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FOR
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The Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
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Dear Secretary

Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014: responses to questions on notice

Australian Lawyers for Human Rights (ALHR) is pleased to provide an addendum to its existing submission of 3 October 2014 in relation to the provisions of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (the Bill), being a fuller response to questions raised with the writer in the public hearing on 8 October 2014.

We set out below the questions (by questioner) and our answers.

The Hon Tanya Plibersek MP

1. What are ALHR concerns in relation to the introduction of the term 'subverting society'? Can you explain in what situations you think this might be problematic?

ALHR has concerns that the definition of "subverting society" would encompass acts broader than the current definition of "terrorist act" in the Criminal Code, thus expanding the range of activities that would trigger the foreign incursions offences and the life imprisonment penalty.

ALHR is concerned that ordinary acts of criminality committed offshore, but unrelated to terrorism offences could be caught under this definition¹. ALHR submits that the proposed definition of "subverting society" is so broad that it would capture any serious damage to any property, harm to any person or interference with any electronic system. For example, a person who commits an assault causing harm or death offshore (which could include scenarios such as dangerous driving

¹ There is also the related problem that foreign courts may not have applied the same legal standards as would apply in Australia and so there could be questions as to the correctness of the foreign decision as to criminality. Peter Greste's situation is a case in point.

occasioning injury or death) would be caught by this definition, triggering the life imprisonment penalty. While this example would still constitute a criminal act, we submit that the broad drafting would result in a disproportionate outcome that arguably would not in fact achieve the aim of preventing or penalising acts of terrorism.

ALHR notes also that in the proposed definition of “subverting society” the intention (to influence a government by intimidation, or to intimidate a section of the public) and motive (to advance a political, religious or ideological cause) elements required in the definition of a “terrorist act”² have been removed. In our view this has the effect of unnecessarily broadening the range of offences that may be considered acts of “subverting society”, such as common assault.

ALHR endorses recommendation 8 made in the submission of the Gilbert + Tobin Centre for Public Law,³ extracted here for your convenience:

Recommendation 8:

The definition of ‘subverting society’ should be replaced with a reference to the definition of a ‘terrorist act’ in s 100.1 of the Criminal Code.

In our view this amendment would result in a more proportionate outcome, given the serious nature of the proposed penalty.

2. If there is already an offence around incitement, how does ALHR think the advocacy offence will differ from incitement? Will it be the intention part of it, the recklessness, that is the key difference? What complications do you see, if any, arising from that?

ALHR’s concerns around the proposed advocacy offence are twofold. Firstly, it is unclear to what extent the proposed offence overlaps with already-existing offences. Secondly, we are concerned that if the proposed offence does lower the threshold of prohibited speech, it may capture speech that does not in fact have a real nexus to a resulting commission of a terrorist act.

The current offence of incitement requires that a person *urges* or *encourages* another person to commit a terrorism act or offence, and does so *intending* that the conduct will occur. The incitement offence would already capture speech urging, spurring on, stirring up, prompting to action, instigating or stimulating⁴ or even merely requesting or encouraging⁵ a person to commit an offence.

The proposed offence of advocating a terrorist act would provide a maximum penalty of five years’ imprisonment where a person intentionally advocates the doing of a terrorist act or terrorism offence, and is reckless as to whether another person will engage in that conduct as a result.

ALHR is of the view that curbing incitement to violence is a legitimate legislative aim. However, our view is that the proposed advocacy offence is redundant to the extent that it overlaps with the existing incitement offence. We note that the Law Council of Australia, in its submission to this inquiry,⁶ made the following statement at [65]:

² *Criminal Code Act 1995* (Cth), s 100.1(1).

³ Submission 3 to this Inquiry

⁴ *R v Crichton* [1915] SALawRp 1; [1915] SALR 1 (Way CJ); *Islamic Council of Victoria v Catch the Fire Ministries Inc (Final)* [2004] VCAT 2510 (Unreported, Higgins VP, 22 December 2004) [18]; *Brown v Classification Review Board of the Office of Film and Literature Classification* (1998) 50 ALD 765, 778.

⁵ *R v Massie* [1998] VSCA 82; [1999] 1 VR 542, 547

⁶ Submission 12 to this inquiry.

It is difficult to make an accurate assessment as to the necessity of the advocacy offence in light of the wide range of offences which are currently available (discussed below). The Law Council therefore encourages the Committee to seek examples from the Attorney-General's Department as to what conduct would be captured by the offence which is not already encompassed by pre-existing offences. There is utility in making any such examples publicly available and deferring commencement until the community has had an opportunity to consider its full ramifications. A range of legislative measures already exist which would appear to overlap significantly with the proposed offence.

The Law Council further sets out a range of existing legislative offences likely to overlap with the advocacy offence at [65] and [66] of its submission.

In addition to querying the necessity of the advocacy offence, ALHR is concerned that lowering the threshold will result in speech without some level of proximity to the commission of a terrorist act being captured. ALHR notes that as the freedom of expression is not expressly protected in Australia beyond the freedom of political communication, there is little opportunity for the development of sophisticated jurisprudence in this area. However, ALHR notes Professor Ben Saul's view that the suppression of speech that encourages violence is a justifiable restriction, since:

[T]he protection of life is a higher normative and social value which momentarily trumps free expression – but only to the extent strictly necessary to prevent the greater harm. Human rights law does not permit one person to exercise their rights to destroy the rights of another, but any restriction on freedom of expression must not jeopardise the right itself.⁷

In this respect, the proposed offence diverges from the current law on incitement in two ways:

- a) The proposed definition of "advocates" is broad and includes situations where a person "promotes" or "encourages" the doing of a terrorist act or terrorism offence. We note that the terms "promote" and "encourage" are not defined in the Bill. The current incitement offence is already broad, and it is not clear what extra speech the advocacy offence intends to capture. ALHR is concerned that the ordinary dictionary meaning of "promote" may capture more speech than "urging" would, and arguably even more than "requesting" or "encouraging".
- b) The proposed advocacy offence does not require that a person intend for the other person to engage in that conduct as a result of their advocacy. Rather, it requires only that a person be "reckless" as to whether an act of terrorism would result.

