IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

No. 1544 of 2006

THE QUEEN

v

ABDUL NACER BENBRIKA,
AIMEN JOUD,
FADL SAYADI,
ABDULLAH MERHI,
AHMED RAAD,
EZZIT RAAD and
AMER HADDARA

JUDGE:	BONGIORNO J
WHERE HELD:	Melbourne
DATE OF SENTENCE:	3 February 2009
CASE MAY BE CITED AS:	R v Benbrika and ors
MEDIUM NEUTRAL CITATION:	[2009] VSC 21

Revised 20 February 2009
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CRIMINAL LAW: Sentencing — Terrorism offences — Seriousness of terrorism offences generally — Denunciation — General deterrence — Specific deterrence — Protection of the public — *Criminal Code (Cth)*, Part 5.3 — *Crimes Act 1914 (Cth)*, Part 1B

SC:EB

APPEARANCES:	Counsel:	Solicitors:
For the Crown	Mr N T Robinson SC with Mr D J Lane and Ms L A Taylor	Commonwealth DPP
For the Prisoner Benbrika	Mr R Van de Wiel QC	Doogue & O'Brien
For the Prisoner Joud	Mr T E Wraight	Lethbridges
For the Prisoner Sayadi	Ms N Karapanagiotidis	Robert Stary & Associates
For the Prisoner Merhi	Mr M J Croucher	Robert Stary & Associates
For the Prisoner Ahmed Raad	Mr J P McMahon	Robert Stary & Associates
For the Prisoner Ezzit Raad	Mr G Barns	Slades & Parsons
For the Prisoner Haddara	Mr A D Trood	Robert Stary & Associates

HIS HONOUR:

1 Part 5.3 of the *Criminal Code (Cth)* ("the Code") carries the heading "Terrorism". It creates a number of criminal offences designed to prevent, discourage and punish behaviour which falls within a wide range of human activity, and which is commonly described as terrorism: broadly, the use of violence or a threat of violence in the pursuit of some political, ideological or religious cause. This legislation was enacted by the Commonwealth Parliament after the events of 11 September 2001 to give effect to Australia's international obligations with respect to the suppression of terrorism. Its constitutional legitimacy was ensured by a referral of power to the Commonwealth by each State Parliament pursuant to s 51(xxxv) of the *Australian Constitution*.

2 By an indictment laid on 7 December 2006, 13 men were accused of a series of offences against Part 5.3 of the Code. One, Izzydeen Atik, pleaded guilty, in July 2007, to two offences and was subsequently sentenced. The trial of the other 12 commenced before a jury in early February 2008. On 15 and 16 September 2008, seven of those 12 accused were found guilty of knowingly being members of a terrorist organisation. Some of those seven were also convicted of other terrorism offences. Four of the remaining five accused were totally acquitted and in respect of the other the jury could not reach a verdict. It is now the duty of this Court to pass sentence according to law upon each of the seven prisoners who were convicted by the jury.

3 The following table sets out the offences of which each of these prisoners was convicted and the maximum penalty prescribed by Part 5.3 in respect of each of those offences:

Count	**Prisoner**	**Offence and Code section**	**Maximum Penalty**
1	Benbrika, Joud, Sayadi, Merhi, Ahmed Raad, Ezzit Raad, Haddara	Intentionally being a member of a terrorist organisation, knowing that it was a terrorist organisation (s 102.3(1))	10 years
2	Benbrika	Intentionally directing activities of a terrorist organisation, knowing that it was a terrorist organisation (s 102.2(1))	25 years
3	Joud	Intentionally providing resources to a terrorist organisation, knowing that it was a terrorist organisation (s 102.7(1))	25 years
4	Ahmed Raad	Intentionally providing resources to a terrorist organisation, knowing that it was a terrorist organisation (s 102.7(1))	25 years
5	Sayadi	Intentionally providing resources to a terrorist organisation, knowing that it was a terrorist organisation (s 102.7(1))	25 years
6	Joud, Ahmed Raad, Ezzit Raad	Attempting intentionally to make funds available to a terrorist organisation, knowing that it was a terrorist organisation (ss 11.1(1) and 102.6(1))	25 years
7	Joud	Possession of a thing connected with preparation for a terrorist act, knowing of that connection (s 101.4(1))	15 years
8	Joud	Possession of a thing connected with preparation for a terrorist act, knowing of that connection (s 101.4(1))	15 years
12	Benbrika	Possession of a thing connected with preparation for a terrorist act, knowing of that connection (s 101.4(1))	15 years

4 The nature and particular characteristics of the offences created by Part 5.3 have been considered by the New South Wales Court of Criminal Appeal in two cases concerning the indictment and subsequent conviction of Faheem Khalid Lodhi. Lodhi was indicted on four counts of having committed breaches of ss 101.5, 101.6 and 101.4 of the Code, each of which are found within Part 5.3. These counts concerned collecting and making documents connected with the preparation of a terrorist act, doing an act in preparation for a terrorist act and the possession of a thing connected with preparation for a terrorist act. The subjects of the allegations against Lodhi were the collecting of maps of the Australian electricity supply grid, the seeking of information from a chemical supply company about the availability of materials capable of being used to make explosives or incendiary devices, and the possession of a document setting out the ingredients for and the method of making poisons, explosives, detonators, incendiary devices and other similar things. On the evidence which was led at Lodhi's trial, his plans, such as they were, had not advanced beyond the collection of materials for future use. No target had been selected nor had there been any imminent, let alone actual, threat of personal injury or damage to property.

5 In an interlocutory appeal concerned with the validity of the indictment in Lodhi's case, Spigelman CJ (with whom McClellan CJ at CL and Sully J agreed) referred to the offences created by Part 5.3 of the Code in these terms:

> "[65] Each of the offence sections is directed to the preliminary steps for actions which may have one or more effects. By their very nature, specific targets or particular effects will not necessarily, indeed not usually, have been determined at such a stage. …
>
> [66] Preparatory acts are not often made into criminal offences. The particular nature of terrorism has resulted in a special, and in many ways unique, legislative regime. It was, in my opinion, the clear intention of Parliament to create offences where an offender has not decided precisely what he or she intends to do. A policy judgment has been made that the prevention of terrorism requires criminal responsibility to arise at an earlier stage than is usually the case for other kinds of criminal conduct, e.g. well before an agreement has

been reached for a conspiracy charge. The courts must respect that legislative policy."[1]

6 Upon being convicted of three out of the four counts upon which he was indicted, Lodhi was sentenced to a term of imprisonment of 20 years with a non-parole period of 15 years. This sentence was imposed in respect of the count of doing an act in preparation for a terrorist act. Concurrent sentences of ten years were imposed in respect of the two counts of collecting and possessing documents connected with a terrorist act.

7 In dismissing an appeal in respect of Lodhi's sentence, the Court of Criminal Appeal (Spigelman CJ, Barr and Price JJ) emphasised the serious nature of these offences as demonstrated by the maximum penalties provided for them by the statute. It pointed out that this was so notwithstanding the fact that criminal liability in respect of such activity may arise at a very early stage of what might or might not ultimately result in a terrorist act. The offences exist to protect the community from such acts by disabling those who might go on and commit them, not only before any damage is inflicted but before the possibility for such damage becomes real. As Spigelman CJ said:

> "By the extended range of conduct which is subject to criminal sanction, going well beyond conduct hitherto generally regarded as criminal, and by the maximum penalties provided, the Parliament has indicated that, in contemporary circumstances, the threat of terrorist activity, requires condign punishment."[2]

8 Although the offences now before this Court differ from those which were dealt with in *Lodhi*, the principles enunciated by the Court in that case apply equally to the cases of the seven men now to be sentenced. This is particularly so with respect to that Court's acceptance that the legislative intention behind Part 5.3 of the Code was to impose criminal liability upon persons who engaged in activities proscribed by that part of the Code at a very early stage of those activities — well before such liability might ordinarily be imposed at common law or under conventional criminal statutory provisions.

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1 *Lodhi v The Queen* [2006] NSWCCA 101

2 *Lodhi v The Queen* [2006] NSWCCA 101 per Spigelman CJ at [79]; Barr J at [211] and Price J at [215] agreeing.

9 All of the prisoners to be sentenced in this case were convicted of being members of a terrorist organisation contrary to s 102.3(1) of the Code. For them to have been so convicted, the jury must have found that each of them was such a member for some period between 1 July 2004 and 8 November 2005, the day upon which, in simultaneous police raids, all of them were arrested. In fact it was the Crown case that all of them, with the exception of Amer Haddara, were members for the whole or most of that period — at least from the end of 2004.

10 In Haddara's case, such membership was alleged to have been confined to the period between 17 September and 8 November 2005. In the case of Abdullah Merhi, his counsel urged a finding, for sentencing purposes, that he abandoned such membership as he might have had in about the middle of 2005. The particular cases of Haddara and Merhi will be addressed separately in due course.

11 Because of the complexity of the statutory definitions involved in the concept of a terrorist organisation as proscribed by Part 5.3 of the Code, there are many forms in which such an organisation could exist. The Crown case here was that the terrorist organisation to which these men belonged was an unincorporated body which was directly or indirectly engaged in preparing or fostering the doing of a terrorist act: that is to say, preparing or fostering an action or threat of action involving the use of explosives, incendiary devices or weapons intended to advance a religious cause, namely the pursuit of violent jihad in the advancement of Islam. The Crown alleged that this action or threat of action was intended to coerce or influence a government or governments and/or to intimidate the public or a section of the public.

12 The jury, by its verdicts, found that this organisation existed during the indictment period, that is to say between 1 July 2004 and 8 November 2005, and that each of the prisoners belonged to it. It also found that Abdul Nacer Benbrika directed the activities of the organisation.

13 Benbrika is now a 48 year old former aviation engineer who was born, raised and educated in Algeria. He migrated to Australia in 1989, partly, at least, because he perceived the observance of Islam to be becoming more difficult in his home

country. After he arrived in Australia it would appear that he became increasingly recognised as a learned person in the Islamic community. He taught at various mosques, and at Islamic organisations such as the Islamic Information and Support Centre of Australia, which is known by its acronym "IISCA". He was said by Samir Mohtadi, a prominent Muslim who was called by the Crown, to follow a version of Islam which he, Mohtadi, regarded as "harsh", although Mohtadi also thought that Benbrika was learned. However, Benbrika's attitudes to Islam and its practice appear to have brought him into some conflict with other Muslims from time to time to the effect that, eventually, he was either excluded from or voluntarily desisted from some community activities: notably, being involved with the Preston mosque. Also, from about 2002, he came to the attention of the Australian Security Intelligence Organisation, commonly known as "ASIO". This was an organisation to which he often expressed antipathy and with which, he proudly asserted, he would never co-operate.

14 Some time prior to the commencement of the indictment period, a number of young men, including some, at least, of his co-accused, began to associate with Benbrika and each other, and attend religious classes called "dars" classes[3] which he gave. These dars classes, at least as far as the evidence in this case revealed, were unremarkable. They appear to have been concerned with Islamic theology, particularly the central concept of monotheism or "tawheed". That the classes were of this nature, and that the prisoners or most of them attended the classes from time to time, is not surprising. The intercepted conversations upon which this case was largely based conclusively demonstrated that the prisoners all considered themselves as active, involved and committed Muslims. They saw their commitment to violent jihad in the context of this religious commitment. To them, it was the same commitment. They observed the external requirements of Islam; they prayed, they attended the mosque, and they followed the Muslim practice of continually calling upon Allah in their ordinary verbal discourse. But they also regarded violent jihad as an integral part of their religious obligations — a belief

[3] Sometimes referred to as "daroos" classes.

constantly reinforced by Benbrika's teachings and his ordinary discourse with them.

15 Outside the dars classes Benbrika associated, informally and socially, with some of the same young men so that, at some indeterminate time, they, with him, formed a group, or, in Arabic, a "jemaah", of which he was the leader. The jemaah existed, under Benbrika's direction, for the purpose of engaging in violent jihad. Benbrika regarded the destruction of the "kuffar" — Arabic for "unbelievers" — as an essential aspect of the Islamic religion. The jemaah would achieve this by acts of terrible violence in this country, or perhaps elsewhere. In Australia, such terrorism would be directed towards coercing the Australian Government into withdrawing Australian forces from Iraq, as the presence of such troops in that country was seen as oppressive to Muslims and the Islamic religion.

16 The jemaah was not proved by the Crown to have had any formal structure as to meetings, records or the like, although, in common with many Islamic organisations, it had a sandooq (literally "a box") to which the members made financial contributions. Although it appeared that it was intended that such contributions would be made regularly, there was evidence that not all of the members of the jemaah were diligent in making such contributions and some may have made no contributions at all.

17 There was much dispute during the trial as to what the sandooq was used for, or was intended to be used for, by the jemaah. It was contended on behalf of some of the prisoners that it was purely for charitable or other benign purposes, and this might have been, at least partly, true. However, it is an inescapable inference from the whole of the evidence that it was also either used or intended to be used to finance the activities of the jemaah, including those activities which made it a terrorist organisation. Of particular significance in this regard was the evidence of a conversation in the prisoner Ezzit Raad's garage on 10 September 2004 when he, Ahmed Raad and Aimen Joud were discussing the necessity to steal "in Allah's cause" for the purpose of obtaining weapons.[4] This conversation occurred in the

[4] Conversation 40: the so-called "garage conversation".

context of Ezzit Raad having to store a stolen car which they had acquired and which they intended would be stripped and the parts sold to provide funds for the jemaah. It is unclear as to what total sum of money was involved in the sandooq over the whole indictment period — probably, at most, something in the order of about seven thousand dollars.

