FEDERAL COURT OF AUSTRALIA

Booth v Thorne [2020] FCA 445

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| File number: | VID 126 of 2020 |
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| Judge: | **ANASTASSIOU J** |
|  |  |
| Date of judgment: | 6 March 2020 |
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| Catchwords: | **CRIMINAL LAW** – control orders – application for interim control orders pursuant to s 104.4 of the *Criminal Code Act 1995* (Cth) – whether methodology for risk assessment reliable – whether controls reasonably necessary and reasonably appropriate and adapted – application granted |
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| Legislation: | *Criminal Code* *Act 1995* (Cth), ss 11.2A, 104.1, 104.4, and 119.4 *Federal Court of Australia Act 1976* (Cth), s 37AI*Federal Court Rules 2011*, r 41.06 |
|  |  |
| Cases cited: | *Booth v Kaya* [2020] FCA 25*Briginshaw v Briginshaw* (1938) 60 CLR 336*McCartney v EB* (2019) 263 FCR 170*R v Cerantonio & Ors* [2019] VSC 284*Thomas v Mowbray* (2007) 233 CLR 307*Wong v The Queen* (2001) 207 CLR 584  |
|  |  |
| Date of hearing: | 4 and 6 March 2020 |
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| Registry: | Victoria |
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| Division: | General Division |
|  |  |
| National Practice Area: | Federal Crime and Related Proceedings |
|  |  |
| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 20 |
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| Counsel for the Applicant: | Ms C Fitzgerald |
|  |  |
| Solicitor for the Applicant: | Australian Government Solicitor |
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| Counsel for the Respondent: | Mr S Moglia |
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| Solicitor for the Respondent: | Doogue + George |

ORDERS

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|  | VID 126 of 2020 |
|   |
| BETWEEN: | SANDRA BOOTHApplicant |
| AND: | SHAYDEN JAMIL THORNERespondent |

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| JUDGE: | ANASTASSIOU J |
| DATE OF ORDER: | 6 MARCH 2020 |

THE COURT ORDERS THAT:

1. Pursuant to section 37AI of the *Federal Court of Australia Act 1976* (Cth), until 4:15 pm on 13 March 2020, or until further order, certain personal information relating to:
	1. the address and/or whereabouts and contact details of the respondent; and
	2. the identity, address and/or whereabouts and contact details of other persons

referred to in Annexure A and Annexure B of the Schedule to these orders not be published or disclosed.

## Interim control order

1. The Court makes an interim control order pursuant to s 104.4 of the Criminal Code (Cth) in the terms set out in the Schedule to these orders.

## Confirmation hearing

1. The hearing of any application to confirm, vary or revoke these orders be fixed on 4 June 2020 at 10.15am.

## Endorsement pursuant to Rule 41.06

To: Shayden Thorne

You will be liable to imprisonment, sequestration of property or punishment for contempt if:

* 1. for an order that requires you to do an act or thing - you neglect or refuse to do the act or thing within the time specified in the order; or
	2. for an order that requires you not to do an act or thing - you disobey the order.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

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|  | VID 126 of 2020 |
|   |
| BETWEEN: | SANDRA BOOTHApplicant |
| AND: | SHAYDEN JAMIL THORNERespondent |

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| JUDGE: | ANASTASSIOU J |
| DATE OF ORDER: | 10 MARCH 2020 |

THE COURT ORDERS THAT:

1. The schedule to the orders made on 6 March 2020 be amended pursuant to rule 39.05 of the *Federal Court Rules* by adding in respect of Control 3 the Annexures attached to this order.
2. The applicant personally serve this order on the respondent.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

(Delivered *ex tempore*, revised from transcript)

ANASTASSIOU J:

1. This is an application for an interim control order pursuant to s 104.4 of the *Criminal* ***Code*** *Act 1995* (Cth). The applicant is a member of the Australian Federal Police (**AFP**) holding the rank of Commander and, from time to time, Assistant Commissioner. The respondent pleaded guilty to one count of preparation for incursion into a foreign country for the purposes of engaging in hostile activities, contrary to sections 11.2A and 119.4(1) of the Code. The respondent committed this offence jointly with five others who each also pleaded guilty. The respondent and his co-offenders were sentenced by Justice Croucher in the Supreme Court of Victoria over a number of days on 22 and 26 February and 3 May 2019: *R v Cerantonio & Ors* [2019] VSC 284 (**Sentencing Remarks**). On 25 February 2019 Croucher J sentenced the respondent to three years and ten months’ imprisonment with a non-parole period of two years and ten-and-a-half months. The respondent’s sentence expires tomorrow, 7 March 2020.
2. This application was brought on extremely short notice, having been filed only on 27 February 2020. Due to the urgency of this application caused by the lateness of the application having regard to the imminent release of the respondent I shall give short ex tempore reasons for the orders I propose to make.

# Background

1. One of the respondent’s co-offenders was Mr Murat Kaya. The applicant applied for an interim control order in respect of Mr Kaya, whose sentence of imprisonment expired on 23 January 2020. On 22 January 2020 I made orders imposing an interim control order upon Mr Kaya. In *Kaya* at [7] I extracted the relevant statutory provisions which are also relevant to the present application.
2. My summary at [4]-[6] of the group’s offending in *Kaya* is equally apposite in the present case:

4. The sentencing remarks of Croucher J provide a detailed narrative of the events and conduct of [Mr Kaya] and his co-offenders [including the respondent]: *R v Cerantonio & Ors* [2019] VSC 284. In summary, the Crown’s case was that between 22 October 2015 and 10 May 2016, [Mr Kaya] and his co-offenders joined in an agreement to engage in conduct in Australia, and did engage in such conduct, preparatory to one or more of them entering the Philippines with intent to encourage or join with others there in conduct aimed at overthrowing the government of the Southern Philippines by force or violence. The Crown alleged that the motivation for the agreement between [Mr Kaya] and his co-offenders was to enable the Southern Philippines ultimately to be governed by Islamic law, otherwise known as “Sharia law”. The hostile activity that [Mr Kaya] and his co-offenders intended was that one of them, Mr Cerantonio, would enter the Philippines to encourage persons of the Islamic faith to carry out actions directed at achieving the overthrow by force or violence of the government of the Southern Philippines.

5. By 22 October 2015, neither [Mr Kaya] or any of his co-offenders were able to gain entry to a foreign country or to assist Mr Cerantonio to do so. At different times during 2015 and 2016, a number of the co-offenders, including [Mr Kaya], had sought to leave Australia but were refused departure by the authorities. Eventually, all six of the co-offenders had their Australian passports cancelled. In that context, they agreed to acquire a boat and other necessary equipment to leave Australia in a covert manner to facilitate ultimate entry to the Philippines. An element of their agreement was that only Mr Cerantonio was to be involved in actually encouraging others to attempt to overthrow the government of the Southern Philippines by force or violence. There was no formed plan by Mr Cerantonio as to how the encouragement of others in the Philippines was to occur. The means by which he was to encourage others, and who those others might be, were unknown.

6. In the course of his sentencing remarks, Croucher J observed at [91]:

First, as I have just intimated, the whole venture was poorly planned and, I fear, foredoomed to failure. Given the ill-suited vessel the group had purchased and their lack of serious boating experience, it is hard to imagine that they would have made it very far past the breakers off the far north of Queensland.

