



Australian Government
Attorney-General's Department

August 2020

Parliamentary Joint Committee on Intelligence and Security

Review of Declared Area Provisions

Cross-agency submission

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Review of Declared Area Provisions

Introduction

The Attorney-General's Department (AGD), Department of Foreign Affairs and Trade (DFAT), Department of Home Affairs (Home Affairs), Australian Federal Police (AFP), Australian Security Intelligence Organisation (ASIO) and the Office of the Commonwealth Director of Public Prosecutions welcome the opportunity to make a cross-agency submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS), as part of its review of declared area provisions in the *Criminal Code Act 1995* (the Criminal Code).

The Government implemented the declared area provisions to facilitate the prosecution of foreign terrorist fighters and their associates. To date, the Government has declared two areas, al-Raqqa province in Syria and Mosul district, Ninewa Province in Iraq, which at the time (March 2015) were under the effective control of a listed terrorist organisation, Islamic State (IS). Although the Government has now revoked both declarations, following the territorial defeat of IS (November 2017 for al-Raqqa, December 2019 for Mosul), Australian law enforcement agencies continue to investigate Australians for previous offences under the provisions, demonstrating the enduring counter-terrorism value even of short-lived declarations.

The Australian Government's position remains that these provisions continue to be appropriate and proportionate in the context of the current threat environment. The declared area provisions form part of the suite of legislative measures designed to respond to the threat posed by returning Australian foreign fighters. They provide a tool to manage the threat to the Australian community posed by persons who have travelled to a declared area, and facilitate the ability of police to intervene and deter persons attempting to travel into a conflict zone where they may put their personal safety at risk without a legitimate reason, or where they may engage in hostile activity with a terrorist organisation.

This submission provides an overview of the current environment and why the declared area provisions continue to be appropriate in the context of the continuing terrorist threat within Australia and risk of Australians travelling overseas to join extremist groups. It also provides a history of the declared area provisions including previous reviews and how they have been used. The AFP will also provide a separate, operationally-focused submission.

Context

Current environment

Terrorism in Australia

The principal terrorist threat in Australia is from Sunni Islamist extremists, inspired, directed or encouraged by extremist groups overseas. IS continues to produce and disseminate propaganda encouraging attacks in the West, including Australia. Islamist extremists here continue to consume its messages, and draw from IS ideologies to justify violence. As a result, we expect to see further IS-inspired attack planning in Australia. The threat posed by al-Qa'ida and its affiliated groups also remains. Although al-Qa'ida has faced sustained counter-terrorism pressure overseas, it continues to pursue its long-term goal of attacking the West and establishing a transnational caliphate.

The threat from the extreme right-wing in Australia has increased in recent years, and we continue to see Australians adopting extreme right-wing ideologies. This threat is not new, but current extreme right-wing

networks, many of which are transnational, are better organised and more sophisticated than their predecessors.

Travel to join extremist groups overseas

Since 2012, around 230 Australians (or former Australians) have travelled to Syria or Iraq to fight with or support groups involved in the conflict. Around 80 remain in the conflict zone, although a number are in internally displaced person camps or otherwise detained. Around 120 Australians (or former Australians) who have travelled to Syria or Iraq are believed to be deceased. Around 45 people have returned to Australia after travelling to Syria or Iraq and joining groups involved in the conflict. However, the vast majority of these returned before 2016. Some of these returnees remain of ongoing security relevance.

Although COVID-19 travel restrictions currently limit opportunities to travel, before they were put in place a small number of people who aspired to travel overseas to participate in politically motivated violence were identified, even after the collapse of IS' territorial caliphate. This was not a uniquely Islamist extremist phenomenon—in early 2020, an Australian right-wing extremist was prevented from travelling to fight overseas.

The key drivers and enablers of global terrorism are unlikely to change significantly in the next year, but geopolitical volatility – and the impacts of COVID-19 on vulnerable populations and on the counter terrorism capacity of affected governments – will affect the location and number of environments in which terrorism thrives, and which are most attractive to foreign fighters. New permissive environments may emerge. However, we are unlikely to see the number of Australians who previously travelled to the Syria/Iraq conflict zone replicated in the foreseeable future. Not all of the characteristics that drew international recruits—including but not limited to sophisticated and extensive facilitation networks, relatively easy physical access and an effective recruitment narrative—may be present in future conflict zones.

