

## **EXPLANATORY STATEMENT**

*Australian Citizenship Act 2007*

### **Australian Citizenship (IMMI 17/073: Declared Terrorist Organisation—Jabhat Al-Nusra) Declaration 2017**

*(Section 35AA)*

1. Instrument Australian Citizenship (IMMI 17/073: Declared Terrorist Organisation—Jabhat Al-Nusra) Declaration 2017 (the Instrument) is made under section 35AA of the *Australian Citizenship Act 2007* (the Act).
2. The purpose of the Instrument is to declare Jabhat al-Nusra as a declared terrorist organisation for the purposes of section 35AA of the Act. By declaring Jabhat al-Nusra (the Organisation) a declared terrorist organisation for the purposes of section 35AA, the Act is capable of providing for the renunciation or cessation of the Australian citizenship of individuals with links to Jabhat al-Nusra who fall within the circumstances of sections 33AA and 35 of the Act.
3. Section 33AA of the Act provides that a person renounces their Australian citizenship if the person acts inconsistently with their allegiance to Australia by engaging in particular kinds of conduct described in that section. In part, section 33AA provides in subsection 33AA(4) that a person is taken to have engaged in conduct with an intention referred to subsection 33AA(3) if, when the person engaged in the conduct, the person was a member of a declared terrorist organisation.
4. Section 35 of the Act provides for the cessation of Australian citizenship of a person (who is aged 14 or older and is also a national or citizen of another country) who serves in the armed forces of a country at war with Australia, or fights for or is in the service of a declared terrorist organisation, where the person's service or fighting occurs outside Australia.
5. Section 4 of the Instrument provides that the organisation that was known as Jabhat al-Nusra (among other names) at the time this instrument commences is declared as a declared terrorist organisation for the purposes of section 35AA of the Act.
6. Note 1 to section 4 provides that subsection 35AA(1) of the Act requires an organisation declared under that subsection to be a terrorist organisation within the

meaning of paragraph (b) of the definition of terrorist organisation in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code), which covers organisations specified by regulations.

7. Note 2 to section 4 provides that when this instrument commences, the organisation known as Jabhat al-Nusra is such a terrorist organisation because it is specified by section 5 of the *Criminal Code (Terrorist Organisation—Jabhat al-Nusra Regulation) 2016*. Jabhat al-Nusra was at that time also known by a variety of other names listed in that section. Note 2 to section 4 also provides that after that commencement of the Instrument, if the name (or names) by which the organisation is known changes, that regulation may be amended to ensure that the organisation is still so specified (see section 102.1AA of the Criminal Code).
8. Note 3 to section 4 provides that, if no regulation is in effect that specifies the organisation for the purposes of the Criminal Code, this instrument also has no effect. The *Criminal Code (Terrorist Organisation—Jabhat al-Nusra) Regulation 2016* ceases to have effect on 28 June 2019 at the latest, but may cease to have effect earlier if repealed, or if a notice is published under subsection 102.1(4) of the Criminal Code in relation to the organisation (see subsection 102.1(3) of the Criminal Code).
9. Before making an instrument under section 35AA of the Act in relation to an organisation, the Minister is required by subsection 35AA(2) to be satisfied on reasonable grounds that the organisation:
  - either:
    - is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
    - advocates the doing of a terrorist act (paragraph 35AA(2)(a)); and
  - is opposed to Australia, or to Australia’s interests, values, democratic beliefs, rights or liberties, so that if a person were to fight for or be in the service of such an organisation the person would be acting inconsistently with their allegiance to Australia (paragraph 35AA(2)(b)).

10. In determining whether he is satisfied on reasonable grounds of the above issues, the Minister has taken into consideration an unclassified Supporting Statement in respect of Jabhat al-Nusra. The Supporting Statement is included at Attachment B.
11. Consultation was undertaken with the Attorney-General's Department, the Australian Security Intelligence Organisation and the Australian Government Solicitor prior to making the Instrument.
12. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 22503).
13. Under section 42 of the *Legislation Act 2003*, the Instrument is subject to disallowance. A Statement of Compatibility with Human Rights is therefore required and included at Attachment A.
14. Section 2 of the Instrument provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

**Statement of Compatibility with Human Rights**

*Australian Citizenship Act 2007*

**Australian Citizenship (Declared Terrorist Organisation— Jabhat Al-Nusra)**

**Declaration 2017**

*(Subsection 35AA(1))*

**Legislative Instrument IMMI 17/073**

The 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 Disallowable Legislative Instrument**

The *Australian Citizenship (Declared Terrorist Organisation— Jabhat Al-Nusra) Declaration 2017* (the Instrument) is a disallowable legislative instrument made under subsection 35AA(1) of the *Australian Citizenship Act 2007* (the Act). The purpose of the Instrument is, through its operation with the Act, to ensure the safety and security of Australia and its people and to ensure Australian citizenship is limited to those persons who continue to retain an allegiance to Australia. It does this by recognising that Australian citizenship is a common bond, involving reciprocal rights and obligations, and that citizens may, through certain conduct incompatible with the shared values of the Australian community, demonstrate that they have severed that bond and repudiated their allegiance to Australia.

