

## EXPLANATORY STATEMENT

### **Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Revocation Instrument 2017 – Al-Raqqa Province, Syria**

The *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Revocation Instrument 2017 – Al-Raqqa Province, Syria* (the Revocation) is made under subsection 119.3(5) of the *Criminal Code*.

#### **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 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.

On 4 December 2014, the Minister for Foreign Affairs (the Minister) declared al-Raqqa Province, Syria under section 119.3 of the *Criminal Code* in the *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria* (the Declaration).

Under subsection 119.3(5) of the *Criminal Code* if the Minister ceases to be satisfied that a listed terrorist organisation is engaging in a hostile activity in a declared area, the Minister must revoke the declaration. It is no longer confirmed that Islamic State, which is a listed terrorist organisation under the *Criminal Code*, is engaging in a hostile activity in al-Raqqa province in Syria.

#### **Purpose**

The purpose of the Revocation is to revoke the Declaration of al-Raqqa Province, Syria made on 4 December 2014.

#### **Explanation and effect of provisions**

##### **Section 1 – Name of Declaration**

Section 1 sets out the title of the Revocation as the *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Revocation Instrument 2017 – Al-Raqqa Province, Syria*.

##### **Section 2 – Commencement**

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

##### **Section 3 – Authority**

Section 3 notes that the Revocation is made under subsection 119.3(5) of the *Criminal Code*.

## **Section 4 – Revocation of declaration**

Section 4 revokes the *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria*.

## **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 Revocation 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*.

To the extent that the Declaration may have limited the right to freedom of movement under article 12 of the ICCPR, the Revocation removes this potential limitation. While individuals may now enter and remain in al-Raqqa province without committing a criminal offence, the Australian Government maintains its advice that Australians should not travel to Syria at this time.

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

## **Conclusion**

The Revocation is compatible with human rights as it does not raise any human rights issues.

## **Consultation**

Consultation on the Revocation 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 Immigration and Border Protection
- Department of Prime Minister and Cabinet
- Office of National Assessments

The Minister for Foreign Affairs has also offered the Leader of the Opposition in the House of Representatives the opportunity to be briefed in relation to the Revocation.