FEDERAL MAGISTRATES COURT OF AUSTRALIA

JABBOUR v HICKS *[2008] FMCA 178*

ADMINISTRATIVE LAW – CONTROL ORDER – *Criminal Code* – application for confirmation of interim control order – preventing terrorist act – training from terrorist organisation – obligations, prohibitions and restrictions – reasonably appropriate and adapted – variation of interim control order – confirmation of interim control order made.

Criminal Code Act 1995, section 3
Criminal Code, sections 104.12, 104.13, 104.14, 104.15, 104.16

Applicant:	RAMZI JABBOUR
Respondent:	DAVID MATTHEW HICKS
File Number:	ADG 347 of 2007
Judgment of:	Donald FM
Hearing date:	18 February 2008
Date of Last Submission:	18 February 2008
Delivered at:	Adelaide
Delivered on:	19 February 2008

REPRESENTATION

Counsel for the Applicant:	Mr Berger
Solicitors for the Applicant:	Australian Government Solicitor
Counsel for the Respondent:	Ms Detmold
Solicitors for the Respondent:	Mr McLeod

ORDERS

(1) Pursuant to section 104.14 of the Criminal Code the interim control order made 21 December 2007 is confirmed in relation to DAVID MATTHEW HICKS in the terms at attachment 1.

(2) That service of the confirmed control order be affected by a member of the Australian Federal Police by personally serving a copy of the sealed orders of the Court on the Respondent as soon as practicable.

Attachment 1

No. ADG 347 of 2007

***Criminal Code* (Cth), sub-section 104.14**

CONTROL ORDER

Name of Controlled Person: David Mathew Hicks

Date of Birth: 7 August 1975

Under the powers conferred by sub-section 104.14 of the *Criminal Code* (Cth) this confirmed control order has been made against you because:

a) The AFP member holding the rank of Superintendent or above, namely Manager Counter Terrorism Domestic, who requested the Interim Control Order made on 21 December 2007, elected to confirm the Order in accordance with sub-section 104.14 of the *Criminal Code*; and

b) The Court has received and considered the information put before the Court; and

c) The Court is satisfied on the balance of probabilities that:

   i) making the order would substantially assist in preventing a terrorist act; and

   ii) you have received training from a listed terrorist organisation; and

d) The Court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on you by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

The obligations imposed on you under sub-section 104.5(3) of the Criminal Code are set out in Schedule 1 to this Order – **see attached**.

You are required to meet the obligations set out in Schedule 1 of the control order.

By virtue of sub-section 104.27 (read with sub-section 100(1) of the *Criminal Code*) the penalty for contravening any of these obligations is imprisonment for 5 years.

The confirmed control order is to be in force until 21 December 2008.

Your lawyer may attend the Australian Federal Police Adelaide office, 8th floor, 55 Currie Street, Adelaide, in order to obtain a copy of this control order.

Date of this control order: 19 February 2008

…………………………………………

Federal Magistrate Donald Affix Court Seal

***Criminal Code Act 1995*, Sub-section 104.5(3)**

SCHEDULE 1

This schedule sets out the obligations imposed on David Matthew Hicks pursuant to sub-section 104.5(3) and 104.16(1)(c) of the Criminal Code Act 1995 (Criminal Code).

OBLIGATIONS

The following obligations form part of the control order and are imposed on you by virtue of sub-section 104.5(3) of the Criminal Code Act 1995 (Cth).

This control order will be in force when personally served on you:

1. You are required to remain at specified premises between specified times each day, or on specified days, namely you are to remain at a premises within Australia which is agreed in writing between yourself and the Coordinator of the Australian Federal Police (AFP) Joint Counter Terrorism Team AFP Adelaide Office (the AFP CT Coordinator) ('the specified premises') between 1.00am and 5.00am, unless:

    a) You notify the AFP CT Coordinator, AFP Adelaide Office, Level 8, 55 Currie Street, Adelaide, South Australia in writing[1] of another address that you will be residing at between these times or you request an amendment to the above times for specified reasons; and

    b) The AFP CT Coordinator consents to the amendment in writing.

