gave Succarieh and Maestracci \$7700. They then left her residence, approached you and had a conversation with you. You and Succarieh and Maestracci then travelled to Succarieh's residence and then to the Carindale Shopping Centre.

At 2.29 pm whilst in transit, you sent an SMS to a mobile telephone number used by al-Talebi saying:

5 *Salam alaikum, akhi. giv me a buzz later on, inshaAllah, that problem got sorted in the best way alhamdullilah and I'm sitting here atm with work in my pocket.*

10 So the money was given back to you and you used it to fund your travel arrangements.

At 11.57 am on 2 March 2014, you had a telephone conversation with Omar Succarieh in which you discussed your purchasing a universal solar-powered phone charger and the type of clothing most suitable for you to wear whilst you were over there. Succarieh suggested you buy a pair of good boots and later suggested that you should:

travel light, man, and buy your stuff over there.

20 He reiterated that “a good pair of shoes will be good, sufficient”. About three hours later, Omar Succarieh had a telephone conversation with his brother Abraham and three other unidentified Australian men. During this conversation, they spoke in cryptic or coded terms about the arrangements for you to join Abraham and the other Australians in Syria. Omar Succarieh said:

25 *I just want to ask you, God knows best, that there might be umm what's it called is everything would everything be all right for any company?*

30 *Is, is all good for some company?*

Abraham replied:

Sooner rather than later, sooner rather than later ... Yeah don't muck around.

35 Omar asked:

Is it pretty full on at the moment?

To which Abraham replied:

40 *Yeah we got something happening soon.*

On 4 March 2014, you attended the flight centre at Calamvale Shopping Centre and purchased an airfare to travel to Pristina, Kosovo, departing on 9 March 2014 with a stopover in Dubai. You told staff that you were travelling to see family and wanted to travel only on an Arab airline. You told staff you intended to travel from Pristina to Istanbul and inquired about quotes for flight and train tickets for that journey.

You declined the option of booking a stopover in Turkey from Australia even though you were told that that was a cheaper option. You also said that you had been planning a trip for some months but had waited until now to purchase an airfare. In total, you paid \$2,559.54 in cash for this airfare. When purchasing the airfare, you inquired with staff whether you would be able to obtain a refund if you were pulled off the flight or on a no-fly list.

At 12.15 pm on the same day, you had a telephone conversation with Omar Succarieh. You asked Omar:

Do you reckon it's a good idea when I go overseas to, like, ah, wear like dress pants and a dress shirt and like leather shoes?

Omar said:

I probably no point, I mean ... I understand what you're saying. I don't think it will make a difference bro ... it's not going to change anything.

Omar asked:

You um er booked a ticket or not?

To which you said you had got your ticket "today" for "the 9th". About three hours later, Omar Succarieh had a further telephone conversation with his brother Abraham. They discussed the arrangements for you to make contact with Abraham once you had arrived at the border crossing area. During this call, Omar asked:

anyway, so, basically, they are just going to call you, huh?

To which Abraham said:

Yeah, they'll talk to me.

Omar said:

All right so the normal, the same way or a different way? ... Like the area same area or different area?

To which Abraham said:

Yeah same way, just get him to contact me.

On 6 March 2014, the Minister for Foreign Affairs and Trade cancelled your Australian passport on security grounds.

At 5 pm on 8 March 2014, you attended a money exchange at Sunnybank Hills Shoppingtown and exchanged \$1,109.62 for €700. On 9 March 2014, you made a call to a mobile phone service used by Al-Talebi. At about 2.45 pm, you attended a currency exchange at Upper Mount Gravatt and exchanged \$825.23 for €520.

5 A few days prior to 9 March 2014, you married Kubra Yavuz in an Islamic ceremony. You engaged in the Islamic marriage ceremony just prior to your departure as you were both expecting that you would be going to Syria and would not be returning.

10 At about 6.30 pm on 9 March 2014, you attended the Brisbane International Airport to board the flight to Dubai. You were intercepted by Customs officers and your belongings were searched. Amongst other items, Customs officers located \$4,000 and €1,000 and an image of a handwritten note with the name of your friend and the BSB and account number of his Commonwealth Bank account into which the money had been deposited.

15 JCTT officers attended and informed you that your passport had been cancelled by the Minister for Foreign Affairs and Trade and provided you with the cancellation documentation. You accompanied the JCTT officers to an interview room where you agreed to be interviewed. During the interview, you told police that you were aware that fighting in Syria was an offence under Australian law; that you intended to visit your sick uncle in Kosovo; that you had been planning the trip since
20 December 2013; that the money came from your family and was for a kidney transplant for your uncle; that the Australian Government's laws are contrary to Islam's set of rules; that the interviewing officers were henchmen of the government and hence cursed by Allah; and that the police, along with all their supporters and employers, were "at war with Allah" because they were oppressing Muslims.

25 Later that evening, you sent an SMS to Yavuz, saying:

The feds took my passport.

30 Yavuz sent a number of SMSs in reply, including two saying:

May Allah curse them;

and:
35

Don't let shaytaan whisper in your ear this doesn't change anything.

To which you replied:

40 *May Allah reward you. Yor rite..*

On 14 March 2014, Omar Succarieh had a telephone conversation with Abraham Succarieh during which Omar informed Abraham that you were not coming as planned. Omar said:

5 *They're smashing everyone over here at the moment, bro ... everyone's getting their whatchacallits taken off 'em ... there's two just recently ... one of them was, he's literally ah, was uhwhatchacalled, wanted to come, whatchacalled, um the other day ...they pulled him up at the actual airport and gave him a notification and then took it off him.*

10

Later, Abraham asked:

Um, the visitors obviously got cancelled hey?

15 To which Omar said:

Yeah, yeah, they literally ... one of them, one of them fricken probably just gossip anyway, but the other one was full on, bro, and they literally smashed him a new one ...he got smashed very good man ...literally in the airport, man.

20

Count 3 - acts in preparation for a terrorist act

On 10 March 2014, the day after your interception at the airport, you attended a camping and disposal store at Browns Plains and looked at hunting bows and arrows.

25 On 11 March 2014, you returned to the same store and purchased a 10 pound compound bow and target arrows. In May 2014, you bought a second compound bow of higher power and numerous hunting arrows. It is not suggested by the prosecution that these items were purchased with the intention of preparing or planning a terrorist act. The purchase of the bows and arrows is relevant only to your expression of your anger towards authorities at being prevented from going to Syria.

30

On 23 June 2014, a surveillance device installed in the iQraa Islamic Centre recorded you saying:

35 *The day after I lost my passport, I went straight out and bought a bow ... I was so pissed off I just went out and bought a bow.*

On 16 April 2014, you had a conversation at the iQraa Islamic Centre in which you stated that Muslims should not obey the laws of Australia and expressed a desire to burn down a pub in a Muslim area. It was submitted by the defence that that statement should not be construed as meaning that there was any plan, even at its earliest stages, to do any such thing. Your counsel submits that your current view is that such an act would be wrong, and that a belief justifying the contrary is incorrect. There is, however, no evidence that you have changed your views.

45

During the course of the investigation, you had a number of conversations with Kubra Yavuz, which demonstrated that she did not expect to be with you in the latter part of 2014. On 20 April 2014, she questioned whether you would be together for Ramadan, which in 2014 began on 29 June and ended on 29 July.

On 21 April 2014, you had a conversation with an unidentified man at the iQraa Islamic Centre in which you said:

5 *Yeah, if you join the military you're a nonbeliever. That's why they show you, if you join the military you're a non-believer. Because they're at war with our Muslim brothers and sisters, as soon as you start fighting our brothers and sisters for the sake of the nonbeliever, you have apostate from your religion. You actually have to be killed. So like, if you join the military, I'm actually*
10 *allowed to kill you, like, Allah has actually ordered me to kill you.*

On 25 April 2014, you had a conversation with an unidentified man at iQraa Islamic Centre during which you espoused your apocalyptic beliefs in relation to Syria:

15 *The thing is though, look man, like, I sincerely feel like, you know, like, big events are on the horizon (indistinct). I see heaps of signs, bro; you look at what's going on in the world; you look at, you, you look at the preparation of the non-believers against us; you look at the preparation of Allah preparing the Muslims, separating the Muslims from the hypocrites. You look at so many*
20 *preparations for so many things that are coming into place right now, almost every day; more preparations happening. We're on the verge (indistinct) huge things are about to pop off.*

25 Apocalyptic views around the end of time are regularly referred to by Jihadist groups, and particularly Jabhat al-Nursa and ISIS.

On 30 April 2014, you had a conversation with an unidentified man at iQraa Islamic Centre. During that conversation, you said:

30 *So ... so ... so I don't care what happens, I know some things, and I'm making an attempt to inspire some Muslims to (indistinct) because I know this is the most important thing in our day and age. We need to establish an Islamic State, and we're not going to do that –*

35 before you were interrupted.

On 7 May 2014, you had a conversation at the iQraa Islamic Centre, at which you stated that the abduction and sale of 200 schoolgirls in the town of Chibok in Nigeria in April 2014 by the extremist terrorist organisation Boko Haram was a legitimate
40 tactic of war. It is said by your counsel on your behalf in his written submissions, repeated in oral submissions, that you now acknowledge that the comments you made about abduction were incorrect. You instruct that your comments were general in stating that the taking of persons as prisoners and their sale was an acceptable
45 tactic of war, and that you were not specifically passing judgment on what befell the 200 schoolgirls from Chibok. You now recognise, it is submitted, that you should have been more sympathetic, and that what you said was harsh and incorrect. However, there is no evidence to that effect.

On 14 May 2014, you purchased a Spook balaclava from a disposal store. On 17 May 2014, you were intercepted by members of the Queensland Police Service at Kuraby. Your vehicle was searched and a compound bow and arrows were located. Also located was a photocopied book entitled The Book of Jihad written by Abi Zakaryya al-Dimashqi al-Dumyati. The prosecution submits that you had a conversation with the police in which you asked one of the officers if the vest the officer was wearing was “ballistic rated”, and “can it stop knives or arrows?”