The Instrument achieves this purpose by declaring that Jabhat Al-Nusra is a declared terrorist organisation, to enable the operation of certain provisions of the Act which concern the cessation of Australian citizenship. With the making of this Instrument, these provisions will apply where an individual who is a dual citizen or national has engaged in specified conduct as a member of, acting on the instruction of or in cooperation with Jabhat Al-Nusra, or who fights for or is in the service of Jabhat Al-Nusra, and thereby acts inconsistently with their

allegiance to Australia. Specifically, the Instrument will operate under the Act in two circumstances:

- where a person aged 14 or over who also holds a foreign citizenship or nationality engages in specified terrorist conduct with the specified intention; which is taken to be satisfied if they do so while a member of Jabhat Al-Nusra or acting on instruction of, or in cooperation with, Jabhat Al-Nusra; and is either outside Australia at the time or was in Australia but left after engaging in the conduct and has not been tried for any offence relating to the conduct (section 33AA of the Act); and
- where a person aged 14 or over who also holds a foreign citizenship or nationality is outside Australia and either fights for or is in the service of Jabhat Al-Nusra and, in respect of the latter, the person's actions are not unintentional or under duress or force, and the person is not providing neutral and independent humanitarian assistance (section 35 of the Act).

### **Human rights implications**

This Instrument engages human rights due to its operation, in concert with the effect of the Instrument on citizenship more generally. Consistent with and reflecting the information in the Supporting Statement found at Attachment A, and the nature, purpose and operations of a terrorist organisation, the Instrument limits human rights only as far as is reasonable, necessary and proportionate to achieve its object and purpose: to ensure the safety and security of Australia and its people and to ensure Australian citizenship is limited to those persons who continue to retain an allegiance to Australia and act consistently with that allegiance.

*Freedom of movement within territory and choice of residence; freedom to leave any country:*

The Instrument engages the rights in the International Covenant on Civil and Political Rights (ICCPR) article 12 to: liberty of movement and freedom to choose her or his residence (article 12(1)); and freedom to leave any country (article 12(2)). By operating to cease certain persons' Australian citizenship, it may have the practical effect of restricting such movement enabled through having Australian citizenship. However, the Instrument and the Act itself are clear in operating only with respect to individuals who also hold another nationality or citizenship, which would continue to enable those individuals the movement rights associated

with that nationality or citizenship. To the extent that the Instrument may limit these rights, consistent with article 12(3), these rights are permissibly restricted by the Instrument. This is because the Instrument sets out the restriction in law, and is necessary to protect national security, public order and the rights and freedoms of others, in that it addresses the serious threat to the security of Australia posed by those who are members of a terrorist organisation, act on instruction of, or in cooperation with, a terrorist organisation or who fight for or is in the service of a terrorist organisation.

*Right to enter one's own country:*

This Instrument engages the right to enter one's own country pursuant to ICCPR article 12(4), as by enabling the cessation of Australian citizenship of certain individuals, it may deprive them of their right to enter their own country if their 'own country' is interpreted more broadly than the mere holding of nationality or citizenship. However, article 12(4) only prohibits arbitrary deprivation, and any cessation of citizenship under the Act as a consequence of the operation of the Instrument, would not be arbitrary. It would be based on a genuine and serious threat to Australia's national security posed by a person who has objectively demonstrated repudiation of their allegiance to Australia, thus operating proportionately to the Instrument's legitimate goal of ensuring the security of Australia in relation to a terrorist organisation. Further, by only applying to dual citizens or nationals, it will be ensured that the individual continues to have a right to enter a country of their own, other than Australia. This makes any limitation of this right reasonable and proportionate to the legitimate objective of the protection of the Australian community.

*Equality before courts and tribunals:*

ICCPR article 14 relevantly requires that in the determination of an individual's rights and obligations in a suit at law, they are entitled to a fair hearing. This right may be engaged as a result of the cessation of Australian citizenship, where the Minister makes a determination not to rescind a notice of cessation of citizenship and exempt the individual from the effect of the cessation provisions. However, the right to a fair hearing and equality before the law is protected by subsections 33AA(24) and 35(19) of the Act, which explicitly recognise an affected individual's recourse to judicial review. Consequently, affected individuals are not being discriminated against regarding their access to the courts, and there is no suggestion

that judicial review would be undertaken by a body that was not competent, independent and impartial. There is no restriction of Article 14 resulting from the operation of this Instrument.

*Right to the family unit:*

As the Instrument may enable cessation of a dual citizen or national's Australian citizenship through certain links to Jabhat al-Nusra, it may engage the right to no arbitrary or unlawful interference with that individual's family (ICCPR article 17) and the protection of the family unit (ICCPR article 23) where that individual's family remain in Australia and the individual is overseas. However, in such cases the separation of the family unit would have initially occurred as a result of the individual themselves leaving Australia without their family. In any event, any potential interference with the family resulting from the individual's cessation of Australian citizenship would neither be unlawful nor arbitrary. It would be lawful due to the relevant provisions in the Act which provide for the cessation of citizenship in the individual's circumstances, and it would not be arbitrary in the sense of unreasonable or inconsistent with the provisions, aims and objectives of the ICCPR (General Comment No, 16: Article 17, paragraph 4). Any cessation of citizenship would be based on the conduct of the dual citizen or national and their links with Jabhat al-Nusra and, consequently, an objectively demonstrated intent, and action, which indicates the individual would be acting inconsistently with his or her allegiance to Australia.