18 The sandooq was kept by Ahmed Raad, under Benbrika's direction. He sought to collect contributions for the sandooq on a regular basis, with mixed success. A number of the intercepted conversations relate to this topic.[5] Various sums were disbursed by Raad although it appears he generally made such disbursements only after receiving approval from Benbrika. Most of the disbursed funds were used for purposes associated with the jemaah, such as hiring cars for trips which were taken and, probably, accommodation and expenses on those trips. The Crown did not prove that any funds from the sandooq were ever used for the purchase of weapons, explosives or the like.

19 The evidence that the jemaah, led by Benbrika, was engaged in preparing or fostering a terrorist act is largely contained in the 482 intercepted conversations which were before the jury. Some of those conversations were covertly recorded at Benbrika's home and, occasionally, at other places, and some were recorded from intercepted telephone calls. In the former, Benbrika was almost always a participant, whereas the latter were often between other members of the group and sometimes included unidentified people. The nature and purpose of the organisation emerges from those conversations, and from the written and electronically recorded material found in the possession of some of the prisoners and discussed by them in a number of the conversations.

20 The term "jihad" is used, particularly by Benbrika, in many of the intercepted conversations. Although it is an Arabic word which translates literally as "struggle", it has acquired many different meanings in Islam, as Samir Mohtadi explained in his evidence. Many of those meanings are benign. It can mean the promotion of Islam by non-violent means; the seeking of perfection in one's own

5 E.g. conversations 126, 341 and 453.

moral life and relationship with Allah; the diligent attention to one's religious and familial duties; and probably a number of other similar things. However, it also means a violent struggle against the enemies of Islam: the kuffar. This was the meaning which Benbrika attributed to it, and he claimed that it was the only meaning of jihad authorised by the Koran. In a conversation with Sayadi and a man called Belhaj on 19 August 2005[6] he not only asserted that the only meaning of jihad was fighting the kuffar but also that it equated to what the kuffar called "terrorism". The Crown case was that, whatever meanings jihad might have in Islamic discourse generally, Benbrika and his organisation used the term in the sense he described — as a violent attack on the kuffar to advance the Islamic cause. In other words, the jemaah used the expression "jihad" in almost precisely the way s 100.1 of the Code defines a terrorist act.

21 Whilst, as might be expected, the content of the 482 conversations heard by the jury was diverse, it included a great deal of discussion concerning the necessity for the jemaah to engage in jihad in the Islamic cause. This concept was explained more than once by Benbrika as involving violence towards those, including governments, who were considered to be resisting the expansion of Islam and the adoption of Shariah law (which he referred to as "Allah's law") in this country. As he expressed it:

> "… I don't believe in this country. I don't believe in this law. Which all this believe, no Allah but Allah, no Allah no other law of. This is the meaning of no Allah but Allah. (as punctuated in agreed transcript)

22 Benbrika referred to Australia as "a land of war", thus justifying the promotion of a violent Islamic response as being self-defence. He justified fraud and violence against the kuffar because, according to him, both "the money and the blood of the kuffar are lawful"[7].

23 The participants in the intercepted conversations often referred to each other using various English and Arabic expressions as a group might be expected to do. They

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6 Conversation 432.

7 Conversation 107.

clearly considered themselves "brothers". They spoke of "doing something", a term which the Crown invited the jury to infer from its frequent use, and the context in which it was often used, as being generally a euphemism for the carrying out of a terrorist act. They also sometimes referred to themselves as "mujahideen" — Islamic warriors fighting in the cause of Allah. Benbrika often praised the courage of mujahideen who, he believed, had made great sacrifices for Islam.

24 There are numerous references in the conversations to the need for the members of the jemaah to be ready to destroy buildings and kill people in the cause of jihad. It was apparently considered by Benbrika that if such actions were carried out the Australian government would withdraw troops from Iraq or would leave the American alliance. The actions of those who engaged in the 11 September 2001 attacks in the United States and the attacks on trains in Madrid and London were discussed in terms of praise and admiration. The heavenly rewards said to be consequent upon dying in the Islamic cause were often spoken of. The necessity for fortitude in the face of opposition and even the inevitability, or at least the probability, of ultimate arrest and imprisonment were discussed as praiseworthy objects for the true "mujahid", or "person who engages in jihad", to pursue. On one occasion at least, Benbrika referred to his desire to continue the jemaah in gaol if "the brothers" were arrested. He also expressed admiration for Osama bin Laden in conversations with members of the jemaah whilst criticising a Melbourne imam or cleric who expressed a view of bin Laden which was other than complimentary.

25 In many of the conversations, reference is made to hard copy and electronic copy versions of jihadi literature, examples of which were eventually seized in various raids carried out by law enforcement agencies on the homes of some of the prisoners. Much of this material originated from Islamic websites which would be commonly described as "extremist" and was circulated to various members of the jemaah. Examples of this material include a collection of materials supporting violent jihad under the title of "Mansura" (which included US military combat training manuals re-badged as "the Mujahid's Handbook"), and documents entitled "The Terrorist's Handbook" and the "White Resistance Manual" which contained recipes for the manufacture of explosives from commonly available materials, and

diagrams and instructions for the construction of an electronic circuit that, when coupled with an alarm clock, would detonate an explosive device. One CD seized from the premises of the prisoner Joud on 17 September 2004 contained a document entitled "The Vortex Cookbook" which provided, amongst other things, simple instructions relating to homemade explosive devices

26 In his evidence, Samir Mohtadi said that, in his experience in the Muslim community in Australia, it is not uncommon for ordinary young Muslims to access websites containing the sort of material found by investigators in the possession of some of the prisoners and/or discussed by them. This included, it would appear, video material depicting the beheading of hostages captured by mujahideen fighters in Muslim countries, some examples of which were put before the Court — edited to the extent necessary to protect the jury from being exposed to the depiction of unspeakable acts of cruelty.

27 It was put by some Counsel, on behalf of their clients, that the widespread access to such material, particularly among young Muslims as attested to by Mohtadi, excused those prisoners who had had examples of it in their possession. Whilst mere possession of such material might not, of itself, constitute an offence proscribed by Part 5.3 of the Code, it would always depend on surrounding circumstances. Possession of such material takes on a much more sinister complexion when it is realised that those who have it are being encouraged by someone they regard as worthy of emulation and respect to engage in, and are encouraging each other to engage in, acts of terrorism for which such material could provide extremely useful instruction.

28 It was part of the Crown case that on a number of occasions during the indictment period some, at least, of the jemaah members met or attempted to meet together outside of Melbourne. There was evidence before the jury of trips to Kinglake, Ocean Grove, Eden and a remote location in far western New South Wales. The Crown case was that these meetings or trips were directed towards bonding "the brothers" and allowing them to engage in some sort of training for the purpose of advancing violent jihad.

29 That Benbrika regarded training as important can be gauged from references in a number of the intercepted conversations. For example, on 21 September 2004 Benbrika expressed the view that training in the use of knives for attacking the kuffar was necessary. He demonstrated to an unidentified male how a knife could be used to attack and kill a person, saying "You have to learn it".[8]

30 In December 2004 a number of members of the jemaah, including all of the prisoners who are now to be sentenced, and who were then members, went to Kinglake where they were observed by two police officers who were called by a local resident to a group of men acting suspiciously late at night in a remote woodland area. The explanation given to the police for their being there was that the group had been looking for somewhere to pray. There was other evidence which would have permitted the jury to infer that, whether or not the group was in fact intending to pray, it intended to watch jihadi material on a computer while it was at that location.

31 In February 2005, a trip to Ocean Grove was planned where a number of members of the group were to share a house. In fact, the meeting at Ocean Grove never eventuated because the owner of the rental property refused to permit the 12 males who attended to all stay in the premises. All of the prisoners then members, with the exception of Merhi and Ezzit Raad, were among those who sought to go to Ocean Grove.

32 In March 2005, Joud, Sayadi and Ahmed Raad went to a property at Louth, a remote location in far western New South Wales, where they camped with some other young men. The evidence before the Court showed that firearms were discharged and a curious device consisting of a battery connected to a number of spark plugs was found after they left. Expert evidence demonstrated that this device could not have been used in any nefarious way, but the jury were invited to infer that it was an attempt, albeit a totally ineffective attempt, to construct some sort of explosive or incendiary device.

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8 Conversation 53.

33 Another planned trip to Lakes Entrance did not eventuate, and one to Eden in southern New South Wales which involved a number of young males who were not part of the jemaah appears to have been no more than a fishing trip, even if it had originally been planned as something more — as to which there was no evidence.

34 In about May 2004, an undercover Victorian police officer who gave evidence under the name SIO 39 infiltrated the group. He pretended to be a Turkish Muslim called Ahmet Sonmez who had had experience with explosives and their use in agriculture, particularly in tree stump removal. He attended a number of dars classes and similar gatherings where he began to befriend members of the jemaah. Whilst it could be concluded that he appeared to have been generally accepted into the group, some members, particularly perhaps Sayadi, were concerned at his eagerness and willingness to accept almost everything suggested to him without argument. Sayadi expressed these concerns to Benbrika who appeared to dismiss them or at least to play them down.

35 In October 2004, SIO 39 offered to show Benbrika how an explosive could be made from a mixture of ammonium nitrate fertiliser and diesel oil. He obtained a small quantity of these materials and took Benbrika to a remote location in the bush to the north of Melbourne where he detonated a very small quantity of this material for Benbrika's benefit. The whole episode was video and audio recorded, and was subsequently put before the jury.

36 Although, in discussions with SIO 39, Benbrika sought information as to how much explosive would be needed to destroy different targets such as buildings, houses et cetera, and where and how such explosive could be obtained, he did not ask SIO 39 to obtain explosive or, for that matter, anything else that might have been useful to the jemaah. Nor is there any evidence that Benbrika told any other members of the group of SIO 39's demonstration.

37 Argument was put that a conclusion should be reached that Benbrika was not serious about wishing to learn about explosives as, if he had been, he would have expressed greater interest than he did in SIO 39's demonstration and would have requested him to procure explosives for the group. Against this, however, must be

weighed the fact that Benbrika was well aware, at all times during the indictment period, that ASIO was very interested in him and probably also in those around him. As well, other members of the group, notably Sayadi, had expressed doubts as to SIO 39's bona fides as far as his expression of support for the organisation was concerned. Benbrika's apparent nonchalance at SIO 39's demonstration and his failure to take up offers to procure explosives can be equally interpreted as caution on his part.

38 If Benbrika was cautious in his dealings with SIO 39, this was in complete contrast to his open encouragement of the members of the group to engage in terrorism — almost always in conversations covertly recorded within his own home. For example, on 24 September 2004 he exhorted Merhi to not just kill a few people but to "do a big thing", to which Merhi replied, "like Spain" — an obvious reference to the terrorist attacks on the Madrid train system which had occurred on 11 March that year. In the same conversation, Benbrika referred to killing a thousand people so as to coerce the government into withdrawing Australian troops from Muslim countries. In a later recorded conversation with Atik, Benbrika referred to damaging buildings and blasting things.

39 The only evidence before the Court that the Benbrika organisation had selected a target or targets for a terrorist act came from the only member of the group to turn Queen's evidence, Izzydeen Atik. He said that on one occasion in late August 2005 he travelled with Benbrika to a motor car accessory shop in the Campbellfield area to obtain a set of decorative "mag" wheels for Benbrika's wife's Toyota van. He was able to obtain such wheels at no cost because of a fraudulent arrangement he had with someone connected with the business, Buy Direct Tyres. The arrangement involved credit card fraud, an activity in which Atik was highly skilled. He said that in the course of that journey Benbrika told him that the group had intended to carry out a terrorist attack at the Melbourne Cricket Ground during the then forthcoming Australian Football League Grand Final but that the plan had been postponed for security reasons and because of funding difficulties. He said that Benbrika had also mentioned the NAB Cup and Crown Casino on Grand Prix weekend as being possible targets.

40 But Atik was a liar, a cheat and a fraudster of significant accomplishment. He specialised in credit card fraud but also defrauded the social security system to such an extent that he was able to receive a disability pension for a psychiatric illness whilst living in a luxury townhouse, driving a motor vehicle of commensurate standard and employing a butler. For one period, Centrelink even paid his brother a carer's pension to look after him. All of this was provided to him at the same time as he was earning thousands of dollars every month in a systematic credit card fraud which involved the use of other peoples' credit card numbers obtained, for payment, from taxi drivers.

41 The jury in this trial heard all of this and more about Atik. In particular it heard evidence from a police officer that he had interviewed Atik on 30 November 2005 at HM Prison Barwon. That officer said that in that interview Atik had denied any knowledge that the group was planning a terrorist attack and that he would have gone straight to the police had he known of any such thing. He first told the police of the alleged conversation in the motor vehicle with Benbrika in mid-2007 after he had decided to plead guilty and was concerned to reduce any sentence which might be imposed upon him as much as possible.

42 The jury were warned as to the danger of relying on Atik's evidence not only because he was an accomplice who had turned Queen's evidence but also because of his significant deficiencies as a witness. It is unlikely that the jury accepted him as a witness of truth. Certainly, the Court will not now accept him as such. Indeed, having now seen and heard Atik give evidence and seen and heard him cross-examined on two occasions[9] I am satisfied that much of the material he provided to the police, before he was sentenced, including his account of the targets conversation with Benbrika was untrue and designed purely to serve his own ends. I am also now satisfied that his account of the psychiatric condition he relied upon in mitigation of his sentence was at least grossly exaggerated and probably totally feigned despite its having been accepted by a number of psychiatrists and

9 Once on a preliminary enquiry on the voir dire on the statements he provided to police in July 2007 before he was sentenced and once at trial.

psychologists over a considerable period and its not having been contested by the Crown.