Necessity of the provisions in strategic context

Despite the defeat of the IS territorial caliphate in Syria and Iraq, foreign terrorist fighters present an ongoing risk to the safety of the Australian community. Australians currently or previously in the conflict zone may seek to return to Australia either directly or by transiting through third countries. These individuals may return with enhanced capabilities which could be used to facilitate or support a terrorist act in Australia.

The Criminal Code contains a range of offences which are a critical component of Australia's response to threatened or actual terrorist acts. The section 119.2 offence allows for the prosecution of foreign terrorist fighters and their associates on their return to Australia where it can be proven the person was in a specified region known to be under the effective control of a terrorist organisation without a legitimate reason. It remains a useful, appropriately adapted tool for the prosecution of foreign terrorist fighters and their associates in exceptional circumstances, particularly in circumstances where there are challenges in collecting evidence relating to intention elements of other relevant offences from other jurisdictions, including conflict zones. The limited use of the section 119.2 offence to date is indicative of its exceptional nature (as it only applies to areas declared by the Minister for Foreign Affairs).

The revocation of the al-Raqqa declaration in 2017 and the revocation of the Mosul declaration in 2019 accord with the policy intention that these provisions apply only in extraordinary circumstances. No declarations under section 119.3 are currently in effect. Although the section 119.2 offence will continue to apply to conduct which occurred in either al-Raqqa or Mosul while the respective declarations were in place, there is a reasonable likelihood that further declarations may become operationally necessary. Security and

law enforcement agencies continue to monitor global developments to assess the legal and operational grounds for any future declarations.

The declared area provisions also continue to serve an important purpose in deterring Australians from travelling to areas where listed terrorist organisations are engaged in hostile activities, unless they have a legitimate purpose to do so. This has the dual purpose of both preventing Australians from putting their safety at risk, and preventing them from providing support to or engaging in hostilities with a listed terrorist organisation. The offence also helps protect Australians from persons who might return from a declared area with enhanced capabilities which could be employed to facilitate terrorist or other acts in Australia.

The operation of these provisions is balanced by a number of factors. The legitimate purpose exceptions in subsection 119.2(3) ensure that the declared area offence is appropriately targeted. When deciding whether to declare an area, the Minister for Foreign Affairs considers a range of legislative and non-legislative factors, including whether the declaration would have any implications for international relations. As far as the declared area provisions limit the rights of freedom of movement and association, this remains necessary and proportionate in the interests of national security and for the protection of the Australian community. The legitimate purpose exceptions in subsection 119.2(3) reduce the extent to which rights to freedom of movement and association are limited by the provisions, with flexibility to prescribe additional legitimate purpose exceptions in the regulations if required. The regular review of the use of declared area provisions by both the Independent National Security Legislation Monitor (INSLM) and PJCIS (see **Attachment A and B**) is another measure that supports judicious use of these provisions and compliance with Australia's international obligations and constitutional arrangements.

Other countries' approach to declared areas

Both the UK and Denmark have similar offences to Australia's declared area provisions.

The UK offence is similar in that it applies to UK nationals and residents, provides for exemptions to the offence, and no assessment is made until after a person has travelled to the area.

The Danish offence applies to citizens and residents of Denmark, and provides that certain travel (connected with public service/duties) is not an offence. It takes a different approach in providing for persons to apply for authorisation to travel to a declared area before they travel. Further information is at **Attachment C**.

Overview of declared area provisions

On 30 October 2014, the Parliament passed the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill, which then received the Royal Assent on 3 November 2014. Among other things, the Bill amended the Criminal Code to introduce new Part 5.5 Foreign incursions and recruitment, which replaced the now repealed *Crimes (Foreign Incursions and Recruitment) Act 1978*. The new Part includes the declared area provisions in sections 119.2 and 119.3, which commenced 1 December 2014.

Section 119.2 contains the offence of entering or remaining in an area in a foreign country, where the area has been declared by the Minister for Foreign Affairs (a 'declared area'). A person commits this offence if:

- (a) the person enters, or remains in, an area in a foreign country; and
- (b) the area is an area declared by the Foreign Affairs Minister under section 119.3; and
- (c) when the person enters the area, or at any time when the person is in the area, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or

- (iii) is a holder under the *Migration Act 1958* of a visa; or
- (iv) has voluntarily put himself or herself under the protection of Australia.