## The statutory scheme

1. There are four preconditions which must be satisfied before an interim control order can be made pursuant to s 104.4(1) of the Code. In summary, these are that a senior AFP member has made a valid request in accordance with s 104.3, that the Court has received and considered any further information it requires, that the Court is satisfied the offence the subject of the order was convicted of is, broadly speaking, ‘related to terrorism’, and that each of the controls to be imposed are ‘reasonably appropriate and adapted’ to protecting the public by preventing a terrorist act or the facilitation of the same.
2. In the present application, the respondent took issue with the fourth requirement, which is contained in s 104.4(1)(d):

…

(d) the court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of:

(i) protecting the public from a terrorist act; or

(ii) preventing the provision of support for or the facilitation of a terrorist act; or

(iii) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

1. Sections 104.4(2), 104.4(2A) and 104.1 of the Code, identify matters which the Court must take into account when determining whether controls are reasonably appropriate and adapted. Those sections read:

**104.4 Making an interim control order**

…

(2) For the purposes of paragraph (1)(d), in determining whether each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account:

(a) as a paramount consideration in all cases—the objects of this Division (see section 104.1); and

(b) as a primary consideration in the case where the person is 14 to 17 years of age—the best interests of the person; and

(c) as an additional consideration in all cases—the impact of the obligation, prohibition or restriction on the person’s circumstances (including the person’s financial and personal circumstances).

(2A) In determining what is in the best interests of a person for the purposes of paragraph (2)(b), the court must take into account the following:

(a) the age, maturity, sex and background (including lifestyle, culture and traditions) of the person;

(b) the physical and mental health of the person;

(c) the benefit to the person of having a meaningful relationship with his or her family and friends;

(d) the right of the person to receive an education;

(e) the right of the person to practise his or her religion;

(f) any other matter the court considers relevant.

**104.1 Objects of this Division**

The objects of this Division are to allow obligations, prohibitions and restrictions to be imposed on a person by a control order for one or more of the following purposes:

(a) protecting the public from a terrorist act;

(b) preventing the provision of support for or the facilitation of a terrorist act;

(c) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

1. The task to be undertaken in determining whether the controls to be imposed are reasonably appropriate and adapted has been discussed in several authorities.
2. In ***Thomas v Mowbray***(2007) 233 CLR 307, Gummow and Crennan JJ considered that the pre-condition in s 104.4(1)(d) of the Code involved a balancing exercise. Their Honours said (at [99]):

Section 104.4(1) requires in para (d) that each of these be measured against what is “reasonably necessary” and also against what is “reasonably appropriate and adapted” for attainment of the purpose of public protection from a terrorist act. This is weighed with the impact upon the circumstances of the person in question as a “balancing exercise” (s 104.4(2)).

1. In the same case, Gleeson CJ explained the balancing involved in s 104.4(1)(d) as one of proportionality. His Honour said (at [19]):

The requirement that a Court consider whether each of the obligations imposed by a control order is both reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public was the subject of debate. A requirement of that kind would sometimes be described as a requirement of proportionality. Judgments about proportionality often require courts to evaluate considerations that are at least as imprecise as those involved in formulating a control order.

1. In *McCartney v EB* [2019] FCA 183; 263 FCR 170 Wigney J considered an application for an interim control order. His Honour (at [47] and [48]) referred to the above passages from *Thomas v Mowbray* and said (at [49]):

It is worth noting that those passages from *Thomas v Mowbray* concerned orders which were said to be for the purpose of protecting the public from a terrorist act, that being the purpose set out in s 104.4(1)(d)(i) of the Code. The basis of Mr McCartney’s application for interim control orders in relation to EB was that the interim control order was reasonably necessary, and reasonably appropriate and adapted for the purpose of preventing the provision of support for or the facilitation of a terrorist act, or preventing the provision of support for or the facilitation of the engagement in hostile activity in a foreign country, as provided in ss 104.4(1)(d)(ii) and (iii) of the Code. The same principles no doubt apply to those subparagraphs.

1. As is expressly noted in s 104.4(1)(d) the evidentiary standard the Court must be satisfied of is the balance of probabilities. Proceedings for an interim control order are interlocutory for “all purposes (including for the purpose of section 75 of the *Evidence Act 1995*)”: s 104.28A(1) of the Code, c.f. confirmation proceedings s 104.28A(2)(a). The applicant accepted that “in relation to the more serious allegations made against the Respondent” the principles set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 apply.

## Consideration

1. The respondent’s position was essentially that the applicant had not established on the evidence that the respondent presented a sufficient risk of further committing offences related to terrorism to provide a basis for the making of any control order. The respondent contended that the risk assessment methodology employed by the applicant was unreliable, and that when properly considered, the risk posed by the respondent was insufficient to justify the imposition of a control order.
2. I disagree. Based upon the evidence given by the applicant in her affidavit, as well as her oral evidence, there is a rational basis in the evidence for the conclusion that the respondent poses a risk of re-offending that warrants the imposition of a control order to attain the objects of the Code specified in s 104.1.
3. The applicant was challenged in cross-examination essentially as to the bases upon which she determined her risk assessment of the applicant. She gave evidence that her assessment was based upon a variety of factors or inputs, including material prepared by her relevant team, as well as an assessment prepared by Corrections Victoria described as a Violent Extremism Assessment and Recommendation Report. The report was prepared by a doctor applying a methodology entitled Violent Extremism Risk Assessment (VERA-2R). The applicant conceded that she is not directly involved in undertaking risk assessments using the VERA-2R methodology and was unable to give evidence concerning the scientific veracity of this model or its qualities relative to other potential assessment tools. However, from her own knowledge, the applicant was able to say that it is a methodology used in Victoria and other states of Australia and also in the United Kingdom. I am satisfied that for present purposes, insofar as the applicant relied upon the assessment by a doctor, it provides a rational foundation, amongst others, for the applicant’s risk assessment.
4. The applicant’s evidence further indicated that there were a range of factors she took into account in arriving at her risk assessment, including importantly her experience of 20 years as a police officer and her extensive experience in the counter terrorism operations of the AFP. The applicant’s experience is extensive both within Australian as well as through liaison with counter terrorism agencies in other countries, including Indonesia.
5. For these reasons I find that a control order should be made. As I have already noted, the Coderequires the terms of the control order, that is to say, the particular constraints to be imposed by the order, must be reasonably necessary and reasonably appropriate and adapted having regard to the paramount objects of the Act set out in s 104.1. I am satisfied that the terms of the control order meet this requirement. I note further that the terms of the control order have been the subject to negotiations between the applicant and the respondent and as a result of those negotiations have effectively been agreed between them.
6. Plainly it is not possible to prescribe any set of standard, or boilerplate, controls to be imposed in a given case. I have referred above to what the High Court said in *Thomas v Mowbray*. As Gummow and Crennan JJ explained, what is reasonably appropriate and adapted is a “balancing exercise”, weighing the impact of the controls upon the circumstances of the person in question and the attainment of the paramount consideration, namely, the objectives of Division 104 of the Code. In undertaking the balancing exercise, in my view the exercise is analogous intellectually to the task of a court when determining the level of a civil penalty to be imposed, namely the task is one of “instinctive synthesis”, involving the assessment of constraints that are capable of satisfying the paramount consideration of the objectives of Division 104 of the Code, while also having regard to the impact of those constraints upon the person concerned. In the context of the determination of a civil penalty see *Wong v The Queen* (2001) 207 CLR 584 at 611 [75].
7. I note further that section 104.5(h) requires that when making an interim control order, the order must set out a summary of the grounds on which the order is made. The summary is contained in Annexure B to the orders. That summary has been the subject of negotiation between the parties and is agreed. The agreed summary provides further support for my conclusion that the controls are reasonably necessary and reasonably appropriate and adapted.
8. For the foregoing reasons the orders in the form agreed between the parties should be made.

