

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. 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 factsheet on the offences is available on the Australian National Security – external website.

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.

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.^[5]

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.