Although you accept that you had a conversation with police when intercepted at Kuraby on that day, you deny asking one of the officers if his vest was ballistic rated and whether it could stop knives and arrows. Your instructions to your counsel are that you asked why the officers were not dressed like other police officers, and if they were part of a special team that showed up if there is a shooting or something to that effect. You deny mentioning knives and arrows. The prosecution and defence agree that the court need not determine this factual dispute between the parties, and it is not of a type that would result in any difference to the sentence to be ultimately imposed, so I make no findings on that point.

On 27 May 2014, you had a conversation with Kubra Yavuz, during which you both made reference to your not being here much longer. She said:

I can't, I'm sorry, I can't, I can't, I just can't. You're not even going to be here for your children. I can't raise my children alone, and I can't have some other woman raising your children in front of me. It's just too hard for me.

In the same conversation, she spoke about sharing you with a second wife. She said:

I simply can't, it's too painful, and I actually really love you so I don't want to spend the last few months I have with you sharing you with somebody. I can't so if you really ... really ... really want children then please leave me, please.

In the same conversation she said:

When I first met you, I kept telling you I do not want to get remarried, just so I could be with you in paradise ... I would always tell you this, and I didn't even care about you back then.

During the course of the investigation, you were monitored making statements in relation to your apocalyptic beliefs about Islam and the events in Syria and Iraq. You also had a number of conversations in which you encouraged other Muslims to participate in Jihad.

Under the authority of a Major Controlled Operations Authority, an Australian Federal Police undercover operative infiltrated the iQraa Islamic Centre and built relationships with a number of regular attendees. On 11 June 2014, the undercover operative met with you, and you exchanged contact details. The undercover operative also met with Omar Succarieh and Robert Maestracci, and was converted to the Islamic faith in a ceremony conducted by you.

On 18 July 2014, you had a conversation with the undercover operative. During the conversation, you told the undercover operative that it was his obligation as a Muslim man to enter into Jihad. You further said that you had intended to travel to Syria to engage in Jihad, but were stopped by authorities and had your passport confiscated. You said:

5
10
You can give charity, you can help with your time and you can help with your wealth, but it's not the same as fighting with yourself. What excuse are you going to have on the day of judgment when Allah says you knew better, you knew you should have fought ... Allah has told you so many things about it, and you're still going to become a coward and run away?

15
I'll show you a particular chapter in the Quran ... um, read this chapter. It's, it's specifically talks about fighting for the sake of Allah, and Allah tells you about the magnitude of the reward that these people get and how he wants you to fight, and three quarters of the, of this chapter talks about the hypocrites who find excuses to stay away from fighting for the sake of Allah.

20
I have an, um, an exception, because my passport has been taken. I can't reach those lands, we're on a big island.

25
I tried to leave the country, and when I was at the airport, the Feds were there and Customs were there, and they said ASIO has been doing an investigation on me, that they decided they were going to strip me of my passport and I can't get it back again.

30
It comes down to your belief and your understanding of Islam. You need to be a moderate Muslim who follows the definition of Islam that they want you to follow ... or you can follow the Islam Allah wants you to follow, which is Islam in its totality.

35
40
Um, and then you have defensive jihad, and that's where the Muslims are being attacked. Ok, um, so you have your state and the disbelievers, they come to your land and they attack you ... Or there's Muslims somewhere on the face of the earth who are innocent, they didn't do anything, they didn't instigate war, but they're being attacked by the disbelievers, and that's when jihad becomes defensive, and when jihad becomes defensive it's an obligation, it's as compulsory as your prayer ... as an obligation you have absolutely no way of getting out of it, on every single Muslim on the face of the Earth. You have to fight until that struggle that and that until the disbelievers are fought off.

45
In my situation I can't leave the country and so I can do other things. I can help with, like, money and things like that. I can help, you know, spread the word about jihad and to inspire Muslim brothers and sisters around me who don't know, like, I can inspire them. I can tell them to read the Quran. I can tell them to read these verses. I can tell them to go to any book on hadith every single one of them has a chapter titled jihad.

Allah showed me people, guided me to people and wallahi, doors were opening. I had – I started off with not a penny in my pocket ... and I ended up with nine grand ready to go.

5 *It's a lot easier than some people think it is. You only need about ten grand. Buy your ticket from here ... buy your ticket, um, you know, talk to whoever is going to sort you out for connections on the other side and that, um ... yeah, it is, all you need's about ten grand. All you need to do is find the person who's*
10 *going to link you up, ah, buy your ticket, go to a country of your choice, you know, obviously somewhere realistic and make your way there.*

You voiced your support to the undercover operative for extremist Islamic attacks by ISIS on Iraqi cities and villages saying:

15 *The people who have called themselves the Islamic State, they're the correct ones. When you look at their understanding of Islam, their practice of Islam, what they stand for, what they're fighting for, they're the right ones. Absolute*
20 *hands down, no compromise, no questions asked. They really are the right ones. Yeah, ISIS. In Iraq and Syria ... Allah says that there will always be these people in every generation in every era up until the day of judgment, there will always be people like this. And in our era they are those people ...*
25 *they are. When you look at what they stand for, when you look at their understanding of Islam and what they, what they're fighting for. What they're fighting for and seeking to establish what their beliefs are. These are those people.*

On 25 July 2014 you attended a disposal store at Browns Plains and purchased a mini kukri knife. During the purchase, you asked "If it doesn't feel right, can I bring it back?"
30

On 30 July 2014 you attended a retail outlet located at Burleigh Heads and purchased an Under Armour black balaclava, camouflaged tactical-style pants and an 18-inch kukri machete knife. During this transaction you indicated that you required the knife for hunting.
35

On 31 July 2014 you had a lawfully recorded conversation with the undercover operative in which you told him that you "bought a machete the other day" and described it. You then offered to sell the machete to him. You said "I need something more concealable". You showed the machete to the undercover operative and described it as a Gurkha kukri machete.
40

On 11 August 2014 you drove from Logan to Sydney where you stayed before returning to Logan on 31 August 2014. During that time you met with a number of persons known to have extremist Islamic beliefs. During the period you had
45 numerous conversations in which you espoused apocalyptic beliefs. You also demonstrated support for martyrdom, a belief that martyrs automatically go to heaven and a belief that you would be in heaven soon.

On 13 August 2014 you had a conversation with a number of unidentified Muslim men during which one of the men said “He said “Don’t expect if you, Australia, go overseas and fight Muslims, don’t expect nothing to happen here.” You then said “Glorious to god. Did he say that? Well, it’s gunna happen one day, hey.” You
5 further said “You can only friggen cage a lion and poke it with a stick so far until he lashes out at some point. You can’t friggen continue this, bro, and it’s not just Australia it’s all over the whole world, bro. Why do you think there is concentration camps all over the world getting built by (indistinct) that have not a single person in them. It’s so when stuff starts breaking upm they have to imprison all the Muslims
10 or at least the ones that don’t submit.” The prosecution submits that you and your associates were discussing Australian-based Islamic extremists conducting terrorist strikes in Australia in retaliation for the cancellation of passports preventing Islamic extremists from engaging in jihad in Syria.

15 On 15 August 2014 you had a conversation with an unidentified man in which you discussed Islam. You said “But you know why the Muslims complain, because the Muslims have this misconception that Islam is peace. Islam is peace but it’s not friggin passivism, Islam is all about justice the Prophet God’s blessings and peace be upon him he came and he said ‘I’m the Prophet of mercy and the Prophet of war’.
20 He said I’ve, I’ve been, um, I’ve been sent to exterminate disbelief. I will keep fighting until it’s extinguished from this earth, glorious is god.”

The conversation turned to the subject of the killing of a British soldier in England by a Muslim. The unidentified man justified the killing and you said “Who cares
25 about that friggen soldier. He deserves it.” And you said “You friggin dogs are in our country day and night killing our brothers and sisters. I, I thought, you know, you know, tit for tat I’m going to kill one of you. Until you get out of your country this stuff is going to happen to you. You know, you the people of Britain should call your people to get out of our country.”
30

On that same day you had a conversation with an unidentified man in which you stated, in relation to your attempt to depart Australia that “So you know how I came
35 down and I was broke, I ended with 10 grand.” When asked where the money came from you said “From nobody who I expected either, oh I’m not going to say from where. It’s not because I don’t trust you.”

On 16 August 2014 you had a conversation with two unidentified men in relation to your passport cancellation. One of the men asked you where you were going. He
40 asked you if you were going to Turkey and you said “Yeah, I, I, I was, I was going to Europe straight to Albania first and I was going to catch a train down to Turkey, um, yeah, so.” You were then asked who you called when you were going to Turkey and you replied “I was, I was who, brothers I was trying to get money from because I didn’t have any money. Glorious is God, there is one person who lives here. The
45 thing is though a lot of the people who could’ve, in a position to give were not people who knew what I was doing, it’s just people who I would’ve raised the alarm to, you know what I mean? Like, you don’t know what I mean, I don’t know how to explain it.”

An unidentified man said he knew what you meant and you then said “Like, I have been talking about the topic, I wouldn’t be talking about Syria, I wouldn’t be talking about going and fighting but I would tell the brothers who don’t know, brothers who are totally ignorant that fighting even exists in Islam, I would talk about that, I would talk about the Islamic State. I would talk about, you know how, just things like this, glorious is God and I would talk about it like subjects just before I was even planning a trip and somebody told me that they was watching, they were watching me from when I used to do (indistinct).”

5
10 On 17 August 2014 at 8.48 pm you had a conversation with a man believed to be Al-Talebi. During the conversation you discussed you being asked by an associate in Brisbane about a plan to do something to Parliament House in Canberra. The man believed to be Al-Talebi said “Anyway, ah glorious is god, what was I going to say? (indistinct) the boys are back here, huh? They can get jobs for us in Canberra huh? Are you listening to me? His like the brothers are going to try and get jobs that could be even better for things”. You said to him “Oh bro, um someone in Brisbane ... a brother (indistinct) and um, he comes to me recently and he goes there was this brother and the guys informing me about some money (indistinct) he goes to me he goes he goes, argh there’s this brother (indistinct) we weren’t close but you know what I mean(indistinct). Brother, he approached this brother the one we were with and he goes to him oh you know some brothers apparently are conspiring to do something to the Parliament House in Canberra.”

