



**Australian Government**  
**Department of Home Affairs**

# **Joint-agency supplementary submission – Review of AFP Powers – Division 105A**

Parliamentary Joint Committee on Intelligence and  
Security

4 September 2020

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## Division 105A of the Criminal Code (Cth)

### Introduction

1. The Attorney-General's Department (AGD), the Australian Federal Police (AFP) and the Department of Home Affairs (Home Affairs) welcome the opportunity to provide a supplementary submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on the operation, effectiveness and implications of Division 105A of the *Criminal Code Act 1995* (Criminal Code) and any other provision of that Code as far as it relates to that Division.
2. This submission supplements the earlier joint-agency submission regarding the police stop, search and seizure powers within Division 3A of Part IAA of the *Crimes Act 1914* (the Crimes Act), the control order regime under Division 104 of the *Criminal Code Act 1995* (the Criminal Code) and the Preventative Detention Order (PDO) regime within Division 105 of the Criminal Code (Review of AFP Powers).
3. Home Affairs consulted with the Australian Security Intelligence Organisation (ASIO) as part of this supplementary submission.
4. This supplementary submission sets out the ongoing need for the continuing detention order (CDO) scheme within Division 105A of Part 5.3 of the Criminal Code as a fundamental part of Australia's robust counter-terrorism framework. The experience of the scheme to date is also outlined, which includes matters relating to the consideration of offenders and use of psychological evidence. The proposed legislative reform relating to the Extended Supervision Order (ESO) scheme is also discussed.
5. Tables are attached comparing similar schemes established by likeminded countries and jurisdictions within Australia (**Attachment A**); listing the upcoming release of HRTTO-eligible offenders between 2020-25 (**Attachment B**); and providing background information to the risk assessment tool 'Violent Extremism Risk Assessment – Version 2 Revised' (VERA-2R) (**Attachment C**).

### Introduction of the Continuing Detention Order (CDO) Scheme

6. On 1 April 2016, the Council of Australian Governments (COAG) agreed that the Commonwealth develop legislation to introduce, as soon as practicable, a nationally consistent post-sentence preventative detention scheme, with appropriate protections, to apply to high-risk terrorist offenders. The Australian Government implemented the COAG agreement through the passage of the *Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016* (Cth), which inserted Division 105A containing the CDO scheme into the Criminal Code.
7. The CDO scheme was designed with reference to existing State and Territory post-sentence detention schemes established to apply to high risk sex and/or violent offenders. A majority of States and Territories have enacted schemes which attempt to manage 'dangerous' offenders through post-sentence controls. At the time of developing the CDO scheme, New South Wales (NSW), South Australia, Queensland, Victoria, Western Australia and the Northern Territory had enacted schemes to manage high risk sex and/or violent offenders at the end of their sentence.
8. Since 2016, NSW and Victoria have enacted further post-sentence preventative detention regimes within their jurisdictions. The *Terrorism (High Risk Offenders) Act 2017* (NSW) applies

to high risk terrorist offenders, while the *Serious Offenders Act 2018* (Vic) applies to serious sex and violent offenders. An comparison of similar schemes established by likeminded countries and jurisdictions within Australia is at **Attachment A**.

9. The CDO scheme was established to provide for the continued detention of convicted terrorist offenders whose ongoing risk to the community is too great to permit their release at the end of their custodial sentence. Under the scheme, Supreme Courts may make an order for continued detention with respect to an eligible convicted terrorist offender after the completion of their custodial sentence.
10. The thresholds that must be satisfied before a Supreme Court may make a CDO with respect to an eligible terrorist offender are very high given the gravity of the order sought. Under section 105A.7 of the Criminal Code, a Supreme Court may only make a CDO if:
  - a. the Court is satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence if the offender is released into the community; and
  - b. the Court is satisfied that there is no other less restrictive measure that would be effective in preventing the unacceptable risk.
11. These thresholds ensure that only those eligible offenders whose unacceptable risk cannot be effectively prevented by any other less restrictive measure remain in custody at the end of their sentence of imprisonment. State and Territory post-sentence detention schemes have provisions with a broadly similar effect to the thresholds in Division 105A.