The offence carries a maximum penalty of 10 years' imprisonment.

The offence does not prevent a person from travelling overseas, including to a declared area, for a legitimate purposes. Subsection 119.2(3) provides a number of exceptions where a person enters, or remains in, the area solely for one or more of the following purposes:

- (a) providing aid of a humanitarian nature;
- (b) satisfying an obligation to appear before a court or other body exercising judicial power;
- (c) performing an official duty for the Commonwealth, a State or a Territory;
- (d) performing an official duty for the government of a foreign country or the government of part of a foreign country (including service in the armed forces of the government of a foreign country), where that performance would not be a violation of the law of the Commonwealth, a State or a Territory;
- (e) performing an official duty for:
 - (i) the United Nations, or an agency of the United Nations; or
 - (ii) the International Committee of the Red Cross;
- (f) making a news report of events in the area, where the person is working in a professional capacity as a journalist or is assisting another person working in a professional capacity as a journalist;
- (g) making a bona fide visit to a family member;
- (h) any other purpose prescribed by the regulations.

Subsection 119.2(4) provides additional exceptions for serving with the armed forces of the government of a foreign country or any other armed force if a relevant declaration covers the person and circumstances of that service.

The person bears an evidential burden to demonstrate this defence on the balance of probabilities. Consistent with the normal rules for criminal prosecutions, if the person discharges that evidential burden the prosecution is then required to prove beyond reasonable doubt that the person was not in the declared area solely for that purpose(s).

Section 119.3 authorises the Minister for Foreign Affairs to declare (by legislative instrument) an area in a foreign country for the purposes of section 119.2 if satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country (and having first arranged for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed declaration). A declaration may cover areas in two or more foreign countries if one or more listed terrorist organisations are engaging in a hostile activity in each of those areas, but it cannot cover an entire country.

A declaration ceases to have effect on the third anniversary of the day on which it takes effect or when revoked by the Minister for Foreign Affairs (as declarations are legislative instruments, they may also be disallowed by either House of Parliament in accordance with section 42 of the *Legislation Act 2003*). The Minister must revoke a declaration if he or she is no longer satisfied that a listed terrorist organisation is engaging in a hostile activity in the area; but the Minister may also revoke a declaration if he or she considers it necessary or desirable to do so. The Minister may make new declarations in relation to areas previously subject to declarations that have either expired (or are about to expire) or been revoked, subject to meeting the conditions in section 119.3.

Once the Minister has made a declaration, there are various options available to review it. For example, the Minister for Home Affairs or the Minister for Foreign Affairs may direct agencies to review the status of a 'declared area' at any time. This includes a consideration of whether a declared area continues to meet the legislative test for declaration and/or whether changes in non-legislative or other factors make it necessary or desirable to revoke the declaration. Judicial review of the legality of a decision to declare an area is available in the courts under section 75(v) of the Constitution and section 39B of the *Judiciary Act 1903*. In addition, the PJCIS may at any time review a declaration and report their comments and recommendations to each House of the Parliament (including before the end of the applicable disallowance period for that House).

In addition to the exceptions to criminal liability provided for by Division 119, Part 2.3 of the Criminal Code sets out a range of other circumstances in which there will be no criminal responsibility, including where, for example, an accused lacks capacity or carries out the conduct constituting the offence in response to a sudden or extraordinary emergency.

Section 119.11 provides that proceedings for the commitment of a person for trial for an offence against Division 119 must not be instituted without the written consent of the Attorney-General.

2018 Amendment

The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 amended the Criminal Code and the *Intelligence Services Act 2001* to:

- extend the operation of declared area offences for three further years. Following this amendment, the provisions are now due to sunset on 7 September 2021. This implemented Recommendation 1 of the PJCIS Declared Areas Report (see 'Reviews of declared area provisions' below);
- create an exception to the declared areas offence for individuals performing an official duty for the International Committee of the Red Cross;
- enable the Minister for Foreign Affairs to revoke a declaration of a declared area prior to the expiry of the declaration;
- enable the PJCIS to review a declaration of a declared area at any time while it is in effect and to table a report in both Houses of Parliament following its review;
- require the PJCIS to review the preventative detention order regime, declared areas provisions and the stop, search and seize powers ahead of their sunset date.

