



**THE HON JULIE BISHOP MP**

Minister for Foreign Affairs

Mr Dan Tehan MP  
Chair  
Parliamentary Joint Committee  
on Intelligence and Security  
Parliament House  
CANBERRA ACT 2600

RECEIVED 02 MAR 2015

  
Dear Chair

I am writing to advise of the recent making of the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq*, which declares Mosul district in the Ninewa Province of Iraq as an area in a foreign country for the purposes of section 119.2 of the *Criminal Code*.

I have made the declaration as I am satisfied that the Islamic State of Iraq and the Levant (ISIL), which is a listed terrorist organisation under the *Criminal Code*, is engaging in a hostile activity in Mosul district.

My decision to declare Mosul district was made following careful consideration of a Statement of Reasons provided by the Australian Security Intelligence Organisation in consultation with relevant government agencies.

In compliance of the requirement under subsection 119.3(3) the *Criminal Code* that, before making a declaration, arrangements must be made for the Leader of the Opposition to be briefed in relation to the proposed declaration, I wrote to the Leader of the Opposition on 23 February 2015 advising of my intention to declare Mosul district and enclosed a copy of the Statement of Reasons upon which my decision to make the declaration was based. I invited the Leader of the Opposition to contact my office if he required further briefing.

Subsection 119.3(7) of the *Criminal Code* provides that the Parliamentary Joint Committee on Intelligence and Security may review the declaration before the end of the period during which the declaration may be disallowed under section 42 of the *Legislative Instruments Act 2003*.

To assist the Committee, I enclose a copy of the Declaration and Explanatory Statement (with attached Statement of Reasons upon which my decision to

declare Mosul district was based). The legislative instrument commences the day after it is registered on the Federal Register of Legislative Instruments.

The action officer for this matter in my department is Emil Stojanovski, who may be contacted by email at \_\_\_\_\_ or by telephone on \_\_\_\_\_

Yours sincerely

Julie Bishop

02 MAR 2015

Encl:

Declaration and Explanatory Statement including Statement of Reasons



# Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq

*Criminal Code Act 1995*

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I, JULIE BISHOP, Minister for Foreign Affairs, make this Declaration under subsection 119.3(1) of the *Criminal Code*.

Dated  March 2015

JULIE BISHOP

Minister for Foreign Affairs

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## 1 Name of Declaration

This declaration is the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq*

## 2 Commencement

This declaration commences on the day after it is registered.