## Ongoing requirement for CDOs

12. Australia's national terrorism threat level is **PROBABLE**, meaning credible intelligence, assessed to indicate a plausible scenario, indicates an intention and capability to conduct a terrorist attack in Australia. The threat level has been elevated since September 2014, during which there have been seven terrorist attacks on Australian soil, and law enforcement and security agencies have disrupted a further 18 potential or imminent terrorist attacks. The threat of terrorism is likely to remain elevated for the foreseeable future.
13. The growing cohort of released terrorist offenders poses a potential threat to the Australian community. As at 24 July 2020, 86 individuals have been convicted of and sentenced for Commonwealth terrorism offences. Of these individuals, 45 were sentenced in the last three years, with a further 13 offenders due to be released into the Australian community following the expiry of their custodial sentences between 2020 and 2025. Experiences of other likeminded countries indicates the severity of this risk – in particular, the 2019 London Bridge and 2020 Streatham attackers in the United Kingdom (UK) were previously convicted terrorist offenders who had been released into the community. There is an enduring risk posed by post sentence offenders and a continued need for appropriate prevention and risk management measures.
14. The CDO scheme provides an additional tool within Australia's counter-terrorism framework to address the potential harm to the community posed by high risk terrorist offenders. Other measures which may be available in relation to individuals who have completed a sentence of imprisonment for a terrorism offence can include control orders and citizenship cessation.

## Experience with the CDO scheme to date

15. As at 24 August 2020, no applications have been made for a CDO since the scheme was introduced.
16. A list of convicted terrorist offenders whose custodial sentence is due to expire between 2020-25 and are likely to be eligible to be considered for a CDO is at **Attachment B**.

## Consideration of offenders eligible for CDOs

17. The process through which Commonwealth and State and Territory agencies support this work is outlined below.
18. The Australian Government considers the prospects of a CDO application with respect to each eligible terrorist offender on a case-by-case basis. Home Affairs leads this work and relies on close partnerships with agencies across the Commonwealth and jurisdictions, including Commonwealth law enforcement and intelligence agencies (particularly the AFP and ASIO), the Australian Government Solicitor, State and Territory Departments of Justice and Corrections (or equivalent), and Police.
19. Home Affairs reviews all available information for each eligible offender. In addition to information relating to an offender's criminal history and behaviour during their custodial sentence, their level of risk may be assessed by relevant experts for the purpose of assisting the AFP Minister to decide whether to make a CDO application. The VERA 2R assessment is the primary tool used to assist an expert for this purpose. This tool is discussed in the next section.
20. To inform the Minister's consideration in each case, Home Affairs seeks legal advice in each matter on the prospects of making an application for a CDO and the prospects of meeting the legal thresholds that a Supreme Court must be satisfied of in order to make a CDO.

## The use of psychological assessments and VERA-2R

21. Psychological assessments and tools such as the VERA-2R may be used to assess the level of risk an offender poses, to inform the AFP Minister's decision whether to apply for a CDO. These assessments and tools may also be used to inform the Court's decision whether to make a CDO through the appointment of a Court-appointed expert who may undertake a VERA-2R assessment of the offender as part of the proceedings.
22. Under section 105A.6 of the Criminal Code, once the AFP Minister has made an application for a CDO in relation to an offender, the Court must determine whether to appoint one or more relevant experts to assist the Court to determine whether to make a CDO. If the Court decides to appoint a relevant expert, the Court-appointed expert must:
  - conduct an assessment of the risk of the offender committing a serious Part 5.3 offence if the offender is released into the community; and
  - provide a report of their assessment to the Court, the AFP Minister and the offender.
23. The VERA-2R may be used by the Court-appointed expert to support their assessment. Further information about the VERA-2R is at **Attachment C**.