Declared areas

Although the decision to declare areas for the purposes of section 119.2 rests with the Minister for Foreign Affairs, the provision of advice to the Minister is a whole-of-government responsibility. The Counter-Terrorism Coordination Centre (CTCC) within the Department of Home Affairs coordinates these arrangements, which are subject to scrutiny by senior officials across government.

The CTCC coordinates input from key agencies, including the AFP, the National Intelligence Community, Home Affairs, DFAT, AGD, and the Departments of Defence and the Prime Minister and Cabinet. ASIO generates a Statement of Reasons (SOR) nominating an area for declaration. The CTCC ensures cross-agency support for the SOR before submitting the proposal to the Minister for Home Affairs, who decides whether to submit the proposal to the Minister for Foreign Affairs to consider making the relevant declaration.

These arrangements ensure both that proposals for declaration directly support national security and law enforcement interests and that the decision to declare an area takes into account Australia's international relations and obligations. Agencies are currently working to update the formal protocol for declaring areas in foreign countries.

In March 2015, the Minister for Foreign Affairs made declarations under section 119.3 of the Criminal Code in respect of al-Raqqa province in Syria and Mosul district, Ninewa Province in Iraq. The Minister for Foreign Affairs revoked the declaration in respect of al-Raqqa on 27 November 2017. The Minister renewed the declaration for Mosul district on 2 March 2018, before finally revoking it on 19 December 2019.

There are currently no declared areas.

DFAT is not aware of any adverse impact on Australia's international relations following the declaration or revocation of these areas under section 119.3.

In DFAT's experience, for the duration of the above declarations, the exceptions in section 119.2 proved sufficient to allow the Government's exercise of its functions, including the delivery of humanitarian assistance in Iraq and in Syria.

Use of the declared areas offence

In December 2017, the AFP charged a Sydney man with one count of engaging in hostile activity in a foreign country and one count of entering or remaining in declared area. The AFP alleged that he intentionally entered and remained in al-Raqqa province in March 2015.

The man pled guilty to the offence of engaging in hostile activity in foreign country, contrary to subsection 119.1(2) of the Criminal Code. In February 2020, the court considered issues of totality, accumulation and concurrence in exercising sentencing discretion. As such, the Court determined that the man had been present in al-Raqqa and therefore committed the declared area offence when applying a sentence of three years and eight months imprisonment for the foreign incursions offence.

The declared area offence remains relevant to investigations where no additional offences are able to be proven, noting that as at 1 July 2020, the AFP has 22 outstanding arrest warrants that include a charge of entering or remaining in a declared area.

Reviews of declared area provisions

INSLM review

As required under subsection 6(1B) of the *Independent National Security Legislation Monitor Act 2010* (INSLM Act), the then INSLM, Dr James Renwick SC, completed a review of sections 119.2 and 119.3 of the Criminal Code and presented a report to the Prime Minister on 7 September 2017.

In conducting the review, the INSLM held a public hearing and held private consultations with the AGD, AFP, ASIO, and the CDPP. The INSLM also sought views from experts in terrorism and law enforcement, and invited and received 14 submissions from Government, academia, peak bodies and other interested parties, including the Law Council of Australia, Australian Strategic Policy Institute and the Australian Human Rights Commission.

The report considered Australia's international obligations and constitutional arrangements, and the use of declared area provisions. The four broad issues considered were:

- the repeal (or sunset) of s119.2
- amendments to the legitimate purpose exception in s119.2(3)
- the sentencing of persons convicted of the declared area offence
- an increased role for the PJCIS.

The INSLM concluded that the declared area provisions were necessary, proportionate to the current threats of terrorism and to national security, contained appropriate safeguards for protecting the rights of individuals, and were consistent with Australia's human rights, counter-terrorism and international security obligations, and with intergovernmental agreements within Australia.

