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**Submission to the
Parliamentary Joint Committee on Intelligence and Security
Review of the listing of the entirety of Hamas**

We are deeply concerned about the recent decision to list the entirety of z Hamas as a terrorist organisation, as it risks vital humanitarian and human rights work by both Australians and Palestinians; as well as undermining Australia's policy of supporting a just peace for Palestine and Israel.

We ask the Committee to recommend that this decision be overturned.

1. Submissions to the initial review contained errors – of fact and analysis

- 1.1. The external evidence provided to the Parliamentary Joint Committee on Intelligence and Security at the time of the review of the listing of the Izz ad-Din al-Qassam Brigades, only heard from organisations who advocate for Israel's interests. These included Australian lobby groups, such as the Australian Israel Jewish Affairs Council, and the Zionist Federation of Australia. They also included two US based pro-Israel think-tanks. None of the groups or individuals that presented to the review are recognised by other academics as experts on the nature of Hamas. Additionally, not one Palestinian or organisations that advocate for Palestinian human rights, or are engaged in delivering humanitarian aid to Gaza, gave evidence. Given that Hamas are ruling over 2 million Palestinians, the omission of a narrative that reflects their perspectives and interests should render the previous decision flawed and thus void. In a country founded on democratic principles and the rule of law, such an omission should be inconceivable.
- 1.2. In fact the review report in October 2021 states that "The Committee is thankful to the stakeholders and community groups who made submissions to this review and found the evidence they provided supporting the expansion of the listing to the whole of Hamas very compelling." The 2021 review therefore is akin to a court case where only the prosecution, and not the defence was heard, effectively a Kangaroo Court.
- 1.3. Additionally, some of the evidence presented to the 2021 review was factually inaccurate or contained baseless conclusions. Three examples from the Committee's report of October 2021:

- 1.3.1. The report cites in 3.59 charitable monies being diverted to Hamas, using Mohammed El Halabi as a central example. The evidence reports this as a ‘fact’ that monies were diverted. However this allegation has not been proven in any court, and in fact an internal DFAT investigation found no evidence of diversion of funds. World Vision and their auditors, Deloitte, found no evidence of maleficence. Amnesty International has expressed deep concern about the treatment of Mr El Halabi and the lack of a fair trial, and recent World Vision statements indicate that after closely following the court cases for nearly 6 years, that they maintain their belief that he is innocent.

In fact, there has not been a single case of funds or assets being transferred from the civil administration structure to the armed wing or political party, as despite a great deal of scrutiny no evidence tested in court has been found of this ever occurring.

- 1.3.2. The evidence presented conflates the civil administration in Gaza with the ruling party, and further conflates the ruling party (Hamas) with the armed wing (the already proscribed Qassam Brigades). The Committee relies on evidence from submitters regarding whether the Qassam Brigades are separate from other parts of Hamas. However they rely primarily on the testimony of two US based commentators both from think-tanks that are identified as “pro-Israel”, with only one mention of a 12 year old human rights report. In contrast, other governments including the United States and the United Kingdom consider ‘Hamas’ (whether this is referred to in terms of only the political party, or also the al-Qassam Brigades) as being separate from the civil administration structures in Gaza.

- 1.3.3. The evidence presented was misleading in terms of the current circumstances of Hamas’ role in Gaza:

1.3.3.1. The Committee report cites in 3.27 that the Zionist Federation of Australia (ZFA) noted that Hamas “overran the rightful and recognised government in Gaza”. This is not correct. In 2006, Hamas was democratically elected in Gaza, in elections that were [independently verified by the Carter Center](#) (link downloads report) as being free and fair. The comparisons made by the ZFA with the Taliban and ISIS are erroneous, as both were military take-overs. Additionally ISIS were responsible for invading other territories, something Hamas has never been involved in, so this comparison is not only highly inaccurate but deliberately inflammatory.

1.3.3.2. The evidence presented to the Committee refers to the original 1988 Hamas charter, portraying the organisation as focused on the eradication of Israel. However in 2017 Hamas updated their charter, now accepting a two-state solution and removing its antisemitic content. The British Home Office now agrees that the new charter “no longer demands the destruction of Israel”.