The declaration of Jabhat al-Nusra as a 'declared terrorist organisation' under subsection 35AA(1) of the Act and an individual's resulting cessation of citizenship is a proportionate response to the Government's legitimate objective of ensuring the security of Australia because it addresses and seeks to manage the genuine serious threat posed by a person who has engaged in specified conduct as a member of, acting on the instruction of or in cooperation with a terrorist organisation, or who fights for or is in the service of a terrorist organisation. As a result, any limitation of this right in this regard is reasonable and proportionate.

*Non-discrimination:*

Non-discrimination (article 2(1) of the ICCPR), together with equality before the law and equal protection of the law without any discrimination (article 26), constitute a basic and general principle relating to the protection of human rights (General Comment No. 18: Non-discrimination, paragraph 1). This Instrument applies specifically in relation to a single

terrorist organisation (Jabhat al-Nusra) and thus operates only to differentiate certain individuals on the basis of their conduct as it pertains to that terrorist organisation for legitimate safety and national security reasons. As discussed above in relation to article 14 of the ICCPR, the Instrument does not operate to discriminate against affected individuals regarding their equality before the law.

To the extent that dual nationals are discriminated against by way of application of the Instrument and the Act together, given their exclusive operation concerning Australian citizens aged over 14 who also hold a foreign nationality or citizenship, this discrimination is reasonable and proportionate to achieve the national security policy objectives. Differentiation on the basis of dual nationality is the consequence of international obligations relating to statelessness, and as such represents a measure of extra protection for those without dual nationality, rather than a means of positively selecting those who may be subject to the cessation provisions.

The differentiation at the heart of the cessation provisions is that the person has engaged in particular conduct, which is inconsistent with, and demonstrates repudiation of, that person's allegiance to Australia. These provisions operate only in the most serious of circumstances, and the consequence of their operation – the cessation of a person's citizenship – is proportionate to the seriousness of the conduct.

*Best interests of the child:*

As the Instrument operates to enable application of provisions of the Act to persons aged 14 years and over, it engages the Convention on the Rights of the Child (CRC) to the extent it applies to persons under the age of 18 (CRC article 1). Article 3 of the CRC requires the best interests of the child to be a primary consideration in all actions concerning children. This is explicitly recognised in the way the Instrument and the Act operate. They require the best interests of the child to be considered by the Minister if the Minister decides to consider exercising the power to rescind a notice of cessation of citizenship and exempt a person from the effect of the cessation provisions (see paragraphs 33AA (17)(d) and 35(12)(d) of the Act). While the best interests of the child is not the only consideration to which the Minister is required to have regard, and it may be outweighed by other primary considerations such as the safety and security of the Australian community, it is nevertheless explicitly a primary consideration consistent with this right. Consequently, the Instrument does not limit article 3.



### Freedom of opinion and expression:

This Instrument may engage the right in article 19 of the ICCPR to freedom of opinion and expression. This is because it enlivens consequences for dual nationals or citizens who have certain links with Jabhat al-Nusra, namely that they have engaged in conduct as a member of, acting on the instruction of or in cooperation with a terrorist organisation, or who fights for or is in the service of a terrorist organisation. Such conduct could be considered a form of expression or holding a particular opinion. Article 19 of the ICCPR permits the restriction of the rights set out in article 19, relevantly, for the protection of national security or of public order (article 19(3)(b)). Any restriction imposed by the Instrument is permissible because it is aimed at, and is necessary for, the protection of the Australian community and Australia's national security as it assists to address the serious risk posed by persons who have objectively repudiated their allegiance to Australia through particular conduct with a terrorist organisation. This makes any limitation of this right reasonable and proportionate.

### Freedom of association:

This Instrument may engage the right to freedom of association with others under ICCPR article 22. This is because it explicitly enables the automatic cessation of Australian citizenship of dual citizen or national individuals who engage in certain, specified terrorism-related conduct while being a member of or acting on instruction of, or in cooperation with, a terrorist organisation. It also explicitly enables the automatic cessation of Australian citizenship of dual citizen or national individuals who fight for, or are in the service of, a terrorist organisation. To the extent there is an overlap of such behaviour with associating with other members of a terrorist organisation, the Instrument thus restricts this right. However, any such restriction is reasonable and necessary to address the serious risk posed by persons who have engaged in conduct which objectively repudiates their allegiance to Australia and the restriction is thus aimed at protecting national security, public safety, public order and to protect the rights and freedoms of others. Consequently, such a restriction would be consistent with ICCPR article 22(2).

### **Conclusion**

The 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. To the extent that the Instrument in its application of declaring that Jabhat Al-

Nusra is a declared terrorist organisation may limit some human rights, those limitations are reasonable, necessary and proportionate in light of the Instrument's object and purpose, to protect the Australian community and Australia's national security.

