

Section 119.1

Division 119—Foreign incursions and recruitment

119.1 Incursions into foreign countries with the intention of engaging in hostile activities

Offence for entering foreign countries with the intention of engaging in hostile activities

- (1) A person commits an offence if:
- (a) the person enters a foreign country with the intention of engaging in a hostile activity in that or any other foreign country; and
 - (b) when the person enters the country, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for life.

Offence for engaging in a hostile activity in a foreign country

- (2) A person commits an offence if:
- (a) the person engages in a hostile activity in a foreign country; and
 - (b) when the person engages in the activity, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for life.

Absolute liability element

- (3) Absolute liability applies to paragraphs (1)(b) and (2)(b).

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Note: For absolute liability, see section 6.2.

Exception

- (4) Subsections (1) and (2) do not apply to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:
- (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

- (5) Paragraph (4)(a) does not apply if:
- (a) the person intends to engage, or engages, in a hostile activity in a foreign country while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the following time:
 - (i) for subsection (1)—the time of the entry referred to in that subsection;
 - (ii) for subsection (2)—the time the person engages in the hostile activity referred to in that subsection.

119.2 Entering, or remaining in, declared areas

- (1) A person commits an offence if:
- (a) the person enters, or remains in, an area in a foreign country; and
 - (b) the area is an area declared by the Foreign Affairs Minister under section 119.3; and
 - (c) when the person enters the area, or at any time when the person is in the area, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or

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(iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for 10 years.

Absolute liability element

(2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Exception—entering or remaining solely for legitimate purposes

(3) Subsection (1) does not apply if the person enters, or remains in, the area solely for one or more of the following purposes:

- (a) providing aid of a humanitarian nature;
- (b) satisfying an obligation to appear before a court or other body exercising judicial power;
- (c) performing an official duty for the Commonwealth, a State or a Territory;
- (d) performing an official duty for the government of a foreign country or the government of part of a foreign country (including service in the armed forces of the government of a foreign country), where that performance would not be a violation of the law of the Commonwealth, a State or a Territory;
- (e) performing an official duty for the United Nations or an agency of the United Nations;
- (f) making a news report of events in the area, where the person is working in a professional capacity as a journalist or is assisting another person working in a professional capacity as a journalist;
- (g) making a bona fide visit to a family member;
- (h) any other purpose prescribed by the regulations.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3).

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Exception—entering or remaining solely for service with armed force other than prescribed organisation

- (4) Subsection (1) does not apply if the person enters, or remains in, the area solely in the course of, and as part of, the person's service in any capacity in or with:
- (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

- (5) However, subsection (4) does not apply if:
- (a) the person enters, or remains in, an area in a foreign country while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the time the person enters or remains in the area as referred to in paragraph (1)(a).

Note 1: For conduct for the defence or international relations of Australia, see section 119.9.

Note 2: Sections 10.1 and 10.3 also provide exceptions to subsection (1) of this section (relating to intervening conduct or event and sudden or extraordinary emergency respectively).

Sunset provision

- (6) This section ceases to have effect at the end of 7 September 2018.

119.3 Declaration of areas for the purposes of section 119.2

- (1) The Foreign Affairs Minister may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2 if he or she is satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country.
- (2) A single declaration may cover areas in 2 or more foreign countries if the Foreign Affairs Minister is satisfied that one or more listed

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terrorist organisations are engaging in a hostile activity in each of those areas.

- (2A) A declaration must not cover an entire country.

Requirement to brief Leader of the Opposition

- (3) Before making a declaration, the Foreign Affairs Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed declaration.

Cessation of declaration

- (4) A declaration ceases to have effect on the third anniversary of the day on which it takes effect. To avoid doubt, this subsection does not prevent:
- (a) the revocation of the declaration; or
 - (b) the making of a new declaration the same in substance as the previous declaration (whether the new declaration is made or takes effect before or after the previous declaration ceases to have effect because of this subsection).

Note: An offence committed in relation to the declared area before the cessation can be prosecuted after the cessation: see section 7 of the *Acts Interpretation Act 1901* as it applies because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*.

- (5) If:
- (a) an area is declared under subsection (1); and
 - (b) the Foreign Affairs Minister ceases to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area;

the Foreign Affairs Minister must revoke the declaration.

Note: The Foreign Affairs Minister may, for example, cease to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area if the organisation ceases to be specified in the regulations.

- (6) To avoid doubt, subsection (5) does not prevent an area from being subsequently declared if the Foreign Affairs Minister becomes satisfied as mentioned in subsection (1).

Review of declaration

- (7) The Parliamentary Joint Committee on Intelligence and Security may review a declaration before the end of the period during which the declaration may be disallowed under section 42 of the *Legislative Instruments Act 2003*.