43 For sentencing purposes, no account will be taken against the prisoners of any of Atik's evidence. Specifically, the prisoners will be sentenced on the basis that they were members of a terrorist organisation which, although it had encouraged them to perform a terrorist act or acts in the future and had taken steps towards that end, no target or targets had been selected and no explosives or other material had been obtained to carry out such an attack.

44 To be guilty of the offence of membership it was not necessary that the terrorist organisation to which they belonged had gone as far as selecting a particular target. The organisation became a terrorist organisation in the terms of the indictment in this case once it engaged in any activity which could be characterised as fostering or preparing the doing of a terrorist act. An organisation may become a proscribed terrorist organisation long before it selects a target, obtains bomb-making or similar materials, or plans an attack.

45 It is an element of the offence created by s 102.3 of the Code that for a person to be convicted of being a member of a terrorist organisation he must know that the organisation is a terrorist organisation. In the way this case was put by the Crown, these prisoners must have known that the organisation was fostering and/or preparing the doing of a terrorist act, that is to say encouraging its members (and perhaps others) to engage in a terrorist act and/or taking some step, however indirect, towards the doing of that act. Submissions by some counsel to the effect that the highest the case could be put against their clients was that the organisation only ever fostered the performance of a terrorist act and took no steps in preparation, ignore the evidence that the organisation either provided or supplied the means of obtaining bomb making and similar instruction material to its members and provided instruction for terrorist activity. It provided or supplied the means of obtaining jihadi material such as videos of hostages being beheaded which had the effect, or could have had the effect, of desensitising these young men to the brutal and barbaric means by which they were expected to carry out

executions of other human beings — as mujahideen faithful to the Islamic cause as interpreted by Benbrika. All of these activities in which the organisation engaged are able to be characterised as "directly or indirectly" preparing the doing of a terrorist act within the definition of terrorist organisation in s 102.1 of the Code.

46 Had Atik's evidence as to the proposed targets been accepted, and had knowledge of those targets been proved against the prisoners other than Benbrika, their criminality in belonging to the terrorist organisation would have been commensurately greater than has been proved without Atik's evidence. They will all be sentenced on the basis that they knew the jemaah led by Benbrika encouraged and/or took some act towards the commission of a terrorist act some time in the future on an as yet undetermined target.

47 This is not to say that their criminality is to be regarded as trivial. The existence of the jemaah as a terrorist organisation constituted a significant threat that a terrorist act would be or would have, by now, been committed here in Melbourne. The absence of an imminent, let alone an actual, terrorist attack does not mean that condign punishment is not warranted in this case. As Price J said in *Lodhi*, with respect to a different offence under the Code:

> "It does not follow that as long as the preparatory acts relied upon to constitute the offences are in their infancy criminal culpability must necessarily be low."[10]

48 Whilst the criminality of each of the prisoners will be considered with regard to his own circumstances and a sentence imposed accordingly, the general approach will be that the membership of this terrorist organisation must be regarded as a serious crime although not as serious as it might have been regarded had Atik's evidence been accepted, leading to a finding that preparation for a terrorist act had advanced further than it actually had; namely, as far as the selection of a target or possible target.

49 In reaching an appropriate sentence for each of the prisoners, their own culpability and mitigating factors peculiar to each of them will be taken into account

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10 *Lodhi v The Queen* [2006] NSWCCA 101 at [229].

individually. There are some matters, however, which are common to all of them and can be dealt with before proceeding to consider the cases of each of them. One of the most obvious relates to the conditions under which they will serve their sentences.

50 Since they were arrested in November 2005, all of these men have been in custody, classified by prison authorities as requiring incarceration in a maximum security facility. Until the Court intervened in March last year to ensure that they were able to obtain a fair trial, they were held at HM Prison Barwon in the Acacia Unit. A description of the conditions of their confinement and travel during this period is set out in the Court's ruling given on 20 March 2008[11] and need not be repeated here.

51 An affidavit of Brendan Francis Money attesting to the principles of prison classification and placement within the Victorian system is before the Court. Whilst that evidence does not permit any confident prediction as to how these men will be classified or where they will be placed in the Victorian prison system, after they are sentenced it would seem highly improbable that they will experience prison conditions less harsh as sentenced prisoners than they experienced when they were on remand. This probability will be appropriately taken into account in fixing all of their sentences, as will the fact that they have already endured those conditions for the first two and a half years of their custody whilst on remand.

52 Secondly, all of the prisoners co-operated with the Crown and with each other in the way the trial was conducted. They also conducted themselves in an exemplary manner in the court room. Their co-operation led to considerable savings in public expenditure by permitting the trial to be concluded in as short a time as reasonably possible. They will all receive consideration for this co-operation in their sentences.

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11 *R v Benbrika and ors (Ruling No. 20)* (2008) 18 VR 410.

Abdul Nacer Benbrika

53 Benbrika was found guilty of being a member of a terrorist organisation (Count 1), of directing the activities of a terrorist organisation (Count 2), and of possession of a thing connected with preparation for a terrorist act (Count 3).

54 Benbrika is 48 years old. He was born and raised in Algiers, the capital of Algeria. He was one of ten children of parents who died in 1986 and 2004 respectively.

55 Benbrika has seven brothers who all still reside in Algeria except for one who lives in Canada. One brother has retired. The rest are gainfully employed in occupations including architecture, engineering, labouring and business management. Until his arrest Benbrika was in regular contact with each of his brothers and his two sisters who reside in Algeria and Australia respectively. His family was and remains observantly Islamic.

56 After completing his secondary education Benbrika attended a technical college where he studied aviation engineering in which he eventually graduated. He speaks English, French and Arabic. Before migrating to Australia he worked as an aviation engineer at the Houari Bounedine Airport in Algiers. His employment concerned aircraft maintenance.

57 Benbrika came to Australia in 1989 for a number of reasons. War had broken out in Algeria and he could not see a productive future there. As previously noted, these circumstances also made it more difficult for him to practise his faith in accordance with his beliefs.

58 Upon arrival in Australia on a visitor's visa he lived with a friend who had come from Algeria and, despite his visa, ultimately obtained work as a process worker in Campbellfield.

59 In 1992 Benbrika married Rakia Aballah who was a mechanical engineering student at Swinburne University. She ceased studying when they married and has since had seven children aged between 15 and two. Three of the children are schooled at home. The others attend Ilim College, an Islamic school in Broadmeadows.

60 Following his arrival in Australia, Benbrika's Islamic faith and his practice of it intensified. Gradually he became recognised as a learned person and was sought after for religious advice concerning a host of personal, professional and family related problems. Up until about 2002 he held teaching positions with a number of Islamic organisations including IISCA and a number of mosques. He was also the President of the Algerian Society, the primary objective of which was accommodating Algerian refugees.

61 Benbrika met Aimen Joud and Fadl Sayadi at IISCA. He came to know the Raads and the other prisoners following a death in the Raad family.

62 In fixing an appropriate sentence the Court must take into account the matters prescribed by s 16A of the *Crimes Act 1914* (Cth). Ultimately it must impose a sentence that is of a severity appropriate in all the circumstances of the case.

63 The plea in mitigation put on Benbrika's behalf emphasised a number of things. His counsel, Mr Van de Wiel QC, submitted that his criminal culpability could not be said to have been at a high level. He maintained only a "general intention" with respect to terrorist activities. He vacillated. He was inconsistent. He was unskilled in terrorism matters. He had but a limited ability to direct anything. He preferred to give religious advice and he tended to defuse other members of the group by postponing decisions and/or urging patience.

64 Whilst Mr Van de Wiel properly conceded that Benbrika had control over who joined the group, he argued that he never really led the group in any meaningful sense. The organisation, under his direction, never got beyond being an embryonic form of a terrorist organisation, argued Mr Van de Wiel.

65 The organisation which Benbrika directed may indeed have been only an embryonic terrorist organisation. His leadership may have been less than what would have been expected had he been a trained soldier or even a trained terrorist, and his and his followers' capacity to carry out a terrorist act may have been less than professional. They may never have got to the point of carrying out a terrorist act. But all of these considerations are of little moment. By its existence, its nature

and its activities the organisation fostered and encouraged its members to engage in violent jihad — to perform a terrorist act. By its collection and circulation of terrorist material it prepared, however indirectly, the doing of a terrorist act. These constitute the substance of the criminality in this case.

66 As Mr Robinson SC, for the Crown pointed out, had any of the members of the organisation progressed further along the continuum of terrorist activity than they did by, for example, performing a specific act in preparation for or actually engaging in a terrorist act, the crime for which they would be being sentenced, would have been much more serious and carried a maximum penalty of life imprisonment.

67 As far as Mr Van de Wiel's submissions as to his client's ineptitude or incapacity is concerned, overseas experience of terrorist activity with which we are all unfortunately now very familiar does not suggest that terrorism is the preserve of highly skilled or highly effective operatives. Indeed, it might be said that terrorist acts as they have been experienced in modern times are often carried out by amateurs whose principal attribute has not been skill but rather a zealous or fanatical belief in some ideology or other which seeks to promote itself by the use of violence. Benbrika clearly had such a belief and fanaticism, and imparted it to his younger associates. They shared such a belief to varying degrees, even if they might have been less than expert in putting it into effect.

68 The essence of Benbrika's criminality, with respect to the Count of directing the activates of a terrorist organisation lies in his exercising an enormous influence over the young men who followed him, and imbuing, or seeking to imbue in them, a fanatical hatred of non-Muslims and, even, those vast majority of Muslims who abhor violence as much as anyone else. The degree of his criminality, both with respect to his membership and direction of the organisation, must be judged in light of the fact that the existence of that organisation and his leadership of it created a significant risk that a terrorist act would be committed in this community. Where and when such an act might have been committed, how devastating it would have been, or how many people would have been killed or injured as a result of it is

impossible to say. It is the creation of the risk of such an event occurring that the legislation is aimed at. Accordingly, it will be for his part in the creation and maintenance of this risk that Benbrika will be punished.

69 There were three reports before the Court concerning Benbrika, all written by Dr Danny Sullivan, a consultant psychiatrist.

70 The first of them, dated 10 October 2008, was prepared in anticipation of Benbrika's plea hearing. In that report, Dr Sullivan recounted Benbrika's history and noted that the only overtly psychiatric condition from which he had suffered in the past was one of psychotic symptoms in 2004 relating to ASIO. This condition apparently responded to antipsychotic medication and Dr Sullivan considered that it did not suggest that he had a pervasive psychotic illness. However, he did diagnose Benbrika as having a major depressive disorder of mild to moderate severity — no doubt exacerbated by his incarceration in the Acacia Unit at HM Prison Barwon and the fear of being returned to such conditions after he is sentenced. He found that there was no significant personality disturbance, cognitive impairment or other psychological defect in Benbrika's makeup.

71 Dr Sullivan considered that Benbrika held a persecutory interpretation of international and local events with particular reference to Muslims. He did not consider this to be delusional in nature. He thought that Benbrika was a zealot rather than a delusional person. Of particular significance is his conclusion that Benbrika's participation in the offences for which he is to be sentenced is not obviously associated with any mental disorder.

72 The two other reports of Dr Sullivan are of more recent origin, being dated 17 December 2008 and 15 January 2009 respectively. They were written after Benbrika's plea hearing.

73 Dr Sullivan's report of 17 December 2008 was written to alert Benbrika's solicitors, and through them, the Court, of a report of a magnetic resonance imaging (MRI) scan of Benbrika taken on 3 December 2008. This scan showed a significant abnormality in a part of his brain. Apparently the MRI had been undertaken

following an observation that he had been suffering from involuntary upper body movements. The purpose of Dr Sullivan's report of 17 December 2008 was to seek to delay Benbrika's sentencing until further investigations of his neuropsychiatric condition could be undertaken. Following a mention before the Court on 19 December 2008, the sentencing of all the prisoners was adjourned to a date to be fixed to enable Benbrika's condition to be further investigated. All the other prisoners were present by video link at that mention and were represented. They did not object to this course being followed, hence the considerable delay between the jury verdict and the sentencing of these prisoners.

74 A further report from Dr Sullivan was received by the Court on 19 January 2009. As a result, the matter was listed again on 30 January at which time the plea was reopened and both the later reports of Dr Sullivan were tendered without demur by the Crown.

75 In his report of 15 January 2009, Dr Sullivan says that subsequent investigations of Benbrika's neuropsychiatric condition have been inconclusive. Whilst they excluded a number of serious progressive disorders which might have shortened his lifespan, they have left unresolved the question of the cause or causes of both his tremor and the aetiology of the defects seen on the earlier MRI scan. Dr Sullivan concluded this report by advising that Benbrika will require ongoing medical review because of his abnormal MRI scan which might suggest that he is at greater risk of some cerebrovascular problems than someone of his age would normally be.

76 At the hearing on 30 January, Mr van der Wiel submitted, on Benbrika's behalf, that the conclusion in Dr Sullivan's final report meant that Benbrika's incarceration would be more onerous than that of other prisoners because he would need ongoing medical review. There is no basis for this submission to be found in Dr Sullivan's evidence. Benbrika will have, in prison, the right to appropriate medical treatment. There is no reason to believe that such treatment will make his incarceration more onerous. His sentence will not be reduced on that account.

77 There is no evidence before the Court that Benbrika has, in any way, renounced his commitment to violent jihad and hence to terrorism. On the contrary, on one

occasion, which has already been noted, he said that if "the brothers" were arrested, as he thought likely, the jemaah should continue in gaol. No submission was made on Benbrika's behalf that he had resiled from his former position, nor was there any evidence upon which such a submission could have been based. Indeed, all of the evidence points inexorably to a conclusion that he maintains his position with respect to violent jihad which was demonstrated over and over in his own words on the intercepted conversations.