2. You are required to report to the following specified persons at the following specified times and places:

    a) A member of the AFP, or State or Territory Police, every Wednesday and Saturday, between 5.15am and midnight, at a police station in a location as directed by the Australian Federal Police CT Coordinator[2]; unless:

---

[1] For the purposes of this order, the term 'in writing' includes hand or type written hard copy letters and, subject to paragraphs 7g and 7h, electronic correspondence in the form of an 'e-mail'.

[2] The AFP will provide you with sufficient Cab Charge vouchers to enable 3 round trips per week (i.e. 6 vouchers per week) for the life of the Control order.

i) You contact the AFP CT Coordinator in writing, requesting an amendment to the obligations set out in section 2a; and

ii) The AFP CT Coordinator consents to the amendment in writing.

3. You are required to allow impressions of your fingerprints to be taken by a member of the AFP, or State or Territory Police, for the purposes of ensuring compliance with this control order, where required by a member of the AFP, or State or Territory Police, on any occasion you report at the place specified in paragraph 2.

4. You are prohibited from leaving Australia except with the prior written permission of the AFP CT Coordinator.

5. You are prohibited or restricted from carrying out the following specified activities (including in respect of your work or occupation), namely:

a) You are prohibited from acquiring, taking possession of, producing, accessing or supplying documentation (including in electronic form) or attempting to acquire, take possession of, produce, access or supply documentation (including in electronic form) regarding:

i) explosives; and/or,

ii) weapons; and/or,

iii) combat skills; and/or,

iv) military tactics.

b) You are prohibited from manufacturing, acquiring, taking possession of or attempting to manufacture, acquire, or take possession of any commercial, military or home made and/or improvised explosives or explosive accessories, initiation systems or firing devices;

c) *Subject to section 104.5(5) of the Criminal Code Act 1995* (Cth), you are prohibited from communicating to any person, whether directly or indirectly (including via internet chat rooms, websites, media interviews, publications and group gatherings) in relation to:

i) methodology, tactics or other knowledge connected with, or likely to facilitate, terrorist acts, including explosives, weapons and/or combat skills; or

ii) names or contact details of persons you know to be associated with a terrorist organisation;

6. You are prohibited from communicating or associating with specified individuals, namely:

a) Any individual that you know to be a member of a terrorist organisation.

7. You are prohibited from accessing or using the following specified forms of telecommunications or other technology:

a) Any mobile telephone service that has not been approved in writing by the AFP CT Coordinator with such approval to be given provided only one mobile telephone service is nominated in total and sufficient details to identify the service to be used are provided[3];

b) A telephone service card, subscriber identification module card (SIM card) or account, incorporating a credit or 'top up' facility that has not been approved in writing by the AFP CT Coordinator with such approval to be given provided only one telephone service card, SIM card or account, incorporating a credit or 'top up' facility is nominated in total and sufficient details to identify the service to be used are provided;

c) Any fixed or landline telephone service that has not been approved in writing by the AFP CT Coordinator with such approval to be given provided only one fixed or landline telephone service is nominated in total and sufficient details to

[3] The Australian Federal Police has provided you with a pre-paid mobile telephone service and meet the initial costs of purchasing the phone. Any subsequent costs associated with this service shall be your responsibility. This service shall be an approved service for the purposes of this order.

identify the service to be used are provided or is required in the case of an emergency;

d) Any public telephone except in the case of an emergency;

e) Any satellite telephone service;

f) Any Voice Over Internet Protocol (VOIP) service including any software or hardware that will facilitate a VOIP service that has not been approved in writing by the AFP CT Coordinator with such approval to be given provided only one VOIP service including any software or hardware that will facilitate a VOIP service is nominated in total and sufficient details to identify the service to be used are provided;

g) Any internet service provider account that has not been approved in writing by the AFP CT Coordinator, with such approval to be given provided only one internet service provider account is nominated, in total and sufficient details to identify the account to be used are provided;

h) Any electronic mail (e-mail) account that has not been approved in writing by the AFP CT Coordinator, with such approval to be given provided only one e-mail account is nominated in total and sufficient details to identify the account to be used are provided.