Given that there is an additional element of "promoting", and given the lowering of the threshold of intention, there may be a range of speech that may be caught by the new offence. For example, speech that might merely indicate political sympathy for particular causes, or that forward or call attention to others' comments (for example, by tweeting or Facebook posting), may be caught by the promotion element of the proposed offence. This might include speech that is posted online, and not directed at any particular audience. ALHR considers this outcome incompatible with a democratic society concerned with freedom of speech. ALHR would recommend that this offence not be proceeded with unless the Government can demonstrate its necessity, and that it is a reasonable and proportionate measure rationally connected to the achievement of its purpose.

⁷

Saul, Ben, "Speaking of Terror: Criminalising Incitement to Violence," (2005) 28(3) *University of New South Wales Law Journal* 868

3. Given that [Australia] has never had a successful prosecution under the *Foreign Incursions Act* ... and given that we have seen evidence that about 60 Australians are fighting overseas is the *Foreign Incursions Act* sufficient?

We understand from other submissions to the Committee that problems in enforcing the existing *Foreign Incursions Act* relate largely to admissibility of foreign evidence (as to which we have made comments in our main submission), which is a matter which is dealt with under the *Foreign Evidence Act 1994* and requires amendment to that Act rather than the *Foreign Incursions Act*.

The *Criminal Code* already contains a number of provisions in Parts 101 and 102 which are very similar to the existing wording of the *Foreign Incursions Act* and which it appears are to be retained even after the inclusion in the *Criminal Code* (pursuant to the Bill) of the (amended) provisions taken from the *Foreign Incursions Act*. This means that if the Bill is passed there will be a large amount of duplication in the *Criminal Code* in relation to 'foreign fighter' offences.

ALHR questions whether the extensive changes proposed to the *Foreign Incursions Act* are necessary in order to cover any other enforcement difficulties and whether more minor changes have been considered.

We are particularly concerned, as we note are many other parties making submissions, at the disproportionate maximum penalties introduced by the Bill for both 'primary' and 'preparatory' offences, and at the removal of distinction in penalties.

In particular, under the present legislation, 'preparatory' offences have a maximum penalty of 10 years' imprisonment. This changes under the Bill to life imprisonment.

At the same time the maximum penalty for major offences increases from 20 years' imprisonment to life imprisonment.

We are concerned that if a preparatory offence (such as packing a suitcase or booking a plane ticket) is to carry the same maximum penalty as a 'primary' offence (such as carrying out a terrorist act, or such as premeditated murder (whether or not in a terrorist context)), a perpetrator will receive the message that they 'may as well be hung for a sheep as for a lamb' and will not be deterred from escalating their wrongdoing by any concern that they could receive a more serious maximum penalty.

Given that deterrence is a major aim of the Bill⁸, surely keeping the maximum sentences for 'preparatory' crimes distinct, and lower, than the maximum sentences for 'primary' crimes gives the desirable social message that it is advantageous to a perpetrator for them to 'pull back' and not engage in more serious offences.

For the assistance of the Committee, we annex a draft marked up version of the *Crimes (Foreign Incursions and Recruitment) Act 1978* showing the very extensive changes that are being made to that Act in connection with its importation into the *Criminal Code*.⁹ We submit, as previously argued, that the changes are disproportionate in scope and legally unclear.

These issues are dealt with further in our response to Question 6.

⁸ See draft transcript of evidence to the Committee of 8 October 2014, p 17, from Mr Neil James, Executive Director, Australian Defence Association. However we note that Mr Walker SC expressed strong doubts in his evidence to the Committee as to whether the Bill would have such an effect: op cit, p 45.

⁹ Given the time limits, the mark up is a draft only.

Senator the Hon Penny Wong

4. Noting ALHR's first preference in relation to review and oversight is judicial review and judicial oversight, as an alternative would a change in the role of the IGIS (from the existing ex post oversight role) be sufficient as a second best option?

In short, the Inspector-General of Intelligence and Security's (IGIS) role is not comparable to the oversight role courts play in a functioning democracy, and ALHR does not consider it an appropriate alternative. Judicial review of administrative action, as ALHR indicated in its submission, is fundamental to the structure of a democratic society. Oversight by the judiciary as a separate branch of government to the executive and legislature is fundamental for the proper functioning of the rule of law.

Alongside the general law, the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) facilitates judicial oversight of government action (together with the *Judiciary Act 1903* (Cth) (**Judiciary Act**) and the Constitution).

Under the *Inspector-General of Intelligence and Security Act 1986* (Cth) (**IGIS Act**) IGIS has the power in certain circumstances, amongst other things, to inquire into particular conduct of security agencies including ASIO, ASIS, DIGO, DSD, DIO and ONA following a request by a Minister or agency, and to inquire into complaints. IGIS does have wide powers to compel a person to give evidence before it or to provide it with documents, but the sufficiency of IGIS's powers with respect to oversight of the Commonwealth security agencies ends there.

The only relevant power IGIS has after an inquiry into a request from a Minister or a Commonwealth agency is to provide a report to the Minister or the agency that includes conclusions and recommendations. IGIS has no power to compel a Commonwealth security agency or a Minister to take any action or to act in accordance with law. The only response IGIS can make following a failure by a Commonwealth agency or a relevant Minister to take action following a first report from IGIS is to make a further report relating to the matter.

