

2007
Submission 1



**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**



Ref No: MS16-001269

Mr Andrew Nikolic AM CSC MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Andrew,
Dear Mr Nikolic

I write to advise you of my decision to declare Islamic State as a 'declared terrorist organisation' under section 35AA of the *Australian Citizenship Act 2007 (Cth)* (Citizenship Act).

I have declared Islamic State as I am satisfied on reasonable grounds that the matters at subsection 35AA(2) of the Citizenship Act have been met in relation to Islamic State.

Subsection 35AA(4) of the Citizenship Act provides that the Committee may review a declaration I make under subsection 35AA(1) as soon as possible after the declaration is made. To assist the Committee, I enclose a copy of the legislative instrument, Explanatory Statement and Supporting Statement upon which my decision to declare Islamic State was based.

I also attach a document outlining the process undertaken in declaring Islamic State. I understand this document may be considered as a separate submission, should the Committee decide to conduct a review into my declaration and I consent to its publication for that purpose. I look forward to working with the Committee. The contact officer in my Department is Beth Powell, Director, Compliance and Enforcement Framework Section on (02) 6198 7923.

Yours sincerely

PETER DUTTON



Australian Citizenship (Declared Terrorist Organisation—Islamic State) Declaration 2016

I, Peter Dutton, Minister for Immigration and Border Protection, make the following declaration.

Dated *4 May* 2016

Peter Dutton
Minister for Immigration and Border Protection

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1 Name

This is the *Australian Citizenship (Declared Terrorist Organisation—Islamic State) Declaration 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 35AA of the *Australian Citizenship Act 2007*.

4 Declared terrorist organisation—Islamic State

The organisation that was known as Islamic State (among other names) at the time this instrument commenced is declared as a declared terrorist organisation for the purposes of section 35AA of the *Australian Citizenship Act 2007*.

Note 1: Subsection 35AA(1) of the *Australian Citizenship Act 2007* 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*, which covers organisations specified by regulations.

Note 2: When this instrument commenced, the organisation known as Islamic State was such a terrorist organisation because it was specified by section 4 of the *Criminal Code (Terrorist Organisation—Islamic State) Regulation 2014*. Islamic State was at that time also known by a variety of other names listed in that section. After that commencement, 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*).

Note 3: However, 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—Islamic State) Regulation 2014* ceases to have effect on 11 July 2017 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*).

EXPLANATORY STATEMENT

Australian Citizenship Act 2007

Australian Citizenship (Declared Terrorist Organisation—Islamic State) Declaration

2016

(Section 35AA)

1. Instrument IMMI 15/148 is made under section 35AA of the *Australian Citizenship Act 2007* (the Act).
2. The purpose of the Instrument is to declare Islamic State as a *declared terrorist organisation* for the purposes of section 35AA of the Act. The intention is to provide for the cessation of Australian citizenship of individuals with links to Islamic State who fall within the circumstances of section 33AA or section 35 of the Act. Section 33AA of the Act provides for the cessation of citizenship of an Australian citizen (who is aged 14 or older and is also a national or citizen of another country) who acts inconsistently with their allegiance to Australia by engaging in specified terrorist conduct, while being a member of a *declared terrorist organisation*, or while acting on instruction of, or in cooperation with, a *declared terrorist organisation*. 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 in the service of a *declared terrorist organisation*, where the person's service or fighting occurs outside Australia.
3. Section 4 of the Instrument provides that the organisation that was known as Islamic State (among other names) at the time this instrument commenced is declared as a *declared terrorist organisation* for the purposes of section 35AA of the Act.
4. 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*, which covers organisations specified by regulations.
5. Note 2 to section 4 provides that when this instrument commenced, the organisation known as Islamic State was such a terrorist organisation because it was specified by section 4 of the *Criminal Code (Terrorist Organisation—Islamic State Regulation)*

2014. Islamic State 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, 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*).
6. 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—Islamic State) Regulation 2014* ceases to have effect on 11 July 2017 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*).
 7. In making an instrument under section 35AA of the Act, the Minister is required under 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)).
 8. 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 Islamic State. The Supporting Statement is included at [Attachment A](#).
 9. Consultation was undertaken with the Attorney-General's Department, the Australian Security Intelligence Organisation and the Australian Government Solicitor prior to making the Instrument.
 10. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 20776).

