

s 22(1)

**From:** s 22(1)

**Sent:** Tuesday, 10 October 2023 21:25

**To:** s 22(1) @dfat.gov.au>; s 22(1)

@homeaffairs.gov.au) s 22(1) .gov.au>

**Cc:** Media s 22(1) @dfat.gov.au>; Media Operations s 22(1) @homeaffairs.gov.au>; s 22(1)

@dfat.gov.au>; s 22(1) @dfat.gov.au>

**Subject:** RE: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)

[SEC=OFFICIAL]

**OFFICIAL**

Hi all,

No red line issues with s 22(1) edits below. s 47C(1)

Happy to discuss further.

Kind regards,

s 22(1)

a/g Director | Counter Terrorism Policy and Engagement Section  
Security Law and Policy Branch | Security and Counter Terrorism Division  
Attorney-General's Department  
T: s 22(1) M: s 22(1)

**OFFICIAL**

**From:** s 22(1) @dfat.gov.au>

**Sent:** Tuesday, 10 October 2023 8:16 PM

**To:** s 22(1) @homeaffairs.gov.au)

s 22(1) [redacted] @homeaffairs.gov.au>; s 22(1) [redacted] @ag.gov.au>  
**Cc:** Media s 22(1) @dfat.gov.au>; s 22(1) [redacted] @dfat.gov.au>; Media Operations  
s 22(1) @homeaffairs.gov.au>; s 22(1) [redacted] @dfat.gov.au>; s 22(1) [redacted]  
[redacted] @dfat.gov.au>

**Subject:** RE: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)  
[SEC=OFFICIAL]

## OFFICIAL

Hi s 22(1)

s 47C(1)

Have looped in AGD s 22(1) [redacted] as AGD best placed to lead on this one.

Thanks, s 22(1) [redacted]

s 22(1)

---

Director | Counter-Terrorism Policy  
Counter-Terrorism Branch  
International Security Division

T s 22(1) [redacted] | M s 22(1) [redacted]

---

**From:** s 22(1) [redacted] @homeaffairs.gov.au>

**Sent:** Tuesday, 10 October 2023 7:31 PM

**To:** Robert O'FARRELL <Robert.O'Farrell@homeaffairs.gov.au>; s 22(1) [redacted]

[redacted] @homeaffairs.gov.au>

**Cc:** Media s 22(1) @dfat.gov.au>; s 22(1) [redacted] @dfat.gov.au>; Media Operations  
s 22(1) @homeaffairs.gov.au>

**Subject:** FW: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)  
[redacted] [SEC=OFFICIAL]

Hi Robbie and s 22(1) [redacted]

Lots of diverse feedback on this (see attached), To try to capture the concerns but produce something workable, I suggest the below. Let us know if OK:

- The Australian Government is alert to the potential for Australians to travel to Israel and the Occupied Palestinian Territories and engage in hostilities.

s 47C(1)

- Hamas is a listed terrorist organisation.
- Australians who travel to fight with a terrorist organisation, or recruit another person to do so (including inducing, inciting or encouraging), are committing a criminal offence.
- Law enforcement and security agencies will consider foreign fighters who have returned to Australia on a case-by-case basis.

**On background (for use in reporting, not for attribution):**

- The Australian Government's travel advice for Israel and the Occupied Palestinian Territories overall has been raised to level 3 'Reconsider your need to travel' travel due to the volatile security situation including the threat of terrorism, armed conflict and civil unrest. The advice for Gaza and border areas with Gaza remains level 4 'Do not travel'.

Regards,

s 22(1)

**Director, National Security, Cyber and Crisis Communication**

Media and Communication Branch

Executive Coordination Division | Executive Group

Department of Home Affairs

P: s 22(1) | M: s 22(1)

E: s 22(1) @homeaffairs.gov.au

---

**From:** Media Operations s 22(1) @homeaffairs.gov.au>

**Sent:** Tuesday, 10 October 2023 7:08 PM

**To:** s 22(1) @homeaffairs.gov.au>

**Cc:** Media Operations s 22(1) @homeaffairs.gov.au>

**Subject:** FW: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)

[SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1)

I have left a msg for the journo.

Please find all feedback in this doc. DFAT cleared with no changes however AGD feedback is in yellow and AFP is in green.

On DFAT/s point below, AGD already provided feedback. Can we capture s 22(1) when we cc to Min's office? Or does he need to see it?

Thanks

Kind regards

s 22(1)

Public Affairs Officer - National Security & Crisis Communication (WA based)  
Media and Communications Branch  
Executive Coordination Division | Executive Group  
Department of Home Affairs

**Media line:** 02 6264 2244 | **M:** s 22(1) | **P:** s 22(1)

**E:** s 22(1) [@homeaffairs.gov.au](mailto:s 22(1)@homeaffairs.gov.au)

Acknowledgement of Country Signature Block Graphic 2022



**OFFICIAL**

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**From:** Media s 22(1) [@dfat.gov.au](mailto:s 22(1)@dfat.gov.au)>

**Sent:** Tuesday, 10 October 2023 6:35 PM

**To:** Media s 22(1) [@afp.gov.au](mailto:s 22(1)@afp.gov.au)>; Media Operations s 22(1) [@homeaffairs.gov.au](mailto:s 22(1)@homeaffairs.gov.au)>; ASIO media s 22(1) [@asio.gov.au](mailto:s 22(1)@asio.gov.au)>; Media AGD s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au)>

**Cc:** Media (DFAT) s 22(1) [@dfat.gov.au](mailto:s 22(1)@dfat.gov.au)>

**Subject:** RE: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)  
[SEC=OFFICIAL]

**OFFICIAL**

Hi all, fine from DFAT perspective.

If not already, could we please ensure these TPs are shared with AGD contact s 22(1)

s 22(1)

Attorney-General's Department

T: s 22(1) M: s 22(1)

Many thanks

s 22(1)

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**From:** Media s 22(1) [@dfat.gov.au](mailto:s 22(1)@dfat.gov.au)>

**Sent:** Tuesday, 10 October 2023 6:27 PM

**To:** Media s 22(1) [@afp.gov.au](mailto:@afp.gov.au)>; Media Operations s 22(1) [@homeaffairs.gov.au](mailto:@homeaffairs.gov.au)>; ASIO media s 22(1) [@asio.gov.au](mailto:@asio.gov.au)>; Media AGD s 22(1) [@ag.gov.au](mailto:@ag.gov.au)>

**Cc:** Media s 22(1) [@dfat.gov.au](mailto:@dfat.gov.au)>

**Subject:** RE: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)  
[SEC=OFFICIAL]

Hi all – apologies for the delay, checking with our policy team now.

Kind regards

s 22(1)

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Media Liaison Section

Department of Foreign Affairs and Trade

p s 22(1)

[dfat.gov.au](mailto:dfat.gov.au) | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

*We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.*

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**From:** Media s 22(1) [@afp.gov.au](mailto:@afp.gov.au)>

**Sent:** Tuesday, 10 October 2023 6:21 PM

**To:** Media Operations s 22(1) [@homeaffairs.gov.au](mailto:@homeaffairs.gov.au)>; Media s 22(1) [@afp.gov.au](mailto:@afp.gov.au)>; ASIO media s 22(1) [@asio.gov.au](mailto:@asio.gov.au)>; Media s 22(1) [@dfat.gov.au](mailto:@dfat.gov.au)>; Media AGD s 22(1) [@ag.gov.au](mailto:@ag.gov.au)>

**Subject:** RE: FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)  
[SEC=OFFICIAL]

**OFFICIAL**

Hi Team

Sorry for the delay. AFP approved response below.

**Attributable to a spokesperson from the Department of Home Affairs:**

- The Australian Government is alert to the potential for Australians to travel to Israel and the Occupied Palestinian Territories and engage in hostilities.

s 47C(1)

s 47C(1)

**On background (for use in reporting, not for attribution):**

- The Australian Government's travel advice for Israel and the Occupied Palestinian Territories has been raised to level 3 'Reconsider your need to travel' travel' due to the volatile security situation including the threat of terrorism, armed conflict and civil unrest. The advice for Gaza and border areas with Gaza remains level 4 'Do not travel'.

