



# Coversheet

## Briefing: Terrorist Designation of the Entirety of Hamas Under the Terrorism Suppression Act

<b>Date:</b>	18/01/2024	<b>Report No:</b>	DPMC-2023/24-556
		<b>Security Level:</b>	██████████
		<b>Priority level:</b>	High

	Action sought	Deadline
Rt Hon Christopher Luxon <b>Prime Minister</b>	<b>agree</b> to recommendations <b>sign</b> letter to Attorney-General	25/01/24

Name	Position	Telephone	1 <sup>st</sup> Contact
Rebecca Kitteridge	Chief Executive, DPMC Chair, National Security Board	section 9(2)(a)	✓
9(2)(g)(ii)	Acting Executive Director, National Security Group	section 9(2)(a)	
9(2)(g)(ii)	Manager, Policy	section 9(2)(a)	

Departments/agencies consulted on Briefing
Combined Threat Assessment Group (hosted in New Zealand Security Intelligence Service), Crown Law Office, Ministry of Foreign Affairs and Trade, National Assessments Bureau, New Zealand Defence Force, Ministry of Defence, New Zealand Police. The National Security Board was consulted on designation and Statement of Case.

### Minister's Office

**Status:**

Signed

Withdrawn

**Comment for agency**

**Attachments:** Yes

# Briefing

## Terrorist Designation of the Entirety of Hamas Under the Terrorism Suppression Act

To: Rt Hon Christopher Luxon  
Prime Minister

Date 18/01/2024

Security Level

### Purpose

1. This paper provides advice on designating the entirety of Hamas<sup>1</sup> as a terrorist entity under section 22 of the Terrorism Suppression Act 2002. It covers:
  - a) whether you **can** make such a designation on statutory grounds;
  - b) considerations about whether you **should** make a designation, including what has changed since previous decisions, the risks of making a designation, and of not doing so;
  - c) advice around **when** and **how** you could make such a designation, particularly in order to manage risks, including through communications and community engagement; and
  - d) practical next steps, including consulting the Attorney-General.

### Executive Summary

2. Designation of an entity under the Terrorism Suppression Act 2002 (the Act) is a mechanism to give effect to New Zealand's obligations under United Nations Security Council Resolution 1373, which obliges Member States to take steps to outlaw the financing of, participation in, and recruitment to, terrorist entities.
3. New Zealand first designated the military wing of Hamas in 2010 and has renewed this designation every three years. In August 2022, officials provided advice to the Prime Minister that considered the possibility of expanding the designation to the entirety of Hamas. Officials recommended renewing the designation of the military wing, but advised against expanding the designation to the entirety of Hamas. <sup>6(a)</sup>  
[Redacted]  
The Prime Minister accepted this advice.
4. On 7 October 2023, Hamas conducted a terrorist attack against Israel from the Gaza Strip, killing over 1,200 people and taking an estimated 240 people into Gaza as hostages. Hamas' political leadership publicly supported and explained the objectives of the October attack, and committed to conducting future attacks. <sup>6(a)</sup>  
[Redacted]
5. As Prime Minister, it is your decision to designate a terrorist entity if you 'believe on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying

<sup>1</sup> Formally named Harakat al-Muqawama al-Islamiya, Hamas is also known as the Islamic Resistance Movement, Al-Tiar al-Islami, and Al-Athja al-Islami.

out of, one or more terrorist acts'. This legal threshold **must** be met as a first step in deciding whether to designate. The National Security Board (NSB) considers that the entirety of Hamas meets the statutory and Cabinet-mandated criteria for designation – that is, you **can** justifiably make this decision.

6. As the legal threshold is met, there are other relevant considerations that can then be factored into a decision about whether you **should** designate the entity. These include the criteria agreed by Cabinet in 2010, which are covered in the attached NSB paper (Attachment B).
7. There are additional considerations and risks specific to this designation. 9(2)(g)(i)  
[Redacted]
8. Other considerations and risks include 6(a)  
[Redacted] Overall, officials assess these are manageable.
9. 9(2)(g)(i)  
[Redacted]
10. DPMC is working with other agencies to develop a proposed communications and community engagement plan to help mitigate risks. 6(a), 9(2)(g)(i)  
[Redacted] An initial draft communications and engagement plan is provided as Attachment D. In addition, DPMC has convened relevant government agencies to understand, mitigate, and manage potential risks, and will continue to do so as appropriate.
11. Should you decide to proceed, there are several further practical steps required. The Act obliges you to consult the Attorney-General prior to any designation. In addition, DPMC will provide further advice on the revocation of the existing designation of Hamas' military wing, as a designation of the entirety of Hamas would supersede and incorporate this.
12. 6(a), 9(2)(f)(iv)  
[Redacted]

## Recommendations

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We recommend you:

1. **note** that previous Prime Ministers designated the military wing of Hamas under the Terrorism Suppression Act 2002 (the Act) in October 2010 and renewed this in October 2013, September 2016, September 2019, and August 2022;
2. **note** that the entirety of Hamas meets the statutory and Cabinet criteria for designation, based on the facts set out in the attached Statement of Case (**Attachment A**) and NSB paper (**Attachment B**);
3. **note** the range of considerations and risks relating to the potential expansion of the designation, as outlined in this paper and Attachment B;



4. **note** that the Act requires you to consult with the Attorney-General before designating an entity;

5. **agree** to consult the Attorney-General, proposing to:

**YES / NO**

a) designate the entirety of Hamas as a terrorist entity under section 22 of the Act; and

b) revoke the existing stand-alone designation of the military wing of Hamas under section 34(1) of the Act, as the designation of Hamas supersedes and incorporates this;

6. **sign** the letter to the Attorney-General at **Attachment C**;

7. **note** that, once the Attorney-General has responded, DPMC will provide you with further advice and documentation to finalise the designation; and

8. **discuss** the potential timing and risk mitigations with officials, including the draft communications approach and engagement plan in **Attachment D**; and

9. **note** that MFAT will shortly be providing advice to the Minister of Foreign Affairs on the potential to introduce visa bans on extremist Jewish settlers, and <sup>6(a)</sup> [redacted]



Rebecca Kitteridge  
 Chief Executive  
 Chair, National Security Board

...../...../.....

Rt Hon Christopher Luxon  
 Prime Minister

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## The Prime Minister may make designations to combat terrorism

13. Designation of an entity under the Act is one mechanism to give effect to New Zealand's obligation under United Nations Security Council Resolution 1373 to take steps to outlaw the financing of, participation in, and recruitment to, terrorist entities.
14. It is an offence under New Zealand law to deal with a designated entity's property, financial, or related services. It is an offence to knowingly recruit for a designated entity or participate in a group for the purpose of enhancing its ability to carry out a terrorist act. Members of a designated entity are not entitled to a visa or permission to enter New Zealand. Membership of a designated entity alone is not an offence.
15. The statutory determination for being deemed a terrorist entity, under section 22 of the Act, is that 'the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts'.
16. In order to designate, the officials-level Terrorist Designations Working Group (TDWG)<sup>2</sup> develops a 'Statement of Case' (**Attachment A**), to provide assurance that the statutory criteria for designation have been met. The TDWG also assesses designations against 2010 Cabinet criteria,<sup>3</sup> and considers other relevant factors, before providing advice to the chief executive-level NSB<sup>4</sup> (**Attachment B**). The NSB then provides a recommendation to you about whether to designate an entity.
17. You must consult with the Attorney-General before designating an entity for the first time.
18. 9(2)(h)

## New Zealand has designated Hamas' military wing since 2010

19. Hamas has Palestinian nationalist and Sunni Islamist objectives. Hamas exercises de-facto governance of the Gaza Strip and has wide linkages and involvement in Gaza, including provision of public services such as health, education, and security.
20. In 2006, officials provided advice to the Prime Minister which proposed designating the military wing of Hamas, also known as Izz al-Din al-Qassam Brigades (IQB),<sup>5</sup> and suspending a decision on the potential designation of the political wing for a fixed time. That approach aimed to demonstrate action against IQB as perpetrators of terrorist acts, whilst offering encouragement to the political wing to continue to move away from violence, in the context of recent electoral victories and a reduction in hostilities. The Prime Minister did not designate any part of Hamas at that time.
21. In October 2010, the Prime Minister designated IQB. Prime Ministers have renewed the IQB designation in October 2013, September 2016, September 2019, and August 2022. Officials'

<sup>2</sup> TDWG meets regularly to develop advice on the potential designation, renewal, or revocation of designations. TDWG is chaired by New Zealand Police, and includes officials from DPMC (National Security Policy Directorate and National Assessments Bureau), Crown Law Office, Ministry of Foreign Affairs and Trade (MFAT), New Zealand Defence Force (NZDF), and Combined Threat Assessment Group (CTAG, which is hosted in the New Zealand Security Intelligence Service (NZSIS)).

<sup>3</sup> The 2010 Cabinet-agreed criteria include New Zealand's contribution to international security environment, threats posed to New Zealanders, the entity's presence in or links to New Zealand, and the nature and scale of the entity's involvement in terrorism (DES Min (10) 2/5 refers – see Attachment B for further details).

<sup>4</sup> The National Security Board, which was previously known as the Security and Intelligence Board (SIB), is a CE-level governance board, chaired by DPMC. Members include Government Communications Security Bureau, Ministry of Business, Innovation and Employment, Ministry of Defence, MFAT, Ministry of Transport, NZ Police, NZ Customs Service, NZDF, NZSIS, and the Treasury.

<sup>5</sup> Other names include the Ezzedeen Al-Qassam Brigades (EQB), or Izz al-Din Al-Qassem Brigades (IQB).

advice on renewals from 2013-2019 focused only on IQB and did not raise the question of wider designation.

