



Attorney-General

Reference: MS24-001030

Mr Peter Khalil MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

By email: pjicis@aph.gov.au

Dear Chair

I am writing to advise you that the Government provided its response to the Parliamentary Joint Committee on Intelligence and Security's *Advisory Report on the Counter-Terrorism Legislation Amendment (Declared Areas) Bill 2024* during debate in the House of Representatives on 12 August 2024. The Government has agreed, or agreed in principle, with all of the Committee's recommendations. I thank you and the Committee for your considered report.

I have enclosed the Hansard extract containing the government response.

Yours sincerely


THE HON MARK DREYFUS KC MP

23/9 /2024

Encl. *Hansard extract – House of Representatives – 12 August 2024*

To be clear, I recognise—and the committee absolutely recognised—that this bill aims to achieve an important objective, that being the protection of Australia's national security interests. The declared areas provisions provide the minister with the power to declare certain areas of a foreign country where a listed terrorist organisation is engaging in a hostile activity, making it an offence to enter or stay in the area without a legitimate reason. The intention of those powers is to enable the disruption and prosecution of returning foreign terrorist fighters and their associates. These provisions are ultimately intended to deter Australians, including families, from travelling to dangerous conflict areas where listed terrorist organisations are engaging in hostile activities and to protect against the possibility of terrorist attacks in Australia. And, to be clear, I wholeheartedly support those intentions and that ambition. However, while this is a legitimate and vital objective, particularly in light of our recently upgraded terrorism threat level, it should not come at the cost of fundamental human rights. We in this place must critically consider whether the measures outlined are proportionate to the stated objective.

The declared area offence provisions engage and limit a number of human rights, including the rights to equality, nondiscrimination, a fair trial, freedom of movement and liberty. When this bill was originally passed in 2014, the Australian Labor Party, the Australian Greens, Independents and various legal, human rights and other interest groups expressed concern with the new offence of entering declared areas. In particular, concerns were raised regarding the limitation on the freedom of movement and the onus of the evidential burden being placed on the defendant through the use of the exceptions to the offence.

Human rights issues were again raised by various interest groups during the 2021 Parliamentary Joint Committee on Intelligence and Security review in relation to the declared areas provisions. Again, these concerns questioned the need for the provisions and raised the possible human rights limitations on freedom of movement and otherwise legitimate activities. I don't believe these concerns have been adequately addressed.

In its most recent report, the Parliamentary Joint Committee on Human Rights reiterated again the concerns that it had raised regarding human rights in relation to the previous bills dealing with the declared areas provisions and drew these again to the attention of the Attorney-General and the wider parliament. In summarising its concerns, the committee stated:

The committee has previously found that while the provisions likely pursue a legitimate objective (namely, that of seeking to prevent terrorist acts), there were questions whether the provisions were necessary, and, in particular, the measures did not appear to be proportionate, and therefore were likely to be incompatible with a range of human rights ... As such, the committee considers that it has not been demonstrated that the extension of these provisions is compatible with human rights.

I also want to note that the Parliamentary Joint Committee on Intelligence and Security, in its 2021 review of the provisions, recommended that the Criminal Code Act 1995 be amended to allow Australian citizens to request an exemption to travel to a declared area for reasons not listed in the Criminal Code but which are not otherwise illegitimate under Australian law. Ultimately, the government then did not support the exception that was recommended. Thus there may be a number of innocent reasons that a person may want to enter or remain in a declared area that currently would not bring a person within the scope of the legitimate purpose defence.

Despite attempts by the parliamentary joint committee, despite the findings of the inquiry and despite the submissions that were received from others engaged across the human rights movement, the government has not amended this legislation. And while, in times when our nation is facing fear, it is understandable that we will move quickly to adopt legislation that we feel protects us, surely at a time when we have the opportunity to seriously review something and assess whether we got it right the first time is the moment we should be ensuring that we fix any mistakes that may have previously been built into the legislation.

As highlighted by the Parliamentary Joint Committee on Human Rights, there is currently a clear lack of sufficient safeguards or flexibility to constitute a proportionate limit on rights as seen in this legislation. For that reason, and as a member of the committee, I cannot support the bill in its current form.