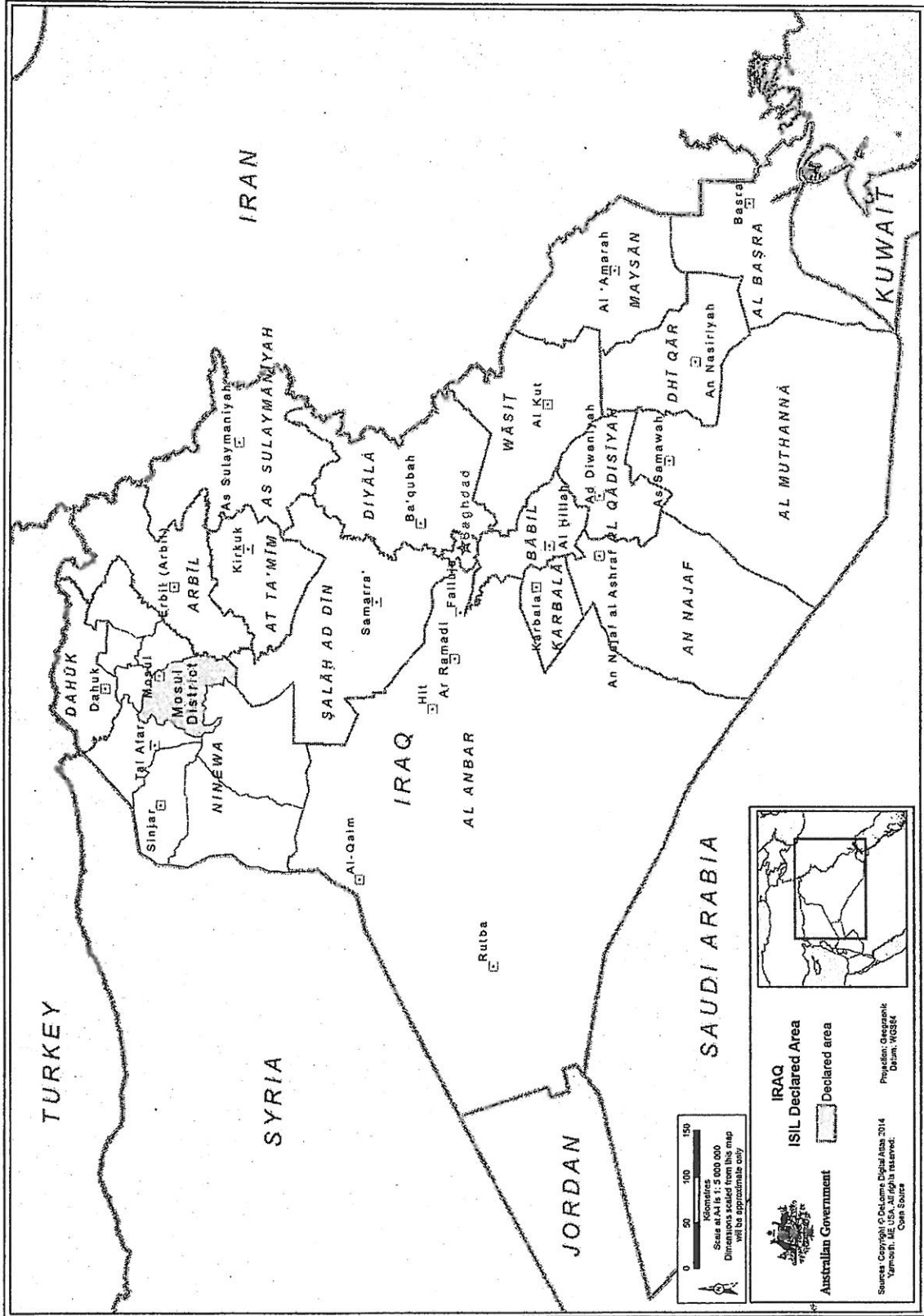
## 3 Authority

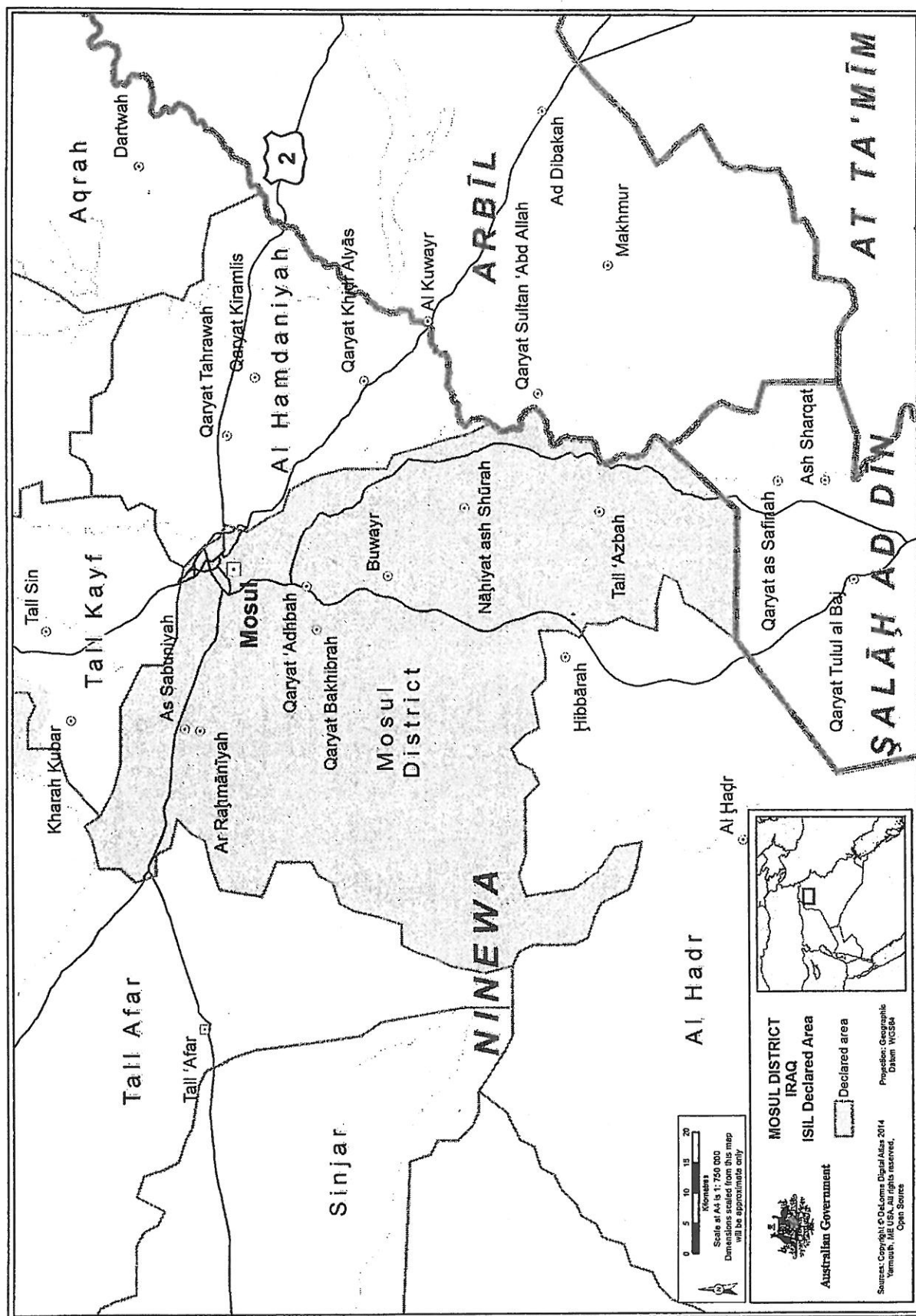
This declaration is made under subsection 119.3(1) of the *Criminal Code*.

