

## Mosul district, Ninewa province, Iraq

### Introduction

- 1.1 This review is conducted under section 119.3 of the *Criminal Code Act 1995* (the Criminal Code).
- 1.2 Section 119.2 of the Criminal Code provides that it is an offence for a person to enter, or remain in, a 'declared area'. There are exceptions to this offence for persons entering, or remaining in, declared areas solely for one or more of the listed 'legitimate purposes', or for service with a foreign government armed force (other than a 'prescribed organisation').
- 1.3 Section 119.3 of the Criminal Code provides that 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'. Unless disallowed by the Parliament, or revoked earlier by the Foreign Affairs Minister, a declaration ceases to have effect on the third anniversary of the day on which it takes effect.
- 1.4 Subsection 119.3(7) provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review a declaration before the end of the period in which the declaration may be disallowed by the Parliament – 15 sitting days after it is tabled.
- 1.5 The declared area provisions were introduced into the Criminal Code following passage of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, which was reviewed and reported on by the Committee in October 2014.

- 1.6 The review power in section 119.3(7) of the Criminal Code was introduced as a result of a recommendation by the Committee in its review that was subsequently agreed to by the Government. In making this recommendation, the Committee indicated that, through its reviews, it would ‘examine the evidence as to why the particular area was declared’ and seek to:
- ensure declarations were made only in the most pressing circumstances; that a sufficiently high level of specificity was included in regard to the areas declared; and that any overextension of the boundaries was minimised.<sup>1</sup>
- 1.7 On 2 March 2015, the Minister for Foreign Affairs, the Hon Julie Bishop MP, wrote to the Committee to advise of the making of *Criminal Code (Foreign Incursions and Recruitment - Declared Areas) Declaration 2015 – Mosul District, Ninewa Province, Iraq*, which declared the Mosul district of Iraq as an area in a foreign country for the purposes of section 119.2 of the Criminal Code. The letter indicated that the Minister was satisfied that a listed terrorist organisation under the Criminal Code, the Islamic State of Iraq and the Levant (ISIL), also known as Da’esh or Islamic State, was engaging in a hostile activity in the province.
- 1.8 The declaration came into effect on 3 March 2015, the day after it was registered on the Federal Register of Legislative Instruments, and was tabled in the House of Representatives on 4 March 2015 and in the Senate on 5 March 2015.
- 1.9 This is the second time that an area has been declared for these purposes under the Criminal Code. This declaration follows the declaration of al-Raqqa province in Syria in December 2014, which was similarly declared due to the hostile activities of Da’esh in the area.

## The Committee’s review

- 1.10 The Foreign Affairs Minister’s letter, which included a copy of the declaration, its explanatory statement and a statement of reasons for the declaration, was accepted as a submission to the review and published on the Committee’s website: [www.aph.gov.au/pjcis](http://www.aph.gov.au/pjcis). The statement of reasons is also included at Appendix A to this report.

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1 Parliamentary Joint Committee on Intelligence and Security (PJCIS), *Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, October 2014, Canberra, pp. 107–108.

- 1.11 Notice of the review was placed on the Committee's website and public submissions were invited. No public submissions were received.
- 1.12 The Committee resolved to conduct a classified hearing with agencies so that evidence presented could be examined in more detail, as required. A private hearing was held with representatives of the Attorney-General's Department, the Australian Federal Police, the Australian Security Intelligence Organisation and the Department of Foreign Affairs and Trade in Canberra on Wednesday, 25 March 2015. Some unclassified evidence from the hearing has been referred to this report to support the Committee's findings.
- 1.13 A list of submissions received and witnesses appearing at the private hearing is included at Appendix C.
- 1.14 The Committee's review has followed a similar structure to that outlined in its previous review of the declaration of al-Raqqa province, Syria. This included an examination of:
- the Government's procedures underpinning the declaration,
  - the declared area's boundaries,
  - communication of the declaration with stakeholders, and
  - the effectiveness of the 'declared area' offence and community counter-narratives.
- 1.15 While documents presented to the Committee refer to ISIL, the Committee has adopted the practice of referring to the organisation as Da'esh and will use that term through the remainder of this report.

## The Government's procedures

- 1.16 During its review, the Committee received a document outlining the process undertaken by government agencies for the declaration of Mosul district.<sup>2</sup>
- 1.17 The Committee sought further information from agencies at the private hearing about the processes underpinning the declaration. The Committee noted that no details had been provided on the process prior to a 12 February 2015 meeting between the Minister for Foreign Affairs and the Iraqi Foreign Minister. In response, witnesses confirmed that the area has

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2 Attorney-General's Department, *Submission 2*.

been under active consideration by the Australian Security Intelligence Organisation (ASIO) prior to that meeting taking place.<sup>3</sup> An updated version of the process for the declaration document was subsequently provided with additional information included to reflect this. The document was taken as a submission,<sup>4</sup> and is included at Appendix B to this report.

