

Updated Australian Lawyers Letter on Gaza

9 May 2024

Dear Prime Minister, Minister for Foreign Affairs, Minister for Defence and Attorney General,

We the undersigned, are legal practitioners, law students, and legal academics in Australia, dedicated to the international legal system, upholding the rule of law and protecting fundamental rights both domestically and internationally. We write with urgency to express our profound concerns about the humanitarian catastrophe in Gaza and to urge the Australian government to do everything it can to end the hostilities and protect innocent civilians from further death, destruction, famine and plausible genocide.

In a letter dated 11 November 2023, over 1,400 members of the Australian legal profession wrote to you concerning your Government's obligations to act without delay to fulfil its international legal obligations in relation to the escalating and horrific conflict in the Middle East including for your Government to avert and avoid complicity in serious breaches of International Humanitarian Law (IHL) in Gaza. That letter stated, inter alia, as follows:

The well-accepted limits of international law, human rights law, and the law of armed conflict have been exceeded. There is mounting evidence that atrocity crimes have been committed.

Atrocity crimes are considered to be the most serious crimes against humankind. Their status as international crimes is based on the belief that the acts associated with them affect the core dignity of human beings.

International law is not being upheld.

We call on the Australian Government to uphold international law by:

- 1. Exerting its influence to secure a ceasefire in Gaza and the West Bank, and to ensure urgently the adequate provision of food, fuel, medicine and other humanitarian assistance to Gaza, and the unconditional restoration of water and electricity;*
- 2. Acting urgently to ensure that international law is complied with and fundamental human rights are protected;*
- 3. Advocating for an end to the occupation of Palestine and a just peace for all people in the region based on equal rights; and*
- 4. Halting defence exports to Israel, confirming what military-specific goods have been provided with the 322 export permits granted between 1 January 2017 and*

31 March 2023 and whether these defence goods are being used in accordance with international law.

Since that letter, there have been significant developments involving authoritative international legal institutions in relation to the situation in Gaza. These include namely:

- a public statement issued on 16 November 2023, by 37 Special Rapporteurs, Independent Experts and members of Working Groups part of the Special Procedures of the UN Human Rights Council, in which they voiced alarm over “*discernibly genocidal and dehumanising rhetoric coming from senior Israeli government officials*”;¹
- the joint statement on 13 December 2023 by the Prime Ministers of Australia, Canada and New Zealand which expressed deep concern at “*the scale of the humanitarian crisis in Gaza and ongoing risks to all Palestinian civilians*” and reiterated that “*safe and unimpeded humanitarian access must be increased and sustained*” and articulated “*support [for] urgent international efforts towards a sustainable ceasefire*”;²
- the provisional order of the International Court of Justice dated 26 January 2024,³ by which the Court concluded that claims put forward by South Africa in respect of the risk of genocide in Gaza were plausible;
- UN Security Council Resolution 2728 on 25 March 2024 which “*[d]emand[ed] an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire*”;⁴ and,
- a further provisional order of the International Court of Justice (ICJ) dated 28 March 2024 (modifying the provisional order dated 26 January 2024) to “*[t]ake all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary*” and “*[e]nsure with immediate effect that [Israel’s] military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected*

¹ See: <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>

² See <https://www.pm.gov.au/media/joint-statement-prime-ministers-australia-canada-and-new-zealand>

³ International Court of Justice (ICJ), Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, Order of 26 January 2024 (“*South Africa v. Israel Provisional Measures Order of 26 January 2024*”)

⁴ United Nations Security Council, Resolution 2728 (2024) Adopted by the Security Council at its 9586th meeting, on 25 March 2024, S/RES/2728 (2024).

group under the [Genocide Convention], including by preventing, through any action, the delivery of urgently needed humanitarian assistance.”⁵

- the joint statement on 15 February 2024 by the Prime Ministers of Australia, Canada and New Zealand which expressed grave concerns about Israel’s proposed ground offensive into Rafah, and reiterated that “*an immediate humanitarian ceasefire is urgently needed*”;⁶
- Proceedings instituted in the ICJ by the Republic of Nicaragua against the Federal Republic of Germany on 1 March 2024 for a Request for the indication of provisional measures against Germany for alleged complicity in the genocide in Gaza;⁷
- the critical and worsening situation in Gaza, where the UN and international aid agencies warn of famine.⁸
- the appointment of Air Chief Marshal Mark Binskin to be a special adviser on Israel’s response to the accidental air-strike that killed foreign aid workers, including Australian Zomi Frankcom.⁹

We write in the light of these developments to remind you of Australia’s binding legal obligations under international law in upholding the international legal order. In service of the objective of securing a lasting, just peace, a respect for human rights and security for all people in the region, we believe you are required take, amongst others, the following ten (10) urgent actions:

1. continue to work actively and effectively to promote and secure a permanent ceasefire in Gaza and to secure the release of Israeli hostages held by Hamas in Gaza;
2. take all available measures to ensure safe access to and delivery of the essentials of existence and medical assistance to Palestinians in Gaza, including confirmation that Australian funding to UNRWA will continue and increase with need;
3. impose sanctions upon individuals and entities who have made statements inciting genocide against Palestinians;
4. impose bans upon Australians and any Australian-based organisations from funding illegal Israeli settlements in the occupied West Bank in violation of international law;

⁵ ICJ Application of the **Convention** on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order on South Africa’s Request for the Modification of the Order of 26 January 2024 Indicating Provisional Measures, Order of 28 March 2024 (“*South Africa v. Israel Modification of Provisional Measures Order of 28 March 2024*”).

⁶ See <https://www.pm.gov.au/media/joint-statement-prime-ministers-australia-canada-and-new-zealand-0>

⁷ International Court of Justice (ICJ), Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*Nicaragua v Germany*) Request for the Indication of Provisional Measures.

