
AUSTRALIA / JUDGMENT

R v Ballesty

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District Court

New South Wales

Medium Neutral Citation:

R v Ballesty [2026] NSWDC 352

Hearing dates:

28 August 2026

Date of orders:

25 September 2026

Decision date:

25 September 2026

Jurisdiction:

Criminal

Before:

Mahony SC DCJ

Decision:

Full-time custodial sentence and Recognizance Release Order. For orders see [158]-[162]

Catchwords:

SENTENCE – Commonwealth offences – Fail to comply with s3LA order – Multiple offences of using carriage service to menace, harass or offend – Offence pursuant to s80.2H(1) of the Code, did display a Nazi Salute – Importance of general deterrence

Legislation Cited:

Crimes Act 1914 (Cth)

Crimes (Sentencing and Procedure) 1999 (NSW)

Criminal Code Act 1995 (Cth)

Cases Cited:

Cahyadi v R [2007] NSWCCA 1; 168 A Crim R 41

DPP (Cth) v De La Rosa (2010) 79 NSWLR 1; [2010] NSWCCA 194

Giles-Adams v R; Preca v R [2023] NSWCCA 122; 377 FLR 426

Hoolash v The King [2026] WASCA 61

Hurt v The King [2024] HCA 8; 98 ALJR 485

McGregor v R [2024] NSWCCA 200

Monis v The Queen (2013) 249 CLR 92; [2013] HCA 4

R v Van Ryn [2016] NSWCCA 1

R v Zahab [2019] NSWSC 629

The King v McGregor [2026] HCA 3

Trinh v R [2024] VSCA 61

Vamadevan v The King [2024] NSWCCA 223

Category:

Sentence

Parties:

Office of the Director of Public Prosecutions (NSW) (the Crown)

Nathan Ballesty (the offender)

Representation:

Counsel:

Ms D New (the Crown)

Solicitors:

Ms L Dangerfield (the Crown)

Mr S Mercael (the offender)

File Number(s):

2025/00495530

Publication restriction:

Nil

remarks on sentence

The offender, who was born in 1998, is to be sentenced in respect of the following seven offences:-

Sequence 1 – Between about 21 December 2025 and 8 January 2026, did contravene a requirement in a s3LA order, warrant relating to a serious offence. This is an offence pursuant to s3LA(6) of the Crimes Act 1914 (Cth) (“the Crimes Act”). The maximum penalty prescribed for this offence is 10 years imprisonment and/or 600 penalty units.

Sequence 3 – On 5 October 2025 did use a carriage service to menace, harass or offend.

Sequence 4 – On 30 October 2025 did use a carriage service to menace, harass or offend.

Sequence 5 – On 24 November 2025 did use a carriage service to menace, harass or offend.

Sequence 6 – On 26 November 2025 did use a carriage service to menace, harass or offend.

Sequence 9 – On 15 December 2025 did use a carriage service to menace, harass or offend.

Each of the offences in Sequences 3, 4, 5, 6 and 9 are offences pursuant to s474.17(1) of the Criminal Code Act 1995 (Cth) (“the Code”) and carry a maximum penalty of 5 years imprisonment.

Sequence 11 – On 16 December 2025 at about 3:12 p.m. did display a Nazi Salute. This is an offence pursuant to s80.2H(1) of the Code. The offence carries a maximum penalty of 5 years imprisonment and pursuant to s16AAA of the Crimes Act, a mandatory minimum term of 12 months imprisonment applies.

The offender has also admitted his guilt in relation to a further offence being Sequence 8, attached to Sequence 4, of using a carriage service in a way that reasonable persons would regard as being, in all of the circumstances menacing or offensive, namely by sending communications to a deleted user on Discord. This is an offence pursuant to s474.17(1) of the Code and the offender has asked that the offence be taken into account on sentence pursuant to a Schedule for the purposes of s16BA of the Crimes Act.

The offender was arrested on 21 December 2025 and had spent 226 days in custody over two periods up until the sentence hearing which took place on 28 August 2026. He has now been in custody for 254 days.

The sentence hearing

The Amended Commonwealth Crown Sentence Summary became Exhibit A. It included a detailed statement of agreed facts which may be summarised as follows.

At all relevant times, the offender was an active member of the Discord Server group “Server Down Under” using the handle “cav” and “cav1r”. The Discord Server contains a number of voice and text channels which allow for open debate on Australian politics.

The offender also had a number of accounts with a social media application “X” (formerly known as Twitter) and used the following handles:-

@nathan_ballesty

@crusadercav

@brokewigger

@SSSgroyperwolf

@AU_NewsChannel

@snapyslittlgroyp

@SGroyper84541

On 21 December 2025, a search warrant was executed by Australian Federal Police at the offender’s residence at Beacon Hill. The following electronic devices were seized:-

Apple iPhone 11 Pro Max IMEI 353916100926782

Desktop Computer with 7 Hard Drives

Grey Apple iPhone in a clear case with a Charizard sticker on the back

Blue ASUS Laptop model E410N

Computer tower (Black) with power cord

The offender was served with an order pursuant to s3LA(6) of the Crimes Act requiring him to provide any information or assistance that was reasonable and necessary to allow access to his devices. The offender declined to provide his passwords to enable access to his devices. The offender participated in a recorded conversation with AFP officers, where he again declined to provide the passwords.

The offender was arrested and participated in a recorded interview, during which he again declined to provide the passwords to his devices. At the end of that interview, the offender indicated he would provide the passwords, which he did several weeks later. This is the conduct that constitutes Sequence 1, refuse to comply with the s3LA(6) order.

The conduct in Sequence 3, use carriage service to menace or offend occurred on 5 October 2025, when the offender sent an edited version of the Snickers logo to a deleted user on Discord. The logo was replaced with the words “Niggers You’re not human when you’re black”.

The offence in Sequence 4, use carriage service to menace or offend occurred on 30 October 2025, when the offender sent messages to the deleted user on Discord during the following exchange:-

The offender: Even since Boris millions have come

We need concentration camps

We need mass deportations and executions in the streets

They're fucking useless scum that shouldn't be here

We need mass extermination

Deleted User: Yeah

The offender: I don't want to send them back I want to kill them all

Deleted User: But this woke society it'll never happen

The offender: Bro nothing is impossible lol

Geneva convention only applies to human beings

Bro I would go to hell so everyone can go to heaven

I hate them all I'd press the button bro

I'd kill them all

Geneva convention only applies to human beings

Poison them, drone strikes, sterilise, euthanise, exterminate

Pests

Cockroaches

I don't believe in democracy, I 100% believe in violent revolution

Door knocking lmao

Haha door to door just shoot in head

Yeah

Fkn rats

The offence in Sequence 5 occurred on 25 November 2025, when the offender on X commented on a post made by another X user regarding Home Affairs Minister Mr Tony Burke MP with the words, "Face the wall Tony".

Prior to that post, the offender on or about 20 November 2025 at 3:49 a.m. drafted, but did not post the following words on X which he screenshotted:-

“If you deport him. I will kill you in parliament on live television”

This was in response to a post made by the Minister regarding the revocation of the visa of Matthew Gruter, a member of the former National Socialist Network who participated in a protest in front of NSW Parliament House on 8 November 2025 which called for the end of the Jewish Lobby.

Sequence 6, use carriage service to menace or offend, occurred on 26 November 2025 at 9:09 p.m. when the offender sent an edited image of Senator Pauline Hanson to the deleted user. The image depicted Senator Hanson as a member of the Klu Klux Klan.

The offence in Sequence 8, use carriage service to menace or offend, occurred on 14 December 2025 when the offender sent to a deleted user the following messages in a reaction to the terrorist attack on Bondi Beach on 14 December 2025:-

We need Cronulla 2 the final solution

And we need it now

CRONULLA 2: THE FINAL SOLUTION

Cronulla riots 20 year anniversary was the other day

This offence was on a Schedule pursuant to s16BA of the Crimes Act, attached to Sequence 4.

The offence in Sequence 9, use carriage service to menace or offend occurred on 15 December 2025 when the offender engaged in a voice call in the Discord Server “Server Down Under” using the handle “Cav” concerning the Prime Minister, Mr Albanese during which the offender said, inter alia, the following:-

The offender: I personally believe – I genuinely believe the best option is too fucking grab him and put him in a room and force him to answer like every possible fucking question like everything, like go through like religious questions, go through like fucking economics and fucking all of it and just give him actual questions and force him to fucking answer the questions.