**4 Declared area in a foreign country**

Mosul district, Ninewa province, Iraq as shown marked ‘Mosul District’ on the two maps attached hereto and marked ‘A’. Mosul district is located in the Ninewa province of Iraq and is bordered by the districts of Al Hadr, Tall Afar, Tall Kayf and Al Hamdaniyah in Ninewa province and the provinces of Arbil and Salah ad Din.

A—Mosul District, Ninewa Province Iraq





## EXPLANATORY STATEMENT

### **Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq**

The *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq* (the declaration) is made under subsection 119.3(1) of the *Criminal Code*.

#### **Background**

Division 119 of the *Criminal Code* contains Australia's foreign incursions and recruitment offences. Section 119.2 of the Code makes it an offence for a person to intentionally enter, or remain in, a declared area in a foreign country where the person is reckless as to whether the area is a declared area. The maximum penalty for this offence is 10 years' imprisonment.

Under section 119.3 of the *Criminal Code*, the Minister for Foreign Affairs may declare an area in a foreign country for the purposes of section 119.2 if the Minister is satisfied that a listed terrorist organisation is engaging in a hostile activity in that area. The Islamic State (also known as the Islamic State of Iraq and the Levant, or ISIL), which is a listed terrorist organisation under the *Criminal Code*, is engaging in a hostile activity in the district of Mosul in the Ninewa province of Iraq.

#### **Purpose**

The declaration makes it an offence under section 119.2 of the *Criminal Code* to enter, or remain in, Mosul district, Ninewa province in Iraq, except where the person has done so solely for a legitimate purpose or purposes.

#### **Explanation and effect of provisions**

##### **Section 1 - Name of Declaration**

Section 1 sets out the title of the declaration as the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq*.

##### **Section 2 – Commencement**

Section 2 provides that the declaration commences on the day after it is registered.

##### **Section 3 – Authority**

Section 3 notes the Minister for Foreign Affairs has the power to make the declaration under subsection 119.3(1) of the *Criminal Code*.

##### **Section 4 – Declared area in foreign country**

Section 4 provides that the area covered by the declaration is Mosul district, Ninewa province, Iraq. Section 4 attaches two maps (marked 'A') to show the geographical

area that the declaration covers. Mosul district is located in the Ninewa province of Iraq and is bordered by the districts of Al Hadr, Tall Afar, Tall Kayf and Al Hamdaniyah in Ninewa province and the provinces of Arbil and Salah ad Din.

### **Statement of Compatibility with Human Rights**

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed under the definition of 'human rights' in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The declaration is compatible with these human rights because it is a lawful, necessary and proportionate response to protect Australia's national security. The declaration, which is made under section 119.3 of the *Criminal Code*, will result in the offence under section 119.2 applying to Mosul district, Ninewa province, Iraq. The Minister for Foreign Affairs can make a declaration if the Minister is satisfied that a listed terrorist organisation is engaging in hostile activity in an area of a foreign country.

