

From: [Madeleine Casey](#)
To: [s 22\(1\)\(a\)\(ii\)](#) ; [DLO FM](#); [s 22\(1\)\(a\)\(ii\)](#)
Cc: [Craig MacLachlan](#); [Alan Copeland](#); [Warren Macilwain](#); [Gemma Huggins](#); [Marc Innes-Brown](#); [s 22\(1\)\(a\)\(ii\)](#)
Subject: Talking Points - [s 22\(1\)\(a\)\(ii\)](#) [SEC=OFFICIAL:Sensitive]
Date: Tuesday, 2 January 2024 7:47:59 AM

OFFICIAL:Sensitive

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Hi All,
[s 22\(1\)\(a\)\(ii\)](#)

If raised: Australia citizens serving with the IDF

- 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
 - this discourages Australians from fighting in overseas conflicts and endangering their lives and the lives of others
- 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.
- Foreign fighters who have returned to Australia are considered by law enforcement and security agencies on a case-by-case basis.

[s 22\(1\)\(a\)\(ii\)](#)

s 22(1)(a)(ii)

Madeleine Casey

Assistant Secretary

Consular Operations Branch | Consular and Crisis Management Division

Department of Foreign Affairs and Trade

s 22(1)(a)(ii)



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[We acknowledge](#) the Traditional Custodians of Country throughout Australia,
and their continuing connection to land, waters and community. We pay our respects
to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

OFFICIAL:Sensitive

From: [Madeleine Casey](#)
To: s 22(1)(a)(ii) ; [DLO FM](#); s 22(1)(a)(ii)
Cc: [Craig MacLachlan](#); [Alan Copeland](#); [Warren Macilwain](#); [Gemma Huggins](#); [Marc Innes-Brown](#); s 22(1)(a)(ii)
Subject: Updated Talking Points s 22(1)(a)(ii) [SEC=OFFICIAL:Sensitive]
Date: Tuesday, 2 January 2024 9:50:22 PM

OFFICIAL:Sensitive

OFFICIAL: Sensitive

Hi All,
s 22(1)(a)(ii)

If raised: Australia citizens serving with the IDF

- 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
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- Foreign fighters who have returned to Australia are considered by law enforcement and security agencies on a case-by-case basis.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Madeleine Casey

Assistant Secretary

Consular Operations Branch | Consular and Crisis Management Division

Department of Foreign Affairs and Trade

s 22(1)(a)(ii)



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AUSTRALIANS IMPACTED BY CONFLICT

Australian citizens serving with the Israeli Defense Force

- 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]

Is DFAT tracking the movements of Australians serving in the IDF?

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

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

s 22(1)(a)(ii) – this section, together with the following pages (16-36) are out of scope and have been removed.

s 22(1)(a)(ii)

What is the Government's response to its citizens fighting in the conflict, including IDF reservists?

- Australians who travel to fight, who are not serving in the armed forces of a foreign country, may be committing a criminal offence.
- Hamas is a listed terrorist organisation
 - Australians who travel to fight with a terrorist organisation, or recruit another person to do so, are committing a criminal offence.
- Australians who are also IDF reservists are serving in the armed forces of a foreign country and that is not illegal under Australian law.
- What if these IDF reservists commit war crimes – is the Government going to take action against them?
 - 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.

s 22(1)(a)(ii)

Prepared By:

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

Branch: LVS/MEB/MAD

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

Cleared By:

Name: Craig Maclachlan

Position: Deputy Secretary

Group: ISG | MAD | Middle East Branch

Phone: [Click here to enter SES contact number](#)

Australian citizens serving with the Israeli Defense Force

- 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]

Is DFAT tracking the movements of Australians serving in the IDF?

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

If pressed: Is DFAT aware of Australians serving in the IDF?

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

s 22(1)(a)(ii) – this section, together with the following pages (56-119) are out of scope and have been removed.

s 22(1)(a)(ii)

Australian citizens serving with the Israel Defense Forces

- 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.

Prepared By:

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

Cleared By:

Name: Gemma Huggins
Position: Assistant Secretary
Branch/Division: ISG | MAD | Middle East Branch
Phone: s 22(1)(a)(ii)

s 22(1)(a)(ii)

Will the government sanction Australian citizens serving with the Israel Defense Forces?

- 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.

Prepared By:

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

Branch: IGTF/MEB/MAD

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

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: ISG | MAD

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

Page 6 of 88

Senate Estimates – February 2025

Last updated: 24 February 2025

Middle East - Israel and OPTs

- 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.
- We do not speculate on potential sanctions measures.

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

s 22(1)(a)(ii) – this section, together with the following pages (203-285) are out of scope and have been removed.

s 22(1)(a)(ii)

Death of Australian citizen serving with the IDF

- The Department of Foreign Affairs and Trade has confirmed the death of a dual Australian and Israeli citizen s 22(1)(a) 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: s 22(1)(a)(ii)
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.

Additional Budget Estimates – February 2024

Last updated:

Middle East - Israel and OPTs

Australian citizens serving with the Israeli Defense Force

- . 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.

Is DFAT aware of any other Australians serving in the IDF?

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

s 22(1)(a)(ii) – this section, together with the following pages (288-338) are out of scope and have been removed.

OFFICIAL: Sensitive

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Pre-submitted Questions:**How many Australians have travelled to fight with the IDF?**

- 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.

s 22(1)(a)(ii) – this section, together with the following pages (340-344) are out of scope and have been removed.

OFFICIAL: Sensitive

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s 22(1)(a)(ii)

s 22(1)(a)(ii)

Pre-submitted Questions:

How many Australians have travelled to fight with the IDF?

- DFAT does not have this information available as we do not track the movements of Australians overseas.
- 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.

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s 22(1)(a)(ii)

- 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 22(1)(a)(ii) – this section, together with the following pages (347-354) are out of scope and have been removed.

OFFICIAL: Sensitive

s 22(1)(a)(ii)

Australian citizens serving with the IDF

- 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
 - this discourages Australians from fighting in overseas conflicts and endangering their lives and the lives of others.

Prepared By:

Name: s 22(1)(a)(ii)
Branch: Middle East Branch / MAD
Phone: s 22(1)(a)(ii)

Cleared By:

Name: Gemma Huggins
Position: Assistant Secretary
Branch/Division: ISG | MAD | Middle East Branch
Phone: s 22(1)(a)(ii)

25 January 2024

s 22(1)(a)(ii)

- 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.
- Foreign fighters who have returned to Australia are considered by law enforcement and security agencies on a case-by-case basis.

s 22(1)(a)(ii) – this section, together with the following pages (357-362) are out of scope and have been removed.

s 22(1)(a)(ii)

If raised: Australian citizens serving with the IDF

- 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
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- Foreign fighters who have returned to Australia are considered by law enforcement and security agencies on a case-by-case basis.

s 22(1)(a)(ii) – this section, together with the following pages (365-367) are out of scope and have been removed.