Unknown Male Person 3: Yes, but are you actually going to do it?

The offender: I would, yeah. If anyone wants to fucking, if anyone wants to like rent the van and help, and come and grab it with me, like yeah, let's go.

Unknown Male Person 4: If you do it, I will give you like ten grand, bro.

The offender: You'll give me ten grand?

Unknown Male Person 4: Yeah, bro. I'll donate to like you straight up.

The offender: Look at all the fucking NSN guys, bro. Surely there's enough people to just fucking like pick him up bro, are you serious? Do you think hes fucking like his personal like bodyguards or whatever hes got would actually care. It think they might even stand down [incoherent] fuck him, fuck the rat.

They're getting paid. He's probably paying them handsomely probably paying them in fucking Bitcoin like millions of dollars cause that's what he got to really get them on to really like fucking to support this fucking scumbag, man. You'd have to get paid million. You have to get paid so much.

Who's betraying their country for like a hundred and fifty grand a year salary man, no ones doing that.

Unknown Male Person 4: What we need to do is we just need a we need like a big big movement of people to get him to say fucking he's going to debate someone or some shit that we want him to talk to that you know you cav like yeah yeah you're the man cav you know like debate cav you know haha like like Nick Fuentes and Ben Shapiro you know like haha

The offender: No I don't think so, I've crossed into the fucking realm of terrorism bro, Im not trying to debate people man.

Unknown Male Person 4: in person you say debate him in person and then we just do what you set out to do like we actually actually just abduct him"

The offender: yeah abduct him and then like do it questions bro I support AUSPILL I mean like I think AUSPILL would make a good like politician or something man I don't want to I mean I don't think I don't know man I don't think I'm cut out for that I don't think look the only way i would take power is through force like, no one is going to vote for me, I don't believe in voting. I don't believe people are smart enough to pick the right choice. They're not.

Before and after this discussion, the offender had expressed negative views about the Prime Minister on X and Discord including referring to him as "A rat and terrorist" and saying he was, "Beneath contempt". During his record of interview, the offender admitted he was referring to kidnapping the Prime Minister but that it was a "joke". He also stated that he believed the Prime Minister was a threat to him and his far right ideology.

The offender was released on conditional bail between 22 December 2025 and 16 January 2026. During that time, he asked several questions on X's Artificial Intelligence (AI) Chat Bot "Grok". He asked Grok whether he should post something online or do it publicly with a microphone about a "joke" he made on Discord, about "taking the PM into custody and forcing him to answer questions in relation to the Bondi Terrorist Attack but also more broadly about a range of issues pressing the Australian public".

A draft post sent to Grok included his views about the Government being corrupt and incompetent. In a further question asked to Grok on 23 December 2025, the offender stated that he was “joking to a mate in Discord about taking the Prime Minister into custody and forcing him to answer questions”.

The offence in Sequence 11, display Nazi Salute, occurred on 16 December 2025 during the call the offender was participating in with others on the Discord Server. A screen recording of this call was found in the offender’s Hard Drive seized by the AFP. During the call, the offender was live streaming his screen and himself using software known as “Open Broadcaster”, which allows the capture of a video of what is happening on the desktop screen and allows the user to film himself and broadcast both images together, with the user’s image superimposed over the background.

During the video, other members of the call interacted with the offender discussing the livestream displaying on his screen which was his X feed. At around the 1 hour mark of the video, a Nazi right wing propaganda video appears on the offender’s X feed, which the offender clicks on, and other members of the chat group discuss. During the video the following is displayed:-

Members of the NSN (specifically Thomas Sewell) at a march;

Far right marches in other countries;

Images depicting members of the KKK with what appears to be assault rifles; and

An unidentified individual doing a Nazi salute.

At that point the offender displays a Nazi salute in response to the video.

Police seized the following additional items during execution of the search warrant:-

A copy of Adolf Hitler’s “Mein Kampf”

A handwritten note depicting the Jewish star of David together with the Nazi Swastika

Nazi Swastikas hand drawn over NSW Health documentation

A Nazi Uniform with embroidered “SS” insignia

A Nazi SS hat

Examination of the Hard Drive seized by the AFP included nine videos recorded by the offender. Five of those are screen recordings made by the offender of himself participating in calls on the Discord Server. Four others are self-recorded videos made by the offender where he discusses his views of politics and the Australian community. None of these recordings were sent to anyone, posted online or transmitted.

On 30 November 2025, the offender recorded a video for approximately 2 minutes in which he was shown wearing a Nazi hat which was seized during the execution of the search warrant. During that video, he expressed opinions including that Australia was no longer a democracy, that people who like the Prime Minister “don’t listen” and the only way to change their mind is through “a 5.56 round, there’s no reasoning”.

On the same day, the offender recorded a video for approximately 4 minutes in which he was shown wearing the Nazi hat and expressed views which included that he was “a victim of society”, “the ANZACS are fucking losers” and further, “Yeah I am a fucking victim, I do deserve more. Give me freedom or give me death, give me freedom or give me death”.

On the same evening, the offender recorded another video for approximately 5 ½ minutes in which he expressed a desire to “kill people” and to “take the country back”.

Shortly thereafter, the offender recorded another video for approximately 8 minutes and 20 seconds duration in which he was shown wearing the Nazi hat. In that video he expressed suicidal ideations and advocated the killing of members of Parliament.

The examination of the offender’s Notes application on his iPhone revealed two documents authored by the offender which discussed his ideologies and views. In a document dated 12 June 2025 titled “Australianism 1998” the offender discusses his views and details his Nazi ideology.

In a document dated 3 December 2025 titled “Dear Snappy Dearest” the offender wrote that he felt that he was trapped, that he hates the country and feels that everything is against him. He also detailed that he had “had enough of being terrorised, now I will do the terrorising. I am not the victim, I’m the one no-one wants to see win”.

Exhibit A included the NSW Police Force record which showed the offender had no previous convictions, his Department of Corrective Services Record and bail history.

Exhibit B was a USB containing two files relating to the offences in Sequences 9 and 11. The video of the Sequence 11 offending was shown in court first. It depicted the offender at his computer terminal clearly enjoying the images being shown on his computer screen for a period of 2 minutes at the end of which he clearly performs a Nazi salute.

The evidence in relation to Sequence 9 is a 3 minute audio recording of the conversation set out above.

Exhibit C comprised three images dated 16 December 2025, two of which depict scenes from the site of the Bondi massacre which took place on 15 December 2025.

The offender’s evidence

The offender tendered a bundle of documents which became Exhibits 1.1 to 1.7. Exhibit 1.1 was a report from Dr O Nielssen, psychiatrist dated 16 April 2026. Dr Nielssen interviewed the offender via audio-visual link on 14 April 2026 and also spoke to the offender’s parents. He was qualified with documents including the Court Attendance Notice, the statement of facts, statements of two

persons which were not otherwise in evidence and records from the Northern Beaches Hospital. Dr Nielssen noted that the offender had been treated with anti-psychotic medication during an admission to Northern Beaches Hospital, which he had resumed taking whilst in custody. In relation to the offending, the offender minimised the seriousness of his conduct describing the charges and background to them as “ridiculous”, “it’s me leaving a comment on a public official’s website”, “the salute is ridiculous” and “asking for my password was an invasion of my privacy”.

The offender told Dr Nielssen that the German officer’s hat in the photo was made in China and he found badges from a military website. He stated, “I should have collected a wider range of material” and when asked about the posts quoted in the statement of agreed facts, he said “I never expected this to happen... I thought I was talking into the ether and no-one was listening... I did not think it really mattered”.

When asked about the background to the charges, the offender stated that “I believe in freedom... private property... freedom of speech...freedom of assembly...all these things are precious to me... my ancestors fought for this country... I see this government making laws that are removed from what its like to live in the real world”.

The offender further stated that being called an extremist was “ludicrous”.