25 The man believed to be al-Talebi says that he would not know anything about it. And you said:

Do you know anything about it? I was like, I don’t know what hell, you’re they’re telling you (indistinct) like he literally goes, he’d be stupid, anyway (indistinct).

30 On 21 August 2014, you had a conversation with an unidentified man in which you discussed that cutting someone’s head off is the most humane way to kill somebody. You also discussed the beheading of a journalist that had occurred in that context. It should be noted that the Defence have pointed out that whilst in Sydney on 21 August 2014, you made a telephone call to your wife, whom they refer to as Yasmeeen, during which you told her you could not wait to get back and that when you did return to Brisbane, you intended to take her out more often and that you wanted her to have a nice time with you.

40 On 22 August 2014, you had a conversation with an unidentified man about how you retrieved the money from the friend you had given it to in Brisbane. You said:

45 *We, we, we were staking out his house, his mate’s house, another mate’s house. We were going to kidnap him, and take him to the centre and hold him hostage while we sorts out the money on the phone ... but he ended up, they ended up going to his house because he was at his family’s house, and they said they had the money for him.*

The unidentified man said:

The guy actually ripped the money?

And you said:

5

Yeah, he did, legit he did ... but that's not the first guy that I got the details off, I went to two Muslim brothers first and then, after that, there was nobody else who I trusted enough to get the money and this guy I've known for seven years, eight years, eight years, I was training with him and everything glorious is God, I knew him for eight years. We were training every day glorious is God, like for the past few months or whatever, so I thought he would be all right.

10

That conversation related to the money that was procured by you to fund your travel to Syria and which was sent to your friend's bank account. The Defence submits with regard to this, as they did with regard to the earlier facts with regard to the retrieval of the money from your friend, that those facts cannot be used to aggravate the penalty imposed upon you for the offences to which you pleaded guilty because to do so would be tantamount to punishing you for uncharged offences relating to demanding property for threats. I agree as you have not been charged with that.

20

On 22 August 2014, you met Al-Talebi. With Al-Talebi, you then travelled to the premises of another member of the Shura where you requested assistance to purchase a firearm. You then received approval from the Shura to use the leftover funds from your prevented travel to Syria to commit a terrorist act. The Shura was of the understanding that the attack was to take place in a public place. On 22 August 2014 at 2.20 pm, you had a conversation with Al-Talebi. During this conversation, you discussed Al-Talebi's support for you. You asserted that you had not realised it had been arranged for you to go to a Jabhat al-Nusra camp as opposed to ISIS.

25

Al-Talebi and you then discussed Omar Succarieh. You said that you knew he was a Jabhat al-Nusra supporter and that two of his brothers were there and one of them had already become a martyr and the other one, as far as you knew, was still alive. You said you had intended to go to Syria but did not know which specific group you were going to join. You said that Succarieh had arranged for you to join Jabhat al-Nusra because that was the group which his brother Abraham was part of. Al-Talebi supported ISIS over Jabhat al-Nusra and had made a decision not to provide funds for people to join Jabhat al-Nusra but only to fund those joining ISIS.

35

On 28 August 2014, you received a text message from the Sydney-based associate which read:

40

Working on it.

On 28 August 2014, while still in Sydney, the Defence points out that you spoke on the telephone with the undercover operative. Amongst other things, you mentioned to him that a brother was about to start attending at iQraa to weekly lectures and that you intended to attend those talks.

45

On 29 August 2014, you had a conversation with an unidentified man. You wanted to know if the man could “do it tonight”. The man responded that:

5 *It’s not up to me, it’s up to ah, up to the, the, the other bloke and, you know, today, I got ah, like, they actually done it for me.*

You and the man discussed that you were leaving Sydney the following day in the afternoon. The man said:

10 *How about you pack up tomorrow, come to mine, alright um, um, what you do is call me on a private number alright, just say you’re coming and hang up alright. . I know it’s a private number anyway so that way I will wait outside for you., we’ll go, we’ll finish it off.*

15 This conversation was a coded conversation as to the man organising a firearm for you and you collecting the firearm prior to leaving Sydney on 30 August 2014.

On 31 August 2014, you returned to Logan by car. At about 8.50 am on that day, you had a conversation with Yavuz at your premises. During the conversation, sounds were audible which were consistent with your taking the firearm from the place where it was hidden and dry-firing it. You then had a conversation with Yavuz where you told her you’d purchased the firearm for \$2000 and had been planning for months. During this conversation, you showed Yavuz the firearm that you had purchased from associates in Sydney for \$2000. This conversation demonstrates, the Prosecution submits, that you were planning to engage in a terrorist act involving the use of the firearm and had been doing so for several months.

25 The Defence drew attention to the fact that on 1 September 2014 you called Centrelink and scheduled an appointment so that you could get your payments back on. An appointment was made for the following Thursday, that is, 4 September 2014, and your payments were restored while you waited on the phone.

30 On 2 September 2014, you had a conversation with the undercover operative. During this conversation, you said he should leave Australia for the self-declared Islamic State. You said that within a year or a couple of years, those Muslims who have had their passports confiscated and are stuck in Australia would start attacking “them”, that is, Australians, in their own lands. You said that the aforementioned attacks were inevitable and will happen. You advised the undercover operative that as little as \$5,000 could fund a person to travel overseas to fight and purchase a gun. You told him that the avenue you had used to travel overseas had now closed. The Prosecution alleges and I accept that this was a reference to the fact that you were now supporting ISIS instead of Jabhat al-Nusra.

5 You advised him that the person responsible for facilitating your travel had paid for your passport and that within a couple of months you had \$10,000 to fund your travel. You also advised the undercover operative that whilst he waited for the right path or for people to appear, he could send funds overseas to fund fighters and mujahideen who were already involved in the conflict. You assured the undercover operative that you could ensure that any money sent would find its way to the fighters. You confirmed to him that whilst giving money to fighters was a good thing, ultimately, one must go and fight personally and not be satisfied with just giving money. You advised the undercover operative that he could also fund other brothers who were ready to travel overseas but were in financial need and you discussed various teachings that you said supported Jihad.

15 On 5 September 2014, you had another conversation with the undercover operative at the Garden City Shopping Centre during which you said that the mujahideen in Afghanistan had pledged allegiance to Islamic State. You said:

20 *Yeah keep in mind that thing we spoke about the other day about money. If you want to give money for the sake of Hasanat and that, the opportunity is always there.*

25 *I had, I'm not going to get into it, but I had a former contact with the brother the other day and he still, he's not in the best state with that, so, anybody that could help him would be good, I ... yeah.*

25 You said that you could get funds to brothers who were ready to go overseas to join Islamic State.

30 On 8 September 2014, you drove to the BP petrol station at Karawatha and purchased a 10 litre plastic jerry can and filled it with petrol. The Defence draws attention to the fact that the only electronic interception evidence post-dating the telephone call to Centrelink on 1 September 2014 that has been disclosed to the defence is the telephone calls made and text messages exchanged between you and the undercover operative, and not with any other persons.

35 On 9 September 2014, you visited a number of shops in the Logan area, looking for glass bottles and corks. Your actions and the conversations with shop staff demonstrate that you were looking for a specific type of bottle with a cap or stopper in which a hole could be made. At some shops you were calm, but at others you appeared agitated. Over four and a half hours in the afternoon, you attended 12 homewares and hardware type shops in the Logan area, including going to Spotlight, 40 Ikea, House and Homewares and 2 Garnish twice each, and going to Freedom Furniture once. You attended Ikea and asked for corks and stated that the stoppers you required had to be cork so they could seal a bottle and have a hole in it. You then attended 2 Garnish, where you purchased two packets of corks in different sizes. 45 You then attended House and Homewares, where you tried to fit a cork into a glass bottle.

The purchase of petrol, 10 litres of it, and corks and the attempts to purchase glass bottles were preparation for making incendiary devices known as Molotov cocktails.

Molotov cocktails are produced by putting a flammable liquid such as petrol into a breakable container such as a glass bottle. This container is usually stopped with a cork or similar. A wick is then attached to the outside of the bottle or through the open or partially stopped neck of the bottle to provide the flame to ignite the liquid.

5

The defence submit that the only evidence tending to support the prosecution's submission that an attack was imminent is the evidence of your attendance at a number of stores and your purchase of petrol on 9 September 2018. On the other hand, they submit it would appear that suitable bottles had not as yet been located.

10 No Molotov cocktails had yet been constructed. The defence submits there was no suggestion of an imminent attack or a view no longer being around when one assesses the multiple telephone call conversations and text messages between you and the undercover operative in the lead up to your arrest.

15 The defence submits that there is good reason to suggest that you were quite open and close to that operative, given your many detailed conversations about Islam, and, for example, your assertion on the telephone call to the undercover operative on 20 August 2014 that you missed him, and that other than family, he would be the first person you would call when you returned to Brisbane. In fact, in a text message
20 exchange with the undercover operative on 8 September 2014, you told him you would probably meet him at the gym to do a workout on Wednesday, that is, on 10 September 2014, which is the day that you were ultimately arrested.

25 However, I am satisfied that you were well underway and planning an attack using the hardware you had acquired. On account of your activity on 9 September 2014, a decision was made to execute search warrants and to arrest you. It was necessary for such an arrest to be made, in my view, to prevent an attack.

30 On 10 September 2014, the JCTT executed a search warrant at your residence. During the search, the following items were seized: two large machete-style knives; your Samsung mobile phone, which was the telecommunication service subject to interception; a Nokia C5 mobile phone; a black balaclava; a green full-faced balaclava; the letter from DFAT provided to you on 9 March 2014 in relation to the
35 cancellation of your passport; the photocopy of a book entitled *The Book of Jihad*, which was believed to be the same book sighted by the police during the roadside stop on 17 May 2014; two laptops and other electronic items; and a .22 calibre semi-automatic Stirling sawn-off rifle and 15 rounds of ammunition. An ISIS flag was located pinned to the wall of your room.

40 The rifle was concealed under the bottom drawer in the cavity space of a free-standing chest of drawers in your bedroom. The rifle's barrel had been shortened, and the stock cut down, making the weapon more easily concealable, and so that it measured 53 centimetres in length. The rifle was found actioned and loaded with 15 rounds of ammunition in an attached 15-round magazine.