22. In 2022, officials recommended to the Prime Minister that the designation of IQB be renewed. At the time, officials did not undertake the formal assessment as to whether the political wing of Hamas met the threshold for designation. Officials did consider the possibility of expanding the designation<sup>6(a)</sup>

The Prime Minister accepted this advice, and only renewed the designation of IQB.<sup>o</sup>

23. Since then, Hamas has conducted further attacks. These attacks have both highlighted the egregiousness of Hamas' activity, and also undermined the previous rationale for not designating Hamas in its entirety. This decision therefore warrants reconsideration.

## **The entirety of Hamas meets the statutory threshold for designation**

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24. Before you consider whether to designate the entirety of Hamas under section 22 of the Act, you must first believe on reasonable grounds that it has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.
25. Hamas has conducted numerous terrorist acts since 2010. The most recent acts have occurred since 7 October 2023, when Hamas attacked Israel from the Gaza Strip, killing over 1,200 people and taking an estimated 240 people into Gaza as hostages. The political leadership of Hamas publicly supported and explained the objectives of the attack, and committed to conducting future attacks of a similar nature and magnitude. Hamas' political leadership has stated that it considers its military and political wings to be the same entity.
26. This is documented in the attached Statement of Case (Attachment A). The Statement of Case is based on open-source unclassified reporting. It provides the formal legal assessment of whether the statutory criteria for designation under the Act have been met.
27. The assessment as to whether Hamas meets the statutory requirements in the Act for designation includes consideration of whether Hamas' actions complied with the rules of international law applicable to an armed conflict.<sup>7</sup> The Statement of Case assesses it is clear that Hamas' actions on 7 October did not comply with those rules.
28. The NSB paper (Attachment B) assesses other relevant criteria agreed by Cabinet in 2010 (see footnote 3). It also covers additional considerations and risks specific to the potential expansion of the Hamas designation, a number of which are further articulated below.
29. NSB discussed these two papers in December 2023 and considers there are reasonable grounds to believe that Hamas, rather than only its IQB military wing, has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts, under section 22 of the Act. Therefore, the entirety of Hamas meets the statutory and Cabinet-mandated criteria for designation.

## **You have discretion as to whether you designate Hamas**

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30. The Act does not require that every entity that meets the criteria must be designated. Even if you agree you have the grounds to make a designation, you have the discretion to decide whether you should do so. This section outlines a range of issues and risks for your consideration.

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<sup>6</sup> On the same rationale, the Prime Minister also renewed the designation of the military wing of Hezbollah (Islamic Resistance).

<sup>7</sup> Section 5(4) states that an act is not a terrorist act if "it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict."

There is no longer a foreign policy rationale for a narrow designation

31. The nature and magnitude of the October 2023 attacks, and the posture and statements made by Hamas' political leadership since then, significantly undermine the previous foreign policy rationale for not designating the entirety of Hamas, <sup>6(a)</sup>

32. The Ministry of Foreign Affairs and Trade (MFAT) has assessed the potential impact of designation on New Zealand's interests in various scenarios. <sup>6(a)</sup>

33. Designation will not create any legal impediment to communication with Hamas, should New Zealand decide it is in our interests to engage, although it might have a political impact on Hamas' willingness to engage with New Zealand.

*Any impact on humanitarian and development support is considered manageable*

34. Gaza (and other parts of the occupied Palestinian territories) has been a long-standing recipient of humanitarian and development support from both the New Zealand government and civil society.

35. The effect of designating Hamas in its entirety will make it very difficult to provide funds and support directly to Hamas without risking contravention of the Act. This is a key objective of a terrorist designation.

36. The designation of an organisation as a terrorist entity does not extend to the population or individuals governed by that organisation, even if they are supporters of its aims and objectives. Therefore, although Hamas effectively governs Gaza, this does not mean that all residents of Gaza are "members" of Hamas, and provision of aid to a Palestinian civilian who supports Hamas does not equate to provision of aid to Hamas.

37. Officials have considered the experiences of our like-minded partners and the specific provisions of the Act. We assess that designating Hamas in its entirety would not negatively impact the ongoing provision of humanitarian and development support by the New Zealand Government for the benefit of Palestinian civilians in Gaza<sup>8</sup> via credible and reputable international organisations (for example the International Red Cross and Red Crescent Movement, United Nations agencies, and NGOs like World Vision). Some of these international organisations will deliver through local civil society organisations.

38. Similarly, New Zealanders and charities or NGOs who want to support affected Palestinian civilians in Gaza would be able to do so, taking a similar approach to that outlined above. <sup>9(2)(g)(i)</sup>

39. Officials will develop advice for New Zealanders, NGOs, and charities on provision of support to Gaza following the designation. <sup>9(2)(f)(iv)</sup>

<sup>8</sup> Designating the entirety of Hamas does not remove the possibility of engaging with other organisations in the occupied Palestinian territories. The Palestinian Authority, which governs the West Bank, is separate from Hamas and New Zealand engages in regular dialogue with it.

9(2)(f)(iv)

[Redacted]

*There may be questions raised around consistency in application of the Act to other actors engaged in egregious activity*

40. 9(2)(g)(i)

[Redacted]

41. 9(2)(h)

[Redacted]

42. Similar considerations apply for instance in respect of the acts of Russia in Ukraine. There are likely other actors that may be proposed for potential designation under the Act for which it is possible there are grounds for designation. Nevertheless, officials are comfortable that the presenting facts in relation to Hamas mean there is sufficient justification for this designation at this time, and that New Zealand is taking an appropriate and principles-based approach to the conflict and wider issues in the region.

43. 6(a), 9(2)(f)(iv)

[Redacted]

<sup>9</sup>9(2)(h)

[Redacted]

<sup>10</sup> 9(2)(f)(iv)

[Redacted]



6(a)

44. Designating the entirety of Hamas would be consistent with the approach of 6(a) international partners:

- a) Australia initially listed the IQB in 2003, and replaced this with a new listing of Hamas in its entirety in March 2022.
- b) The UK initially listed IQB in 2001, and extended this to Hamas in its entirety in November 2021.
- c) The United States (since 1997), Canada (since 2002), and the European Union (since 2003<sup>11</sup>) have designated Hamas in its entirety.

45. 6(a)

6(a)

46. 9(2)(f)(iv)

47. 9(2)(f)(iv)

48. There are certain factors that may impact the nature of domestic public reaction and protest activity. These include:

- 9(2)(g)(i)

- 6(a), 9(2)(g)(i)

<sup>11</sup> Hamas has challenged the EU decision in several cases since 2010, with varying results. Most recently, in 2021, the European Court of Justice confirmed that Hamas should be on the EU list of designated terrorist entities.

9(2)(ba)(I)

6(a), 9(2)(g)(i)

- 6(a), 9(2)(g)(i)

- 9(2)(f)(iv)

49. 9(2)(f)(iv)

9(2)(f)(iv)

50. 9(2)(f)(iv)

*There will be operational impacts*

51. A designation is likely to have operational impacts on agencies, including: policing protests, management of national security persons of interest, and the classification and take down of online objectionable material. This is currently assessed as manageable as part of agencies' usual operations. 9(2)(f)(iv)

52. 6(a)

*Limitations under the Bill of Rights can be justified*

53. A decision to designate a terrorist entity involves the exercise of discretion and the Prime Minister must consider whether any limitations to rights recognised in the New Zealand Bill of Rights Act 1990 (NZBORA) can be demonstrably justified in a free and democratic society.

54. Designating Hamas as a terrorist entity will result in participation in and recruitment for Hamas becoming criminal offences. This may indirectly limit freedom of expression and freedom of association. NSB's view is that any such limits can be demonstrably justified in a free and democratic society.

6(a)

55. 6(a)

**Mitigating risks: Timing, communications and engagement, and cross-government coordination**

56. There are a range of matters to consider if you decide to proceed with designation. These include when and how to announce your decision, and measures to mitigate and manage the above risks.

*The timing of an announcement warrants careful consideration*

57. 9(2)(g)(i)

[Redacted]

*Communications and community engagement will be important components of the decision*

58. Terrorism designations have previously been announced by press release. Given an expanded Hamas designation is likely to attract significant domestic and international interest, NSB also recommends a nuanced communications plan and a more comprehensive focus on community engagement ahead of, and after, any announcement.

59. DPMC is working with other agencies to develop a communications and community engagement plan to reflect the complexities of the designation and to help mitigate some of the risks noted above. An overview of these is provided at **Attachment D** for your initial feedback. DPMC will work with your office to develop these further.

60. The communications plan will provide a narrative which:

- outlines the rationale for designating Hamas at this time;
- provides context around New Zealand's position on all parties' actions in the conflict, including those of Israel;
- distinguishes the designation of Hamas from the Palestinian people (including the domestic Palestinian community) and residents of occupied Palestinian territories,
- reaffirms ongoing government support for the Palestinian people including via humanitarian aid, and the ongoing ability for New Zealanders to provide support to humanitarian and development efforts in Gaza via charities and NGOs; and
- underscores New Zealand's appropriate and principles-based approach to the conflict and wider issues in the region.

61. Talking points will also address potential questions such as why the IDF has not been similarly designated, among other things.

62. If you decide to proceed with aligned or simultaneous announcements on the designation and on visa bans for Israeli settlers, we will develop consistent communications and engagement plans for both issues. 6(a), 9(2)(g)(i)

[Redacted]

63. Proactive engagement with stakeholder communities will be important to ensure this decision does not land as a surprise. Officials will discuss the mechanics of this with your office, as part of the engagement plan.

64. 6(a), 9(2)(g)(i)

[Redacted]

*Cross-government coordination via the ODESC system will continue as appropriate*

65. DPMC's Strategic Crisis Management Unit coordinated a Watch Group meeting on 9 January 2024 to ensure the system is prepared to understand and mitigate any such risk and domestic impacts that may arise should you choose to make this designation. This briefing reflects the discussions in that meeting, as well as issued raised during NSB's discussions in December 2023.

