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AFP

AUSTRALIAN FEDERAL POLICE



Parliamentary Joint Committee on Intelligence and Security

Review of the Declared
Area Provisions

August 2020

Submission by the
Australian Federal Police

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Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security review of the declared area provisions in the Criminal Code.
2. The introduction of the section 119.2 offence in the Criminal Code in October 2014 recognised the operational need to deter Australians from travelling overseas to areas where terrorist organisations are engaged in hostile activity.
3. This submission provides an overview of the current and emerging threat environment and the ongoing utility of the declared area provisions to the AFP. The AFP considers this offence remains an essential part of the suite of legislative mechanisms that keep Australians safe from violent extremists.

The threat environment

Enduring threat of returning foreign fighters

4. In September 2014, the National Terrorism Threat Level was raised to PROBABLE, as credible intelligence indicated that individuals or groups possessed the intention and capability to conduct a terrorist attack onshore.
5. This change was a result of the escalation of the threat environment. There was greater ability for extremists to radicalise and inspire attacks online, a surge of Australian residents and nationals attempting to travel overseas to participate in hostile activities, and the rise of the Islamic State (IS).
6. A number of characteristics drew these individuals to travel overseas to join IS, including its effective online recruitment and radicalisation narrative, sophisticated facilitation networks, and the relative ease of international travel. Though this combination of factors may not be exactly replicated again, it is not unforeseeable that offshore sites may become attractive locations to foreign fighters in future.
7. It is estimated that approximately 230 Australians (or former Australians) travelled to Syria or Iraq to fight with or support groups involved in the conflict. Just over half of this group are believed to be deceased.
8. Many currently and previously in the conflict zone seek to return to Australia, either directly or by transiting through third countries. It is assessed that around 80 individuals remain in the conflict zone, with a number of individuals likely residing in Internally Displaced Person camps or otherwise detained.
9. The AFP, along with partner agencies, seeks to mitigate the risk posed by the potential return to Australia of these individuals. It is an operational concern that they may return with enhanced skills and motivation which could be used to facilitate or support a terrorist act in Australia.

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Emerging right-wing extremism

10. Australia's terrorism threat is not confined to Islamist extremists. The threat of right-wing terrorism continues to increase in Australia, with an increasing number of Australians adopting extreme right-wing ideologies. This was indicated in ASIO's Annual Threat Assessment in February 2020.
11. It is anticipated that there will be an increase in those espousing and adhering to extreme right-wing ideology in Australia. Increased propaganda, compounded with social isolation and increased online usage during the COVID-19 pandemic has created an environment in which extreme right-wing narratives can influence a broad, mainstream audience.
12. It is not unprecedented for Australian right wing extremists to travel overseas to participate in and facilitate politically motivated violence. In March 2019, an Australian right-wing terrorist conducted a mass casualty attack in Christchurch, New Zealand. In early 2020, an Australian right-wing extremist was prevented from traveling to fight overseas.
13. The AFP takes all extremist groups seriously and will continue to target criminality regardless of the background or ideology of the perpetrator. To date, no groups in Australia, or with links to Australia have been identified which meet the threshold for listing as a terrorist organisation.

Developing East Asia threat

14. Islamic State East Asia (ISEA) continues to conduct terrorist attacks against military and civilian targets in the Philippines with the primary objective of establishing an Islamic State under Shariah law in the Philippines. Tactics employed include armed assaults, murders and bombings, including suicide bombings.
15. On 12 September 2017, the ISEA was first listed by the Australian Government as a terrorist organisation in accordance with Division 102 of the Criminal Code.
16. While ISEA has not made statements specifically threatening Australians or Australian interests, there are considerable Australian business interests and number of travellers in the Philippines that could be vulnerable to any future attack.
17. The AFP remains committed to a regional and international approach to meet the shared challenge of terrorism and our common goal to disrupt, prosecute and manage extremists both domestically and internationally.