78 This situation leads to two consequences with respect to Benbrika's sentence. First, he receives no credit by reason of any contrition for the offences for which he is being sentenced.[12] More importantly, the fact that there is no evidence that he has resiled from his former position with respect to the justification of violent jihad means that in considering questions of specific deterrence, rehabilitation and the protection of the public the Court cannot make the allowance in his favour it could have made had the situation been different.

79 However, it is also necessary in fixing an appropriate sentence in respect of each count of which he was convicted to take into account the fact that Benbrika has never been convicted of a criminal offence before, and the fact that his incarceration will have a very significant deleterious effect on the lives of his wife and seven children,[13] all of whom are innocent of any criminality. The other matters already referred to which will be applied to all the prisoners must also be given appropriate weight and consideration in Benbrika's favour.

80 As well as the membership and directing offences, Benbrika must also be sentenced for the offence of knowingly being in possession of a thing connected with a terrorist act. The "thing" in question was a compact disk containing jihadi material, specifically the Mansura web, the contents of which have already been referred to.

81 Benbrika's counsel submitted that the circumstances in which Benbrika possessed this compact disk, which was found in a suitcase under a bed in a spare bedroom at his home, suggested that he may never have viewed its contents. This may or may

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12 s 16A(2)(f), *Crimes Act 1914* (Cth).

13 Section 16A(2)(p) *Crimes Act 1914 (Cth)*.

not be a fair inference. However, he must be sentenced for the crime of which he has been found guilty, namely possession of the CD. The same considerations apply to such sentence as apply to the sentences to be imposed for the membership and directing offences.

82 The most serious offence of which Benbrika has been convicted is the offence of directing the terrorist organisation. The question arises as to whether the sentences in respect of the other two offences should be made concurrent, or partly so, with the sentence to be imposed in respect of the directing offence.

83 As far as the membership offence is concerned, it would seem that the elements of it are practically, if not legally, wholly subsumed within the directing offence. It would be difficult to direct an organisation of which one was not a member, even if it was theoretically possible. In the circumstances, it is appropriate that there be total concurrency between the sentence for the directing offence and the membership offence.

84 A slightly different question arises with respect to the offence of possession. In the course of this case many "things" which could have been proved to be connected with a terrorist act were found in the possession of a number of the then accused. In some cases these things became the subject of a charge, in others they did not. Thus, some of the prisoners face being sentenced for being in possession of such things and some do not. In these circumstances, unless total concurrency is ordered with respect to possession offences where other offences have also been proved, there would be an inappropriate disparity created between prisoners who, in reality, had performed the same criminal acts. Accordingly, in Benbrika's case, it is appropriate that the sentence to be imposed in respect of the possession offence also be made concurrent with that imposed in respect of the directing offence.

85 Subject to the matters referred to, the Court must impose a sentence that is just having regard to the standard sentencing principles of denunciation, general and specific deterrence, the possibility of rehabilitation, and the need to protect the public. Of particular importance in such a case as this are questions of deterrence and the need to protect society by incapacitating the criminal for a sufficiently long

time to ensure, at least for that period, that he will be unable to engage in the continued criminal activity for which he is being sentenced.

Aimen Joud

86 Aimen Joud was found guilty by the jury of being a member of a terrorist organisation (Count 1), providing resources to a terrorist organisation (Count 3), attempting to make funds available to a terrorist organisation (Count 6) and two counts of possessing a thing connected with preparation of a terrorist act (Counts 7 and 8).

87 Joud was born on 15 October 1984 and is now 24 years old. His mother died when he was two and his father remarried about a year later. He has seven siblings. He is unmarried. Joud grew up in Altona and Hoppers Crossing. Whilst at school he worked at a fruit shop, a computer shop and in his parents' café in Flemington. He undertook the VCE but did not complete his final examinations.

88 After leaving school, Joud travelled to Egypt and Lebanon with family members. When he returned to Australia in early 2003 he began his first full-time job as a tiler. In the year leading up to his arrest, he worked as a construction supervisor for his father's company which was developing a shopping complex.

89 Joud is a devout Muslim. He has attended Islamic classes at IISCA and the Islamic Information and Services Network of Australia, also known by its acronym "IISNA".

90 Joud was arrested on 8 November 2005 along with most of the other accused with whom he stood trial. He has been in custody since that time in the same conditions as those which apply to Benbrika and all the other prisoners. Prior to his removal from HM Prison Barwon following the Court's ruling of 20 March 2008 he had required the support of psychiatric nursing staff for psychological problems he was having at that prison.

91 Joud was also assessed by Dr Sullivan who wrote a report dated 12 October 2008. In that report, Dr Sullivan noted Joud's problems at Barwon and finally concluded that, at the time he was seen, he was suffering from an adjustment disorder, and a depressed and anxious mood of moderate severity. He said that Joud was struggling to cope and remained hopeless about the future, but that he may benefit from long-term psychological support. The only other matters of significance in Dr Sullivan's report are his statement that Joud attributed the offences of which he has been convicted to "youthful bravado and talk taken out of context" and that he felt that "the trial process had been inevitably geared to crucify him". Dr Sullivan found it difficult to assess Joud's prospects for rehabilitation.

92 A number of articulate and impressive testimonials were submitted on Joud's behalf. They were from friends and family who knew him and obviously thought very well of him as a brother, cousin or friend. They attested to his kindness, friendliness, concern for others and many other admirable qualities. Of course, as with all testimonials tendered on plea hearings, they are intensely partisan and are hardly objective. However they do demonstrate that Joud could expect to receive significant support from family and friends when he is released.

93 The Crown submitted that this material should be given little weight. Counsel for Joud, Mr Wraight, submitted that as the material was uncontradicted it should be accepted. In sentencing Joud these testimonials will be given such weight in his favour as is appropriate having regard to their content and subject to their obvious limitations.

94 I have already dealt at length with the criminality involved in being a member of this terrorist organisation. Those matters need not be repeated. Joud demonstrated his membership of the group by what he said on a very large number of intercepted conversations. In those conversations he often displayed a keen exuberance and sometimes impatience that the group was not moving more quickly. That he was committed to violent jihad is undoubted.

95 In a conversation on 27 September 2004 at which Joud, Benbrika, Sayadi and an unidentified male were present, the question of performing a terrorist act was

discussed, although in somewhat guarded language. It was Joud who showed enthusiasm by suggesting to Benbrika that if he did not "prepare something" the group would "run away".[14] As far as Count 1 is concerned, Joud's criminality in being a member of the terrorist organisation should be assessed as being the same or marginally less than Benbrika's.

96 Count 3, upon which Joud was convicted, involved his providing himself as a resource to the terrorist organisation by undertaking a leadership and administrative role. The Crown case on this count was that Joud respected Benbrika's overall authority but, under that authority, engaged in a number of activities which were of practical assistance to the organisation and thereby provided a resource. These activities included the giving of direction, encouragement and guidance to other members of the group, to expounding the group's philosophy and purpose and of being a confidante and sounding board for Benbrika.

97 The Crown also contended that Benbrika made it clear that he saw Joud as his heir apparent to control of the organisation and thus recognised his leadership role. Mr Wraight contended that the conversation relied upon, in this regard, that of 7 June 2005[15], does not establish this proposition to the requisite standard for it to be treated as an aggravating factor on the question of sentence.

98 In the conversation on which the Crown relies, Benbrika adverted to the possibility of his going to gaol and said to Joud that in that event he should "keep going". It seems that it would be difficult to find, beyond reasonable doubt, that in his use of the pronoun "you" Benbrika intended only to refer to Joud. Equally, he may have been intending to refer to the whole of the jemaah. The Crown's contention will not be acted upon in sentencing Joud on Count 3.

99 In performing the function that he did in the terrorist organisation, Joud undoubtedly took a leadership role. Whilst there is no direct evidence that he was ever actually appointed to that position by Benbrika, it appears that, at least by the

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14 Conversation 65.
15 Conversation 385.

common consent of the other members, his position was accepted. For sentencing purposes his criminality with respect to Count 3 should be characterised as being that of a member of a terrorist organisation who contributed more to the organisation than its ordinary members did, or were expected to. This offence is considerably more serious than the membership offence.

100 Characterised in this way it would appear to follow that the criminality involved in Count 3 completely subsumes the criminality involved in Count 1. Accordingly, it is appropriate that there be total concurrence between the sentence imposed on Joud in respect of Count 1 with that imposed in respect of Count 3.

101 Before leaving Count 3, it is necessary to consider a submission by the Crown that Joud's criminality with respect to that count is higher than that of Ahmed Raad and Sayadi with respect to Counts 4 and 5. Whilst it is true that Joud was probably involved in more conversations and was more obviously active than Ahmed Raad or Sayadi, to discriminate between them would be descending to an analysis beyond that which could be sensibly undertaken on the vast volume of evidence in this case, or which needs to be undertaken for a proper sentencing exercise. Whilst it is necessary to distinguish degrees of criminality between co-offenders to ensure that justice is done as between them, in this case any distinction between the criminality of Ahmed Raad, Sayadi and Joud involves a distinction too fine for the sentencing process. They will each receive the same sentence for providing resources to the terrorist organisation.

102 In being found guilty of Count 6, Joud was convicted, together with Ahmed Raad and Ezzit Raad, of attempting to make funds available to a terrorist organisation. They did this by engaging in a scheme whereby stolen cars were purchased and stripped, and the resulting parts sold to provide funds for the jemaah. It would appear that money in the sandooq was to be used to buy these cars in the first instance. The process by which this exercise was to be undertaken was complex and need not be set out in detail. It is sufficient for the purposes of sentencing to describe it briefly.

103 In September 2004, a VY Holden Commodore and a black Honda Prelude were stolen from Brunswick and Carlton respectively. The Holden was stripped and cut up. In respect of it there were numerous discussions between Joud and another member of the jemaah about cutting it up, stripping it and dealing with its parts.

104 The Honda was transported to Ezzit Raad's home and stored in his garage. It was after that occurred, on 10 September 2004, that Joud, Ahmed Raad and Ezzit Raad were engaged in the highly significant "garage conversation".[16] In this conversation Ahmed had justified the criminality of the group's activity in stealing cars by referring to the need to obtain money for the purpose of buying weapons.

105 There is no doubt, from an analysis of the garage conversation, that the participants in it, including Joud, intended to sell the parts of both cars for the purpose of enriching the sandooq. It was expected that a large profit would be made. However, on 17 September police raided various premises occupied by members of the group where parts of the Commodore and items from the Honda were found. The Honda was found in Ezzit Raad's garage.

106 In an intercepted conversation on 19 September 2004[17] Joud was heard to say "with this hit, sheik, we lost, say, $10,000". This can be taken to have been the expected profit from the sale of the stolen vehicles. It was intended that the proceeds of sale would go into the sandooq for the purposes of the organisation.

107 The Crown contended that an aggravating feature of this offence is provided by the garage conversation from which it can be inferred that the purpose of seeking to obtain these funds was for the purchase of weapons.

108 Whilst the garage conversation undoubtedly lends support for the proposition that the specific purpose for which the car stealing exercise was undertaken was to provide funds for the purchase of weapons, for this to be a specific aggravating factor it would have to be found beyond reasonable doubt. But two days later, in a conversation concerning the possible acquisition of premises for the group, a reference was made to the funds which would become available when the parts

16 Conversation 40.
17 Conversation 50.

from these vehicles were sold. I am not prepared to find beyond reasonable doubt that the proceeds of the stolen car exercise would necessarily have been used to purchase weapons. On the other hand, of course, the proceeds of the stolen car exercise were to be used for the purposes of the terrorist organisation. One of those purposes was the fostering or preparing of a terrorist act. It seems to me to make little difference whether the proceeds of the exercise were to be used to buy weapons or for the general purposes of the organisation.

109 Mr Wraight submitted that this offence should be treated as being at the lower end of criminal culpability for an offence of this nature because it was limited to an attempt and occurred over a very limited period.

110 The Court cannot accept the submission that this offence be characterised as being at the lower end of culpability. Had it not been thwarted by police intervention, the sandooq may well have been enriched by many thousands of dollars. Such an amount would have significantly enhanced the organisation's capacity to carry out a terrorist act. That capacity is very relevant to the risk of a terrorist act being carried out.

111 Joud was undoubtedly one of the prime movers in this scheme. The Crown submitted that the penalty in respect of this offence should reflect a substantial proportion of the maximum penalty, which is 25 years' imprisonment.

112 Joud's culpability with respect to Count 6 should be characterised as being serious and the penalty imposed should reflect that seriousness. Had the quantum of the expected gain to the terrorist organisation from the car stealing activity been greater, the Crown's submission may have been well-founded. However, having regard to the other sentencing considerations present in Joud's case, the penalty will be somewhat moderated from that for which the Crown contended.

113 Although the activity to be punished by the sentence imposed in respect of Count 6 is part of the activity of the terrorist organisation of which Joud was a member, it should be seen as to some extent separate from those activities. Whilst some concurrency in the sentences in respect of membership and leadership on the one

hand, and attempting to provide funds on the other, is warranted, it is not appropriate that there be total concurrency. Such concurrency as is appropriate will reflect the part of that activity which might be said to be part of Joud's membership and administrative roles, as against the part of it which may be characterised as a separate and distinguishable criminal act.

114 Counts 7 and 8 may be dealt with together. They relate to two CDs found in Joud's possession on 17 September 2004 when police raided his home in relation to the stolen motor vehicles. Count 7 relates to a CD that contained a number of manuals in electronic form, including bomb making instructions and the like. Count 8 relates a CD that contained a copy of the Mansura web, a document that has already been described.