Mr DREYFUS (Isaacs—Attorney-General and Cabinet Secretary) (13:21): I thank my parliamentary colleagues for their contributions to the debate on the Counter-Terrorism Legislation Amendment (Declared Areas) Bill 2024. The Albanese government is committed to protecting the Australian community against the real and evolving threat of terrorism. The declared areas offence in section 119.2 of the Criminal Code Act 1995, which is currently due to sunset on 7 September 2024, is part of the Australian government's efforts to stop Australians becoming foreign fighters. Where an area is declared by the Minister for Foreign Affairs, it is an offence to enter or remain in that area without a legitimate reason.

A declared area is a place where terrorist organisations are engaging in hostile activity. There are very few legitimate reasons for entering such an area. The offence recognises this by providing a carefully targeted range of exceptions. Although there are currently no areas declared, these provisions remain a necessary component of our framework in the current threat environment. The offence plays a role in the disruption and prosecution of returning foreign fighters and their associates.

The bill would extend the offence in section 119.2 for three years to 7 September 2027. A three-year extension reflects the continued appropriateness of the provisions and is consistent with previous recommendations made by the Parliamentary Joint Committee on Intelligence and Security, including in its report on the bill. This will be the third time the provision has been extended. The bill would also provide that section 119.3, the provision under which that Minister for Foreign Affairs can declare an area for the purpose of the offence in section 119.2, also ceases to have an effect on 7 September 2027. This will align the relevant declaration and offence provisions in the criminal code.

The government welcomes the report of the Parliamentary Joint Committee on Intelligence and Security on the bill and its unanimous recommendation that the bill be passed. The committee made three recommendations for the government to consider following passage of the bill and before the next sunset of the provisions in 2027. The first is that the government consider reviewing the list of legitimate purpose exceptions for entering or remaining in a declared area in subsection 119.2(3) of the Criminal Code. This includes considering whether any additional exceptions should be prescribed by regulations. The government agrees with this recommendation. The government will consider reviewing the list of legitimate-purpose exceptions and will consult agencies and other relevant stakeholders.

The second recommendation is:

... that ... the Government consider an additional exception to the offence of entering, or remaining in, an area that has been declared under section 119.3 of the Criminal Code. The exception would apply where:

- the person is already travelling to, or is already in, the area on the day on which it becomes a declared area, and
- the person leaves the area as soon as practicable, but no later than the period of one month beginning with that day.

The government agrees with this recommendation. The government will consider the proposed additional exception to the offence of entering or remaining in a declared area and will consult agencies and other relevant stakeholders.

The third recommendation is:

... that ... the Government consider reviewing the existing safeguards on the Minister for Foreign Affairs' discretion to declare an area under section 119.3 of the Criminal Code. This would include reviewing the Minister's protocol and the list of factors to be taken into consideration by the Minister for Foreign Affairs before declaring an area.

The government agrees with this recommendation. The government will consider reviewing the safeguards that apply to the Minister for Foreign Affairs' discretion to declare an area and will consult agencies and other relevant stakeholders. The government accepts these three recommendations and will consider these matters following passage of the bill and before the next sunset of the provisions in 2027.

The committee also recommended:

... that the Independent National Security Legislation Monitor review Division 119 of the Criminal Code, with particular attention to the declared areas provisions and their ongoing necessity within the broader counter-terrorism legislative framework.

The committee recommended that the monitor report its findings in relation to the declared areas offence by 7 January 2027. The government agrees in principle with this recommendation. The government is supportive of this recommendation, noting that the monitor can initiate its own review into this matter.

Finally, the committee recommended that the bill be passed. The government accepts this recommendation. The Intelligence Services Legislation Amendment Bill 2023, which is currently before the parliament, would empower the Parliamentary Joint Committee on Intelligence and Security to review these provisions before they sunset, ensuring that due consideration is given to the continued utility of the provisions. This bill reflects the government's commitment to protecting Australians against the enduring threat of terrorism. I commend the bill to the House.

Question agreed to.

Bill read a second time.

Third Reading

Mr DREYFUS (Isaacs—Attorney-General and Cabinet Secretary) (13:28): by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

STATEMENTS BY MEMBERS

Australian Red Cross: 110th Anniversary

Mr ENTSCH (Leichhardt) (13:29): I am honoured to help celebrate the 110th anniversary of the Australian Red Cross. Since its founding on 13 August 1914, the Red Cross has been a pillar of support and compassion, providing