45

During the search of your vehicle, the following were located: compound bow and arrows, a park of corks consistent with those purchased from 2 Garnish, and the 10-litre jerry can containing fuel.

Forensic examination of The Book of Jihad located your fingerprint. Analysis of the book showed it included the following chapters: Chapter 1, On the Command of Jihad Against the Non-believers and its Mandate and the Stern Warning Against Those Who Don't Practice Jihad; Chapter 7, The Virtues of Killing a Non-believer for the Sake of Allah; and Chapter 12, Martyrdom. A number of sections of the book were marked. These included one stating that a mujahedeen on jihad will be admitted to paradise; stating that 100 steadfast believers will defeat 1000 disbelievers; referring to a mother rejoicing that her son had died in battle; and referring to a command for a person to station himself to a vulnerable land where the enemy is expected.

Examination of your electronic items seized during the search identified the following relevant material found on your laptop computer, a Samsung memory card and a Toshiba eight gigabyte storage device: two videos of you shooting arrows at and into a Styrofoam human head inside the iQraa Islamic Centre with an ISIS flag in the background; over 2,600 audio files containing lectures and speeches by Anwar al-Awlaki, an American-born Islamic militant and other radical speakers (the defence submitted, and I accept, that some of these were quite short and there was no evidence that you had listened to them); 614 image files in the nature of ISIS and Al-Qaeda propaganda material images relating to combat and Islamic militants; a further 318 image files in the nature of ISIS propaganda; 34 images of Osama Bin Laden; 59 images relating to radical Islamic ideology; 13 image files relating to death and martyrdom; an image file containing instructions on how to "behead in the correct way according to the west"; a selfie-type image of your posing in front of ISIS and jihad flags; and 161 audio files of speeches about jihad. Of the audio files detailed above, one contained a jihad speech stating that listeners should terrorise unbelievers and another contained a jihad speech stating that every Muslim wants to see the extermination of unbelievers.

An examination of the 128 web links in the web history of your devices located 28 web links to ISIS material, eight web links to radical Islamic material, and three web links to jihadist material.

On 19 September 2014, JCTT officers attended the Arthur Gorrie Correctional Centre and conducted a digitally recorded interview with you. During the interview, you were informed that you were being investigated in relation to acts in preparation for a terrorist attack. Subsequent to the interview, and later that day, you contacted police and requested their attendance at the Arthur Gorrie Correctional Centre. On 20 September 2014, JCTT officers attended as requested. You made the following admissions: that you bought the firearm before you left Sydney and that it cost \$2000; that you were in the process of equipping yourself; that if you had more time, you would have been better equipped and in relation to the firearm:

If I had waited longer, I would have had things given to me for free ... and I thought this is going to do the job.

The Defence submit and I accept that this indicates some cooperation with law enforcement agencies in the investigation of your offending and that must be taken into account by the Court under section 16A(2)(h) of the *Crimes Act*.

Sentencing principles and consideration

5 It is common ground between the parties that you are to be sentenced in accordance with part 1B of the *Crimes Act* 1914 (Cth) . Section 16A(1) provides that the court must impose a sentence of a severity appropriate in all the circumstances of the offence. In determining that sentence, in addition to any other matters, the Court must take into account such of the matters listed in section 16A(2) which are relevant and known to the Court.

10 The Prosecution submits and I accept that any sentence must have due regard to the object and purpose of the terrorism legislation and the maximum penalties involved. As the High Court held in *Markarian v The Queen* (2005) 228 CLR 357 at 372 [30], the maximum available sentences serve as a yardstick and at 372 [31] that the
15 maximum penalties invite comparison between the worst possible case and the case before the Court at the time.

In *R v Touma* [2008] NSWSC 1475 at [74], Justice Whealy said:

20 *There is also a need to consider the nature and purpose of the anti-terrorism laws, the reason for their enactment and, in the context of the precise offences, the maximum penalties prescribed by the legislature.*

25 The Prosecution submits and I accept that one of the defining features of terrorism is the object to use serious violence or the threat of it as an instrument of coercion or intimidation of the community or governments and the pursuit of a political, religious or ideological cause. Terrorism offences such as that provided by section 101.6 of the *Criminal Code* have criminalised conduct motivated by such objectives. The maximum penalty of life imprisonment reflects the severity with which Parliament
30 views such conduct.

The Prosecution submits that while this maximum penalty may be intended for offending falling into the worst category of cases, as held by *Veen v The Queen (No 2)* (1988) 164 CLR 465 at 478:

35 *That does not mean that a lesser penalty must be imposed if it be possible to envisage a worse case; ingenuity can always conjure up a case of greater heinousness.*

40 The Prosecution submitted and I accept that it is self-evident that terrorist action has caused immense harm. Aside from the physical harm and threat terrorist acts pose to the lives and safety of individuals and the community, the social and economic cost can be immense. Terrorism can engender fear and distrust and lead to people being unwilling to exercise previously cherished freedoms or only being able to do so at the cost of increased restrictions. The daily function of a whole society may be
45 affected in many subtle ways.

In his sentencing remarks in *R v Lodhi* [2006] NSWSC 691 at [52], Justice Whealy observed that in that case the actions of the accused displayed an intention on his part to conduct a violent terrorist act or acts that would be carried out in Australia.

Justice Whealy observed that that was intended, in effect, to be a general attack on the community as a whole. It carried the obvious consequence that, if carried out, it would instil terror into members of the public so that they could never again feel free of the threat of bombing attacks within Australia.

5

As the Prosecution submitted, in sentencing an offender for a terrorist offence, the prominent considerations are the protection of the community, the punishment of the offender, denunciation of the offence, and deterrence. In *Lodhi v The Queen* (2007) 179 A Crim R 470, the New South Wales Court of Criminal Appeal accepted as correct the statement of Chief Justice Lord Bingham in *R v Martin* (1999) 1 Cr App R (S) 477. In *Lodhi v The Queen* at 490-491 [89]-[92], Chief Justice Spigelman said:

10

15

“In *R v Martin* (1999) 1 Cr App R (S) 477 at 480, Lord Bingham CJ as the Senior Law Lord then was, said, “In passing sentence for the most serious terrorist offences, the object of the Court will be to punish, deter and incapacitate. Rehabilitation is likely to play a minor (if any) part.”

20

In *Roche McKechnie J*, with whom Murray ACJ agreed, quoted this sentence at [112] and adopted as one of the sentencing principles applicable to a case of this character at [119]:

25

“For the most serious terrorist offences the sentence must be of a severity appropriate to the circumstances. The object of the sentence is to punish, deter and incapacitate.”

Chief Justice Spigelman continued:

30

“Although it is necessary to treat remarks made in a different statutory context with care, I note that in *R v Parole Board* (2005) 1 WLR 350 at [23] Lord Bingham referred to ‘the well-known objects of a custodial sentence (retribution, personal and general deterrence, incapacitation, reform, rehabilitation). But the predominant purpose of the sentence will be punitive.’”

35

His Honour continued:

40

“I will refer below to some aspects of the debate about the role of incapacitation in the exercise of a sentencing discretion. However, for purposes of its application in Australian law, this element should be understood as encompassed by the element of protection of the community, recognised as a separate element by the High Court in *Veen (No 2)*.”

Further on in his judgment at 493-494 [108]-[109], Spigelman CJ observed:

45

In the context of the crimes presently under consideration, incapacitation does not merely refer to the prospect that in the future a particular offender will re-offend. With respect to the crime of preparation for terrorist acts, the Court is not simply concerned with future criminal conduct of a recidivist character. It

is concerned with the possibility of perfection of the very crime for the preparation of which the offender has been found guilty.

5 *Accordingly, the issue is not merely one of punishing an offender for something s/he may do in the future. It is the recognition that protection of society requires the offender to be prevented from perpetrating the offences which s/he was preparing to commit. Giving the element of protection of society substantial weight, particularly in a context where personal deterrence and rehabilitation are, given the nature of the offence and the findings of fact,*
10 *entitled to little weight, is consistent with the principle of proportionality laid down by the High Court in Veen (No 2).*

In agreeing, Price J observed at 539 [274]:

15 *In determining the sentence to be passed the matters identified in s 16A(1) and 16A(2) of the Crimes Act must be taken into account. These matters include the subjective circumstances of the offender: s 16A(2)(m); and the prospects of rehabilitation: s 16A(2)(n). Rehabilitation and personal circumstances should often be given very little weight in the case of an offender who is charged with a terrorism offence. A terrorism offence is an outrageous offence and greater weight is to be given to the protection of society, personal and general deterrence and retribution.*

25 In that case, Lodhi had been sentenced to imprisonment to concurrent terms totalling 20 years and a non-parole period of 15 years was set. Lodhi had been charged with collecting certain documents which were concerned with preparation for a terrorist act, knowing that connection; with doing a certain act in preparation for a terrorist act; and with possessing a certain thing connected with preparation for a terrorist act, knowing that connection. The documents in the first charge were maps of the
30 Australian electricity supply grid. The act in the second was seeking information from a chemical supply company about the availability of materials capable of being used to make explosives or incendiary devices. The thing in the third charge was a document setting out the ingredients for and the method of making poisons, explosives, detonators, incendiary device, etcetera. The charges were laid under
35 sections 101.5, 101.6 and 101.4 respectively of the *Criminal Code*. The maximum prescribed sentences were imprisonment for 10 years, for life, and for 10 years respectively.