The offender described his mental health as being “on a roller coaster” in the last few years, which he attributed to being psychologically abused in several of his workplaces as an apprentice fitter machinist. He gave a history of being admitted to the psychiatric ward of the Northern Beaches Hospital after coming home angry after losing his job. He was admitted for 10 days but could not remember any referral for further care after his discharge.

Dr Nielssen took a history suggestive of the presence of symptoms of psychosis in that the offender told him, “At some level I had the hysterical idea that something is out to get you...that there are things at play that aren’t really as they seem”, and “I was paranoid about the bail conditions... that the government is out to get me anyway”.

He also said, “I felt I was really in tune with the algorithm on my phone...it was really talking to me...sending me positive vibes...I opened Instagram and I was scrolling down... all of them had aligned and seemed to signal something”. He said, “I am not out of my mind...was probably confirmation bias...but it was bizarre”.

The offender gave a history of smoking a lot of cannabis and was smoking the drug on most nights during the period before his arrest. He was not aware of being more paranoid or depressed due to cannabis use.

The offender had no political affiliations but had attended a rally organised after the English activist Tommy Robinson was arrested in the UK, at which he expressed disappointment that there was only 10 people attending. He said, “I was just holding an Australian flag and I got branded as a Neo-Nazi”.

Dr Nielssen took a family and psychiatric history. The offender reported that he had a “great childhood” and had no learning difficulties. He left school partway through year 12 and was able to complete the TAFE component of his apprenticeship as a fitter and turner.

The offender reported seeing a school counsellor in year 9 because of depression and had some contact with his local doctor over his mental health but was not treated with medication until his admission to the NBH. He told Dr Nielssen that he had often contemplated suicide but had never made an actual suicide attempt. He also reported periods of good mood and told Dr Nielssen, “I am feeling pretty good right now to be honest”.

Dr Nielssen took a history of substance abuse which involved the offender smoking cannabis from the age of 15 and becoming a regular smoker whilst at school which affected his school performance.

Dr Nielssen took a family history. The offender is the eldest of four siblings with two younger sisters and a younger brother. Both of his parents work. He had longer term plans by which he hoped to buy a lathe to start his own fitting business doing contracting machining.

Dr Nielssen took a history from the offender’s parents which confirmed that he had been bullied at school. He identified as an atheist but had “brought himself around to becoming a Catholic” in recent years. He owned a number of books, including the Quran, the Bible as well as Mein Kampf. His parents confirmed that prior to his psychiatric admission he was very agitated and angry and had stated, “I may as well kill myself”. His father stated that he had become paranoid and had told his parents that he had “seen the devil”. His mother described the offender as “a loner and a homebody and is always at home”. She told Dr Nielssen that he did not recognise the seriousness of his comments because of his poor awareness of social situations.

Dr Nielssen diagnosed the offender as having suffered a psychotic episode which had resolved, a cannabis use disorder and a cannabis related mood disorder. He opined that the diagnosis of a psychotic episode was based on the offender’s account of symptoms amounting to delusions of reference, confirmed to some extent by his parent’s observations. The offender had described a delusional belief that he was the subject of government scrutiny (regardless of whether that was in fact the case) and that his social media feed had a special significance. Both parents had noted his poor social skills, termed autistic traits by his treating psychiatrist at NBH. He had made a good response with anti-psychotic medication during that admission and had further made a good response to treatment he has received in custody.

Dr Nielssen opined as follows:-

“At the time of the offences, Mr Ballesty’s psychotic illness and persistent mood disorder resulted in a mental impairment within the meaning of s4 of the Mental Health and Cognitive Impairment Forensic Provisions Act, and hence 20BQ of the Commonwealth legislation. He was admitted to a psychiatric hospital as a mentally ill person within the meaning of the Mental Health Act in April 2024, but at the time of the recent interview was not found to be a mentally ill or mentally disordered person within the meaning of that Act, as he appeared to accept the recommendations of further treatment with both

counselling and psychotropic medication, and also that he should not resume using cannabis.

The connection between his symptoms and the offences stemmed from his belief that he was being persecuted by the government and his willingness to seize on conspiracy theories, as well as the logical thinking and emotional lability that typically accompanies emerging psychosis.”

Dr Nielssen set out a comprehensive treatment plan.

Exhibit 1.2 was a letter from the offender’s parents, Chris and Angela dated 10 July 2026. In it, they expressed their love for their son and the fact that they have witnessed his lifelong struggles with mental health, social isolation, and dependence on his computer. Understandably, they now wish they had earlier recognised the risk of allowing prolonged isolation and unrestricted access to the internet. Mr Ballesty describes this as “a burden he will always carry”.

Despite his challenges, Mr Ballesty states that he has always been proud of his son and describes him as, “naturally introverted” but, “those who know him well know him to be a kind, gentle and empathetic person” who has always enjoyed spending time with his family and close family friends. He described his son as being “respectful, caring and compassionate”.

Mr and Mrs Ballesty do not in any way excuse their son’s behaviour, notwithstanding that it is evident that he had becoming increasingly isolated and immersed in harmful online communities that reinforced unhealthy thinking which contributed to his offending. They describe a profound change in the offender since his arrest, which has been “an incredibly painful experience for the entire family”.

Whilst in custody the offender has turned to his Christian faith for guidance and strength and has had weekly visitations from his family. He has also been subject to an assault whilst in custody but, in keeping with his gentle nature has not retaliated. Mr Ballesty describes his son as “deeply remorseful and determined to live according to the values of his faith”. His parents state that they are committed to supporting him in every way they can and will continue to encourage him to engage with his mental health treatment. They implore the Court to take into account the offender’s mental health struggles, the strong support of his family, and his genuine capacity for rehabilitation to turn a negative situation into a positive learning experience.

Exhibits 1.3 to 1.7 are letters deposing to the good character of the offender from Ms H Van Hemert, Father Ogsimer, Ms P Ballesty and Mr J Ballesty (the offender’s grandparents), Mr K Dean and Mr C Galloway of whom have known the offender for significant periods of time and attest to his good character as a respectful, thoughtful and caring person who has expressed genuine remorse and acknowledges the seriousness of his offending conduct. They further expressed that the offender has a loving and supportive family and outlined that he, by virtue of his mental health struggles became susceptible to the harmful influence of online communities that reinforced poor judgment, which in no way reflect the values with which he was raised.

The offender's mother, Angela has also sworn an affidavit dated 20 August 2026 outlining the onerous nature of the offender's custody whilst on remand during which he has been subjected to a number of assaults and abusive conduct. Following an unsuccessful release application on 18 March 2026, his inmate status was changed following which his location and security classification were not communicated to his family and he was disallowed visiting rights. The family were required to re-submit documentation to obtain approval to visit him and he spent several weeks in isolation.

Ms Ballesty stated that the circumstances have caused the offender significant emotional and psychological distress and have contributed to his ongoing fear for his safety whilst in custody. Notwithstanding that, she had observed improvements in his mental health due to the prescribed medication and abstinence from cannabis. Notwithstanding that his continued incarceration is having a significant negative impact on the offender, and she expressed confidence that with the family's support he will not re-offend. The offender has ambitions to find a position within his machinist trade upon his release and the family will continue to support him with all of his ambitions moving forward.

Exhibit 2 was a handwritten letter from the offender which was undated. In it, he admits that he has made some serious errors and broken the law and apologises for causing offence with his words and actions.

The offender stated that he understood the severity of his actions and the impact on the community, however it was not his intention to cause anyone harm. He stated that he has fallen short of his Christian faith and that prison has had a profound impact on him and he will never repeat the actions that brought him there. The offender has taken responsibility for his offending conduct and learnt his lesson. He stated that his incarceration has devastated his family and had he known the consequences he would never have done the salute. He states that he wants to put all of this behind him and move on with his life, spending time with his loved ones, starting his own machine shop business and playing soccer with his brother. He further states that he is sorry for what he has done and describes himself as "a foolish man", that he will be more careful in the future and will seek mental health treatment.

The Crown submissions

The Crown relied on a thorough and detailed written outline of submissions in which it set out details of the offences and sentencing principles which are not controversial.