**The Hon. Peter Dutton MP, Minister for Immigration and Border Protection**

**Attachment A**

## **Supporting Statement**

### **Jabhat al-Nusra also known as Jabhat Fatah al-Sham**

(Also known as: Jabhat Fatah al-Sham; Al-Nusra Front; Al-Nusrah Front; Al-Nusrah Front for the People of the Levant; Jabhat al-Nusra li-Ahl al-Sham Min Mujahideen al-Sham fi Sahat al-Jihad; Jabhat al-Nusrah; Jabhet al-Nusra; Support Front for the People of Syria from the Mujahideen of Syria in the Places of Jihad; The Victory Front)

This statement is based on publicly available information which has been sourced by the Department of Immigration and Border Protection about Jabhat al-Nusra. This statement of reasons demonstrates that Jabhat al-Nusra is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or advocates the doing of a terrorist act; and is opposed to Australia, or to Australia's interests, values, democratic beliefs, rights or liberties, so that if a person were to fight for or be in the service of Jabhat al-Nusra, the person would be acting inconsistently with their allegiance to Australia.

This statement takes into account the information included in the Attorney-General's list of terrorist organisations and published by the Attorney-General's Department (<http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>).

In addition to taking into account the information considered by the Attorney-General for the purposes of his decision to re-list Jabhat al-Nusra as a 'terrorist organisation,' with effect from 28 June 2016 (amended on 31 October 2016 to include the alias Jabhat Fatah al-Sham, commencing 04 November 2016), this statement considers new information sourced by the Department of Immigration and Border Protection and corroborated by the Australian Security Intelligence Organisation (ASIO) in relation to Jabhat al-Nusra.

### **Basis for listing a terrorist organisation**

1. Section 35AA of the *Australian Citizenship Act 2007 Cth* (Citizenship Act) provides that a 'declared terrorist organisation' is any terrorist organisation, within the meaning of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code Act 1995* (Criminal Code), that the Minister for Immigration and Border Protection, by legislative instrument, declares is a declared terrorist organisation for the purposes of section 35AA of the Citizenship Act.

2. Under paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Criminal Code, a terrorist organisation means an organisation specified by the regulations for the purposes of the paragraph. By subsection 102.1(2), before a regulation may be made specifying an organisation for the purposes of paragraph (b) the Attorney-General must be satisfied on reasonable grounds that the organisation:
  - a. is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or
  - b. advocates the doing of a terrorist act.
3. Under subsection 35AA(2) of the Citizenship Act, before declaring an organisation that has been specified by regulation under the Criminal Code to be a declared terrorist organisation for the purposes of the Citizenship Act, the Minister for Immigration and Border Protection must be satisfied on reasonable grounds that the organisation:
  - a. either:
    - i. is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
    - ii. advocates the doing of a terrorist act; and
  - b. is opposed to Australia, or to Australia's interests, values, democratic beliefs, rights or liberties, so that if a person were to fight for or be in the service of such an organisation the person would be acting inconsistently with their allegiance to Australia.

#### **Details of the organisation: Jabhat al-Nusra**

4. Jabhat al-Nusra has been specified by Regulation made under the Criminal Code for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Criminal Code: Criminal Code (Terrorist Organisation – Jabhat al-Nusra) Regulation 2013.
5. The Jabhat al-Nusra listing was amended on 31 October 2016 to include the alias Jabhat Fatah al-Sham. This followed a publically released video by its leader on 28 July 2016 that Jabhat al-Nusra had changed its name to Jabhat Fatah al-Sham.<sup>1</sup> ASIO has determined the video as authentic.

#### **Objectives**

6. As part of al-Qa’ida’s global network, Jabhat al-Nusra adheres to a violent jihadist ideology that is strongly anti-Western and encourages violence as a key element of pursuing its goals. It directly threatens Australia’s interests, values and liberties by upholding al-Qa’ida’s overall mission of global terror.
7. Jabhat al-Nusra's stated objectives are to remove the Syrian al-Assad government and create a Salafist-oriented Sunni Islamist state in Syria, which it plans to expand into an Islamist Caliphate under its own rule throughout the Levant. Jabhat al-Nusra believes that the fight against the Syrian regime is supported by religious texts, and its fighters hope to

fulfil 'God's wish' for an 'Islamic Caliphate'. In areas it controls, Jabhat al-Nusra enforces its interpretation of Islamic law—including violent punishments and executions for perceived crimes.

8. Jabhat al-Nusra attempts to portray itself as less extreme and brutal than Islamic State, and promotes its activities as legitimate opposition to the government of Syria. It avoids the media attention that Islamic State actively courts, and conducts public outreach activities in an attempt to build local support. Prior to April 2013, it sought to hide its extremist ideology and conceal its links to the Islamic State and al-Qa'ida to avoid alienating the Syrian population.
9. Jabhat al-Nusra enjoys cooperative relationships with some like-minded Syrian opposition groups, its longer term objective is to unify the global Salafi-jihadi movement under the al-Qa'ida umbrella. It uses violence against moderate Syrian opposition and rival groups, employs Islamic terminology to appeal to Muslim audiences, and opportunistically exploits other jihadi groups to advance its goals.
10. However, its ultimate aim is to transform Syria into an Islamic Caliphate ideologically opposed to the West, and it uses violence and brutality to achieve these goals. It has not disavowed violence against the West, and remains part of the al-Qa'ida terrorist network. The group's leader, Abu Muhammad al-Jawlani, restated these goals when announcing Jabhat al-Nusra's rebranding as Jabhat Fatah al-Sham, espousing objectives intrinsically aligned with, and supportive of, al-Qa'ida's leadership, ideology and goals.<sup>ii</sup>

