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PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

**Statutory review into the 'declared area' provisions, listed in sections 119.2 and 119.3
of the *Criminal Code Act 1995***

Questions on notice

22 September 2020

Australian Federal Police

QoN Number: 01

Question:

Mr DREYFUS: To turn to that provision: since 2014, how many individuals have been prosecuted for an offence under section 119.1? I'm just trying to get a context here. You can take it on notice if you haven't got it to hand.

Answer:

Two (2) individuals have been prosecuted for an offence under section 119.1 since 2014. The table below provides information about all prosecutions for foreign incursion offences since 2014.

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QoN Number: 02

Question:

Mr DREYFUS: ... How many individuals have been convicted of an offence under section 119.1?

Mr McCartney: I've got the details here. Eighteen persons have been convicted of foreign incursion offences, two persons have been convicted of foreign incursions with the intention of engaging in hostile activities and 16 further persons have been convicted for preparations for incursions for the purpose of engaging in hostile activities.

Mr DREYFUS: That last lot are at 119.4, I think.

Mr McCartney: I might just pass to my legal expert, Mr Bruckard.

Mr DREYFUS: I think that, for the committee's inquiry, it'd be nice to have a baseline here. You can take that on notice. The purpose of it is simply to compare what use has been made of 119.2, which is the provision we're looking at, the 'declared areas' provision, as against the other provisions of section 119, which are, as the Law Council described for us, substantive provisions that go to the intent to carry out hostile activity in a foreign country. Perhaps you could just give us a table of those provisions you've just referred to there.

Answer:

The table below sets out the number of individuals prosecuted and convicted for foreign incursions offences under both the Criminal Code and now-repealed Crimes (Foreign Incursions and Recruitment) Act provisions since 2014.

<u>Section</u>	<u>Offence</u>	<u>Number of individuals prosecuted</u>	<u>Number of individuals convicted</u>
119.1 Criminal Code	Incursions into foreign countries with the intention of engaging in hostile activities	2 (including 1 currently before the court)	1
119.2 Criminal Code	Entering, or remaining in, declared areas	1 [Note this was the Betka matter – he pled guilty to the 119.1 offence, of which he was ultimately convicted]	0
119.4 Criminal Code	Preparations for incursions into foreign countries for purpose of engaging in hostile activities	16 (5 currently before the court)	11
s.6(1)(a) Crimes (Foreign Incursions and Recruitment) Act 1978 (repealed)	Enter a foreign state with intent to engage in a hostile activity in that foreign state.	1	1
s.6(1)(b) Crimes (Foreign Incursions	Engage in a hostile activity in a foreign state	2 (both currently before the court)	0

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and Recruitment) Act 1978 (repealed)		[Note: 1 prosecution relates to an individual also currently before the court for the 119.1 offence]	
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Please note, the AFP's reference during the public hearing to 16 individuals convicted of foreign incursions offences), should instead refer to 16 prosecutions in relation to the offence under s 119.4 of the Criminal Code (preparations for incursions into a foreign country for the purpose of engaging in hostile activities).

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QoN Number: 03

Question:

Mr DREYFUS: Thank you. The written submission from the AFP stated that, as at August 2020, there were 20 active arrest warrants, which include the 'declared area' offence. How many of those arrest warrants also include the offence under section 119.1?

Mr McCartney: There would be a range of individuals.

Mr DREYFUS: All of them?

Mr McCartney: No. I wouldn't say all of them. We'll take that on notice and provide that detail to you.

Answer:

Of the 20 active arrest warrants for offshore foreign terrorist fighters which include the declared area offence under section 119.2, seven (7) of those arrest warrants also include an offence under section 119.1 Criminal Code.

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QoN Number: 04

Subject:

Mr DREYFUS: Do you know where all of them are, the subjects of the 20 active arrest warrants?

Mr McCartney: Yes, we do.

Mr DREYFUS: All of them?

Mr McCartney: Yes.

Mr DREYFUS: Broadly, are they in prison or in a detention centre somewhere?

Mr McCartney: A combination thereof.

Mr DREYFUS: Are some fighting in various places, in the world, like in Iran or in Libya or in Yemen or in the Philippines?

Mr McCartney: No. The cadre that we're looking at are, predominantly, in Syria.

Mr DREYFUS: In detention?

Mr McCartney: I'd have to take that on notice. The majority of those people would be in detention.

Answer:

These individuals continue to be investigated by the AFP and it is therefore not appropriate to provide any further information about their whereabouts.

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