Kind regards,

s 22(1)

s 22(1)

DIRECTOR AFP NATIONAL MEDIA  
OFFICE OF THE COMMISSIONER

Tel: s 22(1) Ext: s 22(1) Mob: s 22(1)

Australian Federal Police



*The Australian Federal Police acknowledges the Traditional Owners and Custodians of Country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to First Nations people, culture and Elders past, present and emerging.*



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**From:** Media Operations s 22(1) [@homeaffairs.gov.au](mailto:s 22(1)@homeaffairs.gov.au)>

**Sent:** Tuesday, 10 October 2023 3:50 PM

**To:** Media s 22(1) [@afp.gov.au](mailto:s 22(1)@afp.gov.au)>; ASIO media s 22(1) [@asio.gov.au](mailto:s 22(1)@asio.gov.au)>; Media (DFAT) s 22(1) [@dfat.gov.au](mailto:s 22(1)@dfat.gov.au)>; Media AGD s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au)>

**Cc:** Media Operations s 22(1) [@homeaffairs.gov.au](mailto:s 22(1)@homeaffairs.gov.au)>

**Subject:** FOR REVIEW: 231010 EN Australians Fighting in Israel\_The Age/SMH\_s 47F(1)  
[SEC=OFFICIAL]

**OFFICIAL**

Good afternoon teams,

We have received the below enquiry from The Age/SMH regarding Australians travelling to Israel/Gaza to fight.

We have prepared the attached response for your review.

Noting the journalist is filing this afternoon, we would appreciate your response by 4.30 PM please.

Apologies for the quick turnaround.

Best wishes,

s 22(1)

Public Affairs Officer, National Security and Crisis Communication  
Media and Communication Branch

Executive Coordination Division | Executive Group

Department of Home Affairs

**Media Line:** 02 6264 2244 | **P:** s 22(1) | **M:** s 22(1)

**E:** s 22(1) [@homeaffairs.gov.au](mailto:s 22(1)@homeaffairs.gov.au)

## OFFICIAL

**From:** s 47F(1) [@nine.com.au](mailto:s 47F(1)@nine.com.au)>

**Sent:** Tuesday, 10 October 2023 12:02 PM

**To:** Media Operations s 22(1) [@homeaffairs.gov.au](mailto:s 22(1)@homeaffairs.gov.au)>; Media (DFAT) s 22(1) [@dfat.gov.au](mailto:s 22(1)@dfat.gov.au)>

**Subject:** Australians fighting in Israel - The Age/SMH

Hi there,

s 47F(1) here from The Age/SMH. We're pulling together a story on the community reaction here to the awful situation in Israel/Gaza right now and were wondering about reservists here who might be looking to go to Israel to fight:

Are you aware of any Australians or residents here heading over to fight? If so how many (even roughly i.e dozens etc)

If Australians are called up as reservists for Israel, what happens?

Are you aware of any Palestinian or Arabic residents/Australians here looking to go over too? (And could they actually get into Israel/Gaza?)

Anything else to add on this/advice for Australians considering fighting?

I'm on s 47F(1) Filing this afternoon. Thanks heaps!

Best,

s 47F(1)

Journalist



**Mobile** s 47F(1) **Twitter** s 47F(1) **Skype** s 47F(1)

**A** 717 Bourke Street, DOCKLANDS, VIC, 3008



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**HOT TOPIC BRIEF****NSCJG-11****Hamas-Israel conflict****BRCH-NSCJG-SCTD-Security Law and Policy Branch**

On 7 October 2023, Hamas and other militant groups including Palestinian Islamic Jihad launched a surprise attack against Israel from Gaza. Israel has declared a state of emergency and war and responded with air strikes on targets in the Gaza strip. On 14 October 2023, the Government announced \$10m in humanitarian assistance (\$3m to the International Committee of the Red Cross and \$7m to UN organisations). On 19 October 2023, the Government announced a package of measures (totalling \$71.8m) to support affected Australian communities, including grants for community safety and funding for mental health and wellbeing support and to address terrorist and violent extremist online content.

**Listing of Hamas as a terrorist organisation under the Criminal Code**

- Hamas is listed as a terrorist organisation under the Criminal Code.
- Listing Hamas as a terrorist organisation puts Hamas and the community on notice that certain types of conduct in relation to Hamas are criminal offences under the Criminal Code, such as providing support, recruiting for, and being a member of the organisation.

**Ministerial Direction – AG consent to prosecute offences relating to Hamas listing**

- On 25 March 2022, the former Attorney-General issued a ministerial direction to the Commonwealth Director of Public Prosecutions (CDPP) relating to offences in Division 102 of the Criminal Code relating to Hamas.
- The direction provides that the CDPP must seek the Attorney-General's consent to prosecute persons under the Criminal Code for terrorist organisation offences in connection with Hamas.
- In considering whether to consent to a prosecution, the Attorney-General will consider the circumstances of each individual case.

**Financing Hamas**

- It is a crime to directly or indirectly fund a terrorist organisation or provide funds which will be used to facilitate or engage in an act of terrorism.
  - Hamas is a listed terrorist organisation.
  - Law enforcement will consider matters on a case-by-case basis.

## **Foreign Incursion Offences**

- Australian citizens and residents who travel to engage in hostile activities, or induce, incite or encourage another person to do so, may be committing a criminal offence under the Criminal Code.
  - This offence does not apply to a person's service with the armed forces of the government of a foreign country.
- It is an offence to recruit, in Australia, another person to service in any capacity with an armed force in a foreign country. This includes an armed force of the government of a foreign country.
- Law enforcement and security agencies will consider foreign fighters who have returned to Australia on a case-by-case basis.
- The Attorney-General's consent is required prior to the commitment of a person to trial for foreign incursion offences in the Criminal Code.

## **Other Terrorist Organisation Listings**

- On 10 December 2021, the Government made regulations listing Hizballah as a terrorist organisation under the Criminal Code.
- On 3 May 2004, Palestinian Islamic Jihad was listed as a terrorist organisation. It has been re-listed a further 8 times, most recently on 4 August 2021.

## **Grants to secure faith-based places and communities**

- The Government is providing \$50 million for 177 grants under the Securing Faith-Based Places grant program, as announced by the Attorney-General on 18 October 2023.
  - These grants will improve security at religious schools and preschools, places of worship and faith-based community centres across different faith communities in every state and territory.
  - The grants have been awarded through an open, competitive and merit-based process.

- In addition, on 19 October 2023, the Government announced \$50 million in grants to support Australian communities affected by the Hamas attacks on Israel and ongoing conflict. This comprises:
  - \$25 million in funding to the Executive Council of Australian Jewry, to be distributed through the National Council for Jewish Community Security, to immediately improve community safety measures across Australia (administered by the Attorney-General's Department).
  - \$25 million for Australian Palestinian, Muslim and other communities affected by the conflict for a range of safety, security, mental health, cohesion and education objectives in response to particular needs of local communities (administered by the Department of Home Affairs).

#### **Legality of Israel's military response**

- The Government unequivocally condemns the Hamas attacks on Israel as abhorrent acts of terror against innocent civilians.
- Australia recognises Israel's right to defend itself.
- Australia continues to call on all parties to comply with international law, including the protection of civilian lives and the observation of international humanitarian law.

#### **International legal advice on the conflict**

- The Department of Foreign Affairs and Trade has the lead on Australia's position on the conflict between Israel and Hamas.
- It would not be appropriate for AGD to provide details of legal advice.

#### **Racial and religious vilification**

- The Government believes in an Australia where everyone is free to speak their mind, in which rights are accompanied by responsibilities and in which there is absolutely no place for racial or religious vilification.

- The Government has provided \$7.5 million to the Australian Human Rights Commission to develop a National Anti-Racism Strategy.
  - The Strategy will deliver a National Anti-Racism Framework to support government, civil society, businesses and the community to tackle racism and promote racial equality.
- The Government is committed to introducing legislation to prevent discrimination against people of faith, including protections from vilification.