The Crown noted that in respect of Sequence 11, the offender is to be sentenced in accordance with the mandatory minimum sentencing regime contained in s16AAA and s16AAC of the Crimes Act. Accordingly, subject to permissible reductions under s16AAC for a plea of guilty or assistance to authorities, the offender must be sentenced to a minimum head sentence of 12 months imprisonment. Relying on the High Court decision in *Hurt v The King* [2024] HCA 8; 98 ALJR 485, as summarised by Taylor JA in *Trinh v R* [2024] VSCA 61 at [40], the minimum sentence restricts sentencing power to the minimum period of imprisonment, subject to those exceptions,

and provides a yardstick representing “the least worst possible case warranting imprisonment against which the case before the Court at the time can be measure” or “the offence in the least serious circumstances”. Thereby, the statutory minimum operates to increase the appropriate term of imprisonment generally for that offence. The Crown submitted that Sequence 11 does not fall within that category and the head sentence imposed would not be at the minimum sentence.

The Crown also noted that the Court may impose an aggregate sentence under s53A of the Crimes (Sentencing and Procedure) 1999 (NSW) (“the CSPA”) for multiple Federal offences including an offence for which the mandatory minimum sentence applies. The Crown referred to *McGregor v R* [2024] NSWCCA 200 where the Court held that the discount provisions in s16AAC set a floor below which the terms of imprisonment cannot go (rather than capping the discount that can be applied).

The Crown also referred to the Schedule offence (Sequence 8 attached to Sequence 4) which does not aggravate the objective seriousness of the principal offence, rather the practical effect of a s16BA Schedule offence on sentence is to increase the sentence for the principal offence.

The Crown noted that in respect of the section 3LA offence (Sequence 1), the maximum penalty prescribed is 10 years imprisonment which indicated Parliament’s clear expression that a failure to comply with the Court order warrants stern punishment because it ultimately hinders, if not conceals, the detection of serious indictable offences. The Crown referred to *R v Zahab* [2019] NSWSC 629 at [61] where Bellew J stated that the purpose of s3LA is to assist police in their investigations which may be frustrated by an offender’s failure to comply with the demand placed upon him. The Crown submitted the following factors are relevant in assessing the objective seriousness of an offence pursuant to s3LA:-

The nature of the offence to which the s3LA order relates;

Whether the s3LA order is anticipated to implicate the offender in the serious offence;

The importance of the evidence sought to be obtained by accessing the device; and

The extent to which the failure to comply with the order frustrated the investigation.

In relation to the offences pursuant to s474.17(1) of the Code, the Crown submitted that the purpose of the offence was about protecting civil society, relying on *Monis v The Queen* (2013) 249 CLR 92; [2013] HCA 4. The plurality in that case held that the purpose of the offence was about maintaining public order. The Crown noted that in *Monis v The Queen*, French CJ observed that the “reasonable person” was:-

“(1) Reasonably tolerant and understanding, and reasonably contemporary in reactions;

(2) was not a social anarchist nor a social cynic; and

(3) was a constructed proxy for the judge or jury.”

The Crown submitted that the target of the communication may be an aggravating factor, however the sharing of the communicating with like-minded others is not a mitigating factor. The Crown referred to *Hoolash v The King* [2026] WASCA 61, where the Western Australian Court of Appeal found the fact that the communications of an offence were circulated within what was described as a closed group of like-minded people, rather than more broadly in the community was not a mitigating factor. The Court went on to say, “If anything, it makes it worse because the users of that group were likely to have sympathised with the hateful things that you were saying”, at [18]. The Court was referring to a charge contrary to s474.17(1) of the Code.

In relation to Sequence 11, the offence pursuant to s80.2H(1) of the Code, the Crown referred to the revised Explanatory Memorandum which addressed the rise in religious extremism and the threat of terrorism in Australia. The Bill introducing the offence sought to ensure that law enforcement could appropriately manage this risk and protect the community from those planning, preparing or inspiring others to do harm. The legislation was intended to directly address the “dramatic and recent rise in antisemitism and the use of the Nazi Salute as means to advocate hate, incite violence and vilify members of the Australian community”. Thus, Parliament’s intention for the offence was to strengthen the protections against hatred and prejudice, and to prevent vilification of members of the community. Thus, the Crown submitted that any sentence imposed must reflect Parliament’s intention in denouncing offending of this type. It submitted that the making of a gesture that is a Nazi salute in a public place was likely to offend, insult, humiliate or intimidate a reasonable person who is a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin”.

The Crown noted that the fault element for the offences pursuant to s474.17(1) of the Code is “recklessness” which meant that an offender who knew his posts were menacing and/or offensive is more culpable than one who may be reckless in the same conduct.

In addressing the relevant factors pursuant to s16A(2) of the Crimes Act, the Crown made the following submissions in respect of each offence.

The offender failed to provide his password to any of his electronic devices despite understanding the consequences of that non-compliance.

Sequence 1 objectively features the following factors:-

It related to five different electronic devices;

The offender declined to comply with the Order during the search warrant and during the record of interview;

The nature of the underlying offences to which the s 3LA order related is not as serious as an offence for example of investigating a large drug syndicate but nonetheless hindered an investigation of the offender’s right-wing views;

The non-compliance hindered the ability of authorities to investigate the offences;

The evidence would have been critical to the investigation given the nature of his offending; and
The failure to comply with the order frustrated the investigation.

The Crown submits that the non-compliance was deliberate and frustrated the investigation but is otherwise not a serious example of offences of this kind.

Sequence 3, s474.17(1) of the Code

The offence occurred on one day, was sent on a platform called Discord and appeared to be sent to one person directly. The content was highly offensive but contained one image.

Sequence 4, s474.17(1) of the Code (and the associated schedule offence)

Sequence 4 objectively features the following factors:

It related to one date (30 October 2025) and was sent to one user on the platform Discord;

The content related to immigrants and expressions of violently killing them;

The content exhibited an endorsement of highly violent views such as “mass extermination”; and

The content was communicated to a like-minded user.

The Schedule s16BA offence (sequence 8) which relates to a message sent on 14 December 2025, the same day as the Bondi Beach attack, shows a highly non-compassionate view, encouraging antisemitism, islamophobia, and riots.

It is unclear if the same view was shared by the user. The Crown submits that the sentence imposed for Sequence 4 must give greater weight to deterrence and retribution, to give effect to the scheduling of Sequence 8.

Sequence 5, s474.17(1) of the Code

Sequence 5 objectively features the following factors:

The offending occurred on one day;

It was posted on a platform that can be read by millions; and

The content targeted a politician, Tony Burke MP.

Sequence 6, s474.17(1) of the Code

Sequence 6 objectively features the following factors:

The offending occurred on one day;

It appears to have been sent directly to another user;

The content targeted a politician, Senator Pauline Hanson and was grossly offensive; and

That the image was edited suggests some time was taken by the Offender to engage in this act of either finding the image or editing it.

Sequence 9, s474.17(1) of the Code

Sequence 9 objectively features the following factors:

The offending occurred on one day;

The offending occurred one day after the Bondi Terrorist Attack on 15 December 2026;

It relates to a group call in the Discord Server “Server Down Under”, which can be accessed by invited members of the public and contains a number of voice and text channels which allow for open debate on Australian politics;

The call involved other likeminded persons, with the offender’s views being shared by the likeminded persons and those views being violent and menacing;

The offending also occurred in the context of the offender posting on the Social Media platform X his political views, including referring to the Prime Minister as a “rat” and “terrorist”;

During the record of interview, the offender admitted he was referring to kidnapping the Prime Minister; and

The offence was considered and represented an engrained and violent disdain the offender had towards the Prime Minister and politicians.

Sequence 11, s80.2H(1) of the Code

Sequence 11, objectively features the following factors:

The offending occurred on one day;

The offender participated in a Discord livestream with like-minded persons;

The offender took the deliberate step of recording the livestream which had provided the potential for him to disseminate it, on the internet, after the livestream;

The livestream was lengthy;

At around the one-hour mark the offender comes across a Nazi right wing propaganda video posted by another user and in response to it, shares his endorsement of the views by performing the Nazi salute.

The Crown submitted that the offences represent discrete acts of embedded violent and racist views expressed over a three month period. The Crown submitted that the offender’s actions were deliberate in furtherance of the extreme views he embraced and would likely have continued but for his arrest. Further, the offences related to sharing views with other like-minded persons and disseminating them on platforms that reach millions of people. The content of the offences were highly offensive and menacing.

