

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019

The purpose of the *Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019* (the Regulations) is to specify Jabhat Fatah al-Sham for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Jabhat Fatah al-Sham is currently specified for this purpose under the name Jabhat al Nusra by the *Criminal Code (Terrorist Organisation—Jabhat al Nusra) Regulation 2016*, which is repealed by the Regulations. Details of the Regulations are set out in Attachment A.

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*.

Paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code* provides that regulations can specify organisations for the purposes of the definition of ‘terrorist organisation’.

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1), the Minister must be satisfied on reasonable grounds that the organisation 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.

The Minister for Home Affairs is satisfied on reasonable grounds that Jabhat Fatah al-Sham is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration an unclassified Statement of Reasons provided by the Director-General of Security, as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons is at Attachment B.

Effect of the instrument

Division 102 of the *Criminal Code* sets out the following offences relating to terrorist organisations

- directing the activities of a terrorist organisation

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- (b) an organisation that is specified by the regulations for the purposes of this paragraph.

- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of the *Criminal Code* continue to apply to conduct relating to Jabhat Fatah al-Sham. Regulations specifying Jabhat Fatah al-Sham (previously known as Jabhat al Nusra) as a terrorist organisation have been in effect since 2013.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

Consultation

The unclassified Statement of Reasons was prepared by the National Threat Assessment Centre in the Australian Security Intelligence Organisation, in consultation with the Department of Foreign Affairs and Trade and the Department of Home Affairs (Home Affairs). Home Affairs also sought the advice of the AGS to inform the decision of the Minister for Home Affairs.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that Jabhat Fatah al-Sham met the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the states and territories prior to making regulations specifying an organisation for the purposes of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the states and territories object to the making of such a regulation within a time frame nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the states and territories. A majority of the states and territories did not object to the making of the Regulations within the time frame nominated by the Minister.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019* (the Regulations) specifies Jabhat Fatah al-Sham for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to identify Jabhat Fatah al-Sham as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the *Criminal Code* in relation to Jabhat Fatah al-Sham.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the Regulations provide that the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Jabhat Fatah al-Sham.

Terrorist organisations, including Jabhat Fatah al-Sham, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act which includes the causing of serious harm to persons or death and serious damage to property (refer to [Attachment B](#) for details).

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

The Regulations limit the following human rights contained in the ICCPR:

- the right to freedom of expression in Article 19, and
- the right to freedom of association in Article 22.

The inherent right to life in Article 6

Article 6 of the ICCPR provides that countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Jabhat Fatah al-Sham. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance Jabhat Fatah al-Sham.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of 'terrorist organisation' in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Jabhat Fatah al-Sham, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code* the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) of the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within the applicable disallowance period, which is 15 sitting days after the Regulations are laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations achieve a legitimate purpose and are reasonable, necessary and proportionate.

Details of the Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019

Section 1 – Name

This section would provide that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019*.

Section 2 – Commencement

This section would provide for the commencement of each paragraph in the instrument, as set out in the table.

Subsection (1) would provide that each provision in the instrument specified in column 1 of the table commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the Regulations commence the day after the instrument is registered.

The note to subsection (1) would clarify that the table only relates to the provisions of this instrument as originally made, and that it will not be amended to deal with any later amendments to the instrument.

Subsection (2) would provide that information in column 3 of the table is not part of the instrument. It is designed to assist readers, and may be updated or changed in any published version of these Regulations. Column 3 is empty at the time of making the instrument.

Section 3 – Authority

This section would provide that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

This section would provide each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule has effect according to its terms. Schedule 1 to the instrument would repeal the whole of the *Criminal Code (Terrorist Organisation—Jabhat al Nusra) Regulation 2016*.

Section 5 – Terrorist organisation—Jabhat Fatah al-Sham

Subsection (1) would provide that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Jabhat Fatah al-Sham is specified.

Subsection (2) would provide that Jabhat Fatah al-Sham is also known by the following names:

- a) Al-Nusra Front

- b) Al-Nusra Front
- c) Al-Nusra Front for the People of the Levant
- d) Conquest of the Levant Front
- e) Fatah al-Sham Front
- f) Front for the Conquest for Sham
- g) Jabhat al-Nusra
- h) Jabhat al-Nusra
- i) Jabhet al-Nusra
- j) Jabhat al-Nusra li-Ahl al-Sham Min Mujahideen al-Sham fi Sahat al-Jihad
- k) Support Front for the People of Syria from the Mujahideen of Syria in the Places of Jihad
- l) The Victory Front

Schedule 1—Repeals

Schedule 1 would provide that *Criminal Code (Terrorist Organisation—Jabhat al Nusra) Regulation 2016* is repealed.