Version: 3	Cleared by: Sarah Chidgey	Action officer: s 22(1)
Current at: 23/10/2023	Phone number: s 22(1)	Action officer number: s 22(1)

**PROTECTED**
**Office of the Hon Mark Dreyfus KC MP**

 Attorney-General  
 Cabinet Secretary

**MINISTERIAL SUBMISSION COVER SHEET**

<b>Ministerial Submission Details</b>			
<b>Sub No:</b>	MS23-001405	<b>Date Sent to AGO:</b>	20 November 2023 20 November 2023
<b>Deadline:</b>	<b>No deadline</b>		
<b>Title:</b>	Ministerial Direction on prosecution of terrorist organisation offences in relation to Hamas and Hizballah		
<b>Business Unit / Agency:</b>	BRCH-NSCJG-SCTD-Security Law and Policy Branch		
<b>Purpose/Objective:</b>	<input type="checkbox"/> For Approval/Signature/Agreement <input checked="" type="checkbox"/> For Info/Noting		
<b>Attorney-General's Office Use</b>			
<b>Responsible AGO Adviser:</b>			

**PROTECTED**

**PROTECTED**

Australian Government  
Attorney-General's Department

**Sub No:** MS23-001405  
November 2023

**Date submitted to Office by AGD:** 20 November 2023

**File No:** 23#761848DOC

**Min No:** N/A

**ATTORNEY-GENERAL**

**Ministerial Direction on Hamas and Hizballah**

**Deadline:** No deadline

**Recommendation:** I recommend that you:

1. Note the effect and operation of two ministerial directions issued by the former Attorney-General, requiring the Commonwealth Director of Public Prosecutions to seek the Attorney-General's consent to any prosecution of terrorist organisation offences which relate to Hamas and Hizballah.

Noted / Discuss

.....  
Attorney-General  
/ /2023

**AG Comments**

**Key Issues:** s 47E(d) this submission provides information about two ministerial directions issued by the former Attorney-General, which require the Commonwealth Director of Public Prosecutions (CDPP) to seek the Attorney-General's consent to any prosecution of terrorist organisation offences which relate to Hizballah or Hamas.

On 10 December 2021, the Australian Government listed the entirety of Hizballah as a terrorist organisation under Division 102 of the *Criminal Code Act 1995* (Criminal Code). This replaced the listing of Hizballah's External Security Organisation, which had been listed since 2003. On 4 March 2022, Hamas was also listed in its entirety under the Criminal Code. This replaced the listing of the Izz al-Din al-Qassam Brigades, which had been listed since 2003.


Subsection 8(1) of the *Director of Public Prosecutions Act 1983* provides:

*In the performance of the Director's functions and in the exercise of the Director's powers, the Director is subject to such directions or guidelines as the Attorney-General, after consultation with the Director, gives or furnishes to the Director by instrument in writing.*

On 13 December 2021, the former Attorney-General issued a ministerial direction under this subsection requiring the consent of the Attorney-General to commence trial proceedings for Division 102 offences where the alleged offence relates to conduct in connection with Hizballah (**Attachment A**). On 25 March 2022, the former Attorney-General issued a second ministerial direction of the same nature pertaining to Hamas (**Attachment B**). These directions remain in force.

Hizballah has social and political functions, holds seats in Lebanon's government and provides social services in some areas of Lebanon.

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**PROTECTED**s 33(a)(iii)  



The requirement for the Attorney-General's consent to a prosecution of offences relating to Hizballah and Hamas is intended to provide an additional safeguard to ensure that prosecutions only proceed where they are in Australia's national interest – that is, it is not the intention to prosecute Australians engaged in legitimate daily activities not connected with terrorism or terrorist acts.

*Policy Guidelines*

Both directions are accompanied by policy guidelines, at **Attachments C and D**, which outline factors to be considered by the Attorney-General in deciding whether to consent to a prosecution. These factors include:

- whether the person's conduct directly or indirectly assisted Hamas or Hizballah to engage in, prepare, plan, assist in, or foster the doing of a terrorist act
- whether the person intended that their conduct would directly or indirectly assist Hamas or Hizballah in the way described above, or was reckless as to that fact
- whether a prosecution would be in Australia's national interest, having regard to any relevant matters of national security, defence, international relations and economic well-being, and
- any other matter which the Attorney-General considers relevant.

The policy guidelines are not binding on the Attorney-General and you would be free to depart from them in any particular case. It is also open for you to amend the policy guidelines or revoke them entirely.

s 47C(1)  
s 42(1)  
s 47C(1)  
s 47E(d)  
**PROTECTED**

**PROTECTED**

s 47C(1)

**AGD Clearing Officer:** Luke Muffett, Security Law and Policy Branch, s 22(1)  
**Date Cleared:** 18 November 2023  
**Branch Head:** Luke Muffett, Security Law and Policy Branch, s 22(1)  
**Dept Action Officer:** s 22(1), BRCH-NSCJG-SCTD-Security Law and Policy Branch, s 22(1)

**Attachments:**

- **Attachment A** – Ministerial direction relating to consent Hizballah
- **Attachment B** – Ministerial direction - Hamas
- **Attachment C** – Policy guideline - Hizballah
- **Attachment D** – Policy guideline - Hamas

s 7(2)

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## **Director of Public Prosecutions (Terrorist Organisation Prosecutions) Ministerial Direction 2021**

### *Director of Public Prosecutions Act 1983*

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I, Senator the Hon Michaelia Cash, Attorney-General, having consulted the Director of Public Prosecutions, give the following direction under subsection 8(1) of the *Director of Public Prosecutions Act 1983*.

1. Proceedings for the commitment for trial of a person for an alleged offence under Division 102 of the Criminal Code must not be instituted without the written consent of the Attorney-General where the facts constituting the alleged offence relate to the person's conduct in connection with Hizballah.
2. Nothing in this direction is intended to prevent the following steps from being taken (but no further steps in proceedings may be taken) without consent having been given:
  - a) a person may be charged;
  - b) a person may be arrested and a warrant for such an arrest may be issued and executed;
  - c) a person so charged may be remanded in custody or on bail.
3. Nothing in this direction prevents the discharge of the accused if proceedings are not continued within a reasonable time.

Dated 9 December 2021

**Senator the Hon Michaelia Cash**

**Attorney-General**

Note: The name of this document was amended on registration as the document as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).



## **Director of Public Prosecutions (Terrorist Organisation Prosecutions) Ministerial Direction 2022**

### *Director of Public Prosecutions Act 1983*

---

I, Senator the Hon Michaelia Cash, Attorney-General, having consulted the Director of Public Prosecutions, give the following direction under subsection 8(1) of the *Director of Public Prosecutions Act 1983*.

1. Proceedings for the commitment for trial of a person for an alleged offence under Division 102 of the Criminal Code must not be instituted without the written consent of the Attorney-General where the facts constituting the alleged offence relate to the person's conduct in connection with Hamas.
2. Nothing in this direction is intended to prevent the following steps from being taken (but no further steps in proceedings may be taken) without consent having been given:
  - a) a person may be charged;
  - b) a person may be arrested and a warrant for such an arrest may be issued and executed;
  - c) a person so charged may be remanded in custody or on bail.
3. Nothing in this direction prevents the discharge of the accused if proceedings are not continued within a reasonable time.

Dated            25 March 2022

**Senator the Hon Michaelia Cash**

**Attorney-General**



**Senator the Hon Michaelia Cash**  
Attorney-General  
Minister for Industrial Relations  
Deputy Leader of the Government in the Senate

**Policy guideline – factors to be considered by the Attorney-General when considering whether to consent to the prosecution of terrorist organisation offences in relation to Hizballah**

The Australian Government does not condone the actions of groups that use terrorism to achieve their political, religious or ideological objectives. Australia has a comprehensive suite of laws in response to terrorism. These laws not only target terrorist acts, but also the organisations that plan, finance and carry out such acts.

Offences relating to terrorist organisations are set out in Division 102 of the Criminal Code.<sup>1</sup> Under that Division, a terrorist organisation is an organisation that:

- is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act; or
- has been listed in regulations as a terrorist organisation.

Division 102 includes offences for providing support to a terrorist organisation, providing or receiving funds from a terrorist organisation, and associating with a terrorist organisation. Further detail on the terrorist organisation offences is available on the website of the [Attorney-General's Department](#). A list of terrorist organisations, and a factsheet on the offences, is available on the [Australian National Security](#) website.

Listing of Hizballah

On 9 December 2021, Hizballah was listed as a terrorist organisation under the Criminal Code, after the Minister for Home Affairs was satisfied that the organisation meets the criteria for listing, as set out in section 102.1 of the Criminal Code.<sup>2</sup> A statement of reasons in support of the listing is available.<sup>3</sup>

On 9 December 2021, the Attorney-General issued a ministerial direction to the Commonwealth Director of Public Prosecutions (CDPP), under subsection 8(1) of the *Director of Public Prosecutions Act 1983*.<sup>4</sup> The effect of this direction is to provide that the CDPP must seek the Attorney-General's consent in order to institute proceedings for the commitment for trial of a person for an offence under Division 102 of the Criminal Code, where the alleged offending relates to the person's conduct in connection with Hizballah.