The Crown submitted that it was open to the Court to find Sequence 11 was the leading offence. The Crown submitted that it was an offence which could not be characterised as the least serious example because it was shared with others, done in response to a Nazi propaganda video and recorded by the offender.

The Crown submitted that it was open for the Court to find that the offences in Sequence 9, Sequence 4 (and the Schedule offence associated with it) and Sequence 1 could be considered the next highest in objective seriousness because of the content of the expressions in relation to Sequences 9 and 4. In relation to Sequence 1, the maximum penalty is double that of the other offences and the deliberate non-compliance by the offender likely hindered significantly, the extent of communications to be discovered by investigating police.

The Crown submitted that the Court may find Sequences 3, 5 and 6 are somewhat similar in objective seriousness and less serious than the other offences.

The Crown noted that the members of Parliament and Senator who were subject of the offender's vitriol should not be subject to menacing, harassing or offensive communications.

The Crown noted that the offender entered an early plea of guilty on 27 May 2026 in the Local Court and accepted the plea has utilitarian value which should be quantified.

The Crown noted that pursuant to s16A(2)(f) a guilty plea may also have a subjective value indicative of a willingness to facilitate the course of justice, acceptance of responsibility or contrition. The Crown submitted this is separate to the quantified discount for the objective value of the plea and is not quantified but taken into account in the instinctive synthesis of sentencing, relying on *Giles-Adams v R*; *Preca v R* [2023] NSWCCA 122; 377 FLR 426 where Wright J said at [3]:-

"Where a sentencing court is persuaded that the timing of the plea itself reflects a willingness on the part of the offender to facilitate the course of justice, that finding should find expression in the reasons for sentence as one of the factors which informs the value of the plea without it attracting any additional or arithmetical sentencing discount."

The Crown submitted that as the offender's guilty pleas were entered in the face of a strong Crown case, this mitigates if not nullifies any submission that his pleas are indicative of a willingness to facilitate the course of justice or remorse. The Crown accepted however, that a plea of guilty may be accepted as demonstrating contrition. In assessing contrition and remorse, the Crown submitted that the Court is not bound to accept hearsay evidence of what the offender may have said to third parties.

In relation to the factors outlined in s16A(2)(j),(ja) and (k), namely specific deterrence, general deterrence and adequate punishment, the Crown submitted that both specific and general deterrence are key considerations in sentencing here. The offender had maintained extremist right-wing expressions and appeared un-deterred to share them until arrested. The Crown submitted he needs to be specifically deterred from repeating this offence. Further, other like-minded members of the community must know that if they too engage in such offending, they risk stern punishment from the Court. The Crown noted:-

This offending is easy to commit, and it is also corrosive to community safety, public morale and social cohesion.

It also has the ability to shape young and vulnerable minds who read this material.

Publishing content on X a platform that reaches millions of viewers worldwide, has the ability to undermine an image of Australians as a secular and open society.

The Crown also addressed subjective matters that are relevant pursuant to s16A(2)(m) as follows. The offender was 27 years old at the time of the offending and is now 28 years old. He has no criminal history and one recorded breach of bail. At the time of the offending, he resided in his family home with his parents and siblings and was unemployed. The offender's mental health may be relevant to sentencing. In assessing his moral culpability, the Court should consider the offender's ability to understand the wrongfulness of his actions.

In assessing the offender's prospects of rehabilitation and likelihood of re-offending pursuant to s16A(2)(n), the Crown submitted that the offender's views are "engrained, repeated and evidently embraced by him". In the absence of evidence of treatment, the Crown submitted the Court cannot be satisfied to the balance of probabilities that the offender is unlikely to re-offend.

In respect of family hardship pursuant to s16A(2)(p), the Crown noted that this forms part of the instinctive synthesis even if the hardship is "no different to that which would normally be expected". This was a discretionary matter to be taken into account and is ultimately governed by the terms of s16A(1) which requires a sentence to be imposed "of a severity appropriate in all of the circumstances of the case".

The Crown referred to the principles of structuring Commonwealth sentences which are not controversial and provided the Court with some decisions of intermediate Courts of Appeals, not that they were "comparatives" i.e. factually similar to the current offences, but rather a general yardstick that properly identified the appropriate disposition for offending of this nature. The Crown submitted that no other sentence but one of full-time imprisonment was warranted in all the circumstances.

In her oral submissions, the Crown rehearsed her submission regarding the offence in Sequence 11 by reference to the elements of s80.2H(1) of the Code to submit that displaying the Nazi salute on the internet may be far more serious than displaying it in other public places, for example outside a building. Further, on this occasion the offender recorded himself doing so and displayed it on X. The Crown rehearsed her submission relying on *Hoolash v The King* [2026] WASCA 61, to submit that the public place here comprised an online platform sharing views with like-minded persons. Users on Discord could see him while he was playing a reel of offensive material. The public place here thus, inferentially was global with the number of viewers being immeasurable. The fact of his recording of the incident suggested a potential to disseminate the offensive material further. Thus the Crown submitted the offender's Nazi salute was more objectively serious in these circumstances than doing so in some other public places. The Crown referred to s80.2H(3)(a) and (b) to submit that the offending involved dissemination of ideas

based on racial superiority or racial hatred and could incite a group of persons to offend, insult, humiliate or intimidate either targeted persons or a targeted group because of matters of race or religion.

The Crown then highlighted features of the Twitter feeds viewed by the offender which involved disrespect to police officers, racist commentary, video of members of the KKK to which the offender responded, “that’s me”, together with the Nazi salute by the offender which the Crown submitted showed intent, anger and support of Nazism. The Crown submitted it was a serious example of such offending particularly as it occurred on 16 December 2025, two days following the Bondi shooting at a time when the Australian community was generally grieving. The Crown submitted that reasonable persons in the community would find the material highly offensive and seriously insulting and it was particularly highly intimidating and insulting to every Jewish Australian. Thus the offending was highly objectively serious which meant that the offence was far from the least worst category so as to attract the mandatory minimum sentence of 12 months.

The Crown rehearsed her submissions that general deterrence was important in the sentencing process and responded to a submission made by the offender in writing that he “never acted upon the comments, possess weapons or formed any operational plan or attempted to carry out any threats into effect”, by submitting that if any of those matters had occurred, he would have been charged with more serious offences.

The Crown rehearsed her submissions regarding the offence pursuant to s3LA(6) by reference to the Explanatory Memorandum and Secondary Reading Speeches in Parliament evidencing the purpose as outlined above. The offender here had only provided the passwords to the devices after obtaining legal advice which missed the point of the objective seriousness of the offence because the delay provided an opportunity for evidence to be destroyed.

The Crown rehearsed her submissions regarding the other sequences, noting that Sequence 4 occurred on the day of the Bondi shooting. The Crown further rehearsed her submissions regarding the utilitarian value of the offender’s plea and his willingness to facilitate the course of justice.

The Crown accepted that the mental diagnoses suffered by the offender reduced his moral culpability and provided some explanation for the offending and may be taken into account in mitigation, however the Crown highlighted the need for protection of the community and that the desirability for rehabilitation in sentencing. In relation to the offender’s explanation for his offending given to Dr Nielssen, the Crown submitted that it did not suggest that the offender accepted full responsibility or genuine insight to the harm done to the community and thus must affect the assessment of his prospects of rehabilitation and risk of recidivism. What was clear was that he had the love and support of his parents and family and their guidance will have a positive influence on him for the future.

In respect of the offender’s remorse as expressed to the authors of the testimonials and in particular Ms Van Hemert and Mr K Dean, as well as the offender’s own letter of apology (Exhibit 2). The Crown asked rhetorically, “Remorse for what?”. The Crown submitted there was no

remorse for the timing of the Nazi salute or the potential harm and intimidation involved. The Crown further submitted that there was no expression of the offender's understanding of what his conduct had done to the community. Rather, the offender was now regretful for the position that he is in. His own characterisation of his conduct as being "foolish", the Crown submitted, was not consistent with the video footage shown to the Court.

The Crown accepted the offender's mother's evidence concerning the onerous conditions of his custody and the impact on him.