As a point of comparison, the original platform of the Likud Party, the largest political party in the Israeli Knesset, specifically rejects a Palestinian State in any of historic Palestine, stating: “between the Sea and the Jordan there will only be Israeli sovereignty.... A plan which relinquishes parts of western Eretz Israel, undermines our right to the country, unavoidably leads to the establishment of a "Palestinian State," jeopardizes the security of the Jewish population, endangers the existence of the State of Israel, and frustrates any prospect of peace.” While this platform has been updated, it still has no mention of Palestine, and talks only about Jewish people’s rights to Sovereignty in the “Land of Israel”. There remains no ‘recognition of Palestine’ in their charter. Further, the current Israeli Prime Minister Naftali Bennet has stated unequivocally “I oppose a Palestinian state — I think it would be a terrible mistake.”

- 1.4. Given that the recommendations made by the former committee were based on incomplete and in some cases inaccurate information, a complete revision of the conclusions is warranted.

2. Hamas is a loose network with a variety of purposes

- 2.1. Hamas is a broad movement, with many functions within its network. It would be a mistake to overlay Western understandings of centralised organisational structures to understand how Hamas operates. Its core functions vary depending on what aspect of the ‘movement’ is being described.
- 2.2. Some parts of Hamas have a humanitarian focus, as they run hospitals and welfare services. Some parts of Hamas have an educational focus, such as Universities or schools. The Hamas political party clearly has political aims. Since Hamas began ruling over the Gaza Strip 15 years ago, Hamas is effectively the ‘ruling party’ of the civil administration within Gaza. None of these aspects are at all connected to violence.
- 2.3. There is no evidence that any money raised for governance or humanitarian work is diverted to the Qassam Brigades.
- 2.4. The Qassam Brigades are not subservient to the political wings of the movement. This has been recognised by Australian designation until this year. Until the recent change, the Izz ad-Din al-Qassam Brigades, the Hamas ‘military wing’ was designated as a terrorist organisation. In the former review of this listing, the Parliamentary inquiry recognised that [“the Brigades operate with a significant degree of independence in their decision making”](#).

This current inquiry, even with the very biased evidence it received, still concluded that “the Hamas Brigades are thought to operate largely independently from the political structure of the organisation”.

3. Proscribing such a broad ‘movement’ risks criminalising entire Gazan population

- 3.1. Given Hamas is the ruling power in Gaza, all people in Gaza are to come into contact with Hamas-run activities or services in some way – whether it is through employment in the civil administration, in paying taxes, or in involvement in educational, health or charitable work connected with Hamas.
- 3.2. The designation of the entirety of Hamas therefore could appear to criminalise the entirety of the population of Gaza, as they will be “acquiring funds for, from or to a terrorist organisation” – which could then be perceived as constituting a criminal offence in Australia.
- 3.3. Whilst we note that the [Attorney-General has issued a policy guideline](#) that indicates that the above everyday activities in dealing with Hamas are “unlikely” to be given consent to be prosecuted, it is doubtful this would be fully understood by most members of the Australian or Palestinian community. The impact therefore of a decision to designate the entirety of Hamas is likely to lead people to think the people of Gaza, including those people themselves, are committing acts of terrorism, simply by living under a Hamas Government.
- 3.4. While for some years the Israeli Government has been seeking to hold every person in Gaza responsible for the actions of the Qassam Brigades, this must not be tolerated by the international community. This policy is acknowledged as collective punishment by human rights organisations and UN bodies. It is vital that the political decisions within Australia do not contribute to this assertion.