Purpose of the policy

This policy provides guidance on the factors that the Attorney-General will take into account when deciding whether to consent to the prosecution of a person where the alleged offending relates to the person's conduct in connection with Hizballah.

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<sup>1</sup> [Criminal Code Act 1995](#)

<sup>2</sup> [Listing instrument](#)

<sup>3</sup> [Statement of Reasons](#)

<sup>4</sup> [Ministerial Direction](#)

Given Hizballah's linkages and involvement in Lebanon, there may be reasons why a person may need to engage with Hizballah that are not related to terrorism. Hizballah has social and political functions, holds seats in Lebanon's government and provides social services in some areas of Lebanon. The requirement for the Attorney-General's consent to a prosecution of offences relating to Hizballah is intended to provide an additional safeguard to ensure that prosecutions only proceed where they are in Australia's national interest. It is not the intention of the Australian Government to prosecute Australians engaged in daily activities not connected with terrorism or terrorist acts.

In addition to the Attorney-General's consent requirement, the CDPP must also be satisfied that a prosecution would be in the public interest. The CDPP makes this decision in accordance with the *Prosecution Policy of the Commonwealth*, and in particular, the public interest factors set out in paragraph 2.10.<sup>5</sup>

#### Factors to be considered

In deciding whether to consent to a prosecution of a person for terrorist organisation offences in relation to Hizballah, the Attorney-General will consider the circumstances of each individual case.

In considering whether to consent to a prosecution, the Attorney-General will consider whether the conduct directly or indirectly assisted Hizballah to engage in, prepare, plan, assist in, or foster the doing of a terrorist act, and whether the person intended that it would do so, or was reckless as to that fact. The Attorney-General may be less likely to consent to a prosecution where this is not the case.

The Attorney-General will consider whether prosecution would be in Australia's national interest, having regard to any relevant matters of national security, defence, international relations and economic well-being.

The Attorney-General may consider any other matter which she considers relevant.

Without limiting the discretion of the Attorney-General, examples of conduct where consent is unlikely to be granted may include:

- paying taxes to the Government of Lebanon or any sub-national government within Lebanon
- accessing or paying for food, medicine, education or fuel provided by Hizballah
- voting for Hizballah in an election
- sending remittances to a member of Hizballah for their personal education, health and/or basic living expenses
- being engaged in employment by Hizballah in a capacity where responsibilities are not linked to the preparation or planning of terrorist acts, and
- selling goods or providing services to Hizballah where the goods or services are not linked to the preparation or planning of terrorist acts;

where such conduct does not indirectly or directly assist Hizballah to engage in, prepare, plan, assist in, or foster the doing of a terrorist act.<sup>6</sup>

Individuals should seek independent legal advice on their circumstances.

It should also be considered that, as Hizballah is a listed entity under Australian sanctions

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<sup>5</sup> [Prosecution Policy | Commonwealth Director of Public Prosecutions \(cdpp.gov.au\)](https://www.cdpp.gov.au/prosecution-policy)

<sup>6</sup> Conduct of the kind listed may not necessarily fall within the scope of the terrorist organisation offences. The inclusion of conduct in this Guideline does not reflect a view of the Australian Government that it would be in breach of the Criminal Code. These examples are included to provide assurance on activities which are unlikely to be prosecuted as terrorist organisation offences.

law, there are offences which apply to dealing with assets owned or controlled by Hizballah, and making assets available to Hizballah, either directly or indirectly.<sup>7</sup>

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<sup>7</sup> Information on Australia's sanctions regimes is available on the website of the Department of Foreign Affairs and Trade, [What You Need to Know | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](https://www.dfat.gov.au/what-you-need-to-know).



**Senator the Hon Michaelia Cash**  
Attorney-General  
Minister for Industrial Relations  
Deputy Leader of the Government in the Senate

**Policy guideline – factors to be considered by the Attorney-General when considering whether to consent to the prosecution of terrorist organisation offences in relation to Hamas**

The Australian Government does not condone the actions of groups that use terrorism to achieve their political, religious or ideological objectives. Australia has a comprehensive suite of laws in response to terrorism. These laws not only target terrorist acts, but also the organisations that plan, finance and carry out such acts.

Offences relating to terrorist organisations are set out in Division 102 of the Criminal Code.<sup>1</sup> Under that Division, a terrorist organisation is an organisation that:

- is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act; or
- has been listed in regulations as a terrorist organisation.

Division 102 includes offences for providing support to a terrorist organisation, providing or receiving funds from a terrorist organisation, and associating with a terrorist organisation. Further detail on the terrorist organisation offences is available on the website of the [Attorney-General's Department](#). A list of terrorist organisations, and a factsheet on the offences, is available on the [Australian National Security](#) website.

Listing of Hamas

On 4 March 2022, Hamas was listed as a terrorist organisation under the Criminal Code, after the Minister for Home Affairs was satisfied that the organisation meets the criteria for listing, as set out in section 102.1 of the Criminal Code.<sup>2</sup> A statement of reasons in support of the listing is available.<sup>3</sup>

On 25 March 2022, the Attorney-General issued a ministerial direction to the Commonwealth Director of Public Prosecutions (CDPP), under subsection 8(1) of the *Director of Public Prosecutions Act 1983*.<sup>4</sup> The effect of this direction is to provide that the CDPP must seek the Attorney-General's consent in order to institute proceedings for the prosecution of a person for an offence under Division 102 of the Criminal Code, where the alleged offending relates to the person's conduct in connection with Hamas.

Purpose of the policy

This policy provides guidance on the factors that the Attorney-General will take into account when deciding whether to consent to the CDPP commencing a prosecution of a person where the alleged offending relates to the person's conduct in connection with Hamas.

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<sup>1</sup> [Criminal Code Act 1995](#)

<sup>2</sup> [Listing instrument](#)

<sup>3</sup> [Statement of reasons](#)

<sup>4</sup> [Ministerial Direction](#)

Given Hamas' linkages and involvement in Gaza, there may be reasons why a person may need to engage with Hamas that are not related to terrorism. Hamas provides public services in Gaza, including health, education and security. The requirement for the Attorney-General's consent to a prosecution of offences relating to Hamas is intended to provide an additional safeguard to ensure that prosecutions only proceed where they are in Australia's national interest, and directed at conduct that supports terrorist aims and purpose. It is not the intention of the Australian Government to prosecute Australians engaged in daily activities not connected with terrorism or terrorist acts.

In addition to the Attorney-General's consent requirement, the CDPP must also be satisfied that a prosecution would be in the public interest. The CDPP makes this decision in accordance with the *Prosecution Policy of the Commonwealth*, and in particular, the public interest factors set out in paragraph 2.10.<sup>5</sup>

#### Factors to be considered

In deciding whether to consent to a prosecution of a person for terrorist organisation offences in relation to Hamas, the Attorney-General will consider the circumstances of each individual case.

In considering whether to consent to a prosecution, the Attorney-General will consider whether the conduct directly or indirectly assisted Hamas to engage in, prepare, plan, assist in, or foster the doing of a terrorist act, and whether the person intended that it would do so, or was reckless as to that fact. The Attorney-General may be less likely to consent to a prosecution where this is not the case.

The Attorney-General will consider whether prosecution would be in Australia's national interest, having regard to any relevant matters, including but not limited to, national security, defence, international relations and economic well-being.

The Attorney-General may consider any other matter which they consider relevant.