### **The need for a specialised violent extremism risk assessment tool**

24. A range of psychosocial risks and needs assessment tools have been developed to support the criminal justice system. Such tools are commonly used by the courts, parole boards and corrective services to make decisions about general or typical criminal offenders, violent offenders and sex offenders. Many of these tools have been validated statistically against large populations of offenders and revised over more than 20 years.
25. While terrorism is a form of violent offending, many of the indicators in generalised violent offender risk assessment tools are not relevant to ideologically motivated offending. Specialised risk assessment tools, such as the VERA-2R, have arisen out of recognition that existing tools do not appropriately apply to the characteristics of violent extremists.
26. The Government has identified the VERA-2R as the most appropriate tool currently available to assess the risk posed by persons of counter-terrorism interest, including convicted terrorist offenders. As a specialised violent extremism risk assessment tool, the VERA-2R assists the expert to analyse and assess the risk of an offender perpetrating a further terrorism offence. This includes supporting a comprehensive assessment of the nature of the risks presented by the offender, how they may be mitigated, and whether the risks can be safely mitigated in a non-custodial environment.
27. The VERA-2R does this by supporting the expert to identify particular criminogenic needs that, unless they are addressed, will continue to present a risk of reoffending (for example, commitment to an ideology that justifies violence). The tool also supports the identification of 'protective factors' in the person's life that mitigate their risk of reoffending (for example, rejection of violence as a means to achieve political goals, support from family members for non-violence). Completion of the VERA-2R will also support the expert to explore scenarios in which the person's risk might be increased or reduced and to make recommendations about case management and treatment strategies to reduce their risk.
28. The expert also may use other appropriate psychosocial tools relevant to the individual offender's circumstances. These may include assessments of personality, cognitive functioning, general criminal reoffending, general violence, family violence and substance abuse.
29. The quality of the VERA-2R assessment relies on the expertise of the risk assessor and the information available. To use the VERA-2R, the user must have successfully completed a training course approved by the authors of the VERA-2R. The expert must also have a professional background in psychosocial risk assessment methodologies and an appropriate knowledge of violent extremism, terrorism and radicalisation.

### **Future legislative reforms**

30. While the CDO scheme and other reforms have added important risk-mitigation options to Australia's counter-terrorism framework, the Australian Government is committed to ensuring counter-terrorism laws remain subject to constant review to ensure they remain fit-for-purpose and appropriately calibrated to the evolving terrorism threat. The Australian Government continues to work closely with jurisdictional partners as part of this commitment.
31. As outlined above, in considering whether to make a CDO, the Supreme Court must be satisfied there is no other less restrictive measure that would be effective in preventing the unacceptable risk posed by the offender if released into the community. A 'less restrictive

measure' would typically be a control order. However, under existing legislation, the Supreme Court does not have the power to make a control order – control orders are made by the Federal Court or the Federal Circuit Court. This has resulted an interoperability issue between the control order scheme and the CDO scheme, whereby the Supreme Court is not able to make a less restrictive order if it is not satisfied that the thresholds for a CDO are made out.

32. The Government proposes to address this interoperability issue through the introduction of the Extended Supervision Order (ESO) scheme. The scheme would enable the AFP Minister to apply to the relevant Supreme Court, for the court to consider the risk evidence, and for the court to make either a CDO or an ESO as appropriate (as discussed in the Department's main submission to this inquiry). The ESO scheme would amend Division 105A of the Criminal Code and enable Supreme Courts to impose tailored conditions onto an eligible convicted terrorist offender to apply upon their release back into the community, as an alternative to making a CDO. The conditions would impose obligations, prohibitions or restrictions onto an offender as a means of managing the risk they pose.
33. The establishment of a Commonwealth ESO scheme would implement recommendations made in the Independent National Security Legislation Monitor's (INSLM) 2017 Report, *Review of Divisions 104 and 105 of the Criminal Code (including the interoperability of Divisions 104 and 105A): Control Orders and Preventative Detentions Orders*, and the PJCIS' 2018 Report, *Review of Police Stop, Search and Seize Powers, the Control Order Regime, and the Preventative Detention Order Regime*.



## Attachment A: Comparison of preventative detention and other schemes

### Post-sentence legislation for terrorism offences – Foreign schemes

Schemes	Eligibility	Threshold	Length
<b>United Kingdom</b>  <i>Criminal Justice Act 2003</i>  <i>Chapter 5: 'Dangerous offenders'</i>	<b>Extended sentences</b> Makes provision for an extension period of up to 5 years (violent offenders) or 8 years (sexual or terrorist offenders) where: <ul style="list-style-type: none"> <li>Aged 18* and over</li> <li>Convicted of a specified violent, sexual or terrorism offence (listed in Schedule 15B—includes terrorism offences).</li> </ul> * Separate provisions exist for those under 18 years of age allowing detention rather than imprisonment.	The Court considers the offender poses a significant risk of serious harm to the public through the commission of further specified offences (includes terrorism offences).	An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of— <ul style="list-style-type: none"> <li>The appropriate custodial term, and</li> <li>A further period (the “extension period”) for which the offender is to be subject to a licence.</li> </ul> The “extension period” must be: <ul style="list-style-type: none"> <li>Minimum of 1 year and maximum of 8 years for a specified terrorism offence; and</li> <li>A period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences; and</li> <li>Must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence.</li> </ul>
	<b>Life sentence for serious offences</b> Makes provision for an indeterminate sentence of imprisonment for public protection where: <ul style="list-style-type: none"> <li>Aged 18* and over</li> <li>Convicted of a serious offence (listed in Schedule 15B—includes serious terrorism offences) carrying a maximum sentence of imprisonment of 10 years or more</li> </ul> * Separate provisions exist for those under 18 years of age allowing detention rather than imprisonment.	The Court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences (includes terrorism offences) if: <ul style="list-style-type: none"> <li>the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and</li> <li>the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life.</li> </ul>	A life sentence is defined in section 34 of the <i>Crime (Sentences) Act 1997</i>