40 I also express my agreement with the observation made by Justice Latham with regard to sentencing principles applicable to terrorism offences in *R v Khazaal* [2009] NSWSC 1015 at [47] where her Honour said that:

5 *Terrorism offences have been described as crimes of notoriety and heinousness in the name of a political cause requiring the imposition of a significant sentence in order to mark the seriousness with which the offence is viewed. General and specific deterrence and denunciation must be manifestly reflected in the sentence ultimately imposed, given that the objects of terrorism are to use violence, or the threat thereof, as an instrument of coercion and/or intimidation of the community or governments in the pursuit of a political, religious or ideological cause. The offence committed by the prisoner falls within this rubric. The potential for great harm to members of the public, the economy and the social fabric reinforces the obligation of the Courts to denounce terrorism in all its forms by the imposition of sentences that have a strong deterrent effect.*

15 The legislative intention behind the criminal offence created by section 101.6 of the *Criminal Code* was set out by the Court of Appeal of the Supreme Court of Victoria in *Director of Public Prosecutions of the Commonwealth (Cth) v MHK* [2017] VSCA 157 at [48] where the Court said:

20 *It is important to bear in mind that the statutory offence created by section 101.6 of the Criminal Code was designed to ensure that persons who plan to commit dangerous acts of terror in our community be intercepted early, well before they are able to perpetrate such acts and thereby cause the appalling casualties that invariably result from acts of terror. It is for that reason that an assessment of the criminal culpability of a person convicted of such an offence is not measured purely by the steps and actions taken by the offender towards the commission of the act of terror, but, in addition, by a proper understanding and an appreciation of the nature and extent of the terrorism act that was in contemplation, and to which those steps were directed.*

30 A person who does acts in preparation for a terrorism act does not appear before the court to be sentenced as though he had, in fact, committed the terrorism act he was preparing for. Nevertheless, the nature and gravity of the terrorist act that was contemplated must inform the nature and gravity of the criminal response for the preparatory act, in accordance with *R v Lodhi* (2006) 199 FLR 364 at [51] and *Fattal v The Queen* [2013] VSCA 276 at [165].

40 I turn specifically to the sentencing principles under the *Crimes (Foreign Incursions and Recruitment) Act 1978*. This Act has subsequently been repealed and replaced with the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth), and amendments to part 5.5 of the *Criminal Code*. Nevertheless, the *Crimes (Foreign Incursions and Recruitment) Act* provided a significant legislative scheme to promote and protect Australia's international interests and, as the prosecution submits, the security and social cohesion of the nation by providing criminal sanctions for Australian citizens or residents who undertook activities in Australia or elsewhere that had the potential to interfere with or harm foreign countries or governments through the use of force, violence or armed hostilities.

One of the ways in which it did that was prohibiting Australian citizens and those ordinarily resident in Australia from engaging in hostile activities in a foreign state, and providing criminal sanctions for those that engaged in preparatory activity in Australia. The creation and punishment of those offences is important for both international and national security. However, it is also important to keep in mind that this offence is not a terrorism offence, and does not contain any element, as the prosecution correctly submits, that this offence was committed in furtherance of terrorism. What is appropriate in this case is to impose a sentence on count 3 which reflects the whole of your criminality on both counts 1 and count 3.

Section 16A of the Crimes Act

The first, under section 16A(2)(a) is the nature and circumstances of the offence. The nature of the offences and the circumstances in which they were committed have already been set out. As the prosecution submitted, each of the offences committed by you were manifestations of your religious and ideological beliefs. You adhered to a radical strain of Islam and held extremist ideological views that endorsed and promoted violent jihad. Your beliefs motivated you to commit each of the offences in pursuit of your commitment to what you perceived to be your religious obligation or duty.

The offences were each committed in the context of the Syrian civil war and the involvement in that conflict of militant Islamists seeking to promote and establish an Islamic caliphate. At the time you committed the offences, you were a young Muslim man living in Brisbane who associated with other similar-minded individuals who shared your extreme religious views. You and others met to discuss regularly and followed the events unfolding in Syria, and to debate and advocate the virtues of your religious views and those of the groups involved in the conflict who shared similar views. You drew inspiration to commit the offences from your preoccupation with the Syrian conflict, and your belief that it was necessary to instigate a terrorist attack in Australia to strike a blow against Western non-believers.

Count 1 is the culmination of your plan to travel from Australia to Syria to engage in armed hostilities as a foreign fighter. You were stopped by the authorities at the Brisbane Airport in March 2014 and were prevented from departing from Australia on an overseas flight that was to be the first leg of your journey to Syria. Prior to that, you had acquired approximately \$7,000 from associates to fund your preparations and travel. You had obtained an Australian passport. You booked and paid for an airfare to travel from Brisbane to Pristina, Kosovo with the intention of then travelling on to Syria via Turkey. You attended the airport to travel and were only prevented from doing so by the Australian authorities.

You wanted to travel to Syria to engage in armed hostilities against government forces as part of the efforts by opposition forces to overthrow the Assad regime, and the desire held by some militant Islamic groups to establish in its place a caliphate governed by Islamic law. You planned to travel from Australia to a location close to the Syrian border where you were to enter into and be received into Syria by a group which included other Australian Muslims in order to join them as a participant in armed hostilities in Syria. You knew or believed that the group you would be joining was associated with Jabhat al-Nusra or other Islamist opposition groups who were engaged in armed conflict with the Assad regime.

You believed that it was your religious duty to support and aid oppressed Muslims worldwide, no matter where such oppression may be occurring. You embraced the idea of engaging in offensive jihad through armed struggle and fighting where necessary. You believed it was your religious obligation and duty to fight with the opposition in Syria. The offence you committed involved a degree of planning or organisation. Although the conduct that is the subject of the offence involved only your attendance at the airport to leave the country, the steps leading up to that act involved a series of acts carried out over time as you planned and prepared for your travel overseas. You were assisted by others to fund and arrange your planned entry and receipt into Syria. The objective seriousness of this offence is high.

Count 3 occurred when, after you had been prevented from travelling to Syria, you began planning to carry out a domestic terrorist attack in Australia. Over a period of approximately two weeks, you did a series of acts with the intention of planning for and ultimately carrying out one or more terrorist acts. In particular, you travelled to Sydney where you acquired a .22 calibre rifle, transported the rifle back to your home at Logan, obtained 10 litres of petrol in a plastic jerry can, and obtained or attempted to obtain corks and glass bottles; these latter two activities to obtain the ingredients to make improvised explosive devices known as Molotov cocktails.

It appears that you had not yet decided upon the particular target for your intended attack. Nevertheless, the prosecution submits you planned to use the rifle you had obtained and/or the incendiary devices you would make from the bottles, corks and fuel you had acquired to kill random innocent people in a public place, and ultimately to die as a martyr in the attack. The defence, on the other hand, submits that the evidence does not support a finding that you planned to kill random innocent people.

The defence submits that you had not finalised a plan. However, while contemplating an attack, you considered a plan that would involve killing and/or injuring the police that you saw as involved in preventing you from leaving Australia to fight in Syria. You considered placing a telephone call to the police involved in investigating you and asking them to meet you at a place, most likely a park, under the guise of meeting to discuss important information you would claim to have. The defence submits that your planning did not ever involve exposing members of the general public to your actions.

The Defence also submits that the attack was not imminent and you had not yet determined when or even if you would ultimately go through with this plan. The Defence submits that your determination and commitment to your plan was doubtful. Your attendance upon shops on multiple occasions over an extended period of time to look at and purchase, including at times with some contemplation of returning, knives, bow and arrows and articles of clothing, including balaclavas, is consistent, it is submitted, with a lack of determination and a degree of procrastination.

The Defence submits that you seemed more interested in the intellectual exercise and associating with other likeminded Muslims than being driven and solely focused on committing a terrorist attack. You were prevented from travelling overseas on 9 March 2014. You were arrested just over six months later. Despite the passage of more than half a year, you had not carried out what would have been a relatively unsophisticated terrorist attack. The defence submits that you did consider a number of things in the lead-up to your arrest which tend to suggest that you were procrastinating and that an attack was not imminent and that perhaps it may not have ultimately been carried out. These things included, apparently, making plans for the future.

The only evidence tendered to support the Prosecution's submission that an attack was imminent is the evidence of your attendance at a number of stores and your purchase of petrol on 9 September 2018. On the other hand it would appear that, the Defence submits, suitable bottles had not yet been located and no Molotov cocktails had yet been constructed.

The defence submits that there was no suggestion of an imminent attack or of your no longer being around when one assesses the multiple telephone call conversations and text messages between you and the undercover operative in the lead-up to your arrest. The Defence submits that there is good reason to opine that you were quite open and close to the undercover operative, given your many detailed discussions about Islam and, for example, your assertion on the telephone to him on 20 August 2014 that you missed him and that, other than family, he would be the first person you called when you returned to Brisbane. In fact, in a text message with him on 8 September 2014, as I have already said, you told him you would probably meet him at the gym to do a workout on 10 September 2014, the day you were ultimately arrested.

I have taken account of all those submissions. It may well be that you intended to kill innocent law enforcement officers rather than random members of the public in a public place, but that does not, in my view, lessen the criminality of your behaviour. The offending was interrupted through police taking action at a stage where an attack, if it was not imminent, was at least planned to the point where you had obtained weapons to carry out a brutal attack. There seems little doubt, from what was found in your possession when you were arrested, that you intended to carry out a terror attack, as the Prosecution submits; albeit, the precise details at the time, place and target of the attack were yet to crystallise.

As the Prosecution submits, you appeared determined and committed to carry out an attack. Immediately after you had been prevented from leaving Australia to travel to Syria, you began equipping yourself with weapons such as bows, arrows and knives. These acts do not form part of the offence but the Prosecution submits that they rely upon them as they and the surrounding circumstances are evidence of your anger towards the authority at the time. Your anger and intent evolved and escalated over the following months to a point where you were readying yourself to carry out a terrorist attack.

5
10 Your travel to Sydney where you met with members of the Shura and convinced them to assist you in carrying out your plot is further evidence of your commitment to carry out a terrorist act. The Prosecution submits and I accept that although you planned to carry out the terrorist act alone, you were supported and assisted by other likeminded Muslims in Sydney to develop and facilitate your plan. These associates provided you with spiritual and religious motivation, encouragement and justification to steel your resolve to carry out your plan. They provided you with the rifle and gave you the imprimatur to carry out your planned attack. Having obtained their assistance and support, you returned to Brisbane to pursue your plan.

15
20 Of your own volition, you sought and obtained the fuel, corks and bottles to further arm and equip yourself for an attack. The extent of your religious and ideological motivation was extreme, as evidenced by the various statements you made to your associates, the undercover operative and the police. The statements contain a mixture of anti-Western sentiments, expressions of intolerance and disdain for non-believers, and proclamations and exhortations of the righteousness of your religious beliefs. The level of your radicalisation was also evident from the nature of the literature and media found in your possession when police searched your house and from the web browsing history identified on your electronic devices.