11. Under section 42 of the *Legislation Act 2003*, the Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights is attached.
12. The Instrument, IMMI 15/148, 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—Islamic State) Declaration

2016

(Subsection 35AA(1))

Legislative Instrument IMMI 15/148

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—Islamic State) Declaration 2016* (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 Islamic State 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 conduct as a member of, acting on the instruction of or in cooperation with Islamic State, or who fights for or is in the service of Islamic State, and thereby demonstrates a renunciation of their allegiance to Australia. Specifically, the Instrument operates 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 Islamic State or acting on instruction of, or in cooperation with, Islamic State; 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 Islamic State 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, in each case the Instrument does so 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.

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 fights 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 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) prohibits arbitrary deprivation, and any cessation of citizenship under the Act as a consequence 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 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.

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 in the course of judicial review 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. Nevertheless, subsection 33AA(24) and subsection 35(19) explicitly recognise recourse to judicial review in such circumstances, meaning any cessation due to a person's links with a terrorist organisation as a result of this Instrument acknowledges the right found in ICCPR article 14.

Right to the family unit:

As the Instrument may enable cessation of a dual citizen or national's Australian citizenship through certain links to a terrorist organisation, it may engage the right to a family unit found in ICCPR articles 17 and 23 where that individual's family remain in Australia and they are 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 would neither be unlawful nor arbitrary. Any

cessation of citizenship would be based on the conduct of the dual citizen or national and their links with a terrorist organisation and, consequently, an objectively demonstrated intent to repudiate allegiance to Australia. As such in the Government's view, the ceasing of citizenship is proportionate to the Instrument's legitimate object of ensuring the security of Australia by addressing the genuine serious threat posed by a person who has acted in this way and objectively demonstrated such intent. As a result, any limitation of this right in this regard is reasonable and proportionate.

Equality before the law:

ICCPR article 26 provides a right to equality before the law without discrimination. This Instrument applies specifically in relation to a terrorist organisation 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. 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 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 new cessation power.

The differentiation at the heart of the cessation provisions is that the person has engaged in particular conduct, which demonstrates repudiation of 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, where the Minister decides to consider

exercising the power to rescind a notice of cessation of citizenship and exempt a person aged under 18 years from the effect of the cessation provisions (see subsections 33AA (17) and 35(12) of the Act). While the best interests of the child is not the only consideration, and it may be outweighed by other considerations such as the safety and security of the Australian community, it is nevertheless explicitly a primary consideration consistent with this right.

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 who have certain links with a terrorist organisation, 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)). The restriction imposed by the Instrument is permissible because it is aimed and is necessary to protect the Australian community and Australia's national security by addressing 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 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, the 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. ensuring it is consistent with ICCPR article 22(2). This makes any limitation of this right reasonable and proportionate.

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 Islamic State 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

Islamic State

(Also known as: Al-Qa'ida in Iraq; Al-Qa'ida in Iraq — Zarqawi; Al-Qa'ida of Jihad in the Land of the Two Rivers; Al-Qa'ida of Jihad Organization in the Land of the Two Rivers; Al-Tawhid; Al-Tawhid and al-Jihad; Brigades of Tawhid; Islamic State of Iraq; Dawla al-Islamiya; Dawla al-Islamiya fi al-Iraq wa as-Sham; Islamic State of Iraq and al-Sham; The Islamic State in Syria and the Levant; Jama'at al-Tawhid wa'al-Jihad; Kateab al-Tawhid; Mujahidin Shura Council; Qaida of the Jihad in the Land of the Two Rivers; Tanzeem Qa'idat al-Jihad Bilad al Raafidaini; Tanzim Qa'idat al-Jihad fi Bilad al Rafidayn; The al-Zarqawi network; The Islamic State of Iraq and al-Sham; The Islamic State of Iraq and Syria; The Islamic Caliphate; The Islamic Caliphate State; The Islamic State of Iraq and Greater Syria; The Monotheism and Jihad Group; The Organisation Base of Jihad Country of the Two Rivers; The Organisation Base of Jihad Mesopotamia; The Organisation of Jihad's Base in the Country of the Two Rivers; Unity and Holy Struggle; Unity and Holy War; Unity and Jihad Group.)

This statement is based on publicly available information which has been sourced by the Department of Immigration and Border Protection about the Islamic State. This statement of reasons demonstrates that Islamic State 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 Islamic State, 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 Islamic State as a 'terrorist organisation' with effect from 11 July 2014, 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 Islamic State.