### Post-sentence legislation for non-terrorism offences – Foreign schemes

Schemes	Eligibility	Threshold	Length
<b>New Zealand</b>  <i>Public Safety (Public Protection Orders) Act 2014</i>	<b>Public protection orders</b> <ul style="list-style-type: none"> <li>Aged 18 and over</li> <li>Detained in prison under a determinate sentence for a serious sexual or violent offence (does not include terrorism offences); or</li> <li>Subject to an extended supervision order; or</li> <li>Subject to a protective supervision order.</li> </ul>	A court can make a public protection order if satisfied on the balance of probabilities that there is a very high risk of imminent serious sexual or violent offending if : <ul style="list-style-type: none"> <li>where the respondent is detained in a prison, the respondent is released from prison in to the community; or</li> <li>in any other case, the respondent is left unsupervised.</li> </ul> The court may not make a finding unless satisfied that the respondent exhibits a severe disturbance in behavioural functioning established by evidence to a high level of <u>each</u> of the following characteristics: <ul style="list-style-type: none"> <li>an intense drive or urge to commit a particular form of offending</li> </ul>	Length is at Court’s discretion  A court must review the PPO within 5 years after the order is made. However a review panel must review within 1 year after the order is made, and then within every succeeding year thereafter. If the panel considers the person no longer meets the risk threshold, they may direct the chief executive to apply to the court for a review.



Schemes	Eligibility	Threshold	Length
		<ul style="list-style-type: none"> <li>limited self-regulatory capacity, evidenced by general impulsiveness, high emotional reactivity, and inability to cope with, or manage, stress and difficulties</li> <li>absence of understanding or concern for the impact of the respondent's offending on actual or potential victims, and</li> <li>poor interpersonal relationships or social isolation or both.</li> </ul>	
<b>Canada</b>			
<i>Criminal Code, RSC, 1985, c C-46, ss 752-753</i>	A 'dangerous offender' is one who has committed certain specified violent or sexual offences (not applicable to terrorism offences)	Considered to present a continued threat to other persons.	Detention must be reviewed within seven years and every two years following this point by the Parole Board of Canada and may be granted release on parole.
<b>United States</b>			
<i>18 USC §4248 (2018)</i>	Sexual offenders	Where a court determines that a person is likely to engage in future acts of sexual violence, the court can proscribe continued detention in a civil secure treatment facility.	Detention until such a time that the person is no longer sexually dangerous or the danger can be mitigated by psychiatric or psychological treatment.

**Post-sentence detention legislation – State and Territory schemes**

Schemes	Threshold and other matters
<i>Crimes (High Risk Offenders) Act 2006 (NSW)</i>	<ul style="list-style-type: none"> <li>Subsection 13B(6): The Supreme Court must not make a CDO ... unless it is satisfied that circumstances have altered since the making of the ESO or interim ESO and those altered circumstances mean that there is an unacceptable risk of the offender committing a serious offence if the CDO is not made.</li> <li>Subsection 13B(7): Without limiting the matters that the Supreme Court may take into account for the purposes of the above, it may take into account the failure to comply, or an allegation that the supervised offender has failed to comply, with any requirement of an ESO or interim ESO.</li> <li>Subsection 17(1): The Supreme Court may determine an application under this Part for a CDO: <ul style="list-style-type: none"> <li>– by making an ESO, or</li> <li>– by making a CDO, or</li> <li>– by dismissing the application</li> </ul> </li> <li>Subsection 17(2): In determining whether or not to make a CDO or ESO, the safety of the community must be the paramount consideration of the Supreme Court.</li> </ul>
<i>Terrorism (High Risk Offenders) Act 2017 (NSW)</i>	<ul style="list-style-type: none"> <li>Subsection 34(1): The Supreme Court may make an order for the continued detention of an eligible offender if: <ul style="list-style-type: none"> <li>– the offender is a detained offender or supervised offender, and</li> <li>– an application for the order is made in accordance with this Part, and</li> <li>– the Supreme Court is satisfied that the offender is any of the following: <ul style="list-style-type: none"> <li>▪ a convicted NSW terrorist offender,</li> <li>▪ a convicted NSW underlying terrorism offender,</li> <li>▪ a convicted NSW terrorism activity offender, and</li> </ul> </li> </ul> </li> </ul>