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| I certify that the preceding twenty (20) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Anastassiou. |

Associate:

Dated: 24 April 2020

**SCHEDULE – INTERIM CONTROL ORDER**

1. This interim control order relates to the Respondent, Shayden Jamil Thorne.
2. The Court is satisfied on the balance of probabilities that the respondent has been convicted in Australia of an offence relating to terrorism (s 104(1)(c)(iv)) of the Criminal Code.
3. The Court is satisfied on the balance of probabilities that the respondent has provided support for or otherwise facilitated the engagement in a hostile activity in a foreign country (s 104(1)(c)(vii)) )) of the Criminal Code.
4. Further, the Court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the Respondent by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of:
	1. protecting the public from a terrorist act (s 104.4(1)(d)(i) of the Criminal Code);
	2. preventing the provision of support for or the facilitation of a terrorist act (s 104.4(1)(d)(ii) of the Criminal Code); and
	3. preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country (s 104(1)(d)(iii) of the Criminal Code).
5. The obligations, prohibitions and restrictions to be imposed on the Respondent by this Interim Control Order are those set out in **Annexure A** to this Schedule.
6. A summary of the grounds on which the order is made is set out in **Annexure B** to this Schedule.
7. This Interim Control Order does not begin to be in force until it is served personally on the Respondent and the Respondent is released from custody.
8. If this Interim Control Order is confirmed, the confirmed control order is to be in force for 12 months after the day on which this Interim Control Order is made.
9. The Respondent may attend the Federal Court of Australia which is located at Commonwealth Law Courts at 305 William Street, Melbourne, Victoria, on 4 June 2020 at 10.15am for the Court to:
	1. confirm (with or without variation) this Interim Control Order,
	2. declare this Interim Control Order to be void, or
	3. revoke this Interim Control Order.
10. The Respondent’s lawyer may attend the AFP Melbourne office at 383 La Trobe Street, Melbourne, Victoria between 9:00 am and 4:00 pm, Monday to Friday in order to obtain a copy of this Interim Control Order.

**ANNEXURE A – TERMS OF INTERIM CONTROL ORDER**

1. **Control 1**
	1. You are required to remain at <redacted> in the State of Western Australia or other such premises:
		* 1. nominated by you within 24 hours from the time that this Interim Control Order comes into force; and
			2. approved in writing by an AFP Superintendent

(the **specified premises**),

between the hours of 12:00 am local time and 6:00 am local time each day (the **curfew period**) from the day on which this Interim Control Order comes into force until the day that it ceases to be in force.

* 1. In relation to Control 1.1., you are excepted from remaining at the specified premises on the following dates and at the following location (the **interim premises**):

<redacted>

* 1. You must present and identify yourself at the specified premises and at the interim premises during the curfew period upon request by a police officer.
1. **Control 2**
	1. You are required to report to a police officer every Monday and Thursday between 7am and 7pm at <redacted>
	2. On the dates specified at Control 1.2 when they fall on a Monday or Thursday you are required to report to <redacted>
2. **Control 3**
	1. You are prohibited from being at any of the following areas
		* 1. within the exclusion zone set out in **Annexure 1** at <redacted> save and except on 13 March 2020;
			2. within the exclusion zone set out in **Annexure 2** at <redacted>;
			3. within 1 km of any Australian airport (besides <redacted> which is addressed in Control 3.1.a and besides <redacted> which has an international point of departure, or from which a person can board or charter a flight for an international destination;
			4. within 1 km of any Australian port (besides <redacted> which is addressed in Controls 3.1.b) that has an international point of departure, or from which a person can board or charter a marine vessel for an international destination;
			5. inside, or in the grounds of, any prison or correctional facility unless you are incarcerated there;
			6. at the residence of any person with whom, by reason of **Control 11**, you are prohibited from communicating or voluntarily associating;
			7. any place in Australia outside <redacted>.
3. **Control 4**
	1. You are prohibited from leaving Australia.
4. **Control 5**
	1. You are prohibited from carrying out the following specified activities (including in respect of your work or occupation), namely: accessing, acquiring, possessing, producing, storing or distributing documents (including documents in electronic form) or electronic media, or attempting to access, acquire, possess, produce, store or distribute documents (including documents in electronic form) or electronic media, which relate to any of the following:
		* 1. explosives, explosive devices, initiation systems or firing devices;
			2. firearms, ammunition or knives;
			3. anti-surveillance or counter surveillance.

unless that material is:

* + - 1. published by a ‘constituent body’ of the Australian Press Council;
			2. broadcast on Australian free to air television;
			3. broadcast on Australian pay television;
			4. shown in a commercial movie cinema;
			5. broadcast on one of the following streaming services: Al Jazeera; Netflix; STAN; ABC iView; or SBS on demand’; or
			6. served on you or your legal representatives by or on behalf of a senior AFP member in the Federal Court proceeding relating to this interim control order, including any appeal from such proceeding, and is accessed, possessed, and stored solely for the purposes of proceedings in the Federal Court relating to this interim control order, including any appeal from such proceeding.
1. **Control 6**
	1. You are prohibited from carrying out the following specified activities (including in respect of your work or occupation), namely: accessing, acquiring, possessing, producing, storing or distributing documents (including documents in electronic form) or electronic media, or attempting to access, acquire, possess, produce, store or distribute documents (including documents in electronic form) or electronic media, depicting or describing any:
		* 1. execution;
			2. beheading;
			3. suicide attack;
			4. bombing;
			5. terrorist attack;
			6. propaganda and promotional material for a terrorist organisation within the meaning of s 102.1(1) of the Schedule to the *Criminal Code Act 1995* (Cth); or
			7. activities of, or associated with, a terrorist organisation within the meaning of s 102.1(1) of the Schedule to the *Criminal Code Act 1995* (Cth),

unless that material is:

* + - 1. published by a ‘constituent body’ of the Australian Press Council; or
			2. broadcast on Australian free to air television;
			3. on Australian pay television;
			4. shown in a commercial movie cinema;
			5. on one of the following streaming services: Al Jazeera; Netflix; STAN; ABC iView; or SBS on demand; or
			6. served on you or your legal representatives by or on behalf of a senior AFP member in the Federal Court proceeding relating to this interim control order, including any appeal from such proceeding, and is accessed, possessed, and stored solely for the purposes of proceedings in the Federal Court relating to this interim control order, including any appeal from such proceeding.
1. **Control 7**
	1. You are prohibited from the following specified activities (including in respect of your work occupation), namely: producing or distributing documents (including documents in electronic form) or electronic media relating to:
		* 1. explosives, explosive devices, initiation systems or firing devices;
			2. firearms, ammunition or knives;
			3. anti-surveillance or counter surveillance;
			4. execution;
			5. beheading;
			6. suicide attack;
			7. bombing;
			8. terrorist attack;
			9. Islamic State;
			10. propaganda and promotional material for a ‘terrorist organisation’ within the meaning of s 102.1(1) of the Schedule to the *Criminal Code Act 1995* (Cth);
			11. activities of, or associated with, a ‘terrorist organisation’ within the meaning of s 102.1(1) of the Schedule to the *Criminal Code Act 1995* (Cth).
2. **Control 8**
	1. You are prohibited from carrying out the following specified activities (including in respect of your work or occupation), namely: purchasing, renting or driving any vehicle which exceeds a gross vehicle mass of 4.5 tonne.
3. **Control 9**
	1. You are prohibited from carrying out the following specified activities (including in respect of your work or occupation), namely: undertaking paid work without first notifying the AFP Superintendent in writing.
	2. In notifying the AFP Superintendent, you must submit a written notice to the AFP Superintendent which includes information about the proposed work, including details of the person for whom you will be undertaking the work (eg the employer), including their name and place of business, and the nature of the work that will be undertaken.
4. **Control 10**
	1. You are prohibited from possessing or using, or causing any person to act on your behalf to possess or use, any of these specified articles or substances, namely:
		* 1. firearms or ammunition within the meaning of s 4 of the *Firearms Act 1973* (WA);
			2. a ‘prohibited weapon’ within the meaning of s 3 of the *Weapons Act 1999* (WA);
			3. any quantity of petrol exceeding 4 litres that is not contained in the petrol tank of a vehicle that you have purchased, rented or driven in compliance with Control 8.1;
			4. any quantity of any chemical which is not consistent with reasonable domestic use;
			5. an article or device, not being a firearm, capable of discharging by any means:
5. any irritant matter in liquid, powder, gas, chemical form or any dense smoke; or
6. any substance capable of causing bodily harm;

except for reasonable domestic use;

* + - 1. a detonator;
			2. a fuse capable of use with an explosive or a detonator;
			3. a knife, in a public place, without reasonable excuse;
			4. anything intended, by the person having custody of the thing, to be used to injure or menace a person or damage property.
1. **Control 11**
	1. You are prohibited from communicating or voluntarily associating with:
		* 1. Apart from your brother, <redacted>, any person incarcerated in any correctional facility, unless you are yourself incarcerated in that correctional facility;
			2. any person located in Turkey, Iraq, Syria or the Philippines;
			3. any of the following specified individuals:

<redacted> (Date of birth: 13 July 1993);

<redacted> (Date of birth: 17 February 1960);

<redacted> (Date of birth: 7 July 1993), except for the purpose of discussing your child or facilitating contact with your child;

<redacted> (Date of birth: 14 February 1995), except for the purpose of discussing your child or facilitating contact with your child;

Robert CERANTONIO (Date of birth: 28 January 1985);

Paul DACRE (Date of birth: 6 July 1985);

<redacted>, otherwise known as <redacted> (Date of birth: 26 October 1975);

Antonino GRANATA (Date of birth: 10 November 1990);

<redacted> (Date of birth: 23 August 1979)

<redacted> (Date of birth: 7 January 1993)

<redacted> (Date of birth: 23 October 1992);

Kadir KAYA (Date of birth: 13 July 1994);

Murat KAYA (Date of birth: 14 February 1991);

<redacted> (Date of birth: 25 June 1988);

<redacted> (Date of birth: 4 December 1986);

<redacted> (Date of birth: 13 October 1994);

<redacted> (Date of birth: 4 November 1992);

<redacted> (Date of birth: 28 October 1995);

<redacted> (Date of birth: 20 June 1995).