The INSLM made two principal recommendations to improve the operation of the declared areas provisions:

- that declarations of declared areas should be subject to periodic review by the PJCIS at its discretion. Government supported this recommendation.
- that an amendment should be made introducing a Ministerial pre-authorisation process for individuals to enter and remain in a declared area. Government did not support this recommendation.

Subject to these recommendations being adopted, the INSLM recommended that the declared areas provisions be extended for a further period of five years. A summary of the INSLM's recommendations and the government response to those recommendations can be found at **Attachment A**.

PJCIS review

On 9 August 2017 the PJCIS commenced an inquiry into the declared area provisions under sections 119.2 and 119.3 of the Criminal Code, reviewing their operation, effectiveness, and implications. Under paragraph 29(1)(bb) of the *Intelligence Services Act 2001*, the PJCIS was required to complete its review by 7 March 2018. The PJCIS tabled its report on 1 March 2018.

The PJCIS held public and private hearings and received private briefings from the INSLM, AGD, AFP, and ASIO. The Committee also received 11 written submissions and three supplementary submissions from Government, academia, and other stakeholders.

In their review, the PJCIS took into account the findings and recommendations of the INSLM, and considered in particular the following matters:

- the purpose of, and the necessity for, the provisions;
- the operation and effectiveness of the provisions, with reference to their usage to date and their deterrent effect;
- matters concerning the offence in section 119.2 of the Criminal Code, including its implications for individual liberties and potential amendments put forward by participants in the review; and
- matters concerning the process for the making and revocation of declarations in section 119.3 of the Criminal Code, including potential amendments aimed at improving safeguards and oversight.

The PJCIS concluded that the declared area offence remained necessary, as it served a dual purpose of deterring persons from entering dangerous and hostile areas, and enabled strong action to be taken against such persons who return in order to appropriately manage the threat to the Australian community. The PJCIS also considered it reasonable that persons entering, or remaining in, declared areas, be required to justify

their presence, as the range of legitimate reasons for individuals to be in terrorist-controlled areas is extremely limited.

The PJCIS recommended that the declared area provisions be amended to make explicit that humanitarian work beyond direct acts would be considered a 'legitimate purpose' for entering or remaining in a declared area, that key non-legislative factors considered by ASIO in their deliberations on declared areas be made publicly available, and that the Minister for Foreign Affairs be empowered to be able to revoke a declaration at any time. They also recommended that the PJCIS be required to commence a further review of declared areas prior to the provisions' sunset date, and supported the INSLM's recommendation that the PJCIS be empowered to review and report back to Parliament on any declared area declaration at their discretion. Government supported, or supported in principle all recommendations.

The PJCIS endorsed the INSLM's 2017 recommendations with one exception. The PJCIS recommended a three year sunset period, as opposed to the five year period recommended by the INSLM. The PJCIS also made additional recommendations that key non-legislative factors considered by ASIO be made publicly available, and that humanitarian work beyond direct aid be considered a legitimate purpose. A complete summary of the PJCIS' recommendations, government response, and action taken on those recommendations can be found at **Attachment B**.

Conclusion

The declared area offence remains necessary and proportionate in the current threat environment. It provides a tool to manage the threat to the Australian community that is posed by persons who have travelled to a declared area where listed terrorist organisations are engaged in hostile activity. Such persons could return with enhanced capabilities that could be employed to facilitate terrorist or other acts in Australia. It also provides a tool to deter Australians from travelling to these areas where their personal safety is put at risk, unless they have a legitimate purpose to do so.

