

Doing an Act in Preparation For or Planning a Terrorist Act

Section 101.6 (Cth) *Criminal Code*

s 101.6 Other acts done in preparation for, or planning, terrorist acts

(1) do any act in preparation for, or planning, a terrorist act

Maximum Penalty: Life

	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	s.101.6 Collecting documents connected with preparation for terrorist act: s.101.5(1) [15y] Possess thing connected with preparation for a terrorist act: s.101.4(1) [15y]	VG	20y 10y 10y <u>Total:</u> 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 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 s.101.6 2 x Possess thing connected with preparation for terrorist act: s.101.4(1) [15y]	PG (25%)	14y 8y <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

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3.	ELOMAR (40)	Consp s.101.6	VG	28y NPP 21y	AD	Nil	<p>Over 6 month period (late 2004-2005) each agreed to detonate explosive devices, or use firearms for terrorist act - no specific target identified - amassed armoury of firearms and ammunition, purchased laboratory equipment, obtained chemicals and materials suitable for use in manufacture and detonation of explosives - not satisfied beyond reasonable doubt intention was plan to kill but each offender countenanced possibility of loss of life: [65] – serious offence falling only marginally short of most serious case: [69] – conspiracy well-advanced although amateurish: [68].</p> <p>ELOMAR and K.CHEIKHO - directly involved in purchase of ammunition</p> <p>ELOMAR and HASAN - purchased laboratory equipment</p> <p>HASAN and JAMAL - ordering and purchase of chemicals</p> <p>Each offender collected literature about manufacturing and detonating explosives, and extremist literature advocating “Jihad”.</p> <p>ELOMAR - role more senior.</p> <p>K.CHEIKHO - co-ordinator of conspiracy - occupied senior position.</p> <p>EACH OFFENDER - poor prospects of rehabilitation given absence of remorse and lack of withdrawal of extremist views.</p> <p>CCA: Lack of target for attack not supportive of manifest excess where offence directed to preparatory acts — SJ correctly considered “mindset” of offenders as distinctive feature of offending not as aggravating factor.</p> <p>MULAHALILOVIC, SHARROUF, TOUMA and BALADJAM sentenced for s.101.4 offence</p> <p>TOUMA and BALADJAM sentenced for s.101.6 offence</p>
	HASAN (35)	Consp s.101.6	VG	26y NPP 19y 6m	AD	Nil	
	K.CHEIKHO (32)	Consp s.101.6	VG	27y NPP 20y 3m	AD	Nil	
	M.CHEIKHO (28)	Consp s.101.6	VG	26y NPP 19y 6m	AD	Nil	
	JAMAL (20)	Consp s.101.6	VG	23y NPP 17y 3m	AD	Nil	
	(2010) 264 ALR 579 [2010] NSWSC 10 Whealy J						
	(2014) 316 ALR 206 (2014) 300 FLR 323 [2014] NSWCCA 303						