25
30 The Prosecution submits that the objective seriousness of the offence is very high. Your weapons and plan, as the Defence submits, were relatively unsophisticated, but that does not mean that your plans were not brutal or that they would not be successful. It is, however, true, as the Defence submits and as the Prosecution concedes, that the period of time covered by count 3 is only 12 days, that is, from 28 August to 10 September 2014. You left Brisbane by car en route for Sydney about a month before you were arrested.

35
The next sentencing principle is found in 16A(2)(c):

40 *If the offence forms part of a course of conduct consisting of a series of criminal acts of the same nature or a similar character -- that course of conduct.*

45 The Prosecution submits that you are to be sentenced in respect of two offences committed as part of a continuing course of conduct engaged in by you over a period of approximately seven months. During this period, you engaged in a series of acts that were connected in purpose and intent. Although the offences are different in nature, they were motivated by the same religious and ideological mindset and world view.

5 The principle of totality will be relevant to the sentencing exercise. The Prosecution submits and I accept that count 3 is the more serious of the two offences. Both the Prosecution and the Defence submit that the sentences should be structured so that the sentence to be imposed on count 3 properly reflects the totality of your conduct and represents an overall sentence that is just and appropriate to the totality of your offending behaviour.

10 The next relevant part of section 16A is sections 16A(2)(f) and (g):

The degree to which the person has shown contrition for the offence.

And:

15 *If the person has pleaded guilty to the charge in respect of the offence—that fact.*

20 You were originally charged with various offences under the *Crimes (Foreign Incursions and Recruitment) Act* and the *Criminal Code*. On 24 January 2017, contested criminal proceedings were held in the Magistrates Court in Brisbane in respect of those charges. I accept the Defence submission that those proceedings were very short and involved cross-examination about what you said to the police, a matter which has not been necessary to resolve. At the conclusion of those committal proceedings, you were committed to the Supreme Court for trial.

25 On 21 July 2017, an indictment was presented in this Court charging you with four counts of preparation for incursions into a foreign State, three acts in preparation for and planning a terrorist act, one count of recruiting for a terrorist organisation and one count of possessing things connected with terrorist acts.

30 On 15 November 2017, the indictment was listed for trial commencing on 23 July 2018. Subsequently, on 8 June 2018, a three-count indictment was presented charging you with “rolled up” charges in respect of the four preparations for incursions into a foreign State counts and the three acts in preparation for or planning a terrorist act counts, being counts 1 and 3 on the present indictment for sentence, and a charge for recruiting for a terrorist organisation, count 2. You were arraigned and pleaded guilty to counts 1 and 3. The trial of the remaining count, count 2, remained listed to commence on 30 July 2018 and directions were made by this Court in respect of various pre-trial issues. On 15 June 2018, the Prosecution indicated that it would no longer proceed with count 2 and the charge was formally discontinued.

40

The fact that you have pleaded guilty to the charges must be taken into account as a mitigating factor. The Court must have regard to the objective utilitarian value of a guilty plea; that is, that it saves the time, expense and uncertainty of a trial. If the Court is satisfied that it was demonstrated the guilty plea may be evidence of a subjective willingness on your part to facilitate the course of justice, the Court may also consider the guilty pleas as some evidence of remorse and an acceptance of responsibility. It appears in this case that you have accepted that you committed these criminal acts, but I see no evidence of remorse.

10 The timing of a guilty plea is an important consideration when determining the weight to be given to the plea as a mitigating factor. The utilitarian benefit of the guilty pleas in this case has saved the Court, witnesses and the community the time, expense and cost of a trial of about four weeks duration, in which the Prosecution would probably have called about a dozen witnesses.

15 Whilst the Prosecution accepts that you pleaded guilty to the charges after negotiation and rolling up of two offences, it does not accept that the guilty plea should be considered as timely or made at the first available opportunity. I do, however, accept that these pleas of guilty, whilst not made at the earliest possible time, should be taken into account in mitigation of penalty. You have not, apart from your plea of guilty, otherwise provided any evidence of contrition or remorse for your offending.

25 The next relevant section is section 16A(2)(h):

The degree to which the person has cooperated with law enforcement agencies in the investigation of the offence or of other offences.

30 As I previously said, you were interviewed by police on 20 September 2014 during which you made various admissions about planning for a terrorist act. You told police about the firearm you purchased and that you had been in the process of equipping yourself. There is, therefore, some limited cooperation with law enforcement agencies in the investigation of the offending, which I will take into account.

35 The next relevant sections are section 16A(2)(ja) and 16A(2)(j), general and specific deterrence. The Prosecution submits that specific deterrence has a role to play in the sentencing exercise because the offending was committed as part of a course of conduct that extended over a period of months, and the offending was driven by your particular religious and ideological beliefs and there is no evidence that you have resiled from or changed your beliefs. You have not shown any remorse for your offending.

45 The fact that you were prepared to offend in the way in which you did because of a belief in matters that you value above compliance with the laws of this country indicates that specific deterrence must be given some significant weight. You also valued your beliefs over the safety and lives of people who live and work in this community.

General deterrence is an important sentencing consideration for offences of this nature. The sentence imposed upon you should be of a severity, as the prosecution submits, sufficient to deter and discourage you and other like-minded persons from conducting or engaging in conduct of this nature.

5

The next relevant section is section 16A(2)(k), the need for adequate punishment. In addition to deterrence, the general sentencing purposes of community protection, punishment and denunciation are highly relevant to the sentencing task and should be given the greatest weight in determining the sentence of a severity appropriate in all of the circumstances. The sentence imposed by this Court must, as the prosecution submits, adequately punish you for your criminal conduct. The prosecution submits that the very high objective seriousness of the offending in this case, the need to protect the community from acts of terrorism, your high moral culpability, the need for general deterrence and specific deterrence, the maximum penalty for the offences and the need to punish you and denounce your conduct lead to the conclusion that a sentence of lengthy actual imprisonment is warranted and is the only appropriate sentencing outcome.

The prosecution has provided schedules of sentences that have been imposed and comparable cases on both count 1 and count 3 to assist the Court to identify the range of appropriate sentences available in the present case. Your counsel has also provided detailed submissions relevant to the comparable cases as to the sentence that the Defence submits should be imposed.

The next relevant section is section 16A(2)(m) which deals with the offender's character, antecedents and background. You were born in Brisbane in September 1992 and, as I have said earlier, are an Australian-born citizen of Albanian descent. You belong to the Muslim Sunni faith. You were 21 years old at the time of all of the offences and your arrest. You are now 25 years of age. At the time of the offences, you were unemployed. You have a prior but very minor criminal history.

Your parents separated when you were 13 years old but resumed their relationship about 18 months ago but that was short lived. Your father has visited you every week in custody, but your mother's regular visits ceased recently after she found the process too distressing. Both of your parents have come to Court to support you as well as one of your sisters and an aunt.

You have been on remand in custody since your arrest on 10 September 2014. You have four older sisters and one younger brother. You commenced but did not complete grade 11 schooling. Your employment history includes working at a petrol station, as an apprentice chef, in sales and in security. At one stage you contemplated joining the army and later the police service. While working in sales you met two Muslim men who invited you along to their study group. You became more interested in Islam in the second half of 2010. I have referred to the fact that you have a previous very minor criminal history. It did not lead to your being sentenced to community-based order or any form of imprisonment.

I accept that your time in custody has not been easy. You spent about three and a half months in solitary confinement when you were first detained in custody in September 2014. You were precluded from having any contact with your family for the first three weeks and your first visit from them was after a month of being
5 detained. For the first six to nine months all of these visits were of a non-contact type. You have been in the maximum security unit at the Brisbane Correctional Centre since March of this year.

The Defence submissions state that reflecting particularly on 2014 and your time
10 since, you regret your actions that have brought you before this Court. You wish that you had contributed positively to society. The Defence submits that you feel terrible about the effect your offending has had on the broader society as you feel that it has created or contributed to distrust in society as well as the feeling of reduced security. It is submitted that you do not want to add to bad sentiments in the world. The
15 Defence submits that had you had the opportunity to do 2014 over, you would take it and not repeat your offending behaviour. You now realise that if you had committed an attack then you would have caused much harm. That much is true. But these are submissions not backed up by any evidence from you or others and accordingly I can give them little weight.

20 Section 16A(2)(n) deal with the prospects of rehabilitation. The Court must take into account, insofar as it is relevantly known, your prospects of rehabilitation. There are submissions about that but no evidence. It cannot in these circumstances have any meaningful effect on the sentence to be imposed.

25 The next relevant section is section 16A(2)(p), the probable effect of any sentence or order under consideration would have on the person's family or dependents. The prosecution submits that it is not aware of any issues that may be relevant to the probable effect that any sentence may have on your family or dependents. For
30 present purposes it submits that it is sufficient to note that the effect referred to is only to be taken into account as a mitigating factor where it is exceptional, consistent with the common law position. Of course, a sentence imposed on you will have an effect on your family, particularly, it seems, on your mother.

35 **Sentencing options and requirements**

Pursuant to section 17A of the *Crimes Act*, a sentencing Court must not impose a sentence of imprisonment unless satisfied that no other sentence is appropriate in all
40 the circumstances of the case. It is accepted that in all the circumstances, this is obviously a case where a sentence of imprisonment is the only appropriate sentence and that threshold requirement is satisfied. Section 19 of the *Crimes Act* specifies that in the imposition of multiple sentences no sentence must commence later than the end of a sentence already fixed so as to avoid any hiatus in accumulated
45 sentences.

Pursuant to section 19AB(1), if the Court imposes a head sentence of imprisonment in the aggregate of more than three years the Court must set a non-parole period in respect of the minimum period that the Court determines is appropriate to be served by you before being eligible for release on parole, except with regard to a sentence
5 for count 3.

Count 3 concerns an offence against section 101.6(1) of the Criminal Code and is therefore a terrorism offence and as such is a minimum non-parole period offence for the purposes of section 19AG of the Criminal Code. Consequently, pursuant to
10 section 19AG(2)(a) the Court must fix a single non-parole period of at least three-quarters of the sentence of imprisonment to be imposed for count 3.