Schemes	Threshold and other matters
	<ul style="list-style-type: none"> <li>– the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept in detention under the order.</li> <li>• Subsection 34(2): The Supreme Court can make a CDO in respect of a supervised offender when: <ul style="list-style-type: none"> <li>– the offender has been found guilty of an offence under section 30 in respect of an existing supervision order, or</li> <li>– the Supreme Court is satisfied that the offender poses an unacceptable risk of committing a serious terrorism offence if a CDO is not made because of altered circumstance since the making of the existing supervision order.</li> </ul> </li> <li>• Section 35: The Supreme Court is not required to determine that the risk of an eligible offender committing a serious terrorism offence is more likely than not in order to determine that there is an unacceptable risk of the offender committing such an offence.</li> </ul>
<i>Serious Offenders Act 2018 (Vic)</i>	<ul style="list-style-type: none"> <li>• Subsection 62(1): The Supreme Court may make a detention order in respect of an eligible offender, if, and only if, the court is satisfied: <ul style="list-style-type: none"> <li>– that the offender poses, or after release from custody will pose, an unacceptable risk committing a serious sex and/or serious violence offence if a CDO or ESO is not made; and</li> <li>– the risk of committing a serious sex/violence offence would be unacceptable unless a detention order were made</li> </ul> </li> <li>• Subsection 62(2): The Supreme Court must be satisfied by acceptable, cogent evidence to a high degree of probability that the offender poses or will pose an unacceptable risk to apply a CDO. Under subsection 62(3), If a Court is not satisfied that the risk would be unacceptable unless a detention order were made, the court may issue an ESO.</li> </ul>
<i>Dangerous Prisoners (Sexual Offenders) Act 2003 (QLD)</i>	<ul style="list-style-type: none"> <li>• Subsection 13(6): In determining whether to make an ESO or CDO: <ul style="list-style-type: none"> <li>– the paramount consideration is to ensure the adequate protection of the community, and</li> <li>– the court must consider whether: <ul style="list-style-type: none"> <li>▪ adequate protection of the community can be reasonably and practicably be managed by an ESO, and</li> <li>▪ whether the requirements of an ESO can be reasonably and practicably be managed by corrective service officers.</li> </ul> </li> </ul> </li> </ul>
<i>Dangerous Sexual Offenders Act 2006 (WA)</i>	<ul style="list-style-type: none"> <li>• Subsection 7(1): Before the court dealing with an application under this Act may find that a person is a serious danger to the community, the court must be satisfied that there is an unacceptable risk that, if the person were not subject to a CDO or an ESO, the person would commit a serious sexual offence. The Court must be satisfied of this by acceptable and cogent evidence, and to a high degree of probability.</li> <li>• Subsection 17(2): Subject to subsection (3), in deciding whether to make a CDO or ESO, the paramount consideration is to be the need to ensure adequate protection of the community.</li> <li>• Subsection 17(3): A court cannot order an ESO unless it is satisfied, on the balance of probabilities that the offender will substantially comply with the standard conditions of the order.</li> </ul>
<i>Criminal Law (High Risk Offenders) Act 2015 (SA)</i>	<ul style="list-style-type: none"> <li>• Subsection 7(4): The Supreme Court may order that the respondent is to be subject to an ESO if satisfied that— <ul style="list-style-type: none"> <li>– the respondent is a high risk offender; and</li> <li>– the respondent poses an appreciable risk to the safety of the community if not supervised under the order.</li> </ul> </li> <li>• Subsection 7(5): The paramount consideration of the Supreme Court in determining whether to make an ESO must be the safety of the community.</li> <li>Subsection 18(2): The Supreme Court may order that the person be detained in custody (a CDO) until the expiration of the ESO, or for such lesser period as may be specified by Court, if satisfied that the person: <ul style="list-style-type: none"> <li>– has breached a condition of the ESO; and</li> <li>– poses an appreciated risk to the safety of the community if not detained in custody.</li> </ul> </li> </ul>

