



THE HON JULIE BISHOP MP

Minister for Foreign Affairs

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee
on Intelligence and Security
Parliament House
CANBERRA ACT 2600


Dear Chair

I am writing to advise of the recent making of the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq*, which re-declares Mosul district in the Ninewa province of Iraq as an area in a foreign country for the purposes of section 119.2 of the *Criminal Code*.

Mosul district was first declared on 3 March 2015 for a period of three years. The re-declaration of this area will ensure that the offence of entering, or remaining in, a declared area under section 119.2 of the *Criminal Code* will continue to apply in relation to Mosul district.

I have made the declaration as I am satisfied that the Islamic State of Iraq and the Levant (ISIL), which is a listed terrorist organisation under the *Criminal Code*, continues to engage in hostile activity in Mosul district.

My decision to re-declare Mosul district was made following careful consideration of a Statement of Reasons provided by the Australian Security Intelligence Organisation in consultation with relevant government agencies.

In compliance of the requirement under subsection 119.3(3) the *Criminal Code* that, before making a declaration, arrangements must be made for the Leader of the Opposition to be briefed in relation to the proposed declaration, I wrote to the Leader of the Opposition on 28 February 2018 advising of my intention to re-declare Mosul district and enclosed a copy of the Statement of Reasons upon which my decision to make the declaration was based. I invited the Leader of the Opposition to contact my office if he required further briefing.

Subsection 119.3(7) of the *Criminal Code* provides that the Parliamentary Joint Committee on Intelligence and Security may review the declaration before the end of the period during which the declaration may be disallowed under section 42 of the *Legislative Instruments Act 2003*.

To assist the Committee, I enclose a copy of the Declaration and Explanatory Statement (with attached Statement of Reasons upon which my decision to re-declare Mosul district was based). The legislative instrument commences the day after it is registered on the Federal Register of Legislation.

The action officer for this matter in my department is Gina Schwass, who may be contacted by email

Yours sincerely

~~J~~ulie Bishop

1 - MAR 2018

Encl:

Declaration and Explanatory Statement including Statement of Reasons



Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq

Criminal Code Act 1995

I, JULIE BISHOP, Minister for Foreign Affairs, make this Declaration under subsection 119.3(1) of the *Criminal Code*.

Dated

1st March 2018

JULIE BISHOP

Minister for Foreign Affairs

1 Name of Declaration

This declaration is the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq*

2 Commencement

This declaration commences on the day after it is registered.

