

Senate Estimates – June 2024

Last updated: 31 May 2024

Middle East - Israel and OPTs

Middle East - Israel and Occupied Palestinian Territories

This section and pages 2-13 have been removed as irrelevant - section 22(1)(a)(ii)

Prepared By:

Name: Israel-Gaza Taskforce

Branch: Middle East Branch

Phone: Gemma Huggins, s 22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD | Middle East Branch

Phone: s 22(1)(a)(ii)

s 33(a)(iii)

- Australia's consistent position in the Hamas-Israel conflict is to call for the protection of civilian lives and the observation of international humanitarian law.
- 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.
- Under the *Criminal Code Act 1995*, it is an offence for Australians to engage in hostile activities overseas, unless serving in or with the armed forces of a foreign country.
 - this legislation discourages Australians from fighting in overseas conflicts and endangering their lives and the lives of others.

[Defer to Attorney-General's Department on legality of Australians serving with the IDF]

s 33(a)(iii)

- The Government does not track the movements of Australians overseas.

s 33(a)(iii)

[Defer to Department of Home Affairs on movements of Australian citizens]

This section and pages 15-68 removed as irrelevant - section 22(1)(a)(ii)

Prepared By:

Name: Israel-Gaza Taskforce

Branch: Middle East Branch

Phone: Gemma Huggins, s 22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD | Middle East Branch

Phone: s 22(1)(a)(ii)

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Middle East - Israel and OPTs

Division: ISG MAD MEB IGTF	
Prepared by: Israel-Gaza Taskforce Mob: s 22(1)(a)(ii) Ext: s 22(1)(a)(ii) Date: 16 May 2024	Cleared by Branch/Division Head: Marc Innes-Brown
Consultation: Tel Aviv, Ramallah, LGD, MPD	

Prepared By:

Name: Israel-Gaza Taskforce

Branch: Middle East Branch

Phone: Gemma Huggins s 22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD | Middle East Branch

Phone: s 22(1)(a)(ii)

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Additional Budget Estimates – February 2024
Last updated: 14 February 2024

PDR No: s 22(1)(a)(ii)
02. Hamas-Israel Conflict - Update

02. Hamas -Israel Conflict - Update

s 22(1)(a)(ii)

Prepared By:

Name: s 22(1)(a)(ii)
Branch: ISG/MAD/MEB/ IGTF
Phone: Insert s 22(1)(a)(ii)

Cleared By:

Name: Craig Maclachlan
Position: Deputy Secretary, ISG
Phone: s 22(1)(a)(ii)

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Additional Budget Estimates – February 2024

Last updated: 14 February 2024

PDR No: s 22(1)(a)(ii)

02. Hamas-Israel Conflict - Update

s 22(1)(a)(ii)

s 33(a)(iii)

- Australia's consistent position in the Hamas-Israel conflict is to call for the protection of civilian lives and the observation of international humanitarian law.
- 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.
- Australians who travel to fight with a terrorist organisation (such as Hamas, Hizballah or the Palestinian Islamic Jihad), or recruit another person to do so, are committing a criminal offence.
 - These foreign fighters are considered by law enforcement and security agencies on a case-by-case basis.

[Further questions to be referred to the Attorney-General's Department]

s 33(a)(iii)

- It is not helpful to speculate on hypotheticals.
- The domestic prosecution of any war crimes offences is a matter for the Attorney General's Department and the Commonwealth Director of Public Prosecutions.

[Further questions to be referred to the Attorney-General's Department]

This section and pages 76-88 removed as irrelevant - section 22(1)(a)(ii)

Prepared By:

Name: s 22(1)(a)(ii)

Branch: ISG/MAD/MEB/IGTF

Phone: Insert s 22(1)(a)(ii)

Cleared By:

Name: Craig Maclachlan

Position: Deputy Secretary, ISG

Phone: s 22(1)(a)(ii)

OFFICIAL: Sensitive



Australian Government
Department of Foreign Affairs and Trade

PDR ID: s 22(1)(a)(ii)

Senator the Hon Penny Wong
s 47F(1)

s 22(1)(a)(ii)

Prepared by: s 22(1)(a)(ii)
s 22(1)(a)(ii)

Cleared by: Gemma Huggins, AS MEB,
ISG | MAD | Middle East Branch

Date cleared: 08 January 2024

OFFICIAL

OFFICIAL: Sensitive

PDR ID: s 22(1)(a)(ii)

s 22(1)(a)(ii)

Pre-submitted Questions:

s 33(a)(iii)

- 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 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.