8. You are prohibited or restricted from possessing or using specified articles or substances, namely:

a) You are prohibited from possessing or using any firearm or ammunition (you must immediately surrender any such items in your possession to police); and

b) You are prohibited from possessing or using commercial, military, home made and/or improvised explosive or explosive accessories, initiation systems or firing devices (you must immediately surrender any such items in your possession to police).

…………………………………………….

Federal Magistrate Donald Affix Court Seal

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT ADELAIDE

ADG347 of 2007

RAMZI JABBOUR
Applicant

And

DAVID MATTHEW HICKS
Respondent

REASONS FOR JUDGMENT

PRELIMINARY

1. This is a matter in which application is made pursuant to Subdivision D of Division 104 of the *Criminal Code* for the confirmation of an interim control order in relation to the Respondent David Matthew Hicks. The Interim Control Order sought to be confirmed is one made by this Court on 21 December 2007.

2. I am satisfied that the scheme of the Act provides for initial Applications for Interim Orders to be normally dealt with on an *ex parte* basis. The legislation does not specifically provide guidance in this respect but the structure of the relevant provisions clearly establishes that an application is normally made in the absence of the Respondent with the resultant orders having no effect until personally served on him. The Respondent then has the opportunity of returning to the Court where Orders are able to be confirmed, varied or discharged in circumstances where the evidence is then able to be tested and where the Respondent is able to give evidence on his own behalf and make submissions.

3. In this particular matter, however, the Respondent was given notice of the interim proceedings. His legal representatives appeared on the application for interim orders and were able to participate to the extent permissible in proceedings of this type. Even though they were able to represent the interests of the Respondent, this fact does not alter the nature of the proceedings dealt with at that time and did not alter the procedural steps that then had to be taken. The Orders made on an interim basis on 21 December 2007 must be the subject of further confirmation proceedings in which the Respondent is able to challenge, if he so desires, the orders made. These are those subsequent proceedings.

4. The current proceedings were adjourned until 18 February 2008 so that sufficient time could pass such that Mr Hicks would be able to provide proper instructions to his legal representatives and to enable him to provide evidence to this Court by way of affidavits. I note at this time that Mr Hicks, although represented, did not attend upon the confirmation hearing and did not file any affidavits for consideration by the Court. The Respondent was offered a further adjournment to enable him to prepare his evidence but this invitation was not accepted.

5. The Australian Federal Police have sought to vary the Interim Orders in a relatively minor way. The amendment sought by the Australian Federal Police are neither consented to nor opposed by the Respondent. The central dispute between the parties remains the number of times Mr Hicks is required to report to a police station each week. The Australian Federal Police maintain their application for Mr Hicks to report on 3 occasions each week, whilst the Respondent seeks to reduce that requirement to once per week.

6. The Applicant did file and serve 3 further affidavits relating to the inability of the Australian Federal Police to proffer an alternative means of monitoring the Respondent such that the number of occasions that the Respondent must report to police could be reduced. This and the evidence adduced on cross examination in these proceedings was the only evidence additional to that considered by the Court on the Application for the Interim Control Order.

7. I again note that the Respondent has not sought to produce evidence to these proceedings. He has not asked to give evidence himself. It must

be clearly understood that the Court can only make decisions based upon evidence presented to it and that each party has had opportunity to properly present its case. The Respondent could have, for example, given evidence to the Court that the evidence produced by the Applicant was false; that it did not correctly convey the impression currently drawn by the Court from it; that his views had changed; that he did not represent a risk to the Australian community; that the current conditions impacted adversely upon him; or that there was any other means by which the concerns of the Australian Federal Police could be addressed. He did not. Again, this means that the Court only has the evidence relied upon by the Applicant and the evidence of the Applicant elicited in the course of cross-examination by those representing the Respondent.

