Supreme Court

New South Wales

Case Name:	State of New South Wales v Kiskonen (Preliminary)
Medium Neutral Citation:	[2021] NSWSC 915
Hearing Date(s):	21 July 2021
Date of Orders:	27 July 2021
Decision Date:	27 July 2021
Jurisdiction:	Common Law
Before:	Lonergan J
Decision:	(1) Amended summons dismissed. (2) Plaintiff to pay the defendant's costs.
Catchwords:	HIGH RISK TERRORISM OFFENDERS – preliminary hearing - whether interim supervision order should be made – whether matters alleged would if proved justify an ESO – whether offender poses an unacceptable risk of committing a serious terrorism offence – application refused
Legislation Cited:	Criminal Code (Cth) Firearms Act 1996 (NSW) Terrorism (High Risk Offenders) Act 2017 (NSW)
Cases Cited:	Minister for Home Affairs v Benbrika (2021) 388 ALR 1; [2021] HCA 4 State of NSW v Fayad (Preliminary) [2020] NSWSC 1681
Category:	Principal judgment
Parties:	State of New South Wales (Plaintiff) Juha Kiskonen (Defendant)

Representation:	Counsel: J Emmett SC / T Epstein (Plaintiff) M Johnston SC / E S Kerkyasharian / S J Young (Defendant) Solicitors: Crown Solicitor's Office (NSW) (Plaintiff) Ryan Payten Le (Defendant)
File Number(s):	2021/00201054
Publication Restriction:	Nil

Choose an item.

JUDGMENT

1 The plaintiff, the State of New South Wales, brings proceedings against Juha Kiskonen, the defendant, pursuant to the *Terrorism (High Risk Offenders) Act 2017* (NSW) ("the Act"), for an Interim Supervision Order ("ISO") under s 27 of the Act for 28 days, with a view to obtaining an Extended Supervision Order ("ESO") for three years on specific conditions. Ancillary orders are sought for the appointment of two psychiatrists or psychologists under s 24(1) of the Act and that the defendant be directed to comply with a series of conditions (55 in number), during the period of the ISO.

2 The defendant opposes the imposition of an ISO or ESO.

3 The Summons seeking these orders was dated 12 July 2021 and was filed on 13 July 2021. An Amended Summons was filed in Court with leave on 21 July 2021.The defendant is due for release at midnight on 29 July 2021.

4 Due to the very late commencement of the proceedings and the very late notice to the defendant, he has had to compress both his time to give instructions to his legal representatives and their time to prepare his defence of this application. The quality of the written submissions provided by counsel for the defendant, and the relevance of the material provided by the defendant for me to consider, is commendable given the very short timeframe within which this has had to be prepared.

The Legislation

5 The requirements for making an ESO are set out in ss 20 and 21 of the Act:

20 Supreme Court may make extended supervision orders against eligible offenders if unacceptable risk

The Supreme Court may make an order for the supervision in the community of an eligible offender (called an *extended supervision order*) if:

(a) the offender is in custody or under supervision (or was in custody or under supervision at the time the original application for the order was filed):

(i) while serving a sentence of imprisonment for a NSW indictable offence, or

(ii) under an existing interim supervision order, extended supervision order, interim detention order or continuing detention order, and

(b) an application for the order is made in accordance with this Part, and

(c) the Supreme Court is satisfied that the offender is any of the following:

(i) a convicted NSW terrorist offender,

(ii) a convicted NSW underlying terrorism offender,

(iii) a convicted NSW terrorism activity offender, and

(d) the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order.

…

21 Determination of risk

For the purposes of this Part, the Supreme Court is not required to determine that the risk of an eligible offender committing a serious terrorism offence is more likely than not in order to determine that there is an unacceptable risk of the offender committing such an offence.

6 Section 4 of the Act defines a "serious terrorism offence" as "an offence against Part 5.3 of the Commonwealth Criminal Code for which the maximum penalty is seven or more years of imprisonment."

7 Sections 6 and 7 deal with the persons to whom the Act can apply. Section 7 defines an "eligible offender" as:

7 Eligible offender

In this Act, an *eligible offender* is a person who is:

(a) 18 years of age or older, and

(b) serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence.

8 Section 6 defines the words "serving a sentence of imprisonment":

6 Serving sentence of imprisonment

In this Act, a person is *serving a sentence of imprisonment* for an offence if:

(a) the person is serving a sentence of imprisonment for the offence by way of full-time detention, or

(b) the person is on parole in respect of the offence.

9 The State says that for the purposes of s 20(c) of the Act, the defendant is a "convicted NSW terrorism activity offender" as defined in s 10 of the Act, relevantly as follows:

10 Convicted NSW terrorism activity offender

(1) In this Act, an eligible offender is a *convicted NSW terrorism activity offender* if the offender is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence (the *offender's offence*) and any of the following apply in respect of the offender:

…

(c) the offender:

(i) is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any terrorist act or violent extremism, or

(ii) has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism.

(1A) Without limiting subsection (1)(c):

(a) advocating support for a terrorist act or violent extremism includes (but is not limited to) any of the following:

(i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,

(ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,

(iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and

(b) an association or other affiliation with a person, group of persons or organisation includes (but is not limited to) any of the following:

(i) networking or communicating with the person, group of persons or organisation,

(ii) using social media sites or any other websites to communicate with the person, group of persons or organisation.

(2) Subsection (1) (b) and (c) apply regardless of whether or not the eligible offender has been convicted of an offence for the conduct concerned (whether in Australia or elsewhere).

(3) In this section:

terrorist organisation has the same meaning as it has in Division 102 of Part 5.3 of the Commonwealth Criminal Code.

10 Section 100.1 of the *Criminal Code* (Cth) defines “terrorist act” as:

“terrorist act” means an action or threat of action where:

(a) the action falls within subsection (2) and does not fall within subsection (3); and

(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the action is done or the threat is made with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

(ii) intimidating the public or a section of the public.

(2) Action falls within this subsection if it:

(a) causes serious harm that is physical harm to a person; or

(b) causes serious damage to property; or

(c) causes a person's death; or

(d) endangers a person's life, other than the life of the person taking the action; or

(e) creates a serious risk to the health or safety of the public or a section of the public; or

(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:

(i) an information system; or

(ii) a telecommunications system; or

(iii) a financial system; or

(iv) a system used for the delivery of essential government services; or

(v) a system used for, or by, an essential public utility; or

(vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person's death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

11 Sections 101.5 and 101.6 of the Criminal Code titled “Collecting or making documents likely to facilitate terrorist acts” and “Other acts done in preparation for, or planning, terrorist acts”, were said by the plaintiff to be relevant to potential future acts of the defendant and comprise illustrations of “serious terrorism offences” which the defendant poses an unacceptable risk of committing:

101.5 Collecting or making documents likely to facilitate terrorist acts

(1) A person commits an offence if:

(a) the person collects or makes a document; and

(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:

(a) the person collects or makes a document; and

(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if:

(a) a terrorist act does not occur; or

(b) the document is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

(c) the document is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

…

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

(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:

(a) a terrorist act does not occur; or

(b) the person's act is not done in preparation for, or planning, a specific terrorist act; or

(c) the person's act is done in preparation for, or planning, more than one terrorist act.

(3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

12 Section 102.1 of the Criminal Code defines "terrorist organisation" as follows:

> ***"terrorist organisation"*** means:
>
> (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
>
> (b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)).

The UKOA has not been specified in the regulations as a "terrorist organisation".

13 Sections 24 and 27 of the Act deal with the making of an interim order. Relevantly those sections provide:

> **24 Pre-trial procedures**
>
> …
>
> (4) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
>
> (5) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must make orders:
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> (a) appointing:
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> (i) 2 qualified psychiatrists, or
>
> (ii) 2 registered psychologists, or
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> (iii) 1 qualified psychiatrist and 1 registered psychologist, or
>
> (iv) 2 qualified psychiatrists and 2 registered psychologists,

to conduct separate psychiatric or psychological examinations (as the case requires) of the eligible offender and to furnish reports to the Supreme Court on the results of those examinations, and

(b) directing the eligible offender to attend those examinations.

(6) Without limiting subsection (5) (a), the Supreme Court may also make orders appointing any other relevant experts to furnish reports to the Supreme Court in respect of the eligible offender on specified matters.

(7) If, following the preliminary hearing, it is not satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must dismiss the application.

…

27 Interim supervision order

The Supreme Court may make an order for the interim supervision of an eligible offender (called an ***interim supervision order***) if, in proceedings for an extended supervision order, it appears to the Court:

(a) that the offender's current custody or supervision will expire before the proceedings are determined, and

(b) that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order.

The principles articulated in the case law

14 I gratefully adopt the summary of the principles to be applied at an interim hearing set out by Johnson J in *State of New South Wales v Fayad (Preliminary*) [2020] NSWSC 1681 at [44]-[52]:

"[44] The task for the Court at the preliminary hearing is to apply the statutory formula in s.24(5) (concerning the appointment of a psychiatrist and a psychologist to carry out examinations of the Defendant) and s.27(b) (concerning the making of an ISO).

[45] Before making the orders sought by the Plaintiff, the Court must determine:

that the Defendant's current custody or supervision will expire before the proceedings are determined: s.27(a); and

that the matters alleged in the supporting documentation would, if proved, justify the making of an ESO: ss.24(5) and 27(b).

[46] In *State of NSW v Naaman (No. 2)*, the Court of Appeal (Basten, Macfarlan and Leeming JJA) described the Court's task at a preliminary hearing as follows (at [17]) (my emphasis):

"Broadly speaking, the Act provides for a preliminary application to be made by the State, during which time interim orders, both for supervision and detention, and applications for orders appointing qualified psychologists and psychiatrists to conduct examinations of the person, may be made. An order for extended supervision may only

be made if there are reports from at least two psychologists or psychiatrists who have examined the person (see more particularly s 24(5)); the Court in determining whether or not to make the order must have regard to those reports (s 25(3)(a)). Broadly speaking the test for making interim orders is that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order (s 27). That determination will ordinarily be made in advance of the reports from the psychologists and psychiatrists, and in any event is a lower standard than applies to the making of an extended supervision order."

[47] This statutory interlocutory process exists in legislation intended to protect the community. A lower standard applies at a preliminary hearing to determine whether the application should proceed further where the Court will be assisted by expert psychiatric and psychological reports prepared after examination of the Defendant. At a final hearing, the Court will have the benefit of reports by court-appointed experts with the THRO Act provisions to be applied at that hearing by reference to all evidence adduced by the Plaintiff and the Defendant.

[48] This approach does not overlook the potential adverse consequences for the Defendant if orders are made at the preliminary hearing. Rather, it reflects the statutory two-stage process where a lower hurdle applies at the interlocutory stage.