Basis for declaring 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 Cth* (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: Islamic State

4. The Islamic State 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 – Islamic State) Regulation 2014.

Objectives

5. Islamic State is an Iraq and Syria-based Sunni extremist group and former al-Qa'ida affiliate that adheres to the global jihadist ideology. Islamic State follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those who do not agree with its interpretations as infidels and apostates. Islamic State's announcement of a caliphate claims the land from Aleppo in Syria to Diyala in Iraq, being the Sunni-dominated areas of both countries. Eventually, it aims to establish a salafist-orientated Islamist state spanning Iraq, Syria and other parts of the Levant. Islamic State has also accepted pledges of allegiance from like-minded groups elsewhere in the world.

6. The group became an al-Qa'ida affiliate in October 2004 when its former leader, Abu Musab al-Zarqawi, pledged allegiance to Usama bin Laden. In late 2011, the group established operations in Syria through its former subordinate organisation, Jabhat al-Nusra.

In April 2013, current leader Abu Bakr al-Baghdadi announced the creation of the Islamic State of Iraq and the Levant (ISIL) to subsume Jabhat al-Nusra and consolidate operations across Iraq and Syria.

7. Jabhat al-Nusra leader Abu-Muhammad al-Jawlani attempted to annul the announcement by pledging allegiance to al-Qa'ida leader Ayman al-Zawahiri. In June 2013, al-Zawahiri ruled that Jabhat al-Nusra was the only al-Qa'ida affiliate in Syria and annulled the creation of ISIL. However, al-Baghdadi refused to follow this ruling and confirmed the creation of ISIL. On 29 June 2014, Baghdadi announced the formation of an Islamic Caliphate in areas it controls, with himself as the Caliph (leader of the global Muslim community). Currently listed as the Islamic State under the Criminal Code, it continues to operate in both Syria and Iraq as one consolidated organisation separate from Jabhat al-Nusra.

8. Since January 2014, the group has focussed on capturing and consolidating its control over areas of Iraq including parts of Anbar Province and most of Ninawa Province—including Mosul, Iraq's second largest city. It remains in control of large areas of the provinces of Raqqah and Dayr az-Zawr in Syria, as well as parts of Homs, al-Hassakah and Aleppo provinces.

Leadership

9. Islamic State's current leader and proclaimed caliph is Ibrahim Awwad Ibrahim Ali al-Badri. He has many aliases and is usually known as Abu Bakr al-Baghdadi or Abu Du'a. Al-Baghdadi became the leader following the May 2010 death of his predecessor, Abu Hamza al-Muhajir. He is currently located in either Syria or Iraq and leads Islamic State in both countries. In August 2013, al-Baghdadi appointed Abu Muhammad al-Adnani al-Shami as the Islamic State emir for Syria.

10. Islamic State has a hierarchical structure, featuring an overall leadership council and provincial governments in the regions it controls in both Iraq and Syria. Regional and specialist cells act with relative autonomy under general direction from senior leaders. Islamic State affiliates elsewhere in the world act independently from the organisation's leaders in Iraq and Syria.

Membership

11. Islamic State has several thousand members in Iraq, mostly young Iraqi Sunni men. Its numbers were boosted in 2014 by its success in capturing Iraqi cities and coercing or convincing Sunni tribes to ally with the group. It has also claimed responsibility for several mass prison breaks throughout Iraq that have freed hundreds of its members, most of whom are still at large.

12. In Syria, Islamic State has several thousand additional members drawn from both Syrian nationals and foreign fighters. Due to Islamic State's Iraqi origins, a large number of its Syria-based senior operatives and leadership are Iraqi nationals. Fighters in both countries are able to pass across the border, which is no longer recognised by Islamic State.

Recruitment and funding

13. Islamic State uses a combination of threats, incentives and ideology to recruit new members, including a sophisticated social media campaign in several languages. Its recruitment efforts mostly target young Sunni men worldwide, exploiting anger at the Iraqi and Syrian governments' perceived mistreatment of Sunni Muslims and encouraging them to join it in restoring an Islamic caliphate. It also aims to recruit former Iraqi security force members to gather intelligence and undermine the performance of its enemies.

14. The group continues to attract a large number of foreign fighters, including Westerners. Although foreign fighters in Syria with an extremist mindset were initially drawn to Jabhat al-Nusra, Islamic State's effective social media messaging, willingness to accept members rejected by Jabhat al-Nusra and highly publicised military successes have resulted in a greater flow of international recruits to Islamic State and the defection of some Jabhat al-Nusra members.

