



29 April 2024

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary

Review of the Counter-Terrorism Legislation Amendment (Declared Areas) Bill 2024

The Australian Human Rights Commission (Commission) welcomes the opportunity to make a submission in relation to the Counter-Terrorism Legislation Amendment (Declared Areas) Bill 2024 (Cth) (Declared Areas Bill).

The Commission notes that the effect of the Declared Areas Bill would be to:

1. extend for a further three years the offence contained within section 119.2 of the *Criminal Code Act 1995* (Cth) (Criminal Code), to 7 September 2027
2. insert a sunset provision on the power for the Minister for Foreign Affairs to declare an area for the purpose of the offence in section 119.2 of the Criminal Code, which would also cease to have effect on 7 September 2027
3. amend the *Intelligence Services Act 2001* (Cth) to repeal paragraph 29(1)(bbaa).

The Commission has previously outlined, including to this Committee, its concerns regarding the declared areas provisions. The Commission remains of the view that the provisions to be extended by the Declared Areas Bill are

inconsistent with human rights, and are not necessary or proportionate to achieving a legitimate objective.

The behaviour sought to be captured by the provisions is not ‘inherently criminal’, yet attracts a high penalty. The onus of proof is on the accused to establish that the purpose of their travel is legitimate, and the Commission has concerns about the limited scope for permissible reasons for travel. In its submission to the Committee in 2021, the Attorney-General’s Department said that it would ‘continue to consider the need for additional exceptions at such time when it becomes apparent that there are further legitimate reasons for travel to a declared area, that are not addressed by the existing exceptions’. The Commission is concerned that such an approach allows Australian citizens and residents to become ‘test cases’ for the legitimacy of reasons for travel by exposing them to prosecution.

The Commission is also concerned that the declaration of an area by the Foreign Affairs Minister under s 119.3 of the Criminal Code may be made only on the basis of their satisfaction that a terrorist organisation is engaging in a hostile activity in that area of the country. For many parts of the world, this is a low bar to be met, and so has the potential to ‘cast the net’ too widely.

The Commission notes that the PJCIS, in its last review, recommended that the Criminal Code be amended to allow a person to request an exemption from the Minister for Foreign Affairs to travel to a declared area. This recommendation has not been adopted in the Declared Areas Bill.

These concerns remain the view of the Commission, and the recommendations made most recently in the submission dated 28 August 2020, when the declared areas provisions were last extended, remain valid.

These recommendations are as follows:

Recommendation 1

The declared areas provisions should be repealed as they are not justified as necessary and proportionate to achieving a legitimate aim.

Recommendation 2

In the event that recommendation 1 is not accepted, s 119.3 of the Criminal Code should be amended so that the Foreign Affairs Minister may declare an

area only if the Minister is satisfied that a listed terrorist organisation is engaging in a hostile activity to a significant degree in that area.

Recommendation 3

In the event that recommendation 1 is not accepted, the exception contained in s 119.2(3) of the Criminal Code should be amended so that s 119.2(1) does not apply to a person if that person enters, or remains in, an area solely for a purpose or purposes not connected with engaging in hostile activities.

Recommendation 4

In the event that recommendation 3 is not accepted:

- a) Detailed consideration be given to expanding the list of legitimate reason for travel to declared areas in s 119.2(3) of the Criminal Code to include, for instance, visiting friends, transacting business, retrieving personal property and attending to personal or financial affairs. This list should be made as comprehensive as possible
- b) Section 119.2 of the Criminal Code be amended so that it is a defence to a charge of entering or remaining in a declared area if a person establishes they were in a country for a purpose other than engaging in a hostile activity.

Recommendation 5

In the event that recommendation 1 is not accepted, as previously recommended by the PJCIS, the Criminal Code 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.

Accordingly, the Commission attaches for the Committee's consideration, copies of the following submissions:

- Review of the 'declared areas' provisions, submission to the PJCIS, dated 28 August 2020
 - Review of the 'declared areas' provisions, submission to the PJCIS, dated 3 November 2017
 - Independent National Security Legislation Monitor (INSLM) Statutory Deadline Review, submission to the Acting INSLM, dated 15 May 2017.
-

The Commission would be pleased to provide any additional information or explanation to the Committee if requested.

Yours sincerely

A large black rectangular redaction box covering the signature of Emeritus Professor Rosalind Croucher.

Emeritus Professor Rosalind Croucher AM FAAL
President

A black rectangular redaction box covering the signature of Lorraine Finlay.

Lorraine Finlay
Australian Human Rights Commissioner