115 These CDs contained, among other things, instruction in bomb making and similar activities which, according to expert evidence before the Court, if followed could have resulted in the production of extremely dangerous and lethal weapons capable of causing significant death and destruction. It is not surprising that they were found in Joud's possession. To some extent they can be seen as an almost necessary concomitant to being a member of a terrorist organisation, particularly to being a member in a leadership role. They are the tools of the trade, as it were.

116 Joud's culpability in possessing these materials should be assessed as being neither at the top nor bottom of the range of culpability. He will be sentenced in respect of each of them but, for reasons already given in respect of Benbrika, his sentences in respect of Counts 7 and 8 will be made wholly concurrent with his sentence in respect of Count 1.

117 Joud is still young. He is entitled to have his youth taken into account in having sentences fixed in this case. His youth is relevant to the possibility of his rehabilitation. He also had no prior criminal history before he became involved in the activities associated with this terrorist organisation.

118 As far as rehabilitation is concerned, I give appropriate weight to the comments of those who have provided testimonials on Joud's behalf. However, of considerably

greater weight is the fact that there is no evidence before the Court that he has abandoned his belief in violent jihad, and that there is no evidence of contrition or remorse in respect of the offences he has committed. Indeed, if his comments to Dr Sullivan about the verdict are accepted, there is no basis whatsoever upon which a finding could be made that he has resiled from being a would-be terrorist. The Court must, accordingly, proceed to sentence him on the basis that there is little the Court can take into account in his favour on the issues of rehabilitation, specific deterrence and the protection of the public. It can only be hoped that the length of the sentences themselves will have the effect of deterring him from persisting in espousing the cause of violent jihad, thus itself effecting his rehabilitation and also protecting the public.

119 In general, the same sentencing considerations, largely derived from the common law and Part 1B of the *Crimes Act 1914 (Cth)*, apply to Joud as to Benbrika.

Fadl Sayadi

120 Fadl Sayadi was convicted of being a member of a terrorist organisation (Count 1) and providing resources to a terrorist organisation (Count 5).

121 Sayadi was born on 12 January 1980 in Tripoli, Lebanon, the eldest of five children. His family migrated to Australia when he was about three years of age. Before they left Lebanon, Sayadi's father was shot in both legs, as a result of which he was ultimately confined to a wheelchair. Sayadi's father and mother are currently separated.

122 Sayadi attended Northcote High School until the end of Year 10. Thereafter, he undertook an electrical apprenticeship and studied at the Northern Metropolitan College of TAFE but did not complete the course. He later again studied at RMIT TAFE but did not complete that course either. He then worked at Rydges Hotel for about 12 months as a room service attendant, and subsequently found sporadic employment as a concreter, a forklift driver and in a steelworks. He has experienced various periods of unemployment. He is married but has no children.

123 A number of impressive testimonials were tendered on behalf of Sayadi. Sheikh Fehmi Naji El Imam, the Mufti of Australia, and Sheikh Mohammad Abou Eid, the Imam of the Islamic Society of Victoria, each attested to his good character as they knew it. A number of references from family members and leaders of the Islamic community attest to similar matters. In particular, D. Aziz Cooper, the Senior Islamic Chaplain to Prison Services in Victoria, commended Sayadi's behaviour in prison, describing him as a "model prisoner" with a co-operative behaviour and polite attitude towards prison staff.

124 Each of these references is supportive of Sayadi. However, of course, they must be viewed in the light of their origins and the purpose for which they have been provided. Subject to that, they will be taken into account in fixing Sayadi's sentence.

125 Sayadi was seen by Ms Carla Lechner, a consultant forensic psychologist, on 20 October 2008. Ms Lechner took an extensive personal history from Sayadi, the only matter of significance in which is that he had some disruptive periods during his teenage years which led to his involvement with the police. Ms Lechner thought that Sayadi was average to below average in verbal intelligence. He maintained to Ms Lechner that he was not, and is not, part of any terrorist organisation, as a result of which she did not take the matter of his offending any further.

126 After conducting appropriate testing, Ms Lechner proffered the opinion that Sayadi was evidencing symptoms of depression confirmed by a score in the "extreme" range on the Beck Depression Inventory. She said that he reported chronic sleeping problems which require medication but that he is not keen on taking anti-depressants. She also noted that he told her of the particularly onerous conditions in which he was held at HM Prison Barwon until those conditions changed.

127 Fadl Sayadi was involved in some minor criminal activity in 1997 involving a burglary, criminal damage and subsequently a theft from a shop. Two years later he was involved in a fight as a result of which he was charged with intentionally causing injury. Having regard to the seriousness of the matters upon which he is now to be sentenced these prior convictions are of little or no consequence. They

are not aggravating factors with respect to the current offences and have no effect other than to prevent his coming before the Court as a person without a prior history.

128 Sayadi was found to be a member of the terrorist organisation by the jury on the evidence provided by the intercepted conversations, although as his counsel Ms Karapanagiotidis pointed out, his participation in phone calls and conversations which were recorded may have been less than some of the other prisoners. He also participated with Joud in a number of meetings with Benbrika about the organisation, particularly early in 2005.

129 For example, on 24 January 2005 they discussed with Benbrika the bayat, or oath of allegiance, which at least some members of the organisation gave to Benbrika and the authority of an Amir. They talked about Ahmed Raad holding the group's money. In a conversation on 5 February they discussed with Benbrika and another former accused the acquisition of a car for the group, an upcoming trip and how they could avoid police attention. They again talked about the bayat and its use as a measure of control over certain members. There were many other such conversations.

130 Sayadi performed a number of different tasks for the group. On 22 December 2004 he received a telephone call from Ahmed Raad who asked him to "give me some good sites". Sayadi gave him advice as to how to access jihadi sites including one which had an article called "Nineteen Lions" — an article which extols the bravery of Al-Qaeda operatives who hijacked the American aeroplanes on 11 September 2001. On another occasion, at Benbrika's place, Sayadi gave Joud directions to a web site to gain access to "terrorist videos".

131 As well as the membership count, Sayadi was found guilty of Count 5 of providing resources to a terrorist organisation by undertaking a leadership or administrative role. Sayadi described himself as an "elder". In a conversation with Joud on 12 December 2004 following the Kinglake trip he said, "If we are the elders and we can't be patient and guide them as good examples what would it be like in the

future?"[18] Sayadi concerned himself particularly with the security of the organisation. He was concerned about the bona fides of two would-be members of the organisation, namely, SIO 39 and another man called Nasser Raad. Sayadi reported to Benbrika that he was not a hundred per cent happy with SIO 39 because: "I've heard things … be careful, don't say anything, don't bring up anything with him at all".[19] On the other hand, he was happy for Nasser Raad to go with the group on the Ocean Grove trip in February 2005 because he had "done a test on him".[20]

132 After the Kinglake trip when Sayadi and the driver of the other vehicle that went to Kinglake were questioned by police, Sayadi told the other driver that before speaking to the police they had to get their stories straight.[21]

133 Sayadi viewed the bayat as a measure of control which could be used to discipline members of the group. On more than one occasion he asked Benbrika who had taken the bayat.[22]

134 Sayadi urged Benbrika to allocate each member of the organisation responsibility for a specific job.[23] He organised rooms for dars classes.[24] He made plans as to which of "the brothers" should travel together in cars on group trips.[25] He directed others to literature glorifying violent jihad and asking them to report to him on how it made them feel.[26] He was concerned with the administration of the sandooq, particularly as to where it should be hidden, how much was in it and whether the keeping of receipts would make it more easily reconciled.[27] Sayadi attended the excursion to Louth in far western New South Wales with Joud, Ahmed Raad and four other men.

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18 Conversation 185.
19 Conversation 67.
20 Conversation 255.
21 Conversation 239.
22 Conversations 247 and 255.
23 Conversation 140.
24 Conversation 141.
25 Conversation 360.
26 Conversation 192.
27 Conversations 126, 379 and 222.

135 Ms Karapanagiotidis, in her plea on Sayadi's behalf, stressed the number and contents of the testimonials which were submitted on Sayadi's behalf. She argued that he was a devout Muslim who followed his religion faithfully. In particular, she submitted that the fact that he continues to protest his innocence should not be used in any way against him. This submission is undoubtedly correct. But the fact that there is no evidence before the Court that he has in any way moderated or changed his extremist views as the jury must have found them to be, presents the Court with the same difficulty in approaching questions of rehabilitation, specific deterrence and the protection of the public as it faces with Benbrika, Joud and all of the other prisoners.

136 The Crown submitted that the conduct of Sayadi along with the other two prisoners convicted of providing resources to a terrorist organisation were grave examples of the offence. It submitted that the resources provided by each of them were significant and sustained.

137 In sentencing Sayadi, the Court will take into account the matters put by Ms Karapanagiotidis, his past history, the support he has from his family and other members of the Islamic community, and the matters already referred to as mitigating factors in respect of all the prisoners.

138 As with Aimen Joud and for the same reasons, the sentence imposed on Sayadi in respect of membership of the terrorist organisation will be served concurrently with the sentence imposed in respect of providing resources to the terrorist organisation.

139 In fixing the sentence the Court must impose a sentence of a severity appropriate in all the circumstances.[28] It must have regard to the need to punish the offender and to questions of general deterrence, specific deterrence, denunciation of the crimes committed, rehabilitation of the offender if possible and protection of the community by incapacitation of the offender for an appropriate period.

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28 Section 16A(1) *Crimes Act 1914*.

Abdullah Merhi

140 Abdullah Merhi was found guilty of one count of being a member of a terrorist organisation.

141 Merhi was born on 6 June 1985 in Melbourne. He is 23. He is one of the ten children of Lebanese immigrants who arrived in Australia in 1971. His father died suddenly in 2003 when Abdullah was 18 years old.

142 Merhi is married with one son, born shortly after his arrest in late 2005. His wife and son visit him in prison regularly.

143 Merhi attended Princes Hill Secondary College until half way through Year 11. He began an electrical apprenticeship in 2002 and at the time of his arrest he was close to completing that apprenticeship.

144 Merhi played football with the Fitzroy Junior Football Club until sometime prior to his arrest and he taught physical education classes at Eris Arabic School, a voluntary organisation based in the Flemington Community Centre.

145 A number of education certificates and personal references were tendered on behalf of Abdullah Merhi. They included references from former work supervisors, former teachers, his family doctor, the Education Officer at the Eris Arabic School, family friends and a former football coach. There are also three other documents which need to be dealt with separately.

146 The first is a "reference" from the prisoner's wife, Violet Nyirenda. Strictly speaking, a reference, or testimonial, is simply a statement in writing concerning the reputation of the person to whom it refers. In the same way as (again, strictly speaking) a character witness who is called can speak only of the person's general reputation, so it is with a written testimonial or reference. Notwithstanding this rule, however, it is not uncommon, particularly on plea hearings in mitigation of sentence, for material to be introduced, for convenience, by written references and testimonials, which is strictly speaking, inadmissible.

147 The letter from Ms Nyirenda is not a testimonial at all. It is a plea on his behalf made by his wife. Not surprisingly it says nothing about his reputation but rather about his qualities as a husband and father. If those matters were sought to be put before the Court they should have been put before the Court with sworn evidence. However, the Crown did not object to the tender of Ms Nyirenda's "testimonial" and accordingly I will admit it as evidence on the plea.

148 More problematic are the three letters which Mr Croucher, counsel for Merhi, sought to tender, each written by the prisoner himself. They can be dealt with briefly. The first two of those letters are letters to officers of Corrections Victoria. They concern the question of the prisoner's classification and his access to certain privileges. These letters, which are dated 14 July 2007 and 18 September 2008, each seek indulgences from Corrections Victoria concerning his conditions of incarceration. They are well written, articulate and eminently suitable for the purpose for which they were written. Each of the letters contains references to Merhi's beliefs concerning terrorism and allied subjects. He says that he is opposed to the killing of innocent people and expresses similar thoughts. Having regard to the purpose for which the letters were written, the contents are unremarkable.

149 The Crown opposed the tender of these letters. Mr Croucher argued for their admission on the basis that they provided evidence of the prisoner's state of mind at the time each of them was written. Accordingly, his argument went, the Court should find that as at the dates of each of those letters Merhi held the views which are expressed in them.

150 It is trite that a person's state of mind may be inferred from what he says and what he does. This may make these letters technically admissible. However, the real problem for Mr Croucher is that even if they are admissible the weight which could be given to them in the circumstances has to be very limited. They are self-serving and written for the purpose of the prisoner's obtaining an advantage — in much the same way as his counsel has put a plea in mitigation of sentence.

151 In the circumstances I will admit the letters of the prisoner dated 14 July 2007 and 18 September 2008 but, in the absence of sworn evidence from the prisoner which

could have been cross-examined, the weight to be given to them is limited indeed. Specifically, they will not be accepted as proof that the prisoner's state of mind was, at the time they were written, that he was opposed to the killing of innocent people.

152 The final letter is a letter dated 21 October 2008 written to the Court. On no possible basis could that letter be admissible as evidence on this plea. If the prisoner wished to put evidence of the type contained in that letter before the Court there was an appropriate way to do so — a course which he chose not to follow.

153 Mr Croucher could point to no authority which would permit the Court to admit Merhi's letter. I know of none. The letter will be rejected and will not be considered in determining the sentence to be imposed on him.

154 Counsel submitted that there are several factors which place Merhi's offending towards the less serious end of the spectrum of seriousness of this particular offence. He submitted that as the organisation had no history of committing terrorists acts, membership of it should be contrasted favourably with an organisation which was, for example, specified under regulations as being a terrorist organisation because it had a history of committing such acts.