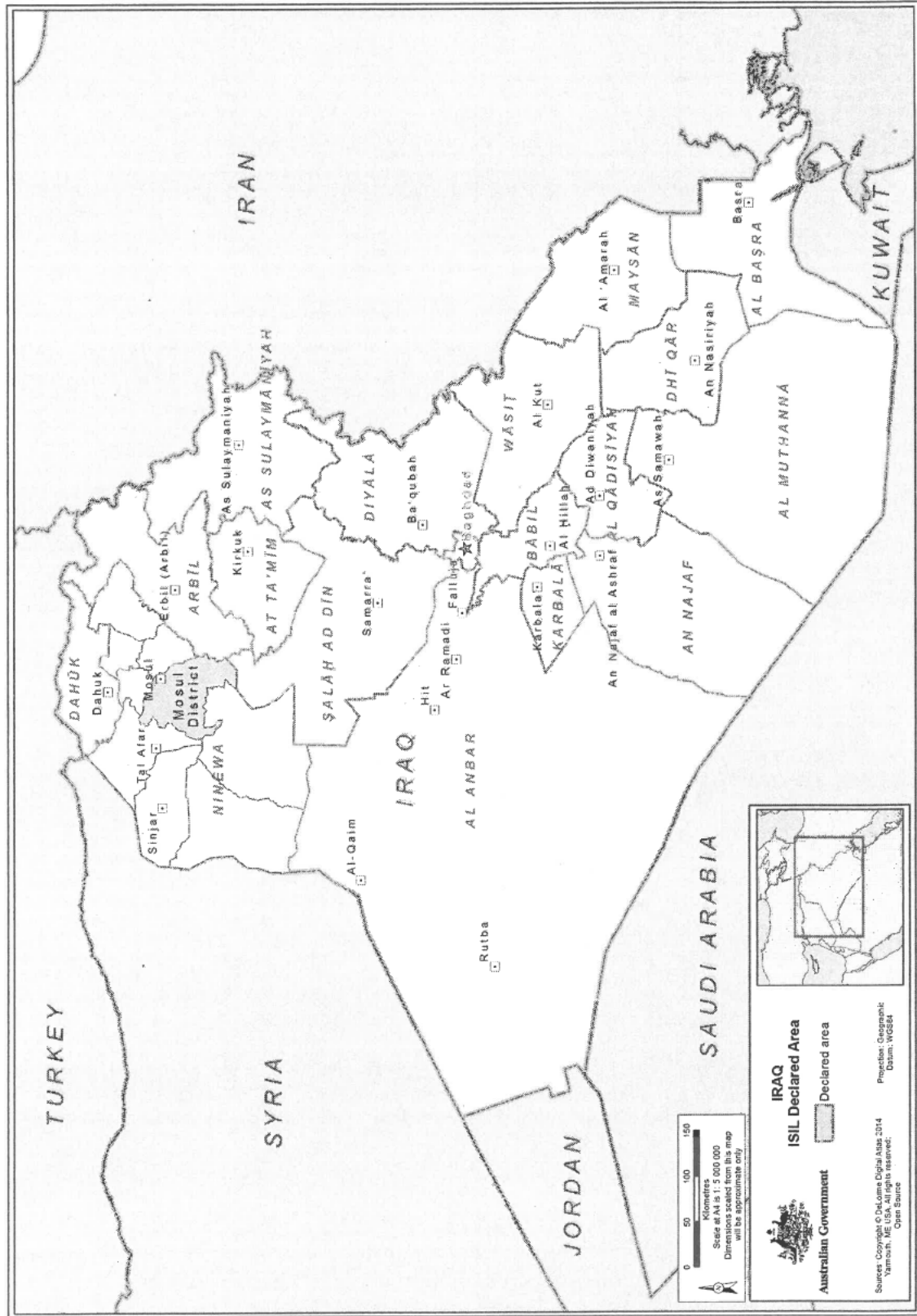
3 Authority

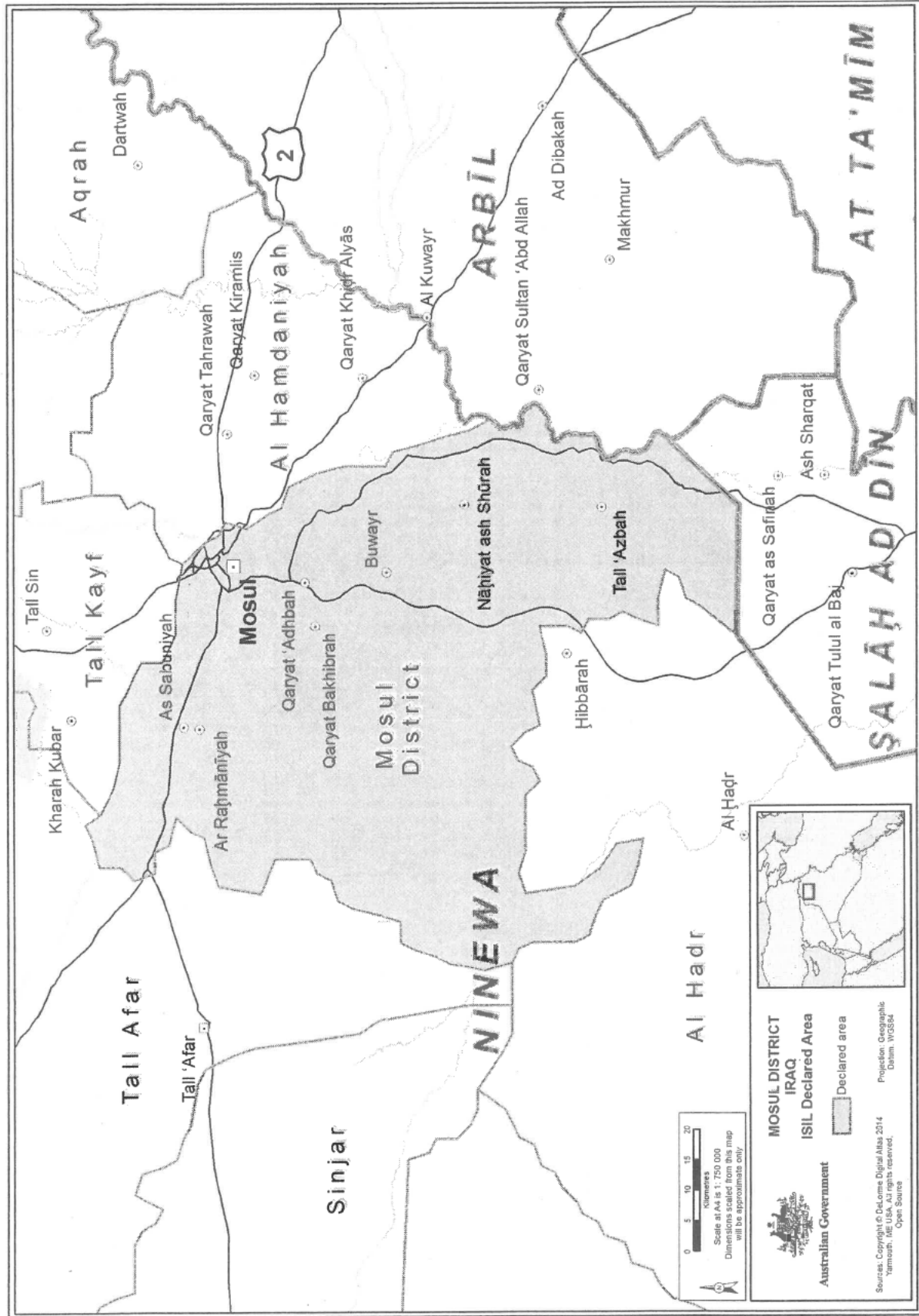
This declaration is made under subsection 119.3(1) of the *Criminal Code*.

4 Declared area in a foreign country

Mosul district, Ninewa province, Iraq as shown marked 'Mosul District' on the two maps attached hereto and marked 'A'. Mosul district is located in the Ninewa province of Iraq and is 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.

A—Mosul District, Ninewa Province Iraq





EXPLANATORY STATEMENT

Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq

The *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq* (the declaration) is made under subsection 119.3(1) of the *Criminal Code*.

Background

Division 119 of the *Criminal Code* contains Australia's foreign incursions and recruitment offences. Section 119.2 of the Code makes it an offence for a person to intentionally enter, or remain in, a declared area in a foreign country where the person is reckless as to whether the area is a declared area. The maximum penalty for this offence is 10 years' imprisonment.

Under section 119.3 of the *Criminal Code*, the Minister for Foreign Affairs may declare an area in a foreign country for the purposes of section 119.2 if the Minister is satisfied that a listed terrorist organisation is engaging in a hostile activity in that area. The Islamic State (also known as the Islamic State of Iraq and the Levant, or ISIL), which is a listed terrorist organisation under the *Criminal Code*, is engaging in a hostile activity in the district of Mosul in the Ninewa province of Iraq.

Purpose

The declaration makes it an offence under section 119.2 of the *Criminal Code* to enter, or remain in, Mosul district, Ninewa province in Iraq, except where the person has done so solely for a legitimate purpose or purposes.

Explanation and effect of provisions

Section 1 - Name of Declaration

Section 1 sets out the title of the declaration as the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq*.

Section 2 – Commencement

Section 2 provides that the declaration commences on the day after it is registered.

Section 3 – Authority

Section 3 notes the Minister for Foreign Affairs has the power to make the declaration under subsection 119.3(1) of the *Criminal Code*.