In relation to an inquiry by IGIS following receipt of a complaint about Commonwealth security agencies, IGIS does not need to afford an opportunity to the complainant to appear before it or before any other person in connection with an inquiry. Further, in response to the complaint, IGIS need only prepare a written response for the complainant, and even then need not provide the written response to the complainant if the head of the relevant security agency and IGIS cannot agree that the giving of the report will not prejudice, inter alia, security.

The Bill proposes to include in schedule 1 of the ADJR Act decisions suspending an Australian passport under section 22A or 24A of the *Australian Passports Act 2005* (Cth), and decisions under section 15A or 16A of the *Foreign Passports (Law Enforcement and Security) Act 2005* (Cth). This means decisions of an administrative character made under these provisions would not be subject to ADJR act review. This adds to the lengthy list of security legislation already in schedule 1 of the ADJR Act and outside the purview of review. The Bill also proposes to include in schedule 2 of the ADJR Act important decisions relating to security notices allowing a Minister to cancel welfare payments, thereby removing the requirement for reasons under the ADJR Act.

IGIS cannot perform the oversight role a court plays at general law and under the ADJR Act. IGIS's lack of true independence from the executive and legislature and its inability to compel agencies to make decisions and act in accordance with law make it a poor alternative to judicial review and oversight. Given the nature of IGIS ALHR submits that it would be difficult for any changes to be made to it to make its role even comparable to judicial oversight.

ALHR submits that especially when dealing with legislation that infringes human rights to a substantial extent such as the counter-terrorism legislation, it is essential that the executive and its agencies be held accountable by an independent and impartial judiciary. There simply should be no use of second best option.

ALHR also notes specifically in relation to provisions that deprive a person of their liberty, Article 9 of the International Covenant on Civil and Political Rights provides:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Senator the Hon John Faulkner

5. What is ALHR's position on the use of sunset clauses? Should they be used and how long should they be?

ALHR does not object to the use of sunset clauses per se and submits that they are necessary when considering legislation that infringes on human rights to the extent that Australia's counter-terrorism legislation does. Sunset clauses emphasise that extraordinary powers should be limited in use to respond to a specific urgent threat. They provide an ability for the review of the efficacy and necessity of those powers.

ALHR submits that sunset clauses that extend powers for a lengthy period of time are less effective as the longer an extraordinary power remains in force the more likely it is to be accepted as the norm rather than the exception. ALHR submits that any sunset provisions should be no longer than 5 years and preferably for a shorter period. ALHR notes the submission of Professor Saul to this enquiry who submits that a period of 3 years is appropriate.

The Bill proposes to extend the sunset clauses in relation to control orders and preventative detention orders; the stop, search and seizure powers under the *Crimes Act 1914* (Cth); and the questioning and warrant and questioning and detention warrant powers under the *Australian Security Intelligence Organisation Act 1979* (Cth) for a further 10 years. Currently these powers are due to expire in either December 2015 or July 2016.

ALHR endorses the submissions of the Australian Human Rights Commission, the Human Rights Law Centre and the Gilbert + Tobin Centre of Public Law that the provisions of the Bill postponing the sunset dates for these powers should not be passed. Whether these powers should continue past the current sunset dates should be the subject of separate legislation and full and proper review of the need for the continuation of these powers in accordance with the current sunset clauses, that is, late 2015 and early 2016.

6 Has ALHR had a look at the current offences that exist in relation to entering a foreign country with the intent of engaging in a hostile activity and tried to make an assessment of their applicability in this new environment we find ourselves in?

As reflected in our original submission and in our response to Question 3 above, it is ALHR's view that the existing provisions of the *Foreign Incursions Act* and the *Criminal Code* are (generally) a more appropriate and proportionate response to terrorist activity of all kinds than is the Bill, and would sufficiently cover even the more extreme violent acts recently seen.

We fear that the 'overkill' of the Bill provisions, if adopted, will undermine the deterrent effect of the existing more proportional legislation, not least because all levels of terrorism and preparation for terrorism will bear the same maximum penalties under the Bill. In this way, we fear that the

Bill, paradoxically, could fail to discourage terrorists from undertaking the most extreme levels of terrorism.

We believe that the 'declared areas' provision offence should require *mens rea*, and should not effectively involve a reverse burden of proof (as it does). The offence has been described as one of being in a declared area 'without a legitimate reason' - which would be acceptable if the offence related to persons knowingly being in such an area and to persons failing to make a legitimate objective case for their presence.

But the legislation goes far beyond that. It does not require intent and therefore the offence can be committed unknowingly. This is entirely unacceptable for an offence carrying a penalty of 10 years imprisonment.

We also question the underlying assumption that Australian citizens who might wish to support their family and friends by fighting alongside them in another country necessarily have a 'terrorist' aim in mind. Their aims might indeed be political or even humanitarian and not terrorist as such.¹⁰

The list of acceptable 'excuses' for being in a declared area is extremely restrictive and fails to take account of numerous legitimate matters.

We find it extremely concerning that the 'declared areas' provision appears to be intended as a 'catch all' to penalise people who may (or may not) have committed appalling offences – but without any need for the prosecution to actually provide any evidence as to those offences. The potential for mis-application or even abuse of such a provision is very clear. The severity of the offences being committed in the name of terrorism is not a reason to introduce Australian legislation that potentially criminalises people who have/had no *male fides* whatsoever and who did not do a single thing wrong. In the words of Mr Bret Walker SC: 'it does seem ... that the utility of 119.2 ... is greatly to be doubted'.¹¹

We also endorse Mr Walker's concerns in relation to the over-broadness of the definition of 'prescribed organisation'.¹²

If you would like to discuss any aspect of this addendum, please email me at:

Yours faithfully,

~~N~~athan Kennedy
President
Australian Lawyers for Human Rights

Addendum Contributors: Nathan Kennedy, Dr Tamsin Clarke, Vicky Kuek, Charles Gregory

¹⁰ See draft transcript of evidence to the Committee of 8 October 2014, p 20, from Mr Neil James, Executive Director, Australian Defence Association.