8. As indicated in my reasons given for the granting of the Interim Control Order, it is important to note that the function of this Court is not to determine whether or not the Respondent should be punished or further punished for any of his activities. Rather, the function of this Court is to consider whether a control order should be made placing restrictions upon the activities of Mr Hicks and, if so, what those restrictions should be. In making those decisions, the applicable legislation provides clear guidance as to the matters to be taken into account by the Court. Punishment or further punishment is not a factor to which this Court has any regard. The matters are to be considered on what could be described as a prospective basis – what is to occur in the future so that the public is protected from a terrorist act.

EVIDENCE

9. In considering this matter, I have had regard to the Application filed in these proceedings; the Amended Schedule 1 tendered to the Court on 18 February 2008; to the three affidavits of the Applicant, the first being sworn on 12 December 2007, the second being sworn on 18 December 2007, and the third being one sworn on 14 February 2008; to the affidavit of Charles Frederick Muller sworn 14 February 2008; to the affidavit sworn by Neil Hayes sworn 14 February 2008; to the oral evidence of the Applicant, and to the submissions of the parties.

LEGISLATION

10. I note the various legislative provisions as detailed to the Court by the Applicant in the course of submissions. The statutory provisions relevant to the confirmation of an Interim Control Order are contained within Subdivision D of Division 104 of the *Criminal Code*.

BACKGROUND

11. The evidence before the Court has changed little since this Court made an Interim Control Order on 21 December 2007. As indicated earlier in these reasons, 3 further affidavits have been filed by the Applicant. They relate to the lack of alternative technical resources which could serve to substitute for the reporting requirement sought by the Applicant. Also as indicated earlier, the Respondent has failed to avail himself of the opportunity to present evidence on his own behalf.

12. Whilst the following brief background is in essentially the same terms as that recited in the Interim proceedings, it needs to be repeated to place the competing arguments in context and to provide a factual background. In the following brief statement of background, I indicate that I am satisfied on the balance of probabilities as to each of the facts recited based upon the annexure and attachments to the Affidavit of the Applicant sworn 12 December 2007, this being the only evidence before the Court touching upon those matters.

13. On the material before me, I am satisfied that the Respondent is an Australian citizen who was born in Adelaide, South Australia on 7 August 1975. I am satisfied that in September 1999 he converted to Islam.

14. I am satisfied that he trained with the organisation known as Lashkar-e-Tayyiba ("LeT") between March 2000 and June 2002. I am also satisfied that he trained with the organisation known as Al-Qa'ida between January 2001 and August 2001. Each of these organisations are listed terrorist organisations pursuant to the *Criminal Code Regulations 2002.* I am satisfied that they were not so listed when the Respondent trained with them.

15. The Respondent travelled to Pakistan on 11 November 1999 and after sometime decided that he wished to join the LeT. He was provided

with an air ticket for travel to Lahore. His intention was to assist the people to push the Indians out of Kashmir. He attended an LeT training camp and received training in weapons handling; shooting tactics; ballistic missiles; room entry; grenade throwing; mountain survival, topography; hand to hand combat; and guerrilla warfare.

16. Around 2000 he attended the line of control between Indian and Pakistan controlled Kashmir. He discharged some small arms across the border in the direction of the Indian bunkers.

17. Also in about December 2000, the Respondent travelled to Afghanistan to receive training from Arab run training camps. The LeT provided some funds and a domestic ticket from Karachi to Quetta. From there he travelled across the border into Afghanistan. When he arrived in Afghanistan he stayed in a Madafah (house) in Kandahar for about 3 weeks waiting for an appropriate training course. He then undertook 4 Al-Qa'ida training courses which included training in the areas of weapons training; commando tactics, topography and explosives. He then trained in advanced instruction in guerrilla warfare strategies, advanced marksmanship, topography, ambush, attacks, reconnaissance and surveillance.

18. The next component of this training comprised instruction in weapons training, advanced marksmanship, sniper training and house entries. The final component of this training was related to information collecting and surveillance of people, streets and premises. He indicated both in his interview annexed to the affidavit filed by the Applicant and in letters sent to his family in Australia that whilst in these training camps he had the opportunity, together with others at the training camps, of meeting Osama bin Laden.