[49] The Court looks at the allegations and documentation *"through the lens of the plaintiff's case"* and takes them *"at their highest when deciding whether the test articulated in section 27(b) THRO Act has been made good in all the circumstances of the case"*: *State of NSW v Naaman (No. 2)* [2018] NSWSC 1329; *State of NSW v Elzamtur* [2019] NSWSC 186 at [4].

[50] In undertaking the assessment at the preliminary hearing, the Court is not involved in weighing up the documentation or resolving any conflicts, inconsistencies or uncertainties which appear in the documentation: *State of NSW v Sturgeon* [2019] NSWSC 559 at [6].

[51] It is necessary for the Plaintiff to allege certain facts which, if proved, would lead to a conclusion that would justify the making of an ESO: *State of NSW v Elomar (No. 2)* [2018] NSWSC 1034 at [7]-[10].

[52] Section 27(b) THRO Act requires attention to be given to *"the matters alleged in the supporting documentation"*. A *"matter alleged"* should have some proper foundation and could not include matters of rumour, possibilities unfounded in fact or wholly unsupported speculation: *State of NSW v Alam* [2020] NSWSC 295 at [159]."

The evidence

15 The plaintiff relies upon the following evidence:

- Affidavit of Patrick Mullane solicitor sworn 12 July 2021, exhibiting 2 volumes of material as indexed and extracted from 13 volumes of material which it is said will be tendered on the primary application.
- Affidavit of DSC Matthew Reason sworn 1 July 2021, a detective in the "Fixated Persons Unit".

- Affidavit of SC Alexander Clark sworn 9 July 2021, an officer in the “High Risk Terrorist Offenders Unit” of the New South Wales Police.

16 The defendant relies upon:

- Affidavit of Hayley Le, solicitor for the defendant, affirmed 20 July 2021.
- Affidavit of Todd Davis affirmed 19 July 2021, outlining the role and reach of Community Treatment Orders.
- Extracts from the defendant’s OIMS Case Management records dated 20 March 2020 and 9 April 2020, which makes reference to whether the defendant should be assessed for a concern that he has “extremist views with peculiar ideation”. (It is common ground that no assessment occurred).

The defendant’s personal circumstances and the relevant history

17 The defendant was born in March 1970 and is 51 years of age. He works as a truck driver and at the time of arrest lived with his (de-facto) wife and two sons. He has a criminal record involving driving offences in 1997 and a destroy and damage property in 2014. He came to police attention in September 2019 in the context of an assault charge involving a neighbour. His behaviour at Picton Local Court in October 2019 was odd in that he denied that he was the named defendant and asserted that arresting police were, by arresting him, committing crimes that should be tried in the Hague. The Magistrate determined that if he, Mr Kiskonen was not in fact the defendant, then the person who was the defendant needed to be arrested and that led to a warrant being issued. The defendant was duly arrested at Court and the proceedings continued. He failed to appear on 29 October 2019, leading to other charges.

18 All of this led to his coming under the observation of the New South Wales Police Fixated Persons Unit which, having observed him for a period, concluded, via DSC Gatward in December 2019, that he was “not a threat at that time”.

19 However concerns about him continued and he was observed during both 2019 and 2020. DSC Reason in his affidavit sets out the bases upon which he holds concerns about the defendant as a member of the “United Kingdom of Australia”:

> “[6] The United Kingdom of Australia ("UKOA") is an organisation which holds beliefs that are commonly referred to as those of the sovereign citizen movement. This means that they do not consider the laws of Australia to be legitimate, nor do they believe that such laws should or do apply to them. The

ideologies of the sovereign citizen movement have their origins in a number of anti-government movements which emerged in the United States of America in the 1970s. UKOA is one of a number of sovereign citizen groups and individuals which I have been monitoring since commencing duties at the Fixated Persons Investigation Unit in 2018.

[7] UKOA members adhere to a set of pseudo-legal theories which descend directly from American sovereign citizen theories, but which were adapted for the Australian context by Steven Spiers ("Mr Spiers"), born 27 December 1973. Mr Spiers advocates for an alternative history of the world wherein both the United States of America and the United Kingdom were taken over by "world bankers" due to their various war debts.

[8] The original American ideology from which the UKOA thinking has been appropriated is more forthright in acknowledging that the "world bankers" are to be understood as Jewish. This latent anti-Semitism, along with an allied anti-Catholicism, is an undercurrent throughout UKOA thought. This can be seen in social media posts and other media published on the internet, both in overt reference to supposed Jewish and Catholic influence, as well as coded language such as "world bankers" and "occupiers".

[9] In UKOA theories, as a Dominion, Australia too is believed to come under the administration of these "world bankers" despite being supposedly awarded its own "Kingdom" at the Treaty of Versailles. Ultimately, the Australian people were supposedly tricked into accepting occupation and slavery, through the use of birth certificates which mortgage the individual to the corporation and represent an acceptance of the corporate law. In some manner, this corporation is believed to have ties to the Vatican. UKOA members believe that, as civilians in an occupied country, they have protections under the various laws of armed conflict which exempt them from the authority of police, the judicial system and the laws of the Federal and State Governments.

[10] Mr Spiers claims to have taken up the vacant line of authority of the Australian "Kingdom" and has subsequently been declared by his followers as the "king" of UKOA. His two books, Realm and Man" and "Realm and Commonwealth", constitute the central documents of the belief system. Also important is a document entitled "Timeline" which was authored by Juha Kiskonen ("Mr Kiskonen"), born **[REDACTED]** 1970, and a document entitled "Bill of Rights-1" which is of uncertain authorship. The stated aim of the UKOA movement is to declare the "true" Kingdom of Australia, remove its members from the authority of Australian law and place them instead under the authority of both "King" Spiers and an idiosyncratic conception of the common law. Ultimately, they believe that the Australian government and its occupying forces will be ejected from Australia and various police, judges, politicians and so on, will be executed after being tried by military tribunals under the authority of the Hague. The interest in executing public officials is a recurrent theme, appearing in videos, memes and online discussion distributed online.

[11] Prior to the involvement of Mr Kiskonen and, in particular, the advent of the COVID-19 pandemic, Mr Spiers was one of many theorists in the Australian sovereign citizen community. His abrasive interpersonal style and claim to be the Australian monarch tended to alienate others and led to him being the subject of considerable ridicule. This changed noticeably when the COVID-19 pandemic appeared to contribute to a sudden interest in conspiracy theories about the virus and concerns over quarantine restrictions. Many individuals searched for answers via social media and encountered sovereign citizen ideology, which appeared to offer an answer to these concerns. Many

individuals appeared to draw upon the involvement of Mr Kiskonen who took the UKOA doctrine and explained it in a simpler, less hostile and more charismatic fashion. His authorship of the "Timeline" document, his numerous YouTube videos, and online commentary meant that individuals could access UKOA theory in a simpler and more entertaining fashion. Based upon the engagement with the material online that I observed in my surveillance of UKOA internet sites, this appeared to be more popular than reading Mr Spiers' books, which are voluminous, poorly written, arcane and somewhat convoluted. Conversations I have had with members of UKOA tend to reference the works of Mr Kiskonen more frequently and specifically than those of Mr Spiers. The latter are revered, but it is unclear how many followers of the UKOA have read them in any detail.

[12] Mr Kiskonen administers a YouTube account, "John K", which has 1,930 subscribers, and two Facebook accounts, "Juha Kulevi Kiskonen" and "Juha Kiskonen", which are followed by 926 and 950 people respectively. UKOA also has had a number of Facebook groups in which Mr Kiskonen has also been active, including the discontinued group "Remaining Loyal to the Kingdom of Australia", which had 2,300 members, and the successor site, "Introduction to the ANZAC Research Group", which has 1,500 members. These are believed to be the public sites from which more dedicated members are eventually invited to closed groups for further discussion. It has been my observation that Mr Kiskonen's posts, and his videos in particular, were a major focal point for UKOA. Videos produced by Mr Spiers were often introduced and referred to by Mr Kiskonen through his various formats.

[13] Mr Kiskonen's YouTube channel was a major focal point of the movement and a venue from which he regularly told his followers that they did not have to obey the law or police and encouraged confrontation (for example, the YouTube videos "Notice to police", 27 July 2020; "New South Police have a lot to answer for", 5 May 2020; "Only citizens can be fined by police", 11 April 2020; "NSW Police are getting the picture", 20 May 2020; "Police, Treaties and the Common Law of War", 7 May 2020; "NSW Police take notice", 6 May 2020"; "There are rules we must follow:, 1 May 2020). In a YouTube video on 26 June 2020 ("How to get off the citizen-ship"), Mr Kiskonen told viewers that they were actually required to ignore the law as subjects of UKOA. On 27 July 2020, (YouTube video "Notice to Police") he stated that he would no longer be attending court when required to do so. He suggested that he would not be pursued in regard to his non-appearance as the courts and police would know he was beyond their jurisdiction.

[14] On 25 May 2020, Mr Kiskonen posted a video on YouTube in which he indicated that Mr Spiers had been declared King of Australia and encouraged people to make the oaths of allegiance. This was followed by an online campaign, through YouTube and Facebook, of getting as many individuals to swear allegiance as possible. As part of the emergence of the kingdom, a campaign of raising the red ensign flag at war memorials across Australia was undertaken, beginning with Mr Kiskonen doing so at Campbelltown on 17 July 2020. It is believed that Mr Kiskonen declared himself to be the "Lord Mayor of Campbelltown" on this occasion.

[15] The red ensign flag - and specifically an early version of it - is used by UKOA as their flag. UKOA adherents believe that it signals their jurisdiction and that, by flying it, they render themselves immune from action by police under International Law. Mr Spiers and others have advocated a theory that

this is a "Land flag" which places them outside the jurisdiction of "Admiralty Law" as represented by the blue Australian National Flag.

[16] On 4July 2021, Mr Kiskonen announced that UKOA would be holding an "Australia Day" ceremony on 31 July 2020. This was to occur at the main war memorial in each state capital. Police subsequently learned that this was intended to be a day at which the Kingdom of Australia was to be declared and the red ensign flag was to be consecrated. It was also intended to remove any Australian National Flags from the monuments and replace them with the red ensign. In his video Mr Kiskonen outlined plans for "mass oaths" and an intent to put the Government of Australia "on notice". This was to be the most significant event in UKOAs history to this date. Mr Kiskonen spent a great deal of time and money organising this event, which he comments on in his videos, and included Mr Kiskonen writing speeches, purchasing flags and having flyers printed. While Mr Kiskonen was ultimately arrested prior to the event, simultaneous events did go ahead in Sydney, Melbourne, Brisbane, Perth and Adelaide. With the exception of Adelaide, these individuals were prevented from interfering with the memorials through intervention of police.