## The declaration of Mosul district

- 1.18 Da'esh is a listed terrorist organisation operating in Iraq under various names since 2003. In June 2014, the group launched a major offensive throughout northern Iraq, taking control of the city of Mosul and proclaiming an Islamic caliphate in areas it controls in Iraq and Syria.<sup>5</sup>
- 1.19 As noted above, to declare an area in a foreign country for the purposes of section 119.2 of the Criminal Code, the Foreign Affairs Minister must be satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country. Section 117.1 of the Criminal Code defines 'engages in a hostile activity' as engaging in conduct with the intention of achieving one of the following objectives:
- (a) the overthrow by force or violence of the government of that or any other foreign country (or of a part of that or any other foreign country);
  - (b) the engagement, by that or any other person, in action that:
    - (i) falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and
    - (ii) if engaged in in Australia, would constitute a serious offence;
  - (c) intimidating the public or a section of the public of that or any other foreign country;
  - (d) causing the death of, or bodily injury to, a person who is the head of state of that or any other foreign country, or holds, or performs any of the duties of, a public office of that or any other foreign country (or of a part of that or any other foreign country);

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3 *Classified Committee Hansard*, Canberra, 25 March 2015, pp. 26–27.

4 Attorney-General's Department, *Submission 2.1*.

5 Statement of reasons, p. [1] (see Appendix A).

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

1.20 Using publicly available information, the statement of reasons produced by ASIO outlines the basis of Mosul district's declaration by assessing Da'esh's activity in the area against each of the above criteria. The statement concludes that Da'esh is engaged in hostile activities in Mosul district.<sup>6</sup>

### **The declared area's boundaries**

1.21 Mosul is located in the Ninewa province of northern Iraq, bordered by the districts of Al Hadr, Tall Afar, Tall Kayf and Al Hamdaniyah in Ninewa province and the provinces of Arbil and Salah ad Din.

1.22 ASIO's statement of reasons notes that, although Da'esh has captured cities in other parts of Iraq, it has a 'significant and enduring presence in Mosul, which is its main base for operations in Iraq'.<sup>7</sup> Mosul is also the largest city in Iraq controlled by Da'esh, and 'plays a key role as a central location for foreign extremists – including Australians – to form networks and train'.<sup>8</sup>

1.23 The statement of reasons also notes the symbolic significance of Mosul for Da'esh due to it being the location of the first video appearance of its leader, Abu Bakr al-Baghdadi, immediately following Da'esh's declaration of a caliphate.<sup>9</sup>

### **Communication of the declaration with stakeholders**

1.24 At the private hearing, the Committee was referred to a travel warning pamphlet that has been publicly distributed highlighting the declared area offence, the declaration of Mosul, and the risks of travel to the district.

1.25 Other activities to communicate the declaration of Mosul, as outlined in the process for the declaration, included:

- briefing the Iraqi ambassador to Australia and the Iraqi Foreign Minister on the proposed declaration,

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6 Statement of reasons, p. [5] (see Appendix A).

7 Statement of reasons, p. [1] (see Appendix A).

8 Statement of reasons, p. [2] (see Appendix A).

9 Statement of reasons, pp. [1-2] (see Appendix A).

- advising attendees at Countering Violent Extremism events of the proposed declaration,
- advising the Australian Council for International Development and the International Development Contractors Group of the proposed declaration,
- advising states and territories of the proposed declaration through the Australia-New Zealand Counter-Terrorism Committee Secretariat,
- discussing the proposed declaration with the Australian Representative of the Kurdistan Regional Government, the Assyrian Universal Alliance and a NSW Member of Parliament,
- updating the Australian National Security website with details of the declaration,<sup>10</sup>
- updating advice on the Smartraveller website,<sup>11</sup> and emailing Australians registered as being in, or going to, Iraq, and
- emailing members of the Living Safe Together community about the declaration.<sup>12</sup>

## **Effectiveness of the ‘declared area’ offence and community counter-narratives**

- 1.26 The Committee discussed with agencies at the private hearing the effectiveness of the declared area offence in aiding the collection of evidence for use in the prosecution of Australians suspected of fighting for terrorist organisations in Iraq and Syria, and how returnees from detained areas would be managed by the authorities. Agencies did not raise any concerns with the Committee about how the laws were working in practice to date.<sup>13</sup>
- 1.27 The Committee also discussed with witnesses at the private hearing the Government’s efforts to support counter-narratives in opposition to terrorist propaganda. The Attorney-General’s Department highlighted the

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10 <http://www.nationalsecurity.gov.au>

11 <http://www.smartraveller.gov.au>

12 Attorney-General’s Department, *Submission 2.1*, p. 1–4 (see Appendix B).

13 *Classified Committee Hansard*, Canberra, 25 March 2015, pp. 29–32.