Section 4 – Declared area in foreign country

Section 4 provides that the area covered by the declaration is Mosul district, Ninewa province, Iraq. Section 4 attaches two maps (marked 'A') to show the geographical

area that the declaration covers. Mosul district is located in the Ninewa province of Iraq and is 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.

Statement of Compatibility with Human Rights

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed under the definition of 'human rights' in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The declaration is compatible with these human rights because it is a lawful, necessary and proportionate response to protect Australia's national security. The declaration, which is made under section 119.3 of the *Criminal Code*, will result in the offence under section 119.2 applying to Mosul district, Ninewa province, Iraq. The Minister for Foreign Affairs can make a declaration if the Minister is satisfied that a listed terrorist organisation is engaging in hostile activity in an area of a foreign country.

The Islamic State (also known as the Islamic State of Iraq and the Levant or ISIL) is a listed terrorist organisation under the *Criminal Code*. ISIL's activities, including in the district of Mosul, and calls by ISIL's leadership, have attracted thousands of foreign fighters, including Australians, who have travelled to Iraq to join ISIL and engage in hostile activity.

It is appropriate for the Minister to declare Mosul district in Ninewa province, Iraq under subsection 119.3(1) of the *Criminal Code* as ISIL is engaging in hostile activity in the area. The declaration promotes the safety of Australians, including those who might be seeking to travel to Mosul district, Ninewa province, Iraq and those who may be at risk of harm posed by persons returning from Mosul district, Ninewa province, Iraq. Consistent with subsection 119.3(2A) of the *Criminal Code*, the declaration does not cover an entire country.

As a result of the declaration, it will be a criminal offence under section 119.2 of the *Criminal Code* for a person to enter, or remain in, Mosul district, Ninewa province, Iraq, where the person is reckless as to whether the area has been declared. The Attorney-General's consent to prosecute will be required before a prosecution under section 119.2 can commence and the Commonwealth Director of Public Prosecutions is required to consider the public interest in line with their prosecutorial policy prior to the commencement of a prosecution.

The 'declared area offence' under section 119.2 addresses two substantial concerns. The first concern is that Australians who enter or remain in conflict areas put their own lives at risk. The second concern is that foreign conflicts provide a significant opportunity for Australians to develop the necessary capability and ambition to undertake terrorist acts overseas and within Australia.

A person prosecuted for an offence under section 119.2 of the *Criminal Code* for entering or remaining in Mosul district, Ninewa province, Iraq will maintain the right to

a fair trial and presumption of innocence in accordance with article 14 of the International Covenant on Civil and Political Rights (ICCPR). A defendant will bear no burden of proof unless they seek to raise facts constituting a defence that their presence in Mosul district was solely for a legitimate purpose or purposes. Should a defendant choose to rely on the exception at subsection 119.2(3), they bear an evidential burden to adduce or point to evidence that suggests a reasonable possibility that their travel to the district of Mosul in Ninewa province, Iraq was solely for a legitimate purpose or purposes. The prosecution retains the legal burden and must disprove any legitimate purpose defence raised beyond a reasonable doubt, in addition to proving the elements of the offence.

Subsection 119.3(7) of the *Criminal Code* provides for the review of the declaration by the Parliamentary Joint Committee on Intelligence and Security before the end of the disallowance period.

To the extent that the declaration may limit the right to freedom of movement under article 12 of the ICCPR the limitation is lawful and proportionate. The declaration does not remove the ability to enter or remain in Mosul district in the Ninewa province of Iraq for a legitimate purpose or purposes. A limitation can be justified if it is in the interest of national security. The risk of a successful terrorist attack occurring in Australia is high and the limitation imposed by the declaration is necessary to assist in the prevention of an attack on Australian soil by individuals who have gained terrorist capabilities by engaging in hostile activities with a listed terrorist organisation.

Conclusion

The declaration is compatible with human rights because it is a lawful, necessary and proportionate response to protect Australia's national security.

