

Al-Raqqa province, Syria

Introduction

- 1.1 This review is conducted under section 119.3 of the *Criminal Code Act 1995* (the Criminal Code).
- 1.2 Section 119.2 of the Criminal Code provides that it is an offence for a person to enter, or remain in, a 'declared area'. There are exceptions to this offence for persons entering, or remaining in, declared areas solely for: one or more of the 'legitimate purposes' listed in the Act; or for service with a foreign government armed force, other than a 'prescribed organisation'.
- 1.3 Section 119.3 of the Criminal Code provides that the Foreign Affairs Minister may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2 if he or she is 'satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country'. Unless disallowed by the Parliament, or revoked earlier by the Foreign Affairs Minister, a declaration ceases to have effect on the third anniversary of the day on which it takes effect.
- 1.4 Subsection 119.3(7) provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review a declaration before the end of the period in which the declaration may be disallowed by the Parliament – 15 sitting days after tabling.
- 1.5 The declared area provisions were introduced into the Criminal Code following passage of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, which was reviewed and reported on by the Committee in October 2014.

- 1.6 The review power in section 119.3(7) of the Criminal Code was introduced as a result of a recommendation by the Committee in its review of that Bill, which was subsequently agreed to by the Government. In making this recommendation, the Committee indicated that, through its reviews, it would 'examine the evidence as to why the particular area was declared' and seek to:
- ensure declarations were made only in the most pressing circumstances; that a sufficiently high level of specificity was included in regard to the areas declared; and that any overextension of the boundaries was minimised.¹
- 1.7 On 4 December 2014, the Minister for Foreign Affairs, the Hon Julie Bishop MP, wrote to the Committee to advise of the making of *Criminal Code (Foreign Incursions and Recruitment - Declared Areas) Declaration 2014 - Al-Raqqa Province, Syria*, which declared al-Raqqa province in Syria as an area in a foreign country for the purposes of section 119.2 of the Criminal Code. The letter indicated that the Minister was satisfied that a listed terrorist organisation under the Criminal Code, the Islamic State of Iraq and the Levant (ISIL), was engaging in a hostile activity in the province.
- 1.8 The declaration came into effect on 5 December 2014, the day after it was registered on the Federal Register of Legislative Instruments, and was tabled in the House of Representatives and the Senate on 9 February 2015.
- 1.9 This is the first time that an area has been declared for these purposes under the Criminal Code. The Committee considers that its power to review declarations represents a significant additional safeguard for the declared area offence. The Committee's reviews will help ensure that declarations are reserved for areas in foreign countries where restricting travel is a necessary and proportionate response to the hostilities taking place.

The Committee's review

- 1.10 The Foreign Affairs Minister's letter, which included a copy of the declaration, its explanatory statement and a statement of reasons for the declaration, was accepted as a submission to the review and published on

1 Parliamentary Joint Committee on Intelligence and Security (PJCIS), *Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, October 2014, Canberra, pp. 107-108.

the Committee's website: www.aph.gov.au/pjcis. The statement of reasons is also included at Appendix A to this report.

- 1.11 Notice of the review was placed on the Committee's website and public submissions were invited. No public submissions were received.
- 1.12 Consistent with the Committee's practice when reviewing the listing of terrorist organisations, the Committee resolved to conduct a classified hearing with agencies so that evidence presented could be interrogated in more detail, as required.
- 1.13 A private hearing with representatives of the Attorney-General's Department, the Australian Federal Police, the Australian Security Intelligence Organisation and the Department of Foreign Affairs and Trade was held in Canberra on Thursday, 12 February 2015. Some unclassified statements from the hearing have been included in this report to support the Committee's findings.
- 1.14 A list of submissions received and witnesses appearing at the private hearing is included at Appendix C.
- 1.15 The Committee sought to put in place a formal structure for reviewing declarations. This included an examination of:
 - the Government's procedures underpinning the declaration,
 - the declared area's boundaries,
 - communication of the declaration with stakeholders, and
 - international engagement on 'declared area' laws.