Without limiting the discretion of the Attorney-General, examples of conduct where consent is unlikely to be granted may include:

- paying taxes to the de facto governing authority of Gaza
- accessing or paying for food, medicine, education or fuel provided by Hamas
- voting for Hamas in an election
- sending remittances to a member of Hamas for their personal education, health and/or basic living expenses
- being engaged in employment by Hamas in a capacity where responsibilities are not linked to the preparation or planning of terrorist acts, and
- selling goods or providing services to Hamas where the goods or services are not linked to the preparation or planning of terrorist acts;

where such conduct does not indirectly or directly assist Hamas to engage in, prepare, plan, assist in, or foster the doing of a terrorist act.<sup>6</sup>

Individuals should seek independent legal advice on their circumstances. It should also be considered that, as Hamas is a listed entity under Australian sanctions law, there are offences which apply to dealing with assets owned or controlled by Hamas, and making assets available

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<sup>5</sup> [Prosecution Policy | Commonwealth Director of Public Prosecutions \(cdpp.gov.au\)](https://cdpp.gov.au/publications/prosecution-policy)

<sup>6</sup> Conduct of the kind listed may not necessarily fall within the scope of the terrorist organisation offences. The inclusion of conduct in this Guideline does not reflect a view of the Australian Government that it would be in breach of the Criminal Code. These examples are included to provide assurance on activities which are unlikely to be prosecuted as terrorist organisation offences.



to Hamas, either directly or indirectly.<sup>7</sup>

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<sup>7</sup> Information on Australia's sanctions regimes is available on the website of the Department of Foreign Affairs and Trade, [What You Need to Know | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](https://www.dfat.gov.au/what-you-need-to-know).



**Australian Government**  
**Attorney-General's Department**

## TALKING POINTS

<b>Subject</b>	<b>Australian citizens serving with the IDF</b>		
<b>Date</b>	21 December 2023		
<b>Type</b>	Ministerial		
<b>AGD Media:</b> 02 6141 2500		<b>Email:</b> s 22(1) @ag.gov.au	

## TALKING POINTS

- Under the *Criminal Code Act 1995* (Criminal Code), it is an offence for Australians to engage in hostile activities overseas, unless serving in or with the armed forces of a foreign country.
- The exemption to the foreign incursions offences for serving with the armed forces of a foreign country does not extend to other Commonwealth criminal offences.
- The Government encourages all Australians who seek to serve with the armed forces of a foreign country to carefully consider their legal obligations, and ensure their conduct does not constitute a criminal offence.
- Australia's consistent position in the Hamas-Israel conflict, and in all conflicts, is to call for the protection of civilian lives and the observation of international humanitarian law.

## BACKGROUND

- Part 5.5 of the Criminal Code prohibits Australian citizens and residents, and holders of Australian visas from engaging in hostile activities overseas unless serving in or with the armed forces of a foreign country.
- It is an offence to:
  - enter a foreign country with an intention to engage in a hostile activity, unless serving in or with the armed forces of the government of a foreign country
  - prepare to enter, or to prepare another person to enter, a foreign country with an intention to engage in a hostile activity, or
  - recruit persons to join an organisation engaged in hostile activities, or recruit persons to serve in or with an armed force in a foreign country.
- Foreign incursions offences carry penalties of up to life imprisonment. The recruitment offences carry penalties of up to 25 years imprisonment.
- Under Part 5.5 of the Criminal Code, 'engaging in a hostile activity against the government of a foreign country' means doing an act with the intention of achieving one or more of the following aims:
  - overthrowing a government of a foreign country by force or violence
  - causing the public in the foreign country to be in fear of suffering death or injury
  - causing the death or injury of a person who is the head of a state or holds or performs duties of public office, or
  - unlawfully destroying or damaging property belonging to the government of the foreign country.
- Under s119.8 of the Criminal Code, the Attorney-General, as the Minister responsible for the Australian Federal Police, can declare that foreign incursions activities (recruitment and hostile activities) do not apply to service with a specified armed force, where this is in the interests of Australia's defence or international relations. This would permit a person to serve with a specified armed force. A declaration under this provision has never been made.

**CLEARANCE:**

<b>Drafted by</b>	<b>Title</b>	<b>Contact details</b>
s 22(1) [REDACTED]	Director, Counter Terrorism, Policy and Engagement	s 22(1) [REDACTED] [REDACTED]

<b>Cleared by</b>	<b>Title</b>	<b>Contact details</b>
s 22(1) [REDACTED]	A/g AS Security Law and Policy	s 22(1) [REDACTED] [REDACTED]

s 22(1)

**From:** s 22(1)  
**Sent:** Thursday, 21 December 2023 1:15 PM  
**To:** s 22(1)  
**Cc:** s 22(1) International Law  
and Human Rights Division Coordination; s 22(1)  
**Subject:** RE: OIL input - Australians in the IDF [SEC=OFFICIAL]

**OFFICIAL**

Thanks s 22(1) We will be sure to flag with media that they should seek AFP input on these TPs.

Kind regards,

s 22(1)

Attorney-General's Department

T: s 22(1) M: s 22(1)

**OFFICIAL**

**From:** s 22(1) @ag.gov.au>  
**Sent:** Thursday, 21 December 2023 13:05  
**To:** s 22(1) @ag.gov.au>  
**Cc:** s 22(1) @ag.gov.au>; s 22(1) @ag.gov.au>; s 22(1) @ag.gov.au>; s 22(1) @ag.gov.au>; International Law and Human Rights Division Coordination s 22(1) @ag.gov.au>; s 22(1) @ag.gov.au>  
**Subject:** OIL input - Australians in the IDF [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1),

Please see SESB1-cleared TPs for the international law aspects of the correspondence. We have not had time to consult the AFP but given the letter specifically refers to actions they should take and the substance relates to them (i.e. investigations), we suggest ensuring Media also consults them.

s 22(1) – we have used previously cleared wording on Division 268 but copying you in for visibility and in case you have any comments.

#### **International law and domestic prosecutions**

- Australia acknowledges the allegations of international law violations by both parties to the conflict.
- As a strong supporter of the International Criminal Court (ICC) as a court of last resort, Australia recognises the importance of States' primary responsibility for the investigation and prosecution of the most serious international crimes.
- Pursuant to its ratification of the Rome Statute, Australia has an obligation to investigate war crimes, crimes against humanity and genocide.
  - Division 268 of the *Criminal Code Act 1995* (Cth) (Criminal Code) gives effect to Australia's obligations under the Rome Statute and contains a number of offences including genocide, crimes against humanity and war crimes.
- In addition to the criminalisation of torture as a crime against humanity and war crime, Australia has separately criminalised torture under Division 274 of the Criminal Code in similar terms to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.
- Australia takes its obligations to address allegations of serious international crimes very seriously.
  - This is evidenced by Australia's recent Inspector-General of the Australian Defence Force (IGADF) Afghanistan Inquiry, which culminated in the IGADF Afghanistan Inquiry Report (often referred to as the 'Brereton Report'), and Australia's subsequent and ongoing response to the Report's findings and recommendations.

- Law enforcement and security agencies will consider foreign fighters who have returned on a case-by-case basis. [CTLS – for your views noting you have probably already covered this in your points]

Kind regards,

s 22(1)  
Principal Legal Officer  
Office of International Law  
Attorney-General's Department

3-5 National Circuit | Barton ACT 2600

T: s 22(1) M: s 22(1)  
E: s 22(1) @ag.gov.au

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**From:** s 22(1) @ag.gov.au>  
**Sent:** Thursday, 21 December 2023 11:23 AM  
**To:** s 22(1) @ag.gov.au>  
**Cc:** s 22(1) @ag.gov.au>; s 22(1) @ag.gov.au>  
**Subject:** FW: Australians in the IDF [SEC=OFFICIAL]

OFFICIAL

Hi s 22(1)

As discussed, please see attached letter from the ACIJ regarding Australian nationals fighting for the IDF. As the letter mentions various IL matters, I would be grateful if your team could consider and provide any relevant points we can include in the response to the AGO's request.

I understand that the AGO would like something back today so appreciate if OIL can return something ASAP – apologies for the tight turn around.

Happy to discuss!

Thanks,  
s 22(1)

Attorney-General's Department  
T: s 22(1) M: s 22(1)

OFFICIAL

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**From:** s 22(1) @ag.gov.au>  
**Sent:** Thursday, 21 December 2023 10:09  
**To:** s 22(1) @ag.gov.au>; s 22(1) @ag.gov.au>  
**Subject:** FW: Australians in the IDF [SEC=OFFICIAL]

OFFICIAL

Hi team - are you well placed to action this one?

Happy to discuss if needed.

Many thanks,  
s 22(1)

**OFFICIAL**

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**From:** Media AGD s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>  
**Sent:** Thursday, 21 December 2023 10:01 AM  
**To:** s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>  
**Cc:** s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>; Media AGD s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>; s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>  
**Subject:** FW: Australians in the IDF [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1) and s 22(1),

As discussed with s 22(1) just now, the AGO has requested TPs on the below matter of Australians in the IDF today.