⁸ See, for example, paragraphs 18-21 and 30 - 40 of ICJ, South Africa v. Israel, Request for the Modification of the Order of 26 January 2024 Indicating Provisional Measures, Order of 28 March 2024.

⁹ See <https://www.foreignminister.gov.au/minister/penny-wong/media-release/appointment-special-adviser>

5. ensure a comprehensive, independent, Australian investigation into the death of humanitarian aid workers from World Central Kitchen including Australian Zomi Frankcom; and that actions are taken in response to the findings, including referring the incident and the situation in the Occupied Palestinian Territory to the International Criminal Court;
6. call for the suspension of all military exports, including dual purpose supplies and services and aid exports to Israel while the risk of genocide in Gaza continues;
7. call for a suspension of intelligence sharing with the Israeli Defence Force (IDF) via Pine Gap Joint Defence Facility;
8. cancel of all defence contracts with any Israeli defence contractors involved in Gaza such as Elbit Systems and cancellation of any arms purchases/imports from Israel while the risk of genocide in Gaza continues;
9. significantly increase the categories of humanitarian visas for Palestinians in Gaza for permanent resettlement in Australia;
10. commit to investigating the conduct of any Australian citizens or residents who have travelled to Israel to serve in the IDF since 7 October 2023 for possible atrocity crimes pursuant to Chapter 8, Division 268 of the *Criminal Code Act 1995* (Cth) (the Code).

A detailed account of our reasons follows.¹⁰

¹⁰ Adopted and adapted with acknowledgement and gratitude from the UK Lawyers Letter. Available: <https://lawyersletter.uk/wp-content/uploads/2024/04/Gaza-letter-FIN-3-April.pdf>

Section 1: Recent legal and factual developments

Provisional Orders of the International Court of Justice re Gaza

In its provisional order of 26 January 2024, the ICJ concluded, by reference to the statements of senior Israeli officials including the Prime Minister and the Minister of Defence,¹¹ as well as the manner in which the offensive in Gaza was being conducted, that South Africa's claims "*with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III*" [of the Genocide Convention¹²] were plausible.¹³

The Court considered that "*the catastrophic humanitarian situation in the Gaza strip is at serious risk of deteriorating further*"¹⁴ and indicated six provisional measures.¹⁵

The ICJ further expressed its grave concern about the hostages abducted during the attack in Israel on 7 October 2023 and held since then by Hamas and other armed groups and called for their immediate and unconditional release.¹⁶

On 16 February 2024 the ICJ noted that "*the most recent developments in the Gaza Strip, and in Rafah in particular, 'would exponentially increase what is already a humanitarian nightmare with untold regional consequences'*" and observed that this perilous situation "*demand[s] immediate and effective implementation of the provisional measures*".¹⁷

Provisional orders are binding on States Parties to the proceedings. In addition, all States Parties to the Genocide Convention have obligations under the Convention, namely to prevent and punish genocide, the applicability of which to the situation in Gaza is made clear by the order for provisional measures.

¹¹ These included the Israeli Minister of Defence's assertion on 9 October 2023 that he had "*released all restraints*" and reference to "*fighting human animals*": South Africa v. Israel Provisional Measures Order of 26 January 2024, paras 51 to 52. The Court also took note (para 53) of a [document issued on 16 November 2023](#), by 37 Special Rapporteurs, Independent Experts and members of Working Groups part of the Special Procedures of the United Nations Human Rights Council, in which they voiced alarm over "*discernibly genocidal and dehumanising rhetoric coming from senior Israeli government officials*".

¹² [Convention on the Prevention and Punishment of the Crime of Genocide](#) 9 December 1948.

¹³ South Africa v. Israel Provisional Measures Order of 26 January 2024, at [54].

¹⁴ Ibid, at [72].

¹⁵ Ibid, at [78]-[82].

¹⁶ Ibid, at [85].

¹⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), [Decision of the Court on South Africa's request for additional provisional measures of 16 February 2024](#)

The same urgency must apply to the performance by all other State Parties of their preventative obligations under the Genocide Convention, including Australia.

On 28 March 2024, the ICJ issued a further order. It noted that “*the catastrophic humanitarian situation in the Gaza Strip which existed when it issued its Order of 26 January 2024 has deteriorated even further*” with “*unprecedented levels of food insecurity experienced by Palestinians in the Gaza Strip over recent weeks, as well as the increasing risk of epidemics*”.¹⁸ The Court indicated two further provisional measures and emphasised the need for “*the unhindered provision at scale*” of humanitarian assistance.¹⁹

We further note the declaration from Judge Hillary Charlesworth in March. Judge Charlesworth put her view beyond doubt, finding that “*Israel is required to suspend its military operations in the Gaza Strip, precisely because this is the only way to ensure that basic services and humanitarian assistance reach the Palestinian population.*”²⁰

Rapidly Worsening Situation in Gaza

Civilian death and injury

Since the ICJ’s provisional order, an average of 108 Palestinians have been killed and another 178 injured each day in Gaza.²¹ At least 34,1151 Palestinians have now been killed and 77,084 injured in Gaza.²² Seventy percent of recorded deaths have been women and children.²³ The circumstances make it difficult to verify these figures, however they are widely accepted as credible, including by the White House,²⁴ and it is beyond doubt that they are significant.

¹⁸ ICJ, *South Africa v. Israel* Modification of Provisional Measures Order of 28 March 2024, at [30]-[31].

¹⁹ Ibid, at [45], [51].