[17] Prior to their "Australia Day" ceremony on 31 July 2020, UKOA had a considerable online following in most Australian states with a smaller group of serious adherents who had sworn formal oaths to the "king" and who made UKOA a central part of their lives. Based on my investigations, I estimate that the latter group comprised approximately 100 persons situated mostly in Victoria, New South Wales, Western Australia and Queensland. The group had a managing body, the "Australian Royal Counsel" [sic], a number of subcommittees, and was appointing its own local officials to districts within which the members lived. A bureaucratic administrative process emerged in which communications were carried out through formal minutes, document transmission policies and an online document management system administered by Mr Spiers.

…

[23] I continued to monitor the social media activity of Mr Kiskonen, Mr Spiers and the UKOA community as part of my monitoring and investigation activities for the Fixated Persons Investigation Unit. Over a period of months, I observed increased activity and rhetoric indicating that Mr Kiskonen and Mr Spiers were beginning to formalise the UKOA community and were increasingly advising their members that they were above the law. As detailed above, Mr Kiskonen posted a number of videos specifically referring to the police. From May to July 2020, I was aware that Detective Senior Constable Gatward was receiving emails from Mr Kiskonen. These emails caused both Detective Senior Constable James Gatward and I to form the opinion that Mr Kiskonen was becoming increasingly radical, as he was becoming increasingly passionate about his beliefs, strident in his opinions and increasingly focussed on his supposed immunity from the law and on the eventual execution of traitors, and was attempting to recruit Detective Senior Constable Gatward into UKOA.

[24] I also became aware of plans to hold a UKOA "Australia Day" ceremony on 31 July 2020. Mr Kiskonen's YouTube videos indicated that Mr Kiskonen was working at an increasingly frantic pace to get preparations in place for this event. He referred to not having had enough sleep on a number of occasions and spoke a number of times about how busy he was. I am aware that he was writing speeches, having brochures printed, ordering flags, designing ceremonies and liaising with individuals in a number of other states. His level of activity at this time was noticeably higher.

> [25] On 23 July 2020, Detective Senior Constable James Gatward showed me an email response that he intended to send to Mr Kiskonen, in which he responded to Mr Kiskonen's request to explain why he did not believe the UKOA doctrine. I agreed with Detective Senior Constable Gatward that it was important to attempt to resolve this issue in Mr Kiskonen's mind to prevent him from believing he had support for his ideas within NSW Police.
>
> [26] On 27 July 2020, as I foresaw the potential for violent confrontation, I advised other relevant law enforcement agencies of the plans by UKOA to attend major war memorials in Australian capitals and conduct various ceremonies, remove any national flags there and raise their own red ensign in its place.
>
> [27] Also on 27 July, Mr Kiskonen posted a video on YouTube entitled "Notice to Police" in which he appeared to make a threat towards Detective Gatward and to police generally. At this time, I began preparations to arrest Mr Kiskonen and took over the role of officer in charge from Detective Gatward."[1]

20 These activities led to the arrest of the defendant at his home on 30 July 2020. He was charged with two counts of "use carriage service to menace/harass and/or offend" and with firearm offences related to a "gel-blaster pistol" found at his home.

21 According to DSC Reason's affidavit, the defendant's take on his own activities was that his videos were not threatening, but "telling the truth about what would happen".

22 DSC Reason noted that the "Australia Day Ceremony" discussed in the defendant's posts did go ahead on 31 July 2020, with UKOA members attending war memorials in Sydney, Melbourne, Adelaide, Perth, Brisbane, Cairns, Mackay, Launceston, Geelong and Canberra. DSC Reason said that the ceremonies in Sydney, Melbourne and Perth all exceeded 20 attendees and attendees were arrested or moved on in Melbourne and Sydney.

23 There is other evidence relied upon by the plaintiff in the form of YouTube and Facebook material posted by the defendant and the comments posted by others in response:

> "**Investigation of Mr Kiskonen's social media accounts and Exhibit AC-1**
>
> [25] On 16 June 2021, I began my investigation into social media accounts believed to be operated by Mr Kiskonen. My duties during the investigation process is to conduct a review and capture of social media handles/profiles utilised by Mr Kiskonen. On 23 June 2021, 25 June 2021 and 30 June 2021, I navigated to and reviewed various Facebook and YouTube accounts as part of my investigation into Mr Kiskonen. Of the accounts I reviewed, I downloaded

[1] Affidavit, DSC Matthew Reason dated 1 July 2021 at pars 6 – 17; 23 – 27

two Facebook accounts in Portable Document Format ("PDF") in addition to various videos from YouTube in mp.4 form, so that they could be accessed offline.

[26] In order to capture the Facebook profiles, I utilised a tool called the 'Snipping tool' to screenshot the window and the 'print to pdf' function to directly save a copy of the page/contents. A program called 'Snagit' was utilised to record the YouTube videos.

[27] Exhibited to me at the time of making this affidavit, and marked Exhibit AC-1, is a USB drive containing the PDF files of the social media content and YouTube videos I downloaded.

Facebook accounts believed to be operated by Mr Kiskonen

[28] While conducting the investigation referred to at paragraph [25] above, I navigated to a Facebook account located at the URL https://www.facebook.com/juha.k.kiskonen. At all times during my investigation the username for this account was "Juha Kulevi Kiskonen". I will refer in this affidavit to this account as the "Juha Kulevi Kiskonen" Facebook page.

[29] On 25 June 2021, I navigated to the Juha Kulevi Kiskonen Facebook page and downloaded the entire timeline as it appeared to me, including thumbnails of the account's "friends", pages "liked", photographs posted, posts written and content shared by the operator of that account between the dates of 1 October 2019 and 27 July 2020. This download is contained in Tab 343 of Exhibit AC-1.

[30] On 5 July 2021, I reviewed the Juha Kulevi Kiskonen Facebook page and noted the following replies to various posts made by that page:

On 18 May 2020 at 17:51, a Facebook account bearing the name 'Anthony Joseph' replied to a post made by the Juha Kulevi Kiskonen Facebook page on 18 May 2020. That reply, containing the words "they pull a gun on us we can shoot back lawfully in self defence", is located at page 2584, Tab 343 of Exhibit AC-1;

On 18 May 2020 at 17:33, a Facebook account bearing the name 'Cher Wilson' replied to a post made by the Juha Kulevi Kiskonen Facebook page on 18 May 2020. That reply, containing the words "shoot them all", is located at page 2584, Tab 343 of Exhibit AC-1;

On 29 April 2020 at 12:58, a Facebook account bearing the name 'Craig Nicholls' replied to a post made by the Juha Kulevi Kiskonen Facebook page on 28 April 2020. That reply, containing the words "cops will end up in gutters", is located at page 2620, Tab 343 of Exhibit AC-1;

On 28 April 2020 at 17:27, a Facebook account bearing the name 'Danny Stepan' replied to a post made by the Juha Kulevi Kiskonen Facebook page on 28 April 2020. That reply, containing the words "start chopping heads again", is located at page 2622, Tab 343 of Exhibit AC-1;

On 18 January 2021 at 14:43, a Facebook account bearing the name 'Shane Harrison' replied to a post made by the Juha Kulevi Kiskonen Facebook page on 18 January 2020. That reply, containing the words "hang together or hang alone. And we have to stand together", is located at page 2916, Tab 343 of Exhibit AC-1;

On 11 December 2019 at 20:19, a Facebook account bearing the name 'Peter Schuback' replied to a post made by the Juha Kulevi Kiskonen Facebook page

on 11 December 2019. That reply, containing the words “not if they are all hung”, is located at page 3138, Tab 343 of Exhibit AC-1;

On 10 December 2019 at 12:22, a Facebook account bearing the name ‘Paul Edward Johanson’ replied to a post made by the Juha Kulevi Kiskonen Facebook page on 10 December 2019. That reply, containing the words “hang the bastard!!!”, is located at page 3143, Tab 343 of Exhibit AC-1;

On 5 November 2019 at 20:33, a Facebook account bearing the name ‘Paul Edward Johanson’ replied to a post made by the Juha Kulevi Kiskonen Facebook page on 5 November 2019. That reply, containing the words “we may, as has happened in many other countries, use guerrilla warfare, to bring the country to a standstill.” and ”I pray it doesn’t happen, but I am prepared to take the necessary measures.”, is located at page 3286, Tab 343 of Exhibit AC-1;

On 1 December 2019 at 07:47, a Facebook account bearing the name ‘Mike Woods’ replied to a post made by the Juha Kulevi Kiskonen Facebook page on 30 November 2019. That reply, containing the words “treasonous bastards need hanging”, is located at page 3186, Tab 343 of Exhibit AC-1;

On 8 November 2019 at 03:06, a Facebook account bearing the name ‘Brett R Pain’ replied to a post made by the Juha Kulevi Kiskonen Facebook page on 8 November 2019. That reply, containing the words “This can be used as a rope, and they will tie the noose and hang themselves!”, is located at page 3269, Tab 343 of Exhibit AC-1.

[31] While conducting the investigation referred to at paragraph [25] above, I navigated to a Facebook account located at the URL https://www.facebook.com/juha.kiskonen.9. At all times during my investigation the username for this account has been “Juha Kiskonen”. I will refer in this affidavit to this account as the “Juha Kiskonen” Facebook page.

[32] On 23 June 2021, I navigated to the Juha Kiskonen Facebook page and downloaded the entire timeline as it appeared to me, including thumbnails of the account’s “friends”, pages “liked”, photographs posted, posts written and content shared by the operator of that account between the dates of 16 December 2019 and 22 July 2020. This download is contained in Tab 344 of Exhibit AC-1.