Schemes	Threshold and other matters
<p><i>Serious Sex Offenders Act 2013</i> (NT)</p>	<ul style="list-style-type: none"> <li>• Subsection 31(1): On hearing an application made for a final CDO/ESO, the Supreme Court may make a final CDO or final ESO in relation to the qualifying offender if satisfied that the qualifying offender is a serious danger to the community.</li> <li>• Subsection 6(2): In deciding whether a person is a serious danger to the community, a court must have regard to: <ul style="list-style-type: none"> <li>– the likelihood of the person committing another serious sex offence;</li> <li>– the impact of serious sex offences committed, or likely to be committed, by the person on: <ul style="list-style-type: none"> <li>▪ victims of those offences and the victims' families; and</li> <li>▪ members of the community generally;</li> </ul> </li> <li>the need to protect people from those impacts.</li> </ul> </li> <li>• Subsection 7(1): A court must not decide that a person is a serious danger to the community unless it is satisfied, to a high degree of probability, that there is acceptable and cogent evidence of sufficient weight to justify the decision.</li> <li>• Subsection 14(2): The court must have regard to the following: <ul style="list-style-type: none"> <li>– as the paramount consideration – the need to protect: <ul style="list-style-type: none"> <li>▪ victims of serious sex offences committed, or likely to be committed, by the person; and</li> <li>▪ the victims' families; and</li> <li>▪ members of the community generally;</li> </ul> </li> <li>– as a secondary consideration – the desirability of providing rehabilitation, care and treatment for the person.</li> </ul> </li> <li>• Section 14(3): In considering the need for protection mentioned in subsection (2)(a), the court must have regard to the following: <ul style="list-style-type: none"> <li>– the likelihood of the person committing another serious sex offence;</li> <li>– whether it will be reasonably practicable for the Commissioner of Correctional Services to ensure that the person is appropriately managed and supervised as per s 63;</li> <li>– whether adequate protection could only reasonably be provided by making a CDO in relation to the person.</li> </ul> </li> </ul>

**Attachment B: Forthcoming releases of HRT0-eligible offenders (2020-25)\***

No.	NAME	HRT0 ELIGIBLE OFFENCE(S)	JURISDICTION	SENTENCE LENGTH	SENTENCE EXPIRY
1	Belal KHAZAAL	• s101.5(1) Criminal Code (Cth) – Collecting or making documents likely to facilitate terrorist act	NSW	12 years	30/08/2020
2	Abdul Nacer BENBRIKA	• s102.3(1) Criminal Code (Cth) – Membership of a terrorist organisation • s102.2(1) Criminal Code (Cth) – Directing the activities of a terrorist organisation	VIC	15 years	05/11/2020
3	Mehmet BIBER	• s6(1)(a) of the <i>Crimes (Foreign Incursions and Recruitment) Act 1978</i> – Incursions into foreign States with intention of engaging in hostile activities	NSW	4 years and 9 months	02/08/2021
4	Blake PENDER	• s101.6 Criminal Code (Cth) (by virtue of section of s11.5 – Conspiracy) – Other acts done in preparation for, or planning, terrorist acts • s101.4(1) Criminal Code (Cth) – Possessing things connected with terrorist acts	NSW	4 years and 3 months	13/09/2021
5	Amin ELMIR	• s119.4(1) Criminal Code (Cth) - Preparations for incursions into foreign countries for purpose of engaging in hostile activities	NSW	5 years and 5 months	21/09/2022
6	Robert CERANTONIO	• s119.4(1) Criminal Code (Cth) (by virtue of section of s11.2A – Joint commission) – Preparations for incursions into foreign countries for purpose of engaging in hostile activities	VIC	7 years	09/05/2023
7	Belal BETKA#	• s119.1(2) Criminal Code (Cth) – Incursions into foreign countries with the intention of engaging in hostile activities • s119.2(1) Criminal Code (Cth) – Entering, or remaining in, declared areas	NSW	3 years and 8 months	18/02/2022
8	Mohamed ALMAOUIE	• s101.5(1) Criminal Code (Cth) – Collecting or making documents likely to facilitate terrorist acts	NSW	9 years	22/12/2023
9	Faheem LODHI	• s101.4(1) Criminal Code (Cth)– Possessing things connected with terrorist acts • s101.5(1) Criminal Code (Cth) – Collecting or making documents likely to facilitate terrorist acts • s101.6(1) Criminal Code (Cth) – Other acts done in preparation for, or planning, terrorist acts	NSW	20 years	21/04/2024
10	Omar BALADJAM	• s101.6(1) Criminal Code (Cth) – Other acts done in preparation for, or planning, terrorist acts • s101.4(1) Criminal Code (Cth) – Possessing things connected with terrorist acts	NSW	18 years and 8 months	07/07/2024
11	Hamdi ALQUDSI	• s7(1)(e) of the <i>Crimes (Foreign Incursions and Recruitment) Act 1978</i> (Cth) – Preparations for incursions into foreign States for purpose of engaging in hostile activities	NSW	8 years	11/07/2024
12	Farhad SAID	• s101.5(1) Criminal Code (Cth) – Collecting or making documents likely to facilitate terrorist acts	NSW	9 years and 6 months	25/11/2025