155 The Crown contended that this submission should be rejected. I accept the Crown's submission. There is no reason why the history of an organisation should determine the seriousness of the offence of joining it. The offence is committed by joining an organisation which has the characteristics of a terrorist organisation set out in the statute. It is an element of the offence that the member knows that the organisation is a terrorist organisation. Once that element is proved it is the level of risk to the community created by the existence of the organisation which determines the objective seriousness of belonging to it, not whether it is or is not a declared organisation.

156 Mr Croucher referred to matters referred to by other counsel such as the lack of any specific plan to carry out a terrorist act, the smallness of the organisation, its limited resources and the fact that it was confined to Melbourne.

157 The most significant aspect of Mr Croucher's plea and the principal point of contention between Merhi and the Crown revolved around his assertion that at sometime in about June 2005 he renounced membership of the terrorist organisation of which he had been a member since sometime toward the end of 2004. This submission was based very largely on the case made by counsel at the trial. That case was that at about that time Merhi began engaging in a study of Islam which did not involve terrorism. It was Islam promoted by "moderate" clerics and had embraced a concept known as "dawah" which might be described as goodwill towards others or some similar concept.

158 There was much evidence at the trial that after about June 2005 Merhi engaged in dawah. He attended lectures by moderate clerics and Islamic scholars, read books by respected Islamic scholars, listened to tape recordings of such scholars and obtained copies of those books and tapes which he kept in his home. Particular emphasis was placed by counsel at trial on Merhi's production of a leaflet entitled "Your right to pray at work". This leaflet was designed to give advice to Muslims of their rights in the workplace with respect to their religious obligation to pray at particular times. Counsel, in his final address to the jury, made much of the fact that Merhi had sought legal advice about this pamphlet and put the argument that the inconsistency between seeking legal advice and being a member of a terrorist organisation was so great as to lead to the inference that he had abandoned the terrorist organisation.

159 In addition to these matters, counsel sought to persuade the jury that there should be a doubt about Merhi's membership of the organisation because of his settled family life, his wife's pregnancy, his interest in football and other similar matters. Large numbers of exhibits were tendered to support this argument. Their tender was not objected to by the Crown. Had there been objection, the relevance of a lot of the material might have been very difficult to justify.

160 Of some significance however was a bundle of transcripts of intercepted conversations which had not been tendered by the Crown. They were tendered by

counsel for Merhi as part of his case.[29] Of particular significance was one conversation, referred to by Mr Croucher in his argument, which occurred between Merhi and Ahmed Raad on 12 June 2005 in which he referred to Benbrika in terms which, Mr Croucher submitted, suggested that he was no longer interested in having anything to do with him. He submitted that the conversation should be interpreted as an expression by Merhi that he was no longer interested in being a member of the organisation.

161 The Crown contends that the submission made on behalf of Merhi that by about June 2005 he had renounced his membership of the terrorist organisation should be rejected. It says that the conversation relied upon between Merhi and Ahmed Raad in support of Merhi's counsel's submission does not bear the interpretation sought to be put on it by him. Mr Robinson argued that the conversation did not mean that Merhi had left the group even if he did say that he did not see Benbrika "no more".

162 Further, the Crown points to a number of actions by Merhi after June 2005 and, indeed, right up until shortly before all the prisoners were arrested in November as indicating that he was still a member of the organisation right up until the time he was arrested.

163 On 20 August 2005, Merhi had a conversation[30] with Benbrika in which he sought Benbrika's advice concerning a personal problem which he had with carnal temptations when he used his brother's computer. His brother's computer apparently had downloaded on it salacious video clips which Merhi found himself attracted to. Benbrika advised Merhi to buy a computer of his own and to stop using his brother's. He suggested this not only for Merhi's moral advancement but also because he could jeopardise the work of the group. He said:

> "You are a part of us. One mistake from you it affects the work Allah will not help us understand? (Inaudible).
>
> …

29 Exhibit AM44 — tab 11.
30 Conversation 433.

> If — why? Because you are under the jemaah. Your mistake. That's why the profit and Abou Bakr Omar is to say (inaudible) said, the enemy will win with you because of your mistake, your sin.
>
> …
>
> That's all. Especially these days everyone is against us."

164 Not only did Merhi not dissent from Benbrika's assertion that he was part of the group; he agreed with Benbrika's assessment that his actions could place the group in jeopardy.

165 Almost immediately Merhi bought a new computer. On 24 August 2005 he copied 677 "common library" documents – jihadi material to which reference has already been made – onto that computer in three batches. Shortly afterwards he re-arranged these documents on his computer into folders of his own according to his own system.[31] These documents were referred to as the "common library" because they were found, in electronic and other forms, in the possession of various members of the group. Their significance is, of course, that they provide justification and instruction with respect to terrorist acts.

166 The Crown contended that these actions of Merhi are inconsistent with any notion that he might have abandoned the group in June 2005.

167 The Crown also pointed to a conversation[32] on 2 November 2005 in which Benbrika, Joud, Sayadi and an unknown male discussed the issue of a relative of Merhi's being questioned by ASIO. The Crown contended that Merhi participated in this conversation and referred to himself as a member of the group. He sought advice from the others as to what he should tell his relative. He said (of his relative):

> "Of course he knows that's why he's telling me but he's saying which way should I go about it now should we keep talking shit to them or should just cut relations that's what."

168 Finally, the Crown pointed to other material which, it contended, has the same effect. It referred to Merhi's will which, although written in May, was retained after

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31 Exhibit 154 (parts 1 and 2). Exhibit 159. Evidence of Madden at T3165-77, 3180-93, T3171-2. It was an agreed fact that 677 common library documents were copied on to Merhi's computer in three batches on 24 August 2005. T3188-90.

32 Conversation 471.

June and until he was arrested.[33] It also referred to Merhi's possession of writings consistent with membership of the terrorist organisation in his notebook at the time of his arrest.[34]

169 A consideration of the June conversation between Merhi and Ahmed Raad together with the material relied on by the Crown leads me to the conclusion that Merhi did not renounce his allegiance to the jemaah in June 2005 or at any time before his arrest. If it is necessary to do so I make this finding beyond reasonable doubt. Indeed there is no evidence before the Court that Merhi has ever renounced his position within the group or that he has given up a commitment to violent jihad.

170 Much was made by counsel at trial of Merhi's attraction to what was described as "moderate" Islam. He referred to Merhi's activities in seeking out the views of moderate clerics, scholars and writers and of his attendance at lectures given by them. His adoption of dawah was emphasised and much reliance was placed upon Mohtadi's opinion that someone who practises dawah could not be a terrorist. However, the evidence that Merhi continued to be part of the group notwithstanding these activities is convincing. It dispels any doubt raised by the apparent inconsistency between some of the activities Merhi engaged in and his embracing of violent jihad.

171 Abdullah Merhi is clearly a thoughtful and sincere young man. Even making all appropriate allowances, the testimonials tendered on his behalf support this conclusion as did the evidence of Mr Johnson, his former teacher, who gave evidence on the plea. All of the other evidence concerning him also supports this view.

172 It was contended on Merhi's behalf that he has excellent prospects of rehabilitation. But this submission rests upon the premise that he has renounced terrorism and did so over three years ago — a submission which has been rejected. The Court is, accordingly, left in considerable doubt as to his real prospects of rehabilitation. He

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33 Exhibit 104.
34 Exhibit 144.

will be given such credit as is appropriate for the factor that having regard to his character and antecedents he at least has the prospect of rehabilitation.

173 Abdullah Merhi is entitled to have a number of matters taken into account in his favour on sentence: his youth, the devastating effect his absence from his young family is having on them, his otherwise unblemished character, and the matters already referred to as applying to all the prisoners. Of course, the Court must also take into account questions of denunciation, general deterrence, specific deterrence and, most importantly, protection of the community. It must also punish him for the crime of which he has been found guilty. The Court faces the same problem with respect to specific deterrence and protection of the community as it faces with the issue of rehabilitation having regard to the lack of evidence that this young man has, in fact, renounced his former adherence to violence.

Ahmed Raad

174 Ahmed Raad was convicted of three offences by the jury — membership of a terrorist organization, providing resources to a terrorist organisation and attempting to intentionally make funds available to a terrorist organisation.

175 Ahmed Raad is 25. He is the fourth of eight brothers. He is married and has a daughter aged three. He attended Northcote High School to Year 11. When he left in 1999 he attended Batman TAFE, undertaking a spray painting apprenticeship. He could not complete it as the chemicals involved caused him to suffer from a skin condition.

176 For a few months Ahmed Raad worked as a salesman and team leader for the EL Group, a mortgage business which makes unsolicited telephone calls to home owners. Between 2002 and 2004 he undertook a plumbing apprenticeship and worked briefly with two plumbing firms. He eventually ceased work when he damaged his elbow. After receiving WorkCover benefits for some time he developed a business selling phone cards and subsequently a business selling various products on-line. Neither venture was profitable.

177 Ahmed is the brother of Ezzit Raad. Like Ezzit, he was deeply affected by the death of their brother Mansour in 2003. It was this event which prompted him to become more religious, to begin attending the mosque regularly and seeking religious instruction, eventually from Benbrika.

178 A number of references have been tendered on Ahmed Raad's behalf. They are from a pharmacist, a medical practitioner, Samir Mohtadi the director of IISNA, Sheik Fehmi Naji el Imam, the Mufti of Australia, and a number of other friends and family, including one from his mother-in-law.

179 Raad has been psychologically assessed by Mr Patrick Newton a psychologist. He provided a report dated 2 November 2008. The Crown took no issue with Mr Newton's conclusions in this report and did not cross-examine him. Accordingly, it is appropriate that the Court should act on his opinion.

180 Mr Newton reviewed Ahmed Raad's background and upbringing which were unremarkable until the death of his older brother in 2003. He noted that Raad is bi-lingual in Arabic and English but Raad told him that his level of proficiency in both is relatively poor. He had difficulties at school and left part way through year 11, as noted above.

181 The most significant matter in Ahmed Raad's background was the sudden death of his elder brother in 2003. He reported a significant impact from that occurrence which led him to consider the spiritual and religious significance of the choices he was making. Prior to that he had drifted from his Islamic background, had been drinking and engaged in other forms of substance abuse. After his brother's death he determined to re-commit himself to his religion and it was in the context of this situation that he began to seek out a range of spiritual teachers. In the process he came into contact with Benbrika.

182 Mr Newton noted that Ahmed Raad was married with one daughter aged nearly three who was born a short time after he was arrested. He said that he expressed a strong commitment to his wife and child.

183 Raad's medical history was largely confined to minor episodes of anxiety and lowered mood. He had never consulted a medical professional in respect of them.

184 The most significant feature of Mr Newton's report was his opinion that Ahmed Raad was suffering from severe anxiety. He considered this anxiety to be multifaceted, affecting his physical, cognitive, emotional and interpersonal life. It causes him severe distress. He is consumed by concern and worry to the extent that he finds it difficult to concentrate and think. He is emotionally agitated and constantly in a state of heightened arousal. He cannot relax and has disturbed sleep.

185 Mr Newton considered that there were several key themes which dominated Raad's anxiety. He is deeply concerned by the prospect of a return to his previous circumstances of imprisonment — in Acacia Unit at HM Prison Barwon. His response to these conditions, until he was removed in March 2008 following the intervention of the Court, was severe.

186 Secondly, Raad is anxious about his wife and family and the financial and personal hardship they are undergoing as a result of his absence. Finally he expressed concern about his physical health. He said he had suffered a bladder complaint for an extended period and that he was concerned that his symptoms may be of a serious illness.

187 Mr Newton also considered that Ahmed Raad was experiencing ongoing depressive symptoms to the extent that he had recurrent bouts of suicidal ideation.

188 Mr Newton considered that if Ahmed Raad was returned to the custodial regime he experienced between the time of his arrest and March 2008 it is likely that he would suffer a severe depressive illness. In this regard Mr Newton is merely echoing a body of professional opinion which has already been put before the Court on the earlier application which resulted in a ruling concerning the fairness of the trial[35] that prolonged incarceration in the Acacia Unit would be likely to lead to major depressive illness in even psychologically robust people.

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35 *R v Benbrika and ors (Ruling No. 20)* (2008) 18 VR 410.

189 Mr McMahon, on Raad's behalf, submitted that his offending was at the very low end of the kind of conduct envisaged by legislation of this kind. He argued this on the basis of the nature of the organisation to which Raad belonged along with his fellow prisoners. He submitted that the nature of the organisation was at the very low end of seriousness and that although it had the potential to obtain arms or literature it did nothing which was violent, dangerous or which could be said to be planning anything in particular. It had no history of violence. Mr McMahon conceded that in a record of interview with police after his arrest Raad had admitted all of his associations and admitted his part as effectively the "treasurer" of the jemaah.

