

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Foreign Affairs

Criminal Code Act 1995

Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Revocation Instrument 2019—Mosul District, Ninewa Province, Iraq

The *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Revocation Instrument 2019—Mosul District, Ninewa Province, Iraq* (the Revocation Instrument) is a legislative instrument made under subsection 119.3(5A) of the *Criminal Code Act 1995* (the Criminal Code).

Purpose

The purpose of the Revocation Instrument is to revoke the declaration of Mosul District, Ninewa Province, Iraq, which was made on 1 March 2018.

Background

Division 119 of the Criminal Code contains Australia's foreign incursions and recruitment offences. Section 119.2 of the Criminal Code makes it an offence if a person enters, or remains in, a declared area in a foreign country, and at any time when the person is in the area, that person is an Australian citizen, a resident of Australia, a holder of a visa under the *Migration Act 1958*, or has voluntarily put themselves under the protection of Australia. The maximum penalty for this offence is 10 years' imprisonment.

Under subsection 119.3(1) 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 of the foreign country.

On 1 March 2018, the then Minister for Foreign Affairs declared Mosul District, Ninewa Province, Iraq under subsection 119.3(1) of the Criminal Code in the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq*. This declaration was made on the basis that a listed terrorist organisation (the Islamic State of Iraq and the Levant (ISIL)) was engaging in hostile activity in Mosul District, Ninewa Province, Iraq. This declaration made it an offence under section 119.2 of the Criminal Code to enter, or remain in, Mosul District, Ninewa Province in Iraq (subject to exceptions for legitimate purposes).

Under subsection 119.3(5A) of the Criminal Code, the Minister for Foreign Affairs may revoke a declaration if that Minister considers it necessary or desirable to do so. The Minister for Foreign Affairs has considered the advice of Australian Government agencies and the relevant legislative and non-legislative factors, including that while ISIL continues to engage in hostile activity in Mosul District, Ninewa Province, Iraq, ISIL does not exercise territorial control in Mosul District and there is little difference between the scale of ISIL's activities in the Mosul District and some other parts of Iraq. On the basis of agency advice and the relevant legislative and non-legislative factors, the Minister for Foreign Affairs considers it necessary or desirable to revoke the declaration of Mosul District, Ninewa Province, Iraq.

Consultation

Consultation on the instrument 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 Federal Police
- Australian Geospatial-Intelligence Organisation
- Australian Secret Intelligence Service
- Australian Security Intelligence Organisation
- Australian Signals Directorate
- Department of Defence
- Department of Foreign Affairs and Trade
- Department of Home Affairs
- Department of the Prime Minister and Cabinet, and
- Office of National Intelligence

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) was consulted and advised that a Regulatory Impact Statement is not required: OBPR ID 25794.

Details

Details of the Revocation Instrument are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out at Attachment B and has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Revocation Instrument is compatible with human rights.

The Revocation Instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

The Revocation Instrument commences on the day that it is registered on the Federal Register of Legislation.

Notes on sections

Section 1 - Name of Declaration

Section 1 sets out the title of the Revocation Instrument as the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Revocation Instrument 2019—Mosul District, Ninewa Province, Iraq*.

Section 2 – Commencement

Section 2 provides that the Revocation Instrument commences on the same day that it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 notes the Revocation Instrument is made under subsection 119.3(5A) of the Criminal Code, which enables the Minister for Foreign Affairs to revoke a declaration made under subsection 119.3(1) if that Minister considers it necessary or desirable to do so.

Section 4 – Revocation of declaration

Section 4 revokes the *Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2018—Mosul District, Ninewa Province, Iraq*. This section indicates that it is no longer a criminal offence for a person to enter, or remain in, Mosul District, Ninewa Province in Iraq.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Revocation Instrument 2019—Mosul District, Ninewa Province, Iraq

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the instrument

The purpose of this instrument is to revoke the declaration of Mosul District, Ninewa Province, Iraq, which was made on 1 March 2018.

Human rights implications

This instrument engages the right to freedom of movement in article 12 of the *International Covenant on Civil and Political Rights* (ICCPR). To the extent that the declaration of Mosul District, Ninewa Province, Iraq, may have limited the right to freedom of movement under article 12 of the ICCPR, the Revocation Instrument removes this potential limitation. The Revocation Instrument allows a person to enter into, or remain in, the Mosul District, Ninewa Province, Iraq, without committing a criminal offence. However, the Australian Government maintains its advice that Australians should not travel to Iraq at this time.

The Revocation Instrument does not have the effect of engaging or diminishing any applicable rights or freedoms.

Conclusion

The Revocation Instrument is compatible with human rights because it engages the right to freedom of movement and does not raise any human rights issues.