66. DPMC will continue to convene further meetings via the ODESC system as necessary and appropriate to understand, mitigate, and manage any risks arising from a designation.
67. Individual agencies will also continue their own normal operations and risk management associated with a designation (e.g. policing of protests).

## Next steps

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### You are required by law to consult the Attorney-General before making a decision

68. If you decide to proceed with expansion of the designation, there are several further practical steps to effect this change. Section 22(4) of the Act requires you to consult with the Attorney-General before designating an entity for the first time. A draft letter to the Attorney-General is at **Attachment C**, seeking her consideration of the proposed designation.
69. The Attorney-General is likely to seek advice from the Crown Law Office (CLO) (this will be different advisers to those who supported the development of the Statement of Case and NSB paper, to ensure an independent assessment). CLO is aware of the potential for this request.

### DPMC will then support you to finalise the designation

70. Following consultation with the Attorney-General, DPMC will provide you with the necessary documentation to finalise the designation, including letters to the Commissioner of Police and to Parliament's Intelligence and Security Committee.
71. If you decide to designate the entirety of Hamas, you must follow this with a revocation of the current designation of IQB, pursuant to section 29C of the Act. This is because the designation of IQB will be superseded by and incorporated into the designation of Hamas in its entirety.
72. Following these steps, the decision must be gazetted. Gazetting usually takes place a few days after a decision by the Prime Minister.
73. A revised unclassified version of the Statement of Case will be published on the Police website following your decision.

## Future designations advice

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74. Beyond the Hamas decision, officials' planned advice to you in the first half of 2024 includes:
- a) 6(a), 9(2)(f)(iv) [REDACTED]
  - b) 6(a), 9(2)(f)(iv) [REDACTED]
  - c) 6(a), 9(2)(f)(iv) [REDACTED]

Attachments	Title	Security classification
<b>Attachment A:</b>	Statement of Case to Designate the Entirety of Hamas as a Terrorist Entity	Unclassified
<b>Attachment B:</b>	National Security Board Paper: Terrorist Designation of the Entirety of Hamas under the Terrorism Suppression Act	[REDACTED]
<b>Attachment C:</b>	Draft Letter to the Attorney-General	Unclassified
<b>Attachment D:</b>	Draft Communications Plan and Engagement Approach	In Confidence

Attachment D removed and withheld in full under section 9(2)(f)(iv)

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## ATTACHMENT A

### STATEMENT OF CASE TO DESIGNATE THE ENTIRETY OF HAMAS AS A TERRORIST ENTITY

#### PURPOSE

1. This paper sets out the case demonstrating that Harakat Al-Muqawama al-Islamiya (Islamic Resistance Movement, known as Hamas)<sup>1</sup> meets the statutory criteria for designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).

#### STRUCTURE OF THIS PAPER

2. This paper details various aspects of Hamas, including its background and history; ideology and objectives; organisation and structure; and weapons, tactics, and capabilities, before detailing case studies of attacks that meet the definition of a terrorist act under the TSA.
3. A discussion preceding the case studies provides background about the situation in the Gaza Strip of the Occupied Palestinian Territories ('Palestine'), about the relationship between the Izz al-Din al-Qassam Brigades (IQB) and the greater Hamas organisation. The participation of all layers of the organisation in the events October 2023 in Israel provide the basis for this paper's conclusion that the entirety of Hamas meets the legal criteria for designation as a terrorist entity under the TSA.

#### STATUTORY CRITERIA FOR THIS DESIGNATION UNDER THE TSA

4. The Prime Minister has the power under the TSA to designate individuals or groups as terrorist entities. Section 22 provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.
5. A terrorist act is defined in s 5 of the TSA. A number of different acts fall within this definition. The s 5 criteria relevant to this paper are those that deem an act to be a terrorist act if it:
  - 5.1 Is an act against a specified terrorism convention (as defined in section 4(1), which relevantly includes the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979);
  - 5.2 Is intended to cause the death of, or serious bodily injury to, one or more persons; and
  - 5.3 Is carried out for the purpose of advancing an ideological, political, or religious cause; and
  - 5.4 Is intended to either:

- 5.4.1 induce terror in a civilian population; or
- 5.4.2 unduly compel or force a government or an international organisation to do or abstain from doing any act; and
- 5.5 Is not an act that occurs in a situation of armed conflict and which is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

### **Credibility of sources**

- 6. This paper has been prepared using a wide range of open or unclassified sources that have a reputation for careful reporting from varying perspectives. These include the New York Times, Al Jazeera, Time, The Washington Post, BBC News, Associated Press, Wall Street Journal, Forbes, CNN, Reuters, Politico, The Guardian, Middle East Eye, Jewish News Syndicate, and Memri TV.
- 7. A range of think tanks were referred to including Pew Research Centre, Janes World Insurgency and Terrorism, Council of Foreign Relations, Jewish Virtual Library, Counter-Extremism Project, Axios, Anti-Defamation League, Flashpoint, and Middle East Monitor.
- 8. Other sources utilised include the Counter Terrorism Centre Sentinel, published by the US Military Academy.

### **Background**

- 9. Hamas, formally named Harakat al-Muqawama al-Islamiya, is also known as Islamic Resistance Movement, Al-Tiar al-Islami, and Al-Athja al-Islami. Hamas has Palestinian nationalist and Sunni Islamist objectives. In 2006 Hamas participated in, and won, the Palestinian legislative election – the last ever held in the Palestinian territories – and were invited by Palestinian Authority President to form the new government. In 2007 a dispute between the two main Palestinian parties, Hamas and Fatah, resulted in Hamas taking control of Gaza and leaving the Palestinian Authority in charge of the West Bank. Reconciliation attempts have so far alluded the two parties. Hamas has exercised de-facto governance of the Gaza Strip since then and has assumed responsibility for the provision of public services, including health, education, and security.
- 10. New Zealand designated the ‘military wing’ of Hamas, also known as Izz al-Din al-Qassam Brigades (IQB), Ezzedeem Al-Qassam Brigades (EQB), or Izz al-Din Al-Qassem Brigades (IQB), in October 2010 and renewed in October 2013, September 2016, September 2019, and August 2022.
- 11. The entirety of Hamas has never been designated under New Zealand’s designations system.
- 12. This Statement of Case provides for the designation of Hamas in its entirety, and the revocation of the existing designation of IQB on the basis that it is superseded by the new designation.

### Establishment of Hamas and the Izz al-Din al-Qassam Brigades

13. Hamas was founded in December 1987 at the time of the first Palestinian Intifada (‘uprising’) against Israeli control of the Occupied Palestinian Territories (consisting of Gaza and the West Bank).<sup>2</sup> Hamas conducted a series of violent attacks against both Israel (including suicide bombings) as well as Palestinian “collaborators”. Hamas’ Charter was published in 1988 and updated in 2017, and records the stated commitment of the organisation to “liberating Palestine” from Israeli occupation and achieving an Islamic Palestinian State.<sup>3</sup> The 2017 revision of the Charter sought to clarify that Hamas’ struggle was with “the Zionist project” and “not with the Jews”: nonetheless it reaffirms that armed resistance to occupation is a legitimate strategic choice to achieve political and religious objectives.<sup>4</sup>
14. In May 2009, Hamas’ then political (and overarching) leader Khaled Meshal said in an interview that the organisation maintained the right to resist and to respond to the Israeli occupation and that “the central goal is the liberation of the occupied land and regaining our rights, ending the Israeli occupation, leading our people toward liberation and freedom, achieving the rights of self-determination and living in a sovereign state on liberated land.”<sup>5</sup>
15. Prior to the conflict of 2023, and subsequent to Hamas taking sole control of Gaza after 2007, Hamas and Israel fought four short wars in 2008-9, 2012, 2014, and 2021.

### Ideology and Objectives

16. Hamas is a Palestinian nationalist and Sunni Islamist group. The group was established with the goal of “liberating” Palestine through armed resistance. The group has operated as a religious and social movement, with roots in the ideology of the Muslim Brotherhood, providing welfare and support to the Palestinian people. Since its formation, the group has maintained an armed resistance to what it sees as Israeli occupation.<sup>6</sup>
17. Hamas is divided into three main functions: political, social services (education, health and welfare) and military.<sup>7</sup> There are also a number of police/security units that fall under the political leadership, including the Executive Force, which is a security force established after Hamas won the Palestinian legislative election in 2006.<sup>8</sup> The social services provided by Hamas in Gaza (and at significant levels in the West Bank until 2007), are wide ranging and of long standing – Hamas funds schools, orphanages, mosques, healthcare clinics, soup kitchens, and sports leagues.<sup>9</sup>
18. IQB carries out the military function of Hamas and aligns with the greater Hamas groups’ ideology – to carry out war against Israel and the stated goal to “liberate Palestine”.<sup>10</sup> The IQB also aligns with the same contemporary leaders of Hamas and is committed to the goals laid out in the groups’ 1988 founding charter and supplementing 2017 charter.<sup>11</sup>
19. The leadership of Hamas considers that there is no division between the organisation’s political, social, and military components.<sup>12</sup> 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. While Hamas is a complex organisation with some internal factionalism, all functions are ultimately subordinate to the political leadership and committed to the use of terrorism to further the group's goals.

20. Hamas' Izz al-Din al-Qassam Brigades carried out the attacks of 7 October 2023, with the support of Hamas' political leadership in Qatar, Türkiye, and Lebanon. Following the terrorist attacks, Ismail Haniyeh, the head of the Hamas Political Bureau, made a statement endorsing, and setting out the attacks' objectives.

