



**THE HON KAREN ANDREWS MP
MINISTER FOR HOME AFFAIRS**

Ref No: MS22-000505

Senator James Paterson
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Chair *James*

I write to advise that, as the Minister responsible for the purpose of regulations made under Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), I am satisfied that Hamas in its entirety meets the legal threshold for listing as a terrorist organisation under Division 102. This listing will ensure that all offence provisions under Division 102 of the Criminal Code apply to conduct in relation to Hamas.

Under subsection 102.1(2) of the Criminal Code, before listing an organisation as a terrorist organisation, I must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act.

Following careful consideration of information provided by the Department of Home Affairs in consultation with national security agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that Hamas meets the legal threshold to be listed as a terrorist organisation.

In accordance with a previous recommendation of the Parliamentary Joint Committee on Intelligence and Security, I have given consideration to delaying the commencement of the regulations listing Hamas until after the end of the applicable disallowance period. However, I have decided that the listing of Hamas replacing the listing of Hamas' Izz al-Din al-Qassam Brigades necessitates that the regulations commence immediately.

Before the regulations were made, I wrote on behalf of the Commonwealth to all state and territory First Ministers advising them of the proposed listing, and provided them with copies of the statement of reasons with respect to Hamas. The states and territories did not object to the listings.

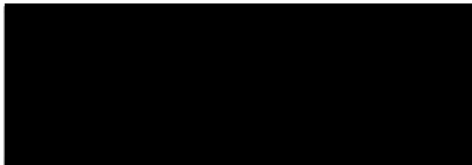
As required under subsection 102.1(2A) of the Criminal Code, I also wrote to the Leader of the Opposition advising him of the proposed listing. I provided the Leader of the Opposition with a copy of the statement of reasons with respect to Hamas, and invited him to contact my office if he wished to receive a further briefing.

Section 102.1A of the Criminal Code provides that the Committee may review regulations listing an organisation as a terrorist organisation as soon as possible after they are made, and report the Committee's comments and recommendations to each House of Parliament before the end of the applicable disallowance period for each House.

To assist the Committee, I enclose a copy of the Criminal Code regulations and explanatory statement. Attached to the explanatory statement is the statement of reasons prepared by the Department of Home Affairs with respect to Hamas. The statement of reasons provides information on the history, ideology, leadership and activities of this organisation, and is the basis upon which I came to the view that Hamas in its entirety meets the legal threshold for listing as a terrorist organisation under Division 102 of the Criminal Code.

I also attach a document outlining the process for listing Hamas. I understand that this document may be considered as a separate submission should the Committee decide to conduct a review into the listing, and I consent to its publication for that purpose.

Yours sincerely



KAREN ANDREWS

30 / 3 / 2022



Criminal Code (Terrorist Organisation— Hamas) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 03 March 2022

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation— Hamas) Regulations 2022*.

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.	4 March 2022

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 the *Criminal Code Act 1995*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Terrorist organisation—Hamas

- (1) For the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as Hamas is specified.
- (2) Hamas is also known by the following names:
- (a) Al-Athja al-Islami;
 - (b) Al-Tiar al-Islami;
 - (c) Harakat al-Muqawama al-Islamiya;
 - (d) Islamic Resistance Movement.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation— Hamas’ Izz al-Din al-Qassam Brigades) Regulations 2021

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation— Hamas) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation— Hamas) Regulations 2022* (the Regulations) is to specify the organisation known as Hamas for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, which prescribes offences against humanity and related offences, and dangers to the community and national infrastructure.

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

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1), the **AFP Minister** (the Minister for Home Affairs) must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act.

The Minister for Home Affairs is satisfied on reasonable grounds that the organisation known as Hamas is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (the Statement of Reasons at [Attachment C](#)).

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

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

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

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

The Regulations ensure that these offences apply to conduct relating to Hamas.

The Regulations also repeal the *Criminal Code (Terrorist Organisation—Hamas' Izz al-Din al-Qassam Brigades) Regulations 2021*, specifying Hamas' Izz al-Din al-Qassam Brigades as a terrorist organisation. Hamas' Izz al-Din al-Qassam Brigades is the military wing of Hamas. These Regulations commenced on 4 August 2021 and, if not repealed, would have ceased to have effect on 4 August 2024, by operation of subsection 102.1(3) of the *Criminal Code*.