[33] On 5 July 2021, I reviewed the Juha Kiskonen Facebook page and noted the following posts made by that page, and various replies made to posts by that page:

On 20 March 2020 at 22:13, the Juha Kiskonen Facebook page made a post containing an image of Prime Minister Scott Morrison and armed police containing the words “toe the line citizen or else”. This post is located at page 3556, Tab 344 of Exhibit AC-1;

On 20 March 2020 at 22:54, a Facebook account bearing the name ‘Dale Jorgensen’ replied to the post made by the Juha Kiskonen Facebook page referred to at paragraph [33a] above. That reply was an image of a rifle, overlain with the words “You’ve got your point of view and I have mine”, and is located at page 3557, Tab 344 of Exhibit AC-1;

On 23 March 2020 at 21:57, a Facebook account bearing the name ‘Ray Rowley’ replied to the post made by the Juha Kiskonen Facebook page referred to at paragraph [33a] above. That reply was comprised of an image

containing the silhouette of a man with a pistol held to the back of his head, and a comment. This reply is located at page 3559, Tab 344 of Exhibit AC-1;

On 13 March 2020 at 19:37, a Facebook account bearing the name 'Paul Blart' replied to the post made by the Juha Kiskonen Facebook page containing the text "All off you that mocked … I'm going to enjoy watching you all suffer". The reply, containing the words "I want to see every city dwelling pro government SHEEP slaughtered then we can get on with life", is located at page 3603, Tab 344 of Exhibit AC-1;

On 13 March 2020 at 22:58, a Facebook account bearing the name 'Paul Figures' replied to a post made by the Juha Kiskonen Facebook page on 13 March 2020. That reply, containing the words "power is dry eyesight is good, I know where high ground is", is located at page 3622, Tab 344 of Exhibit AC-1;

On 15 March 2020 at 10:08, a Facebook account bearing the name 'Barry Dohnt' replied to the reply made by the Facebook account bearing the name 'Paul Figures' referred to at paragraph [33e] above. That reply, containing the words "just make sure you correctly id the target before firing. No civilians. Non combatants are unarmed .. beware the trojans", is located at page 3622, Tab 344 of Exhibit AC-1.

YouTube account believed to be operated by Mr Kiskonen

[34] While conducting the investigation referred to at paragraph [25] above, I navigated to the website YouTube at http://www.youtube.com, and typed "UKOA John K" into the search bar on the YouTube website. As a result of this search, I located the YouTube subscriber channel titled "John K". I will refer in this affidavit to this subscriber channel as the "John K" YouTube page.

[35] On 30 June 2021, I navigated to the John K YouTube page and downloaded the subscriber channel as it appeared to me, including thumbnails of videos posted by that subscriber channel, the number of subscribers to the subscriber channel and the number of videos posted by that subscriber channel. At that time, the John K YouTube page had "1.93K" subscribers and had posted a total of "288" videos. This download is contained in Tab 345 of Exhibit AC-1.

[36] On 30 June 2021, also downloaded the following videos posted by the John K YouTube page:

A video titled 'Callout to help our man Thursday 16th July', posted on 10 July 2020 and is 8 minutes and 6 seconds in length. This video currently has a total of 521 views with comments hidden by 'restricted mode', as well as 55 'thumbs up' and 1 'thumbs down'. A copy of this video is located at Tab 346 of Exhibit AC-1;

A video titled 'Is it the end?', posted on 11 July 2020 and is 28 minutes and 18 seconds in length. This video currently has a total of 2,168 views with comments hidden by 'restricted mode', as well as 172 'thumbs up' and 1 'thumbs down'. A copy of this video is located at Tab 347 of Exhibit AC-1;

A video titled 'Rise vs Fall', posted on 12 July 2020 and is 33 minutes and 10 seconds in length. This video currently has a total of 801 views with comments hidden by 'restricted mode', as well as 73 'thumbs up' and 2 'thumbs down'. A copy of this video is located at Tab 348 of Exhibit AC-1;

A video titled 'Why oath to Steven?', posted on 16 July 2020 and is 19 minutes and 57 seconds in length. This video currently has a total of 1,839 views with

comments hidden by ‘restricted mode’, as well as 129 ‘thumbs up’ and 13 ‘thumbs down’. A copy of this video is located at Tab 349 of Exhibit AC-1;

A video titled ‘A chat with the Honourable Matthew’ posted on 22 July 2020 and is 1 hour, 9 minutes and 5 seconds in length. This video currently has a total of 989 views with comments hidden by ‘restricted mode’, as well as 85 ‘thumbs up’ and 2 ‘thumbs down’. A copy of this video is located at Tab 350 of Exhibit AC-1;

A video titled ‘New South Wales police have a lot to answer for’ posted on 5 May 2020 and is 4 minutes and 43 seconds in length. This video currently has a total of 489 views with comments hidden by ‘restricted mode’, as well as 60 ‘thumbs up’ and 1 ‘thumbs down’. A copy of this video is located at Tab 351 of Exhibit AC-1;

A video titled ‘Only citizens can be fined by police.’ posted on 11 April 2020 and is 13 minutes and 26 seconds in length. This video currently has a total of 824 views with comments hidden by ‘restricted mode’, as well as 98 ‘thumbs up’ and 5 ‘thumbs down’. A copy of this video is located at Tab 352 of Exhibit AC-1;

A video titled ‘NSW Police are getting the picture.’ posted on 20 May 2020 and is 3 minutes and 43 seconds in length. This video currently has a total of 5,135 views with comments hidden by ‘restricted mode’, as well as 255 ‘thumbs up’ and 3 ‘thumbs down’. A copy of this video is located at Tab 353 of Exhibit AC-1;

A video titled ‘Police, Treaties and the Common Law of War’ posted on 7 May 2020 and is 24 minutes and 56 seconds in length. This video currently has a total of 674 views with comments hidden by ‘restricted mode’, as well as 70 ‘thumbs up’ and 3 ‘thumbs down’. A copy of this video is located at Tab 354 of Exhibit AC-1;

A video titled ‘NSW Police take notice.’ posted on 6 May 2020 and is 15 minutes and 13 seconds in length. This video currently has a total of 797 views with comments hidden by ‘restricted mode’, as well as 88 ‘thumbs up’ and 4 ‘thumbs down’. A copy of this video is located at Tab 355 of Exhibit AC-1;

A video titled ‘There are rules we must follow’ posted on 1 May 2020 and is 8 minutes and 22 seconds in length. This video currently has a total of 526 views with comments hidden by ‘restricted mode’, as well as 58 ‘thumbs up’ and 3 ‘thumbs down’. A copy of this video is located at Tab 356 of Exhibit AC-1;

A video titled ‘How to get off the citizen-ship’ posted on 26 June 2020 and is 10 minutes and 51 seconds in length. This video currently has a total of 831 views with comments hidden by ‘restricted mode’, as well as 101 ‘thumbs up’ and 2 ‘thumbs down’. A copy of this video is located at Tab 357 of Exhibit AC-1;

A video titled ‘Wayne glew is a traitor’ posted on 12 June 2020 and is 15 minutes and 13 seconds in length. This video currently has a total of 1,308 views with comments hidden by ‘restricted mode’, as well as 65 ‘thumbs up’ and 20 ‘thumbs down’. A copy of this video is located at Tab 358 of Exhibit AC-1.”[2]

[2] Affidavit, SC Alexander Clark dated 9 July 2021 at pars 25 – 36

24 It is against this background that the materials the subject of the charges was published and sent by the defendant to DSC Gatward on 25 May 2020 and 27 July 2020. The key points of this correspondence are relevantly summarised in the Police Facts:

> "(Offence 1 – Use Carriage Service, to menace, harass, offend)
>
> On the 25th of May 2020 the Accused uploaded a video to YouTube and shared it to the "Remaining Loyal to the Kingdom of Australia" Facebook group'. The video showed the Accused providing commentary about SPIERS being the new King of Australia and that they will now be "Challenging this government big time. We are going to put them in their place". He goes on to say that all the Police officers and Army personal will be held accountable and if they do not make an oath to the "… Kingdom of Australia there will be consequences for your treason". The Accused stated that those who do not swear an allegiance will be hung and their "… necks snapped". The Accused stated his followers were required to advise him of their oath to King Steven and htat from today on "… things are changing". This video can be seen to have been filmed in an area of the garage at the Accused's home at **[REDACTED]** Gregory Hills.
>
> …
>
> (Offence 2 – Use Carriage Service to Menace, harass, offend)
>
> On the 27th of July 2020 the Accused posted a video of himself to his YouTube page. The video was a 20 minute recording titled "Notice to Police". During the video the Accused stated that he had a document that put the police on notice. He began to talk about police and stated "The one that surprised me the most was the Fixated Persons Unit. A detective there names James, G'day James how you going? I know you watch. Very surprised at your response, James. Although I realise why you made that response. I mean you like your job. But is your job worth your life mate? That's the thing. Not saying im going to do anything about it. But you read all of the material (…) I was only looking out for you (…) but obviously your job is more important that your country. So I guess that puts you into a special kind of category. It starts with 'T'. Im sure you know what that word is". The Accused continued to talk about police and if they go against the Kingdom of Australia that they will be hanged (the Accused did this by making a hanging motion). The Accused has subsequently indicated during hsi (sic) interview that "t" stands for "Treason". This video is identifiable as having been filmed in the Accused's garage at **[REDACTED]** Gregory Hills.
>
> In the video the Accused later referred to GATWARD and Police stating "You need to realise that when you know you're committing treason and you continue to commit treason (the Accused made another hanging motion) it does lead to that". The Accused referred to the king taking power stating "Do you think you're going to be able to stay here and avoid a hanging?". The Accused continued to threaten that Police will be hanged. He talked about hanging certain police stating "Fuck yeah we should (…) Im not going to beat around the bush. I'll get a bit of pleasure out of it". The Accused stated that the only way anyone will avoid hanging would be by changing their allegiance."

25 The firearm offences are described in the Police Facts as follows:

> "… (Offence 3 – Possess unregistered firearm – prohibited pistol) (Offence 4 – not keep firearm safely)
>
> During the search of the premises, police located a "gel blaster" pistol on a shelf in the garage. This shelf is close to the area in which the Accused films his videos. The pisstol (sic) resembles a conventional semi-automatic pistol and fires small plastic projectiles. It is automatic firing and is classed as a firearm (prohibited pistol) at law. The firearm is not registered and was not secured in an approved safe. The Accused is not currently licensed to own a firearm.
>
> The Accused participated in an electronically recorded interview wherein he made admissions to operating the "John K." Youtube account, creating and posting the videos referred to above. He also admitted to sending the emails to Detective GATWARD referred to above. The Accused made admissions to owning the pistol and stated that he had purchased it from a friend some time ago. The Accused continued to assert that the Laws of both the Commonwealth of Australia and the State of New South Wales do not apply to him."

26 In his ERISP on 30 July 2020, a transcript of which was tendered, a long, largely incomprehensible, rambling series of answers were provided to questioning police. The defendant denied that he was inciting people to violence[3] stating: "I'm telling people not to cower in a corner at the sight of the police, to stand up to the police, but at the same time, do not raise a hand against the police, don't be belligerent".

27 He was also asked whether he believed police should be hanged to which he replied "No".

28 He was asked questions about the role of the "military tribunal" he has referred to:

> Q217 I was just gunna, um, ask, what would happen to one of your members if they acted outside the military tribunal, if they went ahead and, and hung the police?
>
> A Oh, they wouldn't be one of our group, that's for sure.
>
> Q218 But is there some sort of repercussion?
>
> A Yeah, Yeah, they would face a military tribunal themselves, and probably lose their head.
>
> Q219 Through you guys?
>
> A No, through you guys.
>
> DETECTIVE SENIOR CONSTABLE REASON
>
> Q220 [11:39] A military tribunal?