### Links to Other Groups

21. While the 7 October 2023 attacks are solely attributed to Hamas – including in remarks by Hasan Nasrallah, the head of Lebanon based Hezbollah – they have been endorsed by Hezbollah's leadership.<sup>13</sup> In his speech of 3 November 2023, Nasrallah endorsed Hezbollah's daily strikes against northern Israel and the effect of these in weakening Israel's fight against Hamas in the south. He noted that Hezbollah's exchanges with Israel on the Lebanese border were "a front of solidarity and support for Gaza" and warned that "all the options are on the table" when it came to Hezbollah's evolving approach to developments in the region.
22. Palestinian Islamic Jihad (PIJ) participated in the 7 October 2023 attacks in support of Hamas, firing rockets and taking additional hostages.<sup>14</sup> PIJ has a long history of training with and supporting Hamas<sup>15</sup> and was last renewed as a designated terrorist entity by New Zealand in September 2022. Established in the 1980s, PIJ's primary objective is to establish a sovereign Palestinian Islamic State. PIJ continues to violently oppose the existence of the Israeli state, particularly through their armed wing known as the al-Quds Brigades.<sup>16</sup>
23. Al-Aqsa Martyrs' Brigade (AAMB) also participated in the 7 October 2023 attacks, with their social media channels showing videos of fighters alongside injured Israeli soldiers.<sup>17</sup> AAMB were last renewed as a designated terrorist entity by New Zealand in September 2022. AAMB is a Palestinian militant organisation that has historically carried out attacks against Israel. AAMB was founded in the late 1950s and has historically been loosely associated with Fatah, the main component of the Palestine Liberation Organization (PLO).

### Organisation and Structure

24. Ismail Haniyeh currently serves as Hamas' political chief, having replaced long-time leader Khaled Meshaal in 2017.<sup>18</sup> Haniyeh has operated from Doha, Qatar, since 2020. Following Hamas' actions on 7 October 2023 Ismail Haniyeh delivered a televised statement endorsing the acts and referring to the IQB as merely one indistinct part of Hamas' broader political organisation, or "the Resistance".<sup>19</sup>
25. Day-to-day affairs in Gaza are overseen by Yahya Sinwar, who previously headed IQB, and served twenty-two years in an Israeli prison for masterminding the abduction and killing of two Israeli soldiers.<sup>20</sup> As of June 2021, the head of Gaza's Government Administration Committee is Issam al-Da'alis.<sup>21</sup>

26. Hamas has an estimated 30,000–40,000 members as of October 2023.<sup>22</sup> The majority of these are IQB fighters.<sup>23</sup>

### **Weapons, Tactics and Capability**

#### *Military capability and tactics*

27. Hamas typically uses asymmetrical, guerrilla warfare in its attacks, including rocket barrages, snipers, improvised explosive devices, and typically operates from underground tunnels.
28. Hamas routinely operates across the borders of the Occupied Palestinian Territories and Israel, for example periodically firing rockets and mortars into Israel since the group took over the Gaza Strip in the mid-2000s. Hamas had an estimated thirty thousand rockets and mortars in its arsenal prior to the 7 October 2023 attacks, as well as short to longer range missiles and drones.<sup>24,25</sup> Hamas militants have also previously flown balloons carrying incendiary devices toward Israel, which have sometimes caused fires.<sup>26</sup> Prior to October 2023 the group had also carried out incursions into Israeli territory, killing and kidnapping soldiers and civilians.
29. The attacks on 7 October 2023 were conducted from air, land, and sea marking an unprecedented scale and sophistication for Hamas,<sup>27</sup> for instance involving paragliders, bulldozers, pickup trucks, and motorbikes.

#### *Funding sources*

30. Hamas maintains a number of social programmes.<sup>28</sup> Hamas collects a substantial amount of its funding from charities it controls, especially in Europe.<sup>29</sup> Funds raised from the social programmes are often diverted to fund IQB, which in turn uses Hamas' social wing for recruitment.<sup>30</sup>
31. In previous years, foreign aid to Gaza was partly used to pay the salaries of Hamas members working in government – effectively public servants in Gaza. Other foreign funding was used by Hamas to fund military operations.<sup>31</sup>
32. Prior to the 7 October 2023 attacks, Hamas collected revenue by taxing goods moving through a sophisticated network of tunnels that circumvented the Rafah Crossing (the only entry point to Egypt) into Gaza.<sup>32,33</sup> This brought staples such as food, medicine, and cheap gas for electricity production into the territory, as well as construction materials, cash, and arms.

### **EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA**

#### *Attack on 7 October 2023*

33. On 7 October 2023, Hamas attacked Israel from the Gaza Strip killing over 1,200 people<sup>34</sup> and taking an estimated 240 persons into Gaza as hostages.<sup>35</sup> Reporting indicates the attack was planned up to 12 months beforehand, possibly longer.<sup>36</sup>

34. Hamas militants began the attack with a rocket barrage, deployed drones to destroy security cameras and automated machine gun defences,<sup>37</sup> and crossed the border between Israel and Gaza. Civilians at the Supernova music festival<sup>38</sup> and in nearby Israeli kibbutzim were specifically targeted in line with Hamas' stated intentions.<sup>39</sup> Footage of the attack disseminated on social media showed Hamas militants shooting bursts of automatic fire into crowds of unarmed civilians and into closed portals at the music festival.<sup>40</sup>
35. Hamas specifically targeted civilians to kill and kidnap, including infants and children.<sup>41</sup> There have been reports of victims being tied together and burned alive, women raped, individuals beheaded, and mutilated body parts.<sup>42</sup>

*Hamas' political leadership's endorsement and explanation of the 7 October 2023 attack*

36. The political leadership of Hamas publicly supported and explained the objectives of the 7 October 2023 attack, and committed to conducting attacks of a similar nature and magnitude in the future. Specific examples are detailed below:
- a. Hamas spokesperson Khaled Qadomi publicly endorsed the attack on Israel, saying, "We want the international community to stop atrocities in Gaza against Palestinian people, our holy sites like Al-Aqsa [Mosque]. All these things are the reason behind starting this battle."<sup>43,44</sup>
  - b. On 24 October 2023, senior Hamas official Ghazi Hamad stated in a televised interview that Hamas' leadership support the attack of 7 October 2023 and will continue to conduct similar attacks until "Israel is annihilated".<sup>45</sup>
  - c. On 2 November 2023, Hamas official Ayman Shanaa (Head of Hamas in Lebanon), stated in a televised interview that "what we did on October 7 was [to exercise] the legitimate right of the resistance on its path to liberate its land".<sup>46</sup> He stated that the actions were in defence of their [Palestinian] land. Shanaa further stated that Israeli settlers in the 'Gaza Envelope'<sup>a</sup> were combatants, implying they were viewed as legitimate targets despite their civilian status.
  - d. In a radio interview on 7 November 2023, senior Hamas official Osama Hamdan stated that the 7 October 2023 attack was part of Hamas' long-term strategy and he would endorse repeating the actions.
37. There are reports to indicate Hamas' political leadership is involved in the management of hostages taken during the 7 October 2023 attack. Although this remains to be verified, an Israeli civilian who was taken hostage by Hamas then released in October 2023 claimed that Hamas' political leader Yahar Sinwar was present with the hostages and interacted with many of them.<sup>47</sup> This followed Ismail Haniyeh, head of the Hamas Political Bureau, in his 7 October 2023 statement, referring to the taking of hostages on

<sup>a</sup> The 'Gaza Envelope' is a 7-kilometre land area extending from the border of Gaza, which is in range of mortar shells and rockets fired from the Gaza Strip. The area is populated by Israeli neighbourhoods and is frequently targeted by Hamas rockets. (26/03/2017, 'Kibbutz Under Fire: Back to the Days of Sickle and Bayonet', Project Muse, accessed from <https://muse.jhu.edu/article/652041>).

7 October, and stating an objective of the attacks was to obtain the release of Palestinians imprisoned in Israel.

*Attacks since 7 October 2023*

38. On 1 December 2023, two Hamas members shot and killed civilians at a bus stop in West Jerusalem, Israel. Hamas claimed responsibility for the attack. A statement posted on the group's Telegram channel said the operation was in response "to the occupation's crimes of killing children and women in Gaza and the occupied West Bank".<sup>48</sup>

**LAW OF ARMED CONFLICT**

39. Section 5(4) of the TSA provides that an act does not constitute a terrorist act for the purposes of the TSA if two conditions are met. The first condition is that there must be a situation of armed conflict in those areas in which the entity conducts its operations, at the time the act occurs. Secondly, the act must accord with the rules of international law applicable to the conflict – the law of armed conflict (LOAC). If one of these conditions is not met, the acts in question may constitute a terrorist act.
40. The activities of Hamas referred to in paragraphs 33-38 above occurred in a region of long standing tension and were the subject of a significant military response by Israel. While there is now a situation of armed conflict between Hamas and Israel, assessing the geographical scope and temporal length of that conflict is inherently complex.
41. However, even if the activities of Hamas referred to in this statement of case occurred in an armed conflict, it is clear that they did not comply with the rules of international law applicable to an armed conflict as they intentionally and openly targeted civilians in breach of the LOAC principle of distinction, and with the intent of intimidating the civilian population and coercing or forcing Israel into releasing Palestinians held in Israel's prisons. Hamas also breached other obligations of the LOAC including taking hostages, consisting of an unknown number of civilians, from Israel into Gaza with the same intent.
42. Accordingly, the exemption in s 5(4) cannot apply and Hamas' attacks are properly characterised as terrorist acts.

**REVOCATION OF THE DESIGNATION OF IQB**

43. The designation of the entirety of Hamas (including IQB) supersedes and incorporates the existing designation of IQB. To avoid duplicate designations, it is recommended the existing stand-alone designation of IQB be revoked under section 34(1) of the Act.

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- <sup>3</sup> 2/05/2017, 'Hamas in 2017: The document in full', Middle East Eye, accessed at <https://www.middleeasteye.net/news/hamas-2017-document-full>.
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Out of Session Paper

Members

National Security Board

## **Terrorist Designation of the entirety of Hamas under the Terrorism Suppression Act**

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### **Purpose**

1. This paper proposes the National Security Board (NSB) recommend to the Prime Minister that he designate the entirety of Hamas as a terrorist entity.