The Islamic State (also known as the Islamic State of Iraq and the Levant or ISIL) is a listed terrorist organisation under the *Criminal Code*. It operates across much of Iraq and Syria, but it has a significant and enduring presence in Mosul district, which is its main base for operations in Iraq. ISIL's activities, including in the district of Mosul, and calls by ISIL's leadership, have attracted thousands of foreign fighters, including Australians, who have travelled to Iraq to join ISIL and engage in hostile activity.

It is appropriate for the Minister to declare Mosul district in Ninewa province, Iraq under subsection 119.3(1) of the *Criminal Code* as ISIL is engaging in hostile activity in the area. The declaration promotes the safety of Australians, including those who might be seeking to travel to Mosul district, Ninewa province, Iraq and those who may be at risk of harm posed by persons returning from Mosul district, Ninewa province, Iraq. Consistent with subsection 119.3(2A) of the *Criminal Code*, the declaration does not cover an entire country.

As a result of the declaration, it will be a criminal offence under section 119.2 of the *Criminal Code* for a person to enter, or remain in, Mosul district, Ninewa province, Iraq, where the person is reckless as to whether the area has been declared. The Attorney-General's consent to prosecute will be required before a prosecution under section 119.2 can commence and the Commonwealth Director of Public Prosecutions is required to consider the public interest in line with their prosecutorial policy prior to the commencement of a prosecution.

The 'declared area offence' under section 119.2 addresses two pressing and substantial concerns. The first concern is that Australians who enter or remain in conflict areas put their own lives at risk; the Australian Security Intelligence Organisation has advised that at least 20 Australians have died in the Syria and Iraq conflicts in the past year. The second concern is that foreign conflicts provide a



significant opportunity for Australians to develop the necessary capability and ambition to undertake terrorist acts overseas and within Australia.

A person prosecuted for an offence under section 119.2 of the *Criminal Code* for entering or remaining in Mosul district, Ninewa province, Iraq will maintain the right to a fair trial and presumption of innocence in accordance with article 14 of the International Covenant on Civil and Political Rights (ICCPR). A defendant will bear no burden of proof unless they seek to raise facts constituting a defence that their presence in Mosul district was solely for a legitimate purpose or purposes. Should a defendant choose to rely on the exception at subsection 119.2(3), they bear an evidential burden to adduce or point to evidence that suggests a reasonable possibility that their travel to the district of Mosul in Ninewa province, Iraq was solely for a legitimate purpose or purposes. The prosecution retains the legal burden and must disprove any legitimate purpose defence raised beyond a reasonable doubt, in addition to proving the elements of the offence.

Subsection 119.3(7) of the *Criminal Code* provides for the review of the declaration by the Parliamentary Joint Committee on Intelligence and Security before the end of the disallowance period.

To the extent that the declaration may limit the right to freedom of movement under article 12 of the ICCPR the limitation is lawful and proportionate. The declaration does not remove the ability to enter or remain in Mosul district in the Ninewa province of Iraq for a legitimate purpose or purposes. A limitation can be justified if it is in the interest of national security. The risk of a successful terrorist attack occurring in Australia is high and the limitation imposed by the declaration is necessary to assist in the prevention of an attack on Australian soil by individuals who have gained terrorist capabilities by engaging in hostile activities with a listed terrorist organisation. This is particularly so given that ISIL is using Mosul district, Ninewa province, Iraq as a base of operations and Australians have travelled to Iraq and Syria to participate in the foreign conflict.

### Conclusion

The declaration is compatible with human rights because it is a lawful, necessary and proportionate response to protect Australia's national security.

## Consultation

Consultation on this declaration was undertaken with key stakeholders. Pursuant to section 17 of the *Legislative Instruments Act 2003*, the Minister for Foreign Affairs is satisfied that appropriate and reasonably practical consultation has occurred.

On 23 February 2015, the Prime Minister announced that the Government was considering declaring Mosul district in the Ninewa province of Iraq under section 119.3 of the *Criminal Code*. The announcement was widely reported in the media. Efforts were made to draw the announcement to the attention of people who might be affected by this Declaration, including:

- an announcement on the Smartraveller website
- an email to people registered for Living Safe Together updates
- an email to the Australian Council for International Development and International Development Contractors Group.