The *Criminal Code (Terrorist Organisation—Jabhat al Nusra) Regulation 2016* specifies Jabhat al Nusra (now known as Jabhat Fatah al-Sham) as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. Jabhat Fatah al-Sham was previously known as Jabhat al Nusra. The proposed clause would ensure there is no duplication where the new Regulations are made before the current Regulation ceases to have effect.

ATTACHMENT B

STATEMENT OF REASONS FOR JABHAT FATAH AL-SHAM

Also known as: Al-Nusra Front; Al-Nusrah Front; Al-Nusrah Front for the People of the Levant; Conquest of the Levant Front; Fatah al-Sham Front; Front for the Conquest for Sham; Jabhat al-Nusra; Jabhat al-Nusrah; Jabhet al-Nusra; Jabhat al-Nusra li-Ahl al-Sham Min Mujahideen al-Sham fi Sahat al-Jihad; 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 about Jabhat Fatah al-Sham. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.

1. Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, 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.

For the purposes of listing a terrorist organisation under the *Criminal Code*, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

2. Background to this listing

The first listing of this group for proscription purposes was under the name it formerly used, Jabhat al-Nusra, on 29 June 2013. The group was re-listed under this name on 28 June 2016. The listing was amended on 4 November 2016 to include the alias Jabhat Fatah-al-Sham.

This statement has been prepared to support the continued listing of Jabhat al-Nusra under the name it now uses, Jabhat Fatah al-Sham. This is the name commonly used to refer to the group.

The use of Jabhat Fatah al-Sham in this statement does not represent a change in the leadership, ideology or methods of the group, but reflects a change in the group's identity since 28 July 2016 when it rebranded from Jabhat al-Nusra to Jabhat Fatah al-Sham. Various sources continue to use the name Jabhat al-Nusra separately, or in conjunction with, Jabhat Fatah al-Sham or other aliases; including those referred to above. These aliases apply to the same group first listed on 29 June 2013.

Many sources also use the name Hay'at Tahrir al-Sham interchangeably with Jabhat Fatah al-Sham. Hay'at Tahrir al-Sham is not included as an alias in this listing as it is currently an umbrella organisation, including Jabhat Fatah al-Sham, as well as other Syrian opposition groups. Despite

overlaps in leadership and membership, Jabhat Fatah al-Sham remains a distinct element of Hay'at Tahrir al-Sham; and other groups which form Hay'at Tahrir al-Sham are not listed under the *Criminal Code*.

3. Terrorist activity of the organisation

Objectives

Jabhat Fatah al-Sham adheres to a violent extremist ideology that is anti-Western, and encourages violence as a key element of pursuing its goals. The group ultimately aims to overthrow the Syrian regime and create a Salafist-oriented Islamist state in Syria under its own rule.

Jabhat Fatah al-Sham believes its fight against the Syrian regime is supported by religious texts, and that its fighters hope to fulfil 'God's wish' for an 'Islamic caliphate'. Jabhat Fatah al-Sham also uses violence against Syrian opposition and rival groups, and other violent extremist groups to advance its goals. Jabhat Fatah al-Sham employs Islamic terminology in attempt to appeal to Muslim audiences and in areas it controls, enforces its interpretation of Islamic law—including the use of violent punishments and executions.

In pursuing its ultimate aim of transforming Syria into an Islamic Caliphate, Jabhat Fatah al-Sham seeks to be the preeminent power in Syria. In addition to fighting against rival opposition and violent extremist groups, including Islamic State, it aims to influence and control other groups by offering assistance and alliances.

Jabhat Fatah al-Sham also attempts to draw recruits, support and standing within Syria through social outreach and by providing humanitarian supplies, social services and food to Syrian citizens. In doing so, the group seeks to embed itself within the local population before transitioning these services into more overt forms of governance. Jabhat Fatah al-Sham has cemented its presence in some areas of Syria, and has established formal governance structures such as Islamic institutes, a court system handling military, criminal and administrative legal matters, as well as agencies that provide services such as electricity, water and infrastructure repair.

Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts

To achieve its objectives, Jabhat Fatah al-Sham undertakes a range of militant activities and terrorist attacks, using improvised explosive devices, suicide attacks, snipers and small-arms attacks, as well as kidnapping and executions. Jabhat Fatah al-Sham continues to target the Syrian regime; and attacks individuals and groups it perceives to be supporting the regime. Jabhat Fatah al-Sham also attacks Syrian opposition groups that oppose the group, including violent extremist groups such as the Islamic State. In targeting these groups, Jabhat Fatah al-Sham has conducted attacks in urban areas, resulting in indiscriminate civilian deaths. In many cases, there is limited information on the specific targets and casualties caused by Jabhat Fatah al-Sham's attacks.

Before 28 July 2016, while operating under the name Jabhat al-Nusra, the group claimed responsibility for numerous terrorist attacks often releasing footage or images through its media centre al-Manara al-Bayda (the White Minaret). Since rebranding on 28 July 2016 as Jabhat Fatah al-Sham, the group no longer claims attacks under its own name. Selected attacks that align with group's new public identity and messaging are now claimed under the media wing of Hay'at Tahrir al-Sham—an umbrella organisation focused on the fight against the Syrian regime that includes Jabhat Fatah al-Sham, as well as other Syrian opposition groups. This aligns with Jabhat Fatah al-Sham's objectives to increase its support and standing within the Syrian armed opposition, and to reduce international attention and pressure applied to the group.

Jabhat Fatah al-Sham dominates the Hay'at Tahrir al-Sham organisation, and is the largest, most powerful, well-resourced, and extreme component of the alliance. Hay'at Tahrir al-Sham's suicide operations and complex attacks are largely conducted, or led by, Jabhat Fatah al-Sham.

Significant attacks claimed by Jabhat Fatah al-Sham include the following:

- On 12 January 2017, a suicide bombing killed seven people in a heavily policed area of Damascus where the Syrian regime's main security installations are located.
- On 20 July 2016, Jabhat Fatah al-Sham (then called Jabhat al-Nusra) executed 14 soldiers of the Syrian regime forces. The soldiers were taken hostage two weeks earlier.

Significant attacks assessed to be reliably attributed to Jabhat Fatah al-Sham include the following:

- On 5 October 2018, Hay'at Tahrir al-Sham attacked the headquarters for Syrian armed opposition group Nour al-Din Zinki's in Kafar Halab, Aleppo province, Syria. Four people were killed, and several others injured when Hay'at Tahrir al-Sham targeted civilians protesting the group's presence in the town.
- On 1 March 2018, Hay'at Tahrir al-Sham undertook a large-scale offensive in Idlib and Aleppo provinces, Syria; announcing that it had taken control of several towns and killed fighters from Jabhat Tahrir Suriya (a coalition of Syrian armed opposition groups Nour al-Din Zinki and Ahrar al-Sham). As part of the offensive, Hay'at Tahrir al-Sham shelled at least one town with mortars, causing civilian casualties; before capturing and executing five Jabhat Tahrir Suriya fighters in the town square. Separately, as part of the offensive, Hay'at Tahrir al-Sham is accused of releasing 150 Islamic State fighters it had captured two weeks prior; providing them with weapons to fight against Jabhat Tahrir Suriya.
- On 11 March 2017, Hay'at Tahrir al-Sham claimed responsibility for a twin suicide-bombing targeting Shia holy sites in the Old City of Damascus, Syria which killed 40 people and injured at least 120 others, mostly Iraqi Shia pilgrims.
- On 25 February 2017, Hay'at Tahrir al-Sham claimed responsibility for a complex suicide attack against a Syrian regime military complex in Homs, Syria; killing 40 people and injuring over 50 others. The attack involved five suicide bombers that engaged in a gunfight before infiltrating Syrian regime positions and detonating their explosives. The attack killed a senior military

adviser to the Syrian regime and critically wounded the head of the Syrian regime's National Security Branch.

Advocating the doing of terrorist acts

While operating under the name Jabhat al-Nusra, the group publicised its activities, including suicide bombings, and distributed propaganda through its own media outlet called al-Manara al-Bayda (the White Minaret). The group has refrained from using this media outlet since it rebranded as Jabhat Fatah al-Sham on 28 July 2016.