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4.	<p>FATTAL (35)</p> <p>AWEYS (25 at offence, 29 at sentence)</p> <p>EL SAYED (25 at offence, 27 at sentence)</p> <p>[2011] VSC 681 King J</p> <p>[2013] VSCA 276</p>	<p>Consp s.101.6</p> <p>Consp s.101.6</p> <p>Consp s.101.6</p>	<p>VG</p> <p>VG</p> <p>VG</p>	<p>18y NPP 13y 6m</p> <p>18y NPP 13y 6m</p> <p>18y NPP 13y 6m</p>	<p>Conviction AD Sentence AD Crown AD</p>	<p>Minor – not indicated</p> <p>serious violence prior to 2005)</p> <p>Nil</p>	<p>Proposed terrorist act to attack on Army Base at Holsworthy, Sydney - to shoot and kill as many soldiers and other persons as possible - most ameliorating factor is amateurish level at which all offenders were operating and that conspiracy did not advance to any significant degree: [87] – each offender played different role - no one emerges as leader or follower: [91] – target chosen and intention to kill: [85] – no purchase or gathering of weapons: [95]-[96].</p> <p>FATTAL - visited army base and reported easy target - cognitive impairment from low intellectual functioning – rigid in views of Islam – difficult behaviour in custody.</p> <p>EL SAYED and AWEYS - continuing ongoing involvement in conspiracy, particularly seeking of fatwa or approval from Muslim clerics to carry out an attack on Holsworthy.</p> <p>Absence of remorse or behaviour indicating renouncement of their extremist views: [83] – slim prospects for rehabilitation: [99].</p>
5.	<p>MHK (17 at time of offence)</p> <p>[2016] VSC 742 Lasry J</p> <p>[2017] VSCA 157</p> <p>[2017] VSCA 180</p>	<p>s.101.6</p>	<p>PG</p>	<p>7y NPP 5y 3m</p>	<p>Crown AA 11y NPP 8y 3m</p> <p>(pre guilty plea discount: 16y NPP 12y)</p>	<p>Nil</p>	<p>Planned to build and detonate bomb in populated area - acquired materials - activities elaborate and carefully planned - Islamic State recruiter providing information – intention to carry out terrorist attack - very serious case.</p> <p>Stable supportive family – character - good prospects of rehabilitation – youth - apparent rehabilitation and rejection of extreme jihadi ideas</p> <p>On appeal: [77] <i>In arriving at the new sentence, we are of course aware that in Benbrika significantly lower sentences were imposed for the very serious terrorism offences there committed. Those sentences may have been regarded as within range at that time. However, having regard to the scourge of modern terrorism, and the development of more recent sentencing principles in this area, they seem to us to have been unduly lenient. No such sentences would have been imposed today.</i></p> <p>Second appeal: relevance of new continuing detention provisions under s105A to re-sentencing – no change to conclusion as to appropriate sentence</p>

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6.	AL-KUTOBI (24) KIAD (26) [2016] NSWSC 1760 Garling J	Consp s.101.6 Consp s.101.6	PG PG	20y NPP 15y 20y NPP 15y		Nil Nil	Conspiracy included detonating improvised explosive device to damage or destroy a building and using a bladed weapon to cause serious harm or death to a person - arrested at their flat - police recovered number of items including explosive materials, machete, hunting knife, homemade Islamic State flag, homemade balaclava, handwritten notes and video pledging allegiance to Islamic State and violence - objective seriousness above mid-range. Unable to form view about prospects of successful rehabilitation for either offender.
7.	BESIM (18) [2016] VSC 537 Croucher J [2017] VSCA 158 [2017] VSCA 180	s.101.6	PG	10y NPP 7y 6m	Crown AA 14y NPP 10y 6m (pre guilty plea discount: 19y NPP 14y 3m)	Nil	Plan to drive car to kill, then behead, law enforcement officer on ANZAC Day –communicated with another person in UK via telegram messaging and conducted internet searches – plan foiled by police week before ANZAC Day - objectively very serious offence - planned over a month – one target as opposed to many victims - one death intended - offender was to act alone. Youth – previous good character – supportive family - good prospects rehabilitation although SJ not prepared positively to accept renounced violent jihadism. VSCA: Personal mitigatory factors of limited weight – grave example offending – high moral culpability Second appeal: relevance of new continuing detention provisions under s105A to re-sentencing – no change to conclusion as to appropriate sentence

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8.	KHALID (20)	Consp s.101.6	PG (10%)	22y 6m NPP 16y 9m	AA 20y NPP 15y	Stalk and intimidate	Conspired over 6 weeks to do violent acts to further jihad in Australia – unresolved but to involve firearms, killing of police officers and attacking government buildings – all offenders committed to violent extremism and general deterrence important KHALID – senior role – responsible for co-ordinating many aspects of conspiracy - appeal allowed – error in discount for guilty plea - extremely onerous custodial conditions IM – high level in conspiracy - appeal allowed on basis utilitarian value of plea of guilty not taken into account ALMAOUIE – joined late but involvement still serious – upper end of scale just below K – firearms offences related to conspiracy – could not backdate conspiracy sentence but total sentence to reflect sentence for conspiracy – On appeal Xiao error GHAZZAWY, M.ALMAOUIE and SAID sentenced for s.101.5 offence
	J.ALMAOUIE (21)	Consp s.101.6 4 x Firearms offences Sched: 4 firearms offence	PG (10%)	18y 10m NPP 14y 2m 12m <u>Total:</u> 19y 9m 21d NPP 15y 1m 21d	AA 16y 6m NPP 12y 6m	Nil	
	IM (14)	Consp s.101.6	PG (10%)	13y 6m NPP 10y 1m	AA 10y 9m NPP 8y	Firearms offences related to conspiracy	
	[2017] NSWSC 1365 Bellew J (IM) [2019] NSWCCA 107 (KHALID) [2020] NSWCCA 73 (ALMAOUIE) [2021] NSWCCA 274						