This is in preparation for the attached let to be made public tomorrow (Friday 22<sup>nd</sup>)

If you are able to provide some lines in the attached template, I can then send to Home Affairs and DFAT for input and review.

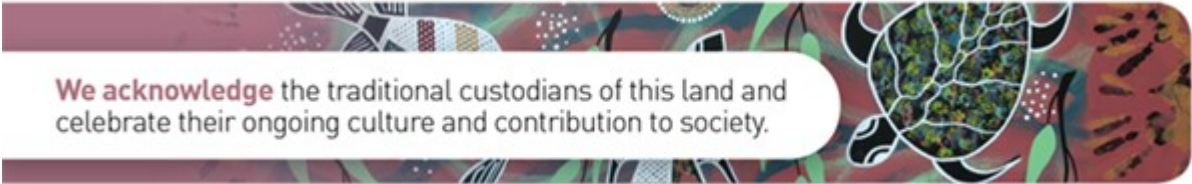
Thanks for your assistance with this.

s 22(1), copying you in as you are working on the related enquiry.

Warm regards,  
s 22(1)

s 22(1)

Attorney-General's Department | Media & Communication | E: s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>



We acknowledge the traditional custodians of this land and celebrate their ongoing culture and contribution to society.

**OFFICIAL**

---

**From:** s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>  
**Sent:** Thursday, 21 December 2023 9:42 AM  
**To:** Media AGD s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>  
**Cc:** s 22(1) <[s 22\(1\)@ag.gov.au](mailto:s 22(1)@ag.gov.au)>  
**Subject:** FW: Australians in the IDF [SEC=OFFICIAL]

**OFFICIAL**

Hi team, could you please work with Home Affairs and DFAT and prepare some lines on this today?

Also for info we received this separate enquiry yesterday below that relates to this.

Thanks

s 22(1)

Dear AG media team, s 22(1) and s 22(1) (Sorry if this isn't relevant to you – I had all of you listed in my contact book under AG media contacts).

I hope this finds you well.

I'm a freelance writer for s 47F(1)

. I was hoping to get some clarification about the legal status of Australian citizens serving with the IDF.

1. According to [information on the Attorney-General's website](#), Australians who also hold Israeli citizenship are legally allowed to serve with the IDF. Can I just check that this is correct and there's no need for such people to obtain permission first from the Australian government?
2. There's a section of [the same A-G webpage](#) that reads: "The Attorney-General may permit recruitment of a person or class of persons to serve with an armed force of a foreign country if it is in the interests of the defence or international relations of Australia." In the last three months, has the A-G's office granted any permits for Australian-Israelis to serve with the IDF?
3. Does the AG's office have any information about how many Australian citizens are currently fighting with the IDF or is this a question for another department?

Thanks,

s 47F(1)

OFFICIAL

**From:** "Attorney Correspondence" s 22(1) @ag.gov.au>

**Date:** Wednesday, 20 December 2023 at 16:47:14

**To:** "Ministerial Correspondence Unit" s 22(1) @ag.gov.au>

**Cc:** s 22(1) @ag.gov.au>, s 22(1) @ag.gov.au>, s 22(1)

@ag.gov.au>

**Subject:** FW: Australians in the IDF [SEC=OFFICIAL]

OFFICIAL

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Priority B		Refer to DSU	
Info. Only		Refer to NSH	
App. Action	x	Invitation	
Reply by AG		Sub required	
Reply by AM		Reply by dept	
Reply by COS		Action area	SLPB
Reply by Adviser		Allocated by	s 22(1)

OFFICIAL

**From:** s 47F(1)

**Sent:** Wednesday, 20 December 2023 4:36 PM

**To:** Attorney Correspondence s 22(1) @ag.gov.au>



Cc: Chidgey, Sarah s 22(1) [redacted] @ag.gov.au>

Subject: Australians in the IDF

**CAUTION:** This email originated from outside of the organisation. Do not follow guidance, click links, or open attachments unless you recognise the sender and know the content is safe.

Dear Attorney-General,

Please find **attached** correspondence for your attention.

Please note because of the public interest in the information contained within, we will be making the letter public on Friday 22 December 2023.

Sincerely,

S [redacted]  
[redacted]

s 47F(1) [redacted]

Principal Lawyer & Executive Director

**Australian Centre for International Justice**

M s 47F(1) [redacted] W [www.acij.org.au](http://www.acij.org.au)

T [twitter.com/theACIJ](https://twitter.com/theACIJ) F [fb.com/theACIJ](https://fb.com/theACIJ)

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**OFFICIAL**

**AUSTRALIAN  
CENTRE  
FOR INTERNATIONAL  
JUSTICE**

20 December 2023

The Hon Claire O'Neil MP  
Minister for Home Affairs

The Hon Mark Dreyfus KC, MP  
Attorney-General of Australia

Commissioner Reece Kershaw APM  
Australian Federal Police

*Via email*

Dear Minister, Attorney-General and Commissioner,

We write to seek clarification on the position of, and urge action by, the Department of Home Affairs, the Attorney-General's Department and the Australian Federal Police (**AFP**) with respect to Australian citizens who are currently engaged in hostilities in Israel and the Occupied Palestinian Territory (**OPT**).

**Australian nationals' engagement in the conflict**

On 10 October 2023, following the Hamas attacks in Israel, which included unlawful direct attacks against Israeli civilians, the Israeli government issued an order to 360,000 military reservists to engage in the ongoing hostilities.<sup>1</sup> Numerous media publications have reported that dual Australian-Israeli citizens returned to Israel to participate in hostilities, with Israeli officials confirming that Australians are among those reservists called up to fight.<sup>2</sup> Although the Israel Defense Force (**IDF**) does not release official statistics in relation to serving foreign nationals, estimates stated there could be up to 1,000 Australians currently serving in the IDF or being an active reservist.<sup>3</sup> Media reporting has noted that those dual Australian citizens include both reservists and active duty soldiers in the IDF and some have indicated they are involved in combat units.<sup>4</sup> There is information to suggest that Australian citizens may also be volunteering for the IDF in a program for non-Israeli nationals known as Mahal.<sup>5</sup>

Australian nationals' engagement in the conflict is occurring in the context of decades of widespread, serious, documented violations of international law by the IDF.<sup>6</sup> These international law violations<sup>7</sup> since 7 October 2023

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<sup>1</sup> Jennifer Hassan and Adam Taylor, 'Israel's massive mobilization of 360,000 reservists upends lives', *The Washington Post* (10 October 2023).

<sup>2</sup> See Jack Quail, 'Australian-Israeli military reservists arrive in Israel as Gaza ground invasion looms', *The Australian* (13 October 2023), Matthew Knott, James Massola and Lucy Cormack, 'Australians fly to Israel to join war as Palestinians urged to flee to southern Gaza', *Sydney Morning Herald* (13 October 2023).

<sup>3</sup> Carly Douglas, 'This is a moment in history where the good of everyone ... takes precedence over any individual', *Herald Sun* (21 October 2023).

<sup>4</sup> See, Stephen Rice, 'Young Australian ready to go to war for her other country', *The Australian* (9 October 2023); Danielle Gusmaroli, 'Israel war: Australian-Israelis join fight against Hamas', *The Daily Telegraph* (16 October 2023); Carly Douglas, 'This is a moment in history where the good of everyone ... takes precedence over any individual', *Herald Sun* (21 October 2023).

<sup>5</sup> For more see, Angie Fox, 'The Australians who go to war for the Israeli and Greek armies', *Sydney Morning Herald* (11 September 2014)

<sup>6</sup> Al-Haq, Al Mezan, PCHR, *Initial reporting on the ongoing Israeli retaliatory attacks on Gaza: (Reporting Period, 7-28 October 2023) based on preliminary documentation* (13 November 2023).

<sup>7</sup> António Guterres, 'Secretary-General's remarks to the Security Council - on the Middle East' *United Nations Secretary General* (Press Release 24 October 2023).