Consultation

Consultation on the declaration was undertaken with key stakeholders. Pursuant to section 17 of the *Legislative Instruments Act 2003*, the Minister for Foreign Affairs is satisfied that appropriate consultation has occurred. In particular consultation was undertaken with:

- Attorney-General's Department
- Australian Border Force
- Australian Criminal Intelligence Commission
- Australian Federal Police
- Australian Geospatial-Intelligence Organisation
- Australian Secret Intelligence Service
- Australian Security Intelligence Organisation
- Department of Defence

- Department of Foreign Affairs and Trade
- Department of Home Affairs
- Department of Prime Minister and Cabinet
- Office of National Assessments

The Minister for Foreign Affairs has also arranged for the Leader of the Opposition in the House of Representatives to be briefed in relation to this declaration in accordance with subsection 119.3(3) of the *Criminal Code*.



**THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS
MINISTER FOR IMMIGRATION AND BORDER PROTECTION**

Ref No: MS18-000359

The Hon Julie Bishop MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Julie
Dear Minister

I am writing to advise that the current declaration of Mosul District, Ninewa province, Iraq under section 119.3 of the *Criminal Code Act 1995* (Criminal Code) will lapse on 3 March 2018. Should the declaration lapse, it will no longer be an offence under section 119.2 of the Criminal Code to enter or remain in Mosul district.

You made a declaration in respect of Mosul District on 2 March 2015 on the basis that Islamic State, a listed terrorist organisation, had exclusive control over Mosul District and was assessed to be engaging in hostile activity within the area.

Should you wish to make a new declaration in respect of Mosul District, under section 119.3(1) of the Criminal Code, you must be satisfied that a listed terrorist organisation is engaging in hostile activity in that area.

The National Threat Assessment Centre (NTAC) has prepared the attached Statement of Reasons. NTAC assesses that, while significantly reduced, the Islamic State is engaged in hostile activity in Mosul District, Ninewa province, Iraq.

Based on this assessment it is open to you to make a new declaration in respect of Mosul District, Iraq. The decision to make a declaration is at your discretion.

Given the significance of the declared area provisions, I have provided a copy of this letter to the Prime Minister and the Minister for Defence.

Yours sincerely

PETER DUTTON

21/02/18

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**Declaration of an area where the Islamic State is engaged in hostile activity
under the Criminal Code**

Mosul District, Ninewa Province, Iraq

As at January 2018, Islamic State has been militarily defeated in the vast majority of territory it once claimed in Iraq and Syria, including in Mosul District. Since the liberation of Mosul city from Islamic State on 11 July 2017, the extent of the group's engagement in hostile activity within the geographical boundary of the Mosul District declared area has significantly reduced. However, Islamic State has continued to engage in hostile activities within Mosul District and elsewhere in Iraq.

This statement is based on publicly available information about the areas where the proscribed terrorist group—Islamic State—is engaged in hostile activity. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.

Basis for declaring an area in a foreign country where a listed terrorist organisation is engaging in hostile activity

Under section 119.3 of the *Criminal Code Act (Cth) 1995*, the Minister for Foreign Affairs may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2. Before declaring an area in a foreign country for the purposes of section 119.2, 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 119.2 makes it an offence for a person to enter, or remain in, an area in a foreign country if the area is an area declared by the Minister for Foreign Affairs under section 119.3, and the person enters the area for a purpose other than a legitimate purpose.

Background to this declaration

Proscription of the group engaged in hostile activity

Islamic State has been operating in Iraq under various names since 2003. It was first listed as a proscribed terrorist organisation under the Arabic name *Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn* in 2005. It was then re-listed under the names al-Qa'ida in Iraq and the Islamic State of Iraq and the Levant. Islamic State has been active in the Syrian conflict since late 2011. On 29 June 2014, the group proclaimed an Islamic caliphate in areas it controlled in Iraq and Syria; and has since been known as Islamic State. Islamic State was listed as a proscribed terrorist organisation by the Australian Government on 11 July 2014 and was re-listed on 27 June 2017.