[3] ERISP Interview, Juha Kiskonen dated 30 July 2020 p 25

A We're not here to, we're not here to fight with you, we're not here to argue with you, but you, you, you people have to understand that, that we're, we're standing in our lawful capacity, and, and you people as a foreign military have to, have to respect that, you have to respect that otherwise it's a war crime. This is what I'm trying to get through to you people, is that you have to respect the law, international law. I'm standing within my international law, and I'm, I'm adhering to, to the laws that I'm, I'm obligated to adhere to, and so should you. If you cross that line, you should be funny, punished. If I cross that line, I should be punished. If people wanna take that law into their own hands, they should be punished. I'm not, I'm not here to, to, I never once told anybody, to, to rise up against the police violently. Um, I've hand interactions with the police at the Shrine of Remembrance in Melbourne, at Mawson Park. I mean, I'm sure you have access to that video footage, you will see that I was completely peaceful, I was non belligerent, I didn't argue with them, I just told 'em how it was. And they, and when I laid out, say, for instance, um, the fourth Geneva Convention of 1949, article, uh, chapter 5, article 93 which states that you, the foreign military have to allow us, the peaceful civilians, every latitude to attend the military, to attend a religious service of our faith, the, the people of Melbourne and the people in Campbelltown adhered to that, and they left us alone.[4]

29 This ERISP should be read against the background of the defendant's articulated position in an email dated 7 May 2020 sent to DSC Gatward (that was not the subject of a charge) which included these propositions:

"Hi James

You will find attached several papers you should take the time to read, they lay out a number of things of importance pertaining to the military occupation of our Kingdom of Australia, and a foreign Crown pretending to be our proper Crown… which you serve.

These papers are unrebuttably accurate and you should take the time to read them, feel free to try to rebut them, a retired magistrate has even read the two titled Realm and… and agreed they are indeed correct.

Now I know you have been watching the videos I have posted, and for our conversation today I see you are at least checking that I know what I am talking about and I appreciate it, thanks, good to know your paying attention, when you do read through the Australian Treaty series, in particular Hague IV, customs of wat on land, you will find see this is the primary document that allows for our Military Occupation, and Australia Day actually represents the day that treaty came into effect, being out official Military Occupation…

ARTICLE 1
The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention

This would include the Lieber Code, as the regulations, or field manual that you must follow as the occupying force, as a subsidiary of the United States technically, although now controlled by the United Nation, under the Crown of the United Kingdom of Great Britain and Northern Island, being the St Edwards Crown.

[4] ERISP Interview, Juha Kiskonen dated 30 July 2020 pp 29 – 28

> I also included a somewhat detailed paper I put together, titled timeline, which points out key historical events that let to where we are today… have fun proving that wrong also…"

There is other correspondence in a similar vein later in May and in June 2020.

30 Senior Counsel for the plaintiff, Mr Emmett, placed emphasis on a particular recurrent gesture he says that the defendant made in some of his YouTube material. In a presentation on 27 July 2020 the defendant outlined certain activity that was to take place on 31 July 2020 and made reference to a document that "has not been released yet" and then says this:

> "… And um, ah, as I said it puts the police on notice. So whether they choose to, um, to, you know, take notice of it or not, it, it certainly puts them on notice and if they choose to go against that, well hey, it could end up, you know, being a bit of this action for 'em [03.51 makes gesture]. Or, actually, I'll say, it would, would more than likely end up being that sort of action for 'em. Because they're armed. They're a foreign military and they're threatening the peaceful civilians. And we don't care, well, not that we don't care, but there's, fair enough, there's nothing that we can't, nothing that we can do for you citizens but don't go messin' with our people anymore. The people that are under this flag. So if you see this flag Mr Police Officer, I suggest you walk the other way, like you do with me most of the time.…"

And later in the same presentation:

> "… Um, but, but you police officers that know that you're doing the wrong thing now and you continue to do it, well, I can understand the fact that you did, you know that you need to honour your oath but you can change that just by making another oath. Your oath back to God voids other, all other oaths. You're serving a foreign Crown, a foreign God, against your own people. And, you know, you have the power of changing this. And only you have the power of changing it because you're the ones that in control of your allegiance, where your allegiance lays. So, um, all you police officers that do watch, and I know some of you watch, you, you really need to make a decision as to, um, where your loyalty lays. And, um, you need to realise that when you know that you're, um, committing treason and you continue to commit treason [14:52 makes gesture] it does lead to that. If not by, um, if not by military tribunal, say if the military tribunal does nothing about it, when the King gets control of this country, the whole country again, and we get rid of the occupier, where are you gonna be left? All you police officers out there, when the occupier leaves, are you gonna leave with them to avoid hanging or are you can think that your gonna be able to stay here and avoid hanging?…"

31 Mr Emmett also drew attention to this part of a similar YouTube presentation in May 2020:

> "… We're gunna give everybody a choice to be loyal to your kingdom. Make your oaths back to the kingdom of Australia or, um, there will be consequences for, um, for, ah, your treason. And, um, yeah, the consequences will range from mild, being, your gunna leave this country. You're gunna leave it behind and you're gunna have no recourse to um the

> very strong. And that is that some of you might find [03:26 makes gesture] a rope getting, a rope getting very tight around your neck and your feet dropping out from underneath you and that rope going taut and snapping your neck. Now I say, I know I say that very callously but, believe me, there are some of you that deserve it. And those of you that deserve it will be getting it. Ah, some of you might only be spending your life in jail. Like um Ivan Milokovic, I think his name was, for war crimes. Um, so things are changing…"

32 I was informed by Mr Emmett that I did not need to watch the YouTube videos but the "gesture" each time was a physical gesture consistent with hanging.

Observations regarding the defendant's mental health and the bases of the Community Treatment Order (CTO)

33 The defendant was referred to the Mental Health Review Tribunal (MHRT) shortly after his arrival in custody. In a report of 8 September 2020, the Psychiatry Registrar from Justice Health stated that the defendant had been referred to the Mental Health Screening Unit in the context of "a deteriorating mental state".

34 On 10 August 2020, the defendant was reviewed by Staff Specialist Psychiatrist, Dr Keating. She was asked to see him in the context of a recent hunger strike and to examine whether he was psychotic. She noted the following:

> "…Went into long detailed conspiracy theories, which made it difficult to elicit other history, very fixated and preoccupied by these ideas.
>
> For example:
>
> 'I'm of a different jurisdiction… you only have to research international law and read the Hague… that treaty specifically deals with military occupation of this country is under illegal military occupation by the United Nations, I was going to expose it, so now I'm being victimised'.
>
> 'They (police) mocked me… because of what I know… The government, which IS the United Nations, and also the police, service the Roman Crown… It doesn't belong in this country… it's actually unlawful… under the Act of Supremacy 1688'
>
> I asked what the 'Act of Supremacy' is and said I've never heard of it: 'They don't want you to know it, that's why… There are 2 different constitutions in this country… one that puts people over the government, the other puts the government over the people… They don't want people to know their true lineage, their true crown… the Imperial Crown'
>
> All started when: 'I found out the fact that the Australian government isn't who they say they are 6 years ago. I took my neighbour to court, which I did myself because I like to do things myself… then starting researching the law… that's when I started to realise it all… Found it to be 100% irrefutable and correct'

> ‘They want to shut me up… When I wasn’t so popular on facebook and youtube they didn’t care, but now that my message is getting out there they’re getting worried about me’.
>
> Reports more than 5000 followers on facebook – ‘but I’m working with other people that are targeted as well’…”
>
> And later in the interview:
>
> “…Re charges:
> Using a carriage service – ‘I sent an email to a detective James Gaddard of the fixated persons unit after he mocked me and mocked the information which I shared with him which is irrefutable... if he is going to mess with the loyal people of this country he will probably hang’.
>
> Firearms offence – for a ‘gel blaster’ (like a paintball gun). ‘Not illegal in other states’. Denies intent to use it to harm others.
>
> ‘They offered me legal aid but I can’t use them… if you read the lawyers handbook, you will read that all lawyers first duty is to the court, so how can you trust them?’…”

35 Dr Keating concluded her report as follows:

> “… 50yo man with minimal psychiatric history presents with escalating delusional ideation over several years, accompanied by some grandiosity. No other clear symptoms of psychosis or major mood disorder. Note history of bowel Ca, with possible signs of recurrence 2yrs ago. Need to exclude organic cause of current presentation.
>
> Has acted on his delusional beliefs by making threats and disobeying legal directives under the belief they don’t apply to him, which has caused harm in various domains in his life, particularly his relationships and his reputation, and now leading to legal sanctions. Recent risk to self via hunger strike, however now eating and drinking.”

36 Returning to the September 2020 report for the MHRT, the Registrar recorded that the defendant did not have a history of mental illness prior to custody, but that he had a “systematised paranoid delusion that there was unlawful military occupation of Australia” and that there are “two constitutions of Australia”, and due to these beliefs he believes that police officers should be “hung for war crimes”. He also has had “grandiose delusions that he is the Mayor of Campbelltown and had been putting flags around the suburb”. He described the defendant as being “very guarded” about the psychotic beliefs, and that he refused to engage with the treating team. He apparently had repeatedly told nurses he was “going to be released within days”, and “has friends in very high places”. The Registrar concluded that he was insightless into his persecutory delusions, and was a high risk of harm to others if his beliefs are challenged. At that time he continued to refuse psychiatric medication. The Registrar

concluded that the risk to others was due to his untreated mental illness, and so he was transferred to Long Bay Hospital for involuntary treatment.

37 Documents from the MHRT in early September 2020 noted the grandiose delusions against a background of systematised paranoid delusions. The MHRT agreed with the need for enforced treatment.

38 A more detailed report of Dr Kansou, Registrar in Forensic Psychiatry, dated 19 October 2020 was prepared for a later hearing at the MHRT. This included detail that the defendant, despite denying he had any admission to psychiatric hospital or having ever been prescribed psychiatric medications before, had been admitted to Waratah House in September 2015 following an overdose, although at that point there was, it seems from the Discharge Summary, no sign of a mood disorder or psychotic disorder at that time.

39 Dr Kansou's report made reference to information obtained from the defendant's de-facto partner that the defendant had "become increasingly preoccupied with online conspiracy theories, withdrawing from his family and becoming more grandiose and unable to be challenged" and when he was challenged he "would become verbally, but not physically, aggressive". The de-facto partner also outlined certain behaviours on the part of the defendant that Dr Kansou thought may be features consistent with a narcissistic personality disorder.