²⁰ See <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-05-en.pdf>

²¹ UNCRRC, 21.03.24, *Gaza: halt the war now to save children from dying of imminent famine* <https://www.ohchr.org/en/press-releases/2024/03/gaza-halt-war-now-save-children-dying-imminent-famine-un-committee-warns>

²² UN OCHA, 24.04.2024, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-199>

²³ 13Albanese, F., 25.03.24, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/55/73 <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session55/advance-versions/a-hrc-55-73-auv.pdf> para.25

²⁴ See <https://www.wsj.com/world/middle-east/u-s-officials-have-growing-confidence-in-death-toll-reports-from-gaza-b3b5183a> If anything, the White House has indicated the likely number of dead is higher, see <https://thehill.com/policy/international/4301551-gaza-deaths-likely-higher-than-cited-us-official/>

The International Committee of the Red Cross has stated that “*the situation in the Gaza Strip degenerates by the hour*”, and that there is “*nowhere safe for people to go.*”²⁵ Human rights groups including Amnesty International have recorded multiple instances of “*entire families [being] wiped out in Israeli attacks even after they sought refuge in areas promoted as safe and with no prior warning from Israeli authorities*”.²⁶

Groups of starving Palestinian civilians waiting for food aid have been killed. On 29 February 2024, following 13 similar incidents involving the shooting and shelling of people gathered to receive desperately needed supplies, 118 civilians were killed and 760 were injured.²⁷ While that incident provoked international indignation, lethal attacks by Israeli armed forces on Palestinians waiting for aid have continued, including the killing of at least 19 Palestinians waiting for aid in the same location on 23 March 2024.²⁸

Strikes on UNRWA facilities have led to the deaths of 400 people seeking shelter under the UN flag. At least 178 employees of the United Nations Relief and Works Agency (UNRWA) workers have been killed.²⁹ In addition to UNRWA staff, other humanitarian workers and volunteers have been killed, and possibly, intentionally targeted, including Australian Zomi Frankcom and her six colleagues, humanitarian aid workers employed by the World Central Kitchen (WCK).

The situation of children

The Commissioner General of UNRWA has described the Israeli military operation in Gaza as “*a war on children and their future*”, observing that more children have been killed in the last four months in Gaza than have been killed in the last four (4) years of wars around the world combined.³⁰ The UN Secretary General and UNICEF have each described Gaza as a “*graveyard for children*”.³¹

²⁵ ICRC, 9.04.23, A Statement on Gaza and Israel from the President of the ICRC, <https://www.icrc.org/en/document/statement-gaza-and-israel-president-icrc>

²⁶ Amnesty International, 12.02.24, *New evidence of unlawful Israeli attacks in Gaza causing mass civilian casualties amid real risk of genocide*, <https://www.amnesty.org/en/latest/news/2024/02/israel-opt-new-evidence-of-unlawful-israeli-attacks-in-gaza-causing-mass-civilian-casualties-amid-real-risk-of-genocide/>

²⁷ UN OCHA, 04.03.24, Hostilities in the Gaza Strip and Israel, Flash Update Number 131 <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-131>

²⁸ CNN, 23.03.24, *At least 19 Palestinians killed by Israeli military while waiting for aid in Gaza – Gazan authorities*, <https://edition.cnn.com/2024/03/23/world/palestinians-killed-israeli-military-gazan-authorities/index.html>

²⁹ UNRWA, 17.04.24, Statement by the Commissioner General of UNRWA to the Security Council <https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-security-council>

³⁰ UN News, 13.03.24, Gaza: Number of children killed higher than from four years of world conflict: <https://news.un.org/en/story/2024/03/1147512>

³¹ Reuters, 6.11.23, UN chief says Gaza becoming a ‘graveyard for children’

On 21 March 2024, the UN Committee on the Rights of the Child (‘**UNCRC**’) stated that children in Gaza were at risk of dying of preventable “*imminent famine*”.³² At least 27 children have already died of malnutrition or dehydration, but “[t]he true death toll from starvation is likely to be significantly higher, and it is set to rise. Children in Gaza can no longer wait, as each passing minute risks another child dying of hunger as the world looks on.”³³ The UNCRC warned that “[d]eliberate actions such as blocking and restricting humanitarian aid appear to be calculated to bring about the physical destruction of Palestinian children”.³⁴

At least 17,000 children in Gaza are unaccompanied or separated from their parents.³⁵

Risk of famine and deliberate infliction of starvation

Food insecurity in Gaza has reached a catastrophic level. The Integrated Food Security Phase Classification (operated by UN agencies and humanitarian aid groups) warned on 18 March 2024 that “*the entire population in the Gaza Strip (2.23 million) is facing high levels of acute food insecurity*”.³⁶ The World Bank Group warned on 19 March 2024 that more than half the population of Gaza is “*on the brink of famine*”.³⁷ The Famine Early Warning System of the US Agency for International Development warned that famine in Northern Gaza is “*imminent*”.³⁸

<https://www.reuters.com/world/middle-east/un-chief-says-gaza-becoming-graveyard-children-2023-11-06/>, UNICEF, 31.10.23, Gaza has become a graveyard for thousands of children <https://www.unicef.org/press-releases/gaza-has-become-graveyard-thousands-children>

³² UN Committee on the Rights of the Child, 21.03.24, ‘*Gaza: Halt the war now to save children from dying of imminent famine UN Committee warns*’, <https://www.ohchr.org/en/press-releases/2024/03/gaza-halt-war-now-save-children-dying-imminent-famine-un-committee-warns>

³³ UN Committee on the Rights of the Child, 21.03.24, ‘*Gaza: Halt the war now to save children from dying of imminent famine UN Committee warns*’, <https://www.ohchr.org/en/press-releases/2024/03/gaza-halt-war-now-save-children-dying-imminent-famine-un-committee-warns>

³⁴ UN Committee on the Rights of the Child, 21.03.24, ‘*Gaza: Halt the war now to save children from dying of imminent famine UN Committee warns*’, <https://www.ohchr.org/en/press-releases/2024/03/gaza-halt-war-now-save-children-dying-imminent-famine-un-committee-warns>