15. Islamic State uses funds donated for operations in Syria to also fund its activities in Iraq and transfer weapons, fighters and resources between the two countries. It also sources funding through extortion, kidnapping, theft, black marketeering, smuggling and legitimate businesses.

Paragraph 35AA(2)(a) of the Citizenship Act

Directly or indirectly engaged in the doing of terrorist acts

16. Islamic State is one of the world's deadliest and most active terrorist organisations and conducts daily attacks on security forces and civilians. In addition to its war against the security forces in Iraq and Syria — and against rival opposition groups — it conducts frequent attacks against civilians. Its attacks often aim to maximize casualties and publicity by targeting crowds and gatherings at festivals and religious events. It also conducts public executions and violent punishments in areas it controls.

17. Islamic State's operations in Iraq consist of military operations and regular military and terrorist attacks, mostly in central Iraq and the provinces to the north and west of Baghdad. Attacks in the Kurdish-majority northern provinces and the Shia-majority provinces in the south are less common. Islamic State's primary targets in Iraq are security forces; Shia civilians in public areas, including cafes, mosques and markets; political figures; community and tribal leaders who publicly condemn Islamic State; and anti-Islamic State militias. By attacking these targets, it hopes to undermine security force efforts to contain the group, destroy public confidence in the security forces and provoke a widespread revolt against the government. It also attacks and controls elements of infrastructure including bridges and dams, using them to cause major damage through flooding and to restrict Iraqi security forces' freedom of movement.

18. Islamic State's operations in Syria consist of suicide bombings, sniping and small-arms attacks against the Syrian regime of Bashar al-Assad, and against Syrian armed opposition groups, which it considers apostates and infidels. Islamic State and its followers have also targeted Turkish and Kurdish militants in northern Syria, Syrian refugees and Kurdish

organisations in Turkey, Hezbollah-related targets in Lebanon, and Kurdish interests and tourists in Turkey.

19. Significant attacks either claimed by, or reliably attributed to, Islamic State since December 2013 include:

- a. On 22 March 2016: Islamic State-linked coordinated explosions (including a suicide bombing) at Brussels Airport and Maelbeek metro station in Belgium, killed 35 and injured more than 300 people.
- b. On 19 March 2016: An Islamic State-linked suicide bomber killed four tourists in Itsiklal Street in Istanbul.
- c. 1 February 2016: A car bomb, followed by two suicide bombings, killed more than 70 people and injured a further 40 near the Shia Sayyida Zaynab shrine in Damascus, Syria. Islamic State claimed responsibility for the attack.
- d. 12 January 2016: A suicide bombing in Istanbul believed to have been perpetrated by Islamic State killed 10 German tourists.
- e. 28 January 2016: Islamic State launched a wave of attacks against Iraqi soldiers and pro-government fighters in Ramadi, Iraq. The suicide attacks, sniper fire and roadside bombs killed more than 30. Over the previous week, Islamic State killed a further 50 soldiers and pro-government fighters in attacks on the same area.
- f. 11 January 2016: Islamic State claimed responsibility for a series of attacks against civilian targets in Iraq. The assaults killed 51 people, and included a car bombing and armed attack against the Jawaher shopping centre in Baghdad, a double suicide bombing at a casino in Muqdadiya and a car bombing near a restaurant in Baquba.
- g. 13 November 2015: A group of attackers conducted simultaneous armed assaults against a concert hall, a major stadium, restaurants and bars in Paris, France. Islamic State claimed responsibility for the attacks, which killed 130 and injured hundreds of other.
- h. 10 August 2015: Two bombs in Baquba and Kanaan in Iraq's Diyala province killed nearly 60 people and injured a further 105. Islamic State claimed responsibility for the attacks.
- i. 17 July 2015: A car bomb exploded in a crowded market in the Iraqi town of Khan Bani Saad, killing 115 adults and children who were celebrating the end of Ramadan. Islamic State claimed responsibility for the attack, which injured a further 170 people.
- j. 2 May 2015: Islamic State claimed responsibility for a car bomb attack in Baghdad that killed two traffic police officers and 17 civilian.