190 The intercepted conversations upon which the Crown case was based provide innumerable examples of Ahmed Raad being engaged in conversation about the activities and aspirations of the group. In particular, of course, there is a large body of evidence about Ahmed Raad's role in administering the sandooq, that is to say the communal fund, of the organisation.[36] There are many conversations in which Raad is heard to be collecting, chasing up and exhorting others to make contributions to the sandooq.[37] He reported to Benbrika about the state of finances including who had paid and who had not.[38] He sought to implement Benbrika's decrees about minimum contributions to the sandooq.[39] He sought to enforce controls over expenditure (including the requirement that significant payments be approved by Benbrika).[40] He sought Benbrika's approval for expenditure.[41] He advised Joud, Sayadi and others about the state of the organisations' finances.[42] He discussed other expenditure relating to the organisation with Joud, Sayadi and others.[43] He referred to keeping records of contributions of outgoings, although no such records appear to have been discovered.[44] Finally, he discussed the custody of

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36 For example, conversations 1, 5, 9 and 19.
37 Conversations 28, 105, 135, 244, 246, 347, 350, 355, 452 and 453.
38 Conversations 119, 120, 126, 341 and 402.
39 Conversations 119, 226, 299, 341 and 347.
40 Conversations 119, 130, 131 and 222.
41 Conversations 133, 134 and 232.
42 Conversations 29, 101, 197, 311 and 379.
43 Conversations 44, 197, 222, 240, 277, 278, 379 and 422.
44 Conversation 197, 222, 341, 347 and 350.

the sandooq, how to hide it, how to provide false explanations for it or to take other steps to prevent its discovery and seizure by the authorities.[45]

191 Whilst it is difficult to be in any way precise as to the amounts of money which might have passed through the sandooq during the indictment period, in a police raid on Ahmed Raad's home on 17 September 2004 approximately $2,000 in cash was found. It was expected that the sum of something like $10,000 would have been raised from the sale of stolen car parts had the police not intervened (being matters related to Count 6). On 13 November 2004 Ahmed Raad reported to Benbrika that there was about $7,000 in the sandooq.[46] In the same conversation he told Benbrika "It's getting bigger and bigger now". On 19 November 2004 Ahmed Raad told Benbrika, Sayadi and Joud:

> "A week ago I had like six grand in there … we got about eight grand … what about when it hits ten grand, fifteen grand."[47]

192 There were numerous other conversations in which various amounts which were in the sandooq were discussed.

193 It is apparent that Ahmed Raad's membership of the organisation was closely bound up with his position as "treasurer": thus providing a resource to the organisation. It is in respect of that role that he was convicted of Count 4 on the indictment — intentionally providing resources to a terrorist organisation.

194 Ahmed Raad was also convicted with Joud and his brother Ezzit of attempting intentionally to make funds available to a terrorist organisation (Count 6). The facts and circumstances giving rise to Count 6 have already been described in relation to Aimen Joud and need not be repeated here. The Crown contends that Ahmed Raad, together with Joud, played a significant leadership role in the organisation as evidenced by their activities in relation to these stolen motor vehicles.

195 Mr McMahon did not, in terms, dispute the Crown contention with respect to the role Ahmed Raad played in the events which led to Count 6 but rather pointed out

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45 Conversations 76, 120, 126 and 381.
46 Conversation 119.
47 Conversation 126.

that there is no evidence that any of the funds in the sandooq were ever used for a violent purpose or for a terrorist act. He submitted that it could not be said that the money was earmarked for a terrorist act and no violent action of any kind could be attributed to Ahmed Raad.

196 With respect to the attempting to make funds available charge, Mr McMahon submitted that Raad was involved in that offence for a matter of days only. But it must be remembered, of course, that the scheme to obtain stolen cars and sell their parts came to an abrupt end following police raids shortly after the two vehicles were acquired and stripped. That is, of course, why the charge was laid as an attempt rather than as a completed act. The Crown contended that had this attempt been successful it would have substantially enriched the organisation, thus increasing its potential to undertake a terrorist act.

197 Mr McMahon laid particular emphasis on Raad's psychiatric condition and called in aid the decision of the Court of Appeal in *R v Verdins*.[48] The Court of Appeal in *Verdins* disposed of three appeals and, in doing so, re-stated a number of principles as applying to the sentencing of persons with impaired mental functioning.

198 Mr McMahon submitted that four of those principles were applicable in Ahmed Raad's case. He submitted that general and specific deterrence should be moderated or eliminated as a sentencing consideration, having regard to Raad's impaired mental functioning caused by his anxiety and depression. He also argued that in Ahmed Raad's case a given sentence could weigh more heavily on him than it would on a person in normal health and that where there was a serious risk of imprisonment having a significant adverse effect on an offender's mental health this factor would tend to mitigate punishment.

199 In this case it is probable that the major cause of Ahmed Raad's anxiety and depression, as found by Mr Newton, were the conditions of his incarceration at HM Prison Barwon up until March 2008 and the fear of his being returned to those conditions after he is sentenced. His mental condition is, no doubt, also attributable

48 (2007) 16 VR 269.

to a predisposition to anxiety and depression, conditions from which he has suffered, to some degree at least, intermittently for most of his life.

200 The affidavit of Mr Money, which has already been referred to, suggests that Ahmed Raad's classification and placement within the prison system after he is sentenced will be affected by the fact that he is facing other serious charges. Mr Money said that this makes it likely that Ahmed Raad will continue as a maximum/high security prisoner until the other charges are disposed of, but may be housed at the Metropolitan Assessment Prison until that time. It is unlikely that the charges which Ahmed Raad still faces will be disposed of before about the middle of 2010.

201 Were Ahmed Raad returned to the Acacia Unit at HM Prison Barwon there is little doubt his health would deteriorate severely. Not only does this emerge from Mr Newton's opinion but also from other facts known to the Court, namely the opinions of Dr Bell and other experts and the experience of his having to be removed from Barwon to the MAP as a matter of psychiatric emergency in March last year.

202 The problem which faces this Court in sentencing Raad and applying the principles in *Verdins* is that the classification and placement of prisoners is not a matter for the Court but rather for the Executive Government. Of course the Executive is bound by law to exercise its custodial powers according to law, including, now, in accordance with the Charter of Human Rights and Responsibilities.[49] A custodial authority which, unreasonably, placed a prisoner in circumstances where it was reasonably foreseeable that to do so would expose that prisoner to a risk of serious psychiatric injury would be in breach of its legal obligations to that prisoner.

203 In exercising its sentencing function the Court must assume that the Executive will discharge its legal obligations to those whom it imprisons appropriately.

204 All of the prisoners in this case are likely to be subjected to an unusually harsh regime of imprisonment for which an allowance will be made in their favour in

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49 Perhaps particularly, in this instance, s 22(1).

fixing appropriate sentences. In Ahmed Raad's case he will receive the same benefit in this regard as the other prisoners. The question is whether he should receive any extra benefit or, put another way, whether his impaired mental functioning justifies disparity between his sentence and that of his fellow prisoners on that account.

205 I have decided that such disparity would not be justified in this case. First, it must be acknowledged that a number of the prisoners to be sentenced are likely to suffer psychiatric symptoms of greater or lesser severity from the fact of and the likely nature of their imprisonment after they are sentenced. It would create an injustice as between them and Ahmed Raad should Raad receive not only the benefit already referred to, but also a further benefit because of the possibility that his psychiatric reaction may be more severe than those of his fellow prisoners.

206 Secondly, it must be assumed that the custodial authorities will discharge their legal obligation to Raad and his fellow prisoners appropriately so that none of them will be unreasonably exposed to the risk of an exacerbation of psychiatric symptoms because of the conditions of their incarceration.

207 As in the case of each of the other prisoners no finding could be made in Ahmed Raad's case that he has ever renounced the concept of violent jihad. Mr McMahon did not suggest that any such finding could be made. Thus, in considering questions of specific deterrence, rehabilitation and the protection of the public, the fact that there is no such evidence means that the Court has no basis on which to extend any consideration to Ahmed Raad as it might have been able to do had such evidence been before it.

208 Ahmed Raad will be entitled to have taken into account on sentence in his favour all the matters to which reference has already been made and the effect that his continued incarceration will have on his young family.

209 In sentencing Ahmed Raad, as with the others, the Court will take into account the need to deter others who might be inclined to take the same path as Ahmed Raad and his fellow prisoners did in the pursuit of violent jihad, the need specifically to

deter Raad himself from engaging in this sort of activity when he is released from gaol, the need to denounce terrorism in all its forms as well as the need to punish Ahmed Raad for the crimes of which he has been found guilty. Of particular importance in a terrorism case is the need to protect the public, as far as the sentencing process can, by incapacitating the prisoner from engaging in this reprehensible activity for an appropriate period having regard to all of the other sentencing considerations.

210 As with Joud, in Ahmed Raad's case there will be full concurrency in respect of the sentences imposed in respect of being a member of a terrorist organisation and that of providing resources to a terrorist organisation and partial concurrency between those sentences and that imposed for attempting to provide funds to a terrorist organisation.

211 Ahmed Raad will receive the same consideration as the other prisoners for the possibility that their incarceration will be more onerous because of the crimes of which they have been convicted.

Ezzit Raad

212 Ezzit Raad was convicted of being a member of a terrorist organisation and of attempting to provide funds to a terrorist organisation.

213 Ezzit Raad's counsel, Mr Barns, emphasised the fact that the evidence of Ezzit Raad's activities within the group suggested that he was somewhat less involved than the others. He pointed out that his client was only involved in 23 of the 482 intercepted conversations. Whilst that fact is undoubtedly true he remained a member and by his statements remained committed to the group's objectives.

214 The Crown argued that once membership was proved the offence was complete and that circumstances of aggravation, such as providing resources or funds to the organisation or engaging in other specific acts related to terrorism fall to be penalised as breaches of other sections found in Part 5.3 of the Code. It says that this legislative intention may be inferred from the relatively low maximum penalty

attached to membership as against that attached to the offences of providing resources or funds et cetera.

215 Attractive as this argument might appear, it is necessary to bear in mind that in fixing any sentence for a breach of the criminal law the Court must always have regard to what the convicted person actually did that caused a breach of the law and it must attempt to quantify to some extent at least the criminality involved in that conduct. Sub-section 16(2)(a) of the *Crimes Act 1914 (Cth)* requires the Court to have regard not only to the nature of the offence to which the sentence relates but also its circumstances. Compliance with that injunction requires some attention to be given to what the prisoner actually did.

216 The criminality attaching to membership of a terrorist organisation must be assessed principally by reference to the characteristics of the organisation and the risk it poses to the society which would be affected by the carrying out of a terrorist act by that organisation. Thus it is true that it is the member's support for the objectives of the organisation that creates the organisation and thus the risk, but also relevant is the degree of commitment of the member to those objects and what he has done in furtherance of them.

217 Proof of Ezzit Raad's membership of the terrorist organisation was provided by statements he made at various times concerning violent jihad whilst with other members of the group and his participation, albeit initially reluctantly, in the car stealing exercise which was discussed in his garage at about 11.30 pm on 10 September 2004 — the so-called "garage conversation".[50]

218 Mr Barns submitted that Ezzit Raad's participation in the car stealing operation was reluctant. Whilst that was undoubtedly true at the beginning of the garage conversation, as the conversation progressed his concerns were allayed by Joud and his brother Ahmed who convinced him that as the exercise was being done in Allah's cause it was legitimate to steal from the kuffar. Joud referred to "the brothers in Chechnya" as stealing in the same manner. Whilst Ezzit Raad is concerned that the police might find the car in his garage, eventually he accepts the

50 Conversation 40.

arguments put to him that it is lawful in Islam to steal from the kuffar in Allah's cause. It is not insignificant that Ezzit Raad's objections to being involved in the car stealing exercise were really twofold; he was concerned he might be caught and he wanted to be reassured as to the religious justification for his participation. At no stage did he express any concern that what he was being asked to do was unlawful. That did not appear to concern him at all. Indeed in the same conversation he accepted the propriety of killing the kuffar.

219 The Crown does not contest the proposition put by Ezzit Raad's counsel that his participation in the car stealing operation was of a somewhat lower order than that of Joud and Ahmed Raad so that his punishment in respect of his conviction on Count 6 should be somewhat less than theirs. I agree with that analysis of the relative culpability of Ezzit Raad as against the others involved and his sentence in respect of Count 6 will be affected accordingly. With respect to his membership of the organisation, there is somewhat less evidence as to his active involvement in the organisation than there is in respect of other prisoners. This justifies his receiving a slightly lesser penalty for such membership than them.

220 Ezzit Raad was born on 19 December 1981 and is now 26. He is married with two daughters who are aged two and four respectively. He is the third of eight brothers of immigrant Lebanese parents who came to this country before his birth. His family appears to have been stable and, despite some financial hardship, his childhood appears to have been happy.

221 Ezzit Raad's brother, Mansour, died suddenly of coronary heart disease in 2003 when Ezzit was about 21. After Mansour's death, the Court was told, Ezzit Raad began attending the mosque regularly.

222 Ezzit Raad completed his VCE in 1999. He began an electrician's apprenticeship in 2000 and became fully qualified in 2004. He worked for two electrical companies before being arrested in November 2005. He attended school with Sayadi.

223 Testimonials were tendered to the Court concerning Ezzit Raad from Sheikh Fehmi Naji el Imam, the Mufti of Australia, a medical practitioner, a pharmacist and a

fellow electrician. They attest to his good character prior to his conviction for these offences. Apart from being fined in respect of the stolen Honda in his garage (which fine was paid from the sandooq) Ezzit Raad has no prior criminal history.

224 Ezzit Raad was examined by Dr Lester Walton, a psychiatrist, on two occasions, 17 August 2007 and 10 October 2008. On the first occasion he was in the Acacia Unit at HM Prison Barwon and on the second occasion at the Melbourne Assessment Prison. Dr Walton considered Ezzit Raad to be a man of normal intelligence with no evidence of any intellectual compromise but to be suffering from an adjustment disorder with anxiety and a depressed mood. He found no evidence of any cognitive deficit. Significantly, Dr Walton concluded that if Ezzit Raad was returned to the stringent and restrictive conditions of the Acacia Unit at HM Prison Barwon there may be a significant risk to his mental health. Dr Walton did not suggest that any of Mr Raad's mental health problems were factors relevant to his offending.

225 Ezzit Raad was also assessed by Mr Patrick Newton, a psychologist who had also assessed Ahmed Raad. Mr Newton's report, which was before the Court, is dated 3 November 2008.