¹¹ See draft transcript of evidence to the Committee of 8 October 2014, p 38.

¹² See draft transcript of evidence to the Committee of 8 October 2014, p 38.

DRAFT MARK UP OF CHANGES TO **CRIMES (FOREIGN INCURSIONS AND RECRUITMENT) ACT 1978** ON THE INCORPORATION OF ITS TERMS INTO THE CRIMINAL CODE

~~3 Interpretation~~

Foreign incursions and recruitment

Division 117—Preliminary

117.1 Definitions

- (1) In this ~~Act, unless the contrary intention appears~~Part:

armed force does not include an armed force forming part of the Australian Defence Force ~~of Australia~~.

~~**Australia** includes the external Territories.~~

~~**foreign State** means a place outside Australia that is:~~

- ~~(a) an independent sovereign state; or
(b) an area of land (whether or not it is self governing) that is not part of an independent sovereign state.~~

~~*[for revised definition of ‘engage in a hostile activity’ see further below – the definition is included out of order for ease of comparison with original wording]*~~

~~**engage in subverting society** has the meaning given by subsection (3).~~

~~**Foreign Affairs Minister** means the Minister administering the Diplomatic Privileges and Immunities Act 1967.~~

~~**government**, in relation to of a foreign State country or a part of a foreign country State, means the authority exercising effective governmental control in that foreign State country or that part of that foreign State country.~~

~~**incite** includes urge, aid and encourage and also includes print or publish any writing that incites, urges, aids or encourages.~~

~~**listed terrorist organisation** has the meaning given by subsection 100.1(1).~~

~~**military training** means training in the use of arms or explosives, or the practice of military exercises or movements.~~

~~*[for revised definition of **prescribed organisation** see further below – the definition is included out of order for ease of comparison with original wording]:*~~

~~**recruit** includes procure, induce, ~~and~~ incite or encourage.~~

~~(2) A reference in this *Act* to a part of a foreign State shall be read as a reference to a political subdivision of a foreign State.~~

~~*Prescribing organisations*~~

- ~~(2) *[see mark up further below to what was originally clause 6(8) of the original legislation- – the clause is included out of order for ease of comparison with original wording]:*~~

- ~~(3) A person *engages in subverting society* if the person engages in any of the following conduct (other than conduct that falls within subsection (4)):~~
- ~~(a) conduct that causes serious harm that is physical harm to another person;~~
 - ~~(b) conduct that causes serious damage to property;~~
 - ~~(c) conduct that causes another person's death;~~
 - ~~(d) conduct that endangers another person's life, other than the life of the person taking the action;~~
 - ~~(e) conduct that creates a serious risk to the health or safety of the public or a section of the public;~~
 - ~~(f) conduct that seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
 - ~~(i) an information system; or~~
 - ~~(ii) a telecommunications system; or~~
 - ~~(iii) a financial system; or~~
 - ~~(iv) a system used for the delivery of essential government services; or~~
 - ~~(v) a system used for, or by, an essential public utility; or~~
 - ~~(vi) a system used for, or by, a transport system.~~~~
- ~~(4) Conduct falls within this subsection if it:~~
- ~~(a) is advocacy, protest, dissent or industrial action; and~~
 - ~~(b) is not intended:
 - ~~(i) to cause serious harm that is physical harm to a person; or~~
 - ~~(ii) to cause a person's death; or~~
 - ~~(iii) to endanger the life of a person, other than the person taking the action; or~~
 - ~~(iv) to create a serious risk to the health or safety of the public or a section of the public.~~~~

~~117.2 Extended geographical jurisdiction—category D~~

~~Section 15.4 (extended geographical jurisdiction—category D) applies (subject to this Part) to an offence against this Part.~~

~~3A Application of the *Criminal Code*~~

~~Chapter 2 of the *Criminal Code* applies to all offences against this Act.~~

~~Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.~~

~~4 Extension of Act to Territories~~

~~This Act extends to every Territory.~~

~~5 Act not to apply to acts done for defence of Australia~~

~~Nothing in this Act applies to any act done by a person acting in the course of the person's duty to the Commonwealth in relation to the defence of Australia.~~

Division 119—Foreign incursions and recruitment

6-119.1 Incursions into foreign ~~States~~ countries with intention of engaging in hostile activities

Offence for entering foreign countries with the intention of engaging in hostile activities

- (1) A person ~~shall not~~ commits an offence if:
- (a) ~~the person enters~~ a foreign ~~State~~ country with the intention of ~~to engage~~ in a hostile activity in that ~~or any other~~ foreign ~~State~~ country; ~~and~~
 - (b) ~~when the person enters the country, engage in a hostile activity in a foreign State.~~

~~Penalty: Imprisonment for 20 years.~~

- (2) ~~A person shall not be taken to have committed an offence against this section unless:~~

~~(a) at the time of the doing of the act that is alleged to constitute the offence, the person:~~

- ~~(i) was is an Australian citizen; or~~
 - ~~(ii) not being an Australian citizen, was ordinarily is a resident in 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.~~
- ~~(b) the person was present in Australia at any time before the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.~~

~~Penalty: Imprisonment for life~~

Offence for engaging in a hostile activity in a foreign country

- ~~(2) A person commits an offence if:~~

- ~~(a) the person engages in a hostile activity in a foreign country; and~~
- ~~(b) when the person engages in the activity, 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.~~

~~Penalty: Imprisonment for life.~~

Absolute liability element

- ~~(3) Absolute liability applies to paragraphs (1)(b) and (2)(b).~~

~~Note: For absolute liability, see section 6.2.~~

[The following definition should appear in the correct alphabetic order in the new 117.1 but is retained here for ease of comparison]