*“We would like to thank our brothers, the commanders of Al-Qa'eda in general, Dr. Sheikh Ayman Al-Zawahiri and his vice, Sheikh Ahmad Hasan Abu Al-Khayr especially ... Their blessed leadership has, and shall continue to be an exemplar of putting the needs of the community and their higher interests before the interest of any individual group.”*

11. Further reinforcing the physical and ideological links between Jabhat al-Nusra and al-Qa'ida, while announcing Jabhat al-Nusra's rebranding as Jabhat al-Sham, Abu Muhammad al-Jawlani appeared with Ahmed Mabrouk, a jihadist veteran and former confidant of al-Qa'ida leader Ayman al-Zawahiri.<sup>iii</sup>
12. Publically, Jabhat al-Nusra has distanced itself from al-Qa'ida to avoid international scrutiny and gain further support for its cause among other Syrian anti-regime groups. Jabhat al-Nusra leadership understands that overt association with al-Qa'ida would make them a target of international coalition action in Syria, while also antagonising other Syrian insurgent groups opposed to al-Qa'ida and other foreign entities<sup>iv</sup>. Its leader Abu Muhammad al-Jawlani, cited coalition targeting as a driver for public disassociation with al-Qa'ida.<sup>v</sup>
13. This is further substantiated by public statements by Australian former-Jabhat al-Nusra member Sheikh Mostafa Mahamed, who publically acknowledged that the decision to dissociate from al-Qa'ida was to gain wider domestic support for its cause in Syria.<sup>vi</sup>
14. Furthermore, the publicised disassociation between Jabhat al-Nusra and al-Qa'ida was blessed by al-Qa'ida's leadership, who articulated that the move was designed to deliver

Jabhat al-Nusra greater legitimacy throughout Syria — both within the population and with other insurgent and extremist groups. Specifically, as an organisation al-Qa’ida “blessed” any initiative aimed at separating Jabhat al-Nusra from the global movement for the sake of furthering jihad in Syria.<sup>vii</sup>

“The bonds of Islamic brotherhood are stronger than any obsolete links between organisations...these organisational links must be sacrificed without hesitation if they threaten your unity.”

15. In pursuing its ultimate aim of transforming Syria into an Islamic Caliphate, Jabhat al-Nusra also aims to be the preeminent power in Syria. In addition to fighting against rival opposition and jihadist groups, including Islamic State, it aims to influence and control other anti-regime groups by offering assistance and alliances.
16. Jabhat al-Nusra intends to expel or forcibly convert the minority Alawite and Christian communities in Syria. This is reflected in statements made by the group, including “The blessed operations will continue until the land of Syria is purified from the filth of the nusayris (Alawites) and the Sunnis are relieved of their oppression” and through attacks such as in the Idlib Province in April 2011 destroying churches and threatening to kill Christians unless they paid fees.
17. To achieve its objectives, Jabhat al-Nusra undertakes a range of military activities and terrorist attacks using improvised explosive devices, suicide attacks, snipers and small-arms attacks as well as kidnapping and executions throughout Syria. Jabhat al-Nusra also attacks individuals and groups it perceives are supporting the Assad regime and has targeted urban areas, resulting in indiscriminate civilian deaths. The group releases videos of its attacks and operations through its media network al-Manara al-Bayda (the White Minaret).

### **Leadership**

18. Jabhat al-Nusra is led by Abu-Muhammad al-Jawlani (an alias). Jabhat al-Nusra has received direct endorsement from prominent online extremist forums aligned with al-Qa’ida and leading Islamist extremist figures.
19. Jabhat al-Nusra’s strongest presence is in Syria's northwest, particularly in Idlib Province.

### **Membership**

20. Although the exact number of Jabhat al-Nusra members cannot be confirmed, the group is estimated to have a fighting force of between 3 000 to 10 000 fighters, along with further members in support roles. Jabhat al-Nusra operates at least 19 training camps in north-western Syria.
21. Most of its members are Syrian, but around 30 per cent of its forces are foreign fighters from a wide range of countries — including Australia.<sup>viii</sup>

### **Recruitment and funding**

22. Jabhat al-Nusra uses a combination of incentives and ideology to recruit new members, supported by social media campaigns and its own media outlet, al-Manara al-Bayda (the White Minaret)<sup>ix</sup>.
23. Jabhat al-Nusra has very strict recruitment procedures, requiring new recruits to pledge allegiance to the group. Potential recruits fight on the front-line and must be vouched for by Jabhat al-Nusra commanders before they are accepted. Due to its high level of operational security, they only recruit individuals who have undergone a vetting process. They also maintain smuggling networks to enable foreign fighters to enter Syria and join the group, mostly by travelling through Turkey.
24. Jabhat al-Nusra is well-funded from a range of international donors and local sources. Its Syria-based fundraising activities include extensive kidnapping, including of Westerners, to raise ransom payments.