As the Regulations specify the whole organisation of Hamas as a terrorist organisation, repealing the Regulations that currently specify only Hamas' Izz al-Din al-Qassam Brigades as a terrorist organisation provides clarity and avoids unnecessary duplication in the application of the Regulations.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislation. Subsection 102.1(3) of the *Criminal Code* provides that the Regulations will cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of this Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

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

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

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

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at [Attachment C](#).

ATTACHMENT A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation— Hamas) Regulations 2022

This Disallowable Legislative 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 *Criminal Code (Terrorist Organisation— Hamas) Regulations 2022* (the Regulations) specify Hamas for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to specify Hamas as a terrorist organisation under Australian law, and to put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to Hamas.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Hamas as a listed terrorist organisation.

Terrorist organisations, including Hamas, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a terrorist organisation requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

The inherent right to life in Article 6

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

The right to freedom of expression in Article 19

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

The right to freedom of association in Article 22

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

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

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

General safeguards and accountability mechanisms

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

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

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(3) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

ATTACHMENT B

Details of the *Criminal Code (Terrorist Organisation— Hamas) Regulations 2022*

Section 1—Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation— Hamas) Regulations 2022*.

Section 2—Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table under subsection 2(1).
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 together provide that the Regulations commence in their entirety on the day after the Regulations are registered on the Federal Register of Legislation.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. Information in this column is intended to assist readers of the Regulations.

Section 3—Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4—Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation— Hamas' Izz al-Din al-Qassam Brigades) Regulations 2021*.

Section 5—Terrorist organisation— Hamas

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as Hamas is specified.

10. The effect of specifying Hamas as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Hamas.
11. Subsection 5(2) provides that Hamas is also known by the following names:
 - Al-Athja al-Islami;
 - Al-Tiar al-Islami;
 - Harakat al-Muqawama al-Islamiya; and
 - Islamic Resistance Movement.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Hamas’ Izz al-Din al-Qassam Brigades) Regulations 2021*.
13. Until their repeal, these Regulations specified Hamas’ Izz al-Din al-Qassam Brigades as a terrorist organisation. Hamas’ Izz al-Din al-Qassam Brigades is the military wing of Hamas. The repeal provides clarity and ensures there is no duplication once the Regulations specifying Hamas commence. If the Regulations specifying Hamas’ Izz al-Din al-Qassam Brigades were not repealed, they would have remained in effect until 4 August 2024, when they would cease to have effect by operation of subsection 102.1(3) of the *Criminal Code*.

ATTACHMENT C

Statement of Reasons

Listing of Hamas as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Hamas. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Hamas

Known aliases

- Harakat al-Muqawama al-Islamiya
- Islamic Resistance Movement
- Al-Tiar al-Islami
- Al-Athja al-Islami

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the Minister for Home Affairs must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation, subsection 102.1(20) of the *Criminal Code* describes the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

Hamas has not previously been listed under the *Criminal Code*. The paramilitary wing of Hamas, the Izz al-Din al-Qassam Brigades, was first listed as a terrorist organisation on 5 November 2003 and most recently re-listed on 4 August 2021.

Since 2001, Australia has listed Hamas in its entirety as a terrorist entity for financial sanctions under part 4 of the *Charter of the United Nations Act 1945*, as part of implementing United Nations Security Council Resolution 1373.

Details of the organisation

Hamas is an ideologically and religiously-motivated violent extremist organisation which fuses Palestinian nationalist and Sunni Islamist objectives. Hamas was founded in 1987 during the first intifada uprising. It began as a branch of, and retains an ideological affinity with, the Muslim Brotherhood. In 2006 Hamas participated in the Palestinian election and in 2007 overthrew the Palestinian Authority, seizing control of Gaza. Hamas has since been the governing body in Gaza, largely responsible for the administration and provision of government services, including health, education and security, to Gaza's inhabitants.

Hamas does not recognise Israel as a sovereign state. Its overarching goal is to 'liberate Palestine' by establishing an independent Palestinian state—comprising Gaza, the West Bank and Israel—guided by Islamic principles, and destroying Israel as a political entity in the process. Hamas supports a strategy of armed resistance in pursuit of its goals.