Islamic State follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those that do not agree with its interpretations as infidels and apostates. Islamic State is one of the world's deadliest and most active terrorist organisations and conducts frequent attacks on security forces and civilians in Iraq and Syria; and against rival armed groups. Islamic State also inspires,

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encourages, enables and directs terrorist attacks internationally. The group incites and conducts violence against Muslims and non-Muslim religious minorities within the region, and conducts public executions and violent punishments in areas it controls.

Geographic basis of the group's activities

Given the liberation of Mosul city from Islamic State on 11 July 2017 and the subsequent liberation of other urban population centres such as Tal Afar and Hawijah; the geographic areas in which Islamic State is engaged in hostile activity are now less defined in Iraq than they were in March 2015.

As at January 2018, Islamic State has been militarily defeated in the vast majority of territory it once claimed in Iraq and Syria, including in Mosul District. Since Mosul District was first declared in March 2015, Islamic State changed its focus from the conquest of territory, to maintaining governance, and more recently to defending territory and consolidating resources. Following military pressure along the Euphrates River valley on both sides of the Iraq-Syria border, Islamic State militants have likely withdrawn to other parts of Dayr az-Zawr Province, Syria. Forces fighting Islamic State in Iraq and Syria expect the group to revert to a clandestine insurgency in both countries.

Despite the announced liberation of Mosul city and the group's loss of control in the declared area of Mosul District; Islamic State has continued to engage in hostile activity in this area. Since 2014 the city of Mosul played a key role as a base from which Islamic State directed, encouraged and inspired violence elsewhere in Iraq and Syria, as well as across the globe; including in Australia. Foreign fighters, including Australians, have travelled to Iraq and Syria to train and fight with Islamic State, including to Mosul District.

Group's engagement in hostile activities within or from the declared area

In the aftermath of the liberation of Mosul city from Islamic State on 11 July 2017, Islamic State's hostile activities in Mosul District significantly reduced. However, Islamic State has continued to engage in hostile activities within Mosul District and elsewhere in Iraq.

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

When Mosul District was originally listed as a declared area in March 2015, Islamic State held territory including major population centres, where it governed by brutal rule; including the use of force and violence. Islamic State imposed tight controls on civilians living in Mosul District and imposed punishments and torture on minorities or those who Islamic State perceived had conducted infractions against its laws. In November 2017, Islamic State has now lost control of its last remaining population centres in both Iraq and Syria.

Despite significant loss of territory across Iraq and Syria since Mosul District was originally declared in March 2015, Islamic State continues to engage in violence against the Iraqi Government, the Syrian Regime and other groups, including using

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force to claim or hold territory. Islamic State used extreme violence, including suicide bombs, car bombs, motorbike bombs, mortar fire and sniper fire, to hold the city of Mosul from Iraqi security forces until July 2017.

In addition to Islamic State headquarters in al-Raqqa, Syria the city of Mosul played a key role as a base from which the group directed, encouraged and inspired violence elsewhere in Iraq and Syria, as well as across the globe.

The engagement, by that or any other group, in action that

- falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and*
- if engaged in Australia, would constitute a serious offence*

Despite significant loss of territory and leadership attrition, Islamic State continues to conduct attacks intended to cause death, serious physical harm and serious damage to property. Islamic State has executed soldiers, police, civilians and Islamic State defectors, and the group has also conducted chemical attacks against civilians and Iraqi forces. Islamic State has continued to engage in armed clashes, use improvised explosive devices and deploy suicide bombers across the Iraq and Syria conflict zone, including in Mosul District.

The following hostile activities took place within Mosul District.