In relation to disposition, the Crown rehearsed her submissions regarding the mandatory minimum sentence for Sequence 11 and that an aggregate sentence was available pursuant to s53A of the CSPA. The Crown submitted finally that any head sentence to be imposed would be more than 3 years imprisonment with a non-parole period to be imposed.

The offender's submissions

The solicitor for the offender also relied on a written outline of submissions in which he submitted the objective seriousness of the offending for all offences fell towards the lowest end of objective seriousness. He submitted the communications were "unlawful, offensive and wholly unacceptable", that they occurred over a relatively short period and consisted principally of online communications.

The offender noted that the Nazi salute offence attracted the mandatory minimum sentence of 12 months imprisonment and that Sequence 11 was committed in a recorded video. It was characterised as "a fleeting moment within a lengthy recording". Further, the offender never acted on the comments, possess weapons, formed any operational plan or attempted to carry any threats into effect".

In relation to Sequence 1, after obtaining legal advice, the offender provided all passwords to the investigating officers.

The offender submitted that his pleas of guilty were entered at the earliest opportunity and demonstrated genuine remorse, acceptance of responsibility, facilitated the administration of justice and warranted the full utilitarian discount.

The offender relied on the following subjective features namely, that he is now 28 years of age and has no criminal history. He maintains the support of his parents, extended family and friends and has realistic plans to resume employment. The offender also has a history of mental health impairments as detailed in the report of Dr Nielssen. Further, the offender has served a significant period in full-time custody which has been onerous, particularly as he is suffering from mental illness.

The offender referred to the diagnoses noted by Dr Nielssen, namely a psychotic episode (resolved), cannabis use disorder and cannabis-related mood disorder. Dr Nielssen had opined that at the time of the offending, the offender suffered a mental health impairment and the offending was directly linked to persecutory beliefs, ideas of reference, conspiracy thinking and an emotional instability associated with an emerging psychotic illness.

Dr Nielssen concluded that the offender had responded well to treatment and that his psychosis had resolved and his mood stabilised. Thus his risk of similar offending was significantly reduced provided he continues his rehabilitative treatment.

The offender referred to authorities which recognise that mental illness may reduce an offender's moral culpability and therefore diminish the weight to be afforded to general deterrence and increase the significance of rehabilitation.

It was submitted that the offender's rehabilitation was well under way and that his prospects of rehabilitation are now excellent and his risk of re-offending is low. The offender submitted that the purposes of punishment have been achieved through time served in custody to date and that community protection would now best be served by ensuring the offender's continued psychiatric treatment rather than further imprisonment.

In his oral submissions, the solicitor for the offender submitted there was no evidence to establish the number of people viewing the video in which the offender displayed the Nazi salute, although it was clearly more than one, the Court would not accept the Crown submission that the number was "immeasurable" as the video was never posted.

The offender submitted he had not trivialised any of the offences, but rather they involved reckless conduct, rather than intentional behaviour.

The offender rehearsed his submissions regarding the mental health of the offender, his rehabilitation prospects and that he has the pro-social support of his parents and extended family.

In relation to Sequence 1, the offence pursuant to s3LA(6) the offender submitted that he provided the passwords after obtaining legal advice and he was not trying in the interim to prevent the evidence being provided to police, but rather there was some delay.

The solicitor for the offender noted that the offending occurred over a 3 month period but that the offender had accepted responsibility for his offending conduct and expressed remorse. In respect of the explanation he provided to Dr Nielssen, that occurred prior to his committal and at a time when he was instructed not to discuss the offending in "complete detail". The Court would find that he had good prospects of rehabilitation given that he was compliant with his medication regime and abstaining from prohibited drugs. It was submitted that if he obtained appropriate mental health services it would be extremely unlikely for him to reoffend.

The solicitor for the offender rehearsed his submissions regarding the conditions of the offender's custody being extremely onerous in that he had suffered isolation on numerous occasions and had been subject to a lack of visitation or contact with his family. At the time of the offences he was 27 years of age and had no criminal history. The Court would take into account the pro-social support he has now has from his loving parents, his parent's guilt and the fact they were now well aware of the outside influences on him. It was submitted that this was not a situation where the offender had no prospects, but rather his mental health diagnoses diminished his moral culpability for the offending.

The offender took issue with the submission by the Crown that the image subject of Sequence 6 had been edited. The Court would take into account the 226 days the offender had spent in custody as a significant period and would apply the minimum mandatory sentence in respect of Sequence 11. The Court would further accept that the offender's mindset at the time regarding politicians generally and the Prime Minister led him to believe that his commentary was "a joke" as evidenced by the subsequent enquiries he made on AI. Whilst the offending was extremely serious offending, his mental health and cannabis abuse at the time of the offending should be taken into account.

In reply, the Crown made a short submission regarding the offender's mindset at the time of the offending by referring to the agreed facts regarding the execution of the search warrant and that the offending had taken place over a 3 month period.

Determination

The first step in sentencing for each of the six index offences requires an assessment of the objective seriousness of the offending conduct. Sequence 1 involved the offender declining to provide his passwords for investigating police to access five different devices. He declined to do so at the time the search warrant was executed on 21 December 2025 and again in a recorded interview with investigating police. The offender did provide the passwords several weeks later after obtaining legal advice, however by that time the mischief for which s3LA is designed to address had occurred, namely the offender had frustrated the police in investigating his nefarious online conduct and had provided him with an opportunity to tamper with or delete evidence. Although there is no evidence that he did so, the offender's non-compliance was deliberate. I accept the Crown submission that this was not, in all of the circumstances, a serious example of offences pursuant to s3LA(6) of the Crimes Act.

The offence in Sequence 3 as outlined above occurred on one day when the offender used a carriage service to send a highly offensive message to a deleted user on Discord. It involved a low level of objective seriousness for an offence pursuant to s474.17(1) of the Code but was still serious offending, given the nature of the content of the message.

Sequence 4 concerned the use of a carriage service to menace or offend on 30 October 2025 by sending the messages outlined in [11] above, which included statements by the offender stating, “We need more concentration camps”, “we need mass deportations and executions in the street”, “we need mass extermination”, “I’d kill them all”, “I don’t believe in democracy”, “I 100% believe in violent revolution”, and “Haha door to door just shoot in head”.

The content related to immigrants and expressions of highly violent views including killing and mass extermination and was communicated to a like-minded user. It was objectively serious offending for an offence pursuant to s474.17(1) of the Code. Attached to Sequence 4, was the criminal conduct in the Schedule 16BA offence (Sequence 8) which relates to a message sent on 14 December 2025, the same day as the Bondi Beach shooting, which demonstrated that the offender was encouraging antisemitism, islamophobia and riots. This was objectively serious offending which must add some accumulation to the sentence for Sequence 4.

The offence in Sequence 5 occurred on 25 November 2025, when the offender commented on X concerning the Home Affairs Minister, Mr Tony Burke MP. Earlier he had drafted a post which he had not sent but which he had screenshotted regarding the revocation of a visa of a member of the former National Socialist Network who had protested in front of NSW Parliament House on 8 November 2025 calling for the end of the Jewish lobby. That draft read, “If you deport him, I will kill you in Parliament on live television”. In the context of that background, the words “Face the wall Tony” could only be regarded as a serious threat targeting a member of Parliament that could be read by millions of people. It constituted serious offending for an offence pursuant to s474.17(1) of the Code.

Sequence 6 concerned the use of a carriage service to menace or offend occurred on 26 November 2025, when the offender sent an edited image of Senator Pauline Hanson to a deleted user which depicted the Senator as a member of the KKK. To a reasonably tolerant member of the community, the content was grossly offensive and constituted deplorable conduct. It was again, objectively serious offending pursuant to s474.17(1) of the Code.

The offence in Sequence 9 concerned the use of a carriage service to menace or offend which occurred on 15 December 2025, when the offender engaged in a voice call in the Discord Server concerning the Prime Minister which is set out in [15] above. The offending occurred on a platform that involved other like-minded persons in which the offender expressed views that were both violent and menacing, referring to the Prime Minister as a “rat” and a “terrorist” and referencing kidnapping him. In it, the offender stated, “I’ve crossed into the fucking realm of terrorism”. The context in which this offence took place, namely a day after the Bondi Beach terrorist shooting does not aggravate the offence, but it does highlight the seriousness of the offending conduct at a time when the whole of the community generally was grieving in the aftermath of the events at Bondi. It was objectively serious offending for an offence pursuant to s474.17(1) of the Code.