The prosecution submits that a lower discounted head sentence should not be imposed for the purposes of setting the effect of section 19AG relying on *R v Lodhi*
15 [2006] NSWSC 691 at [107] where Justice Whealy said that he did not accept the submission made on the offender's behalf that because of the operation of section 19AG it was in some way necessary to fix a lower head sentence than otherwise might be appropriate. However, in that case, I note that the defendant in *Lodhi* was convicted after being found guilty by a jury. Therefore, there was no occasion to
20 lower the head sentence. It was not, as in this case here, a guilty plea. Whilst there is no issue that section 19AG applies to the sentence to be imposed for count 3, the Prosecution submits that there nevertheless remains an issue concerning the effect of the principle of totality when imposing sentences for both counts 1 and 3.

25 The Prosecution submitted and the Defence agreed that the principle of totality is relevant to this sentencing exercise and the sentence should be structured so that the sentence to be imposed on count 3, the more serious offence, properly reflects the totality of your criminality. That submission is predicated upon the global approach to which the principle of totality should be given effect. The result would be, on the
30 Prosecution's submission, an imposition of a greater sentence of imprisonment for count 3 than that which would have been imposed had count 3 stood alone; and the imposition of a lesser concurrent sentence of imprisonment for count 1.

It must be observed, however, that pursuant to section 19AB(1) if the Court imposes
35 a head sentence of imprisonment which in the aggregate exceeds three years, the Court must, as I said, set a single non-parole period because of the effect of section 19AG(2) which requires a single non-parole period to be at least three-quarters of the aggregate sentence. The Court should take that fact into account when a global sentence comprehending the totality of your criminality is imposed for count 3.
40

In doing so, the Prosecution submits that the Court may consider that the conduct which is the subject of count 1 may justly and appropriately be reflected in a global sentence for count 3 by imposing a greater overall sentence for count 3 but ameliorating what may otherwise have been considered to be an appropriate global
45 sentence to take into account the effect of the imposition of a single minimum non-parole period because of the application of section 19AG(2). That is because section 19AG(2) would not otherwise apply to count 1.

Accordingly, I hold that the sentence imposed on count 3 is increased because of taking into account count 1; but ameliorated to take account of the fact that the minimum non-parole period does not apply to count 1 and also to take account of your plea of guilty.

5

In conclusion, the Prosecution submits that, given the objective seriousness of the offences in this case and the importance of general deterrence, the requirements of section 17A of the Crimes Act are satisfied and that sentences of imprisonment involving a significant period of full-time custody are the only appropriate sentences.

10

I turn now to consider other sentences which have been imposed at first instance or on appeal to determine the appropriate sentence to be imposed in your case. The Prosecution, as I have said, tendered a schedule of previous sentences imposed for offences against section 101.6 of the Criminal Code. It is appropriate to start with the most recent appellate decisions which are the *Director of Public Prosecutions v Besim* [2017] VSCA 158; and *Director of Public Prosecutions (Commonwealth) v MHK* [2017] VSCA 157. In both cases, the offender had pleaded guilty.

15

In *Besim*, the offender planned to crash a car into a law enforcement officer and behead him with a knife. The attack was planned for ANZAC Day in Melbourne in 2015. The acts in preparation for the attack had occurred over a month. The offender was caught as he had been discussing the planned attack online with a person who was in the United Kingdom and under surveillance. Originally, like you, the offender in *Besim* had planned on going to fight in the Middle East but he could not obtain a passport. At the time of his arrest, seven days before the planned attack, he was found to have conducted internet searches on memorials where ANZAC Day was being remembered, to have had a knife in his car and a Jihad flag in his possession, to have made a pledge to ISIS and to have written and left a suicide note.

25

Besim was sentenced at first instance to 10 years' imprisonment with a non-parole period of seven years and six months' imprisonment with the sentencing judge saying that but for the plea of guilty the head sentence would have been 15 years' imprisonment with an 11 year non-parole period. The Crown appeal against sentence was upheld and he was re-sentenced to 14 years' imprisonment with a non-parole period of 10 years and six months' imprisonment. *Besim* was only 18 years old at the time of the offence. Whilst he did not give evidence on sentence, the Court accepted that he had been exposed to extremist ideas by older and charismatic individuals. Youth, immaturity and previous good character were mitigating factors.

35

The sentencing court found contrition. His plea of guilty was relatively early. As a mitigating factor, the sentencing judge acknowledged the possibility that he might have pulled out. By the time of sentencing, the offender submitted that he had disavowed any intention to pursue violent extremism, but this was not found to have been proven to the Court. The sentencing judge found that he would face some hardship in custody due to his age but that he had good prospects of rehabilitation due to his close-knit family and work whilst in custody.

45

Besim had planned what was referred to as a most brutal and outrageous crime. He intended to brutally kill a police officer selected at random, publicly behead him and seize the officer's gun and kill as many others as he could in the immediate vicinity until he was himself either killed or seriously injured. He intended to do this during the course of ANZAC Day 2015 commemorations in Melbourne. He had lived a perfectly ordinary law-abiding life until, whilst in year 10 at school, he attended an Islamic centre in Melbourne where he was exposed to extremist hate-filled thinking from older hateful but charismatic individuals.

10 He was recruited to fight for IS by one Neil Prakash. He had been a good friend of Numan Haider who, the day after a fatwa had been issued by ISIS instructing followers of ISIS to kill disbelievers, had attacked police officers with a knife at a police station before being shot and killed. Prakash, who was then fighting for ISIS in Iraq, contacted Besim through social media, urging him to come and join him in Iraq. He was not, however, able to obtain a passport. Besim drafted a pledge of allegiance to the leader of ISIS and then began conducting internet searches regarding the ANZAC Day commemorations.

20 He then contacted a man in England, as I have said, who he was told by Prakash was an influential religious figure but was, in fact, only a 14 year old boy. He set out in detail his intentions, targets and motivation. He specifically selected ANZAC Day because it is a day when Australians commemorate their fallen heroes. Although there was the opinion of a forensic psychologist tendered that Besim had renounced violent Jihad, he did not give evidence of that.

25 The Court of Appeal in Victoria made it clear that they disagreed with the finding by the sentencing judge that there was any suggestion that Besim might not have proceeded to carry out his planned attack. The Court of Appeal held that, given the nature of his offence and the purpose of the relevant provision under which he was charged, mitigating factors of a personal nature had to be given substantially less weight than in other forms of offending. Greater weight must be given, as they said, to the protection of society, general deterrence and retribution. The Court held that offending of this kind by its very definition will always be regarded as extremely grave, but that there were aggravating factors present in that case, including the fact that a police officer was to be targeted for beheading, that the killing was to take place publically, and on Anzac day, and that Besim was willing to kill other innocent civilians if at all possible. Those factors that made that case an extremely serious example of a terrorism offence, and Besim's moral culpability was said to have been very great indeed.

40 The Court of Appeal sentenced Besim to a term of 14 years' imprisonment, and fixed the statutorily mandated non-parole period of 10 years and six months. The Court also explicitly said that had it not been for Besim's plea of guilty, they would have imposed a sentence of 19 years' imprisonment with a non-parole period of 14 years and three months. There was accordingly a substantial discount in that case for the plea of guilty, consistent with the laws applying to sentencing in Victoria.

Also of assistance is the decision of the Victorian Court of Appeal in *DPP v MHK*. MHK pleaded guilty to one count of conspiring to do acts in preparation for or planning a terrorist act contrary to sections 11.5 and 101.6 of the *Criminal Code*. He planned and prepared to build a bomb and detonate it in a populated area in order to cause significant death and injury to members of the public to further the cause of ISIS, of which he had become an adherent. He had searched for and obtained materials and documents relating to the manufacture of improvised explosive devices, and he had partially constructed such devices. He was sentenced on the basis that the only reason the bombs were not fully completed and not then activated in a public place was because police intervened and arrested him. The sentencing judge was satisfied that the offender had every intention of using the bombs, knew of their potential consequences, and persisted with his intention until the intervention of police.

MHK was only 17 at the time of the offending. He had migrated with his family from Syria in 1993. He had indicated his willingness to plead guilty at the committal, and had no criminal record. It was said on his behalf that in the 12 months prior to the offending, he had experienced emotional difficulties and anxiety and had started using cannabis. He had started to study Arabic intensively, and began to absorb ISIS propaganda and wanted to travel to Syria to fight in the civil war. He gave up this idea because of the requirement for parental approval for travel, but instead thought of other ways to support the cause of jihad.

The sentencing judge found that there was since a transformative change in MHK, and his attitude whilst in youth custody so that the need for specific deterrence had been reduced to a significant degree, and his prospects of rehabilitation were good. He was sentenced to seven years' imprisonment with a non-parole period of five years and three months, and the sentencing judge said that but for the plea of guilty, the head sentence would have been 11 years' imprisonment with a non-parole period of eight years and three months.

The Crown appealed on the basis that the sentence was manifestly inadequate. That appeal was successful, and he was resentenced to a term of 11 years' imprisonment with a non-parole period of eight years and three months. He had indicated his willingness to plead guilty at a very early stage, and he was a child. A number of members of his family still resided in Syria.