In addition to publicising the announcement, particular consultation was undertaken with:

- Attorney-General's Department
- Australian Customs and Border Protection Service
- Australian Crime Commission
- Australian Federal Police
- Australian Geospatial-Intelligence Organisation
- Australian Secret Intelligence Service
- Australian Security Intelligence Organisation
- Department of Defence
- Department of Foreign Affairs and Trade
- Department of Immigration and Border Protection
- Department of Prime Minister and Cabinet
- The Government of Iraq
- The Australian representative of the Kurdistan Regional Government
- A range of representatives of communities who might be affected by this Declaration

The Minister for Foreign Affairs has also arranged for the Leader of the Opposition in the House of Representatives to be briefed in relation to this declaration in accordance with subsection 119.3(3) of the *Criminal Code*.

## **Declaration of an area where the Islamic State of Iraq and the Levant is engaged in hostile activity under the Criminal Code**

Mosul District, Ninewa Province, Iraq

This statement is based on publicly available information about the areas where the proscribed terrorist group—the Islamic State of Iraq and the Levant (ISIL)—is engaged in hostile activity. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information.

### **Basis for declaring an area in a foreign country where a listed terrorist organisation is engaging in hostile activity**

Under section 119.3 of the Criminal Code, the Minister for Foreign Affairs may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2 should the minister be satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country.

Section 119.2 makes it an offence for a person to enter, or remain in, an area in a foreign country if the area is an area declared by the Minister for Foreign Affairs under section 119.3 — and when the person enters the area, or at any time when the person is in the area, the person is an Australian Citizen, or a resident of Australia, or a holder under the *Migration ACT 1958* of a visa or has voluntarily put himself or herself under the protection of Australia.

### **Background to this declaration**

#### *Proscription of the group engaged in hostile activity*

The group currently referred to as ISIL has been operating in Iraq under various names since 2003. It was first listed as a proscribed terrorist organisation under the Arabic name *Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn* in 2005. In November 2008, it was re-listed as al-Qa’ida in Iraq, and in December 2013 it was re-listed as the Islamic State of Iraq and the Levant (ISIL). The most recent re-listing of the group was on 11 July 2014 under the name Islamic State.

On 5 June 2014, ISIL launched a major offensive throughout northern Iraq and took control of Iraq’s second largest city, Mosul, in Ninewa Province.

ISIL governs the areas under its control with brutal tactics, including public executions and strict prohibitions on the freedom of Iraqis in the area. ISIL has conducted attacks against minority groups and destroyed numerous churches and Shia mosques throughout the area, and uses the province as a base for its attacks elsewhere in Iraq and Syria.

On 29 June 2014, the group proclaimed an Islamic caliphate in areas it controls in Iraq and Syria and changed its name to *Dawla al-Islamiya*, or the Islamic State.

#### *Geographic basis of the group’s activities*

Since January 2014, ISIL has focussed on capturing and consolidating control over large areas of Iraq. Although it has captured cities in other parts of Iraq, it has a significant and enduring presence in Mosul, which is its main base for operations in Iraq. Mosul has symbolic significance for the organisation. ISIL leader Abu Bakr al-Baghdadi’s first video appearance was a recording of a sermon he

delivered at a mosque in Mosul immediately following ISIL's declaration of a caliphate.

ISIL's activities in this area, and calls by ISIL's leadership, have attracted thousands of foreign fighters, including Australians, who have travelled to Iraq to join ISIL and engage in hostile activity. As the largest city in Iraq controlled by ISIL, Mosul plays a key role as a central location for foreign extremists – including Australians – to form networks and train.

### **Group's engagement in hostile activities within or from the declared area**

*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*

ISIL has sought to replace the Iraqi government in the areas listed through the conquest of territory and the declaration of a caliphate spanning the established Iraq/Syria border. It governs Mosul district by applying its rule over the population by force. It also uses this territory to launch attacks on other areas of Iraq through bombings, indirect fire and ground assaults, including with military equipment captured from the Iraqi and Syrian militaries.

In areas under its control, ISIL seeks to supplant government control over all official functions. This includes setting up courts and applying punishments for infractions against its own rules and controlling access to cities using checkpoints. ISIL collects taxes and provides basic social services to the population under its control, and has also announced that it will begin minting its own currency.