³⁵ UNOCHA, 14.03.24, Hostilities in the Gaza Strip and Israel - reported impact | Day 159 <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-159-26>

³⁶ IPC Global Initiative, 18.03.24, *Gaza Strip Special Brief*, https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_Feb_July2024_Special_Brief.pdf

³⁷ World Bank, 19.03.24, World Bank Group Statement on Gaza, <https://www.worldbank.org/en/news/statement/2024/03/19/world-bank-group-statement-on-gaza>

³⁸ FEWS NET, 18.03.24, *Gaza Targeted Analysis*, https://fewsn.net/sites/default/files/2024-03/Gaza%20Targeted-Analysis-03182024-Final_0.pdf

On 23 March 2024, the UN Secretary General stated that a “*situation of starvation exists in Gaza*”, in the light of a UN-backed food security assessment which found that 1.1 million people in Gaza were struggling with “*catastrophic hunger and starvation*”.³⁹

The UN High Commissioner for Human Rights has observed that “[*t*]he extent of Israel’s continued restrictions on entry of aid into Gaza, together with the manner in which it continues to conduct hostilities, may amount to the use of starvation as a method of war, which is a war crime.”⁴⁰ The UN Special Rapporteur on the Right to Food has indicated that Palestinians in Gaza are being intentionally starved, stating that there “*is no reason to intentionally block the passage of humanitarian aid or intentionally obliterate small-scale fishing vessels, greenhouses and orchards in Gaza – other than to deny people access to food*”.⁴¹ The EU Foreign Policy Chief Josep Borrell has similarly stated that starvation is being used as a “*tool of war*.”⁴²

In February 2024, Israel’s Welfare and Social Affairs Ministry halted the renewal of visas for international humanitarian aid workers, further hampering efforts in the delivery and distribution of aid in Gaza. The Association of International Development Agencies (“**AIDA**”), a coalition representing 80 international NGOs, stated in March 2024 that at least 99 aid workers’ visas have expired or are set to expire, and many risk deportation or removal.⁴³

On 23 March 2024, the UN Secretary General visited the Rafah border and, describing the line of blocked relief trucks as a “*moral outrage*,” called upon Israel to facilitate access for humanitarian aid.⁴⁴ On 24 March 2024, UNRWA announced that Israel had informed the United Nations that it will no longer approve the entry of its aid convoys into Northern Gaza.⁴⁵

³⁹ BBC News, 23.03.24, Israel-Gaza war: Situation of starvation exists in Gaza, says UN chief, <https://www.bbc.co.uk/news/av/world-europe-68648409>

⁴⁰ Jerusalem Post, 19.03.24, [Israel's restrictions to Gaza aid may be war crime](https://www.jpost.com/breaking-news/article-792689), <https://www.jpost.com/breaking-news/article-792689>

⁴¹ The Guardian, 27.02.24, [Israel is deliberately starving Palestinians, UN rights expert says](https://www.theguardian.com/world/2024/feb/27/un-israel-food-starvation-palestinians-war-crime-genocide), <https://www.theguardian.com/world/2024/feb/27/un-israel-food-starvation-palestinians-war-crime-genocide>

⁴² The Guardian, 13.03.24, [Starvation being used as a tool of war in Gaza, says EU's top diplomat – video](https://www.theguardian.com/world/video/2024/mar/13/starvation-being-used-tool-of-war-gaza-josep-borrell-eu-top-diplomat-video), <https://www.theguardian.com/world/video/2024/mar/13/starvation-being-used-tool-of-war-gaza-josep-borrell-eu-top-diplomat-video>

⁴³ AP News, 8.03.24, [Leading NGOs slam Israel’s halt in visa renewals for aid workers in Gaza and West Bank](https://apnews.com/article/israel-gaza-war-hamas-humanitarian-visas-5d306d367e6522495a4ee8045859a3b8), <https://apnews.com/article/israel-gaza-war-hamas-humanitarian-visas-5d306d367e6522495a4ee8045859a3b8>

⁴⁴ UN News, 23.03.24, [At Rafah border crossing to Gaza, UN’s Guterres calls for immediate ceasefire](https://news.un.org/en/story/2024/03/1147901), <https://news.un.org/en/story/2024/03/1147901>

⁴⁵ Sky News, 24.03.24, [Israel to block aid convoys to northern Gaza, says UNRWA boss](https://news.sky.com/story/israel-to-block-aid-convoys-to-northern-gaza-says-unrwa-boss-13101332), <https://news.sky.com/story/israel-to-block-aid-convoys-to-northern-gaza-says-unrwa-boss-13101332>

On 28 March 2024, the ICJ observed that “*Palestinians in Gaza are no longer facing only a risk of famine... but that famine is setting in, with at least 31 people, including 27 children, having already died of malnutrition and dehydration according to the United Nations Office for the Coordination of Humanitarian Affairs*”.⁴⁶

Reports of torture and cruel, inhuman or degrading treatment

The abuse by Israel of Palestinian civilians has touched every sector of society. The UN Special Rapporteur on torture has cited reports of mass detention, ill-treatment and enforced disappearance of Palestinians in Northern Gaza.⁴⁷ Six UN experts have condemned the arbitrary detention, disappearance, deliberate targeting and extrajudicial killing of women and children in Gaza.⁴⁸

Destruction of health facilities

84% of health facilities in Gaza have been damaged or destroyed.⁴⁹ The World Health Organisation (‘WHO’) Director General has described the state of the health system in Gaza as “*catastrophic*”, with hospitals “*having turned into battlefields*”, and warns of the “*continued dismantling of the health system*” in Gaza.⁵⁰

One in three hospitals in Gaza are only minimally or partially functional.⁵¹ Hospitals in Rafah are overwhelmed and struggling to keep up with needs. Operations of hospitals in Khan Younis have been jeopardised as a result of their being rendered non-functional or minimally functional through besiegement or damage.⁵² There is no access for Emergency Medical

⁴⁶ *South Africa v. Israel* Modification of Provisional Measures Order of 28 March 2024, at [21].