Attachment A: INSLM review recommendations and government response

INSLM Review of Sections 119.2 and 119.3 of the Criminal Code: Declared Areas		
Recommendation	Government Response	Action taken
<p>Provided the review provision is amended as recommended, the laws should be continued for a further period of five years.</p>	<p>The Government supports the continuation of the provisions for a further three years, in accordance with the PJCIS recommendation.</p>	<p>The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 commenced on 25 August 2018. It provided for declared area provisions in sections 119.2 and 119.3 of the Criminal Code to be extended for a further three years from its current sunset date of 7 September 2018.</p>
<p>The provisions should be continued, subject to any declaration being reviewable by the PJCIS at their discretion at any time prior to the declaration ceasing to have effect or being revoked by the Minister. Increasing the role of the PJCIS will assist in ensuring that the process for declaring areas under s 119.3 is judiciously applied and the situation in declared areas is monitored closely by the government with a view to the possible cessation of a declaration.</p>	<p>The Government supports this recommendation.</p> <p>Australian intelligence agencies continuously monitor the necessity for a declaration. The Government welcomes ongoing engagement with the Committee to ensure any review it undertakes would be timed to maximise its value and complement parallel review processes.</p>	<p>The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 commenced on 25 August 2018. New subsection 119.3(7) provides for the PJCIS to review a declaration at any time during which the declaration is in effect, and to table a report in the Houses of Parliament following its review.</p>
<p>Consideration should be given to making a regulation under, or an amendment to, these provisions to allow an individual to seek permission from the Foreign Affairs Minister (following advice from the Attorney-General) to enter into and remain in a declared area for such period and on such conditions as the Minister may choose to impose.</p>	<p>The Government does not support this recommendation.</p> <p>The Government considers that an authorisation scheme could not be effectively implemented and monitored. There may be little information at the Government's disposal to assist it to assess whether an applicant would be travelling for a bona fide reason, and to gather such information would require diversion of significant security and intelligence resources from other priorities to support such assessments.</p>	<p>NA</p>

	<p>Declared areas are also 'do not travel' destinations. Permitting travel to a 'do not travel' destination would be contrary to the Australian Government's own travel advice and there would be significant practical difficulty in monitoring compliance with any conditions imposed on an authorisation for travel to conflict zones.</p>	
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Attachment B: PJCIS review recommendations and government response

Parliamentary Joint Committee on Intelligence and Security review of the 'declared areas provisions'		
Recommendation	Government Response	Action taken
<p>Recommendation 1: The Committee recommends that sections 119.2 and 119.3 of the Criminal Code, which establish the 'declared area' provisions, be continued for a further period of three years.</p> <p>The Committee also recommends that the <i>Intelligence Services Act 2001</i> be amended to require the Committee to commence a further review into the operation, effectiveness and implications of the provisions prior to the sunset date.</p>	<p>The Government supports this recommendation.</p>	<p>The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 commenced on 25 August 2018. It provided for declared area provisions in sections 119.2 and 119.3 of the Criminal Code to be extended for a further three years from its current sunset date of 7 September 2018.</p> <p>The Bill also amended the <i>Intelligence Services Act 2001</i> to require the PJCIS to review the operation, effectiveness and implications of the declared area provisions in the Criminal Code ahead of their future sunset date.</p>
<p>Recommendation 2: The Committee recommends that section 119.2(3) of the Criminal Code be amended to make clear that humanitarian work beyond direct aid, including compliance training on the laws of armed conflict, is considered to be a 'legitimate purpose' for entering, or remaining in, a declared area.</p>	<p>The Government supports this recommendation in principle.</p> <p>The purpose of the declared area offence is to discourage individuals from entering or remaining in areas, without a legitimate purpose, where listed terrorist organisations are known to be engaging in hostile activities. The legitimate purposes are intentionally narrowly framed to ensure they do not undermine the effectiveness of the offence.</p> <p>The Government considers that the performance of official duties of the International Committee of the Red Cross (ICRC) should be recognised as a 'legitimate purpose' for entering, or remaining in, a declared area. The ICRC has specific standing in international law and its role includes the provision of training on the laws of armed conduct.</p>	<p>The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 commenced on 25 August 2018. It introduced an additional legitimate purpose for travel to conflict zones, being for the purpose of performing official duties for the ICRC.</p>