Since the formation of Hay'at Tahrir al-Sham in January 2017, the group has used a new media outlet associated with Hay'at Tahrir al-Sham called Ebaa News Agency, and has begun operating accounts on Twitter, Telegram and other social media platforms. The group continues to issue statements, updates and propaganda, but has reduced direct anti-Western rhetoric. This is consistent with Jabhat Fatah al-Sham's messaging post its 28 July 2016 rebranding which aimed to reduce international targeting of the group and unite the Syrian opposition against the Syrian regime. Jabhat Fatah al-Sham's messaging through the Hay'at Tahrir al-Sham alliance now focuses on the groups' support to the Syrian people and the Syrian armed opposition's battle against the Syrian regime.

4. Details of the organisation

Jabhat Fatah al-Sham is a Syria-based Sunni Islamist extremist group that adheres to a violent extremist ideology, and retains links to al-Qa'ida.

In late 2011, al-Qa'ida in Iraq (AQI)—the organisation now known as the Islamic State—sent operatives to Syria for the purpose of establishing a group called Jabhat al-Nusra to fight the Syrian regime of President Bashar al-Assad. The group publicly announced its presence in Syria in a January 2012 video statement, and pledged allegiance to al-Qa'ida leader Ayman al-Zawahiri in April 2013 after severing its ties to the Islamic State. On 9 June 2013, al-Zawahiri released a letter publicly announcing Jabhat al-Nusra as the official al-Qa'ida affiliate group in Syria.

On 28 July 2016, the leader of Jabhat al-Nusra announced that it was no longer affiliated with al-Qa'ida and changed its name to Jabhat Fatah al-Sham to reduce international targeting of the group and unite the Syrian opposition against the Syrian regime. Despite the announcement Jabhat Fatah al-Sham retained links to al-Qa'ida.

On 28 January 2017, Jabhat Fatah al-Sham announced that it had merged with a number of Syrian opposition groups to form Hay'at Tahrir al-Sham in attempt to unify the Syrian opposition against the Syrian regime. While Jabhat Fatah al-Sham currently enjoys support from other Syrian opposition groups as part of Hay'at Tahrir al-Sham; there are many divisions within the alliance—and within the Syrian opposition more broadly. These divisions largely relate to Jabhat Fatah al-Sham's links to al-Qa'ida and the groups methods; including attacks which result in indiscriminate civilian deaths. As such, many Syrian opposition groups have withdrawn from the Hay'at Tahrir al-

Sham alliance since its formation.

Jabhat Fatah al-Sham remains the largest and most dominant component of Hay'at Tahrir al-Sham. While currently focused on fighting the Syrian regime, Jabhat Fatah al-Sham retains its violent extremist ideology, and links to al-Qa'ida.

Leadership

Jabhat Fatah al-Sham is led by Abu-Muhammad al-Jawlani (an alias). The group controls large portions of Syria's Idlib province, including the provincial capital. Jabhat Fatah al-Sham has a Shura council for decision making; however regional leaders are responsible for controlling their respective cells throughout Syria, particularly in Idlib province.

Membership

Although the exact number of Jabhat Fatah al-Sham members cannot be confirmed, the group reportedly has a fighting force of between 7 000 and 12 000 fighters, along with further members in support roles.

Recruitment and funding

Jabhat Fatah al-Sham largely recruits from the Syrian population, including from other Syrian opposition, or extremist groups active in the region. Jabhat Fatah al-Sham has provided social services and food in order to attract local Syrians to its cause. In addition the group has attempted to unify the fight against the Syrian regime; drawing other individuals and groups as new recruits. Jabhat Fatah al-Sham, as the largest and most powerful Syrian armed opposition group; leaves smaller Syrian opposition groups with limited options but to join the group. It attracts others with offers of weapons, battlefield expertise, training, support and at times protection from the Syrian regime or other Syrian opposition groups in the region.

- Jabhat Fatah al-Sham has also actively recruited child soldiers, including boys under the age of 18, and some under the age of 15; some observed as manning checkpoints in Idlib province, Syria. Jabhat Fatah al-Sham specifically targets poor, uneducated male youth for recruitment, paying them modest salaries used to support their families.

Jabhat Fatah al-Sham also recruits foreign fighters, but has strict procedures requiring new recruits to pledge allegiance to the group. Potential recruits are required to fight on the front-line and must be vouched for by a member of Jabhat Fatah al-Sham before they are accepted.