⁴⁷ The Times of Israel, 8.03.24, *UN torture expert probing alleged Israeli mistreatment of Palestinian detainees*, [https://www.timesofisrael.com/un-torture-expert-probing-alleged-israeli-mistreatment-of-palestinian-detainees/#:~:text=The%20UN%20human%20rights%20office,thousands%20in%20the%20West%20Ba nk](https://www.timesofisrael.com/un-torture-expert-probing-alleged-israeli-mistreatment-of-palestinian-detainees/#:~:text=The%20UN%20human%20rights%20office,thousands%20in%20the%20West%20Ba%20nk).

⁴⁸ OHCHR, 19.02.24: Israel/OPT: UN experts appalled by reported human rights violations against *Palestinian women and girls*, <https://www.timesofisrael.com/un-torture-expert-probing-alleged-israeli-mistreatment-of-palestinian-detainees/#:~:text=The%20UN%20human%20rights%20office,thousands%20in%20the%20West%20Ba nk>.

⁴⁹ ‘X’ UN Official Account, 15.02.24, <https://twitter.com/UN/status/1758221834401534212>

⁵⁰ WHO, 03.03.24, *Emergency Situation Report #24*, https://www.emro.who.int/images/stories/Sitrep_-_issue_24.pdf, X, Director General of WHO, 22.02.24, <https://twitter.com/DrTedros/status/1760556264373788882?t=vjNsG2jSaNg4odegQ4tTNw&s=19>, 27.02.24 https://twitter.com/DrTedros/status/1762578621426811119?t=dH4iP8_pN-E7Kzh0gXwv2A&s=19

⁵¹ ‘X’, Director General of WHO, 08.03.24, <https://twitter.com/DrTedros/status/1766223069184446573?t=NjXEUNZcD4f4tewntzWibA&s=19>

⁵² WHO, 03.03.24, *Emergency Situation Report #24*, https://www.emro.who.int/images/stories/Sitrep_-_issue_24.pdf

Teams to North Gaza hospitals due to the security situation.⁵³ 490 healthcare workers have been killed.⁵⁴

The collapse of the health care system in Gaza has disproportionately impacted maternal and newborn care. UNICEF has stated that *“the situation of pregnant women and newborns in the Gaza Strip is beyond belief, and it demands intensified and immediate actions. The already precarious situation of infant and maternal mortality has worsened as the healthcare system collapses. Mothers face unimaginable challenges in accessing adequate medical care, nutrition, and protection before, during and after giving birth”*.⁵⁵

Women giving birth by caesarean section are being discharged within three hours due to overcrowding and limited resources. UNICEF has noted higher rates of undernutrition in newborns, developmental issues and other health complications.⁵⁶ The WHO has similarly documented an increase in *“dangerously underweight pregnant women”* and *“newborn babies simply dying because they (are) too low birth weight.”*⁵⁷

Imminent ground invasion of Rafah

At the time of writing, the Israeli military has commenced offensive operations of Rafah. We note that the international community has sounded strong warnings against a ground invasion of Rafah. The UN High Commissioner for Human Rights has warned that a *“potential full-fledged military incursion into Rafah -- where some 1.5 million Palestinians are packed against the Egyptian border with nowhere further to flee -- is terrifying.”*⁵⁸ The UN Under-Secretary for Humanitarian Affairs has likewise warned that over a million people are *“crammed in Rafah, staring death in the face”*.⁵⁹ Save the Children, highlighting the plight of the 610,000 children trapped in Rafah, has stated that *“what happens next will be beyond our worst nightmares... With Israeli authorities telling people in Gaza that Rafah is a*

⁵³ WHO, 03.03.24, *Emergency Situation Report #24*, https://www.emro.who.int/images/stories/Sitrep_issue_24.pdf

⁵⁴ UNOCHA, 19.04.24, *Reported Impact Day 196*, available at: <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-196>. WHO, 03.03.24, *Emergency Situation Report #24*, available at: https://www.emro.who.int/images/stories/Sitrep_issue_24.pdf

⁵⁵ UNICEF, 19.01.24, *Born in hell*, <https://www.unicef.org/press-releases/born-hell>

⁵⁶ Ibid.

⁵⁷ WHO, 19.03.24, *Gaza: Increasing numbers of newborns on brink of death, agencies warn* <https://news.un.org/en/story/2024/03/1147711>

⁵⁸ UNOCHA, 12.02.24, *Flash update 117* <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-117-0>

⁵⁹ BBC, 14.02.24, *Israel Gaza: UN warns of 'slaughter' if Israel launches ground assault on Rafah* <https://www.bbc.co.uk/news/world-middle-east-68287513>; UNOCHA, 13.02.24, *Statement by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator*, <https://unocha.org/news/un-relief-chief-warns-military-operations-rafah-could-lead-slaughter-gaza-and-put-fragile>

*safe place to flee, 80% of the population – half of whom are children – is now crammed into this area, many with no walls or roofs to shelter and protect them.*⁶⁰

We note the joint statement on 15 February 2024 by the Prime Ministers of Australia, Canada and New Zealand which expressed grave concerns about Israel’s proposed ground offensive into Rafah, and reiterated that “*an immediate humanitarian ceasefire is urgently needed*”.⁶¹

The EU has also requested that Israel “*not take military action in Rafah that would worsen an already catastrophic humanitarian situation*” and in doing so, highlighted that Israel must comply with IHL and with the ICJ’s provisional order.⁶²