The Government's procedures

- 1.16 During its review, the Committee received a document outlining the process undertaken by government agencies for the declaration of al-Raqqa province. The document was taken as a submission to the inquiry, and is included at Appendix B to this report. The Committee also sought information from agencies about the Government's processes during the private hearing.

Committee comment

- 1.17 The Committee reviewed the process for the declaration of al-Raqqa province and was satisfied with the appropriateness of the procedures undertaken by the Government.
- 1.18 The Committee considers it would assist with transparency and scrutiny of new declarations if a document outlining these procedures was made available to the Committee at the outset of each review. Such documents are already provided to the Committee at the commencement of its reviews of listings of terrorist organisations under the Criminal Code. The Committee considers that a similar practice should also be adopted for the declared area provisions.

Recommendation 1

The Committee recommends that, at the time a declaration is made, the Minister for Foreign Affairs provide to the Committee a document outlining the process underpinning the declaration of the area for the purposes of 119.2 of the *Criminal Code Act 1995*.

The declaration of al-Raqqa province

- 1.19 Al-Raqqa province is situated east of the Syrian province of Aleppo and shares its northern border with Turkey.
- 1.20 ISIL, which is also known as the Islamic State or Da'esh, is a listed terrorist organisation that has been active in Syria since late 2011. In June 2014, the group proclaimed an Islamic caliphate in areas it controlled in Iraq and Syria.²
- 1.21 According to the statement of reasons produced by the Australian Security Intelligence Organisation (ASIO) and upon which the declaration was based, al-Raqqa is the 'de facto capital of ISIL and provides a base from which much of its operations are directed'.³
- 1.22 As noted above, to declare an area in a foreign country for the purposes of section 119.2 of the Criminal Code, the Foreign Affairs Minister must be satisfied that a listed terrorist organisation is engaging in a hostile activity
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2 Statement of reasons, p. [1].

3 Statement of reasons, p. [3].

in that area of the foreign country. Section 117.1 of the Criminal Code defines 'engages in a hostile activity' as engaging in conduct with the intention of achieving one of the following objectives:

- (a) the overthrow by force or violence of the government of that or any other foreign country (or of a part of that or any other foreign country);
- (b) the engagement, by that or any other person, in action that:
 - (i) falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and
 - (ii) if engaged in in Australia, would constitute a serious offence;
- (c) intimidating the public or a section of the public of that or any other foreign country;
- (d) causing the death of, or bodily injury to, a person who is the head of state of that or any other foreign country, or holds, or performs any of the duties of, a public office of that or any other foreign country (or of a part of that or any other foreign country);
- (e) unlawfully destroying or damaging any real or personal property belonging to the government of that or any other foreign country (or of a part of that or any other foreign country).

1.23 The statement of reasons (included at Appendix A) outlines the reasons for al-Raqqa's declaration by assessing ISIL's activity in the area against each of these criteria. The statement concludes that ISIL is engaging in hostile activities in al-Raqqa province.⁴

The declared area's boundaries

1.24 At the private hearing, the Committee sought further information about the boundary chosen for the declaration.

1.25 The Committee was informed that the declaration of the area along the boundaries of al-Raqqa province allowed the area to be described in sufficient detail to ensure clarity for members of the public considering travel to the region, consistent with the Government's protocol. Further, there is a high level of confidence that ISIL controls the entire province:

There is absolutely no means of entering or exiting Al Raqqa without needing to transit some form of ISIL control. So it was a

4 Statement of reasons, p. [4].

fairly clear-cut example where ISIL is controlling the entire province and is active and is using it as a base from which to control and organise its operations elsewhere.⁵

- 1.26 The Committee understands that surrounding areas are also likely to meet the threshold for declaration, at least at certain times.⁶

Communication of the declaration with stakeholders

- 1.27 At the private hearing, witnesses outlined the work that has been undertaken to inform community stakeholders about the declaration. This included:

- distribution of a travel warning pamphlet, in both English and Arabic, to community groups and at airports through the Australian Customs and Border Protection Service,
- including information on the declaration on the Government's Smartraveller website,⁷ the Australian National Security website,⁸ and the Living Safe Together website,⁹ and
- distribution of information through community leaders and organisations,¹⁰ and the Living Safe Together (Countering Violent Extremism) programme.¹¹

International engagement on 'declared area' laws

- 1.28 Noting that laws similar to Australia's 'declared area' offence do not exist in other comparable jurisdictions, the Committee was interested in the reaction of other countries to the new laws, and whether any were looking at enacting similar provisions.