<p>Recommendation 3: The Committee recommends that the key non-legislative factors that are considered by ASIO to guide and prioritise the selection of areas in foreign countries for consideration be specifically addressed in the unclassified Statement of Reasons that is provided to the Minister and made publicly available in relation to each declared area. These factors include:</p> <ul style="list-style-type: none"> • links to Australia and Australians • threats to Australian interests including the role of a particular area in the radicalisation of Australians and likely repercussions in Australia • the enduring nature of the listed terrorist organisation’s hostile activity in the area • the operational benefit of declaring the area • factors relevant to Australia’s international relations, including bilateral relations with countries including those in which an area may be declared, and engagement with international organisations such as the United Nations • the listed terrorist organisation’s ideology • links to other terrorist groups, and • engagement in peace or mediation processes. 	<p>The Government supports this recommendation in principle.</p> <p>The Government supports the provision of comprehensive, publicly available information about the factors considered by the Government when determining whether to declare an area in a foreign country.</p> <p>However, some of the factors listed in Recommendation 3 would not be appropriate for inclusion in a publicly available, unclassified statement of reasons due to their potential impact on Australia’s foreign relations and reference to sensitive nation security considerations. The Government will review the unclassified Statement of Reasons and the Protocol to determine what additional information could be included in it without compromising national security interest or foreign relations.</p>	<p>In progress: relevant agencies are considering what additional information could be included in a publicly available Statement of Reasons and Protocol</p>
<p>Recommendation 4: The Committee recommends that section 119.3 of the Criminal Code be amended to provide that the Minister for Foreign Affairs may revoke a declaration at any time. This should include circumstances where the legislative test for the declaration continues to be met, but where changes in non-legislative factors suggest that the declaration is no longer necessary or desirable, taking into account security advice from relevant agencies.</p>	<p>The Government supports this recommendation.</p>	<p>The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 commenced on 25 August 2018. New subsection 119.3(5A) provides for the Minister for Foreign Affairs to revoke a declaration if they consider it necessary or desirable.</p>

<p>Recommendation 5: The Committee recommends that the Government implement the Independent National Security Legislation Monitor’s recommendation to empower the Committee to review and report back to the Parliament on any declaration made under section 119.3 of the Criminal Code at its discretion ‘at any time prior to the declaration ceasing to have effect or being revoked by the Minister’.</p>	<p>The Government supports this recommendation.</p> <p>Australian intelligence agencies continuously monitor the necessity for a declaration. The Government welcomes ongoing engagement with the Committee to ensure any review it undertakes would be timed to maximise its value and complement parallel review processes.</p>	<p>The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 commenced on 25 August 2018. New section 119.3(7) provides for the PJCIS to review a declaration at any time during which the declaration is in effect, and to table a report in the Houses of Parliament following its review.</p>
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Attachment C: Similar provisions in other countries

United Kingdom

The UK's designated area provisions came into effect from 12 April 2019. A new power in the *Terrorism Act 2000* allows the Secretary of State to designate an area outside the UK that is associated with a risk of terrorism. This makes it an offence for UK nationals or residents to enter or remain in the area without a reasonable excuse, or for a non-exempt purpose.

A person does not commit the offence if they entered or remained in the designated area for an exempt purpose, including providing humanitarian aid, satisfying an obligation to appear before a court, working for the government of a country other than the UK (including service in the armed forces), working for the UN or as a journalist, visiting a terminally ill relative, attending a relative's funeral, and providing care for a relative who is unable to care for themselves.

The provisions are not retrospective, therefore will have greater effect in prosecuting individuals involved in future, rather than current conflicts.

Denmark

Section 114j of the Danish Criminal Code prohibits Danish citizens and residents from being present in conflict areas without express prior authorisation from Danish authorities.

On 27 August 2019, the Danish Supreme Court affirmed an appellate court decision sentencing a Danish citizen for unlawful presence in al-Raqqa, Syria. That the individual in question was fighting against Islamic State at the time was not considered an extenuating circumstance.

Canada

Canada does not have declared area provisions similar to Australia. A 2013 amendment to the Combatting Terrorism Act made it a criminal offence for a person to leave or attempt to leave Canada for the purpose of participating in the activity of a terrorist group. Canada's Foreign Enlistment Act also prohibits enlisting, leaving Canada, or intending to leave Canada to enlist with a foreign state at war with a friendly state.

New Zealand

New Zealand does not have declared area provisions similar to Australia. Terrorism offences are contained in the *Terrorism Suppression Act 2002* and *Crimes Act 1961*. These include offences for committing terrorist acts, involvement with a designated terrorist entity, financing of terrorism, recruiting members of terrorist groups and harbouring or concealing terrorists.

United States

The US does not have declared area provisions similar to Australia. The *US Code*, *Patriot Act 2001* and *Homeland Security Act 2002* include provisions to investigate, conduct surveillance, and disrupt terrorist activities, and include a terrorist offence.