1. **Control 12**
	1. You are prohibited from accessing or using, any mobile telephone device and SIM card other than the one mobile telephone device and SIM card provided by the AFP (the **permitted mobile phone**), and your use of the permitted mobile phone is subject to the following conditions:
		* 1. prior to using the permitted mobile phone an AFP Superintendent in writing will provide you with the following information: the International Mobile Equipment Identity number for the permitted mobile phone, the Integrated Circuit Card Identifier for the SIM card you will use with the permitted mobile phone, the telecommunication service provider which you will use with the permitted mobile phone, the password for the permitted mobile phone and the phone number to which the permitted mobile phone will be connected;
			2. at any time an AFP Superintendent (or a police officer specified in writing by an AFP Superintendent) requests, you must present the permitted mobile phone for inspection;
			3. you must not change, remove, modify or disconnect or cause any other person to change, remove, modify or disconnect on your behalf (including any employee or person acting on behalf of a telecommunications service provider) the SIM card provided by the AFP, telecommunication service provider or phone number connected to the permitted mobile phone; and
			4. if you change the password for the permitted mobile phone, you must provide the new password to an AFP Superintendent, or a police officer acting under an AFP Superintendent’s direction, if you are requested to do so by an AFP Superintendent or that police officer’.
	2. You are prohibited from causing another person to use or access the permitted mobile phone.
	3. You are prohibited from causing or permitting another person to use or access any mobile telephone device on your behalf.
2. **Control 13**
	1. You are prohibited from accessing or using, or causing any person to access or use on your behalf, any fixed or landline telephone service other than one service that has been approved in writing by an AFP Superintendent for you to access or use.
	2. To seek approval, you must:
		* 1. submit a written request to an AFP Superintendent which nominates the fixed or landline telephone service; and
			2. provide an AFP Superintendent with sufficient detail and any information requested by an AFP Superintendent for the purpose of identifying the fixed or landline telephone service that you will be accessing or using.
3. **Control 14**
	1. You are prohibited from accessing or using, or causing any person to access or use on your behalf, any public telephone except in the case of an emergency, provided that you contact an AFP Superintendent as soon as possible after accessing or using such a public telephone and:
		* 1. provide sufficient detail to an AFP Superintendent to identify the public telephone that you accessed or used, and the date, time and phone number called; and
			2. you explain the nature of the emergency which required you to access or use, or cause another person to access or use on your behalf, that public telephone.
4. **Control 15**
	1. You are prohibited from accessing or using, or causing any person to access or use on your behalf, any satellite telephone service.
5. **Control 16**
	1. You are prohibited from accessing or using, or causing any person to access or use on your behalf, any of the following websites, applications or computer programs (collectively, **platforms**), as the case may be:
6. WhatsApp
7. Viber
8. Telegram
9. Facebook
10. Facebook Messenger
11. Instagram
12. Snapchat
13. KIK
14. iCall
15. WeTalk
16. Lync2013
17. Nimbuzz Messenger
18. Whistle Phone
19. Talkatone
20. Discord
21. Google Duo
22. MagicApp
23. Signal Private Messenger
24. Zoiper IAX SIP VOIP Softphone
25. Beejive
26. Fring
27. JaJah
28. Line2
29. Talkatone
30. Truphone
31. Twitter
32. Yahoo
33. ICQ
34. Google Talk
35. MSN Messenger
36. AIM
37. Yahoo Messenger
38. Packet8
39. Google Hangouts.
	1. In addition to the platforms listed in Control 16.1, you are prohibited from accessing or using, or causing any person to access or use on your behalf, FaceTime or Skype, except you may access or use FaceTime or Skype for the purposes of contacting your child. You may only use the phone number associated with the permitted mobile phone to access or use FaceTime for the purposes of contacting your child. At least 24 hours prior to accessing or using Skype for the purposes of contacting your child, you must provide to an AFP Superintendent the username and password for the Skype account you will be using to make that contact, unless you have previously provided the username and password you will be using to make that contact to an AFP Superintendent in compliance with this Control 16.2 and that username and password have not changed. At least 24 hours prior to accessing or using Skype for the purposes of contacting your child, you must provide to an AFP Superintendent the Skype username of the party you will be contacting, unless you have previously provided the Skype username of the party you will be contacting to an AFP Superintendent in compliance with this Control 16.2 and that username has not changed.
	2. In addition to the platforms listed in Control 16.1, you are prohibited from accessing or using, or causing any person to access or use on your behalf, any gaming applications or software that connects to other users or servers, via the internet or Local Area Network (**LAN**).
	3. In addition to the platforms listed in Control 16.1, you are prohibited from accessing or using, or causing any person to access or use on your behalf, any Voice Over Internet Protocol (VOIP) service, including any software, mobile application or hardware.
	4. In addition to the platforms listed in Control 16.1, you are prohibited from accessing or using, or causing any person to access or use on your behalf, any internet based messaging service, including any software, mobile application or hardware.
	5. Controls 16.1 to 16.4 does not prohibit access to or use of a website which includes an ‘instant chat’ function that allows a visitor to the website to send messages to, and receive messages from, the website host solely for the purpose of obtaining or providing customer service.
40. **Control 17**
	1. You are prohibited from accessing or using, or causing any person to access or use on your behalf, any internet service other than:
		* 1. the one service that has been provided by the AFP for you to access and/or use (the **permitted internet service**); and
			2. a television connected to an internet service at the specified premises, subject to all of the existing controls.
	2. You are prohibited from allowing any other person to access or use the permitted internet service.
	3. You are prohibited from causing any other person to access or use on your behalf any other internet service.
	4. You are prohibited from:
		* 1. using a virtual private network (VPN) service;
			2. using the TOR network; and
			3. accessing any Darknet services (denoted by “onion” top level domain suffix).
41. **Control 18**
	1. You are prohibited from accessing or using, or causing any person to access or use on your behalf, any electronic mail (**email**) account other than one account that has been approved in writing by an AFP Superintendent for you to access or use (the **permitted email account**).
	2. To seek approval of an AFP Superintendent you must submit a written request and:
		* 1. nominate the email account; and
			2. provide any other information requested by, or on behalf of, the AFP Superintendent in relation to, or for the purpose of identifying, the nominated account which you will be accessing or using’.
	3. You are prohibited from causing or permitting another person to use or access the permitted email account.
	4. You are prohibited from causing or permitting another person to use or access the permitted email account.
42. **Control 19**
	1. You are prohibited from accessing or using any computer other than the computer that has been provided to you by the AFP for you to access and use (the **permitted computer**) and your use of the permitted computer is subject to the following condition:
		* 1. if you change the password for the permitted computer, you must provide the new password to the AFP Superintendent, or a police officer acting under the AFP Superintendent’s direction, if you are requested to do so by the AFP Superintendent or the police officer.
	2. You are prohibited from accessing or using any tablet device other that the tablet device that has been approved in writing by the AFP Superintendent for you to access and use (the **permitted tablet device**) and your use of the tablet device is subject to the following conditions:
		* 1. Before using the permitted tablet device, you must provide the password for the permitted tablet device to the AFP Superintendent; and
			2. If you change the password for the permitted tablet device you must provide the new password to the AFP Superintendent, or a police officer acting under the AFP Superintendent’s direction, if you are requested to do so by the AFP Superintendent or the police officer.
	3. To request approval under Control 19.2 you must:
		* 1. submit a written request to the AFP Superintendent which nominates the tablet device; and
			2. provide any information requested by or on behalf of the AFP Superintendent in relation to, or for the purpose of identifying and accessing, the nominated tablet device.
43. **Control 20**
	1. You are required to consider in good faith participating in counselling or education relating to your spiritual, emotional and physical wellbeing, with a suitably qualified professional counsellor or publicly recognised religious leader, for at least 60 minutes per week.
	2. If you agree to participate in such counselling or education you must advise the AFP Superintendent in writing that you have commenced the counselling or education and provide the AFP Superintendent the name and qualifications of the professional you have engaged.
44. **Exemption**
	1. You may request the AFP Superintendent approve an exemption to the requirements or prohibitions (as the case may be) specified in Controls 1.1,1.2, 2.1, 2.2, 3.1.a, 3.1.c, and 3.1.g.
	2. To request an exemption, you must:
		* 1. submit a written request to the AFP Superintendent which: (i) identifies the Control in respect of which you seek an exemption; (ii) explains the extent to which you seek to be exempted from the Control; and (iii) explains your reason(s) for seeking the exemption; and
			2. provide any other information requested by, or on behalf of, the AFP Superintendent for the purposes of determining whether to approve the exemption.
	3. The AFP Superintendent may grant an exemption subject to conditions specified in writing.
	4. You must comply with all of the conditions specified in writing by the AFP Superintendent. If you do not comply with a condition to an exemption, the exemption is (and will be taken to have been for all purposes) of no effect.
	5. A request for an exemption in respect of Controls 1.1, 1.2, 2.1 and 2.2 must be made three business days before the material time and date.
	6. A request for an exemption in respect of Controls 3.1.a, 3.1.c, and 3.1.g must be made seven business days before the material time and date.
	7. If the AFP Superintendent has not approved an exemption by the material time and date, the request is deemed to have been refused.

**Interpretation**

* 1. In this Interim Control Order:
		+ 1. ***AFP Superintendent*** means a member of the Australian Federal Police performing the duties of a Superintendent within the Counter-Terrorism portfolio.
			2. ***Password*** includes but is not limited to any passcode, swipe pattern or any information or function necessary to facilitate access to the applicable device.
			3. ***Police officer*** means a ‘member’ or ‘special member’ of the Australian Federal Police, as defined by the *Australian Federal Police Act 1979* (Cth), or a ‘police officer’ or ‘special constable’ within the meaning of the *Police Act 1892* (WA)*.*
			4. ***Material time and date*** means:
1. in relation to a request for an exemption to the requirement in Control 1.1 ⎯ the commencement of the curfew period that is the subject of the request (and, if more than one curfew period is the subject of the request, the first of those curfew periods);
2. in relation to a request for an exemption to the requirement in Control 2.1 ⎯ before the conclusion of the reporting period that is the subject of the request (and, if more than one reporting period is the subject of the request, the first of those reporting periods); and
3. in relation to a request for an exemption to the requirement in Control 3.1.g⎯ the time and date at which you wish to depart Western Australia.

**ANNEXURE B – SUMMARY OF GROUNDS ON WHICH INTERIM CONTROL ORDER MADE**

**Overview**

1. On 26 February 2019, following a plea of guilty on 22 February 2019, Mr Shayden Thorne was convicted of an offence of preparing for incursions into foreign countries for the purpose of engaging in hostile activities, contrary to ss 11.2A and 119.4(1) of the *Criminal Code 1995* (Cth).[[1]](#footnote-1) That is an offence relating to terrorism.
2. Mr Thorne was sentenced to three years and ten months’ imprisonment with a non-parole period of two years and ten and a half months in the Supreme Court of Victoria. Mr Thorne has been refused parole, and his period of imprisonment expires on 7 March 2020.[[2]](#footnote-2)
3. By reason of the following matters, Mr Thorne presents an ongoing risk of committing, supporting or facilitating a terrorist act in Australia or overseas; or committing, supporting or facilitating engagement in a hostile activity in a foreign country:
	1. the nature and circumstances of, and background to, Mr Thorne’s offending and the extreme ideology that he held at that time, including:
		1. his attempt (by agreement with his co-offenders) to travel to the Southern Philippines (where a number of Islamist militant groups operated) with the intention of his co-offender Mr Cerantonio engaging in hostile activity, despite the cancellation of his passport by the Minister on 22 October 2015;
		2. his security awareness, demonstrated during the course of the investigation;
		3. demonstrated support for Islamic State and extremist ideology supportive of violence; and
		4. his susceptibility to others who espouse extremist ideology as demonstrated by his susceptibility to the influence of Mr Robert Cerantonio;
	2. his continuing inability to accurately identify or assess extremist views and ideologies;[[3]](#footnote-3)
	3. his continued association with persons of security concern whilst in custody, in view of his susceptibility to influence; and
	4. his failure to renounce his extremist ideology that led to his criminal conviction.