## AUSTRALIAN CENTRE FOR INTERNATIONAL JUSTICE

include: widescale indiscriminate bombing targeting civilians<sup>8</sup> and civilian infrastructure, including health facilities,<sup>9</sup> churches,<sup>10</sup> and bakeries;<sup>11</sup> intentional starvation of a civilian population as a weapon of war;<sup>12</sup> total siege and collective punishment, including through denial of access to water, medicines, aid, fuel and electricity;<sup>13</sup> forced transfer of the protected civilian population;<sup>14</sup> targeting and shooting at civilians, including journalists;<sup>15</sup> acts of torture or cruel, inhuman or degrading treatment or punishment;<sup>16</sup> and outrages upon human dignity;<sup>17</sup> among other serious violations which amount to international crimes. Most concerning, on 16 November, several UN Special Procedures mandate holders warned of an imminent risk of genocide against the Palestinian population in Gaza,<sup>18</sup> together with a significant and growing body of evidence<sup>19</sup> that Israel either intends to commit, or is in the process of committing the crime of genocide in Gaza.

### Australia's response to Australian nationals' engagement in the conflict appears to be inadequate

Despite the publicly available information about Australian nationals' participation in the Israel/OPT conflict as part of the IDF, and clear evidence of violations of international law by the IDF, it appears that the Australian government has failed to provide any public statements advising of the risks involved, particularly the legal risks, including the risk of individual criminal liability, for those Australians participating in the conflict as members of the IDF.

The only public statements from the Department of Home Affairs we have been able to locate are those referred to in the following excerpts from media reports. One such report included:

The Department of Home Affairs said anyone travelling to fight in the conflict from Australia must be part of a nation's official army, or risk breaking the law, but did not provide a number on those returning.<sup>20</sup>

<sup>8</sup> Amnesty International, *Israel/OPT: US-made munitions killed 43 civilians in two documented Israeli air strikes in Gaza – new investigation* (5 December 2023); Amnesty International, *Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza* (20 October 2023).

<sup>9</sup> Human Rights Watch, *Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis* (14 November 2023); Médecins Sans Frontières, *MSF convoy attacked in Gaza: all elements point to Israeli army responsibility* (1 December 2023).

<sup>10</sup> Amnesty International, *Israel/OPT: 'Nowhere safe in Gaza': Unlawful Israeli strikes illustrate callous disregard for Palestinian lives* (20 November 2023).

<sup>11</sup> Kaamil Ahmed, Elena Morresi, 'Airstrikes on Gaza bakeries add to 'catastrophic' food shortages' *The Guardian* (28 October 2023).

<sup>12</sup> Human Rights Watch, *Israel: Starvation Used as Weapon of War in Gaza* (18 December 2023).

<sup>13</sup> ICRC, 'Evacuation order of Gaza triggers catastrophic humanitarian consequences' (13 October 2023); Amnesty International, *Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel* (12 October 2023)

<sup>14</sup> Al-Haq, Al Mezan and PCHR, 'Israel's Last Evacuation Order Requires Urgent International Intervention to Protect Gaza's Civilian Population, Who Have Nowhere Left to Shelter' (29 October 2023); *Protection of civilians and upholding legal and humanitarian obligations, GA Res 10/21, UN Doc A/ES-10/L.25* (26 October 2023);

UN Special Procedures, *Israel must rescind evacuation order for northern Gaza and comply with international law: UN expert* (13 October 2023).

<sup>15</sup> Mohamed Mandour, 'Attacks, arrests, threats, censorship: The high risks of reporting the Israel-Gaza war' *Committee to Protect Journalists* (5 December 2023).

<sup>16</sup> Amnesty International, *Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests* (8 November 2023).

<sup>17</sup> Hagar Shezaf, 'Hundreds of Gazans Arrested During War Held Blindfolded and Handcuffed at Israeli Base' *Haaretz* (18 December 2023).

<sup>18</sup> UN Special Procedures, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023).

<sup>19</sup> See for example, *Defense for Children International—Palestine, et al. v Joseph Biden, et al.* (D ND Cal, 3:23-cv-05829, 13 November 2023) (Complaint); Center for Constitutional Rights, *Defense for Children International - Palestine v. Biden* (Webpage).

<sup>20</sup> Sherryn Groch, 'We are resilient': Australian reservists called up in Israel join fight', *Sydney Morning Herald* (12 October 2023).

**AUSTRALIAN  
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JUSTICE**

Another report stated:

A Home Affairs Department spokesperson told SBS News the Australian Government was alert to the potential for Australians to travel to Israel and the Palestinian territories and engage in hostilities.

"Australians who travel to fight who are not serving in the armed forces of a foreign country may be committing a criminal offence," the spokesperson said.<sup>21</sup>

He reminded Australians that Hamas was a listed terrorist organisation and Australians who travel to fight with a terrorist organisation, or recruit another person to do so, were committing a criminal offence.

Whilst we note that there is no prohibition on Australian citizens from fighting in the armed forces of the government of a foreign country,<sup>22</sup> the reported guidance from the Department of Home Affairs does not warn individuals that their actions could constitute criminal offences under Australian law, which could result in the initiation of criminal proceedings against them, in circumstances where: there is mounting evidence the IDF is committing grave crimes in the OPT, and; Australia has obligations under international law to prosecute the commission of such crimes.

We note the South African government publicly released such an advisory on 19 December 2023.<sup>23</sup>

Furthermore, failure to consider this issue may raise a national security risk for Australia, in that failing to both warn against involvement in the IDF or to act against alleged perpetrators of crimes could risk "undermining social cohesion and unity by stoking fears and division [which] risks Australia's domestic security".<sup>24</sup>

### **Australia's contravention of international legal obligations**

A failure to investigate and prosecute Australian nationals for involvement in potential war crimes, crimes against humanity, genocide and torture as codified in Divisions 268 and 274 of the Commonwealth Criminal Code, would be in breach of Australia's obligations under international law to investigate and prosecute these crimes.<sup>25</sup>

<sup>21</sup> Aleisha Orr, 'Military conscription is mandatory for most Israelis. Here's how it works', *SBS News* (17 October 2023).

<sup>22</sup> *Criminal Code Act 1995* (Cth), sch 1 ('Criminal Code'), ss 119.1(4)(a).

<sup>23</sup> South Africa, Department of International Relations and Cooperation, '*South African nationals to avoid joining foreign armed forces which may contribute to the violation of domestic and international law*' (Media Statement, 18 December 2023).

<sup>24</sup> Commonwealth, Hansard, House of Representatives, *Motion – Israel*, 16 October 2023, 52 (Anthony Albanese, Prime Minister of Australia). See also, Natassia Chrysanthos, '*Worsening war in Gaza will heighten risk of violence in Australia: ASIO boss*', *Sydney Morning Herald* (23 October 2023); Commonwealth, *Legal and Constitutional Affairs Legislation Committee, Senate Estimates*, 23 October 2023, (Mike Burgess, Director-General, Australian Security Intelligence Organisation).

<sup>25</sup> *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) art 49; *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) art 50; *Geneva Convention relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) art 129; *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 146; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) arts 2, 5, 7; *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) Preamble, art 1.

**AUSTRALIAN  
CENTRE  
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JUSTICE**

Moreover, and specifically with respect to acts of genocide, the Australian government must uphold its obligation as a State Party to the Genocide Convention to not only punish acts of genocide, but prevent such acts.<sup>26</sup> The inadequacy of warnings issued to date by the Department of Home Affairs may constitute a failure by Australia to comply with its obligations under the Convention.

**Clarification and action sought from the Australian government**

Given the catastrophic situation currently unfolding in the OPT and in particular in Gaza, we seek clarification regarding the Australian government's position, and intended response, to the real risk that Australian nationals may be involved in the commission of international crimes.

We further urge the Australian government, as a matter of public interest, to assess the risks identified above and undertake to:

1. Update its advice to all persons who have travelled to Israel and the OPT to warn that they may be committing offences under Australian and international law for which they may be prosecuted, in Australia or a third state competent to do so. Such warnings should be a routine part of Australian government policy in situations where dual citizens are involved in the service of an armed force of a government of a foreign country.
2. Issue warnings that anyone who travels to Israel and the OPT and participates in hostilities will be investigated and could be prosecuted if there is evidence of their commission of, or complicity in, the commission of international crimes proscribed by the Criminal Code.
3. Coordinate with the AFP to monitor Australian citizens, including dual nationals, who travel to Israel and the OPT to fight in the IDF, and provide specific guidance to the AFP and the Commonwealth Director of Public Prosecutions to investigate these individuals and prosecute them if there is evidence that they have participated in the commission of international crimes proscribed by the Criminal Code.