Despite these warnings, Israel has repeatedly stated its intention to launch a ground offensive on Rafah. The Israeli Defence Minister has stated that “*those who think we are delaying will soon see*”.⁶³ The Israeli Prime Minister affirmed that his Government is “*determined*” to invade Rafah.⁶⁴

Legal implications of the above facts

These facts demonstrate a pattern of behaviour giving rise not only to specific violations of IHL and of crimes against humanity but also, when taken together with the evidence of genocidal intent in statements by senior Israeli officials cited by the ICJ in its *South Africa v. Israel* Provisional Measures Order of 26 January 2024, a serious risk of genocide. That risk relates in particular to the Genocide Convention Article II:

- (a) “*killing members of the group*”;
- (b) “*causing serious bodily or mental harm to members of the group*”; and
- (c) “*deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part*”.

⁶⁰ Save the Children, 08.02.24, Majority of Gaza children now trapped in Rafah <https://www.savethechildren.org.uk/news/media-centre/press-releases/majority-of-gaza-children-now-trapped-in-rafah->

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⁶² ‘X’, Josep Borrell Fontelles, 17.02.24, <https://x.com/JosepBorrellF/status/1758814395222683742?s=20> 55

⁶³ Times of Israel, 13.03.24, *Visiting Gaza, Gallant hints at imminent Rafah op: ‘Those who think we are delaying will soon see* https://www.timesofisrael.com/liveblog_entry/visiting-gaza-gallant-hints-at-imminent-rafah-op-those-who-think-we-are-delaying-will-soon-see/

⁶⁴ Reuters, 22.03.24, *Israel’s Netanyahu says he told Blinken we will go into Rafah alone if needed* <https://www.reuters.com/world/middle-east/israels-netanyahu-says-he-told-blinken-we-will-go-into-rafah-alone-if-needed-2024-03-22/>

In light of the infant and maternal mortality rates and the destruction of Gaza's healthcare system described above, these facts may also give rise to violations of Article II(d), i.e. "*imposing measures intended to prevent births within the group*".

We note that on 25 March 2024, the UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories published a report which concluded that "*there are reasonable grounds to believe that the threshold indicating Israel's commission of genocide is met*".⁶⁵

Notably, the Joint Declaration of the UK, Canada, Denmark, France, Germany and the Netherlands in the case of *The Gambia v Myanmar* before the ICJ correctly observed that the prohibition in Article II(c) Genocide Convention on the deliberate infliction of "*conditions of life calculated to bring about [the group's] physical destruction in whole or part*" includes "*subjecting a group of people to a subsistence diet, systematic expulsion from homes and the induction of essential medical services below minimum requirement*".⁶⁶

We note also the robust position adopted by your Government in other contexts in relation to the legal scope of acts of genocide and the authoritative function of the ICJ. The Declaration of Australia in the case of *Ukraine v Russia* stated, *inter alia*:⁶⁷

Australia stresses its continued commitment to the rules-based international order that is critical for maintaining international peace and security. It recognises the vital role the Court plays in this regard, as the principal judicial organ of the United Nations, particularly in relation to the peaceful settlement of disputes.

Australia has a long history of supporting efforts to promote the Genocide Convention. It played an active role in negotiating the text of the Convention and supporting its adoption. In particular, Dr Herbert Vere Evatt, the President of the General Assembly at the time, and Australia's Minister for Foreign Affairs, played a key role with respect to Resolution 260(A)(III), by which the Convention was approved for signature and Ratification

Australia was one of the first countries to ratify the Genocide Convention in 1949. Since then, Australia has been a steadfast supporter of the establishment and mandate of international courts and tribunals with jurisdiction over genocide and other serious

⁶⁵ Albanese, F., 25.03.24, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, [A/HRC/55/73](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session55/advance-versions/a-hrc-55-73-auv.pdf), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session55/advance-versions/a-hrc-55-73-auv.pdf>

⁶⁶ Joint Declaration of Intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland in the case of Application of the Convention of the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar) at [9].

⁶⁷ Declaration of Intervention by Australia dated 30 September 2022 in the case of Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Ukraine v Russia), at [5]-[7].

international crimes.

Section 2: Australia's obligations to prevent genocide

A. Obligations under the Genocide Convention

Australia is a party to the Genocide Convention, having signed on 11 December 1948 and deposited its instrument of ratification, without reservations, on 8 July 1949.

As early as 1951, the ICJ held that the Genocide Convention imposes obligations on all States Parties which flow from “*the universal character both of the condemnation of genocide and of the co-operation required ‘in order to liberate mankind from such an odious scourge’*”.⁶⁸

Article 1 of the Genocide Convention requires States Parties to undertake to prevent and punish genocide. The ICJ has confirmed the extraterritorial applicability of these obligations and has affirmed that States Parties to the Genocide Convention have a “*common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity*.”⁶⁹

Australia cannot wait until the ICJ decides the case on the merits; it must act now in accordance with its obligation to prevent genocide.

In relation to your Government's binding obligations, we remind you that:

- (1) The prohibition of genocide is recognised as a peremptory (or *jus cogens*) norm of international law, i.e. “*a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted*.”⁷⁰ Peremptory norms reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law.⁷¹
- (2) States are required “*to employ all means reasonably available to them*” to prevent genocide and responsibility is incurred if “*the State manifestly failed to take all measures to prevent genocide which were within its power*”. The notion of due diligence is of critical importance in this obligation.⁷²

⁶⁸ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p.2.

⁶⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Request for the Indication of Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 17, para. 41

⁷⁰ Vienna Convention on the Law of Treaties, 1969, article 53.

