

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.