

Israel-Hamas – Hate Speech/Incitement and Doxxing of Jewish Community

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s 22(1)(a)(ii)

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Background- Israel-Hamas Conflict and Protest Activity

- [REDACTED]
- [REDACTED]
- On 19 December 2023, Lior Sivan, an Australian citizen serving in the Israeli Defence Force was killed during service.

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BACKPOCKET BRIEF – Hamas-Israel and Hate Crimes

Israel-Hamas Conflict and Protest Activity

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- On 19 December 2023, Lior Sivan, an Australian citizen serving in the Israeli Defence Force was killed during service.

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TALKING POINTS

Subject	Australian citizens serving with the IDF		
Date	21 December 2023		
Type	Ministerial		
AGD Media: 02	s 47E(d)	Email: media@ag.gov.au	

TALKING POINTS

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

BACKGROUND

- Part 5.5 of the Criminal Code prohibits Australian citizens and residents, and holders of Australian visas from engaging in hostile activities overseas unless serving in or with the armed forces of a foreign country.
- It is an offence to:
 - enter a foreign country with an intention to engage in a hostile activity, unless serving in or with the armed forces of the government of a foreign country
 - prepare to enter, or to prepare another person to enter, a foreign country with an intention to engage in a hostile activity, or
 - recruit persons to join an organisation engaged in hostile activities, or recruit persons to serve in or with an armed force in a foreign country.
- Foreign incursions offences carry penalties of up to life imprisonment. The recruitment offences carry penalties of up to 25 years imprisonment.
- Under Part 5.5 of the Criminal Code, 'engaging in a hostile activity against the government of a foreign country' means doing an act with the intention of achieving one or more of the following aims:
 - overthrowing a government of a foreign country by force or violence
 - causing the public in the foreign country to be in fear of suffering death or injury
 - causing the death or injury of a person who is the head of a state or holds or performs duties of public office, or
 - unlawfully destroying or damaging property belonging to the government of the foreign country.
- Under s119.8 of the Criminal Code, the Attorney-General, as the Minister responsible for the Australian Federal Police, can declare that foreign incursions activities (recruitment and hostile activities) do not apply to service with a specified armed force, where this is in the interests of Australia's defence or international relations. This would permit a person to serve with a specified armed force. A declaration under this provision has never been made.

CLEARANCE:

Drafted by	Title	Contact details
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Australian Federal Police
Senate Estimates Brief
Additional Estimates Hearing – February 2025

Brief Number: SB24-000301

Brief title: War Crimes – Counter Terrorism and Special Investigations Command

Responsible Deputy: Deputy Commissioner National Security Krissy Barrett

s 22(1)(a)(ii)

Contents

s 22(1)(a)(ii)

If asked: Re: allegations of war crimes by Australian citizens serving in the Israeli Defence Force.....3

s 22(1)(a)(ii)

SES2 clearing officer: AC Stephen Nutt, Counter Terrorism and Special Investigations:

s 47E(d)

SES1 clearing officer: Commander Matthew Gale, Special Investigations:

s 47E(d)

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Australian Federal Police
Senate Estimates Brief
Additional Estimates Hearing – February 2025

Brief Number: SB24-000301

If asked: Re: allegations of war crimes by Australian citizens serving in the Israeli Defence Force

- The AFP is aware of allegations of the commission of war crimes by Australian citizens.
- The AFP cautions all Australian who seek to engage in hostilities overseas to carefully consider their legal obligations and ensure their conduct does not constitute a criminal offence.
- Allegations of Commonwealth offences should be reported to the AFP.
- The AFP works closely with foreign law enforcement agencies and international bodies to support investigations into allegations of Commonwealth offences occurring in foreign jurisdictions.

s 22(1)(a)(ii)

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