- 15 December 2017: Islamic State detonated several improvised explosive devices near Hamam al-Alil, south of Mosul; killing and wounding 13 soldiers of the Iraqi Popular Mobilisation Forces.
- 12 November 2017: An Islamic State bomb killed three civilians in west-Mosul. Another explosion killed a tribal fighter, and wounded three others, in al-Qayyarah.
- 23 July 2017: Islamic State claimed a commando attack on Iraqi forces in al-Sahaji village, west of Mosul; killing over 45 members of the Popular Mobilisation Forces.
- 1 June 2017: Islamic State snipers targeted civilians fleeing Mosul—the United Nations claimed Islamic State militants shot and killed 163 civilians in a single day in Mosul.
- 19 April 2017: Islamic State undertook a 'low grade' chemical attack against an Iraqi forces unit in west Mosul. Australian and United States advisers were with the Iraqi forces at the time. No Australian personnel were exposed to the chemical, however 25 Iraqi soldiers required treatment for chemical exposure.
- 3 March 2017: Mortars fired from Islamic State held territory in west Mosul injured 12 civilians in the first reported chemical attack in the battle for Mosul.
- 22 December 2016: At least 23 people were killed in a triple car bomb attack by Islamic State in eastern Mosul in an area retaken by Iraqi forces.
- 8 November 2016: Iraqi forces found a mass grave containing the remains of approximately 100 people inside a school in a town close to Mosul recaptured from the Islamic State.

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- 5 March 2016: Islamic State executed 132 prisoners in Mosul and 68 in al-Raqqa in order to reduce expenses.

Intimidating the public or a section of the public of that or any other foreign country

Islamic State continues to engage in terrorist attacks against civilians, particularly in Iraq, but also elsewhere internationally. Islamic State conducts mass casualty attacks in public places, including in marketplaces and cafes. It also undertakes drone strikes and executions, including beheadings and burnings, and publicises these activities, including through the dissemination of videos and magazines.

- As at August 2017: More than 3,000 Yazidis, mostly from Sinjar, Iraq have been killed by the Islamic State—with more than half shot, beheaded or burnt alive—and approximately 6,800 taken for sex slaves or fighters.
- According to the United Nations, at least 741 civilians died in ‘execution-style killings’ by Islamic State during the battle for the city of Mosul which lasted from the end of 2016 through to early July 2017. It is also alleged Islamic State carried out mass abductions, used human shields, intentionally shelled civilian homes and targeted people trying to flee the city.
- 8 June 2017: The United Nations received reports that 231 Iraqi civilians were killed by Islamic State while attempting to flee Mosul city over a two week period in late-May to early-June 2017.

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)

Within Iraq and Syria, Islamic State focuses its attacks against Iraqi and Syrian military, paramilitary and security force targets—as well as soft targets such as civilians.

The following hostile activities took place within Mosul District.

- 3-9 January 2018: Islamic State claimed four assassinations in three neighbourhoods of Mosul city targeting a local leader and three intelligence agents.
- 11 November 2017: Five policemen were killed and seven others wounded in a suspected Islamic State person borne suicide attack targeting a checkpoint in al-Houd village.
- 23 October 2017: Seven Iraqi police personnel were killed and wounded in an Islamic State suicide and armed attack in Mosul’s Old City, including when a ‘booby-trapped house’ exploded in east Mosul.
- 14 October 2017: Islamic State targeted a security forces headquarters in Tal Safuk village, where five security force personnel were killed and another

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13 wounded in armed clashes. Three watchtowers and an armored vehicle were damaged during the attack.

- 4 August 2017: A suicide bomber invaded a makeshift headquarters belonging to the Iraqi Army's elite Counter-Terrorism Service in west-Mosul, killing three Iraqi Army members, as operations continued to clear Islamic State cells.
- 29 April 2017: A United States service member died of wounds sustained from an explosion outside Mosul city, where United States-backed forces were fighting to retake the city from Islamic State.
- 13 October 2016: An Islamic State 'booby-trapped' drone exploded killing two Kurdish Peshmerga fighters and wounding two French commandos near Mosul city, in what was described as a Trojan-horse style attack.

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)

Islamic State continues to destroy property, including through its military campaign. This includes property which belongs to the government in areas that it held. Islamic State has on many occasions destroyed entire areas that it vacated due to military losses.