226 Mr Newton's opinion is broadly in line with that of Dr Walton. He too refers to the dangers involved in returning Ezzit Raad to conditions which he suffered at Barwon Prison. He said Ezzit Raad was experiencing heightened anxiety and depressive symptoms particularly concerning his wife and family's wellbeing and the fear that he would be returned to Barwon after he was sentenced. Overall Mr Newton's opinion seems to be in line with the opinion he expressed about Ahmed Raad. For the reasons expressed in relation to Ahmed Raad it is not appropriate that there be any distinction made between Ezzit Raad and the other prisoners with respect to an allowance in their favour for the harsh conditions they may experience after being sentenced.

227 Ezzit Raad will be entitled to have taken into account in having his sentence fixed, the obvious effect that his continuing imprisonment will have upon his relationship with his wife and children and the effect that it will have on them.

228 Having regard to the fact that Ezzit Raad's conviction on Count 6 is a conviction related to an activity in which he engaged as a member of the terrorist organisation there should be significant but not total concurrency between the sentence imposed on Count 1 and that imposed on Count 6. Again, such concurrency will be tailored in the same way as that relating to the sentence imposed on Ahmed Raad and Aimen Joud in respect of Count 6.

Amer Haddara

229 Amer Haddara was convicted by the jury of only Count 1 on the indictment — being a member of a terrorist organisation.

230 Haddara became a member of the terrorist organisation at a specific time on 17 September 2005.[51] In a conversation on that day Benbrika spent a considerable time instructing Haddara and another man on the principles and rules of jihad. He referred to various religious texts and the opinions of sheiks whose opinions he clearly respected. Matters on which he instructed Haddara included the religiously legitimate ways around "the permissibility of killing the innocents", "the decree about killing the Moslems who were at the World Trade Center", martyrdom operations, the difference between living under the rules of a nation of kuffar and living under an Islamic religious leader and many other topics in similar vein. There was a significant passage during the conversation in which Benbrika expounded the jihadi rules about killing women and the elderly. The conversation continued for about an hour, towards the end of which time Haddara gave the bayat or pledge of allegiance to Benbrika. Benbrika explained that by giving the bayat he was pledging absolute obedience to him.

231 It is clear from one passage in the same conversation that Benbrika wanted Haddara to remain as a secret part of the organisation of which the other members must remain ignorant. This would be done, Benbrika said, because this is what "confuses the enemy and stops them from thinking in a sound way?" He considered that the more brothers that did not know each other the better.

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51 Conversation 441.

Haddara did not express any opposition to becoming such a member and acting in accordance with Benbrika's wishes.

232 The evidence of Haddara's joining the organisation is probably clearer than the evidence in relation to any of the other prisoners although it would appear that all or most of them had given the bayat to Benbrika at some time or other.

233 Mr Trood submitted, on Haddara's behalf, that the fact that he was a member of the organisation for a considerably shorter period than any of the others, and that during the time he was a member he had no impact on the progress or impetus of the organisation apart from the fact of joining, should be significant mitigating factors in his case.

234 The Crown submitted that it is immaterial to the gravity of Haddara's offending that he joined the Benbrika organisation relatively late in its existence. The Crown position is that it was simply fortuitous that the period of his membership was cut short by police intervention. He was clearly a committed member of the organisation and would have remained so, on the evidence, had that police intervention not occurred.

235 For the reasons already expressed the offence of being a member of a terrorist organisation is committed upon joining the organisation and the criminality of membership is principally dependent upon what the objectives of the organisation are, its capacity and how it intends to achieve those objectives. But this is not to say that the actions of the member are immaterial. In Haddara's case the fortuitous circumstance that he was arrested only weeks after he joined and was thus unable to contribute very much to the organisation does have the effect of diminishing his criminality when it is compared to that of a longer serving member. Undoubtedly, as the prosecutor argued, had he not been arrested he would have been a very valuable and perhaps very dangerous member into the future. The fact that that did not occur must enure to his benefit on sentence.

236 Amer Haddara was born in 1979 and is now 29. His parents are Lebanese migrants having emigrated to Australia in the late 1970s. He has two younger sisters, is unmarried and was living with his family at the time of his arrest.

237 Haddara grew up in Yarraville and attended Footscray Secondary College until Year 9 when he went to Syria for two years. Whilst in Syria he studied Arabic. On his return to Australia he resumed his secondary education, completing his VCE at Bayside Secondary College in Altona North in 1998.

238 In 1999 he began studying civil engineering at Victoria University. He changed courses several times but eventually graduated in 2002 with an Advanced Diploma in Computer Systems Engineering.

239 Since leaving school he has worked in various customer service and sales positions. In 2004 he began organising tours to Mecca for pilgrims who wished to undertake the haj, one of the pillars of Islam. He acted as a tour leader on one occasion in 2005 and, shortly before his arrest, in October 2005, he began a new job with a recruitment company. The Crown case against Haddara is that he was a member of the organisation from 17 September 2005 until his arrest on 8 November of that year.

240 Mr Trood submitted that because of Haddara's relatively young age, absence of relevant prior convictions, stable employment record and family support he had excellent prospects of rehabilitation.

241 This submission raises once again the fact that in Haddara's case, as in all of the others, there is no evidence before the Court that he has renounced violent jihad or the aims and principles of the organisation to which he belonged. Accordingly, questions of rehabilitation, specific deterrence and the protection of the public must be assessed by the Court in the absence of that evidence.

242 Mr Trood made a further submission to the effect that the existence of control orders under Division 104 of the Code affects the question of the need for specific deterrence in a case such as this. Division 104 provides for orders to be made which impose obligations, prohibitions and restrictions on a person for the purpose of

protecting the public from a terrorist act. His argument was that knowledge that control orders exist and can be imposed on a person in certain circumstances concerned with terrorism has the effect of moderating the need for specific deterrence.

243 Control orders are orders made in the exercise of a discretion upon application by law enforcement officials. Whilst an order may restrict the freedom of a person subject to it, whether an order would be made in any given case cannot be predicted with sufficient certainty to permit the fact that one could be made to influence the fixing of a sentence of imprisonment. Control orders are simply one remedy available to law enforcement authorities seeking to prevent illegal or threatening activity by someone who might be concerned to engage in terrorism. The fact that they exist does not relieve the Court from fixing a sentence without regard to that fact.

244 In any event the Division concerned with control orders has a sunset provision which means they will go out of existence on 15 December 2015 so that their efficacy in this case would be limited to the relatively short period between the expiry of Haddara's sentence and that date. The submission must be rejected.

245 Two testimonials were tendered to the Court on behalf of Amer Haddara. They are from Sheikh Mohamad Abou Eid of the Islamic Society of Victoria and the prisoner's twin sister, Ida. In so far as they contain matters of relevance to the question of sentence and subject to their limitations they will be taken into account.

246 The sentence to be imposed on Mr Haddara will take into account questions of general and specific deterrence, punishment, denunciation, rehabilitation and the protection of the public as well s matters going to his criminality as a member of a terrorist organisation.

Abdul Nacer Benbrika

247 It is the sentence of the Court that Abdul Nacer Benbrika be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1), he be convicted and sentenced to seven years' imprisonment, such sentence to commence on 3 February 2009.

(2) That on the count of directing the activities of a terrorist organisation (Count 2), he be convicted and sentenced to 15 years' imprisonment, such sentence to commence on 3 February 2009.

(3) That on the count of being in possession of a thing connected with a terrorist act knowing of that connection (Count 12), he be convicted and sentenced to five years' imprisonment, such sentence to commence on 3 February 2009.

(4) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914* (Cth) the non-parole period fixed in respect of the aggregate sentence imposed upon him be 12 years.

(5) That pursuant to s 18 of the *Crimes Act 1914* (Cth), all of the said sentences be served without hard labour.

(6) That it be declared, pursuant to s 16E of the *Crimes Act 1914* (Cth) and s 18 of the *Sentencing Act 1991*, that he has served 1184 days of pre-sentence detention in respect of the offences for which he is now sentenced, and it is ordered that this declaration be entered in the records of the Court.

Aimen Joud

248 It is the sentence of the Court that Aimen Joud be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1), he be convicted and sentenced to six and a half years' imprisonment, such sentence to commence on 3 February 2009.

(2) On the count of intentionally providing resources to a terrorist organisation (Count 3) he be convicted and sentenced to eight years' imprisonment, such sentence to commence on 3 February 2009.

(3) That upon the count of attempting to make funds available to a terrorist organisation (Count 6) he be convicted and sentenced to eight years' imprisonment, such sentence to commence on 3 February 2011.

(4) That on the count of knowingly being in possession of a thing connected to a terrorist act knowing of that connection (Count 7) he be convicted and sentenced to five years' imprisonment, such sentence to commence on 3 February 2009.

(5) That on the second count of knowingly being in possession of a thing connected with a terrorist act knowing of that connection (Count 8) he be convicted and sentenced to five years' imprisonment, such sentence to commence on 3 February 2009.

(6) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914 (Cth)* the non-parole period fixed in respect of the aggregate sentence imposed upon him be seven and a half years.

(7) That pursuant to s 18 of the *Crimes Act 1914 (Cth)* all of the said sentences be served without hard labour.

(8) That it be declared, pursuant to s 16E of the *Crimes Act 1914 (Cth)* and s 18 of the *Sentencing Act 1991* that he has served 1184 days of pre-sentence detention in respect of the offences for which he is now sentenced and it is ordered that this declaration be entered in the records of the Court.

Fadl Sayadi

249 It is the sentence of the Court that Fadl Sayadi be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1) he be convicted and sentenced to six and a half years' imprisonment, such sentence to commence on 3 February 2009.

(2) That on the count of providing resources to a terrorist organisation (Count 4) he be convicted and sentenced to eight years' imprisonment, such sentence to commence on 3 February 2009.

(3) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914 (Cth)* the non-parole period fixed in respect of the aggregate sentence imposed upon him be six years.

(4) That pursuant to s 18 of the *Crimes Act 1914 (Cth)* all of the said sentences be served without hard labour.

(5) That it be declared pursuant to s 16E of the *Crimes Act 1914 (Cth)* and s 19 of the *Sentencing Act 1991* that he has served 1184 days of pre-sentence detention in respect of the offences for which he is now sentenced and it is ordered that this declaration be entered in the records of the Court.

Abdullah Merhi

250 It is the sentence of the Court that Abdullah Merhi be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1) he be convicted and sentenced to six years' imprisonment, such sentence to commence on 3 February 2009.

(2) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914 (Cth)* the non-parole period fixed in respect of the sentence imposed upon him be four and a half years.

(3) That pursuant to s 18 of the *Crimes Act 1914 (Cth)* the said sentence be served without hard labour.

(4) That it be declared pursuant to s 16E of the *Crimes Act 1914 (Cth)* and s 18 of the *Sentencing Act 1991* that he has served 1184 days of pre-sentence detention in respect of the offence for which he is now sentenced and it is ordered that this declaration be entered in the records of the Court.

Ahmed Raad

251 It is the sentence of the Court that Ahmed Raad be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1) he be convicted and sentenced to six and a half years' imprisonment, such sentence to commence on 3 February 2009.

(2) That on the count of providing resources to a terrorist organisation (Count 4) he be convicted and sentenced to eight years' imprisonment, such sentence to commence on 3 February 2009.

(3) That on the count of attempting to make funds available to a terrorist organisation (Count 6) he be convicted and sentenced to eight years' imprisonment, such sentence to commence on 3 February 2011.

(4) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914 (Cth)* the non-parole period fixed in respect of the aggregate sentence imposed upon him be seven and a half years.

(5) That pursuant to s 18 of the *Crimes Act 1914 (Cth)* all of the said sentences be served without hard labour.

(6) That it be declared pursuant to s 16E of the *Crimes Act 1914 (Cth)* and s 18 of the *Sentencing Act 1991* that he has served 1184 days of pre-sentence detention in respect of the sentences for which he is now sentenced and it is ordered that this declaration be entered in the records of the Court.

Ezzit Raad

252 It is the sentence of the Court that Ezzit Raad be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1) he be convicted and sentenced to six years' imprisonment, such sentence to commence on 3 February 2009.

(2) That on the count of attempting to provide funds to a terrorist organisation (Count 6) he be convicted and sentenced to six years' imprisonment, such sentence to commence on 3 August 2010.

(3) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914 (Cth)* the non-parole period fixed in respect of the aggregate sentence imposed upon him be five years and nine months.

(4) That pursuant to s 18 of the *Crimes Act 1914 (Cth)* all of the said sentences be served without hard labour.

(5) That it be declared pursuant to ss 16E of the *Crimes Act 1914 (Cth)* and s 18 of the *Sentencing Act 1991* that he has served 1184 days of pre-sentence detention in respect of the offences for which he is now sentenced and it is ordered that this declaration be entered in the records of the Court.

Amer Haddara

253 It is the sentence of the Court that Amer Haddara be convicted and sentenced as follows:

(1) That on the count of being a member of a terrorist organisation (Count 1) he be convicted and sentenced to six years' imprisonment, such sentence to commence on 3 February 2009.

(2) That pursuant to ss 19AB(1) and 19AG of the *Crimes Act 1914 (Cth)* the non-parole period fixed in respect of the sentence imposed upon him be four and a half years.

(3) That pursuant to s 18 of the *Crimes Act 1914 (Cth)* the said sentence be served without hard labour.

(4) That it be declared pursuant to s 16E of the *Crimes Act 1914 (Cth)* and s 18 of the *Sentencing Act 1991* that he has served 1184 days of pre-sentence detention in respect of the offences for which he is now sentenced and it is ordered that this declaration be entered in the records of the Court.