Jabhat Fatah al-Sham is funded from a range of international donors and local sources. Its Syria-based fundraising activities include kidnap for ransom activities, and collection of taxes, tariffs and fines.

Links to other terrorist organisations

In early April 2013, then called Jabhat al-Nusra released a video statement in which leader Abu-Muhammad al-Jawlani, on behalf of Jabhat al-Nusra, pledged allegiance to al-Qa'ida leader Ayman al-Zawahiri. In this same statement, al-Jawlani confirmed that Islamic State leader Abu Bakr al-Baghdadi provided Jabhat al-Nusra with funding and operatives to conduct operations in Syria.

Over the course of 2013, tensions reportedly increased between the Islamic State and Jabhat al-Nusra, and in 2014 battles between the groups began, resulting in 3,000 casualties by March 2014. In June 2015, Jabhat al-Nusra leader al-Jawlani reportedly rejected the idea of forming an emerging alliance with the Islamic State, including stating that there is 'nothing but fighting between us.' Following which, Jabhat al-Nusra remained al-Qa'ida's official branch in Syria.

On 28 July 2016, Jabhat al-Nusra leader al-Jawlani announced that the group was no longer affiliated with al-Qa'ida and changed its name to Jabhat Fatah al-Sham. Since this time, Jabhat Fatah al-Sham entered into various alliances with other Syrian opposition and extremist groups, most notably the Hay'at Tahrir al-Sham umbrella group in January 2017. Despite its rebranding, Jabhat Fatah al-Sham retains links to al-Qa'ida, and al-Qa'ida aligned groups operating in Syria.

Links to Australia

Over 100 Australians have travelled to Syria and Iraq and have fought for or otherwise supported Islamist extremist groups. Some joined Jabhat Fatah al-Sham when it was known as Jabhat al-Nusra.

Threats to Australian interests

Despite Jabhat Fatah al-Sham's current focus on establishing itself as a major power in Syria and its active reduction of anti-Western rhetoric; the group retains an anti-Western ideology. While no longer publicly calling for anti-Western attacks, the group continues to cite attacks by other groups against Western interests, and promotes news reporting that it perceives will indirectly fuel an anti-Western sentiment amongst its supporters. Jabhat Fatah al-Sham continues to pose a threat to Western, including Australian, interests through its violent extremist and anti-Western ideology.

- On 3 December 2018, Hay'at Tahrir al-Sham's Ebaa News released a statement entitled 'Taliban Shoot down an American aircraft and destruction of all of its passengers.' The statement describes Taliban purportedly shooting down a United States helicopter in Afghanistan.
- On 16 October 2018, Hay'at Tahrir al-Sham's Ebaa News released a statement entitled 'Will Australia recognize Jerusalem as the capital of the Zionist entity.' The statement describes Australia purportedly evaluating the recognition of Jerusalem as Israel's capital.

Listed by the United Nations or like-minded countries

Jabhat Fatah al-Sham is listed as a proscribed terrorist organisation by the United States, Canada, United Kingdom and New Zealand; under the following names:

- *Al-Nusra Front* by the United States,
- Jabhat Fatah al-Sham as an alternate name for *Al-Qa'ida* by the United Kingdom,
- *Hay'at Tahrir al-Sham*, also known as Jabhat al-Nusra, by Canada, and
- *Al-Nusrah Front for the people of the Levant* by New Zealand.

It is also listed as *Al-Nusrah Front for the people of the Levant* under the United Nations Security Council resolution 2253 (2015) which expands on the United Nations Security Council resolution 1267 (1999) Sanctions Committee's consolidated list.

Engagement in peace or mediation processes

Jabhat Fatah al-Sham is not engaged in any peace or mediation process.

Jabhat Fatah al-Sham has been involved in several local level ceasefires between components of the Syrian opposition; however these agreements are generally short in duration and usually fail soon after they are formed, with one or both sides disregarding the negotiated agreements.

5. Conclusion

On the basis of the above information, ASIO assesses that Jabhat Fatah al-Sham continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

In the course of pursuing its objectives, Jabhat Fatah al-Sham is known to have committed or threatened actions that:

- a) cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;
- b) are intended to have those effects;
- c) are done with the intention of advancing Jabhat Fatah al-Sham's political, religious or ideological causes;
- d) are done with the intention of intimidating the government of one or more foreign countries; and
- e) are done with the intention of intimidating the public or sections of the public.