19. After completing his training, the Respondent wished to return to Australia but had no funds to enable him to do this and required some action in relation to his expired visa. He travelled over the border into Pakistan in attempt to address these issues. When he did so, he left his personal belongings in Afghanistan.

20. He then learned of the events of September 11, returned to Afghanistan to collect his belongings and then discovered that the borders had been closed preventing his return to Pakistan. He was eventually made to

leave that madafah in which he was living and moved to another. He was then made to leave that house. At that time he was informed that there would probably be American air strikes and was given the option of going to the mountains, to Kabul or to Kandahar airport. He agreed to go to Kandahar airport.

21. He remained in trenches in that location for about 2 weeks before the bombing commenced. At that time he was under the direction of those in the Al-qa'ida organisation. He and others were then ordered to guard a tank located in a mountain village behind Kandahar. He was given a rifle and found his own ammunition which he carried as he was fearful that the Northern Alliance would kill all foreigners. There is no evidence that he ever discharged that weapon.

22. After a few days at that location, he travelled to Kabul with the intention of training others in the front line in the tactics he had learned. He then travelled to Kunduz where he was ordered to the front line. Shortly after his arrival at the back of the front line, the Northern Alliance advanced and the front line collapsed. He fled to Kunduz being pursued by the Northern Alliance.

23. The Respondent then attempted to travel back to Pakistan by taxi but was apprehended by the Northern Alliance.

CONSIDERATION

24. I am satisfied that an AFP member, has complied with the requirements of Section 104.12 of the *Criminal Code*. The Respondent did not contest that these requirements had been satisfied.

25. I am also satisfied that that the Applicant has complied with the requirements of Section 104.12A of the *Criminal Code*. Again, compliance with this Section was not disputed by the Respondent.

26. I now turn to consider the subsection 104.14(7) of the *Criminal Code.* The Court has previously found that it is satisfied on the balance of probabilities that the making of a Control Order would substantially assist in preventing a terrorist act and that Mr Hicks has, at the very least, received training from a terrorist organisation.

27. In relation to the first of these findings, it was urged upon the Court at the hearing of the Interim Control Order Application that the evidence appearing in the affidavit of the Applicant sworn 12 December 2007 established that the Respondent had received training in various activities that could assist in a terrorist act and that he had expressed views which, when combined with his past actions and training, were sufficient grounds for concern that a terrorist act could be committed either by him or with his assistance.

28. I accepted at that time that the letters written by the Respondent to his family members whilst living and training in Pakistan and Afghanistan provide a sufficient basis when coupled with the evidence of military style training received by him from terrorist organisations prior to his capture.

29. An example of the letters to which I have just referred is that contained within attachment number 21 of the annexure to the affidavit of Ramzi Jabbour sworn 12 December 2007. That was a letter sent to his "family" and within that letter appears the following:

> *Christians and Jews are fighting Muslims in Eretria and the same in Nigeria. All because non-believers work together to destroy Islam. Myself as a practising Muslim with military experience can go to help in any of these conflicts.*

30. Further, in a letter to another family member[4], the Respondent has written the following:

> *So to as a Muslim (young and fit) my and (our)responsibility is to protect my brothers for the sake of Islam, to protect them from aggressive non-believers and not let them destroy Islam.*
>
> ...
>
> *So please understand that if you are in a position to help (as I am) then of course I and others will help each other for the sake of Allah, and Allah is happy with those who take this action.*

31. The evidence before me also established and continues to establish to the requisite standard that the Respondent trained with both Lashkar-e-Tayyiba and Al-Qa'ida. That training included components

[4] Attachment 22 to Annexure RJ1 of the affidavit sworn by Ramzi Jabbour on 12 December 2007

relating to weapons training, commando tactics, explosives, guerrilla warfare strategies, advanced marksmanship, topography, ambush attacks, reconnaissance, surveillance, sniper training and house entries.[5] I also note that when in Afghanistan, the Respondent sought to train others in these areas.