- 1.29 The Attorney-General's Department advised that Australia had been working bilaterally with a number of countries to discuss 'international best practice approaches to countering the foreign fighters threat, including counter-terrorism legislative reforms'. This included
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5 *Classified transcript*, 12 February 2015, p. 3.

6 *Classified transcript*, 12 February 2015, p. 4.

7 <http://www.smartraveller.gov.au>

8 <http://www.nationalsecurity.gov.au>

9 <http://www.livingsafetogether.gov.au>

10 *Classified transcript*, 12 February 2015, pp. 8, 12.

11 Attorney-General's Department, *Submission 2.1*, p. 1.

Departmental representatives meeting with embassy officials from New Zealand, Canada, the United Kingdom and France to discuss legislative reforms.¹²

- 1.30 The Attorney-General's Department also advised that, with the Department of Foreign Affairs and Trade, it had:
- engaged on foreign fighters issues via multilateral fora, including during Australia's recent term on the United Nations Security Council, through the Global Counter Terrorism Forum and various five-country fora.¹³
- 1.31 The Committee received additional classified evidence about the responses of other countries to these laws.¹⁴
- 1.32 The Committee was also interested in Australia's engagement on this issue through the United Nations and noted Australia's advocacy for action against foreign fighters, which has included, among other things, briefing by the Foreign Affairs Minister to the United Nations Security Council on Australia's introduction of the declared area offence.¹⁵

Committee comment

- 1.33 The Committee considers the declaration of al-Raqqa province to be well within the scope of what the declared area offence was intended to target. The atrocities being committed by ISIL (referred to by the Committee as Da'esh) in Syria are well known to the Committee and broader community. The organisation has control of al-Raqqa province, which is the centre of its sphere of influence.
- 1.34 ASIO's statement of reasons provides examples of where Da'esh has committed actions in al-Raqqa that meet the threshold of 'engaging in hostilities' against all of the criteria listed in the Criminal Code.
- 1.35 The Committee notes that there are other parts of both Syria and Iraq that will meet the threshold for declaration, at least temporarily, due to hostilities committed by Da'esh. To be effective, however, the Committee accepts that it is necessary for declared areas to be relatively stable, with highly specific boundaries that are easily communicated to the public.

12 Attorney-General's Department, *Submission 2.1*, p. 2.

13 Attorney-General's Department, *Submission 2.1*, p. 2.

14 Department of Foreign Affairs and Trade, *Submission 3*, pp. 1-2.

15 Department of Foreign Affairs and Trade, *Submission 3*, p. 3.

- 1.36 The Committee notes that a second area, the Mosul district of Ninewa province, Iraq, was declared by the Foreign Affairs Minister on 2 March 2015.¹⁶
- 1.37 The Committee notes the activities that have been undertaken by the Australian Government to inform the community about both the declared area offence more generally and the declaration of al-Raqqa province. The Committee will be interested to monitor the effect of this, and other, declarations, on the actions of individuals over time. The Committee considers that a sustained effort will be required to inform the community about the risks associated with travel to conflict zones.
- 1.38 The Committee considers that the Government should continue its advocacy both bilaterally and multilaterally for action against the threat posed by foreign fighters.
- 1.39 The Committee is satisfied that the declaration of al-Raqqa province is appropriate, and therefore supports the declaration under section 119.2 of the Criminal Code.

Recommendation 2

The Committee recommends that the legislative instrument declaring al-Raqqa province, Syria for the purposes of section 119.2 of the *Criminal Code Act 1995* not be disallowed.

Dan Tehan MP

Chair

March 2015

16 Hon Julie Bishop MP, Minister for Foreign Affairs, 'Declaration of Mosul District, Ninewa Province, Iraq', *Media Release*, 2 March 2015, viewed 3 March 2015, <http://foreignminister.gov.au/releases/Pages/2015/jb_mr_150302a.asp>.