Membership of a Terrorist Organisation

Section 102.3 (Cth) *Criminal Code*

102.3 Membership of a terrorist organisation

(1) Intentional membership of a terrorist organisation knowing it is a terrorist organisation

Maximum Penalty: 10 years

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	**ATIK** (27) [2007] VSC 299 Bongiorno J	s.102.3(1) Provide resources to terrorist organisation: s.102.7(1) *[25y]*	PG	5y 5y Total: 5y 6m NPP 4y 1m 14d		Driving, dishonesty	Follower of Benbrika (see below) - obtained goods and services by dishonest means, especially airline tickets, for group - not permitted to be involved in more clandestine of group's discussions and activities - only a few relevant acts of assistance over relatively short period. Schizophrenic, very low intellectual functioning - psychological and psychiatric disabilities – less appropriate subject for general deterrence - contrition and remorse - assistance to authorities.
2.	**BENBRIKA** (48 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 457 [2010] VSCA 281	s.102.3(1) Direct activities of terrorist organisation: s.102.2(1) *[25y]* Possess thing connected with preparation for terrorist act: s.101.4(1) *[15y]*	VG	7y 15y 5y Total: 15y NPP 12y	AA 5y 15y Conviction quashed Total: 15y NPP 12y	Nil	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. Benbrika – founder and principal - moral culpability greater than co-offenders - objective seriousness in convincing prospective members to way of violent jihad and moral culpability at high end of scale of seriousness: CCA [561]-[562] Trained as aviation engineer – married with children. JOUD, SAYADI, MERHI, A.RAAD, E.RAAD, HADDARA and KENT sentenced for s.102.3 offence JOUD, A.RAAD, E.RAAD sentenced for s.102.6 offence JOUD, SAYADI, A.RAAD sentenced for s.102.7 offence KENT sentenced for s.101.3 offence

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
3.	**JOUD** (19-21 at offending; 24 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 45 [2010] VSCA 281	s.102.3(1) Provide resources to terrorist organisation: s.102.7(1) *[25y]* Attempt make funds available to terrorist organisation: s.102.6(1) *[25y]* 2 x Possess thing connected with preparation for terrorist act: s.101.4(1) *[15y]*	VG	6y 6m 8y 8y 5y Total: 10y NPP 7y 6m	AA 4y 6m 8y 5y Convictions quashed Total: 8y NPP 6y	Nil	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. Nature and gravity of membership of organisation significantly less than Benbrika - member of consultative committee but in thrall of Benbrika: CCA: [571]-[572] - objective gravity of offence of attempting to provide funds towards lower end of range: CCA [571] Youth - worked for father's construction company – supportive family and community. BENBRIKA, SAYADI, MERHI, A.RAAD, E.RAAD, HADDARA and KENT sentenced for s.102.3 offence A.RAAD, E.RAAD sentenced for s.102.6 offence SAYADI, A.RAAD sentenced for s.102.7 offence KENT sentenced for s.101.3 offence
4.	**SAYADI** (29 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 457 [2010] VSCA 281	s.102.3(1) Provide resources to terrorist organisation: s.102.7(1) *[25y]*	VG	6y 6m 8y Total: 8y NPP 6y	AA 4y 6m 7y Total: 7y NPP 5y 3m	Minor - not relevant.	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. One of 'elders' of organisation, but involvement less than Benbrika and Joud: CCA [580]. Various periods of employment – supportive family and community. BENBRIKA, JOUD, MERHI, A.RAAD, E.RAAD, HADDARA and KENT sentenced for s.102.3 offence JOUD, A.RAAD, E.RAAD sentenced for s.102.6 offence JOUD, A.RAAD sentenced for s.102.7 offence KENT sentenced for s.101.3 offence

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
5.	**MERHI** (23 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 457 [2010] VSCA 281	s.102.3(1)	VG	6y	AA 4y	Nil.	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. Role in organisation less than Sayadi's, and younger than Sayadi - consequently, objective seriousness and moral culpability of offending less than Sayadi: CCA: [582]. Married with one child – close to completing electrical apprenticeship – youth – character – supportive wife. BENBRIKA, JOUD, SAYADI, A.RAAD, E.RAAD, HADDARA and KENT sentenced for s.102.3 offence JOUD, A.RAAD, E.RAAD sentenced for s.102.6 offence JOUD, SAYADI, A.RAAD sentenced for s.102.7 offence KENT sentenced for s.101.3 offence
6.	**A. RAAD** (25 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 457 [2010] VSCA 281	s.102.3(1) Provide resources to terrorist organisation: s.102.7(1) *[25y]* Attempt make funds available to terrorist organisation: s.102.6(1) *[25y]*	VG	6y 6m 8y 8y <u>Total</u>: 10y NPP 7y 6m	AA 4y 6m 8y 5y <u>Total</u>: 8y NPP 6y	Nil	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. Treasurer - important member of organisation - objective seriousness and moral culpability of count 1 same as Joud: CCA: [590], [596] - objective gravity of count 3 more towards lower end of range: CCA: [598]. Married with child – supportive family and community – various periods employment. BENBRIKA, JOUD, SAYADI, MERHI, E.RAAD, HADDARA and KENT sentenced for s.102.3 offence JOUD, E.RAAD sentenced for s.102.6 offence JOUD, SAYADI sentenced for s.102.7 offence KENT sentenced for s.101.3 offence