32. I also again note the submission made on behalf of the Respondent at the hearing for the Interim Control Order that the views expressed by the Respondent were somewhat aged. Unfortunately, even at this time I do not have the benefit of any evidence of the Respondent and I must act on the basis of the evidence before the Court. The Respondent was provided with ample opportunity to present his own evidence to the Court in relation to, amongst other things, his current views and beliefs or as to an explanation of the documents relied upon by the Applicant.

33. When the expressed views of the Respondent are coupled with the capacity to engage in such activities, I am satisfied on the balance of probabilities that there is a risk of the Respondent either participating in a terrorist act or training others for that purpose. It then follows, having regard to the control order sought, that such order in the terms contemplated would substantially assist in preventing such an act.

34. Even if I am wrong in relation to the first leg of section 104.(4)(c)(i) of the *Code*, I am satisfied that the Respondent has received training from a listed terrorist organisation. Both Lashkar-e-Tayyiba and Al-Qa'ida are listed terrorist organisations under the *Criminal Code Regulations 2002.* It is not relevant to the consideration of this aspect that they became listed after the dates on which the Respondent trained with them.[6]

35. It follows from the foregoing that I am satisfied on the balance of probabilities as to the issues referred to in section 104.4(1)(c) of the *Criminal Code.*

36. It remains for me to consider, in accordance with section 104.4(1)(d) of the *Criminal Code,* whether I am satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions

[5] See, for example, Record of Interview, pages 16 to 21of Attachment 1 to Annexure RJ1 of the affidavit sworn by Ramzi Jabbour on 12 December 2007 and also Attachment 3 to the same Annexure.
[6] *Thomas v Mowbray* 237 ALR 194

to be imposed on the Respondent is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act. In doing so, I also take into account pursuant to section 104.4(2) of the *Criminal Code,* the impact of the obligation, prohibition or restriction on the Respondent's circumstances (including his financial and personal circumstances).

37. I note at this point that an Amended Schedule 1 has been provided to the Court. The Amended Schedule seeks obligation which are less onerous than those previously sought in the Application for an Interim Control Order. I again note that these Amendments are neither consented to nor opposed by the Respondent.

TERMS OF CONTROL ORDER

38. As to the first of the obligations sought to be imposed on the Respondent, I note that it is sought to require the Respondent to be at specified premises within Australia between the hours of 1am and 5am. The particular premises are to be agreed in writing between the Respondent and the AFP CT Coordinator in Adelaide. There is further provision that the specified premises can be varied if agreed by the AFP CT Coordinator.

39. The Respondent has not objected to this obligation. I do accept that this condition would make it more difficult for the Respondent to travel to more remote locations to conduct training camps or the like for persons interested in terrorist activities. It should be recalled that the Respondent has trained in various activities that would be of interest and value to terrorist organisations. Such a restriction on the movement of the Respondent would also serve to make it more difficult for the Respondent to travel to other locations for terrorist activities. If he were to participate in any such activities, this condition would also enable the authorities to more easily locate the Respondent.

40. I note that the residential requirement is no longer restricted to the State of South Australia and that the hours at which the Respondent must be a the specified premises are less than currently required under the Interim Control Order.

41. I am conscious that the freedom of movement of the Respondent is impacted upon by this consideration but consider, on balance, that the condition is reasonably necessary, appropriate and adapted for the purpose of protecting the public from a terrorist act.

42. The second condition sought to be imposed is one requiring the Respondent to report to police at a location directed by the AFP CT Coordinator on each Monday, Wednesday and Saturday between the hours of 5.15am and midnight. The Respondent has not objected to this condition other than for the frequency of reporting. It is submitted by his legal representative that 3 times per week is unduly onerous.