**Ongoing risk factors**

*Nature and circumstances of, and background to, his offending*

1. The nature and circumstances surrounding Mr Thorne’s offending included:
	1. **Persistent attempts to travel offshore:**
		1. On 8 October 2015 Mr Thorne attempted to travel out of Australia from Melbourne International Airport but was prevented from doing so because he was unable to satisfactorily explain his travel plans to Australian Border Force officers.[[4]](#footnote-4) On 22 October 2015 the Minister for Foreign Affairs cancelled Mr Thorne’s passport on the basis that he would ‘be likely to engage in conduct that might prejudice the security of Australia or a foreign country’.[[5]](#footnote-5)
		2. Following his being prevented from leaving Australia by plane, and having his passport being cancelled, he entered into an agreement with his co-offenders to acquire a boat and other equipment in preparation for leaving Australia to enter the Southern Philippines for the purpose of his co-offender Mr Cerantonio engaging in hostile activity.
		3. Mr Thorne applied for and received a $500 advance payment of his Newstart allowance, and subsequently purchased female hiking and camping clothing and a Gore-Tex jacket.[[6]](#footnote-6) It can be inferred that he did so in anticipation of leaving Australia.
		4. Mr Thorne intended to travel offshore with his family and co-offenders in the MV Rushcutter if it had been assessed as suitable for purchase by his co-offenders Mr Murat Kaya and Mr Dacre.
		5. Mr Thorne met with the co-offenders following Mr Murat Kaya and Mr Dacre’s return from Darwin, where they had travelled for the purposes of purchasing a boat to travel to the Philippines (although they did not purchase that particular boat).[[7]](#footnote-7)
		6. Between 6 May 2016 and 10 May 2016, Mr Thorne travelled with his co-offenders (other than Mr Murat Kaya) to Cape York in Queensland with a boat purchased in the name of Mr Dacre with the intention of travelling out of Australia to the Philippines.[[8]](#footnote-8) He was subsequently arrested on 10 May 2016.[[9]](#footnote-9)
	2. **Security awareness**
		1. Mr Thorne behaved consistently with the avoidance of detection by law enforcement during the period of offending, in that he:
			1. assisted a number of the co-offenders to search their car for a listening device;[[10]](#footnote-10)
			2. used a system of codes with his co-offenders to mislead any attempts at electronic surveillance of their communications;[[11]](#footnote-11)
			3. used a falsely subscribed mobile phone number;[[12]](#footnote-12)
			4. used multiple Telegram accounts to ‘keep the Feds off my back’;[[13]](#footnote-13)
			5. advised his co-offenders that Telegram is ‘better than other that apps’, ‘but just watch what u say always’.[[14]](#footnote-14)
	3. **Demonstrated support for Islamic State and extremist ideology:**
		1. Islamic State follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those that do not agree with its extreme interpretations. Islamic State has a goal of ‘global jihad’ and has exhorted followers to kill disbelievers. Islamic State inspires, encourages, enables and directs terrorist attacks internationally.[[15]](#footnote-15)
		2. On 17 July 2015, Mr Thorne and his co-offenders attended an organised meeting at Footscray Park, at which ISIS flags were flown by the co-offenders, and they each raised their index fingers (sometimes known as the ‘shahada finger’) in the ‘tawheed salute’ which has come to be used as a widely recognized symbol of support for Islamic State.[[16]](#footnote-16)
		3. On 3 August 2015, Mr Thorne joined a Telegram chat group which included two of his co-offenders, using the username ‘Qaahir Al-Saleeb’ (which means ‘destroyer of the kuffar’, ‘kuffar’ being a derogatory Arabic term used to refer to non-Muslims) and a profile picture featuring a flag with the ISIS symbol[[17]](#footnote-17).
		4. On 13 August 2015, Mr Thorne posted on Telegram a news article titled ‘Authorities brace for ugly scenes as Australian ‘patriots’ plan mosque protests’. He commented ‘it’s time’ followed by a knife emoji.[[18]](#footnote-18)
		5. On 25 August 2015, Mr Thorne posted on Telegram a link to an article about <redacted>pledging allegiance to ISIS, with an Arabic phrase that means ‘god is the greatest’ and a request that the group pray for <redacted>.[[19]](#footnote-19)
		6. Mr Thorne was sentenced by Justice Croucher on the basis that he adhered to an ideology of Islamic extremism and was supportive of Islamic State and that this motivated his criminal offending.
	4. **Susceptibility to the influence of Mr Cerantonio:** From at least 22 October 2015, Mr Thorne was closely associated with Mr Cerantonio whom he looked to for religious guidance and leadership. Mr Cerantonio was the person to whom Mr Thorne and his co-offenders turned to for leadership and religious and spiritual guidance. He enhanced or persuaded Mr Thorne towards extremist ideas. Mr Cerantonio advocated support for the establishment of an Islamic State under Sharia law in the Southern Philippines and Mr Thorne was found by Justice Croucher to have supported Mr Cerantonio’s advocacy for that result.[[20]](#footnote-20)

*Continued extremist ideology whilst in custody*

1. Mr Thorne has maintained his extremist ideology including resentment towards non-Muslims and Australian laws while in custody, as evidenced by the following:
	1. Mr Thorne’s letter to <redacted> dated 22 February 2017, in which he expressed sadness following the cancellation of his passport in 2016, and said he would not accept it for himself or another Muslim to live in this land. Mr Thorne indicated in the letter that he had been searching for a solution to this crisis with some of the brothers, but was caught;
	2. In a letter to <redacted>on 3 March 2019, Mr Thorne referred to the teachings of <redacted>. <redacted>is reported to have been arrested in 2004 and subsequently convicted of offences that included visiting Al-Qaeda members and sanctioning suicide operations, and financing terrorism through Al-Qaeda by collecting for and providing financial aid to Abu Musab Al-Zarqawi, Al-Qaeda’s (then) leader;[[21]](#footnote-21)
	3. Mr Thorne’s continued association with individuals of security concern.