4. Proscribing such a broad ‘movement’ may deter aid to an already incredibly vulnerable population

- 4.1. According to the UN, [two million people in Gaza live under a chronic humanitarian crisis](#). Unemployment has been over 40% for five years; [65% of people are food insecure](#); [96% of water from Gaza’s sole aquifer is undrinkable](#), and there is even insufficient amounts of this water available. Electricity access is between 4 and 8 hours a day.
- 4.2. Australian aid to Gaza is vital to ameliorate this dire humanitarian situation.
- 4.3. In evidence to the 2021 review, when the possibility of the entirety of Hamas being listed was being discussed, Mr Marc Innes-Brown PSM, First Assistant Secretary for the Middle East and Africa Division of DFAT stated that “If the listing of Hamas was expanded there may be implications for some of Australia’s smaller aid partners”.
- 4.4. It is vital that Australia is able to continue providing aid to Gaza, through UN and international agencies, as well as partnerships with local aid organisations. It would be a tragedy if this were to be compromised.
- 4.5. As well as formal aid, there is informal financial support that is offered by people sending money to friends and family in Gaza. Consider the example in 2021 of a crowd-funder

launched by someone in Gaza for blankets for people who had lost their homes and all belongings in Israel's bombings. It is likely that, people would be deterred from giving to this crowd-funder, because of the perceived risk of being prosecuted for supporting terrorism.

- 4.6. In terms of giving reassurance to all parties involved in providing vital humanitarian aid to Gaza, we would recommend that as a very minimum, the Australian Government explicitly safeguard humanitarian aid and development work as not relevant to this designation of Hamas. This would give partner organisations confidence that during the normal business of conducting humanitarian aid, within usual guidelines, would not cause anyone to risk prosecution under this legislation. We understand that in the case of the Taliban take-over of Afghanistan, a specific exemption was implemented by the Department of Foreign Affairs and Trade.

5. Hamas will need to be part of a negotiations towards a two-state solution

- 5.1. Designating all of Hamas including its political wing as a terrorist organisation is an incredibly blunt instrument, which impacts on fragile negotiations happening both between Palestinian parties, as well as the overall negotiations with Israel for a just peace.

- 5.2. Hamas is a major political party, and no solution can be brokered that excludes them.

- 5.2.1. As [Hugh Lovatt, Senior Policy Fellow at the European Council on Foreign Relations](#) states:

Hamas remains an integral part of the Palestinian political system with a large popular support base. It cannot be wished away... The group is also the de facto governing power in the Gaza Strip, and thus an unavoidable interlocutor in any effort to prevent a renewed slide to war and to rehabilitate the strip – a reality underscored by Israel's own indirect negotiations with the group.

- 5.2.2. Proscribing Hamas is not the way to inspire them towards negotiations. In talking about the decision by the UK Government to proscribe Hamas, [Hugh Lovatt states](#)

Ultimately, it{Hamas} will choose the path that it believes can best achieve its objectives, foremost of which is ending Israel's siege of Gaza and the occupation.

The aim of international engagement should therefore be to incentivise and test Hamas's claims to moderation. However, by instigating such a high-profile move against the Islamist group, the UK has effectively undermined the moderate voices within Hamas, and rewarded hardliners who maintain that only armed violence, not diplomacy, can succeed in challenging Israel's military occupation. In parallel, the UK's legislation will further complicate already difficult efforts to reunify and reform the Palestinian political system, which remains a sine qua non for a fully functioning Palestinian state and a sustainable peace agreement with Israel.

- 5.3. If Australia wants to play a direct and constructive role in negotiating a just solution within Israel and Palestine, then it needs to have constructive engagements with all players.
- 5.4. If we examine Northern Ireland as a parallel, we see that while no Governments engaged with the IRA directly, Sein Fein was involved in negotiations towards the Good Friday Agreements. Indeed Gerry Adams met with both Alexander Downer and Paul Keating on visits to Australia. We can't exclude Hamas from the peace process, any more than we could have excluded Sein Fein from the Good Friday Agreement.

6. Designation of Hamas will not reduce terrorism

- 6.1. Part of Hamas is a political party whose aim is the self-determination of an Indigenous people. It is acknowledged by the Australian Government in this designation that Hamas poses no threat beyond the borders of Israel and Palestine.
- 6.2. There is no evidence that the designation of Hamas in Australia would act as a deterrence to terrorism.
- 6.3. Indeed if the people of Gaza do not believe that there is merit to be gained in international diplomacy, then they might be more inclined towards other strategies. This decision therefore may perversely lead to further violence.
- 6.4. We must show Palestinians that the international community will stand with them against the human rights violations that they suffer. This would be a much more constructive role Australia could take to end the violence and lead to a just solution.