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9.	KHAJA (No.5) (19) [2018] NSWSC 238 Fagan J	s.101.6 Sched: Foreign incursion offence	PG (12m reduct)	19y NPP 14y 3m		nil	Went to vicinity of Army Barracks and court buildings to assess facilities as targets of attack with firearms and explosives - made contact with people whom he thought were sympathisers, attempted to procure weapons from them and sought advice with respect to attack - told them he intended to kill as many unbelievers before being killed himself - contemplated 50 deaths – fully committed to offence - attempted to leave Australia to join ISIS in Syria No evidence of prospects of de-radicalisation – importance of deterrence
10.	AH (juvenile) [2018] NSWSC 973 Latham J	s.101.6	PG (25%)	12y NPP 9y			Sought assistance online in making bomb and obtaining gun – indicated desire to plan terrorist attack for ANZAC Day – mobile phone revealed access made to radical websites - activity spanned 7 days – acted alone – low level range of gravity Juvenile – failed to take up diversionary program when risk of radicalisation emerged – after counselling renounced radical views – suffering major depressive illness at time of offence
11.	BALADJAM (32) [2018] NSWCCA 304	2 x s.101.6 Possess thing connected with preparation for terrorist act: s.101.4(1) [15y] Possess thing connected with preparation for terrorist act: s.101.4(1) [15y]	PG	18y (each) 8y 7y <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.CHIEKHO. M.CHIEKHO, ELOMAR, HASAN, JAMAL, and TOUMA sentenced for s.101.6 offence

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12.	ABBAS (22) [2018] VSC 553 Tinney J [2020] VSCA 80 Co-offenders: ABBAS CHAARANI MOHAMED	Consp s.101.6	PG (approx 15%)	24y NPP 20y	AD	nil	Conspired with younger brother, cousin and friend – purchased chemicals for explosive device and bladed weapons and conducted reconnaissance around public square – well advanced in preparations and attack imminent – planned attack for near Christmas – intended substantial death and suffering – had recruited younger brother – upper end of range of seriousness Upon rekindling faith embraced jihad ideology – married with young daughter
13.	HG (16y 5m) [2018] NSWSC 1849 Bellew J Co-Offender: WE	s.101.6	VG	16y NPP 12y		nil	Purchased two hunting knives – 6 days later purchased two more knives in presence of co-offender – arrested in vicinity of Police Station and Courthouse in possession of knives, items to hide face and written pledge to be attached to victim – unequivocally committed to imminent attack – clear although unsophisticated plan – at or about mid-range Strong need for personal deterrence – cautious approach to rehabilitation
14.	BAYDA (18 at offence) NAMOA (18 at offence) [2019] NSWSC 24 Fagan J (Namoa) [2020] NSWCCA 62	s.101.6 s.101.6	VG (20%) VG	4y NPP 3y 3y 9m NPP 2y 10m	 Conviction AD	Nil Nil	B (male) and N (female) in relationship – conspired to attack on New Year’s Eve 2015 - B in company with young males intending to prepare for violent attack against non-Muslims - N knew of proposed attack, agreed B should carry it out and strongly encouraged him - evidence did not establish type of attack - conspiracy in existence for two weeks - first objective abandoned - replacement conceived in vaguest terms - relatively low order of seriousness. Both offenders adopted extremism as young teenagers. B: criminality greater - exercised degree of influence over N - any action was taken by B – assistance – remorse – contrition - youth N: mental health – remorse, contrition - progress in rehabilitation - youth