*Continuing inability to identify or assess extremist views and ideologies;*

1. Mr Thorne continues to have difficulty with identifying or assessing extremist views and ideologies on the one hand, and legitimate religious practices on the other.[[22]](#footnote-22) For example, Mr Thorne, through communications with his legal representative, indicated that he regards the ISIS flag as a flag with a religious symbol which he does not associate with ISIS.[[23]](#footnote-23)

*Susceptibility to influence and continued communication with persons of security concern*

1. As noted in the SOF [18]and above, Mr Thorne was influenced by Mr Cerantonio and adopted his advocated support for the establishment of an Islamic State under Sharia law in the Southern Philippines. This susceptibility to such influence increases the risk that Mr Thorne may pose to the community.
2. While in custody, Mr Thorne has continued to associate with Mr Cerantonio, who was housed in the same prison as Mr Thorne.[[24]](#footnote-24) Mr Thorne’s continued association with Mr Cerantonio demonstrates a lack of insight into the circumstances that led to his offending, and demonstrates that Mr Thorne is not motivated to avoid Mr Cerantonio’s influence despite Justice Croucher’s remarks in sentencing him.
3. During his time in custody, Mr Thorne has associated with the following individuals charged with or convicted of terrorist offences:
	1. <redacted>, who is currently serving a fifteen year sentence of imprisonment for various terrorism related offences under s 102.3(1) and 102.2(1) of the *Criminal Code* (Cth);[[25]](#footnote-25)
	2. <redacted>, who is currently serving a sixteen year sentence for engaging in a terrorist act under s 101.1(1) of the *Criminal Code* (Cth).[[26]](#footnote-26) Mr Thorne has sent a number of letters to, and received a number of letters from, <redacted>.[[27]](#footnote-27) In a letter to <redacted>, Mr Thorne asked <redacted> to pass on his *‘salam’* to <redacted>co-accused. At the date of that letter, <redacted>, <redacted> and <redacted> were on trial in the Supreme Court of Victoria. They were each subsequently convicted of an offences or offences connected with terrorist attacks upon the Imam Ali Islamic Centre, a Shia Islamic community prayer and religious centre[[28]](#footnote-28) (see [15.2] below).
4. Mr Thorne’s desire to maintain contact with others charged with or convicted of terrorist offences while himself imprisoned for a similar offence increases the risk that he will seek out similar associations of security concern upon release into the community and that he is sympathetic to the view/ideology of such persons.
5. During his time in custody, Mr Thorne has also associated with the following individuals whose passports have been cancelled due security concerns assessed by ASIO, or who have renounced Australian citizenship:
	1. <redacted>[[29]](#footnote-29)
	2. <redacted>;[[30]](#footnote-30)
	3. <redacted>;[[31]](#footnote-31)
	4. <redacted>;[[32]](#footnote-32)
	5. <redacted>;[[33]](#footnote-33)
	6. <redacted>;[[34]](#footnote-34)
	7. <redacted>;[[35]](#footnote-35)
	8. <redacted>;[[36]](#footnote-36)
	9. <redacted>;[[37]](#footnote-37)
	10. <redacted>.[[38]](#footnote-38)
6. He has also associated with <redacted>and <redacted>who can each be seen in photographs, with Mr Thorne, displaying the ‘shahada finger’. In one such photograph featuring <redacted>and <redacted>, they are among a group of men posing with the ISIS flag.[[39]](#footnote-39)
7. These individuals listed in [11] and [12] have either visited Mr Thorne in prison, had phone calls with him, or both.

**Overall assessment of risk**

1. In view of the matters outlined above, there is a real risk that in the absence of appropriate controls, Mr Thorne will commit, support or facilitate a terrorist act in Australia or overseas or support or facilitate the engagement in a hostile activity in a foreign country.
2. While Mr Thorne has not professed a desire to commit, support or facilitate a terrorist act in Australia, the risk of this is still a real one. Mr Thorne has not renounced his extreme ideology. The AFP’s experience in recent years is that as more and more Islamic extremists are prevented from travelling to foreign conflict zones, the risk of those persons shifting their focus to domestic terrorist acts increases. Examples of such occurrences in Australia are as follows:
	1. Sevdet Ramadan Besim wished to fight for the Islamic State. However, in December 2014 he was advised that his passport application was under review and that a recommendation may be made against its issue. He instead undertook acts in preparation for an attack, which was to involve hitting a police officer with his car and beheading that officer with a knife, on Anzac Day in 2015. He pleaded guilty and was sentenced in September 2016.[[40]](#footnote-40)
	2. Abdullah Chaarani and Ahmed Mohamed, had their passports cancelled in 2015. They subsequently undertook acts in preparation for a terrorist act together with Hamza Abbas, intended to be carried out in Melbourne’s central business district over the Christmas period in 2016, for which they were convicted in 2018. These preparations were motivated by support for Islamic State. They were sentenced in November 2019.[[41]](#footnote-41) In May 2019, Chaarani and Mohamed were also found guilty of a separate terrorist act – namely, the burning of a Shia Mosque in Melbourne in December 2016. They were sentenced in July 2019.[[42]](#footnote-42)
	3. Hassan Khalif Shire Ali had his passport cancelled in 2015. On 9 November 2018, he carried out a terrorist attack in Bourke Street, Melbourne, which included him setting fire to a vehicle and stabbing three people, one of whom died from his injuries. The Islamic State has claimed responsibility for this attack online.
	4. Milad Atai’s request to renew his Australian passport was refused in 2014. In November 2018 he was convicted of aiding and abetting a terrorist act, being the fatal shooting of Curtis Cheng outside New South Wales Police Headquarters and offences relating to being a member of Islamic State and the organisation of funding and support for Islamic State.[[43]](#footnote-43) Atai was part of an online ‘WhatsApp’ closed chat group where he and others shared views and discussed ideas supportive of Salafi Islam and the Islamic State.
	5. Agim Kruezi intended to travel to Syria in 2014 to join in the fight against the Assad regime. Following the cancellation of his passport in 2014, he instead used the money set aside for his trip to Syria to plan an attack on Australian soil in a public place with the intention to die as a martyr in that attack. In doing so, he contemplated attracting and attacking law enforcement officers. He was subsequently convicted of making acts of preparation for a terrorist attack and making preparatory acts for incursion into a foreign state.[[44]](#footnote-44)
	6. Omarjan Azari’s passport was cancelled in 2013. He was subsequently convicted of offences of attempting to make funds available to Islamic State and committing an act in preparation for or planning a terrorist act.[[45]](#footnote-45) The latter conviction related to a phone conversation during which he discussed a plan for a future terrorist act or acts to be committed in Australia, namely the killing of random members of the public, with a senior Australian figure in Islamic State who was in Syria or Iraq at that time.
	7. On 23 September 2014, the day after he had been advised that his passport had been cancelled, Ahmad Numan Haider stabbed two Joint Counter Terrorism Taskforce police officers outside of a Melbourne police station. Haider was killed by police acting in self-defence. In the period leading up to the attack, Haider had been accessing websites inciting jihad and martyrdom, graphic materials of executions and beheadings and recruitment propaganda for Islamic State.
	8. In 2016, Mohammed Kiad and Omar Al-Kutobi were convicted of conspiring to commit acts in preparation for or planning a terrorist attack. One feature of the intended attack was the detonation of an improvised explosive device to damage or destroy a building. At the time, Al-Kutobi was unable to travel as he did not yet qualify for an Australian passport. Kiad and Al-Kutobi were supporters of Islamic State and had conducted extensive internet research on Islamic State ideology, weapons and improvised explosive devices.[[46]](#footnote-46)
	9. In February 2016, Tamim Khaja was intercepted as he attempted to travel to Syria, resulting in the cancellation of his passport in March 2016. In May 2016, he undertook various acts in preparation for or for the planning of a terrorist act, including conducting reconnaissance of army barracks in western Sydney and court buildings in Parramatta for the purpose of carrying out an attack with firearms and explosives. Khaja advised undercover operatives that he intended to kill as many non-Muslims as he could prior to being killed himself.[[47]](#footnote-47)
3. These acts are consistent with directions given by Islamic State known as ‘Hijrah’ to its supporters to kill non-Muslims in Western countries.[[48]](#footnote-48) In recent years, Islamic State has exploited social media to recruit, motivate and radicalise individuals – including within Australia. A recurring theme of the recent online propaganda is that the West is at war with Islam and terror attacks in the West are permissible. There is accordingly a greater emphasis on local sympathisers to act domestically. The primary terrorist threat in Australia therefore arises from a small number of Islamic extremists, principally lone actors or small groups. Single offender attacks are more likely to go undetected and require less planning and resourcing to carry out in a very short period of time.
4. The obligations, prohibitions and restrictions set out in the proposed interim control orders are reasonably necessary, and reasonably appropriate and adapted, for the purpose of preventing a terrorist attack, preventing the provision of support for or the facilitation of a terrorist attack here or abroad and preventing the provision of support for or facilitation of the engagement in hostile activity in a foreign country. They will ensure that Mr Thorne:
	1. is provided with the opportunity to engage positively with the community (through employment, religious observation, counselling and education),
	2. is capable of being monitored by police during his re-engagement with the community, and
	3. is prohibited from engaging in behaviours, and being exposed to influences, which may lead him to commit a terrorist act or provide support for or facilitate a terrorist act here or abroad or the engagement in hostile activity in a foreign country,