40 It was noted that the defendant had been on a hunger strike when he was first incarcerated due to his systematised delusional beliefs, believing he was a prisoner of war unfairly imprisoned. It was noted that he possessed poor insight into his condition, and had not been consenting to his medication in the beginning, but was at that time, reluctantly compliant with treatment.

41 More detail was noted regarding the defendant's personal history, including that he came to Australia from Finland when he was four years old and that he had worked many jobs including a sweeper in a mechanic shop, a fast food restaurant, carpentry and handyman jobs but that for the last 18 years he had worked as a glass recycling driver.

42 The opinion and recommendation concluding the report stated that the defendant:

> "… is suffering from delusional disorder, perhaps late onset schizophrenia, but possibly with an organic disorder, a mental illness characterised by persecutory grandiose and bizarre delusional beliefs. The Mental illness is been complicated by poor insight and poor compliance. With medication, Mr Kiskonen had shown significant improvement in his mental state. He has poor insight and a history of non-compliance with his medication means he is at risk of relapse. The treating team requested the Tribunal to grant him an FCTO before release. Mr Kiskonen will continue to benefit from his antipsychotic medication and further investigation of his medical condition. He will also benefit from ongoing psycho education."

43 The report of the MHRT dated 5 November 2020 relied upon the treating report and concluded that it was satisfied that the defendant continued to suffer from mental illness and required further inpatient treatment at the Long Bay Hospital. A further review was scheduled, at which time a Forensic Community Treatment Order (FCTO) would be discussed. It was noted that the defendant said that he would not take any medication which would "change his metabolic state", but he did not explain what that meant. At that time the MHRT noted that the defendant was taking olanzapine which had recently been increased to 7.5mg per day and which was at that stage being administered by injection.

44 On review on 23 December 2020 by Dr Sharma, Staff Specialist Psychiatrist, the defendant said that he no longer believed the things he had previously stated about the government not being legitimate and Steven being the King of Australia. Dr Sharma recorded as her "impression" that:

> "He no longer holds his prior delusional beliefs with the same intensity but it is not certain that he has become well enough to simply disguise his underlying beliefs."

45 In an assessment by treating psychiatrists at Long Bay Hospital in January 2021 prepared for a further MHRT hearing, the treating team noted that it had received registered post from one of the defendant's "followers" telling them that they must release the defendant as he is being held illegally, and pleading his case to the Commonwealth Minister of Health Greg Hunt, and that the defendant had said that he had been instructed in his views by "Steven, the right and truthful king".

46 The assessment report concluded that overall, the defendant had shown improvement in his mental state, but was still insightless and "only reluctantly" accepting his medication, and concluded that he was suffering from a "delusional disorder, perhaps late onset schizophrenia (but possibly with an organic disorder) being a mental illness characterised by persecutory, grandiose and bizarre delusional beliefs". It also noted that he had shown significant improvement in his mental state but there was risk of relapse and so the FCTO was requested to be put in place before release into the community. The report also concluded that he will "continue to benefit from his antipsychotic medication and further investigation of his medical condition, as well as ongoing psychoeducation".

47 In January 2021 a Forensic Treatment Plan was formalised which included monthly meetings with his psychiatric case manager in the correctional centre, a six weekly meeting with his treating psychiatrist, a requirement to accept treatment and medication as prescribed and to provide regular urine drug screening samples and to comply with necessary blood tests to provide for metabolic and clozapine level monitoring.

48 The last review available in the evidence tendered where the defendant was actually interviewed and assessed was 22 June 2021, by a CMO, Dr Andrew White, who noted:

> "…Today he presents as somewhat dishevelled but was woken from sleep to see me. He was pleasant and polite and co-operated with the interview. He said that he no longer believes the things about the Australian government or other conspiracies that he previously did. He admits to becoming completely preoccupied with these beliefs and that they had taken over his life and damaged his relationships. He attributes his change in mental state to the shock of incarceration and his wife ending their relationship and does not think that the medication has helped in any way. Medication makes him 'dumbed down' and tired but he feels better on his current regime than he did when he was on more Rx. Accepts his diagnosis and was able to label it as delusional disorder. Accepts that he was completely overrun by his conspiracy beliefs and accepts the label of 'delusional'.
>
> Denied any ongoing interest in pursuing his conspiracy theories. His plans on release are to go back to work and attempt to reconcile with his wife. Said that family is the most important thing and he wants to do the right thing by his family. Will continue to take Rx because he knows he has to and Police and P&P will require him to take it. Also admitted to smoking THC prior to custody and said that he won't do that anymore because he doesn't want to go back to it and he is also aware of parole conditions. Plans to go back to live with his ex and kids (boys in their 20s).

…

Imp: Delusional disorder seems most likely diagnosis, probably on b/g of narcissistic/paranoid PD and THC use."

A summary of the positions taken by the parties regarding the statutory preconditions

(i) The Plaintiff

49 The plaintiff argued that the requirements of s 27(a) of the Act are met given the defendant's current sentence of imprisonment is due to expire on 29 July 2021 and the sentence of imprisonment was imposed for a New South Wales indictable offence - the firearms offences arising from the gel blaster gun found at his home.

50 The Plaintiff submitted that the Court would be satisfied that the requirements of s 27(b) have been met because the matters alleged in the supporting documentation would, if proved, justify the making of an ESO. It was emphasised that the Court must take the allegations and documentation at its highest, and it is not for the Court at this stage to weigh up documents, or resolve any conflicts or inconsistencies which appear in the documentation, nor to predict the ultimate result or consider what evidence the defendant might present at final hearing.

51 The defendant is a "convicted New South Wales terrorism activity offender", having regard to the definition of that term in ss 10(1) and 10(1A) of the Act, because he has previously made a statement advocating support for violent extremism, or has previously had personal or other affiliation with a person, group or organisation that is or was advocating support for violent extremism: s 10(1)(c) of the Act.

52 Having regard to the broad meaning of "violent extremism" that captures conduct that might not satisfy the technical definition of a "terrorism act", particular matters were identified, said to be evidenced in the documentation supporting the plaintiff's application, which would, if proved, amount to advocating support for violent extremism for the purposes of s 10(1)(c) of the Act:

- the defendant making statements to DSC Gatward, including that “breaking the rules could cost him his life” and the references to hanging which are in effect, threats of violence that are promoted by a person, group or ideology that supports violent extremism, namely the UKOA.
- what was said in the email in July 2020 regarding “holding to account under military jurisdiction” any police officer that “tries to force themselves onto me” and “..I’m sure I don’t have to point out that war crimes may be punishable by death and the Nuremberg trials will tell you that following orders will not protect you from a rope around your neck…”, amongst other statements.
- the YouTube video on 27 July 2020 that included comments implying that certain police activity was treason, that the police are “a foreign military threatening peaceful civilians” and that the police should be exposed to the punishment of hanging.

53 It was submitted that the fact that the threats appeared to contemplate some form of court or tribunal proceeding first occurring before the punishment of hanging, does not deprive the propositions expressed of their extremist character.

54 In terms of assessing whether there was an unacceptable risk of committing a serious terrorism offence, the plaintiff emphasised the facts giving rise to the Commonwealth offences which stemmed from the defendant’s ideological connection with the UKOA movement, the ideology evidenced in his social media postings, as well as his poor mental health. It was argued that the material referred to in the Facebook posts regarding the activities of UKOA and that movement’s ideology comprise statements consistent with the use of a violent extremism to achieve their aims. This is in turn consistent with what the defendant says in his own Facebook and YouTube posts.

55 Although recent communications between the defendant and his Justice Health mental health team appeared to include disavowal of his previously expressed beliefs, recorded conversations between the defendant and UKOA members on 29 January and 18 February 2021 suggest that he still maintains those beliefs.

56 I interpolate here to observe that I am not persuaded that those phone calls form a solid basis for that submission. There are statements made in those calls by the defendant that suggest to the contrary, and the calls were almost five months ago.

57 The plaintiff submitted that concerns regarding mental health comprise the nature of the defendant's mental illness, the poor history of compliance with medication and his failure to comply with supervision by Community Corrections, as well is his lack of insight and impaired judgement.

58 The written (and oral) submissions made on behalf of the plaintiff then descended into a level of complexity which it described as potential "risk scenarios". The complexity of these potential, (and in some ways speculative), scenarios, to my mind underscore the speculative and uncertain nature of the risk allegedly presented by the defendant that he will commit a serious terrorism offence.

59 The first scenario was said to comprise the defendant continuing with the conduct of the kind engaged in prior to his arrest and incarceration, and the second, the risk of escalation of his conduct.

60 It was explained that the first risk was the defendant's previous threats of hanging authority figures, including police, as threats of action that would fall within the definition of "terrorist act" in s 100.1(2) of the Code, but not ss 3. These are threats of an action that would result in death, and are threats made first, with the intention of advancing a political or ideological cause and second, with the intention of influencing the police or other public figures in the performance of their duties. It was argued that the defendant's "continued adherence" to these previously expressed beliefs, indicates a real prospect of him resuming conduct of the kind engaged in prior to his arrest and so there is a significant likelihood of the defendant engaging in conduct that constitutes a terrorist act being an offence contrary to section 101.1 of the Code.

61 The plaintiff accepted that the threats of violence are stated to only occur following the regime change for which the defendant advocates, but argued that this still satisfies the definition of "terrorist act", and while the likelihood of threatened hangings might be low, and while the defendant may have had no intention to encourage immediate acts of violence, such threats are significant because they might "create a milieu which fosters the prospect that personal injury will be suffered by innocent members of the community".[5]

[5] Minister for Home Affairs v Benbrika (2021) 388 ALR 1; [2021] HCA 4 at [46]

62 Alternatively, it was submitted that the defendant's conduct in publishing the videos on Facebook containing the material described above, may lead to offences contrary to s 101.5 (collecting or making documents likely to facilitate a terrorist act) or s 101.6 (doing any act in preparation for planning a terrorist act) under the Code, particularly as the defendant is only required to be "reckless" as to the connection between his conduct and a terrorist act in order to establish those offences.

63 The plaintiff argued that the connection between the videos of the kind made by the defendant and the commission of a terrorist act is a real one, given that those videos identify persons said by the defendant to be a legitimate target for retributive violence.

64 Whilst there are disavowals of violence in the material, these disavowals occur alongside statements such as "...got to start carrying out action to deal swiftly with the foreign administrators ruling over a country with no rule of law" and "… I have now given you enough evidence to crucify this man" and "…no one is truly prepared for what's coming".

65 I interpolate here in regard to these statements that I do not see any of them as having sufficient clarity of proposed action to amount to a "call to arms" for violence.