### **Section 35AA (2) (a) of the Citizenship Act**

#### **Directly or indirectly engaged in the doing of terrorist acts**

25. Jabhat al-Nusra undertakes a range of militant activities and terrorist attacks. They use improvised explosive devices, suicide attacks, snipers and small-arms attacks, as well as kidnapping and executions throughout Syria. Targets are often the Syrian regime of Bashar al-Assad and its perceived supporters, rival groups and religious minorities — which Jabhat al-Nusra considers apostates and infidels. The group also conducts public executions and violent punishments in areas it controls.
26. Some of the group's operations have been recorded and released through its media centre, but they remain cognisant of its public image — in an attempt to avoid the international backlash currently facing Islamic State.
27. Jabhat al-Nusra has claimed responsibility for numerous attacks in the recent past. Significant attacks since 2014 either claimed by, or reliably attributed to, Jabhat al-Nusra include the following:
  - a. 12 January 2017: Jabhat al-Sham claim killing 16 Russian military consultants and 'tens' of other enemy forces in a double suicide bombing carried out with explosive belts in Damascus.<sup>x</sup>
  - b. 3 February 2016: Jabhat al-Nusra released a video of the execution of seven Syrian soldiers captured during an attack on Abu al-Duhur Military Airbase in Idlib Province.
  - c. 8 December 2015: Jabhat al-Nusra claimed responsibility for a suicide operation and other attacks in the villages of Khalasa and al-Humayra, Aleppo Province.
  - d. 24 November 2015: Jabhat al-Nusra's media outlet, the White Minaret, released a video of the September 2015 capture of Abu al-Duhur Military Airbase in Idlib Province. The video featured the execution of 42 Syrian soldiers who had been taken prisoner.

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- e. 31 July 2015: Jabhat al-Nusra kidnapped several members of D30, a Syrian rebel group whose stated intention was to fight Islamic State, not Jabhat al-Nusra.
- f. 11 April 2015: After taking over cities in Idlib Province, Jabhat al-Nusra destroyed churches and religious items and threatened to kill Christians unless they paid fees.
- g. 21 January 2015: Jabhat al-Nusra published a photo report of the group bombing the Shia town of al-Fu'ah in Idlib Province with missiles.
- h. 13 January 2015: A video was posted on the internet of Jabhat al-Nusra publicly executing a woman for adultery in the city of Ma'arat al-Nu'man. In the video, a person claiming to be a member of Jabhat al-Nusra declares the woman had been sentenced to death by an Islamic court.
- i. 1 December 2014: Jabhat al-Nusra posted pictures of an attack on two Shia towns in Aleppo Province.
- j. 28 August 2014: Jabhat al-Nusra kidnapped 40 Fijian personnel from the United Nations Disengagement Observer Force (UNDOF). The hostages were released on 11 September 2014.
- k. 31 July 2014: Jabhat al-Nusra kidnapped two Italian aid workers, holding them hostage until January 2015 when, according to media reporting, a ransom was paid.
- l. 22 February 2014: A car bomb attack on an army checkpoint in the Lebanese town of Hermel killed two soldiers and a civilian. Jabhat al-Nusra claimed responsibility for the attack.

**Directly or indirectly fostering and/or advocating the doing of terrorist acts**

28. Several media statements have been issued by the group, and identified group members, that advocate the doing of terrorist acts. These include:
- a. 2 November 2016: Jabhat Fatah al-Sham members called to punish Basuki Tjahaja Purnama, the Indonesian Christian Governor accused of blasphemy against the Quran. Armed members of Jabhat al Nusra posed in a photo with an Indonesian sign that read: 'Punish Ahok or our bullets will'.<sup>xi</sup>
  - b. 28 October 2016: Jabhat Fatah al-Sham released a statement claiming two suicide bombings in new battle for Aleppo.<sup>xii</sup>
  - c. 12 October 2015: Jabhat al-Nusra released an audio statement in which its leader, Abu Muhammad al-Jawlani, called for attacks on Syria's Alawites. In the statement, al-Jawlani stated 'there is no choice but to escalate the battle and to target Alawite towns and villages in Latakia and I call on all factions to...hit their villages daily with hundreds of missiles.' The same statement called for attacks in Russia in response to Russia's support for the Syrian Government.
  - d. 24 January 2012: Jabhat al-Nusra leader, Abu Muhammad al-Jawlani, announced in a video that Jabhat al-Nusra would 'avenge the honour and the spilled blood of

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those who have been wronged [by the government]’ and that jihad was ‘the only way that we can end the cloud of oppression and injustice’.

- e. 27 February 2012: Al-Jawlani stated in a video claiming responsibility for a suicide bombing, ‘know what has befallen your comrades in the past will befall you ... For every town or district that is attacked we will conduct an explosive attack against the state security apparatus’.
29. Jabhat al-Nusra continues to be directly and/or indirectly engaged in, preparing, planning, assisting in and fostering the doing of terrorist acts and advocates the doing of terrorist acts, involving threats to human life and serious damage to property.
30. In the course of pursuing its objectives, Jabhat al-Nusra is known to have engaged in or have advocated the doing of acts that:
- a. cause, or could cause, serious damage to property, or the death of persons, or endanger a person's life or create a serious risk to a person's safety;
  - b. are done with the intention of advancing Jabhat al-Nusra’s political, religious or ideological causes;
  - c. are done with the intention of coercing or intimidating the government of a foreign country (be that Syria or elsewhere); and
  - d. are done with the intention of intimidating sections of the public globally.
31. This assessment is corroborated by information from reliable and credible intelligence sources.