Attorney-General's recent announcement of work in this area, to be led by the Department.<sup>14</sup>

1.28 The Attorney-General had in February announced a \$17.9 million *Combating Terrorist Propaganda in Australia* initiative, which aims to 'combat the lies and propaganda terrorist groups are promulgating online to gain support and sympathy from vulnerable young Australians'.<sup>15</sup> The initiative is intended to:

- establish a social media monitoring and analysis capability to better understand extremist narratives and how they affect Australians,
- help reduce access to extremist material online through the recently launched Report Online Extremism tool and by working with the Australian Communications and Media Authority, private sector and international partners to take down or otherwise address extremist content,
- promote material online that challenges the claims of terrorists and shares the benefits of Australia's diversity, inclusion, democracy and social values, and
- fund communities to 'help vulnerable individuals reject terrorist propaganda by questioning the assertions, inconsistencies and false allegations, and bringing to light the brutality, of extremist groups'.<sup>16</sup>

1.29 The Department informed the Committee that it was looking at how to build the capability of authoritative voices in the Muslim community, both in Australia and internationally, to more effectively put forward their arguments (for example, by engaging with social media).<sup>17</sup>

## Committee comment

1.30 The Committee reviewed the process for the declaration of Mosul district and was satisfied with the appropriateness of the procedures undertaken by the Government.

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14 *Classified Committee Hansard*, Canberra, 25 March 2015, p. 33.

15 Senator the Hon George Brandis QC, Attorney-General, 'Combating terrorist propaganda online', *Media Release*, 19 February 2015; Doorstop interview, White House Countering Violent Extremism Summit, Washington DC, 19 February 2015 (20 February 2015 AEST).

16 Senator Brandis, 'Combating terrorist propaganda online', *Media Release*, 19 February 2015.

17 *Classified Committee Hansard*, Canberra, 25 March 2015, p. 35.

- 1.31 The Committee reiterates the recommendation in its previous report on the declaration of al-Raqqa province that, at the time a declaration is made, the Minister for Foreign Affairs provide to the Committee a document outlining the process underpinning the declaration of the area. The Committee notes, however, that its report on the al-Raqqa declaration had not yet been presented at the time Mosul was declared, and that the process for the declaration of Mosul was promptly provided to the Committee thereafter.
- 1.32 During its hearing, the Committee sought clarification from agencies regarding the initiation of the process for declaring Mosul. Following private evidence and a subsequent update to the document outlining the process for the declaration, the Committee was assured that, although the declaration was made shortly after a meeting between the Iraqi Foreign Minister and the Australian Minister for Foreign Affairs on 12 February 2015, the process of identifying Mosul as a candidate for declaration was already underway well before this meeting. As shown in the updated process for the declaration, the member organisations of the Australian Counter-Terrorism Centre initially met on 27 November 2014 to consider suitable areas for declaration and to coordinate the collection and provision of relevant information and intelligence by key agencies.<sup>18</sup>
- 1.33 Similarly to the previous declaration of al-Raqqa province in Syria, the Committee considers the declaration of Mosul district to be well within the scope of what the declared area offence was intended to target.
- 1.34 ASIO's statement of reasons provides examples of where Da'esh has committed actions in Mosul that meet the threshold of 'engaging in hostilities' against all of the criteria listed in the Criminal Code. Among others, atrocities committed by Da'esh in Mosul have included the execution of 13 teenage boys for watching a sports match, the mass execution of around 600 mainly Shia inmates at a prison, the torture and execution of a women's rights activist, and the destruction of many historical and religious sites.<sup>19</sup>
- 1.35 The Committee understands that, although there are other areas of Iraq controlled by Da'esh, Mosul is a particularly appropriate candidate for declaration due to Da'esh's 'significant and enduring presence' in the area, which is the 'main base' of its operations in Iraq. The symbolic significance of Mosul and its status as a central location for foreign extremists are also important factors. Further, the definition of the declared area along the
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18 Attorney-General's Department, *Submission 2.1*, p. 1 (see Appendix B).

19 Statement of reasons, pp. [2-3] (see Appendix A).

precise boundaries of Mosul district provides a high level of specificity and clarity for members of the public considering travel to the region.

- 1.36 The Committee notes the activities that have been undertaken by the Government to inform stakeholders about the declaration of Mosul district. The Committee will continue to monitor the effect of declarations on the actions of individuals over time, including the impact of any prosecutions that take place as a result of the declarations. The Committee supports initiatives to counter the propaganda being used by Da'esh to draw young Australians into the conflicts in Iraq and Syria, and considers that sustained effort will be needed by both governments and communities to ensure the facts of the situation in those countries are made known to the persons who are most vulnerable.
- 1.37 The Committee is satisfied that the declaration of Mosul district is appropriate, and therefore supports the declaration under section 119.2 of the Criminal Code.

### **Recommendation 1**

**The Committee recommends that the legislative instrument declaring Mosul district, Ninewa province, Iraq for the purposes of section 119.2 of the *Criminal Code Act 1995* not be disallowed.**

**Dan Tehan MP**  
Chair

May 2015