66 Regarding the second risk scenario, the plaintiff submitted that the Risk Assessment Report author has concluded that the defendant is "vulnerable to acting or engaging in violence to achieve the goals of the UKOA, if the narrative was to shift towards the people of Australia adopting roles within the kingdom that is creating perceived legitimacy for engaging in violence, warfare policing and/or military jurisdiction."

67 The plaintiff submits that this risk is unacceptable, given that the defendant had previously made threats to police officers that may reasonably be interpreted as death threats.

68 His previous non-compliance with the CCO which occurred back in May 2020 was premised upon his ideological beliefs. This is cited as evidence of risk, as is his reluctance to engage in mental health treatment. His criminal history

involves some violence and some past difficulty with anger management (based on information provided by his de-facto partner) and these too are said to be matters that heighten risk.

69 It was submitted that the Court should place weight on the conclusion by the Risk Assessment Report author that he is at "moderate to high risk of engaging in politically motivated violence".

70 He was not compliant with his CCO. There is a risk that he may not comply with his CTO. His beliefs and commitments amount to a type of "call to arms" to others with use of social media posts. He has some influence as a "leader" of the UKOA movement.

71 In broad terms, in relation to the relevant s 25 factors, before incarceration his behaviours were escalating, as was his level of fixation and obsession with "the cause". His delusional belief system regarding the legitimacy of the Australian government has real capacity for risk that he will either engage in activity, or disseminate extremist ideology to radicalise and influence others.

72 It was submitted by Mr Emmett that the Court should not infer that the defendant's attitude or beliefs have changed or lessened due to effective treatment of his mental illness, as the position is equally consistent with the medication having no effect, but the defendant choosing to hide his beliefs so he can be released, particularly given his perception stated in his February 2021 phone call with Mr Cook that the reason he was refused bail was his adherence to UKOA beliefs.

73 I note that there is no evidence that the defendant was receiving any mental health treatment or support at the time of the 2019 or 2020 offending.

(ii) The Defendant

74 The defendant submitted that first, the statutory preconditions in the Act have not been met. Second, the Court would not be satisfied to the necessary degree that the defendant poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the Act. It was also submitted that third, the Court would not be satisfied that the matters alleged in the documentation would, if proved, justify making the ESO.

75 It is significant that the offending for which the defendant was sentenced under the Code was relatively low level in that it was a simple offence of using a carriage service to menace/harass or offend rather then the type of offending in Chapter 5C of the Code urging violence against the Constitution or against groups or advocating terrorism.

76 Whilst the defendant's possession of an unregistered gel blaster was sufficient to qualify him as an eligible offender, the nature of the offences weighs strongly against the order being made.

77 There were submissions made about whether the service requirements under the Act had been met and whether there had been disclosure as required by the Act, but these matters were in my view faintly pressed and the application was defended on the basis of the material being properly before the Court.

78 What was pressed however, appropriately in my view, was the problematic bases of the psychologist's Risk Assessment Report relied upon by the plaintiff purporting to calculate the likelihood of the defendant committing a serious terrorism offence. This report of Ms Prince was heavily qualified, referring to itself as an "interim assessment" only, and concluding that any risk presented by the defendant required a narrative shift occurring before any such activity would proceed, and it would be activity in which his role would likely be limited to promotion, recruitment and development of material. It was in this context that she assessed the defendant as presenting a "moderate to high risk" using the Violent Extremism Risk Assessment tool (VERA). There was nothing in the report however that assessed the likelihood of the contextual change or narrative shift actually ever occurring, and so her conclusions remain speculative.

79 The defendant disputed that he should be correctly considered a "convicted New South Wales terrorism activity offender", even under the extended definition set out in s 10(1A) of the Act.

80 Section 11 of the Act sets out the matters the Court may consider in determining whether the defendant is in fact a convicted New South Wales terrorism activity offender.

81 First, the sentencing Magistrate specifically declined to sentence the defendant on the basis that he had an allegiance to a particular group. Second, evidence adduced on sentence did not, properly read, lead to a conclusion that he was either making a "call to arms" to his associates to hang police, or engage in any act of violence. In fact, there was a number of statements that show an intention to act peacefully and that he expected others to act peacefully. Third, there is no relevant terrorism intelligence. The material in the affidavit of DSC Reason is not a report relating to terrorism or a terrorist organisation. It is full of speculation and opinion without real foundation as to what other, unidentified people, "might do". Emphasis was also placed on the concluding paragraph of DSC Reason's affidavit that it should be read as a "picture of a group that has effectively dissipated, with members being disillusioned and having moved on to different groups".

82 Fourth, there was nothing in the prior convictions relevant to terrorism, or of sufficient seriousness to give any concern about the defendant having potential to commit a serious terrorism offence in the future.

83 Fifth, there was nothing in the Risk Assessment Report of Ms Prince which could comprise an assessment result of relevance to "terrorist behaviour":

> "[113] The notable difficulties in determining the specifics of Mr Kiskonen's risk are further complicated by the limitations of the assessment, having not been afforded the opportunity to involve Mr Kiskonen in interview or assessment. Further, whilst the United Kingdom of Australia promotes and adopts the Sovereign Citizen style beliefs their overt promotion for violence to achieve sovereignty is not clear. To the knowledge of the author, the United Kingdom of Australia has not been designated as a terrorist organisation. As such, whilst it is evident that Mr Kiskonen has previously taken a leadership role in the group whether his behaviour could constitute a serious terrorism offence, is directly related to the fundamental intent of the broader group. If the United Kingdom of Australia was to be designated as a terrorist organisation, he would certainly present a threat regarding:
>
> Directing the activities of a terrorist organisation (s102.2)
>
> Membership of a terrorist organisation (s 102.3)
>
> Recruiting for a terrorist organisation (s102.4)
>
> Training involving a terrorist organisation (s102.5)
>
> Getting funds to, for or for a terrorist organisation (s102.6)
>
> Providing support to a terrorist organisation (s102.7)

> [114] There is currently no information that suggests that Mr Kiskonen is or had previously made any preparation toward undertaking or directing others to undertake an act of violent extremism, politically motivated violence or terrorism activity. However, his statements and promotion of the government officials as 'war criminals', 'foreign occupiers' and Australia currently being an 'occupied country' and therefore rules of war applying are certainly significant expressions of concern. This is furthered by his making statements regarding holding the police/courts/government to account, using them as an example through military jurisdiction, military trials and noting that some public servants deserve to be hanged and 'their necks snapped'. He notes it would bring him 'pleasure… no satisfaction'. His role as 'the face' of 'the Kingdom' has him creating and promoting written documents, recruiting and encouraging others to 'take the Oath'; promoting the ideology and the imminence of needing to 'pick a side' in order to be afforded protection. Whilst he is not overtly (or publicly) calling for violence to overthrow the government he does create and (sic) environment and a narrative which would easily be interpreted as a 'call to arms'."

84 At its highest, the conclusions in these paragraphs amount to speculation that the environment or the narrative could change to be interpreted by others as a "call to arms". There is nothing relevant to activity in custody and nothing that indicates information that any of the defendant's current or former associates are known to be included in terrorism activities.

85 In respect of s 10(1)(c) of the Act, the defendant submitted that neither he nor the UKOA have advocated support for a terrorist act or violent extremism. Section 11 factors must be borne in mind, as must s 100.1(a) and its interaction with s 100.1(3) of the Code, that effectively excludes certain activities from the definition of "terrorist acts".

86 There is no evidence that the defendant intended to cause physical harm to any person or endanger lives by his actions. The calling for the curial overthrow of the government does not amount to a "terrorist act" or a calling for curial punishment. The Court should view any statement that a person or class of persons will be punished in a particular way, even by capital punishment when the law is changed, is quintessentially political advocacy no matter how offensive or uncomfortable those threatened by it might find it.

87 The Court could find that what the defendant is advocating is not conduct in support of violent actions, but rather application of what he believes might be the result of due process of law and so it is in effect an extreme political view advocating political change, as opposed to an extremist view advocating illegal violence.

88 The Court should take at face value the videos and statements within them that are careful not to invoke extra-curial violence, but telling listeners to be careful of what had he had seen to be the operation of law, once the matter was "before the Hague". He also admonishes people who might attend that they must not be violent. In effect, what the defendant is advocating is for people to assert their rights, but if you are forced to, go peacefully and keep a diary of the interaction.

89 In respect of s 10(1A) generally, the UKOA does not support "terrorist acts" or "violent extremism". It must be borne in mind that UKOA is not a declared terrorist organisation. The Court should have real reservations about making a finding that the defendant's conduct meets the statutory threshold.

90 Whilst the bar at preliminary hearing is a low one, there is still a requirement that the Court is satisfied to a high degree of probability that the person poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order. Section 24(7) of the Act requires the Court to dismiss the application if the supporting documentation does not justify the making of an ESO. When the matters set out in s 25(3) are considered, particularly noting the nature of the type of activity the defendant has actually engaged in, all there is comprises a generalised risk of making offensive YouTube videos and/or speculation about what other people might do when they see such material.

91 It is important to note that the defendant would be subject to the parameters of a CTO to manage his mental health issues which can be renewed as many times as necessary, as well the Commonwealth Recognisance Release Order in place until March 2022. These items have the role of greatly curtailing any risk that the defendant will commit an offence.

92 The current information regarding the defendant is that he is no longer expressing adherence to UKOA philosophy. This should be seen as, at least, some evidence of decreased risk, regardless of the caution expressed by the treating specialists that he may be stating this to deflect scrutiny.

93 In respect of the CTO, it was emphasised that this is a coercive mechanism that overrides the defendant's personal autonomy in regard to treatment

including, if necessary, enforced medication as well as potential changes to his liberty such as being required to attend particular places at particular times to be examined. It also allows for medication to be given without consent and for further oversight by the MHRT. If there is a lack of cooperation with the requirements of the CTO, police can become involved to detain the defendant and take him to hospital for enforced treatment.

94 The Commonwealth Recognisance was said to also provide a level of supervision in the community. It involves a referral to complete the EQUIPS foundational program to address generalised offending behaviour, a referral to a psychologist for assessment and implementation of strategies to address, amongst other things, his mental health and ideologies associated with the UKOA, referral to the "Proactive Integrated Support Model" of Corrective Services New South Wales, as well as to the CSNSW Terrorism High Risk Offenders Unit for offence-specific intervention and to monitor his engagement with Community Corrections. These things would be more than sufficient to deal with any risk presented by the defendant.

95 The criminal history comprises relatively minor summary offences. A neighbourhood dispute should not be described as "serious" in the context of an application for orders based on the potential for terrorism. The presiding Magistrate made positive comments regarding the hope that the defendant could return to his family and resume work. He took into account the defendant's mental health issues, and tailored the sentence in a way that assisted the defendant to be provided with rehabilitation to be supervised by Community Corrections upon his release. Nothing was said by the Magistrate suggesting that he thought the defendant was a terrorist risk.