### **Executive summary**

2. The Terrorism Suppression Act 2002 (TSA) provides legislative authority for the Prime Minister to designate terrorist entities. This is one measure New Zealand takes to contribute to the international campaign against terrorism. A designation under the TSA freezes the assets of terrorist entities and makes it a criminal offence to participate in or support the activities of that entity.
3. Successive Prime Ministers designated the military wing of Hamas, also known as Izz al-Din al-Qassam Brigades (IQB), Ezzedeen Al-Qassam Brigades (EQB), or Izz al-Din Al-Qassem Brigades (IQB), in October 2010 and renewed this in October 2013, September 2016, September 2019, and most recently August 2022.
4. Following the events of 7 October 2023, the former Prime Minister requested that officials examine the designation of all of Hamas with a view to considering designating the entirety of the organisation.

### **Background**

5. Entities listed by the United Nations Security Council Resolutions (UNSCRs) 1267 (1999), 1989 (2011), 2253 (2015) and 1988 (2011) Committees (the UN 1267 and 1988 Committees) are automatically designated as terrorist entities in New Zealand under the TSA. The UN lists comprises of Al-Qaida, Islamic State of Iraq and the Levant (ISIL), the Taliban and associated individuals and entities.
6. UNSCR 1373 leaves it to Member States to identify other entities against which they should act. The TSA gives New Zealand the ability to designate non-UN-listed entities of any group or individual where there are reasonable grounds to believe they have knowingly planned, carried out, or knowingly participated in the planning or carrying out, of one or more terrorist acts.

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7. Under section 22(1) of the TSA, the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.
8. If an entity is designated under the TSA, it becomes an offence under New Zealand law to deal with the entity's property, financial, or related services, or to provide it with property, funds, or material support. It is also an offence to knowingly recruit for a group that is a designated entity, or participate in such a group for the purpose of enhancing its ability to carry out a terrorist act. Simple membership of a designated entity is not an offence in New Zealand.
9. The Terrorist Designations Working Group (TDWG) manages the process for advising the Prime Minister on the designation of non-UN-listed terrorist entities in support of UNSCR 1373. The TDWG is chaired by New Zealand Police and includes officials from Department of the Prime Minister and Cabinet (DPMC, National Assessments Bureau and National Security Policy Directorate), New Zealand Defence Force (NZDF), Crown Law Office, Ministry of Foreign Affairs and Trade (MFAT), and the Combined Threat Assessment Group, (CTAG).<sup>1</sup>
10. A designation as a terrorist entity made under section 22(1) automatically expires after three years unless revoked or renewed by the Prime Minister prior to this time. In accordance with section 35(2) of the Act, designations may be renewed, prior to their expiry date, for a further three years if the Prime Minister believes that reasonable grounds exist, as set out in section 22, for an entity to be designated.

### Designation of IQB to date

11. Hamas, formally named Harakat al-Muqawama al-Islamiya, is also known as Islamic Resistance Movement, Al-Tiar al-Islami, and Al-Athja al-Islami.
12. Hamas is divided into three main functions: political, social services (education, health and welfare) and military.<sup>2</sup> There are also a number of police/security units that fall under the political leadership, including the Executive Force, which is a security force established after Hamas won the Palestinian Authority legislative elections in 2006.<sup>3</sup> The social services provided by Hamas in both the West Bank and Gaza, are wide ranging and long standing – Hamas funds schools, orphanages, mosques, healthcare clinics, soup kitchens, and sports leagues.<sup>4</sup>

<sup>1</sup> The Combined Threat Assessment Group (CTAG) is an inter-agency group hosted and led within the New Zealand Security Intelligence Service. The group gives independent assessments to government agencies about threats to New Zealand, New Zealanders, and New Zealand's interests abroad. CTAG is made up of analysts from NZSIS and other government agencies, including: New Zealand Police, New Zealand Defence Force, Government Communications Security Bureau, the Civil Aviation Authority and Aviation Security Service, and the Department of Corrections.

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*



13. Hamas has Palestinian nationalist and Sunni Islamist objectives. Hamas exercises de-facto governance of the Gaza Strip and has wide linkages and involvement in Gaza including provision of public services such as health, education, and security. Therefore, there may be reasons why a person would engage with Hamas that are not related to terrorism.

14. IQB performs the military function of Hamas and aligns with the greater Hamas groups' ideology – to carry out war against Israel and liberate Palestine.<sup>5</sup> The IQB also aligns with the same contemporary leaders of Hamas and is committed to the goals laid out in the groups' 1988 founding charter and supplementing 2017 charter.<sup>6</sup> New Zealand designated the 'military wing' of Hamas, also known as IQB or EQB in October 2010 and renewed in October 2013, September 2016, September 2019, and August 2022.

15. Hamas as a whole has never been designated by New Zealand, which has treated IQB as distinct within Hamas. This position was again carried forward at the August 2022 renewal of designation of IQB. <sup>6(a)</sup>

16. Since before 2010, TDWG officials have considered whether Hamas is a sufficiently unified organisation that terrorist acts committed by IQB could be attributed to Hamas in its entirety. The leadership of Hamas considers that there is no division between the organisation's political, social, and military components.

17. <sup>6(a)</sup>

### Recent events have changed New Zealand's position on Hamas

18. The nature and magnitude of the 7 October 2023 attacks by Hamas on Israel, as well as the subsequent posture and statements made by Hamas' political leadership that indicate that Hamas considers itself to be a unified organisation, <sup>6(a)</sup>

<sup>5</sup> 05/2017, 'Hamas: General Principles and Policies', Jewish Virtual Library, accessed at <https://www.jewishvirtuallibrary.org/hamas-2017-document-of-general-principles-and-policies>.

<sup>6</sup> 25/07/2022, 'Hamas', Counter-Extremism Project, accessed at <https://www.counterextremism.com/threat/hamas>.

19. 6(a)

20. However, designating the entirety of Hamas does not remove the possibility of engaging with other actors in the Occupied Palestinian Territories. The Palestinian Authority, which governs the West Bank, is separate from Hamas. New Zealand engages in regular diplomatic dialogue with the Palestinian Authority.

6(a)

21. 6(a)

- a. Australia initially listed the IQB in 2003, and replaced this with a new listing of Hamas in its entirety in March 2022.
- b. The UK took a similar approach, extending their initial 2001 IQB proscription to the entire organisation in November 2021.
- c. The United States (since 1997), Canada (since 2002), and the European Union designate Hamas in its entirety.

22. 6(a)

23. 6(a)

### **Factors for NSB consideration of designation recommendations**

24. The attached Statement of Case provides the formal legal assessment that the statutory criteria for designation under the TSA has been met.

25. Once the statutory threshold has been established, in determining whether to advise the Prime Minister to exercise his discretion to designate Hamas, NSB must weigh other relevant considerations including those agreed by Cabinet in DES Minute (10) 2/5. These considerations are:

- a. the need for New Zealand to contribute to the international security environment by preventing activities such as the recruiting, harbouring, participating in or financing of terrorist entities that fall outside the scope of the UN listing process;
- b. the threat posed by the entity to New Zealand, New Zealanders, or New Zealand interests, including offshore;
- c. the entity's New Zealand or regional presence, or links with New Zealanders; and
- d. the nature and scale of the entity's involvement in terrorist acts or support activity.

26. Following the very clear acts of terrorism carried out by Hamas on 7 October 2023 (as described in the attached Statement of Case), it is in New Zealand's interests to use all possible measures to condemn these acts. It is also in New Zealand's interests to contribute to limiting the ability of Hamas to carry out further acts of terrorism, as the entity is not designated through the UN process. The practical impacts of designation under New Zealand's legislation give effect to our international obligations insofar as they relate to preventing the recruitment, harbouring, participation in, and financing of Hamas.

**The threat posed by the entirety of Hamas to New Zealand, New Zealanders, or New Zealand interests, including offshore**

27. Officials have considered the impact of designating the entirety of Hamas on New Zealand's interests offshore, including for New Zealanders in the region,

6(a)

28. 6(a)

29. Apart from an Honorary Consul in Tel Aviv, New Zealand does not have a formal diplomatic physical presence in Israel or the Occupied Palestinian Territories - the New Zealand Ambassador in Ankara is accredited to Israel and the New Zealand Ambassador in Cairo is our Representative to the Occupied Palestinian Territories. 6(a), 9(2)(g)(i)

30. 6(a), 9(2)(g)(i)

However, New Zealanders and New Zealand interests may be incidentally harmed by any attack Hamas might conduct inside Israel or the Occupied Palestinian Territories, for example:

a. An Australian national was reportedly killed at her property at the Be'eri kibbutz in southern Israel in the current conflict, demonstrating the potential for foreign nationals to be harmed by attacks conducted by Hamas.<sup>7</sup>

b. 6(a)

<sup>7</sup> 11/10/2023, 'Australian Woman Gailit Carbone Killed in Israel in Hamas Attack', *The Guardian*, accessed on 4/12/2023 at <https://www.theguardian.com/australia-news/2023/oct/11/australian-woman-reported-killed-in-israel-after-hamas-attack-galit-carbone>

- c. New Zealand has diplomatic relations with Israel, serviced via our Embassy in Ankara, and New Zealand diplomatic staff travel to Israel to engage with the Israeli government. 6(a)

**The New Zealand or regional presence of the entirety of Hamas, or links with New Zealanders**

31. 6(a)

**The nature and scale of the entirety of Hamas' involvement in terrorist acts or support activity**

32. Hamas is a member of the Iran-backed "axis of resistance", which includes Shia militia groups in Syria and Iraq, Lebanese Hezbollah, the Ansar Allah movement of the Houthis in Yemen, and Iran (in particular the Iranian Revolutionary Guard Corps – Quds Force). This grouping is opposed to the ongoing presence of Western forces in the wider Middle East, although Hamas itself is primarily focused on "liberating Palestine". 6(a)

33. Hamas has conducted numerous terrorist acts since 2010, attributed to IQB and documented in previous Statements of Case. The most recent acts have occurred since 7 October 2023 and are documented in the attached Statement of Case.