~~(3) For the purposes of subsection (1),~~
~~**engage in a hostile activity:** a person engages in a hostile activity in a foreign State-country if the person engages in conduct in that country consists of doing an act with the intention of achieving any one or more of the following objectives (whether or not such an objective is achieved):~~

~~(a) the overthrow by force or violence of the government of ~~the~~that or any other foreign State-country (or of a part of ~~the~~that or any other foreign State-country);~~

~~(aa)(b) engaging the engagement, by that or any other person, in armed hostilities subverting society in ~~the~~that or any other foreign State-country;~~

~~(b) causing by force or violence the public in the foreign State to be in fear of suffering death or personal injury~~

~~(b)(c) intimidating the public or a section of the public of that or any other foreign country;~~

~~(ed) causing the death of, or bodily injury to, a person who:~~

~~(i) is the head of state of ~~the~~that or any other foreign State-country; or~~

~~(ii) holds, or performs any of the duties of, a public office of ~~the~~that or any other foreign State-country (or of a part of ~~the~~that or any other foreign State-country);~~

~~(de) unlawfully destroying or damaging any real or personal property belonging to the government of ~~the~~that or any other foreign State-country (or of a part of ~~the~~that or any other foreign State-country).~~

~~(4) Nothing in this section applies to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:~~

~~(a) the armed forces of the government of a foreign State; or~~

~~(b) any other armed force in respect of which a declaration by the Minister under subsection 9(2) is in force.~~

(5) Paragraph (4)(a) does not apply if:

~~(a) a person enters a foreign State with intent to engage in a hostile activity in that foreign State while in or with an organisation; and~~

~~(b) the organisation is a prescribed organisation at the time of entry.~~

~~(6) Paragraph (4)(a) does not apply if:~~

~~(a) a person engages in a hostile activity in a foreign State while in or with an organisation; and~~

~~(b) the organisation is a prescribed organisation at the time when the person engages in that hostile activity.~~

[the following definition, as revised, now appears in 117.1 (1) and is shown out of order here for ease of comparison]

~~(7) For the purposes of subsections (5) and (6), **prescribed organisation** means:~~

~~(a) an organisation that is prescribed by the regulations for the purposes of this paragraph; or~~

- (b) an organisation referred to in paragraph (b) of the definition of **terrorist organisation** in subsection ~~102.1(1) of the *Criminal Code*~~.

Prescribing organisations [this clause, as revised, now appears as 117.1(2) and is shown out of order here for ease of comparison]

- ~~(8)~~(2) Before the Governor-General makes a regulation prescribing an organisation for the purposes of paragraph ~~(7)(aa) of the definition of **prescribed organisation** in subsection (1)~~, the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering:
- (a) a serious violation of human rights; or
 - (b) ~~armed hostilities against the Commonwealth~~subverting society in Australia or a foreign ~~State~~country allied or associated with ~~the Commonwealth~~Australia (see subsection (3)); or
 - (c) a terrorist act (~~as defined in within the meaning of~~ section 100.1 ~~of the *Criminal Code*~~); or
 - (d) an act prejudicial to the security, defence or international relations of ~~the Commonwealth~~Australia.

117.2 Extended geographical jurisdiction—category D

Section 15.4 (extended geographical jurisdiction—category D) applies (subject to this Part) to an offence against this Part.

Division 119—Foreign incursions and recruitment

119.1 Incursions into foreign countries with the intention of engaging in hostile activities

Offence for entering foreign countries with the intention of engaging in hostile activities

(1) A person commits an offence if:

- (a) the person enters a foreign country with the intention of engaging in a hostile activity in that or any other foreign country; and
- (b) when the person enters the country, 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.

Penalty: Imprisonment for life.

Offence for engaging in a hostile activity in a foreign country

(2) A person commits an offence if:

- (a) the person engages in a hostile activity in a foreign country; and
- (b) when the person engages in the activity, 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.

Penalty: Imprisonment for life.

Absolute liability element

- (3) Absolute liability applies to paragraphs (1)(b) and (2)(b).

Note: For absolute liability, see section 6.2.

Exception

- (4) Subsections (1) and (2) do not apply to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:
 - (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

- (5) Paragraph (4)(a) does not apply if:
 - (a) the person intends to engage, or engages, in a hostile activity in a foreign country while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the following time:
 - (i) for subsection (1)—the time of the entry referred to in that subsection;
 - (ii) for subsection (2)—the time the person engages in the hostile activity referred to in that subsection.

119.2 Entering, or remaining in, declared areas

- (1) A person commits an 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.

Penalty: Imprisonment for 10 years.

Absolute liability element

- (2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Exception—entering or remaining solely for legitimate purposes

- (3) Subsection (1) does not apply if the 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 the United Nations or an agency of the United Nations;
 - (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.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3).

Exception—entering or remaining solely for service with armed force other than prescribed organisation

- (4) Subsection (1) does not apply if the person enters, or remains in, the area solely in the course of, and as part of, the person's service in any capacity in or with:
- (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

- (5) However, subsection (4) does not apply if:
- (a) the person enters, or remains in, an area in a foreign country while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the time the person enters or remains in the area as referred to in paragraph (1)(a).

Note 1: For conduct for the defence or international relations of Australia, see section 119.9.

Note 2: Sections 10.1 and 10.3 also provide exceptions to subsection (1) of this section (relating to intervening conduct or event and sudden or extraordinary emergency respectively).

Sunset provision

- (6) This section ceases to have effect 10 years after it commences.

119.3 Declaration of areas for the purposes of section 119.2

- (1) The Foreign Affairs Minister may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2 if he or she is satisfied that a

listed terrorist organisation is engaging in a hostile activity in that area of the foreign country.