In considering the issue of whether or not the sentence imposed by the judge was wholly outside the range of sentencing options available, the Court of Appeal had regard to the relevant sentencing principles. I will now refer to those principles to which they referred at [48]:

5 *It is important to bear in mind that the statutory offence created by section 101.6 of the Criminal Code was designed to ensure that persons who plan to commit dangerous acts of terror in our community be intercepted early, well before they are able to perpetrate such acts and thereby cause the appalling casualties that invariably result from acts of terror. It is for that reason that an assessment of the criminal culpability of a person convicted of such an offence is not measured purely by the steps and actions taken by the offender towards the commission of the act of terror, but, in addition, by a proper understanding and appreciation of the nature and extent of the terrorist act that was in*
10 *contemplation, and to which those steps were directed.*

The Court also held at [51]:

15 *Unsurprisingly, in cases involving terrorist offences, and preparation to commit terrorist acts, the principles of general deterrence and protection of the community are given substantial, if not primary, weight*

The Court then held at [53]:

20 *Put simply, those planning to commit acts of terror must appreciate that, if they are apprehended in the process of preparing to perpetuate such acts, they will forfeit their liberty to live within the community for a very lengthy period of time. It is in that way that those seeking to enjoy a perverted form of glory or satisfaction, from the perpetration of such acts can be brought to understand*
25 *that the cost to them, if they are intercepted, will be particularly high.*

Their Honours then said at [54]-[55]:

30 *Further, the authorities have made it clear, and properly so, that the concepts of protection of the community and incapacitation of the offender are separate considerations from that of general deterrence ... [T]he very purpose of provisions such as s 101.6 contained in Div 101 of the Criminal Code, is to intercept and interrupt planned acts of terror. Persons who commit such an offence ordinarily only desist from doing so because they are apprehended. As*
35 *such, at the time of their apprehension, they are, a fortiori, persons who pose a very real danger to the community. Unless the Courts give adequate weight to the concepts of protection and incapacitation, that would have failed to comply with the clear intent of the legislature in creating offences of the type with which this case is concerned.*

40 *It follows that, given the nature of the offence, and the purpose of the statutory provisions, mitigating factors of a personal nature, such as prospects of rehabilitation and the like, are given substantially less weight than in other forms of offending.*
45

At [61] the Court analysed this type of offence as follows:

5 *The seriousness of the offence to which the respondent pleaded guilty is reflected in the maximum sentence of life imprisonment prescribed by the Criminal Code. Terrorist acts of the kind planned and prepared by the respondent are calculated to and do cause widespread carnage and suffering amongst civilian populations. Their objective is to strike at the heart of our liberal, democratic and tolerant society. Such actions, and the conduct indulged in by the respondent, are driven by depraved and evil ideology and*
10 *mentality which are anathema to the fundamental values of our nation.*

At [67] the Court also said that while potential rehabilitation is an important sentencing factor, nevertheless, it must give way to the requirements that the sentence be adequate so as to sufficiently express the Court's and the community's
15 repugnance at the actions and intentions of the offender, and to deter other like-minded young people from embarking on and proceeding down the same pathway. The plea of guilty, which was an early plea, was also properly taken into account.

The Court referred to the cases of *Lodhi v The Queen*, *Elomar v The Queen*, and
20 *Fattal v The Queen*, cases of sentences upheld on appeal, as well as first instance sentences.

Another useful decision as to guiding the sentence which should be imposed is found in the first instance decision of *R v Sulayman Khalid* [2017] NSWSC 1365. There
25 were three offenders who had each pleaded guilty to one offence under section 101.6 and section 11.5, that is, conspiracy to commit acts in preparation or planning for a terrorist attack. The fact that this was a conspiracy by three people makes it different from the present case. In that case, each offender received a discount of 10 per cent for their plea of guilty. The learned sentencing judge noted the range of discount for
30 the utilitarian value of pleas is 10 to 25 per cent, with the timing of the pleas being the predominant consideration.

The leader of the conspiracy in that case was sentenced to 22 years and six months' imprisonment with a non-parole period of 16 years and nine months. Of the other
35 two members of the conspiracy, one was sentenced to 18 years and 10 months' imprisonment with a non-parole of 14 years and two months and the 14 year old was sentenced to 13 years and six months' imprisonment with a non-parole period of 10 years and one month.

40 The Prosecution concurred with the Defence submission that most relevant to the appropriate sentence to be imposed in this case was the sentence imposed by Justice Fagan in the New South Wales Supreme Court in *R v Khaja* [2018] NSWSC 238. Khaja pleaded guilty to one offence against section 101.6 of the *Criminal Code*, particularised that in the period of one week he conducted reconnaissance of
45 potential targets, attempted to obtain weapons, attempted to obtain a flag, and sought guidance and assistance from another person.

Also taken into account was the second offence, this time against section 119.4 of the *Criminal Code*, engaging in conduct preparatory to entering a foreign country with intent to engage in hostile activities. He was sentenced to 19 years' imprisonment with a non-parole period of 14 years and three months.

5

The circumstances of the offence were that in May 2016 the offender went to the Timor Army barracks in Western Sydney and Court buildings in the business centre of Parramatta for the purpose of assessing those facilities as targets for an attack with firearms and explosives.

10

He subsequently made contact with undercover operatives he thought were sympathisers and attempted to procure weapons from them and sought their advice with respect to the execution of his planned attack. He intended to kill as many non-Muslims as he could before being killed himself. He contemplated 50 deaths. He had not, however, as yet obtained any weapons or any means of carrying out any attacks. He discussed with the undercover operatives sourcing a Glock firearm or assault rifle, the flag of the caliphate, and his planned attack using an improvised explosive device or suicide belt. But as I said, he had not yet obtained any such weapons.

20

He advised the undercover operatives that he was contemplating an army barracks or the Parramatta Courthouse. He sought advice as how to make a suicide vest. His expressed purpose was to kill unbelievers, to intimidate the Australian people, and to create a climate of fear in which the country could be subjected to a Muslim rule. He expected his actions would encourage others to undertake similar atrocities, leading to Australian security services being overwhelmed and the Australian people being forced to live under Islamic law. He repeatedly expressed the view that a violent attack on unbelievers is the religious obligation of Muslims.

25

30

He acted on his own initiative in making plans and preparations. The target of his planned attack was not finalised. Prior to this offence, in February 2016, Khaja was intercepted attempting to depart Australia, having purchased an airfare to Thailand with the intention of travelling on to Syria to join ISIS, where he intended to participate in armed combat to overthrow the existing Syrian Government.

35

The learned sentencing judge found Khaja's planning was advanced, in that he had carried out repeated reconnaissance and was at the stage of selecting the location for his attack, procuring weapons and seeking advice about how to make the attack effective. There was more to be done before the attack was launched, but the sentencing judge did not accept the characterisation of low-level and early-stage preparation.

40

The learned sentencing judge noted that general deterrence and incapacitation are strongly influential factors in the determination of sentence. His pleas of guilty to the acts in the preparation charge were entered at the last possible moment before trial. The sentencing judge concluded that his plea of guilty was no more than an acceptance that conviction was inevitable, and not an expression of remorse. Khaja was only 18 years of age at the time of both offences. But while he was young and impressionable, the Judge found he was old enough to know that he was planning something appallingly wrong and his culpability was very high.

10 You, on the other hand, were 21 years old; still young, but well aware of what you were doing and the harm you intended to cause. The judge in Khaja's case found that there was an absence of a realistic prospect that he would abandon his religiously based hatred of non-Muslims and of Australia's democratic institutions and he was likely to remain a danger to the community, and that, therefore, personal
15 deterrence was a strong factor.

The Defence submits in this case that, although in many respects similar, Khaja's offending was more sophisticated in that he used an encrypted broadcast and messaging application to view detailed instructions for making a bomb from readily
20 available components, communicate with an Islamic religious leader about matters which led the sentencing judge to conclude that he did not expect to survive the attack he intended to carry out on Australian soil and that his communications with the undercover operative suggested that he wanted to cause maximum carnage to kill as many planned targets as possible. But, of course, you had armed yourself, unlike
25 Khaja, so that is an important aspect in which your offending was more serious.

The Defence's final submissions were that you should be sentenced to a head sentence in the vicinity of 17 years' imprisonment with a non-parole period after 75 per cent of the head sentence. In light of considerations of parity with the sentence imposed in *R v Succarieh*, a lesser concurrent sentence in the vicinity of three years should be imposed for count 1. For the summary charges transmitted to this Court pursuant to section 651 of the *Criminal Code*, you should be convicted and not
30 further punished.

35 Your criminal offending was very serious, indeed. You attempted to go to Syria and were only prevented by vigilant law enforcement. You armed yourself with serious weapons in preparation for a terrorist attack in Australia. I see no evidence that your views or motivation has changed. You remain a serious risk to the public. The sentence imposed on you must not only punish you but, most importantly, protect the
40 community and deter you and others who might be tempted to behave like you.

Your acts, Mr Kruezi, may have been motivated by your sincerely-held religious beliefs, but they showed no respect for the rights or lives of others. You did acts preparatory to engaging in brutal and savage acts which would have caused death and destruction to their immediate victims and were designed to cause fear and intimidation to the whole community. Instead, our community is strong in its resolve to stand up to terrorism. The unfortunate effect of your activities is just to make people more afraid of your fellow Muslims and of other immigrant communities, even though you were born in Australia. And, of course, another unfortunate effect is to bring suffering upon your family, who are here in support of you.

I would like to pay tribute to those brave members of the community, including the Muslim community, who have assisted the police and authorities with their difficult job and, of course, full credit and praise is due to the brave men and women of our police, security and intelligence agencies who protect society from those like you who would do us harm for ideological reasons.

You have been in custody since 10 September 2014 when you were arrested. Not all of that time can be declared to be time spent in custody under this sentence in accordance with the sentencing practice referred to in section 159A of the *Penalties and Sentences Act 1992* (Qld).

The sentence to be imposed on you on count 3, taking into account all the factors I have mentioned, would be 19 years' imprisonment. I propose therefore, in accordance with the submissions made, to take account of the time you have spent in pre-sentence custody of 14 months and 22 days that cannot be declared off the head sentence to be imposed. That will lead, in accordance with the submissions made to me, to a sentence of 17 years and four months' imprisonment. You spent 972 days from 10 September 2014 until 8 May 2017 in custody as time that can be declared as time spent in custody under this sentence. I record convictions for both counts 1 and 3.

I am obliged by section 105A.23 of the *Criminal Code* (Cth) to warn you that an application may be made by the Attorney-General or a legal representative of the Attorney-General to the Supreme Court of the State or Territory under division 105A of the *Criminal Code* for a continuing detention order requiring you to be detained in prison after the end of your sentence for an offence under section 101.6 of the *Criminal Code*, count 3 on the indictment.

So the sentence imposed is this. On count 3, I sentence you to 17 years and four months' imprisonment. Your non-parole period is 13 years. On count 1, I sentence you to a concurrent period of imprisonment of three years and six months. The sentence of imprisonment is to commence today. I declare that you have spent 972 days in pre-sentence custody from 10 September 2014 until 8 May 2017 as time spent in custody under this sentence. On each of the summary counts, I record convictions and impose no further punishment.