96 The plaintiff's submissions that the defendant's beliefs or commitments support potential engaging in terrorism activities are speculative, and rely upon the speculative proposition that the defendant's mental health will deteriorate. This ought not be the conclusion reached by the Court given the CTO.

97 The risk the plaintiff argues is presented by the defendant is also premised on the need for a prior narrative shift to create perceived legitimacy for violence. There is simply no evidence as to when or how that narrative shift would occur,

and so there really is no material upon which the Court could find the circumstances that would underpin the reality of any risk presented by the defendant would occur, let alone it being considered to be an unacceptable risk.

98 The offensive material said to be material that advocates violence and amounts to a “call to arms” to followers of the UKOA, seems to be a somewhat cynical submission given that there has been no application by the State or Police for the defendant’s facebook or YouTube material to be taken down, despite there being various ways this can be done.

99 In end result, what the plaintiff argues is not that the defendant intends to encourage or foster others to commit a terrorist act. There is no evidence that he holds, or has ever held such an intention. The highest the plaintiff’s case rises is that his videos might lead some people to commit terrorist acts. This has to remain an uncalculated, unevidenced, speculative risk which cannot, on any analysis, satisfy the Court to a high degree of probability that the defendant poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order.

100 Even if the Court thought the test was satisfied, the Court should decline to make the order on discretionary grounds, given the role of the CTO and the Commonwealth Recognisance that will both run to control any risk presented by the defendant.

Section 25(3) mandatory factors to consider

101 Division 2.4 of the Act sets out the requirements for determination of an application for an ESO. Section 25(1) provides that the Court can determine an application by making the order or dismissing the application.

102 Critically, s 25(2) provides that in determining whether or not to make an ESO, the safety of the community must be the paramount consideration of the Supreme Court.

103 Section 25(3) sets out the matters to which the Court must have regard. At this preliminary hearing stage some of the parameters have not yet been the subject of evidence, for example there are no reports from persons appointed

by the Court to conduct psychiatric and/or psychological examinations of the offender, and, most unfortunately, the Risk Assessment Report by Ms Prince prepared in late June 2021 did not include any interface at all with the defendant so revelation of his current stated thoughts and plans are limited to the 22 June 2021 review by Dr White set out in [48] of this judgment.

104 To the extent that there is material available addressing these mandatory matters, I will refer to it at the level of detail I consider critical to my determination of this application. Given the very short turnaround time required of this judgment, not every aspect of all the 1500 plus pages of material tendered can be the subject of reference or comment.

Section 25(3)(b): assessments of psychiatrists, psychologists or medical practitioners as to the likelihood of the offender committing a serious terrorism offence, and his cooperation with assessment

105 Whilst it is clear that the Court must take the evidence relied upon by the plaintiff at its highest, the report of Ms Prince is heavily qualified. On more than 10 occasions within the report, she makes reference to the fact that she has not had an opportunity to engage with the defendant, and so in a number of respects she declines to express a view about aspects of the potential risk that he presents.

106 The reason why the defendant was not made available to her to interview remains unexplained, despite my invitation to Mr Emmett to explain why the defendant was not interviewed for the report.

107 From the conclusions expressed in the "Executive Summary", it is evident that Ms Prince based her assessment on a file review only, but rather than simply allowing that fact to speak for itself, Ms Prince goes on to say that her report "… should be considered an interim assessment only. Mr K should be engaged in interview to allow for a more informed assessment of his current vulnerability/risk profile and protective factors." (emphasis added)

108 Ms Prince concluded:

> "Mr K is currently assessed as moderate to high risk for politically motivated violence, violent extremism or terrorism activities using the Vera – 2R. His role would likely be one a promotion, recruitment and development of materials which promote the cause. When he would directly or indirectly promote the

> use of violence to achieve his goals is unclear, however, the emotive language and rhetoric is a genuine possibility to be interpreted as a call to arms. Mr K's risk of grievance fuelled or targeted violence was assessed with the TRAP – 18. This assessment suggests that monitoring and active case management is warranted. This would be best achieved through the application of an ESO with the joint management by the New South Wales High-Risk Terrorism Offenders Team and the Community Corrections Terrorism High-Risk Offenders. Details of recommended intervention and management strategies are outlined at the end of this report."

109 In terms of the risk assessment process, Ms Prince noted that it is not scientifically possible to accurately predict whether or not an individual offender will or will not reoffend, and that the best that can be offered is an "estimate that is anchored to impirical literature, specifying features associated with risk, and sound clinical analysis and formulation of how those present features might operate in the individual subject to the assessment". She explained that the process of risk assessment of violent extremism or politically motivated violence is "comparatively new", when compared to the risk assessment for general violent and sexual offending behaviours. She explained that the assessment of risk of violent extremism "cannot be anchored in statistical probabilities and subsequently a numerical score cannot be provided, rather the overall risk judgement is based on the clinician's assessment of the available information at the time the assessment".

110 The VERA that Ms Prince performed was completed on file information only and again, Ms Prince noted in that context: "It is recognised that this should be considered an interim assessment only", and again says "...should the opportunity to interview Mr K avail itself, it is strongly recommended he be invited to participate in interview and assessment". She then goes on to state, based on the assessment of all the available information that "he is currently assessed as moderate to high risk regarding violent extremism, politically motivated violence or terrorism activity". She makes this assessment without ever making any inquiry herself of the defendant as to whether any of the views in issue are currently held by him.

111 Ms Prince stated (obviously based on the observations of others) that:

> "…his actions thus far have demonstrated his ability to have a significant influence through both social media platforms and in real life. He has demonstrated a willingness and ability to recruit others to the cause.… He has dedicated all his time outside of work on promoting and supporting the

> Kingdom and detaching from his family. It has had a notable impact on his mental health and his liberty, with his being incarcerated for both a breach of his community corrections order and his index offences".

112 Ms Prince concluded, without really explaining why, that there is a "likelihood" that the defendant has maintained his belief in the cause and in "Steven", and so "it is likely that should he be released without any active monitoring case management, he will likely resume his role". She added, again without explaining why, that "whilst residing with his wife and the recognisance order may provide some level of protection in the immediacy, this is likely to have limited long-term effects".

113 Somewhat contradictorily Ms Prince says this:

> "[124] The impact that Mr K's incarceration has had on his world views is unknown. Whilst incarceration and medication appear to be a significant deterrent, whether he has the will or ability to cease all contact with 'the Kingdom' remains unknown at this time. This is likely further complicated by the potential for Mr K's more recent experience through his contact with police, the courts and the mental health services that may have potential to influence an increase in personal grievance which aligns with the greater cause."[6]

114 I consider the first part of par 124 to be a reasonable reflection of the reality – that is that it remains unknown whether the defendant has or will cease contact with "the Kingdom" or not. The second part of the paragraph amounts to nothing more than speculation.

115 With respect to the author, who was not given the opportunity to review and assess the defendant, the report contains much repetition of the comments of others, many assumptions and much speculation. Even at this preliminary phase, and taken at its highest, the report carries little persuasive weight in assisting the Court to resolve whether the defendant presents a relevant risk of committing a serious terrorism offence.

Section 25(3)(d): any report prepared by Corrective Services NSW or the NSW Police Force as to the extent to which the offender can reasonably and practicably be managed in the community

116 The report of Mr Bagley adds little to the question of risk, other than setting out and advocating his views as to how the defendant can be managed in the community and why he sees the multiplicity of proposed conditions to be

[6] Confidential Interim Psychological Risk Assessment Report dated 30 June 2021 at par 124

necessary. The HRTO Unit Management Report of Detective Sergeant James is in the same category.

Section 25(3)(g): options (if any) available if the offender is in the community (whether or not under supervision) that might reduce the likelihood of him reoffending over time

117 I accept the submissions of the defendant in respect of the potential role of the CTO in managing the risk of relevant offending. I consider the Recognisance to have a lesser role, given it will expire in March 2022 and it cannot be renewed, but it has some role potentially in reducing the likelihood he will relevantly offend.

Section 25(3)(h): the likelihood that the offender will comply with the obligations of an ESO

Section 25(3)(i): previous compliance with obligations under parole conditions

118 The defendant failed to comply with his previous CCO. His failure was tied to his beliefs that were entrenched it seems at the time. It is hard to predict whether the defendant would comply with the proposed demanding combination of conditions proposed for the ISO and potential future ESO. He may, but the real question is whether there is a proper statutory basis to impose them.

Section 25(3)(j): the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history

119 There is in my view no relevant previous pattern of criminal offending.

Section 25(3)(k): the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender

120 I agree with the submissions of the defendant that the defendant was not dealt with as a "terrorism" offender, nor were the charges levelled against him framed as terrorist offences under the Code.

Section 25(3)(l): beliefs or commitments of the offender whether of an ideological, religious, political, social or other nature that support engaging or participating in terrorism activities

121 There is no doubt that in the past the defendant engaged in and professed beliefs of an ideological nature subscribed to by the UKOA. There is a lack of

contemporaneous information as to whether he in fact still subscribes to these beliefs or not. It is at least possible that the ongoing treatment of his mental illness with medication has led to a re-calibration of his delusions and previously fixed belief system. Imprisonment has also had a role. At the time of the assessment by Dr White in June 2021, the defendant said he did not believe those things anymore. Dr White reported no cynicism about that assertion and there is no current evidence adduced by the plaintiff that demonstrates a contrary position.

Am I satisfied to a high degree of probability that the offender poses and unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order?

122 It seems to me that the requirements of ss 20(a) and (b) of the Act have been met. I entertain some doubt that s 20(c) has been met, but I consider it just made out on a revisionary and reconstructed analysis, that because of some of the identified past activities of the defendant, with hindsight, he could be viewed as a "convicted New South Wales terrorism activity offender".

123 However, I do not accept that there is a high degree of probability that the defendant poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order.

124 The evidence taken at its highest is equivocal as to where the defendant currently stands regarding his beliefs or otherwise in the doctrines of the UKOA.

125 There are multiple layers of speculation involved in the material upon which the plaintiff relies to reach the proposed conclusion as to the defendant's relevant risk.

126 I also doubt that the type of activities the defendant might engage in, even if he was still a "believer", would, properly considered, amount to a "serious terrorism offence".

127 Fundamentally however, I dismiss the plaintiff's Amended Summons because I am not satisfied to the requisite high degree of probability about the risk the defendant poses, and I cannot conclude that he presents an "unacceptable

risk” of committing a serious terrorism offence if not kept under supervision under the proposed ISO or ESO.

Orders

128 I make the following orders:

(1) Amended Summons dismissed.

(2) Plaintiff to pay the defendant’s costs.

****