*The engagement, by that or any other group, in action that:*

- *falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and*
- *if engaged in Australia, would constitute a serious offence*

ISIL has proven resilient, having survived multiple coalition air strikes since late 2014 and its earlier near extinction at the hands of an international coalition that fought it for eight years. Despite recent military operations against it in both Iraq and Syria, it remains an ongoing threat and conducts daily attacks throughout its areas of operation in Iraq and Syria. In addition, the civilians under its control continue to be treated in a very brutal manner.

- 18 January 2015: ISIL's Information Office for the Mandate of Ninewa released footage of a series of executions, including two allegedly gay men being thrown from a building, a woman accused of adultery being stoned to death and the crucifixion of 17 young men.
- January 2015: ISIL publicly executed 13 teenage boys for watching a sports match in Mosul.
- 10 June 2014: After seizing control of the city of Mosul, ISIL executed around 600 inmates of Badush prison. Most were Shia, although some were Yazidi and Kurdish.

*Intimidating the public or a section of the public of that or any other foreign country*

ISIL uses terrorist attacks extensively against civilians in Iraq. This includes frequent mass casualty attacks in public places including marketplaces and cafes. It also

conducts mass executions, including beheadings, and publicises these activities, including through the dissemination of videos and magazines depicting these violent acts.

ISIL has made multiple statements threatening civilians in Iraq. It focuses its campaign of intimidation against Shia Muslims and religious and ethnic minorities, including Yazidis, Shabaks and Christians. ISIL has carried out mass executions and enslavement of these and other minorities.

ISIL has also produced numerous videos of beheadings featuring threatening statements. Five have featured American or British citizens, and have included statements intended to threaten or intimidate Western audiences. The group also conducts frequent public executions in cities it controls. On 21 October 2014, UN Assistant Secretary-General for Human Rights Ivan Simonovich stated that ISIL's ongoing attacks on Yazidis could be considered genocide.

- 24 November 2014: ISIL destroyed the St. George's Church in Mosul as part of its campaign of attacks against Shia, Yazidi and Christian religious sites in Ninewa Province.
- 22 September 2014: ISIL tortured and publicly executed a women's rights activist in Mosul.

*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)*

ISIL regularly conducts assassinations, executions and attacks targeting government officials, politicians, soldiers and police.

- 30 November 2014: ISIL executed three tribal chieftains in Mosul.
- 11 June 2014: ISIL seized the Turkish consulate in Mosul, taking 46 Turkish citizens—including the Consul-General—and three Iraqis hostage. The hostages were held until 20 September 2014.