The offence in Sequence 11 of displaying the Nazi salute which occurred on 16 December 2025, whilst the offender was participating in a call with others on the Discord Server must be placed in its context. During the call, the offender was displaying a video on his desktop screen and recording himself doing so. The video comprised of images of members of the NSN at a march in Australia, far right marches in other countries, images of members of the KKK with what appears to be assault rifles and an unidentified individual doing a Nazi salute. This occurred during a lengthy livestream after about 1 hour and the offender was clearly shown in the video to be engaging with the content being shown and enjoying it and then himself performing the Nazi salute. By doing so, he was demonstrating his endorsement of the views being propagated.

The fact that the offender was recording the livestream provided him with the potential to further disseminate it on the internet. Thus, whilst the critical offending conduct of performing a Nazi salute was momentary, in its context it constituted objectively serious offending for an offence pursuant to s80.2H(1) of the Code.

Objectively, the totality of the offending constituted highly morally culpable offending. However, in sentencing the offender, there are factors set out below which reduce his moral culpability for the offending.

Section 16A(1) of the Crimes Act provides that in determining a sentence for a Federal offence, a Court must impose a sentence that is of a severity appropriate in all the circumstances of the offence. Section 16A(2) provides that the Court must take into account the following relevant matters that are known to the Court.

s16A(2)(a) The nature and circumstances of the offence

The nature and circumstances of each offence and its objective seriousness are set out in detail above. Each of the six offences constituted serious criminal conduct in which the offender was reckless. Further, in justifying his actions to police as “exercising his right to free speech”, making a “joke” of kidnapping the Prime Minister and claiming that by requesting his passwords was an “invasion of his privacy” demonstrated that his insight into the offending conduct was misguided, wrong-headed and naive. The offending demonstrated that the offender embraced the violent killing of immigrants, threatening politicians with violence as well as embracing antisemitism, islamophobia and far-right extremist views.

s16A(2)(b) Other offences that are required to be taken into account

Sequence 8 on the s16BA Schedule must be taken into account in respect of the sentence for Sequence 4. Given the nature of the offending, it must lead to some accumulation on sentence in respect of Sequence 4.

s16A(2)(c) If the offence forms part of a course of conduct consisting of a series of criminal acts of the same or similar character

Whilst the offending did form part of a course of conduct consisting of a series criminal acts of the same or similar character, the offender is to be sentenced in respect of the discrete index offences and I have been careful not to aggravate the objective seriousness of the offending as forming part of the course of conduct consisting of a series of criminal acts.

s16A(2)(d) The personal circumstances of any victim of the offence

There is no individual victim of the offending here, rather the offending is offensive to all reasonably tolerant and understanding people in the community.

s16A(2)(e) Any injury, loss or damage resulting from the offence

No injury loss or damage physically resulted from the offending conduct, however the potential damage of the material disseminated online and given the potential audience, numbering in the millions of people, should not be underestimated.

s16A(2)(f) The degree to which the offender has shown contrition for the offence

I accept that the offender has shown contrition for the offence to his family and the authors of the testimonials tendered on his behalf.

s16A(2)(g) The fact that the offender pleaded guilty in respect of the offences

The offender pleaded guilty at the earliest opportunity. Whilst entered in the face of a strong Crown case, the offender is entitled a utilitarian discount on sentence of 25% in relation to his early plea. I find that the plea also reflects that the offender accepts responsibility for the offending and his plea also facilitates the course of justice by avoiding a trial.

s16A(2)(j) The deterrent effect that any sentence or order may have on the offender

Specific deterrence is important in sentencing for the index offences. The offender must understand that if he was to repeat this offending, he would be subject to an increasingly severe sentence.

s16A(2)(ja) General deterrence

General deterrence is important for sentencing in respect of each of the index offences. People of reasonable tolerance would, in the Court's view find the offending conduct deplorable. The fact that it occurred online to a relatively small audience is not a mitigating circumstance. Rather, the recording of the materials were suggestive of further potential dissemination on the internet with a global viewership. Other like-minded members of the community must know that if they engaged in such offending, that Parliament has prescribed severe maximum penalties for such criminal conduct and that the Courts will impose condign punishment in appropriate cases. I accept the Crown submission that the offending is easy to commit online, that it is corrosive to community safety, public morale and social cohesion and also has the ability to shape young and vulnerable minds who are exposed to the material.

s16A(2)(m) The character, antecedents, age, means and physical and mental condition of the offender

The offender is 28 years of age and was 27 at the time of the offence. He was unemployed at the time of the offences and his family and personal history are set out in the report of Dr Nielssen as summarised above. The offender has no criminal history and at the time of the offending was residing in the family home. He has the support of his parents and siblings and has plans to resume his employment. Of significance, is the offender's history of mental health impairments as detailed by Dr Nielssen. He had previously been admitted to the psychiatric ward of NBH for a period of 10 days and treated with anti-psychotic medication. I accept the diagnoses of Dr Nielssen that he suffered a psychotic episode (resolved), cannabis use disorder and cannabis-related mood disorder. I further accept that the offender, at the time of the offending, had a mental health impairment which was directly linked to persecutory beliefs, conspiracy thinking and emotional instability associated with an emerging psychotic illness. The picture emerged of a loner who had embraced an online community of like-minded persons.

The testimonials submitted as to his character are impressive and I accept them unreservedly. However, they are difficult to reconcile with the nature of the offending conduct and the content of the communications for which the offender was responsible. However, I accept that he is genuinely remorseful for his offending conduct and that his arrest and incarceration has been a salutary experience for him.

s16A(2)(mb) If the persons conduct constituting the offence was motivated by hatred of a group of persons distinguished by race, or national or ethnic origin

The content of the communications posted online by this offender had all the hallmarks of being motivated by racism, or ethnicity i.e. of immigrants, which contributed to the objective seriousness of the offence. Given the nature of the charges, I have not taken this into account in aggravating the objective seriousness of the offending but it is a relevant factor to take into account on sentence.

s16A(2)(n) The prospect of rehabilitation of the offender

The offender has the pro-social support of his parents and extended family and the benefit of a comprehensive treatment plan as set out by Dr Nielssen. I find that he has good prospects of rehabilitation and given his lack of criminogenic features is likely to be a low risk of recidivism.

s16A(2)(p) The probable effect of any sentence under consideration on the offender's family

The offender's arrest and incarceration have had a considerable impact on the offender's parents who no doubt harbour feelings of guilt as stated by Mr Ballesty. Any parent would experience the same regrets about not intervening in their child's isolated conduct, however the principal impacts on the offender's family here are centred on their concerns for the offender himself, given the onerous conditions of his custody, and for his future.

I accept the mental health diagnoses identified by Dr Nielssen and further accept that at the time of this offending, this offender suffered a mental health impairment so as to engage the principles in DPP (Cth) v De La Rosa (2010) 79 NSWLR 1; [2010] NSWCCA 194 where McClellan CJ at CL set out at [177] the following principles to be applied when sentencing an offender suffering from a mental illness, intellectual handicap or other mental health problems as follows:-

"Where the state of a person's mental health contributes to the commission of the offence in a material way, the offender's moral culpability may be reduced. Consequently the need to denounce the crime may be reduced with a reduction in the sentence: R v Henry [1999] NSWCCA 111; 46 NSWLR 346 at [254]; Miller v R [1999] WASCA 66 at [23]; R v Jiminez [1999] WASCA 7 at [23], [25]; Tsiaras at 400; Lauritsen at [51]; Israil at [23]; R v Pearson [2004] NSWCCA 129 at [43]; Henry [2007] NSWCCA 90 at [28].

It may also have the consequence that an offender is an inappropriate vehicle for general deterrence resulting in a reduction in the sentence which would otherwise have been imposed: Engert at 71; R v Wright (1997) 93 A Crim R 48 at 50-51; Israil at [22]; Pearson at [42]; Henry at [28].

It may mean that a custodial sentence may weigh more heavily on the person. Because the sentence will be more onerous for that person the length of the prison term or the conditions under which it is served may be reduced: Tsiaris at 400; Jiminez at [25]; Israil at [26]; Henry at [28].