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
7.	**E. RAAD** (26 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 457 [2010] VSCA 281	s.102.3(1) Attempt make funds available to terrorist organisation: s.102.6(1) *[25y]*	VG	6y 6y Total: 7y 6m NPP 5y 9m	AA 4y 4y Total: 6y NPP 4y 6m	Nil	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. Participation in activities and involvement in attempt to provide funds to organisation less than A.Raad: CCA: [604]. Electrician apprenticeship – married with children – supportive family and community. BENBRIKA, JOUD, SAYADI, MERHI, A.RAAD, HADDARA and KENT sentenced for s.102.3 offence JOUD, A.RAAD, sentenced for s.102.6 offence JOUD, SAYADI, A.RAAD sentenced for s.102.7 offence KENT sentenced for s.101.3 offence
8.	**HADDARA** (29 at sentence) [2009] VSC 21 Bongiorno J (2010) 29 VR 593 (2010) 204 A Crim R 457 [2010] VSCA 281	s.102.3(1)	VG	6y NPP 4y 6m	AA 4y NPP 3y	Nil	(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. Member of organisation for only a few weeks before being arrested: CCA: [606]. Young age - stable employment record - family support. BENBRIKA, JOUD, SAYADI, MERHI, A.RAAD, E.RAAD, and KENT sentenced for s.102.3 offence JOUD, A.RAAD, E.RAAD sentenced for s.102.6 offence JOUD, SAYADI, A.RAAD sentenced for s.102.7 offence KENT sentenced for s.101.3 offence

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
9.	**KENT** (32 at sentence) [2009] VSC 375 Bongiorno J	s.102.3(1) Make document connected with terrorist act: s.101.5(2) *[10y]*	PG	4y 6m 2y 6m Total: 3y 9m			(2004–2005) - Melbourne-based terrorist organisation - 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 never got to point of committing terrorist act before shut down - organisation towards lower end of scale of seriousness: CCA [561]. 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 E.Raad or Merhi, and considerably less than other co-accused Student – married with children. BENBRIKA, JOUD, SAYADI, MERHI, A.RAAD, E.RAAD, HADDARA sentenced for s.102.3 offence JOUD, A.RAAD, E.RAAD sentenced for s.102.6 offence JOUD, SAYADI, A.RAAD sentenced for s.102.7 offence
10.	**LELIKAN (No.5)** (35 / 41) [2019] NSWSC 494 McCallum J [2019] NSWCCA 316	s.102.3(1)	PG	Community Correction Order 3y	Crown AD (in exercise of discretion)	Custody offensive implement in public	Travelled with PKK (Kurdistan Workers Party) and HPG guerrillas in mountains of Iraq and Turkey wearing uniform and carrying accoutrements of those organisations including weaponry - not a militant - chronicler of events of struggle – informal membership of PKK - did not incite extremist ideology or depict violence – lowest order of seriousness. Kurdish background – nature of PKK established to support creation of independent Turkish State - refugee status in Australia. On appeal: considered relevance of merit, nature and ideology of organisation as well as motivation of offender to objective seriousness of offence

	NAME (age if Known)	OFFENCES	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
11.	**ABDIRAHMAN-KHALIF** (21) [2019] SASCFC 133 (2020) 271 CLR 265 [2020] HCA 36 [2021] FCA 1651 Besanko J	s.102.3(1)	VG	3y NPP 2y 3m	Conviction AA Crown AA Conviction reinstated		Female born in Kenya and immigrated to Australia with family – detained at airport preparing to fly one way to Turkey – numerous Islamic extremist images and material found on phone – communicated with three Kenyan women who later engaged in terrorist act in Kenya – recorded on listening device pledging oath of allegiance to IS leader – listening and reading extremist material – expressing support for extremist ideology and self-identification as member of IS Remarks on sentence unavailable – only reference to sentence in [2021] FCA 1651 judgment dealing with control order (at [25])
12.	**UWEINAT** (21) [2021] NSWSC 1256 Bellew J	s.102.3(1) Advocate terrorist act: s.80.2C(1) *[5y]*	PG (25%)	3y 8m 1y 8m Total 3y 11m NPP 2y 11m		Common assault.	Member of Islamic State, informal arrangement, no position of authority - advocated commission of terrorist acts in accordance with organisation's philosophies over 6 month period – sent messages and posted material on chat group to young persons. Renunciation of previously held extremist beliefs –contrition – cautiously favourable prospects of rehabilitation – support from family, friends, community.

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