

Possess Things / Collect or Make Documents Connected with Terrorist Act

Sections 101.4 / 101.5 (Cth) *Criminal Code*

s 101.4 Possess things connected with terrorist acts

(1) possess a thing connected with preparation for, the engagement of a person in, or assistance in a terrorist act, knowing of the connection

Maximum Penalty: 15 years.

(2) possess a thing connected with preparation for, the engagement of a person in, or assistance in a terrorist act reckless as to the connection

Maximum Penalty: 10 years.

s 101.5 Collect or make documents likely to facilitate terrorist acts

(1) collect or make document connected with preparation for, the engagement of a person in, or assistance in a terrorist act, knowing of the connection.

Maximum Penalty: 15 years.

(2) collect or make document connected with preparation for, the engagement of a person in, or assistance in a terrorist act reckless as to the connection.

Maximum Penalty: 10 years.

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	LODHI (36) (2006) 199 FLR 364 [2006] NSWSC 691 Whealy J (2007) 179 A Crim R 470 [2007] NSWCCA 360	Collect document: s.101.5(1) Possess document: s.101.4(1)	VG	10y 10y 20y Total: 20y NPP 15y	AD	Nil	Offender planned to damage part of electricity system but no evidence as to precise nature of ultimate target – collected maps of Australian electricity supply system - sought information concerning availability of chemical materials capable of being used for manufacture of explosives or incendiary devices - possessed document containing information on ingredients for manufacture of poisons, explosives, detonators and incendiary devices connected with preparation for terrorist act - culpability “at a high level, although falling short of worst category of case”: [55]. Prior good character

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	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
2.	TOUMA (28) [2008] NSWSC 1475 Whealy J	2 x Possess thing s.101.4(1) 2 x Do act in preparation for terrorist act: s.101.6(1) [<i>Life</i>]	PG (25%)	8y 14y <u>Total:</u> 14y NPP 10y 6m		Limited.	Part of larger group - acquired substantial quantities of firearm ammunition - attempted to make improvised explosive devices - possessed collection of items including copper pipe, gun powder, 165 railway detonators, instructional notes, dismantled firearm ammunition - possessed collection of documents, including electronic documents, images, videos and audio files - first two counts very serious level - conduct deliberate and sustained - continuing course of criminal conduct - extremist views. Stable upbringing - affected by anti-Islamic sentiment after 9/11 - some reason to accept has moved / moving away from extremism. MULAHALILOVIC, SHARROUF and BALADJAM sentenced for s.101.4 offence K.CHIEKHO, M.CHIEKHO, ELOMAR, HASAN, JAMAL, and BALADJAM sentenced for s.101.6 offence
3.	MULAHALILOVIC (32) [2009] NSWSC 1010 Whealy J	Possess thing s.101.4(2)	PG (10%)	4y 8m NPP 3y 6m		Nil	Police found receipt in offender's wallet recording purchase of quantity of ammunition - torn page from notebook also found in wallet with notation related to ammunition - ammunition never located - ammunition capable of being used in variety of rifles - in possession of extremist literature and material - serious offence - part of group charged with serious terrorism offences - committed offence out of friendship and sympathies with extremist views Good character - cautious view that offender has abandoned interest in extremism - remorse and acceptance of responsibility TOUMA, SHARROUF and BALADJAM sentenced for s.101.4 offence K.CHIEKHO, M.CHIEKHO, ELOMAR, HASAN, JAMAL, TOUMA and BALADJAM sentenced for s.101.6 offence