- 21 June 2017: Islamic State destroyed the grand al-Nuri Mosque and the al-Hadba minaret in Mosul.
- 24 February 2017: Islamic State released footage of an armed drone destroying an Iraqi Army armored vehicle southwest of Mosul city. The entire crew are believed to have been killed in the attack.
- 1 December 2016: Islamic State set fire to at least 19 oil wells in al-Qayyarah, in south Mosul District, as they were forced to retreat by Iraqi forces.

Threats to Australian interests

Islamic State's coordinated and effective propaganda campaign has exposed susceptible Australians to an extremist ideology and influenced some toward radicalisation. As many as 100 Australians are currently in Iraq and Syria fighting with or supporting Islamist extremist groups—the majority are with Islamic State. Australians fighting with Islamic State have been involved in acts of violence including suicide bombings and holding the decapitated head of a Syrian soldier following Islamic State beheadings; incidents subsequently used in Islamic State's propaganda campaign.

Islamic State continues to openly call for attacks against Australia and its interests, both because of Australia's support to military operations against Islamic State in Iraq and Syria, and because of the group's anti-Western ideology. Islamic State promotes its opposition to Australia through propaganda material, foreign fighter videos and speeches by senior leadership.

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- 7 August 2017: in the 2nd episode of its "Inside the Caliphate" series, the Islamic State featured an Australian fighter in al-Raqqa calling on Muslims among his fellow countrymen to either, travel to and wage jihad in the city of Marawi, Philippines, or stay in Australia and kill "disbelievers".

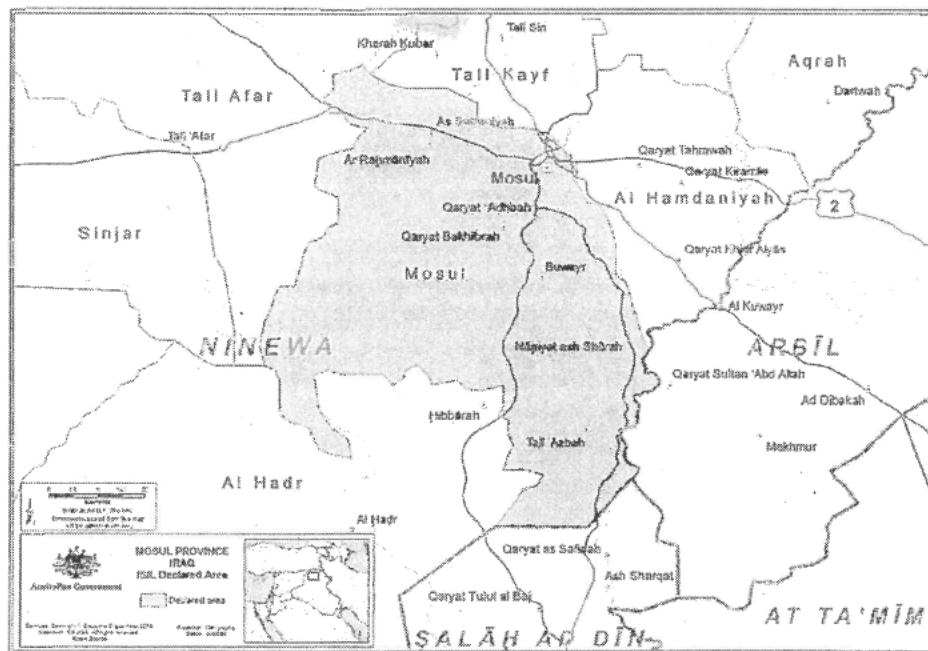
Islamic State has promoted terrorist attacks in Australia and has openly praised terrorist incidents in Australia, including the following:

- 2 October 2015: shooting of an unarmed police civilian, outside the New South Wales (NSW) Police Force headquarters in Parramatta, NSW
- 15–16 December 2014: siege at Martin Place, Sydney, and
- 23 September 2014: stabbing of two counter-terrorism police officers in Victoria.

Conclusion

On the basis of the information available to us, ASIO assesses that, while significantly reduced, the Islamic State is engaged in hostile activity in Mosul District, Ninewa province, Iraq.

This assessment is corroborated by information from reliable and credible intelligence sources.



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