This section and pages 91-94 removed as irrelevant - section 22(1)(a)(ii)

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s 22(1)(a)(ii)

Prepared By:

Name: Israel-Gaza Taskforce

Branch: Middle East Branch

Phone: s 22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD | Middle East Branch

Phone: Click or tap to enter a date.

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HAMAS-ISRAEL CONFLICT

s 22(1)(a)(ii)

s 33(a)(iii)

- The Department of Foreign Affairs and Trade has confirmed the death of a dual Australian and Israeli citizen (Lior Sivan) in Gaza serving in the Israeli Defense Force.
- We send our condolences to his family during this difficult time.

[Defer questions on consular assistance to FAS CCD]

Prepared By:

Name: Israel-Gaza Taskforce

Branch: Middle East Branch

Phone: s 22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD | Middle East Branch

Phone: Click or tap to enter a date.

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Middle East - Israel and OPTs

s 33(a)(iii)

- Australia's consistent position in the Hamas-Israel conflict is to call for the protection of civilian lives and the observation of international humanitarian law.
- 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.

s 33(a)(iii)

- The Australian Government does not track the movements of Australian overseas.

s 22(1)(a)(ii)

Prepared By:

Name: Israel-Gaza Taskforce

Branch: Middle East Branch

Phone: s 22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD | Middle East Branch

Phone: Click or tap to enter a date.



s 22(1)(a)(ii)

s 33(a)(iii)



Pages 99-148 removed as irrelevant - section 22(1)(a)(ii)



s 22(1)(a)(ii)

s 33(a)(iii)



[REDACTED]

s 33(a)(iii)

- The Criminal Code prohibits Australian citizens, Australian residents and holders of Australian visas from engaging in hostile activities overseas unless serving in, or with, the armed forces of a foreign country.
 - While the IDF is the recognised armed forces of Israel, Hamas is not an organ of a recognised nation state.
- Australians who travel to fight with a non-government armed group on either side may be committing a criminal offence.

This section and page 152 removed as irrelevant - section 22(1)(a)(ii)

FAS Brief – Israel/Hamas Conflict: Counter-Terrorism Policy Settings

This section and pages 155-156 removed as irrelevant - section 22(1)(a)(ii)

s 22(1)(a)(ii)

s 33(a)(iii)

- Australian citizens and residents who enter a foreign country with the intention of engaging in hostile activities are liable for life imprisonment.
 - This offence does not apply to a person's service with the armed forces of the government of a foreign country.

s 33(a)(iii)

- *It is an offence to recruit, in Australia, another person to service in any capacity in or with an armed force in a foreign country.*
 - *This offence includes recruitment for an armed force of the government of a foreign country.*
 - *The penalty for this offence is up to 25 years imprisonment.*
- *Law enforcement and security agencies will consider foreign fighters who have returned to Australia on a case-by-case basis.*

s 22(1)(a)(ii)

Background

s 22(1)(a)(ii)

s 33(a)(iii)

Foreign Incursions and Recruitment Offence Provisions – The Attorney-General’s Department manages Part 5.5 of the *Criminal Code Act 1995* which contains provisions that make it an offence to enter a foreign country with the intention of engaging in a hostile activity, except as part of service with the armed forces of a government of a foreign country (for example, the Israeli Defence Force (IDF)).

It is also an offence to recruit persons to join an organisation engaged in hostile activities, including with an armed force of a government of a foreign country. This makes it an offence, in Australia, to recruit a person to serve with the IDF or a listed terrorist organisation.

This section and pages 159-161 removed as irrelevant - section 22(1)(a)(ii)

s 22(1)(a)(ii)

Branch: ISG ISD Office of the Ambassador for Counter-Terrorism	
Prepared by: s 22(1)(a)(ii) Mob: s 22(1)(a)(ii) Ext: s 22(1)(a)(ii) Date: 10 October 2023	Cleared by Director/Branch Head: s 22(1)(a)(ii) Mob: s 22(1)(a)(ii) Ext: s 22(1)(a)(ii) Date: 23 October 2023
Consultation: ASO, MAD, EUD, AGD, HA. Date: 3-23 October 2023. Name: s 22(1)(a)(ii)	
Cleared by CFO / CPO: N/A	Date: N/A