⁷¹ Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), adopted by the International Law Commission, 73rd session, 2022; 2 YBILC 2022, Part Two

⁷² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, I.C.J. Reports 2007 (“Bosnia v Serbia”), para 430

- (3) The “*obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit*”.⁷³
- (4) Australia cannot deny from 26 January 2024, when the ICJ issued its order for provisional measures, knowledge of the risk of genocide through the actions of Israel in Gaza. The ICJ’s finding of plausible risk, together with the profound and escalating harm to the Palestinian people in Gaza, constitute a serious risk of genocide sufficient to trigger Australia’s binding legal obligations under the Genocide Convention.
- (5) Australia’s obligation to perform its treaty obligations in good faith⁷⁴ requires it to carry out regular and ongoing assessments of the situation in Gaza on the basis of the information available, as to which we refer you to the summary above.
- (6) In determining whether a state has discharged its obligations, its “*capacity to influence effectively the action of persons likely to commit, or already committing, genocide*” must be taken into account. This capacity “*itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events*”.⁷⁵
- (7) The duty to prevent genocide “*applies regardless of whether any one state’s actions alone are sufficient to prevent genocide.*”⁷⁶
- (8) Article III (c) and (e) of the Genocide Convention provide that direct and public incitement to commit genocide and complicity in genocide are also punishable.
- (9) International humanitarian obligations do not operate on the basis of reciprocity. Even serious violations of IHL by one party to an armed conflict cannot therefore justify their commission by another. Similarly, as a peremptory norm of international law, the prohibition of genocide is absolute. Your Government’s obligations to prevent genocide are not abrogated by the serious breaches of IHL committed by Hamas on October 7 or by Hamas’ ongoing holding of hostages.

⁷³ Bosnia v Serbia, para 431.

⁷⁴ Vienna Convention on the Law of Treaties, 1969, article 26; Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, ICJ Reports 2022, 211, para 56 (with specific reference to article I of the Genocide Convention)

⁷⁵ Bosnia v Serbia, para 430.

⁷⁶ Bosnia v Serbia, para 430; International Commission of Jurists, Gaza/Palestine: States have a Duty to Prevent Genocide, 17 November 2023.

B. Australia's Capacity to Influence

In accordance with its duties under the Genocide Convention, the Australian Government must take immediate action to address the risk of genocide unfolding in Gaza, commensurate with its distinctive capacity to influence Israel.

Australia has a close relationship with Israel, described by the Department of Foreign Affairs and Trade (DFAT) as '*warm and close.*'⁷⁷ DFAT describes the relationship as consisting of '*significant people-to-people links and broad commercial engagement.*' Australia established diplomatic relations with Israel in 1949.

Australia also has a long history of engaging with UN processes. Australia was an original signatory to the Universal Declaration of Human Rights in 1948. In recent times, Australia has been a member of the Human Rights Council and actively participates in the Universal Periodic Review. As a leading proponent of human rights and UN processes, we have specific credibility that must be protected, and indeed requires us to take the actions set out in this letter.

For these reasons, Australia is in a position of influence to address the risk of genocide, and place pressure on Israel to end the atrocities and plausible genocide in Gaza.

⁷⁷ DFAT country briefing, Israel <https://www.dfat.gov.au/geo/israel/israel-country-brief>

Section 3: Ten actions the Australia must urgently undertake

We are concerned that your Government is not presently discharging its binding international obligations in relation to the Palestinian people in Gaza, including its obligations in respect of the risk of genocide. We also there are steps you could take in service of the objective of securing a lasting, just peace, a respect for human rights and security for all people in the region.

In order to properly meet those obligations, we call upon your Government urgently to take the following actions.

- 1. Continue to work actively and effectively to promote and secure a permanent ceasefire in Gaza and to secure the release of Israeli hostages held by Hamas in Gaza**

Rationale:

The ICJ's Provisional Order requires Israel to: "*take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group*".⁷⁸ All States' obligations to prevent genocide encompass these same measures. An immediate cessation of violence must be the first step in preventing the killing of members of the group and causing serious bodily and mental harm to members of the group contrary to Article II of the Genocide Convention.⁷⁹

At the time of writing, there has been no agreement for a permanent ceasefire. We remain concerned that any ceasefire may not be lasting and that your Government should, in any event, be dedicating itself to the promotion and protection of a lasting, just peace, the protection of human rights and security for all people in the region.

⁷⁸ South Africa v. Israel Provisional Measures Order of 26 January 2024, para 86 (1)

⁷⁹ Thus, the ICJ's 16 February 2024 decision emphasises that compliance by Israel with the Provisional Order requires "*ensuring the safety and security of the Palestinians in the Gaza Strip*": Decision of the Court on South Africa's request for additional provisional measures of 16 February 2024.

Mechanism:

Australia's position and influence in various international fora should be utilised to call for an immediate and permanent ceasefire.⁸⁰ We welcome your Government's initiative in publishing the Joint statement by the Prime Ministers of Australia, Canada and New Zealand in December 2023,⁸¹ and on 15 February 2024,⁸² and its vote in favour of Security Council Resolution 2728 on 25 March 2024. However, that Resolution was not for a permanent ceasefire, but a ceasefire for the month of Ramadan, which ended on 9 April 2024.

Much more needs to, and can be, done by the Australian government in discharging its binding legal obligations under the Genocide Convention.

- 2. Take all available measures to ensure safe access to and delivery of the essentials of existence and medical assistance to Palestinians in Gaza,⁸³ including confirmation that Australian funding to UNRWA will continue and increase with need;**

Rationale:

The effects of the total blockade and siege of Gaza imposed by Israel since 9 October 2023⁸⁴ are so severe that cessation of the immediate violence alone will not alleviate the risk of genocide. The effects of that blockade include the denial to the population of adequate food, power and water. Without access to these essentials of survival on a regular, sustained and massive scale, further deaths or serious bodily and mental harm will continue for the people in Gaza, as will the conditions of life calculated to bring about their physical destruction in whole or in part.

