



Australian Government

Australian Government response to the
Parliamentary Joint Committee on Intelligence and Security
report:

Review of 'Declared Area' Provisions:
Sections 119.2 and 119.3 of the Criminal Code

July 2021

Recommendation	Proposed Government response
<p><u>Recommendation 1</u> 2.44 The Committee recommends that section 119.2 and 119.3 of the Criminal Code Act 1995 be extended a further three years, with a new sunset date of 7 September 2024.</p>	<p>The Government supports this recommendation.</p>
<p><u>Recommendation 2</u> 2.45 The Committee recommends that the Criminal Code Act 1995 be amended to provide that the Parliamentary Joint Committee on Intelligence and Security may review the operation, effectiveness and proportionality of the ‘declared areas’ provisions prior to the new sunset date.</p>	<p>The Government supports this recommendation.</p>
<p><u>Recommendation 3</u> 2.48 The Committee recommends that, within 18 months of tabling this report, the Parliamentary Joint Committee on Intelligence and Security receive a briefing, from relevant government agencies on the use, proportionality and effectiveness of provisions 119.2 and 119.3 of the Criminal Code Act 1995.</p>	<p>The Government supports this recommendation.</p> <p>The Government would welcome the opportunity to provide further detail to the Committee on the use, proportionality and effectiveness of these provisions. Although COVID-19 travel restrictions currently limit the ability of foreign fighters to return to Australia, the provisions remain of ongoing utility given current uncertainties as to the threat environment.</p>
<p><u>Recommendation 4</u> 2.56 The Committee recommends that the Criminal Code Act 1995 be amended to allow Australian citizens to request an exemption from the Minister for Foreign Affairs to travel to a declared area for reasons not listed in section 119.2, but which are not otherwise illegitimate under Australian Law. The Committee recommends that the Minister for Foreign Affairs’ decision is not subject to merit review.</p>	<p>The Government does not support this recommendation.</p> <p>The Government considered a similar recommendation made by the Independent National Security Legislation Monitor following their 2017 review of these provisions. This recommendation was not accepted. The reasons for not accepting the 2017 recommendation remain applicable. The Government considers that a pre-authorisation scheme could not be effectively implemented and monitored, and it would be contrary to Government travel advice to issue a pre-authorisation.</p> <p>Government would have limited information to assess an application, including to consider whether the intended travel was for a genuine reason. The time and resources required to obtain information to assess an application would be significant, and would divert security and intelligence resources from other national security priorities.</p> <p>There would also be significant practical difficulties in monitoring and determining whether a person authorised to travel to a declared area had complied with any conditions to which their travel authorisation was subject.</p> <p>It is likely that any declared areas would also be recommended as ‘do not travel’ destinations, under Australian Government travel advice. This is because declared areas are, by their nature, dangerous conflict zones, and persons who travel there do so at significant risk to their personal safety. It would be</p>

	<p>contrary to Government travel advice to implement a pre-authorisation regime that would consider whether to permit Australians to travel to such a destination.</p> <p>Legislation currently provides for a range of exceptions including for bona fide visits to family members, journalism, a range of official duties, and the provision of humanitarian aid. There is provision to prescribe additional exceptions through regulations. The Government is not aware of any cases where a person has sought to travel to a declared area, for a reason otherwise legitimate under Australian law, and was unable to do so due to the current scope of the legitimate purpose exceptions.</p>
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