### **Section 35AA (2) (b) of the Citizenship Act**

#### **Organisation's opposition to Australia or Australia's interests, values, democratic beliefs, rights or liberties**

32. Jabhat al-Nusra adheres to al-Qa’ida’s global jihadist ideology — which is fundamentally anti-Western, and advocates violence to achieve its goals. It directly threatens Australia’s interests by upholding al-Qa’ida’s overall mission of global terror.
- a. Al-Qa’ida has endorsed and directly called for attacks in Australia, and encouraged attacks on Australians overseas. Al-Qa’ida’s English-language magazine, *Inspire*, encourages attacks in Western nations, including Australia.

*“If we have brothers bringing the battle to the US, France, Britain, Germany, Denmark, Australia, that would have much more effect in weakening the enemy than having brothers join us from those countries.”*<sup>xiii</sup>
  - b. Several statements released by al-Qa’ida leader Ayman al-Zawahiri have encouraged South-East Asia-based extremists to attack Western interests in the region. Australians have also been threatened with attacks should they visit Bali or other Indonesian tourist destinations.<sup>xiv</sup>
33. Jabhat al-Nusra openly praises and incites terrorist acts which oppose Australian interests at home and abroad. Jabhat al-Nusra released a video in June 2015 entitled ‘The Heirs of



Glory<sup>xv</sup> which commended al-Qa'ida's 11 September 2001 attacks against the US — attacks that killed 10 Australians.<sup>xvi</sup> Further, Australian and alleged Jabhat al-Nusra fighter Mehmet Biber has also endorsed acts of terrorism — including in Australia.<sup>xvii</sup>

*"Let the general public know that home ground attacks such as the likes of the one we seen at Parramatta will start to become more frequent as the Australian government sticks its hands deeper into the blood of the Muslims via joint attacks on Muslims overseas,"*

34. Jabhat al-Nusra and its supporters also aim to radicalise Australian Muslims to adopt an extreme interpretation of Salafist-oriented Sunni Islam — inciting violent jihad against non-believers to advance its cause. The purpose of this radicalisation is to increase recruitment of foreign fighters and encourage attacks across the globe — including Australia.
- a. Susceptible Australians are influenced toward radicalisation through Jabhat al-Nusra's coordinated propaganda campaign, and exposure to extremist ideology within Australia.
  - b. At least 110 Australians have travelled to Syria and Iraq to join jihadist groups engaged in conflict, including Jabhat al-Nusra.
    - i. An Australian citizen was a high-ranking official in Jabhat al-Nusra.
    - ii. Australian Mohammad Ali Baryalei, a senior Australian within Islamic state, originally travelled to fight with Jabhat al-Nusra in Syria. He recruited two other Australians — who were killed after travelling to join Jabhat al-Nusra.<sup>xviii</sup>
    - iii. Convicted Hamdi Alqudsi helped Australian aspiring foreign fighters travel to Syria — including an alleged Jabhat al-Nusra member.<sup>xix</sup>
    - iv. Australian Omar Succarieh pled guilty to foreign incursion charges after providing funds, and facilitating the travel of aspiring Australian Jabhat al-Nusra fighters, to Syria.<sup>xx</sup>
  - c. Australians fighting with Jabhat al-Nusra are involved in acts of violence in Syria, which are subsequently used to support Jabhat al-Nusra's propaganda campaign.
    - i. The second edition of Jabhat al-Nusra's English-language *al-Risalah* magazine features two articles about self-purported Australians working for Jabhat al-Nusra in Syria — one glorified for his death during a fire fight in Syria, the other reportedly training Jabhat al-Nusra fighters using skills acquired in the Australian Defence Force.<sup>xxi</sup>
    - ii. A Jabhat al-Nusra video published online reportedly shows Abu Asma al-Australi (alias), Australia's first suicide bomber in Syria. In the video he recites the Quran and encourages others to Syria.<sup>xxii</sup>

*“This is a message to all my brothers in the world: Today jihad is a duty of every Muslim, to carry a weapon and come to the land of jihad.”*

35. Jabhat al Nusra is opposed to Australia and Australia’s interests. Jabhat al Nusra has openly praised attacks that have killed Australian citizens and incites terrorist acts which oppose Australian interests at home and overseas. Official Jabhat al Nusra propaganda seeks to radicalise Australian Muslims in an effort to bolster its numbers and encourage further terrorist attacks.

**Fighting or being in the service of such the organisation indicates that a person is acting inconsistently with their allegiance to Australia**

36. Australians fighting for or in the service of Jabhat al-Nusra are acting inconsistently with their allegiance to Australia. Jabhat al-Nusra adheres to al-Qa’ida’s global jihadist ideology which aims to remove the Syrian regime, Western influence and establish a Caliphate—first in Syria then broader—using extreme violence. Jabhat al-Nusra has also endorsed acts of terrorism which have killed Australians overseas and at home. These actions are in direct opposition to Australia's national interest, international stability and a rules-based global order.