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15.	HRAICHIE (No.3) [2019] NSWSC 973 Johnson J [2022] NSWCCA 155	s.101.6 Send letter containing threat to kill: s.31 (NSW) <i>Crimes Act [10y]</i> Wound with intent to murder: s.27 (NSW) <i>Crimes Act [25y]</i> Cause GBH with intent to cause GBH: s.33(1)(b) (NSW) <i>Crimes Act [25y]</i>	PG (25%) (20%) (25%) (15%)	20y NPP 15y 6y 3m NPP 4y 7m <u>Indicative:</u> 10y NPP 7y 6m <u>Indicative:</u> 14y NPP 10y 6m <u>Aggregate:</u> 20y NPP 15y <u>Total:</u> 34y NPP 29y	AA 20y NPP 15y 6y 3m NPP 4y 7m <u>Indicative:</u> 8y 7m NPP 6y 6m <u>Indicative:</u> 13y 7m NPP 10y 2m <u>Aggregate:</u> 16y 6m NPP 12y 4m <u>Total:</u> 30y 11m NPP 25y 11m	Lengthy as a juvenile and an adult – included violence – offences committed while in custody	Radicalised as a juvenile – over six month period while on parole then in custody committed multiple acts in preparation for terrorist acts – planned targets changed from police officers to corrective services officers – substantial acts including talking to associates, writing material and obtaining weapons – while in custody attacked cell mate with intent to kill – stabbed, punched, choked, whipped with cable, carved letters into forehead, further cuts inflicted with razor and attempted to waterboard – sent letter containing death threats to Corrective Services Commissioner Discount contained small element for admissions to police – no contrition or remorse – letter given to Sentencing Court indicated continued radicalisation – no evidence of mental health issue On appeal: sentence for assault offences excessive
16.	K.KHAYAT (49) M.KHAYAT (32) [2019] NSWSC 1817 Adamson J	Consp s.101.6 Consp s.101.6	VG VG	40y NPP 30y 36y NPP 27y		nil nil	Brothers conspired with third brother and another person (both overseas) over six months – planned to send bomb on plane with another brother – prepared bomb and took to airport concealed in meat mincer but changed mind at last minute due to risk of detection – commenced preparation for use of poisonous gas by making test burns – took instructions from third brother and other person via phone – intended death of significant number of people – K more culpable – very serious offence of this nature – motivation for offence unclear K.KHAYAT – initially co-operated during questioning and during trial – strong family ties – married with four adult children - poor physical health – onerous custodial conditions M.KHAYAT – co-operated during trial – strong family ties – married with two young children - poor physical health – onerous custodial conditions

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17.	ABBAS (21) CHAARANI (26) MOHAMED (24) [2019] VSC 775 Beale J (Abbas) [2022] VSCA 39 (Mohamed) [2022] VSCA 136 Co-offender: ABBAS	Consp s.101.6 Consp s.101.6 Consp s.101.6	VG VG VG	22y NPP 16y 6m 26y <u>Total:</u> (with existing sentence for s.101.1 offence) 38y NPP 28y 6m 26y <u>Total:</u> (with existing sentence for s.101.1 offence) 38y NPP 28y 6m	Conviction AD AA 26y <u>Total:</u> 32y NPP 24y	nil nil relevant limited	Conspiracy to cause mass slaughter of civilians on or about Christmas Day in busy city involving explosive devices and weapons – chemicals and weapons purchased and reconnaissance conducted – upper range of seriousness – Abbas joined conspiracy late and played lesser role ABBAS – born of Lebanese family – not as radicalised as co-offenders but no evidence had de-radicalised – reasonable prospects of rehabilitation CHAARANI – gave sworn evidence accepting guilt and renouncing ideology – married – remorse – reasonable prospects of rehabilitation MOHAMED – gave sworn evidence accepting guilt and renouncing ideology – born in Egypt – father to young son – remorse – reasonable prospect of rehabilitation CHAARANI and MOHAMED sentenced 4 months earlier for committing terrorist offence: s.101.1 - committed similar time – see table for s.101.1 offences On appeal: M successful appeal against totality only
18.	WE (16y) [2020] NSWSC 1569 Bellew J Co-offender: HG	s.101.6 – s.11.2A	VG	16y NPP 12y		nil	Paid for co-offender to purchase hunting knives – arrested with co-offender in circumstances where unequivocally committed to imminent attack on public using bladed weapon – planned offence – mid-range Strong need for personal deterrence – unequivocally committed terrorist – committed to violent, extremist, religious ideology – no indication of rehabilitation Summary of sentencing principles for terrorism offences at [72]-[79]