Directly or indirectly fostering and/or advocating the doing of terrorist attacks

20. Several media statements have been issued by the group that advocate the doing of terrorist acts. These include:

- a. On 30 January 2016, a Twitter user posted a video product by an Islamic State media office threatening attacks and violence against the West that would be worse than the 13 November 2015 attacks in Paris and the September 2001 al-Qa'ida attacks in the United States. The video featured the execution of five captives.
- b. On 24 January 2016, Islamic State released a video about the 13 November 2015 Paris attacks. The video ended with a statement threatening similar attacks in the United Kingdom.
- c. On 3 January 2016, Islamic State released a video of the execution of five 'spies', along with a threat against the United Kingdom and those involved in the coalition fight against Islamic State.
- d. On 16 November 2015, Islamic State released a video warning the United States and other countries conducting air strikes against Islamic State in Syria and Iraq that the group would conduct attacks in their homelands.
- e. On 14 April 2015, a Twitter user released a video produced by Islamic State's al-Hayat Media Centre encouraging terrorist attacks against the United States and other Western countries. The video included footage of beheadings and other executions carried out by Islamic State.
- f. On 21 September 2014, Islamic State spokesman Abu Muhammad al-Adnani released a statement calling on its followers in the West to kill citizens of Western countries in terrorist attacks.

21. On the basis of the above information, Islamic State 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.

22. In the course of pursuing its objectives, Islamic State 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 Islamic State's political, religious or ideological causes;
- c. are done with the intention of coercing or intimidating the government of a foreign country (be that Iraq or Syria or elsewhere); and
- d. are done with the intention of intimidating sections of the public globally.

23. This assessment is corroborated by information from reliable and credible intelligence sources.

Paragraph 35AA(2)(b) of the Citizenship Act

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

24. Islamic State has openly called for attacks against Australia and its interests, both because of the group's anti-Western ideology and because of Australia's support to military operations against Islamic State. Islamic State promotes its opposition to Australia through propaganda material, foreign fighter videos and vitriolic speeches by senior leadership.

- a. The official online magazine of Islamic State, Dabiq, makes direct comments inciting attacks against Australia and praises previous terror attacks conducted within Australia.

"This month, an attack was carried out in Sydney by a Muslim who resolved to join the mujahidin of the IS in their war against the crusader coalition. He did not do so by undertaking the journey to the lands of the Khilafah and fighting side-by-side with his brothers but rather, by acting alone and striking the kuffar where it would hurt them most — in their own lands and on the very streets that they presumptively walk in safety."

Dabiq Issue 6, page 3, 29 Dec 2014 "Al-Qa'idah of Waziristan: A Testimony from Within."

- b. Shaykh Abu Muhammad al-Adnani, the official spokesperson of Islamic State, delivers inflammatory speeches directing jihad against the countries combatting Islamic State, including Australia, and encourages supporters to join their cause by conducting domestic attacks.

"So O muwahhid, do not let this battle pass you by wherever you may be. You must strike the soldiers, patrons, and troops of the tawaghit. Strike their police, security, and intelligence members, as well as their treacherous agents. Destroy their beds. Embitter their lives for them and busy them with themselves. If you can kill a disbelieving American or European — especially the spiteful and filthy French — or an Australian, or a Canadian, or any other disbeliever from the disbelievers waging war, including the citizens of the countries that entered into a coalition against the Islamic State, then rely upon Allah, and kill him in any manner or way however it may be. Do not ask for anyone's advice and do not seek anyone's verdict. Kill the disbeliever whether he is civilian or military, for they have the same ruling."

The Islamic State Magazine: Dabiq, Issue 4, page 9, 11 October 2014

"We will argue, before Allah, against any Muslim who has the ability to shed a single drop of crusader blood but does not do so, whether with an explosive device, a bullet, a knife, a car, a rock, or even a boot or a fist. Indeed, you saw what a single Muslim did with Canada and its parliament of shirk, and what our brothers in France, Australia, and Belgium did — may Allah have mercy upon them all and reward them with good on behalf of Islam."

The Islamic State Magazine: Dabiq Issue 7 page 37, 12 February 2015

- c. Islamic State produces a large volume of other propaganda through social media, much of it created by its various media offices. This includes videos, audio media and statements, which have included specific calls for attacks against Australia and its interests.

"My beloved brothers in Islam in Australia, now is the time to riot, now is the time to wake up... you must start attacking before they attack you."

Australian Islamic State jihadist Neil Prakash, 'Stories from the Land of the Living', al-Hayat Media Centre, 21 April 2015

25. Islamic State and its supporters aim to radicalize Australian Muslims to adopt its extreme interpretation of Sunni Islam and encourage violent jihad against non-believers. The purpose of this radicalisation is to increase recruitment of foreign fighters and encourage terrorist attacks across the globe — including within Australia.