Impact of COVID-19

18. Though the emergence of COVID-19 has reduced the ability of extremists to engage in international travel, the AFP's operational tempo has remained high. Domestically, attack planning from a small number of extremists, primarily lone actors or small groups, continues to threaten Australia.
19. Recent AFP experience demonstrates an emerging trend of racially and ethnically motivated extremists exploiting the public's fear of the pandemic and its repercussions in order to spread disinformation, incite violence, intimidate targets, promote their ideology and recruit new members.

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20. It is clear these groups seek to take advantage of the increased isolation and loneliness experienced by Australians, along with other factors such as unemployment, family stress and financial hardship.

Effect of the offence

21. The Declared Area offence at section 119.2 of the Criminal Code continues to fill a crucial gap in the disruption and prosecution of returning foreign terrorist fighters and their associates, and it remains an important tool for ensuring the security of the Australian and international communities. The offence reduces the ability of offenders to contribute to conflict in foreign countries and reduces their access to training, tools and motivation to carry out terrorism offences in Australia.
22. Travelling to conflict zones harms the stability and security of foreign countries and the international community. Australians travelling to those areas may engage in violence and may place themselves in a situation where they may be further radicalised. There is in addition a risk that people may receive specialised training and preparation for the commission of terrorist acts in Australia.
23. Noting that safeguards exist within the legislation, criminalising this behaviour has a strong deterrent effect. The limitations placed on freedom of movement and association, though extraordinary, remain appropriate to ensure the protection of the Australian community. The offence also gives effect to efforts to work with international law enforcement partners to reduce the global threat of terrorism.
24. Since introduction in 2014, one Australian has been charged under section 119.2. This individual was arrested in December 2017 and charged with one count of engaging in hostile activity in a foreign country and one count of entering or remaining in declared area.
25. It was alleged that in 2015, this man engaged in hostile activity in Syria and intentionally entered and remained in Al-Raqqa province, which was a declared area at the time.
26. The man pleaded guilty to the offence of 'engaging in hostile activity in foreign country', contrary to section 119.1(2) of the Criminal Code. During his sentencing on 21 February 2020, the Court determined that the man had been present in Al Raqqa and therefore committed the declared area offence when applying a sentence of three years and eight months imprisonment for the foreign incursions offence.
27. As of August 2020, there are 20 active arrest warrants obtained by the AFP, which include the declared area offence. These warrants relate to historic conduct which occurred in Al-Raqqa, noting that no declarations under section 119.3 are currently in effect.
28. The AFP continues to remain apprised of international developments, including the operational ramifications of COVID-19, to determine the risks of any emerging conflict zones. Where appropriate, the AFP will escalate any concerns for consideration as future declarations.

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Operational challenges

29. The *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* also introduced amendments to the *Foreign Evidence Act 1994* to allow foreign material obtained through agency-to-agency assistance to be adduced in terrorism-related proceedings.
30. This increased the AFP's ability to prove terrorism-related offences but did not address the difficulties associated with *obtaining* foreign evidence in the first place. This process can be complicated where the evidence is located in an area outside of the control of any legitimate government or in a conflict zone.
31. The AFP established posts in the Middle East to increase collaboration with other governments, law enforcement and intelligence partners to manage the threat of Foreign Terrorist Fighters and obtain evidence and intelligence from the conflict zone.
32. The AFP does encounter operational difficulties when gathering evidence to prove the declared area offence occurred. It can be difficult to establish that:
 - a. The person intentionally entered and remained within the precise boundaries of the declared area; and
 - b. The period of time when the person was alleged to be in the declared area.
33. The AFP continues to work with the Attorney-General's Department (as the department responsible for extradition and mutual legal assistance), the Commonwealth Director of Public Prosecutions and international partners to address the challenges in obtaining foreign evidence in terrorism-related investigations and incorporating evidence into an admissible format for prosecutions within the current legislative framework.

Conclusion

34. The AFP's enduring priority is the protection of human life and ensuring a safe and secure Australia.
35. The declared area provisions, contained within Division 119 of the Criminal Code, serve an important purpose in both deterring Australians from travelling to declared areas and enabling the effective management of returning foreign fighters.
36. The offences continue to form a necessary part of the suite of powers available to the AFP and law enforcement partners to combat terrorism. The AFP considers the provisions should be retained.