6(a), 9(2)(g)(i)

[Redacted text block]

<sup>8</sup> 3/11/2023, 'Who is Hasan Nasrallah, the leader of Hezbollah', *The Washington Post*, accessed on 4/12/2023 at <https://www.washingtonpost.com/world/2023/11/03/hasan-nasrallah-hezbollah-leader/>;

## Humanitarian and development implications

37. The Occupied Palestinian Territories has been a long-standing recipient of humanitarian and development support from both the New Zealand government and New Zealand-based civil society. In this context and elsewhere, the New Zealand government partners with credible and reputable international humanitarian and development organisations that have strong systems and controls to ensure that assistance reaches intended civilian beneficiaries.
38. Since 2007 Hamas has exercised de-facto governance of the Gaza Strip (assuming responsibility for some of the provision of public services, including health, education, and security).<sup>9</sup> It is conceivable that through the course of their work, humanitarian and development actors operating in the Occupied Palestinian Territories, including those funded by New Zealand, may need to engage directly with Hamas, and public service providers, charities or social services linked to Hamas. 6(a), 6(b)(ii), 9(2)(g)(i)
39. Officials assess designating Hamas in its entirety would *not* negatively impact the ongoing provision of humanitarian and development support via reputable international organisations for the benefit of Palestinian civilians in Gaza. The reasons for this assessment are as follows:
- d. Engagement with a terrorist entity is not by itself an offence under the TSA;
  - e. Instead, the specific requirements of the statutory offences contained in the TSA would need to be satisfied before there was a contravention of the TSA. The two provisions of the TSA that are of most relevance are:
    - i. Section 8 - financing of, or provision of material support for, terrorism. This offence will only be established if the financing and provision of material support is made directly or indirectly; and wilfully; and without lawful justification or reasonable excuse; and intending that the funds be used, or knowing that, or being reckless about whether, they will be used, in full or in part, in order to carry out 1 or more terrorist acts.
    - ii. Section 10 - prohibition on making property, or material support, available to designated terrorist entity. This offence will only be established, if the property or material support is provided directly or indirectly; and without lawful justification or reasonable excuse; and knowing that, or being reckless about whether, the entity is a designated terrorist entity.
  - f. There are a range of reasons to assess that the New Zealand government's provision of humanitarian and development support in respect of Gaza would not meet the elements of the above offences:

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<sup>9</sup> The United Nations Relief and Works Agency for Palestine Refugees in the Near and Middle East also provides basic services to Palestine refugees in Gaza, the West Bank, Syria, Lebanon and Jordan. This includes the provision of health services, education, livelihoods assistance and protection services.

- i. New Zealand government does not provide any humanitarian or development funding or support directly to Hamas.
- ii. Instead New Zealand provides funding or support to reputable and credible international humanitarian and development organisations for the purposes of delivery for the benefit of Palestinian civilians.
- iii. The designation of Hamas as an organisation does not extend to the population or individuals governed by an organisation, even if they are supporters of its aims and objectives. In other words, provision of aid to a Palestinian civilian even if they support Hamas, does not equate to provision of aid to Hamas.
- iv. Even if humanitarian or development aid should end up in the hands of Hamas, sections 8(5) and 10(1)(b) of the TSA operate to ensure that support that does, or may do, no more than is necessary to satisfy basic needs of the recipient, is not an offence under those sections.

40. 6(a), 9(2)(f)(iv), 9(2)(g)(i)

**Other considerations**

41. 6(a), 9(2)(g)(i)

42. 6(a), 9(2)(g)(i)

43. 6(a), 9(2)(g)(i)

6(a), 9(2)(g)(i)

### Financial implications

44. If the entirety of Hamas is designated, the Attorney-General can apply for a forfeiture order for any specified property that is controlled or owned by the designated entity. Designation also aims to prevent financing of a terror activity by prohibiting dealing with an entity's property or financing the entity. It also requires any financial institution or person who suspects any property is owned by the entity to report the existence of the property of the Commissioner of the Police.

### Bill of Rights, Human Rights and Privacy Act implications

45. A decision to designate an entity as a terrorist entity under s 22(1) involves the exercise of discretion. Accordingly, by law, the Prime Minister must consider whether any limitations to rights recognised in the New Zealand Bill of Rights Act 1990 (NZBORA) that might result from designation can be demonstrably justified in a free and democratic society.

46. 6(a), 9(2)(h)

47. 6(a), 9(2)(h)

9(2)(h)

Statutory and policy requirements

48. Meeting the statutory conditions is a primary requirement of any case for designation under the TSA. This is essentially a legal question on which Crown Law Office and New Zealand Defence Force (Legal) provide advice. The Prime Minister is also required under the legislation to consult the Attorney-General about the proposed designation.

49. 6(a), 9(2)(h) [Redacted]

50. 6(a), 9(2)(h) [Redacted]

6(a) [Redacted]

51. 6(a) [Redacted]

52. 6(a) [Redacted]

53. 6(a) [Redacted]

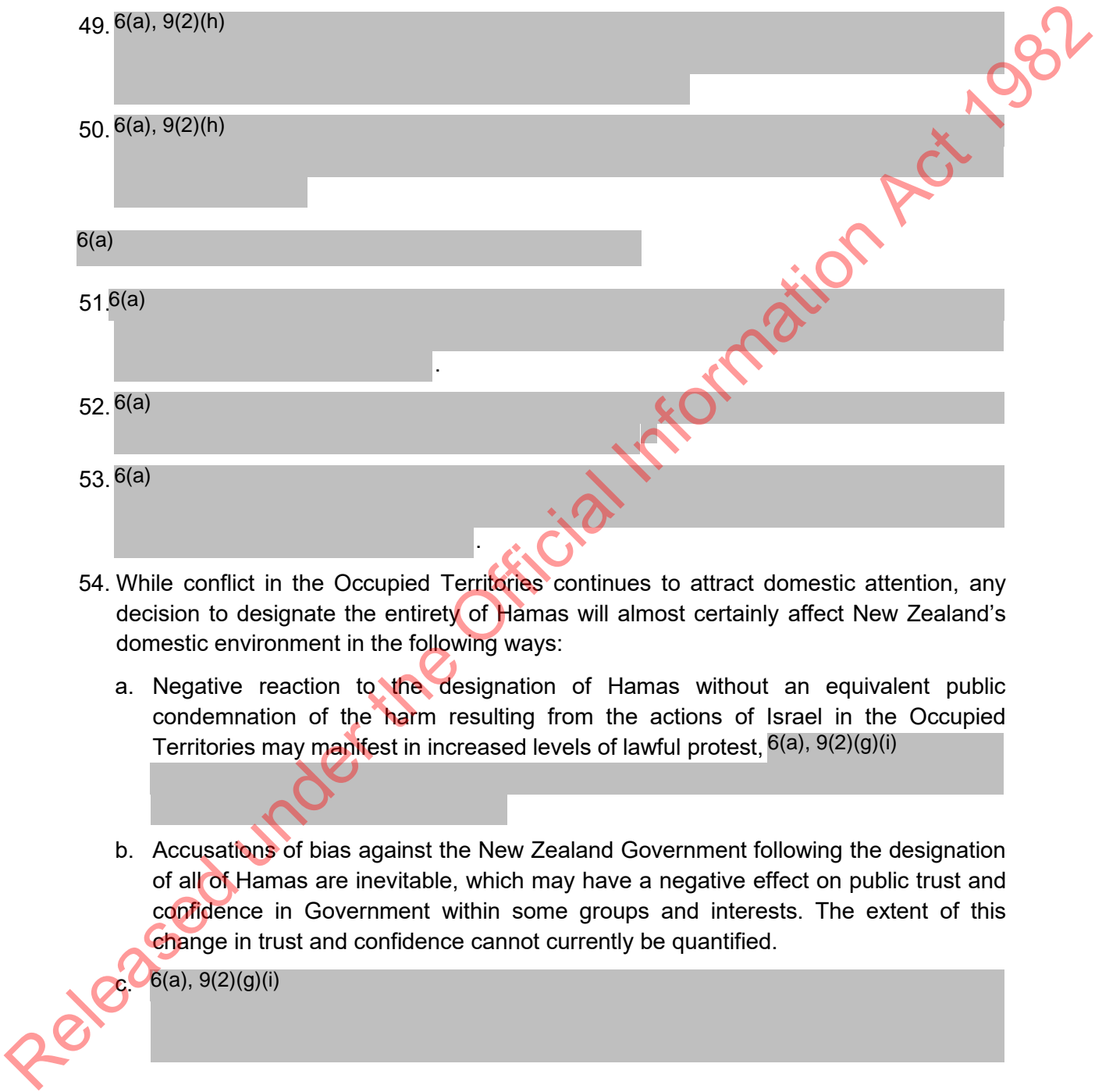
54. While conflict in the Occupied Territories continues to attract domestic attention, any decision to designate the entirety of Hamas will almost certainly affect New Zealand's domestic environment in the following ways:

a. Negative reaction to the designation of Hamas without an equivalent public condemnation of the harm resulting from the actions of Israel in the Occupied Territories may manifest in increased levels of lawful protest, 6(a), 9(2)(g)(i) [Redacted]

b. Accusations of bias against the New Zealand Government following the designation of all of Hamas are inevitable, which may have a negative effect on public trust and confidence in Government within some groups and interests. The extent of this change in trust and confidence cannot currently be quantified.

c. 6(a), 9(2)(g)(i) [Redacted]

6(a) [Redacted]





[REDACTED]

6(a), 9(2)(g)(i)

55. The designation of Hamas in its entirety is therefore likely to have operational impacts on agencies, including; policing protests, management of national security persons of interest (where relevant), and the classification and take down of objectionable material.