43. The Applicant has submitted that training camps for terrorists are usually held in remote locations away from prying eyes. A reporting condition with the frequency sought by the Applicant makes it more difficult to travel to such remote locations and to be effectively involved in any meaningful training of others. It is also submitted that a 3 times weekly reporting requirement would make it more difficult for the Respondent to leave the country for the purpose of training or participating in terrorist activities.

44. I again note the training undertaken by the Respondent and his willingness to train others whilst in Afghanistan. I also note the assertion by the Respondent in a letter to his family that he has contacts in other countries, contacts associated with those participating in conflicts.

45. The Respondent has not placed any evidence on his own behalf before the Court. He has had the opportunity to attend this Court and provide evidence that such a condition is unnecessary, that he is not threat to the community and also as to the impact such a requirement would have upon him. He has not done so. The Court must make its Orders based upon the evidence actually before it which, at this time, consists only of the evidence produced by the Applicant.

46. I note the further evidence of the Applicant filed in relation to these confirmation proceedings. That evidence satisfies me that there is not available to the Applicant a technology based alternative for ensuring the presence of the Respondent at the specified premises. Such technology could serve to assist in reducing a reporting requirement.

47. I do note, however, that during the cross-examination of the Applicant by those representing the Respondent, it was conceded that the Applicant has the means available to know whether the Respondent is present within the specified premises and also that during any day the Applicant has the ability to ascertain the whereabouts of the Respondent at some point[7]. The means of doing this are unknown to the Court and, no doubt, may not be completely reliable. Given, however, that each requirement for reporting does impose a restriction upon the Respondent, I am satisfied that a reduction of the reporting requirement to two occasions per week when coupled with the ability of the Applicant to also use other methodology available is more reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.

48. The third obligation sought to be imposed is one requiring the Respondent to provide his fingerprints on any occasion that he reports to police pursuant to these orders. This obligation is not opposed by the Respondent. I note that this obligation would enable police to ensure that the person reporting is indeed the Respondent and this, in turn, would enable the other obligations contained within this control order to be appropriately effective. On the evidence before me this obligation does not impose on the Respondent an impact of such a nature so as to persuade the court that the condition is not reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act and I find accordingly.

49. The next obligation is in fact a restriction on the Respondent from being able to leave Australia. Given the history of the Respondent having travelled overseas in the past to participate in training activities with terrorist organisations and given that if he did travel overseas this would effectively place him out of the reach of this control order, I do find that this restriction is reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act. If he was able to travel overseas and receive further training this would enhance his ability to pursue terrorist activities in this country and elsewhere.

---

[7] Transcript 18 February 2008 pages 13-15

50. The fifth obligation sought by the Applicant is also not opposed by the Respondent. This is an obligation restricting the Respondent from carrying out specified activities. Those activities are acquiring, taking possession of, producing, accessing or supplying documentation or attempting to do those things in relation to explosives, weapons, combat skills, and/or military tactics. I again note the training received by the Respondent with terrorist organisations and his willingness to pass on such skills to others in Afghanistan. This obligation or restriction will serve to assist in preventing the further acquisition of such knowledge by the Respondent and will also serve to assist in the prevention of dissemination of such information to other who may be minded to participate in terrorist activities. I am unable to ascertain any inappropriate impact of such a restriction upon the Respondent and I find that such a restriction is reasonably necessary, reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.

51. A prohibition is also sought to be imposed on the Respondent from manufacturing, acquiring, taking possession of or attempting to do those things in relation to any commercial, military or home made and/or improvised explosives or explosive accessories, initiation systems or firing devices. I again note the training received by the Respondent in relation to such devices and the statements made by him in the various letters sent to family members concerning Jihad and advancing the Islamic cause. I note that this restriction will prevent the production or detonation of an explosive device and restrict the ability of the Respondent to progress activity which may lead to the planning or preparation of a terrorist act. I am unable to ascertain any impact on the personal circumstances of the Respondent which could serve to dissuade the court from concluding that such a restriction is reasonably necessary and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.