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19.	ALI (20) [2020] VSC 316 Champion J [2020] VSCA 330	s.101.6	PG	10y NPP 7y 6m	Crown AA 16y NPP 12y (pre guilty plea discount: 20y NPP 15y)		Planned attack on Melbourne in 2017 - contemplated killing of civilians, targeting crowd to maximise casualties and eventual death to achieve martyrdom – contemplated several methods – spoke to undercover operatives about obtaining firearms and ammunition although noting purchased at time of arrest several months later - downloaded document describing various techniques and other material – ideological and extreme religious motivation – high level of culpability moderated by youth and exposure to extreme ISIS propaganda Became radicalised in late teen years with older brother – plea entered after pre-trial matters determined – remorse – significant early steps in rehabilitation – youth On appeal – consideration of factors influencing seriousness of offences of this nature at [75]-[83]
20.	GALEA (36) [2020] VSC 750 Hollingworth J	s.101.6 Att make document - s.101.5 [15y]	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
21.	KRUEZI (21) [2020] QCA 222	Preparations for incursion into a foreign state: s.6 <i>Crimes (Foreign Incursions and Recruitment) Act</i> . [10y] s.101.6	PG	3y 6m 17y 4m NPP 13y (concurrent)	AD	Minor record	Supported overthrow of government in Syria – arrested at airport after booking flight to Kosovo intending to travel to Syria – 6m later obtained .22 rifle and material for Molotov cocktails – spent two weeks planning attack although no target identified – objective seriousness very high Albanian descent – each offence an expression of extreme religious and ideological belief – no evidence of remorse or contrition – importance of specific and general deterrence

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22.	AMIN (24 at offence; 30 at sentence) [2021] NSWSC 1267	s.101.6 Attempt to export goods: 233BAA(5) <i>Customs Act [5y]</i>	PG (20%) (25%)	<u>Indicative</u> 5y 9m <u>Aggregate:</u> 5y 4m NPP 4y		Nil	Engaging in acts in preparation for act to take place in Bangladesh, not Australia – communications with persons in Bangladesh regarding making explosive device ('cocktail bomb'), equipment, training of persons – transferred money to wife in Bangladesh – stopped at Sydney airport attempting to travel to Bangladesh with publications, films and material with instructions and support for terrorist acts – member of Islamic State. Below mid-range objective seriousness – not armed – no definite arrangement to join any particular group in Bangladesh – no fixed plans. Reasonable prospects rehabilitation - abandoned extremist ideological views – maturity since offences committed.
23.	AZARI (20) [2021] NSWCCA 199	s.101.6 Attempt make funds available to terrorist organisation: s.102.6(1) <i>[25y]</i> Sched: 2 x s.102.6(1)	VG PG (25%)	12y 8y <u>Total:</u> 18y NPP 13y 6m	AD	nil	Attempted to make US\$9000 available to Islamic State – schedule offences involved transferring total of US\$6000 to Pakistan for Islamic State – telephone conversation with senior Australian Islamic State member in Syria planning terrorist acts in Australia – no actual agreement to commit terrorist act and no further planning – in direct contact with Islamic State acting as intermediary with radicalised groups in Australia – offences below mid-range Born in Afghanistan – delay – still holds some extremist views – prior good character On appeal: no disparity – no error in relation to scheduled offences
24.	EL MATARI (19-20 at offence; 22 at sentence) [2021] NSWSC 1260	s.101.6 Preparing to engage in commission of foreign incursion offence: s.119.4(1) <i>Criminal Code [Life]</i> Sched: Membership terrorist organisation: s.102.3(1) <i>Criminal Code [10y]</i>	PG (25%)	<u>Indicative</u> 4y 6m 6y <u>Aggregate</u> 7y 4m NPP 5y 6m		Arrested in Lebanon for attempting to join and fight with IS in Syria.	Communications regarding preparations to establish Islamic State insurgency in Australia, importation of assault rifles, vague plans of how acts could be carried out and that he would blow himself up – prepared to go to Afghanistan to engage in hostile activity - below mid-range. Youth - exposed to radical beliefs by peers at 15-16y - offence motivated by complex reasons including loneliness, lack of close friendships - ADHD – PTSD - not satisfied of renunciation of beliefs or unlikely to reoffend - risk of both general and violent reoffending - high risk of further offences of violent extremism

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