### **Implication for current designation of IQB**

56. 9(2)(h)

[REDACTED]

### **Communications, media and public interest**

57. 6(a), 9(2)(g)(i)

[REDACTED]

58. DPMC, in conjunction with TDWG agencies, will accordingly provide the Prime Minister's Office with a media statement and reactive talking points for his use, should they be required. This material will provide a succinct narrative outlining the Government's rationale for designating Hamas at this time.

59. A communications plan could also manage any perceptions that this process has been undertaken with more urgency than other designation decisions. The Statement of Case in a revised unclassified form can be published on the Police website following the Prime Minister's decision, as is standard procedure.

### **Consultation**

60. This paper has been developed in consultation with the TDWG member agencies; New Zealand Police, DPMC (National Assessments Bureau and National Security Policy Directorate), NZDF, Crown Law Office, MFAT and CTAG.

## Recommendations

61. NSB is invited to:

- a. **note** that the TDWG has considered the designation of the entirety of Hamas as a terrorist entity under section 22(1) of the TSA and has concluded the statutory criterion for designation is met;
- b. **note** that the TDWG consider that the designation of Hamas is consistent with the relevant factors identified by Cabinet in CAB Min (03) 34/15A and DES Min (10) 2/5;
- c. **note** that the TDWG conclude that the statutory criteria for designation for Hamas is met;
- d. **note** that the TDWG conclude that any limitation to freedom of expression and freedom of association that might result from designation can be demonstrably justified in a free and democratic society.
- e. **recommend** to the Prime Minister that he designate Hamas as a terrorist entity under section 22 of the TSA;
- f. **provide** feedback no later than 9(2)(g)(i) [REDACTED]

62. If NSB recommends to the Prime Minister that Hamas be designated:

- a. **note** that the Prime Minister is required to consult with the Attorney General about all new designations;
- b. **note** that the decision to designate otherwise falls within the statutory discretion of the Prime Minister;
- c. **recommend** to the Prime Minister that he revoke the existing stand-alone designation of IQB under section 34(1) of the Act, as the designation of Hamas supersedes and incorporates the existing designation of IQB; and
- d. **endorse** the Chair's forwarding of the Statement of Case to the Prime Minister for consideration.

### Chair of Terrorist Designations Working Group

**Attachment C**

**Draft Letter to the Attorney-General**

Released under the Official Information Act 1982



RT HON CHRISTOPHER LUXON  
PRIME MINISTER

DD January 2024

Hon Judith Collins  
Attorney-General  
Parliament Buildings

Dear Attorney-General

**Proposed terrorist designation of the entirety of Hamas under the Terrorism Suppression Act 2002**

Section 22(4) of the Terrorism Suppression Act 2002 provides that, before designating an entity as a terrorist entity under section 22, the Prime Minister must consult with the Attorney-General about the proposed designation.

I propose to designate, subject to your views, the entirety of Hamas.

I propose to follow this by revoking the existing stand-alone designation of the military wing of Hamas, also known as Izz al-Din al-Qassam Brigades (IQB), under section 34(1) of the Act, as the designation of Hamas would supersede and incorporate this.

I attach for your consideration the statement of case for this entity, which has been assessed by the National Security Board (NSB), which is responsible for recommending designations to the Prime Minister. NSB reached this decision in December 2023.

I look forward to your views on the proposed designation in due course.

Yours sincerely

Rt Hon Christopher Luxon  
Prime Minister



# Attachment D

## Draft Communications Plan and Engagement Approach

section 9(2)(f)(iv)



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# Coversheet

## Briefing: Decision to Designate Hamas as a Terrorist Entity

Date:	16 February 2024	Report No:	DPMC-2023/24-664
		Security Level:	RESTRICTED
		Priority level:	Routine

	Action sought	Deadline
Rt Hon Christopher Luxon Prime Minister	agree to recommendations and sign letters	20/2/2024

Name	Position	Telephone	1 <sup>st</sup> Contact
Bridget White	Executive Director National Security Group		section 9(2)(a) ✓
9(2)(g)(ii)	Manager, Policy, National Security Group		section 9(2)(a)

Departments/agencies consulted on Briefing
Terrorist Designations Working Group members: Combined Threat Assessment Group, Crown Law Office, Ministry of Foreign Affairs and Trade, National Assessments Bureau, New Zealand Defence Force and New Zealand Police. National Security Board consulted on original Statement of Case.

### Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: Yes/No

# Briefing

## Decision to Designate Hamas as a Terrorist Entity

To: Rt Hon Christopher Luxon  
Prime Minister

Date 8/02/2024

Security Level

### Purpose

1. This briefing seeks your agreement to designate the entirety of Hamas as a terrorist entity under Section 22 of the Terrorism Suppression Act 2002 (TSA), following advice from the Attorney-General.

### Executive Summary

2. On 18 January 2024, you received advice from the National Security Board (NSB) which advised that the entirety of Hamas met the statutory and Cabinet-mandated criteria for designation as a terrorist entity under Section 22 of the Terrorism Suppression Act 2002 (TSA) and proposed that you make such a designation [DPMC-2023/24-556]. On 23 January 2024, you wrote to the Attorney-General to consult her on a proposal to designate the entirety of Hamas as a terrorist entity under section 22 of the Act and revoke the existing stand-alone designation of the military wing of Hamas, as the designation of the entirety of Hamas supersedes and incorporates this.
3. On 8 February 2024, the Attorney-General wrote to you providing advice on matters to consider relating to the proposed designation, particularly in relation to potential limitations on rights that may arise through designation. DPMC considers the issues raised by the Attorney-General are important and appropriate for you to consider as you decide on this designation.
4. Officials assess that the potential rights limitations noted, and the impacts of designation, are justified and proportionate to the objective of combatting terrorism.
5. If you now wish to designate the entirety of Hamas, the next steps are for you to agree to the recommendations in this paper, and to write to the Commissioner of Police and to the Intelligence and Security Committee confirming your decision. We have also provided a letter for you to send to the Attorney-General indicating how you have considered the issues she has raised.
6. Officials have developed a proposed communications and community engagement plan for the announcement. section 6(a)

## Recommendations

We recommend you:

1. **note** the Attorney-General's advice on matters to consider when making a decision about designating the entirety of Hamas as a terrorist entity under the Terrorism Suppression Act 2002 (**Attachment A**); YES / NO
2. **agree** to designate the entirety of Hamas as a terrorist entity under the Terrorism Suppression Act 2002; YES / NO
3. **sign** the letter to the Commissioner of Police (**Attachment B**); YES / NO
4. **sign** the letter to the Intelligence and Security Committee (**Attachment C**); YES / NO
5. **sign** the letter to the Attorney-General (**Attachment D**); YES / NO
6. **agree** to revoke the existing stand-alone designation of Izz al-Din al-Qassam Brigades (IQB, the military wing of Hamas) under section 34(1) of the Act, as the designation of Hamas supersedes and incorporates this; YES / NO
7. **note** that DPMC is working with your office and MFAT directly to prepare for communicating these announcements. YES / NO

**Bridget White**  
**Executive Director**  
**National Security Group**

16/02/2024

**Rt Hon Christopher Luxon**  
**Prime Minister**

...../...../.....



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## Background

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1. On 18 January 2024, you received advice from DPMC, supported by advice from the National Security Board (NSB), which proposed that you designate the entirety of Hamas as a terrorist entity under Section 22 of the Terrorism Suppression Act 2002 (TSA) [DPMC-2023/24-556]. These documents provided an assessment of the potential designation against the Cabinet-mandated criteria [DES (10) 2/5 refers]. There are reasonable grounds to believe that Hamas, rather than only its IQB military wing, has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts, and the entirety of Hamas meets the statutory and Cabinet-mandated criteria for designation. The advice outlined further risks associated with designation.
2. Section 22(4) of the TSA requires you to consult with the Attorney-General before designating an entity for the first time. On 21 January 2024, you wrote to the Attorney-General to consult her on a proposal to designate the entirety of Hamas as a terrorist entity under section 22 of the Act and revoke the existing stand-alone designation of the military wing of Hamas, as the designation of the entirety of Hamas supersedes and incorporates this.

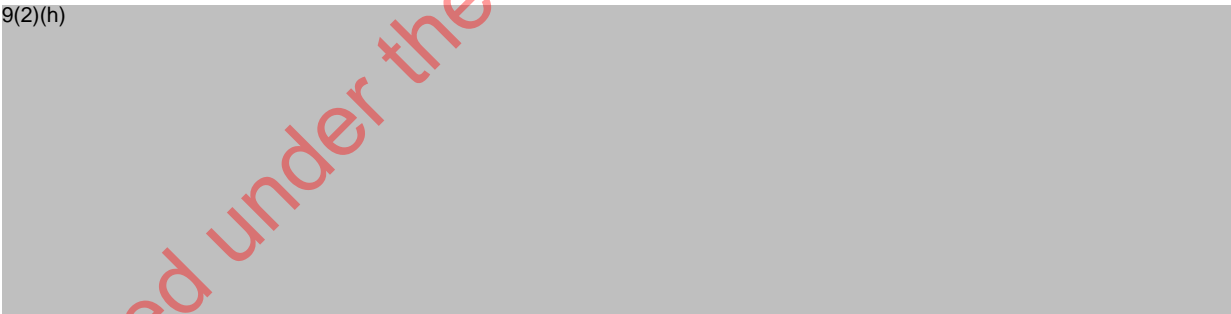
### The Attorney-General has raised additional matters for the consideration of the designation of the entirety of Hamas as a terrorist entity

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3. On 8 February 2024, the Attorney-General wrote to you to indicate that you should consider a number of factors in the designation of the entirety of Hamas (**Attachment A**). This section sets out the Attorney-General's comments (in italics), followed by advice from DPMC, which worked in conjunction with the Terrorist Designations Working Group (TDWG)<sup>1</sup>, on how you could consider these points.