37. Australians who fight for or are in the service of Jabhat al-Nusra will be expected to engage in acts of violence, in support of Jabhat al-Nusra objectives. They will also actively encourage the radicalisation of Australian citizens in an effort to increase recruitment or orchestrate terrorist attacks domestically; conduct which is incompatible with the shared values of the Australian community.

**Conclusion**

38. On the basis of the above information, the Minister for Immigration and Border Protection is satisfied on reasonable grounds that Jabhat al-Nusra is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act or in advocating the doing of a terrorist act.

39. In addition, the above information demonstrates that Jabhat al-Nusra is opposed to Australia and its interests, values, democratic beliefs, rights and liberties, so that if a person were to fight for or be in the service of such an organisation the person would be acting inconsistently with their allegiance to Australia

<sup>i</sup> Attorney-General's Department, *Listed terrorist organisations*, <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>, accessed 14 November 2016.

<sup>ii</sup> Long war journal, *Transcript of Abu Muhammad al Julani's speech*, <http://www.longwarjournal.org/archives/2016/07/transcript-of-abu-muhammad-al-julani-speech.php>, 29 July 2016:

"This new organisation aims to fulfil the following: Work towards establishing the religion of Allah (swt), having His shari'ah (law) as legislation, establish justice amongst all people; (and) strive toward unity with all groups in order to unify the ranks of the Mujahideen and liberate the lands of Al-Sham from the tyrant [Bashar] and his allies.

<sup>iii</sup> Center for Security Studies, *The Dawn of Mass Jihad: Success in Syria Fuels al-Qa'ida's Evolution*, <http://www.css.ethz.ch/en/services/digital-library/articles/article.html/90ce3622-197b-46d7-ab77-ceaa93d56db7>, 05 October 2016

<sup>iv</sup> Ibid.

<sup>v</sup> Al Jazeera, *Al-Nusra leader Jolani announces split for al-Qaeda*, <http://www.aljazeera.com/>, 29 July 2016.

Includes a translated speech by leader of Jabhat al-Nusra — using their new alias Jabhat Fatah al-Sham

<sup>vi</sup> Sky News, *Rebranded Nusra Front Uniting Syria's Rebels*, [www.news.sky.com/](http://www.news.sky.com/), 18 August 2016.

<sup>vii</sup> Center for Security Studies, *The Dawn of Mass Jihad: Success in Syria Fuels al-Qa'ida's Evolution*, <http://www.css.ethz.ch/en/services/digital-library/articles/article.html/90ce3622-197b-46d7-ab77-ceaa93d56db7>, 05 October 2016

<sup>viii</sup> Attorney-General's Department, *Jabhat al-Nusra*,

<https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/Jabhatal-Nusra.aspx>, accessed 14 November 2016.

<sup>ix</sup> Attorney-General's Department, *Jabhat al-Nusrah*,

<https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/Jabhatal-Nusra.aspx>, accessed 10 February 2016.

<sup>x</sup> SITE Intelligence Group, *JFS claims killing 16 Russian military consultants in double suicide bombing in Damascus*, 18 January 2017.

<sup>xi</sup> Sydney Morning Herald. *Indonesia on edge as jihadists urge violence at Jakarta rally against governor*. [www.smh.com.au](http://www.smh.com.au), 02 November 2016.

<sup>xii</sup> SITE Intelligence Group, *JFS claims two suicide operations at start of new battle for Aleppo*, <https://news.siteintelgroup.com/Search/newest-first/Page-1.html?searchphrase=all&searchword=syria>, 28 October 2016

<sup>xiii</sup> Al-Malahem Media 2014. *Inspire*, Issue 12, p. 18.

<sup>xiv</sup> Attorney-General's Department, *Al-Qa'ida (AQ)*,

<https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/Al-QaidaAQ.aspx>, accessed 16 November 2016.

<sup>xv</sup> Foundation for Defense of Democracies Long War Journal, *Al Nusrah Front celebrates 9/11 attacks in new video*, <http://www.longwarjournal.org/archives/2015/06/al-nusrah-front-celebrates-911-attacks-in-new-video.php>, 29 June 2015.

<sup>xvi</sup> Attorney-General's Department, *Al-Qa'ida (AQ)*,

<https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/Al-QaidaAQ.aspx>, accessed 16 November 2016.

<sup>xvii</sup> Sydney morning herald, *Syria returnee Mehmet Biber warns of homegrown attacks*, <http://www.smh.com.au/>, 31 January 2016.

<sup>xviii</sup> International Institute for Counter-Terrorism. *Terror Australis - Australia in the Eye of the Jihadist Storm*. <https://www.ict.org.il/>, 29 May 2015.

<sup>xix</sup> The Australian, *Islamic State recruiter Hamdi Alqudsi jailed for eight years*, <http://www.theaustralian.com.au/>, 1 September 2016.

<sup>xx</sup> ABC news. *Omar Succarieh, Queensland man, pleads guilty to foreign incursion after terrorism charges dropped*. <http://www.abc.net.au>, 24 October 2016.

<sup>xxi</sup> Al-Risalah, October 2015. *Issue 2*, p. 11

<sup>xxii</sup> ABC news, *Australia's first suicide bomber: Video shows 'Brisbane man' preparing for attack*. <http://www.abc.net.au/news>, 12 November 2013.