We request that the Australian Federal Police:

1. Fulfils its mandate and responsibility to make enquiries and investigate allegations concerning the commission of international crimes by Australian citizens abroad, including upon the return of such persons to Australia.
2. Take steps to assist the International Criminal Court's (ICC) investigation in the Situation in Palestine, including by gathering evidence, for example, by interviewing witnesses who have recently returned from Israel and the OPT. The ICC's jurisdiction covers allegations of crimes committed by all parties to the conflict, including members of the IDF, members of the Israeli authorities, and members of Palestinian armed groups including Hamas. The UK's Metropolitan Police has commenced such an initiative.<sup>27</sup>

We look forward to receiving your prompt response and clarification of steps taken by the Australian government in relation to the urgent and serious matters raised above.

---

<sup>26</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature, 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951), arts I, IV – VI.

<sup>27</sup> Alexander Butler, '[Met Police investigating reports of war crimes in Gaza](#)' *The Independent* (27 November 2023).

**AUSTRALIAN [REDACTED]  
[REDACTED] CENTRE  
FOR INTERNATIONAL  
JUSTICE [REDACTED]**

Sincerely,

s 47F(1)

Executive Director  
Australian Centre for International Justice

Cc:  
Mike Burgess  
Director-General of Security  
Australian Security and Intelligence Organisation

s 22(1)

**From:** s 22(1)  
**Sent:** Monday, 25 March 2024 2:10 PM  
**To:** s 22(1)  
**Cc:** s 22(1)  
**Subject:** RE: For Input - Before COB Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1)

Thanks. Not a red line for OIL.

Best,

s 22(1)

Principal Legal Officer  
Office of International Law  
Attorney-General's Department

3-5 National Circuit | Barton ACT 2600

**T:** s 22(1)

**E:** s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au)

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**Sent:** Monday, 25 March 2024 2:07 PM  
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**Cc:** s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au); s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au); s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au)  
**Subject:** RE: For Input - Before COB Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1),

Thanks for coming back to us on this.

s 47C(1)

Thanks,

s 22(1)

a/g Director | Counter Terrorism Policy and Engagement Section  
Security Law and Policy Branch | Security and Counter Terrorism Division  
Attorney-General's Department  
T: s 22(1) M: s 22(1)

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**Subject:** RE: For Input - Before COB Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

Dear s 22(1)

Please find attached OIL's suggested edits for consistently with similar correspondence and recent talking points.

Best,

s 22(1)

Principal Legal Officer  
Office of International Law  
Attorney-General's Department

3-5 National Circuit | Barton ACT 2600

T: s 22(1)

E: s 22(1) <@ag.gov.au>

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**Subject:** FW: For Input - Before COB Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1),

I'm reaching out to ask OIL if there were any updates the team had on the Priority A ministerial correspondence response attached above?

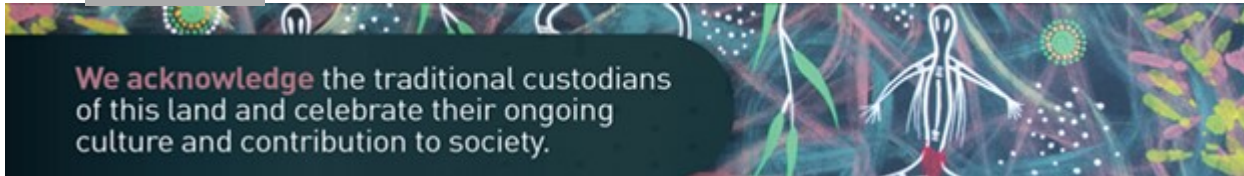


If you could provide us with an answer as soon as possible, so we can get the ministerial correspondence cleared that would be appreciated.

Thanks,

s 22(1)

Policy Officer | Counter Terrorism Policy & Engagement  
National Security and Criminal Justice Group  
Attorney-General's Department  
Phone s 22(1)



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**OFFICIAL**

Hi s 22(1),

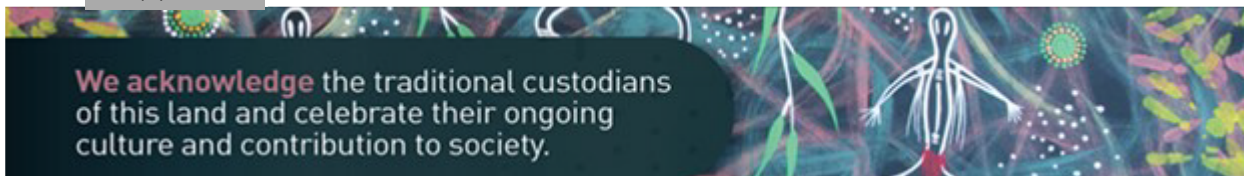
Please see our response to the Priority A Ministerial Correspondence with the response attached above for your input and review.

Would be grateful for any input or comments **before COB today**.

Apologies for the tight timeframes and thank you for your assistance.

s 22(1)

Policy Officer | Counter Terrorism Policy & Engagement  
National Security and Criminal Justice Group  
Attorney-General's Department  
Phone s 22(1)



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**Cc:** s 22(1) <[s22\(1\)@ag.gov.au](mailto:s22(1)@ag.gov.au)>; s 22(1) <[s22\(1\)@ag.gov.au](mailto:s22(1)@ag.gov.au)>

**Subject:** RE: For Input - Due Midday Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

Thanks s 22(1). Noting I will be on leave tomorrow I can consider the input today, if possible.

Otherwise, happy to flag with my EL2 the anticipated input we expect to receive from your team tomorrow.

Kind regards,

s 22(1)

Legal Officer  
Office of International Law  
Attorney-General's Department

T: s 22(1)

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**Subject:** RE: For Input - Due Midday Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

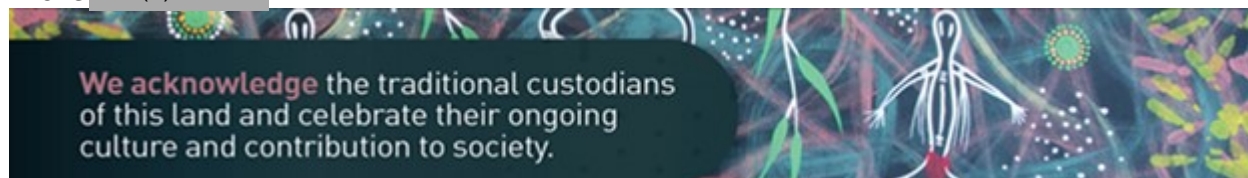
Hi s 22(1),

I will send through a draft of what we have once we've finished pulling it together, apologies for not being able to provide that up front for your team to consider.

Thanks,

s 22(1)

Policy Officer | Counter Terrorism Policy & Engagement  
National Security and Criminal Justice Group  
Attorney-General's Department  
Phone s 22(1)



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**Subject:** RE: For Input - Due Midday Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

**OFFICIAL**

Thank you s 22(1). We are currently reviewing and will get back to you.

Kind regards,

s 22(1)

Legal Officer  
Office of International Law  
Attorney-General's Department

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**Cc:** s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au)>

**Subject:** For Input - Due Midday Friday 22 March 2024 - MC24-00200, PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

Hi s 22(1),

We have received a Priority A, Ministerial Correspondence from Susan Templeman Chair of the Petitions Committee, regarding preventing Australian citizens from serving in the Israel Defence Forces, which I have attached above for your review.

Please let us know if OIL would have any comments or input into the correspondence given the nature of the issue. If you would be able to get us input on this **before midday Friday** that would be much appreciated.

Thanks,

s 22(1)

Policy Officer | Counter Terrorism Policy & Engagement  
National Security and Criminal Justice Group  
Attorney-General's Department  
Phone s 22(1)

**We acknowledge** the traditional custodians of this land and celebrate their ongoing culture and contribution to society.

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**Sent:** Wednesday, 20 March 2024 2:33 PM

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**Subject:** MC24-002001 - Status: Draft - PDMS Notification - Record Assigned - PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF) [SEC=OFFICIAL]

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<b>PDR Subject</b>	PRIORITY A - REFERRAL IN DEFENCE - Petition EN5771 - Prevent Australian citizens from serving in the Israel Defense Forces (IDF)
<b>Status</b>	Draft
<b>Processing Instructions</b>	Australian citizens from serving in the Israel Defense Forces (IDF)

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Kind regards,

Ministerial Engagement and Executive Support Section

Ph: s 22(1)

E: s 22(1) [@ag.gov.au](mailto:s 22(1)@ag.gov.au)

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