Hamas is formally a hierarchical movement with several movement-wide and regional decision-making bodies, which reach decisions through a consultative process. Hamas' highest executive authority is its Executive Committee led by Ismail Haniyeh, which is Hamas' supreme decision-making body. Hamas' central consultative body is its General Shura Council, responsible for electing the Executive Committee and shaping Hamas' overarching strategy and policies. Hamas's three major regions, Gaza, the West Bank and Abroad, are represented on, and exert varying levels of influence over, Hamas' central leadership bodies — the Executive Committee and General Shura Council — and maintain their own internal management systems.

The Izz al-Din al-Qassam Brigades (the Brigades) were officially established in 1991 as the paramilitary wing of Hamas. The Brigades undertake military activity on behalf of Hamas and have adopted terrorist tactics in their efforts to defeat Israel, including indiscriminate rocket attacks, suicide attacks, bombings, shootings and kidnappings against Israeli military and civilian targets. Historically, the Brigades have predominantly operated in Gaza, with limited representation in the West Bank. Hamas has reportedly increased its presence and military capacity building activities in Lebanon, however attacks remain directed at Israel.

The Brigades exist within the overall organisational structure of Hamas, subordinate to its political leadership, but structured as a distinct paramilitary wing. While decisions of the political leadership probably take precedence, the Brigades operate with a degree of independence and may not seek approval from the political leadership for operational activities.

Hamas' leadership has historically stated that there is no neat separation between the organisations' political and paramilitary components. Hamas' founder, Sheikh Ahmed Yassin, stated in a 2004 interview that *"we cannot separate the wing from the body. If we do so, the body will not be able to fly. Hamas is one body."* In 2004 then-Brigades commander Salah Shehadeh said *"the political apparatus is sovereign over the military apparatus, and a decision of the political [echelon] takes precedence over the decision of the military [echelon], without intervening in military operations."* In 2014 senior Hamas leader Abu Marzook referred to Hamas and the Brigades as *"one organisation with two wings or departments."*

Hamas' political leaders often refer to the militant actions and capabilities of the Brigades in the possessive, implying that the Brigades' activities, including the use of terrorism, are sanctioned by and carried out as part of the wider Hamas organisation. Following the May 2019 rocket attacks from Gaza into Israel, Hamas' leader in Gaza, Yahya Sinwar, thanked Iran for providing rockets to the Brigades used in the conflict. *"Iran provided us with rockets, and we surprised the world when our resistance targeted Beersheba."* Following the May 2021 Israel-Palestine conflict, Sinwar similarly thanked Iran for providing Hamas the capability to launch rockets into Israel: *"Our complete gratitude is extended to [Iran] ... They provided us with money, weapons and expertise ... They weren't with us on the ground, but they were with us through those capabilities, with which we crushed and rocked the enemy."* Sinwar reiterated Brigades spokesperson Abu Ubeida's statement that *"firing a salvo of 250 rockets on Tel Aviv is easier for us than [drinking water]."* Sinwar also stated *"we support the eradication of Israel through armed jihad and struggle."*

These statements indicate that while the Brigades retain a degree of operational independence, their militant activities are aimed at achieving Hamas' objectives – primarily the creation of a Palestinian state and the destruction of Israel – and are publicly supported by Hamas' political leadership.

Leadership

Hamas' Executive Committee has been led by Ismail Haniyeh since 2017. There is a significant overlap between the leadership cohorts of Hamas' political and paramilitary wings, and several Hamas political leaders have strong linkages with the Brigades. Yahya Sinwar, the political leader of Hamas in Gaza since 2017, was released from an Israeli prison in 2011 as part of a prisoner exchange, having served 22 years of his sentence following a 1989 conviction for the abduction and killing of two Israeli soldiers and murder of four Palestinians. Saleh al-Aroui is Haniyeh's deputy as well as Hamas's political leader in the West Bank, and is responsible for directing Hamas' militant activities there.

Mohammed Deif has been the leader of the Brigades since 2002. Deif has survived a number of assassination attempts by Israel and has been described by Israeli media as Israel's most wanted man. Marwan Issa is Deif's deputy and serves as the Brigades' representative in Hamas' Gaza political office.