- a. Susceptible Australians are influenced toward radicalisation through a coordinated Islamic State propaganda campaign and exposure to extremist ideology within Australia.
- b. More than 60 Australians are currently fighting with Islamic State in Iraq and Syria. Australians fighting with Islamic State have been involved in acts of violence including suicide bombings and beheadings; incidents subsequently used to support Islamic State's propaganda campaign.
- i. 2014: Australian jihadist Khaled Sharrouf was likely involved in execution of Iraqi soldiers.
- ii. August 2014: Australian jihadist Khaled Sharrouf's son, aged seven, was photographed holding severed head.
- iii. 12 March 2015: Australian jihadist Jake Bilardi conducted a suicide attack against civilians in Ramadi, Iraq.
- c. Islamic State has claimed that it inspired or influenced several terrorist attacks in Australia and has openly praised the incidents through online propaganda.

- i. 23 September 2014: 18-year-old Numan Haider stabbed two counter-terrorism police officers in Endeavour Hills, Victoria.
- ii. 15-16 December 2014: Man Haron Monis held hostage ten customers and eight employees of a Lindt chocolate café located at Martin Place in Sydney, NSW.
- iii. 2 October 2015: Farhad Khalil Mohammad Jabar, a 15-year-old boy, shot and killed Curtis Cheng, an unarmed police civilian, outside the New South Wales Police Force headquarters in Parramatta, NSW.

26. Based on the information available, it is clear that Islamic State is opposed to Australia and Australia's interests. Islamic State leadership have openly called for attacks against Australia and Australian citizens while official Islamic State propaganda seeks to radicalise Australian Muslims in an effort to swell Islamic State ranks and encourage domestic terror attacks.

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

27. Australians who are fighting for or are in the service of Islamic State are acting inconsistently with their allegiance to Australia. The primary objective of Islamic State is to establish a worldwide caliphate and the organisation is using extreme violence to achieve its aim. This objective is in direct opposition to Australia's national interest, international stability and a rules-based global order. Further, Islamic State has openly expressed a desire to conduct attacks in Australia and against Australians. Australians who fight for or are in the service of Islamic State will be expected to engage in acts of violence, in support of Islamic State objectives, or to 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

28. On the basis of the above information, it is considered that Islamic State is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts; and advocates the doing of terrorist acts.

29. In addition, the above information demonstrates that Islamic State 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.

Process for the 2016 declaration of Islamic State as a 'declared terrorist organisation' under section 35AA of the *Australian Citizenship Act 2007*

Section 35AA of the *Australian Citizenship Act 2007* (Citizenship Act) defines a declared terrorist organisation as 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 the section.

The following processes were undertaken for the purposes of declaring Islamic State as a declared terrorist organisation under the Citizenship Act:

1. The group referred to as Islamic State was first listed by the Attorney-General pursuant to Division 102 of the Criminal Code in 2005 under the Arabic name it formerly used, Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn. On 11 July 2014, the group was re-listed under its new name of Islamic State, in response to the group's proclamation of an Islamic caliphate in areas it controls and changed its name to Dawla al-Islamiya, or the Islamic State.
2. Noting the Attorney-General's statement for reasons for listing Islamic State, the Department of Immigration and Border Protection prepared a supporting statement by using the same methodology as the Australian Security Intelligence Organisation (ASIO) use, taking into account the additional aspects for citizenship loss: that is it is opposed to Australia or Australia's interests, values, democratic beliefs, rights or liberties. The supporting statement was developed in consultation with Attorney-General's Department and corroborated by ASIO.
3. On 12 April 2016, the Australian Government Solicitor (AGS) Special Counsel provided written advice to the Department that the Minister for Immigration and Border Protection could, on the basis of the supporting statement, be satisfied on reasonable grounds that the matters at subsection 35AA(2) of the Citizenship Act have been met in relation to Islamic State.
4. Following consideration of the Department's supporting statement with respect to Islamic State, and to legal advice from AGS Special Counsel, the Minister for Immigration and Border Protection signed a statement confirming that he is satisfied on reasonable grounds that Islamic State is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act or advocating 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 or be in the service of such an organisation the person would be acting inconsistently with their allegiance to Australia.
5. The Minister for Immigration and Border Protection also signed and made the *Australian Citizenship (Declared Terrorist Organisation—Islamic State) Declaration 2016* and approved documentation including an Explanatory Statement.