\*This table does not include details of offenders whose information is subject to suppression and/or non-publication orders

# Mr Betka is also serving a sentence for dealing with the proceeds of crime (head sentence expires 16/12/2023)

## **Attachment C: VERA-2R Background**

### **What is the VERA-2R?**

34. The VERA-2R is an assessment instrument that supports the user to identify and analyse a person's risks of perpetrating a violent extremist act. It contains a number of indicators associated with violent extremism, derived from empirical research and consultation with law enforcement and intelligence practitioners.
35. The VERA-2R is designed to be used across different violent extremist ideologies, rather than being confined to a single form of violent extremism. It can be used in community and custodial settings for adults and young people. It can be used to assess changes in risk and need over time, for example during a prison sentence and prior to making a release decision.
36. The VERA-2R is the most widely used assessment tool internationally, including throughout Europe, North America, Australia, New Zealand, and Asia. It was implemented in Australia in 2017.

### **How does it work?**

37. VERA-2R is scored by one or more trained assessors. Each indicator is scored, where information is available, using a protocol. The majority of indicators are dynamic in nature, that is, they identify factors in the individual's life that if changed in a positive direction will reduce their risk of reoffending. The indicators are organised into five domains:
  - *Beliefs, Attitudes, Ideology*: The indicators within this domain reflect an individual's world view, and identify personal attitudes and ideologies that provide a foundation for extremist commitment and action. The indicators are concerned with the person's ideology, attitudes towards Australian society, grievances, and attitudes towards those outside their group. These indicators are essential to identifying the nature of the extremism present, and any support for the use of violence to further ideological goals.
  - *Social Context & Intention*: Social context, such as engagement with violent extremist material and violent extremists or susceptibility to influence, impacts the process of radicalisation and an individual's intention to plan and carry out an act of violence. The intention to commit a terrorist act is an essential element contributing to individual risk of engagement in extremist violence.
  - *History, Action, Capacity*: An individual's ability to plan and carry out extremist violence is assessed in this domain. This domain explores the person's historical engagement with violence and violent extremist ideology, and their technical and organisational skills.
  - *Commitment & Motivation*: This domain identifies possible individual motivations that have been found to be drivers of violent extremism. Information is sought about the reasons why a person may be motivated to engage in violent extremism. A single or combination of motivational factors are considered such as religious and moral obligation, group belonging, meaning, status, and coercion. This domain is important for planning intervention programs and understanding the person's risk and threat level.
  - *Protective/ Risk Mitigating* indicators have been included in VERA-2R that are associated with a person's disengagement from violent extremist ideology. These are important to plan intervention objectives and measure program effectiveness. For example, the assessor is interested in whether the person is reinterpreting their beliefs, participating in rehabilitation programs, and has protective social and family supports.
38. Finally, the VERA-2R contains a number of additional indicators in the categories of criminal history, personal history, and mental disorder. These identify possible vulnerabilities that can impact on the risk of engagement in extremist violence. They will also support decisions about operational and therapeutic methodologies.

39. The overall risk judgement is determined after the user has considered the available evidence which has been structured into the indicators in the tool. The structured approach and the inclusion of a comprehensive set of indicators assists the user to identify the most salient issues for that individual and formulate their assessment.

**How is it managed in Australia?**

40. Home Affairs is responsible for the administration of the VERA-2R in Australia. The department coordinates VERA-2R training and certification, and has formed a Community of Practice of Australia's eight VERA-2R trainers to encourage national consistency in VERA-2R use. Since 2017 over 200 professionals have been trained in Australia and New Zealand in the tool.