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4.	SHARROUF (27) [2009] NSWSC 1002 Whealy J	Possess thing: s.101.4(1)	PG (25%)	5y 3m NPP 3y 11m		Minor	<p>Possession of 6 clocks and 140 batteries – when combined with other components capable of constructing six timed explosive devices - possession of extremist material - extremist views - one-off acquisition, not part of any course of continuing criminal conduct - towards higher end of scale objective seriousness</p> <p>Finding as to objective seriousness moderated by existence of mental illness - capacity at time of offence to reason about actions and consequences likely to have been significantly impaired by mental illness (schizophrenia - depressive anxiety disorder) – some prospects for rehabilitation although on cautious basis - remorse and acceptance of responsibility</p> <p>MULAHALILOVIC, TOUMA and BALADJAM sentenced for s.101.4 offence. K.CHIEKHO, M.CHIEKHO, ELOMAR, HASAN, JAMAL, TOUMA and BALADJAM sentenced for s.101.6 offence</p>
5.	KHAZAAL (No. 2) [2009] NSWSC 1015 Latham J (2013) 304 ALR 345 (2013) 233 A Crim R 106 [2013] NSWCCA 140	Make document: s.101.5(1)	VG	12y NPP 9y	AD	Overseas convictions (terrorist related activity)	<p>Published on internet compilation of book in Arabic called “Provisions on the Rules of Jihad” – compiled from material on internet - discussed means of assassinating and identities of targets that should be assassinated -- book advanced religious or ideological justifications for violent struggle - objective seriousness of offence “not far removed from worst category of an offence”</p> <p>Could not be regarded as person of prior good character in light of various foreign convictions - no remorse – poor rehabilitation prospects.</p>

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6.	KENT (32 at sentence) [2009] VSC 375 Bongiorno J	Make document: s.101.5(2) Being a member of terrorist organisation: s.102.3(1) [10y]	PG	2y 6m 4y 6m <u>Total:</u> 3y 9m			2004–2005 - member of Melbourne-based terrorist organisation - fostering or preparing doing of terrorist act in Australia or overseas, with intention of causing death or serious physical harm - proposed terrorist act alleged to be intentional detonation of one or more explosive or incendiary devices, or use of weapons - religious obligation to pursue violent jihad against non-believers - organisation shut down before committing a terrorist act - organisation was towards lower end of scale of seriousness Contributed to production of jihadi video to be published online - criminality in respect of membership of organisation falls at about mid-point or slightly below - similar to some co-offenders, and considerably less than others Student – married with children. BENBRIKA, JOUD, SAYADI, MERHI, A.RAAD, E.RAAD and HADDARA sentenced for s.102.3 offence BENBRIKA sentenced for s.102.2 offence JOUD, A.RAAD, E.RAAD sentenced for s.102.6 offence JOUD, SAYADI, A.RAAD sentenced for s.102.7 offence
7.	M.AL MAOUIE (19) SAID (22) [2017] NSWSC 1365 Bellew J (SAID) [2019] NSWCCA 239 (AL MAOUIE) [2022] NSWCCA 30	Make document: s.101.5(1) Make document: s.101.5(1)	PG (10%) PG (10%)	9y NPP 6y 9m 9y 6m NPP 7y 1m	AA 8y NPP 6y AA 9y NPP 6y 9m	Minor drug offences nil	Part of group who planned over 6 weeks to do violent acts to further jihad in Australia – acts unresolved but to involve firearms, killing of police officers and attacking government buildings – all offenders committed to violent extremism and general deterrence important – other co-offenders pleaded to conspiring to do acts in preparation (s.101.6) M.ALMAOUIE – wrote one document only – short but reflected violent purpose and was disseminated among group SAID – wrote two documents – showed pre-planning – committed jihadist. IM, KHALID and J.AL MAOUIE sentenced for s.101.6 offence GHAZZAWY sentenced for s.101.5 offence AL MAOUIE: on appeal conceded <u>Xiao</u> error