and thereby reduce the risks outlined above.

1. The interim control orders should be made notwithstanding the matters set out in the SOFN, for the following reasons:
	1. Although Mr Thorne instructed his counsel to tell the court that he does not believe Muslims are obliged to engage in violence in Australia, that he does not intend to be violent, and that he will not encourage other Muslims to be violent, he did not give or adduce any evidence about this. As such, acceptance of those matters should note be accepted, particularly in light of the matters outlined below.
	2. While to <redacted>Mr Thorne denied following an extreme form of Islam or holding ideological beliefs that support the use of violence, and reported that the motivation for his offending was to leave Australia and raise a son in an Islamic environment, this is inconsistent with his plea of guilty and the findings of Justice Croucher. These assertions indicate a lack of contrition and insight into his offending conduct.
	3. Also inconsistent with his plea of guilty and Justice Croucher’s findings is Mr Thorne’s denial to <redacted>that those he associated with prior to his arrest held extreme views. His assertion to <redacted>that if anyone he associated with did support violent extremism or have plans to engage in violent extremist behaviour, he would cease his contact with them, is inconsistent with his associations with Mr Cerantonio and others in custody. <redacted>also notes that Mr Thorne’s inability to accurately identify or assess extremist views and ideologies may have increased his susceptibility to develop and adhere to extreme views. There is no evidence that Mr Thorne has developed an ability to identify or assess extremist views and ideologies, and therefore there is a risk he remains susceptible to them.
	4. Although Mr Thorne has participated in the Court Integrated Support Program since around May 2019,[[49]](#footnote-49) there is no evidence that he has renounced the extreme ideological beliefs which motivated his offending as outlined in the SOF.
	5. While an Operational Threat Assessment (**OTA**) assessed that Mr Thorne ‘unlikely … has the confidence to pursue foreign incursion’ or ‘resources to depart Australia’, it assessed him as having likely maintained the knowledge and desire to travel offshore for the purposes of foreign incursion. Mr Thorne has in the past been susceptible to the influence of others and has continued to be in contact with persons of security concern while in custody. There is a risk that he would support those who do engage in violence or support acts of violence, or be influenced by persons to commit violent acts himself, including overseas.

**ANNEXURES 1 TO 2 – EXCLUSION ZONE MAPS**





1. SOF [4]. [↑](#footnote-ref-1)
2. SOF [9] – [11]. [↑](#footnote-ref-2)
3. SOF [51] – [52]; SOFN [9]. [↑](#footnote-ref-3)
4. SOF [26]. [↑](#footnote-ref-4)
5. SOF [27]. [↑](#footnote-ref-5)
6. SOF [28], [34]. [↑](#footnote-ref-6)
7. SOF [29] – [42]. [↑](#footnote-ref-7)
8. SOF [44] – [6]. [↑](#footnote-ref-8)
9. SOF [47]. [↑](#footnote-ref-9)
10. SOF [41]. [↑](#footnote-ref-10)
11. SOF [30] - [31]. [↑](#footnote-ref-11)
12. SOF [25]. [↑](#footnote-ref-12)
13. SOF [21]. [↑](#footnote-ref-13)
14. SOF [24]. [↑](#footnote-ref-14)
15. SOF [12] – [13]. [↑](#footnote-ref-15)
16. SOF [20]. [↑](#footnote-ref-16)
17. SOF [21]. [↑](#footnote-ref-17)
18. SOF [22]. [↑](#footnote-ref-18)
19. SOF [23]. [↑](#footnote-ref-19)
20. SOF [18]. [↑](#footnote-ref-20)
21. SOF [49.9.5]. [↑](#footnote-ref-21)
22. SOFN [9]. [↑](#footnote-ref-22)
23. SOF [51] - [52]. [↑](#footnote-ref-23)
24. SOF [50]. [↑](#footnote-ref-24)
25. SOF [49.2]. [↑](#footnote-ref-25)
26. SOF [49.6]. [↑](#footnote-ref-26)
27. SOF [49.6]. [↑](#footnote-ref-27)
28. SOF [49.6.4] – [49.6.5]; [↑](#footnote-ref-28)
29. SOF [49.1] – [49.5]. [↑](#footnote-ref-29)
30. SOF [49.3]. [↑](#footnote-ref-30)
31. SOF [49.4]. [↑](#footnote-ref-31)
32. SOF [49.7]. [↑](#footnote-ref-32)
33. SOF [49.8]. [↑](#footnote-ref-33)
34. SOF [49.9]. [↑](#footnote-ref-34)
35. SOF [49.13]. [↑](#footnote-ref-35)
36. SOF [49.14]. [↑](#footnote-ref-36)
37. SOF [49.17]. [↑](#footnote-ref-37)
38. SOF [49.18]. [↑](#footnote-ref-38)
39. SOF [49.15], [49.16]. [↑](#footnote-ref-39)
40. *The Queen v Besim* [2016] VSC 537; *DPP (Cth) v Besim* [2017] VSCA 158 (Crown appeal on sentence upheld). [↑](#footnote-ref-40)
41. *The Queen v Abbas & Others* [2019] VSC 775. [↑](#footnote-ref-41)
42. *R v Mohamed & Others* [2019] VSC 498. [↑](#footnote-ref-42)
43. *R v Atai (No 2)* [2018] NSWSC 1797. [↑](#footnote-ref-43)
44. *R v Agim Kruezi*, unreported, Supreme Court of Queensland, 31 July 2018. [↑](#footnote-ref-44)
45. *R v Azari (No 12)* [2019] NSWSC 314. [↑](#footnote-ref-45)
46. *R v Al-Kutobi; R v Kiad* [2016] NSWSC 1760. [↑](#footnote-ref-46)
47. *R v Khaja (No 5)* [2018] NSWSC 238. [↑](#footnote-ref-47)
48. SOF [12], [13]. [↑](#footnote-ref-48)
49. SOFN [11] – [15]. [↑](#footnote-ref-49)