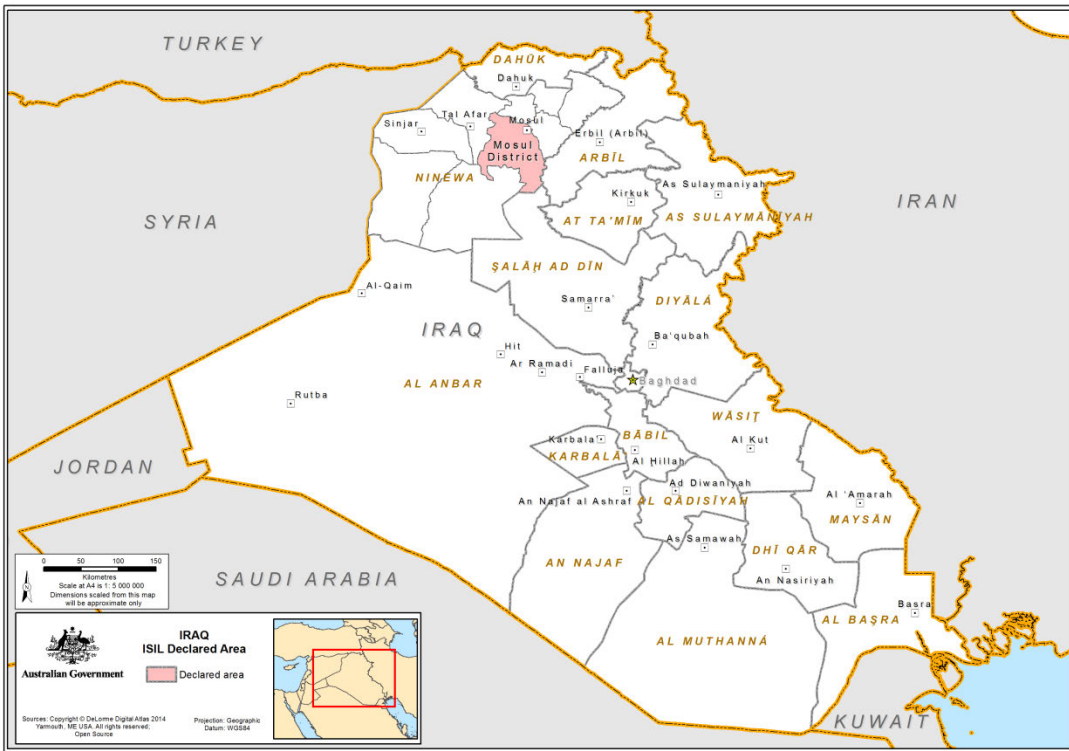
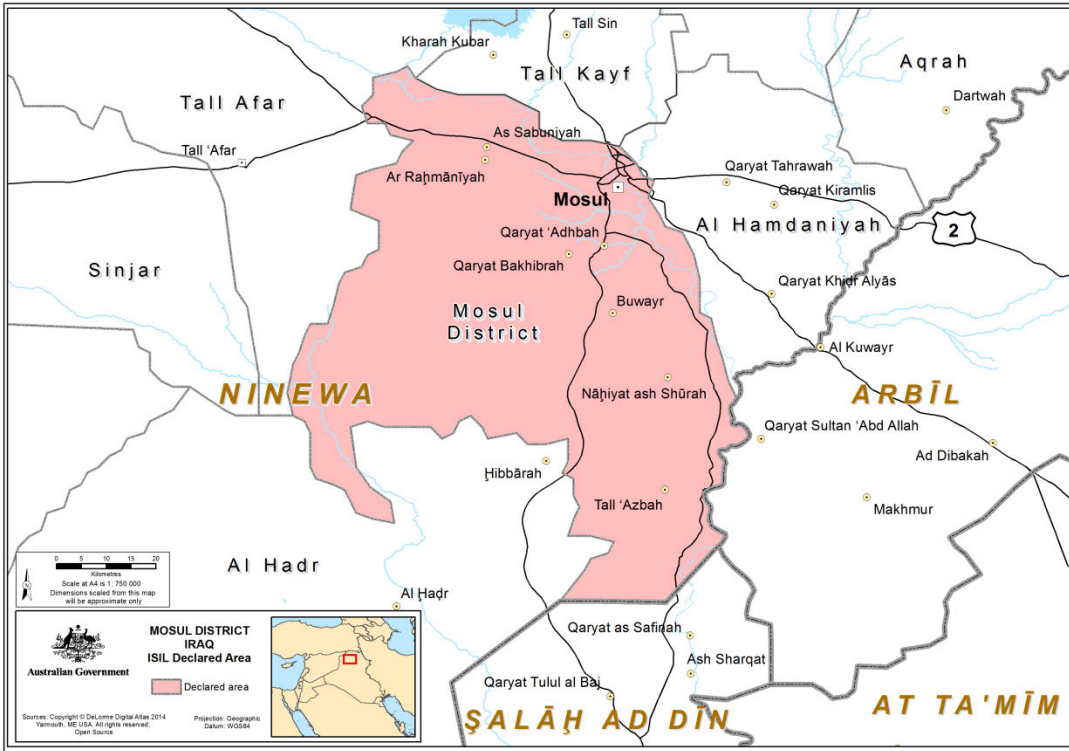
*Unlawfully destroying or damaging any real or personal property belonging to the government of that or any other foreign country (or of a part of that or any other foreign country)*

ISIL regularly destroys government property, both through its military campaign and the imposition of its religious and ideological beliefs on the populations that fall under its control.

- Since occupying areas of Ninewa Province in June 2014, ISIL has systematically destroyed historical and religious sites. This includes the bombing of the Tomb of Jonah near the city of Mosul on 24 July 2014, along with the destruction of numerous Shia mosques and shrines dedicated to Shia and Sufi religious figures.

### Maps of the declared area

Mosul district is the area outlined as 'Mosul District' in the maps below.



## **Conclusion**

On the basis of the above information, ASIO assesses that ISIL is engaged in hostile activities in Mosul District, Ninewa Province, Iraq.

This assessment is corroborated by information from reliable and credible intelligence sources.