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8.	GHAZZAWY (18 at offence, 21 at sentence) [2017] NSWSC 474 Bellew J [2021] NSWCCA 70	Make document: s.101.5(1)	PG (15%)	8y 6m NPP 6y 4m	AA 8y NPP 6y	Nil	Part of group who planned over 6 weeks to do violent acts to further jihad in Australia - preparation of terrorist acts recorded in handwritten documents by offender – wrote of plan to attack AFP building, conduct guerrilla warfare in Blue Mountains and attack on Lithgow jail – offender’s state of mind at time of offending consistent with what he wrote - reflected unequivocal commitment to violent jihadist beliefs which manifested in plan to engage in violent attack - specific identification of two proposed targets, reference to specific areas in which those targets located, reference to degree to which those areas might impact upon any proposal to carry out violent attack – offending not spontaneous. Youth - some prospect of rehabilitation. IM, KHALID and J.AL MAOUIE sentenced for s.101.6 offence M.AL MAOUIE and SAID sentenced for s.101.5 offence CCA: <i>Xiao error</i> .
9.	ALAMADDINE (No.3) (22) [2018] NSWSC 681 Johnson J [2020] NSWCCA 232	Possess thing: s.101.4(2) Supply firearm to unauth person: s.51(1A) <i>Firearms Act [20y]</i> Sched: Possess firearm 2 x Breach Firearms Prohibition Order	PG (15%)	7y 2m NPP 5y 3m 14y 2m NPP 10y <u>Total:</u> 17y 8m NPP 13y 6m	AA 6y NPP 4y 6m 12y NPP 8y 6m <u>Total:</u> 14y NPP 10y 6m	assault and firearms offences – subject to Firearms Prohibition Order – subsequent offences for refusal to answer questions before the NSW Crime Commission	Supplied firearm used to shoot civilian police accountant in terrorist attack – supplied firearm to co-offender who supplied 15y shooter – had ‘good idea’ gun would be used for terrorist attack – known to be person with access to firearms and willingness to supply them – not clear whether supplied for payment – beyond bare recklessness – very high degree of criminality – supply firearm offence in most serious range Lebanese background – family support – strict custodial conditions CCA: sentencing judge erred finding offender sympathetic towards Islamic State and motivated to commit offences because of such sympathy – CCA found offender “anticipated” manner in which gun would be used; conversations showed co-offender disclosed revolver was to be used for the purposes of a terrorist attack; indifferent to substantial risk revolver would be used in a terrorist act in support of Islamic State

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10.	BALADJAM (32) [2018] NSWCCA 304	Possess thing: s.101.4(1) Possess thing: s.101.4(1) 2 x Do act in preparation / planning for a terrorist act: s.101.6(1) [<i>Life</i>]	PG	8y 7y 18y <u>Total:</u> 18y NPP 14y	AD		(2005) One of group of men involved in conspiracy – devout Muslim seeking to defend religion – purchased ammunition and chemicals – in possession of extremist material, loaded firearms, chemicals and phone in false name – degree of planning to avoid detection – could not be satisfied intended to bring about loss of life Troubled childhood including violence MULAHALILOVIC, SHARROUF and TOUMA sentenced for s.101.4 offence. K.CHIKHO. M.CHIKHO, ELOMAR, HASAN, JAMAL, TOUMA sentenced for s.101.6 offence
11.	PENDER (26) [2019] NSWSC 1814 Harrison J	Possess knife: s.101.4(1) Threaten judicial officer: s.326(1) (NSW) <i>Crimes Act [10y]</i>	PG (8%)	4y NPP 3y FT 6m <u>Total:</u> 4y 3m NPP 3y 3m		lengthy record for violence – breached conditional liberty	Made threats towards police and attempted to retrieve knife from sleeve – spontaneous offence on street in early hours of morning – continued threats at police station and against magistrate when she refused bail – threats suggested some link to fundamentalist terrorist ideology – both offences towards low end of scale of seriousness Suffered from long-term serious mental illness – contributed to offending – violent tendencies pre-date ideology which offender now renounces
12.	GALEA (36) [2020] VSC 750 Hollingworth J	Do act in preparation for terrorist act: s.101.6 <i>[Life]</i> Att make document - s.101.5(1)	VG	10y 6y <u>Total:</u> 12y NPP 9y		Minor theft and property damage	Offender held radical right wing views – Aug 2015 – Aug 2016 planned attack on sites associated with left wing ideology – preliminary research into several commercial premises – attempted to recruit people – researched explosive devices – planned property damage – arrested in early stages of preparation – low to mid-range – Nov 2015 – Aug 2016 creating document designed to equip and encourage people to commit violent acts – adapted passages from anarchist publication – moderately serious example Dysfunctional childhood with abuse and neglect – mental diagnosis unclear – ASD – paranoia, conspiratorial theories, substance abuse, social isolation and poor emotional response had some causal connection to offences – no remorse – harsh custodial conditions over 4 years

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