Membership

The total size of Hamas is difficult to determine. Estimates for the Brigades range from several thousand to up to 30,000 fighters. The proportion of members assigned to normal military and security duties, and those involved in planning terrorist attacks is unknown.

Financing

The proportion of funds Hamas has allocated to the terrorism-related activities of the Brigades is difficult to determine. While Iran is known to fund the Brigades, Hamas' funding comes from a range of official and private sources including states, corporations, individual donors, and charities.

Links to other groups

Hamas, through activities conducted by the Brigades, has been known to cooperate with other violent extremist organisations in the region. This includes coordinating militant operations with listed terrorist organisation Palestinian Islamic Jihad and receiving financial, weapons and training support from Lebanese political party and listed terrorist organisation Hizballah.

Terrorist activity

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

The majority of Hamas' terrorist acts have been conducted by the Brigades. Public statements made by Hamas' political leaders acknowledge and support the terrorism-related activities of the Brigades. Since 2005, Hamas terrorist attacks have primarily consisted of small-arms, rocket and mortar fire at Israeli communities in the vicinity of Gaza. These attacks have caused property damage, as well as deaths and injuries to both Israeli military personnel and civilians.

Recent examples of Hamas engaging in, preparing or planning terrorist acts include:

- On 21 November 2021, Hamas member Fadi Abu Shkhaydam conducted a small-arms attack in Jerusalem's Old City, killing one person and injuring four others. The attack was most likely inspired by Hamas and the organisation praised the attack without claiming responsibility, stating it was the 'price' for Israel's actions in Jerusalem.
- From 10-21 May 2021, Palestinian militants, including members of the Brigades, launched over 4,300 rockets and mortar shells towards Israel from Gaza. The Brigades claimed responsibility for multiple strikes against Israel during this period. Hamas militants fired anti-tank guided missiles at civilian and military targets, killing one person and injuring several others. Palestinian rocket and mortar-fire reportedly resulted in 13 deaths and over 100 direct and 200 indirect injuries in Israel during the conflict.
- On 29 December 2020, Palestinian militants, including members of the Brigades, launched rockets into the Mediterranean Sea off Gaza during joint military drills. According to an official Hamas statement, the exercises aimed to simulate expected threats posed by Israel and to develop the capability of Palestinian resistance fighters for conflict.
- From 1-2 July 2020, the Brigades fired rockets and mortar shells towards the sea from Gaza during military drills. An anonymous Hamas official told media that Hamas's rocket tests aim to improve its military capabilities to counter any Israeli plan to attack the Palestinian people.
- On 6 May 2019, the Brigades spokesperson posted on social media that the Brigades had "*succeeded in overcoming the so-called Iron Dome by adopting the tactic of firing dozens of missiles in one single burst*" which caused "*great losses and destruction to the enemy*". The Israeli Defense Forces confirmed Hamas and

Palestinian Islamic Jihad had fired several hundred rockets at a specific location in Israel, although few had penetrated Israel's air defence systems.

Advocates the doing of a terrorist act

Hamas often praises terrorist attacks conducted by its own Brigades and other violent extremist organisations and lone-actor attacks. Recent examples of Hamas advocating terrorist acts include:

- On 8 December 2021, a teenager allegedly stabbed a person in Sheikh Jarrah, East Jerusalem. Hamas praised the attack stating that *"the heroic operations in the West Bank and Jerusalem... with the stabbing of a settler in Sheikh Jarrah, prove the greatness of our rebellious people and that their resistance is unbreakable."*
- On 17 November 2021, a teenager from East Jerusalem stabbed two border police officers in Jerusalem's Old City. Hamas spokesperson Hazem Qassem praised the attack stating *"this commando operation and the rise of its perpetrator as a martyr is a picture of the great conflict between our people and its resistance and the occupation."* Qassem's statements were likely made with the intention of encouraging other persons to engage in similar acts and pose a substantial risk of doing so.

Other considerations

Links to Australia and threats to Australian interests

There are no known direct links between Hamas and Australia. Hamas has not made statements specifically threatening Australians or Australian interests. However, Australians could be incidentally harmed in terrorist attacks conducted by Hamas.