(2) A single declaration may cover:

- (a) areas in 2 or more foreign countries if the Foreign Affairs Minister is satisfied that one or more listed terrorist organisations are engaging in a hostile activity in each of those areas; or
- (b) an entire country if the Foreign Affairs Minister is satisfied that a listed terrorist organisation is engaging in a hostile activity throughout the country.

Requirement to brief Leader of the Opposition

(3) Before making a declaration, the Foreign Affairs Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed declaration.

Cessation of declaration

(4) A declaration ceases to have effect on the third anniversary of the day on which it takes effect. To avoid doubt, this subsection does not prevent:

- (a) the revocation of the declaration; or
- (b) the making of a new declaration the same in substance as the previous declaration (whether the new declaration is made or takes effect before or after the previous declaration ceases to have effect because of this subsection).

Note: An offence committed in relation to the declared area before the cessation can be prosecuted after the cessation: see section 7 of the *Acts Interpretation Act 1901* as it applies because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*.

(5) If:

- (a) an area is declared under subsection (1); and
 - (b) the Foreign Affairs Minister ceases to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area;
- the Foreign Affairs Minister must revoke the declaration.

Note: The Foreign Affairs Minister may, for example, cease to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area if the organisation ceases to be specified in the regulations.

(6) To avoid doubt, subsection (5) does not prevent an area from being subsequently declared if the Foreign Affairs Minister becomes satisfied as mentioned in subsection (1).

7-119.4 Preparations for incursions into foreign ~~States~~ countries for purpose of engaging in hostile activities

Preparatory acts

(1)-(1) A person ~~shall not~~ commits an offence if:

- (a) the person engages in conduct; (whether within or outside Australia); and

~~(ba) do any act the conduct is~~ preparatory to the commission of an offence against section 119.16; (whether by that ~~person~~ or ~~by any~~ other person); and

~~(c) when the person engages in the conduct, 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; or~~

~~(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.~~

Penalty: Imprisonment for life.

Accumulating weapons etc.

(2) A person commits an offence if:

~~(ab) the person (whether within or outside Australia) accumulates, stockpiles or otherwise keeps~~ arms, explosives, munitions, poisons or weapons; and

~~(b) -the person engages in that conduct with the intention of committing that an offence against section 119.16, will be committed (whether by that ~~person~~ or ~~by any~~ other person); and~~

~~(c) when the person engages in the conduct, 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; or~~

~~(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.~~

Penalty: Imprisonment for life.

Providing or participating in training

(3) A person commits an offence if:

(a) the person engages in any of the following conduct (whether within or outside Australia):

(i) providing military training to another person;

(ii) participating in providing military training to another person;

(iii) ~~train or drill or participate in training or drilling, or be being~~ present at a meeting or assembly of persons, ~~where the person intends at that meeting or assembly with intent to train or drill to provide, or to participate in training or drilling providing, military training to any another person in the use of arms or explosives, or the practice of military exercises, movements or evolutions;~~ and

(b) the person engages in the conduct intending to ~~with the intention of preparing~~ prepare ~~that the~~ other person to commit an offence against section 119.16; and

(c) when the person engages in the conduct, 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; or
- (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

(4) A person commits an offence if:

- (a) the person engages in conduct of either of the following kinds (whether within or outside Australia):
 - (i) allowing military training to be provided to himself or herself ~~to be trained or drilled;~~
 - (ii) ~~or allowing himself or herself~~ be present at a meeting or assembly of persons ~~with intent to allow himself or herself to be trained or drilled, in the use of arms or explosives, or the practice of military exercises, movements or evolutions, intending to allow military training to be provided to himself or herself; and~~
- (b) the person engages in the conduct with the intention of committing an offence against section ~~119.16;~~ and
- (c) when the person engages in the conduct, 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; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Giving or receiving goods and services to promote the commission of an offence

(5) A person commits an offence if:

- (a) the person engages in any of the following conduct (whether within or outside Australia):
 - (i) ~~giving~~ money or goods to, or perform~~ing~~ services for, any other person, ~~or any body or association of persons with the intention of supporting or promoting the commission of an offence against section 6;~~
 - (ii) ~~receiv~~ing or solicit~~ing~~ money or goods, or the performance of services, with the intention of supporting or promoting the commission of an offence against section 6; and
- (b) the person engages in the conduct with the intention of supporting or promoting the commission of an offence against section 119.1; and
- (c) when the person engages in the conduct, 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; or

(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Absolute liability element

(6) Absolute liability applies to paragraphs (1)(c), (2)(c), (3)(c), (4)(c) and (5)(c).

Exception

(7) This section does not apply if the person engages in conduct solely by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

Disregarding paragraphs 119.1(1)(b) and (2)(b)

(8) A reference in this section to the commission of an offence against section 119.1 includes a reference to doing an act that would constitute an offence against section 119.1 if paragraphs 119.1(1)(b) and (2)(b) were disregarded.

119.5 Allowing use of buildings, vessels and aircraft to commit offences

Use of buildings

(1) A person commits an offence if:

(a) ~~being the person is the~~ owner, lessee, occupier, agent or superintendent of any building, room, premises or ~~other place~~; and

(b) ~~intentionally the person~~ permits a meeting or assembly of persons to be held in ~~the building, room, premises or that~~ place ~~(whether the person or the place is within or outside Australia)~~; and

(c) by permitting the meeting or assembly to be so held, the person intends to ~~with the intention of committing~~ commit, or supporting or promoting the commission of, an offence against ~~paragraph (a), (b), (c), (d), (e) or (f)~~; ~~or~~ section 119.4; and

(d) when the person permits the meeting to be so held, 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; or

(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Use of vessels or aircraft

(2) A person commits an offence if:

(a) the person is:

(i) being the owner, charterer, lessee, operator, agent or master of a vessel₂ or

(ii) the owner, charterer, lessee, operator or pilot in charge of an aircraft;
and

(b) the person permits the vessel or aircraft to be used (whether the person, vessel or aircraft is within or outside Australia); and

(c) intentionally permit the vessel or aircraft to be used by permitting the use, the person with the intention of committing intends to commit, or supporting or promoting the commission of, an offence against paragraph (a), (b), (c), (d), (e) or (f); section 119.4; and

(d) when the person permits the meeting to be so held, 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; or

(v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Absolute liability element

(3) Absolute liability applies to paragraphs (1)(d) and (2)(d).