52. Again related to this condition is one whereby the Respondent would be restricted from communicating with any person, either directly or indirectly, in relation to methodology, tactics or other knowledge connected with or likely to facilitate terrorist acts and also a prohibition on providing information as to names or contact details of persons known by him as being associated with a terrorist organisation. This

condition is not opposed by the Respondent and in considering this proposed restriction I note, particularly, the record of interview conducted by the Applicant with the Respondent and which forms part of the annexure to the Applicant's affidavit filed in these proceedings. It is apparent from reading that interview that the Respondent has built up a both a knowledge of the matters sought to be the subject of the prohibition and also a relationship with a number of persons associated with terrorist organisations. The imposition of such restrictions will serve to prevent the promulgation of the knowledge obtained in the training camps of terrorist organisations and will also impede the spread of information as to contact persons within or associated with such organisations. There is no impact on Mr Hicks that I am able to ascertain from the material before me that would serve dissuade the court from imposing this condition. I conclude that this restriction is reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.

53. The next condition or restriction sought to be imposed is one prohibiting the Respondent from communicating or associating with persons known to him as members of terrorist organisations. This is not opposed by the Respondent and clearly would serve to prevent the further gaining of knowledge able to be used by the Respondent in relation to terrorist activities, would serve to prevent the dissemination of the knowledge already possessed by the Respondent and would limit the opportunity for the Respondent to participate in terrorist activities. I do find that this restriction is reasonably necessary and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.

54. The next condition or restriction sought is one whereby the Respondent would be limited to having one approved mobile telephone service; one approved sim card; one approved fixed or landline telephone service; one approved internet service provider account; and one approved electronic email account. The requirement for approval and restriction to one of each such service clearly reduces the ability of the Respondent to have multiple services which would, in turn, better enable him to avoid detection of preparations for terrorist acts or inappropriate dissemination of terrorist related information. The further restrictions sought as to the prohibition on using public

telephones and satellite phones also serves to reduce the opportunities available to the Respondent in this regard. I note that it is intended by the AFP to meet the initial costs of the mobile service. I am unable to discern an impact on the Respondent that could serve to dissuade the Court from imposing such a restriction. I am satisfied and find that the restrictions or prohibition sought in this regard are reasonably necessary and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.

55. The final restriction or prohibition sought is one prohibiting him from possessing or using any firearm or ammunition or any explosive or explosive accessories, initiation systems or firing devices. I again note the training received by the Respondent from terrorist organisations and particularly note the copy of an exercise book annexed to the affidavit of the Respondent. I accept on the evidence before me that this book includes notes on how to attack "vip's" and particulars concerning explosive devices. Given the contents of the Respondent's letters, also annexed to the same affidavit, and which have been referred to earlier in these reasons, I do find that this prohibition or restriction will serve to make it more difficult for the Respondent to engage in terrorist activities and that such prohibition or restriction is reasonably necessary, reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act. I am unable to discern any impact on the personal circumstances of the Respondent that would serve to convince the court that such a prohibition or restriction should not be made.

56. For these reasons I confirm and vary the Order as detailed herein.

57. Finally, I note that at the hearing in relation to the Interim Control Order, that the Respondent opposed access being available to the affidavits filed in these proceedings by non-parties to the proceedings. Such access was not opposed by the Applicant.

58. At the conclusion of the confirmation hearing, it was indicated to the Court that neither party now wished to make any submission in relation to such access. I note that there have been various applications for access to the affidavits filed in these proceedings by media representatives.

59. There has been no application made by a party for the public to be excluded from any part of the proceedings. The affidavits filed by the Applicant are considered by the Court in the same manner as any oral evidence adduced before it. I accept that accredited members of the media have a proper interest in inspecting the documents upon which the Court has based its decision. Such inspection must assist in ensuring accurate reporting and an understanding of the processes and reasoning of the Court.

60. I do grant access to documents filed in these proceedings to accredited members of the media who make proper application for such access. Given the bulk of such documents and the practical implications of inspection, I also grant leave for copying by such representatives.

I certify that the preceding sixty (60) paragraphs are a true copy of the reasons for judgment of Donald FM

Associate: Michelle Corney

Date: 19 February 2008