It may reduce or eliminate the significance of specific deterrence: Courtney at [14]; Tsiaras at 400; Israil at [25]; JW at [192].

Conversely, it may be that because of a person's mental illness, they present more of a danger to the community. In those circumstances, considerations of specific deterrence may result in an increased sentence: Israil at [24]; Henry at [28]. Where a person has been diagnosed with an Antisocial Personality Disorder there may be a particular need to give consideration to the protection of the public: R v Lawrence (2005) NSWCCA 91 per Spigelman CJ at [23] - [24]."

The application of these principles here mean that the moral culpability of the offender for his offending conduct is diminished and means that the principal sentencing principles of general deterrence, specific deterrence, denunciation and punishment are ameliorated. I also find that the offender will undergo more onerous custody than the general prison population.

I intend to proceed to sentence the offender by way of an aggregate sentence pursuant to s53A of the CSPA. Recently, in *The King v McGregor* [2026] HCA 3, the High Court confirmed that an aggregate sentence of imprisonment under s53A of the CSPA can be imposed for multiple offences against a law of the Commonwealth, including for offences carrying a mandatory minimum penalty.

To provide transparency in the sentencing process, I am required to provide indicative sentences for each offence. The indicative sentences take into account the objective seriousness of the offending, the relevant matters set out above including the subjective factors relating to the offender and the utilitarian discount on sentence of 25% in respect of his pleas of guilty. The indicative sentences are as follows:-

Sequence 1 – Offence pursuant to s3LA(6) of the Crimes Act – 3 months imprisonment

Sequence 3 – Offence pursuant to s474.17(1) of the Code – 3 months imprisonment

Sequence 4 – Offence pursuant to s474.17(1) of the Code – 12 months imprisonment

Sequence 5 – Offence pursuant to s474.17(1) of the Code – 6 months imprisonment

Sequence 6 – Offence pursuant to s474.17(1) of the Code – 3 months imprisonment

Sequence 9 – Offence pursuant to s474.17(1) of the Code – 12 months imprisonment

Sequence 11 – Offence pursuant to s80.2H(1) of the Code – 18 months imprisonment

In arriving at an aggregate sentence, I must take into account principles of totality and proportionality in sentencing. Any aggregate sentence must be "just and appropriate" to the totality of the offending behaviour. In *R v Van Ryn* [2016] NSWCCA 1, the Court of Criminal Appeal had regard to the following summary of the correct approach to the assessment of sentence for multiple offences, with proper regard to the totality of the criminality involved:-

"[228] Street CJ described the principle of totality in sentencing in *R v Holder*; *R v Johnstone* (1983) 3 NSWLR 245 at 260 as follows:

The principle of totality is a convenient phrase, descriptive of the significant practical consideration confronting a sentencing judge when sentencing for two or more offences. Not infrequently, a straightforward arithmetical addition of sentences appropriate for each individual offence considered separately will arrive at an ultimate aggregate that exceeds what is called for in the whole of the circumstances. In such a situation, a sentencing judge will evaluate, in a broad sense, the overall criminality involved in all of the offences and, having done so, will determine what, if any, downward adjustment is necessary, whether by telescoping or otherwise, in the aggregate sentences in order to achieve an appropriate relativity between the totality of the criminality and the totality of the sentences."

The Court went on to emphasise the need to maintain public confidence in the administration of justice when sentencing for multiple offences, and also referred to the judgment of Howie J in *Cahyadi v R* [2007] NSWCCA 1; 168 A Crim R 41 at [27]:-

"There is no general rule that determines whether sentences ought to be imposed concurrently or consecutively. The issue is determined by the application of the principle of totality of criminality: can the sentence for one offence comprehend and reflect criminality for the other offence? If it can, the sentences ought to be concurrent otherwise there is a risk that the

combined sentences will exceed what is warranted to reflect the total criminality of the two offences. If not, the sentences should be at least partly cumulative, otherwise there is a risk that the total sentence will fail to reflect the total criminality of two offences. Similarly, where they are part of a single episode of criminality with common factors, it is more likely that the sentence for one of the offences will reflect the criminality of both."

In arriving at an aggregate sentence, I am mindful that the ubiquity of the internet has spawned platforms where nihilistic and violent or extremist ideologies driven by such narratives have provided spaces for like-minded persons to derive meaning, motivation and belonging from such content. In a free and democratic society the right of free speech is not an unqualified one and notwithstanding that the fault element involved in the offending here is recklessness on the part of this offender, and that his mental health issues means some diminution in the importance of general deterrence, specific deterrence and denunciation, they remain important principles in sentencing. In applying principles of totality and proportionality to arrive at an aggregate sentence, I intend to sentence the offender to an aggregate sentence of 3 years imprisonment.

The solicitor for the offender advocated that the period of time the offender has served in custody, namely 254 days, is sufficient penalty and that the purposes of sentencing would be best served by allowing the offender to continue his rehabilitative treatment in the community. I have not accepted that submission, however I am aware that an intensive correction order may be imposed when sentencing a federal offender pursuant to s20AB of the Crimes Act – see *Vamadevan v The King* [2024] NSWCCA 223 where the Court held at [57]:-

Accordingly, the steps to be undertaken by a sentencing court before an intensive correction order can be imposed on a federal offender under s 20AB(1) of the Crimes Act are as follows:

- (1) First, the sentencing court must be satisfied "after having considered all other available sentences" that "no other sentence is appropriate in all the circumstances of the case" other than a sentence of imprisonment: s 17A(1).
- (2) Secondly, the sentencing judge must "impose a sentence ... that is of a severity appropriate in all the circumstances of the offence": s 16A(1).
- (3) Thirdly, if none of the disentitling provisions contained in the NSW Sentencing Act (including the identified provisions of the Crimes Act and the Criminal Code summarised above at [11]) apply, then the sentencing court may consider whether or not to impose an intensive correction order. In doing so, the sentencing judge is obliged to consider the matters in s 16A of the Crimes Act and not s 66 of the NSW Sentencing Act. The sentencing court must, "in addition to any other matters", take into account such of the matters in s 16A(2) "as are relevant and known to the court".

Applying those principles as set out above, I am satisfied after having considered all other available sentences that no other sentence is appropriate in all the circumstances of this case, other than a sentence of imprisonment pursuant to s17A(1). Further, I must impose a sentence that is of a severity appropriate in all of the circumstances of the offences pursuant to s16A(1) of

the Crimes Act. Having regard to all of the matters I have set out that are relevant and known to the Court in s16A(2) above, I have concluded that making an intensive correction order would not be an order of a severity appropriate in all of the circumstances here.

I intend to backdate the sentence to be imposed by 254 days to take into account the time the offender has spent in custody, to commence on 13 January 2026.

Pursuant to s19AC of the Crimes Act, I intend to fix a Recognizance Release Order after a period of 1 year and 4 months to take effect on 12 May 2027, on condition that the offender be of good behaviour for a period of 3 years following his release from custody. During that period he is to be subject to supervision by the Community Corrections and to comply with all reasonable directions made by his Community Corrections Supervising Officer including compliance with the rehabilitation treatment plan recommended by Dr Nielssen.

I certify that I have signed the Schedule pursuant to 16BA of the Crimes Act attached to Sequence 4 as outlined above.

orders

You are convicted of the offences in Sequences 1, 3, 4, 5, 6, 9 and 11.

I sentence you to 3 years imprisonment to commence on 13 January 2026.

I order a Recognizance Release Order pursuant to s 20(1)(b) of the Crimes Act 1914 (Cth) after a period of 1 year and 4 months, to take effect on 12 May 2027 upon entering into a recognizance without surety self in the sum of \$500 on the following conditions:-

That you be of good behaviour for a period of 3 years from 12 May 2027.

That you accept supervision by a probation officer appointed by Community Corrections.

That you follow all reasonable directions of your probation officer.

That you do not travel interstate or overseas without the written permission of your probation officer.

I direct you to report to City Community Corrections within 7 days of your release from custody. You must understand that this is a gaol sentence that you are required to serve in the community. If you breach any conditions that are attached to the order, without reasonable cause or excuse, consequences will follow that may include you serving the balance of the term in custody.

I certify the s16BA Schedule offence.

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