#### NZ Bill of Rights Act proportionality

4. <sup>9(2)(h)</sup>



5. The intent of a terrorist designation under the TSA is to reduce the ability of entities to carry out terrorist acts, by criminalising participation in, and material support to, those entities – this inherently provides a limit on New Zealanders' actions. As with all terrorist designations, the proposed designation of Hamas would curtail the ability of some New Zealanders to support this entity carrying out terrorist acts.

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<sup>1</sup> The TDWG is chaired by New Zealand Police and includes officials from Department of the Prime Minister and Cabinet (DPMC, National Assessments Bureau and National Security Policy Directorate), New Zealand Defence Force (NZDF), Crown Law Office, Ministry of Foreign Affairs and Trade (MFAT), and the Combined Threat Assessment Group, (CTAG)

6. Given the nature of Hamas's terrorist actions outlined in the Statement of Case, and the Cabinet and NZBORA considerations in the National Security Board paper (which were attached to DPMC-2023/24-556) our advice is that:

- a. the proposed designation supports the objective of suppressing the terrorist activities of Hamas, which is a legitimate and sufficiently important policy objective to justify some limitation on rights;
- b. there is a rational connection between the objective of suppressing support to Hamas and Hamas's ability to continue to commit terrorist acts and the limits on rights that may result from designation; and
- c. any such limits on those who wish to provide support to Hamas's terrorist activities are proportionate to the importance of the policy objective.

7. Accordingly, these limits can be demonstrably justified in a free and democratic society.

### Freedom of expression and freedom of association

8. <sup>9(2)(h)</sup>



9. Section 8 of the TSA only creates an offence to provide material support, funding etc "intending that the [support/funds] be used, or knowing that, or being reckless about whether, it is to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts."

10. Similarly, section 13 prohibits participation in a designated entity, only where the purpose of such participation is to "enhance the ability of [the] entity... to carry out, or to participate in the carrying out of, 1 or more terrorist acts."

11. section 9(2)(h)



12. People engaging with Hamas or travelling to Gaza *do* need to take care that they are not supporting military and terrorist activities, whether deliberately or inadvertently – this consideration applies already under the present designation of Hamas's military wing.

13. The proposed communications and community engagement plan for this announcement includes information on how New Zealanders can provide support to the people of Gaza within the law.

## Freedom of religion

14 <sup>9(2)(h)</sup>

[Redacted]

15. Designation of Hamas will have limited (if any) impact on the right to freedom of religion. <sup>9(2)(h)</sup> this limit can be justified as the designation is a rational and proportionate limit that will assist to suppress the activity of a terrorist group.

## Freedom of movement

16 <sup>9(2)(h)</sup>

[Redacted]

17. Designation of Hamas itself does not directly limit freedom of movement. As noted in the NSB paper, designation does not limit the New Zealand government or individuals from communicating with Hamas for purposes other than facilitating terrorism. A person's freedom of movement will only be limited if the purpose of their travel is to support Hamas to commit terrorism. As the Attorney-General notes, this is a justified limit given the terrorist acts of Hamas. As above, the proposed communications and community engagement plan will address this issue in the reactive points.

## Freedom of expression and peaceful assembly

18 <sup>9(2)(h)</sup>

[Redacted]

19. <sup>9(2)(h)</sup>

A designation will not stop New Zealanders from assembling and expressing opinions about the Palestinian people, or even Hamas, so has a minimal (if any) impact on these rights, and any such impact is considered justifiable.

## Humanitarian support

20<sup>9(2)(h)</sup>

21. Hamas provides humanitarian support, and government services, to Palestinian people in Gaza. Designation may provide a practical limit on New Zealanders' ability to provide support to Hamas in carrying out these activities. However, these practical limits already exist to some extent due to both New Zealand's existing designation of the military wing and other countries' designation of the entirety of Hamas, as financial institutions (which are critical to the transfer of any funds to Hamas-related bank accounts) already take care not to deal with entities related to Hamas.
22. Designation will not impact New Zealanders' ability to provide financial or humanitarian support directly to Palestinian citizens, as long as this is not being used to fund Hamas's terrorist activities. Any limitations on this support imposed by the designation are considered justified.
23. The proposed communications and community engagement plan will provide advice on how New Zealanders can continue to provide humanitarian support in ways that do not risk contravention of the TSA. The advice encourages New Zealanders who want to send money in support of affected Palestinian civilians in Gaza to donate via reputable and credible international humanitarian and development organisations.

## Discretion for other decision makers

24. <sup>9(2)(h)</sup>

25.

## Discretion in your decision

26. <sup>9(2)(h)</sup>

27.

28. <sup>9(2)(h)</sup>

. As noted in the previous briefing,

officials assess that the legislative criteria are met, and that impacts of designation – including potential limitations on rights as outlined by the Attorney-General in her letter – are justified and proportionate to New Zealand’s contribution to the international campaign against terrorism.

29. As such, we recommend that you agree to designate the entirety of Hamas as a terrorist entity under the Terrorism Suppression Act 2002.

## Risks and considerations

30. 9(2)(h)

31. Officials have developed a proposed communications and community engagement plan for the announcement. section 6(a)

32. 6(a)

## Next steps

33. If you agree to designate the entirety of Hamas as a terrorist entity under Section 22 of the TSA, you must sign the appropriate enclosed letters to the Police Commissioner and the Intelligence and Security Committee to finalise the process (**Attachments B and C**).

34. We have also provided a draft letter for you to send to the Attorney-General indicating that you have considered the issues she has raised, and recommend you refer this briefing to her for her information about how you have considered these issues.

35. If you designate the entirety of Hamas, you must follow this with a revocation of the current designation of IQB, as the designation of the entirety of Hamas supersedes and incorporates this. This is achieved via a letter to the Police Commissioner, which we have included in the letter designating the entirety of Hamas (Attachment B).

36. Once you have signed this briefing, DPMC will work with NZ Police to publish your decisions in the Gazette. This normally takes a few days to effect, but your decision is effective immediately.

37. DPMC’s communication team will liaise directly with your office to provide further support, including officials’ engagement with relevant community groups.

38. No further action is required if you decide not to proceed with the designation.

Attachments:		Security classification
<b>Attachment A:</b>	Letter from Attorney-General, Hon Judith Collins, entitled: Proposed designation of Hamas as a Terrorist Entity	Legally privileged
<b>Attachment B:</b>	Letter to the Commissioner of Police, confirming the designation of Hamas.	Unclassified
<b>Attachment C:</b>	Letter to the Intelligence and Security Committee, confirming the designation of Hamas.	Unclassified
<b>Attachment D:</b>	Letter to the Attorney-General	Unclassified

Attachment A removed and withheld in full under section 9(2)(h)

Released under the Official Information Act 1982

**Attachment B**

**Letter to the Commissioner of Police, confirming the designation of Hamas**

Released under the Official Information Act 1982



RT HON CHRISTOPHER LUXON  
PRIME MINISTER

XX February 2024

Andrew Coster  
Commissioner of Police  
Wellington

**Designation of the entirety of Hamas under the Terrorism Suppression Act 2002 and the revocation of the existing designation of the military wing of Hamas**

Pursuant to section 22 of the Terrorism Suppression Act 2002, I designate the entirety of Hamas as a terrorist entity.

I revoke the existing stand-alone designation of Izz al-Din al-Qassam Brigades (IQB, the military wing of Hamas), as the designation of the entirety of Hamas supersedes and incorporates this.

Yours sincerely

Rt Hon Christopher Luxon  
**Prime Minister**

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**Attachment C**

**Draft Letter to the Intelligence and Security Committee,  
confirming the designation of Hamas**

Released under the Official Information Act 1982



RT HON CHRISTOPHER LUXON  
PRIME MINISTER

XX February 2024

Members  
Intelligence and Security Committee  
**Parliament Buildings**

**Designation of the entirety of Hamas under the Terrorism Suppression Act 2002 and the revocation of the existing designation of the military wing of Hamas**

I write to inform you of my recent decision to designate the entirety of Hamas as a terrorist entity under Section 35(2) of the Terrorism Suppression Act 2002 (the Act).

I have revoked the existing stand-alone designation of Izz al-Din al-Qassam Brigades (IQB, the military wing of Hamas), as the designation of the entirety of Hamas supersedes and incorporates this.

A designation under New Zealand legislation freezes the assets of terrorist entities and makes it a criminal offence to participate in or support the activities of the designated terrorist entity.

Notice of my decision will be given in the New Zealand Gazette. Overseas posts and international partners will be informed, and the decisions are consistent with the approach taken by our major security partners.

Yours sincerely

Rt Hon Christopher Luxon  
**Prime Minister**

**Attachment D**

**Letter to the Attorney-General**

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RT HON CHRISTOPHER LUXON  
PRIME MINISTER

XX February 2024

Hon Judith Collins KC  
Attorney-General  
Wellington

**Designation of the entirety of Hamas under the Terrorism Suppression Act 2002**

Dear Attorney-General

Thank you for your letter of 8 February 2024, proposing additional matters you suggest I consider when deciding on the proposed designation of Hamas as a terrorist entity.

I consider the issues that you have raised are important. I have assessed that the potential rights limitations noted, and the impacts of designation, are justified and proportionate to the objective of combatting terrorism.

For your awareness, I have attached the advice from officials that assisted me in making this assessment.

Pursuant to section 22 of the Terrorism Suppression Act 2002, I have designated the entirety of Hamas as a terrorist entity.

Yours sincerely

Rt Hon Christopher Luxon  
**Prime Minister**