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Declared Areas offence is a blunt instrument and should not be extended

The Law Council of Australia has today recommended against any further extension of both the declared areas offence in section 119.2 of the *Criminal Code Act 1995* and the power for the Minister of Foreign Affairs to declare an area under section 119.3, which enlivens the offence.

“The declared areas offence means that where an area is declared by the Minister for Foreign Affairs, it is an offence to enter, or remain in that area without, what is defined harshly in the statute, as a legitimate reason,” Law Council of Australia President, Mr Greg McIntyre SC said.

“The sections within the Criminal Code that enable this are due to sunset on 7 September 2024 and we strongly recommend they not be extended.”

Appearing before the Parliamentary Joint Committee on Intelligence and Security, the Law Council acknowledged that developing and implementing legal mechanisms to prevent, deter and denounce the activities of so called ‘foreign terrorist fighters’ is complex and challenging.

“The Law Council does not oppose, in principle, the enactment of laws that place some limitations on the freedom of movement of individual Australians to prevent people from engaging in terrorism-related activities in foreign countries. Travel documents can be cancelled or suspended, radicalised persons may be restricted from returning to Australia and terrorism related orders may be imposed providing for restrictions on their liberty if they are in the community,” Mr McIntyre said.

“However, we remain concerned that the declared areas regime places substantial limitations on the rights to freedom of movement and fair trial, which do not meet the essential requirements of proportionality.

“A key reason for opposing an extension of the declared areas offence is that we believe it is unjustifiably broad. Unlike existing foreign incursion related offences, the declared area offence criminalises a person’s mere presence in a declared area regardless of any intended conduct in the area.

“It also puts Australia out of step with like-minded international jurisdictions that do not have a comparable regime. In addition, the Minister’s power to make declarations is unfettered and risks criminalising a wide range of innocent conduct.

“While we think sections 119.2 and 119.3 of the Criminal Code should not be extended, if they were to be, we have recommended a number of amendments.

“We want proof to be required of a person’s intent to travel to a declared area with an illegitimate purpose; replication of the wider ‘reasonable excuse’ defence modelled on section 58B(2) of the *Terrorism Act 2000* (UK); and the statutory criteria and process by which an area may be prescribed a declared area should be strengthened.”

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.