On 9 August 2001, an Australian-American dual national was killed in a suicide bombing in Jerusalem, which has been attributed to the Brigades.

Listings by likeminded countries or the United Nations

Hamas in its entirety is proscribed as a terrorist organisation by the United States, the United Kingdom and Canada. New Zealand proscribes Hamas' Izz al-Din al-Qassam Brigades as a terrorist organisation.

Engagement in peace or mediation processes

Hamas agreed to a ceasefire with Israel following the May 2021 escalation in the Israeli-Palestinian conflict involving the firing of rockets from Gaza into Israel. As at November 2021, Hamas is involved in negotiations with Israel to strengthen the ceasefire, with Egypt acting as mediator.

In 2017, Hamas engaged in reconciliation negotiations with its rivals, the Fatah-led Palestinian Authority. This included a 12 October 2017 agreement to restore Palestinian Authority control to the Gaza strip; however, it did not address the future of the Brigades which, as of January 2022, have not disarmed. Hamas has been involved in other ceasefire agreements, including in August 2020.

In September 2020, Fatah and Hamas announced an agreement to hold general Palestinian elections following reconciliation talks. Further talks between Fatah and Hamas were held in February 2021. General Palestinian elections were scheduled for May 2021 but were postponed indefinitely in April 2021 by the Fatah-led Palestinian Authority. In January 2022, reconciliation talks commenced between Fatah, Hamas and other Palestinian organisations in Algeria.

Conclusion

On the basis of the information above, the Australian Government assesses that Hamas is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.



Australian Government
Department of Home Affairs

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Process for listing Hamas as a terrorist organisation under the Criminal Code

The Counter-Terrorism Strategic Policy Branch in the Department of Home Affairs (the Department) facilitates the process by which the Minister for Home Affairs is satisfied that an organisation meets the legal threshold for listing or re-listing as a terrorist organisation under the *Criminal Code Act 1995* (the Criminal Code).

This process involves coordinating whole-of-government input to a written statement of reasons that assesses the organisation and seeking the advice of the Australian Government Solicitor (AGS) in relation to this assessment. This information and advice is submitted to the Minister for Home Affairs to assist in their decision on whether an organisation meets the legal threshold for listing or re-listing as a terrorist organisation under the Criminal Code.

The following steps were undertaken for the purpose of listing Hamas as a terrorist organisation:

1. From 11 November 2021, the Department coordinated agency input to a statement of reasons outlining the case for listing Hamas.
2. On 21 December 2021, AGS provided advice to the Department in relation to the legal basis for listing Hamas.
3. On 10 February 2022, the Department provided a submission to the Minister for Home Affairs seeking consideration of the statement of reasons and agreement that she was satisfied that Hamas met the legislative threshold to be listed as a terrorist organisation.
4. On 15 February 2022, having considered the information provided in the Department's submission, the Minister for Home Affairs was satisfied that Hamas met the legislative threshold to be listed.
5. On 15 February 2022, the Minister for Home Affairs wrote to state and territory First Ministers on behalf of the Prime Minister, advising of her satisfaction that Hamas met the threshold for listing as a terrorist organisation.

The letters attached copies of the statement of reasons for Hamas and sought First Ministers' consideration of the proposed listings. The letters requested a response by 2 March 2022, advising whether the First Minister approved of, or objected to, the proposed listing.

6. On 15 February 2022, the Minister wrote to the Leader of the Opposition, advising of her satisfaction that Hamas met the legislative threshold for listing, attaching the statement of reasons and offering a briefing in relation to Hamas.
7. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
 - Tasmania – received 3 March 2022
 - South Australia – received 3 March 2022
 - Western Australia – received 4 March 2022

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- Queensland – received 15 March 2022
- New South Wales – received 17 March 2022

At the time of writing, no response had been received from the First Ministers of the Australian Capital Territory, Northern Territory, and Victoria.

No objections were made to the proposed listing of Hamas.

8. On 3 March 2022, the Governor-General made regulations giving effect to the listing of Hamas.
9. On 3 March 2022, the regulations listing Hamas were registered on the Federal Register of Legislation.
10. On 4 March 2022, the regulations listing Hamas came into effect.