Note: For absolute liability, see section 6.2.

Exception

~~(1A) A reference in subsection (1) to the commission of an offence against section 6 is a reference to the doing of an act that would constitute, or would but for subsection 6(2) constitute, an offence against section 6.~~

(4B) This section does not apply if the person engages in conduct ~~A person shall not be taken to have committed an offence against this section merely because of doing an act solely~~ by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

~~(2) A person shall not be taken to have committed an offence against this section in respect of the doing of an act outside Australia unless:~~

~~(a) at the time of the doing of that act, the person:~~

~~(i) was an Australian citizen; or~~

~~(ii) not being an Australian citizen, was ordinarily resident in Australia;
or~~

~~(b) the person was present in Australia at any time before the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.~~

~~Penalty: Imprisonment for 10 years.~~

8119.6 Recruiting persons to join ~~organizations~~organisations engaged in hostile activities against foreign governments

A person ~~shall not~~commits an offence if:

~~(a) the person recruits, in Australia, recruit another person to become a member of, or to serve in any capacity with, a body or association of persons the objectives of which are or include any of the objectives referred to in subsection 6(3); and~~

~~(b) the objectives of the body or association include any one or more of the objectives referred to in the definition of *engage in a hostile activity* in subsection 117.1(1).~~

~~Note: For conduct for the defence or international relations of Australia, see section 119.9.~~

~~Penalty: Imprisonment for 725 years.~~

9119.7 Recruiting persons to serve in or with an armed force in a foreign Statecountry

Recruiting others to serve with foreign armed forces

(1) A person ~~shall not~~commits an offence if the person recruits, in Australia:

~~(a) recruit, another person to serve in any capacity in or with an armed force in a foreign country.State, whether the armed force forms part of the armed forces of the government of that foreign State or otherwise;~~

~~Penalty: Imprisonment for 10 years.~~

Publishing recruitment advertisements

~~(b)(2) A person commits an offence if:~~

~~(a) the person publishes in Australia:~~

~~(i) an advertisement; or~~

~~(ii) an item of news that was procured by the provision or promise of money or any other consideration; and~~

~~(b) the person is reckless as to whetherthe fact that the publication of the advertisement or item of news is for the purpose of recruiting persons to serve in any capacity in or with such-an armed force; in a foreign country.~~

~~Penalty: Imprisonment for 10 years.~~

~~(e)(3) A person commits an offence if:~~

~~(a) the person publishes in Australia:~~

- ~~(i) an advertisement containing any; or~~
- ~~(ii) an item of news that was procured by the provision or promise of money or any other consideration; and~~
- ~~(b) the advertisement or item of news contains information:~~
 - ~~(i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with such an armed force in a foreign country; or~~
 - ~~(ii) relating to the manner in which persons may travel to a foreign State country for the purpose of serving in any capacity in or with such an armed force; or in a foreign country.~~

~~Penalty: Imprisonment for 10 years.~~

~~*Facilitating recruitment*~~

- ~~(d)(4) A person commits an offence if:~~
 - ~~(a) the person engages in conduct in Australia; and~~
 - ~~(b) the person engages in the conduct intending to facilitate or promote do any other act or thing with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such an armed force; -in a foreign country~~

~~Penalty:~~

- ~~(a) if the person is a natural person \$20,000 or imprisonment for 7 years, or both; or~~
- ~~(b) if the person is a body corporate \$100,000.~~

~~Imprisonment for 10 years.~~

~~*Exception*~~

- ~~(2) If the Minister has, by instrument signed by the Minister and published in the Gazette, declared that it is in the interests of the defence or international relations of Australia to permit the recruitment in Australia, either generally or in particular circumstances or subject to specified conditions, of persons to serve in or with a specified armed force, or to serve in or with a specified armed force in a particular capacity, subsection (1) does not apply, or does not apply in those circumstances or where those conditions are complied with, as the case may be, to or in relation to recruitment to serve, or the publication of an advertisement containing information with respect to service, in or with that armed force, or in or with that armed force in that capacity, as the case may be.~~
- ~~(5) This section does not apply in relation to service of a person in or with an armed force in circumstances if a declaration under subsection 119.8(2) covers the person and the circumstances of the person's service in or with the armed force.~~

~~Note 1: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3).~~

~~Note 2: For conduct for the defence or international relations of Australia, see section 119.9.~~

Armed forces that are not part of the government of a foreign country

~~(6) A reference in this section to an armed force in a foreign country includes any armed force in a foreign country, whether or not the armed force forms part of the armed forces of the government of that foreign country.~~

~~(3)(7) Without limiting this section, If a person recruits another person to enter into serve in or with an armed force in a foreign country if the other person enters a commitment or engagement to serve in any capacity in or with an armed force, the first mentioned person shall be taken, for the purposes of this section, to recruit that other person to serve in or with that armed force whether or not the commitment or engagement is legally enforceable and whether or not it constitutes a legal or formal enlistment in that force.~~

~~(4) The provisions of section 48 (except paragraphs (1) (a) and (b) and subsection (2)) and of sections 48A, 48B and 49 of the Acts Interpretation Act 1901 apply, by force of this section, to a declaration made under subsection (2) of this section in like manner as those provisions apply to regulations.~~

~~(5) For the purposes of this section, the publication of an item of news shall be deemed to constitute the publication of an advertisement if the publication was procured by the payment of, or by a promise to pay, money or by the provision of, or by a promise to provide, any other consideration.~~

119.8 Declaration in relation to specified armed forces

Service

~~(1) The Minister may, by legislative instrument, declare that section 119.1 or 119.2 does not apply to a specified person or class of persons in any circumstances or specified circumstances if the Minister is satisfied that it is in the interests of the defence or international relations of Australia to permit the service of that person or class of persons in those circumstances in or with:~~

~~(a) a specified armed force in a foreign country; or~~

~~(b) a specified armed force in a foreign country in a specified capacity.~~

Recruitment

~~(2) The Minister may, by legislative instrument, declare that section 119.7 does not apply to a specified person or class of persons in any circumstances or specified circumstances if the Minister is satisfied that it is in the interests of the defence or international relations of Australia to permit the recruitment in Australia of that person or class of persons to serve in those circumstances in or with:~~

~~(a) a specified armed force in a foreign country; or~~

~~(b) a specified armed force in a foreign country in a specified capacity.~~

119.9 Exception—conduct for defence or international relations of Australia

~~This Division does not apply in relation to conduct engaged in by a person acting in the course of the person's duty to the Commonwealth in relation to the defence or international relations of Australia.~~

~~Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).~~

Note 2: See also section 119.12 (declarations for the purposes of proceedings).

9A119.10 Mode of trial

- (1) ~~Subject to subsection (2), a~~ prosecution for ~~an offence against this Act shall~~ any of the following offences is (subject to subsection (2)) to be on indictment:
 - ~~(a) an offence against this Division;~~
 - ~~(b) an offence against section 6 of the *Crimes Act 1914*, or an ancillary offence, that relates to an offence against this Division.~~
- (2) ~~Where~~ If the law of a State or Territory ~~makes provision~~ provides for a person who pleads guilty to a charge in proceedings for the person's commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence ~~against this Act~~ referred to in subsection (1) may be dealt with in accordance with that law.

- ~~(3) A reference in this section to an offence against this Act includes a reference to an offence against:~~
 - ~~(a) section 6 of the *Crimes Act 1914*; or~~
 - ~~(b) an ancillary offence (within the meaning of the *Criminal Code*);~~~~that relates to an offence against this Act.~~

10119.11 Consent of Attorney-General required for prosecutions

- (1) Proceedings for the commitment of a person for ~~trial on indictment for an offence against this Act, or for the summary trial of a person for an offence against this Act, shall the following must~~ not be instituted ~~except with~~ without the ~~written~~ consent ~~in writing~~ of the Attorney-General:
- ~~(2) (a) Notwithstanding the trial on indictment for an offence against the following provisions:~~
 - ~~(i) this Division;~~
 - ~~(ii) section 6 of the *Crimes Act 1914* to the extent that it relates to an offence against this Division;~~~~(b) the summary trial of a person for an offence referred to in paragraph (a).~~
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) ~~without consent has no~~ having been given ~~in relation to the offence in accordance with subsection (1):~~
 - (a) a person may be charged with an offence ~~against this Act, referred to in paragraph (1)(a);~~
 - (b) a person may be arrested for an offence ~~against this Act, referred to in paragraph (1)(a),~~ and a warrant for such an arrest may be issued and executed; ~~and~~
 - (c) a person so charged may be remanded in custody or on bail; ~~but no further step in proceedings referred to in subsection (1) shall be taken in relation to the offence until such a consent has been given.~~
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

~~(4) A reference in this section to an offence against this Act includes a reference to an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence against this Act.~~

~~11 Certificates of Ministers~~

~~(1) In a proceeding against a person for an offence against this Act in relation to a foreign State, a certificate by a Minister, stating that a place or an area specified in the certificate is or is in, or on a specified day or during a specified period was or was in, an independent sovereign state is conclusive evidence of the matters stated in the certificate.~~

119.12 Declarations for the purposes of proceedings

~~(1) The Foreign Affairs Minister may, in writing, declare that:~~

~~(a) a specified authority is in effective governmental control in a specified foreign country or part of a foreign country; or~~

~~(b) a specified organisation is not an armed force, or part of an armed force, of the government of a foreign country.~~

~~(2) In a proceeding against a person for an offence against this Act, a certificate by a The Defence Minister stating may, in writing, declare that, if the a specified person had done a specified act specified in the certificate, (being an act alleged to constitute the an offence,) the person would not have been acting in the course of the person's duty to the Commonwealth in relation to the defence or international relations of Australia is prima facie evidence of the matters stated in the certificate.~~

~~(3) In Without limiting subsection (1) or (2), a proceeding against a person for an offence against this Act declaration under that subsection may be made in relation to the government of a specified day or period.~~

~~(4) In proceedings for an offence referred to in paragraph 119.11(1)(a foreign State or a part of a foreign State,) a certificate by a Minister stating that an authority described in the certificate is, or on a specified day or during a specified period was, in effective governmental control in a specified foreign State, or in a specified part of a foreign State, under this section is prima facie evidence of the matters stated in the certificate.~~

~~(3A) In a proceeding against a person for an offence against this Act, a certificate by a Minister, stating that an organisation specified in the certificate was not, on a specified day or during a specified period, an armed force, or part of an armed force, of the government of a foreign State specified in the certificate is prima facie evidence of the matters stated in the certificate.~~

~~(4) A reference in this section to an offence against this Act includes a reference to an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence against this Act.~~

~~12 Regulations~~

~~The Governor General may make regulations prescribing matters:~~

~~(a) required or permitted by this Act to be prescribed; or~~

~~(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.~~