The effective entry and distribution of the means of existence to Palestinians in Gaza, and by extension the prevention of genocide, requires funding of UNRWA. As the UN Secretary-General has stated, UNRWA is the primary humanitarian agency working in Gaza, the "*backbone of humanitarian distribution in Gaza*" and "*no other organization would be able to replace*" its work in Gaza. "[T]he school system for the Palestinians is guaranteed by

⁸⁰ Genocide Convention, article VIII: "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."

⁸¹ Joint statement by the Prime Ministers of Australia, Canada and New Zealand, 13 December 2023.

⁸² See <https://www.pm.gov.au/media/joint-statement-prime-ministers-australia-canada-and-new-zealand-0>

⁸³ South Africa v. Israel Provisional Measures Order of 26 January 2024, para 68(4): "The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip".

⁸⁴ Amnesty International, 12.10.23, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israel-must-lift-illegal-and-inhumane-blockade-on-gaza-as-power-plant-runs-out-of-fuel/>

UNRWA, ... *the health system is guaranteed by UNRWA, ... vital conditions are guaranteed by UNRWA.*"⁸⁵ Over two million people depend on UNRWA for their survival. The agency is funded almost entirely by voluntary contributions upon which it relies to fulfil its mandate. The suspension of funding to UNRWA – or indications that future contributions will be suspended – will prevent it from doing its essential work and exacerbate the serious risk of genocide.

While we were significantly concerned with your Government's decision to suspend UNRWA funding on 27 January 2024, we acknowledge and welcome your Government's decision to restore funding to UNRWA on 15 March 2024.

However, much more needs to, and can be, done by the Australian Government in discharging its binding legal obligations under the Genocide Convention.

3. Impose sanctions upon individuals and entities who have made statements inciting genocide against Palestinians

Rationale:

The ICJ ordered Israel to "*take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip.*"⁸⁶ By imposing financial and/or immigration sanctions upon individuals who have incited the commission of genocide in Gaza, the Australian Government would deter further such incitement and thus be acting to prevent genocide in accordance with its binding legal obligations under the Genocide Convention.

Mechanism:

Your Government has at its disposal various legal powers to impose financial sanctions on designated persons for purposes including the interests of international peace and security and to promote the resolution of armed conflicts or the protection of civilians in conflict zones.⁸⁷

Your Government moreover has the power to impose immigration sanctions, or 'travel

⁸⁵ UN Secretary-General Antonio Guterres, 08.02.24, *Press Conference at UN Headquarters*, <https://press.un.org/en/2024/sgsm22130.doc.htm>

⁸⁶ *South Africa v. Israel* Provisional Measures Order of 26 January 2024, para 86(3)

⁸⁷ See, for example: Autonomous Sanctions Act 2011 (Cth); Autonomous Sanctions Regulations 2011 (Cth); Charter of the United Nations (Dealing with Assets) Regulations 2008.s

bans' restricting the movement of identified foreign national individuals to enter or transit through Australia.⁸⁸

Your Government has not applied sanctions against individuals, including senior members of the Israeli Government and military, responsible for the incitement of genocide in Gaza, as set out, *inter alia*, in the *South Africa v. Israel* Provisional Measures Order of 26 January 2024.

4. Impose bans upon Australians and any Australian-based organisations from funding illegal Israeli settlements in the occupied West Bank in violation of international law

Rationale:

Israel's illegal settlement enterprise in the occupied West Bank, and the associated settler violence impacting on communities in the West Bank, undermine the capacity for peace in the region, and contribute to the escalation of violence. We note Foreign Minister Penny Wong's comments on 10 April 2024 that "*A two-state solution is the only hope to break the endless cycle of violence.*" Israel's annexation policies, ongoing settlement expansion and settler violence is inconsistent with this policy at must be condemned in the strongest possible terms.

Mechanism:

We note that the UK Government has imposed financial and travel restrictions upon "*4 extremist Israeli settlers who have committed human rights abuses against Palestinian communities in the West Bank*"⁸⁹. The US Department of State has also imposed visa restrictions on settlers involved in violence.⁹⁰

Australia should follow the lead of its allies and visa restriction policy targeting individuals believed to have been involved in undermining peace, security, or stability in the West Bank, including through committing acts of violence or taking other actions that unduly restrict civilians' access to essential services and basic necessities. Immediate family members of such persons should also be subject to these restrictions on a discretionary basis.

88

⁸⁹ See announcement of 12 February 2024: <https://www.gov.uk/government/news/uk-sanctions-extremist-settlers-in-the-west-bank> and subsequent sanctions announced on 3 May 2024: <https://www.gov.uk/government/news/uk-sanctions-extremist-groups-and-individuals-for-settler-violence-in-the-west-bank>

⁹⁰ See <https://www.state.gov/announcement-of-visa-restriction-policy-to-promote-peace-security-and-stability-in-the-west-bank/>

We also note the comments of Julian Hill MP, calling for an investigation into whether the federal government had granted tax-deductible gift recipient status to any groups supporting West Bank settler activities.⁹¹ We endorse this call. Australia must impose bans upon Australians and any Australian-based organisations from funding illegal Israeli settlements.

5. Ensure a comprehensive, independent, Australian investigation into the death of humanitarian aid workers from World Central Kitchen including Australian Zomi Frankcom; and that actions are taken in response to the findings, including referring the incident and the situation in the Occupied Palestinian Territory to the International Criminal Court

Rationale:

Israel announced that it would investigate the deaths of Zomi Frankcom and her World Central Kitchen Colleagues. There are reports that the deaths did not result from a mistake but a lack of discipline and accountability within the Israeli military.⁹²

The report that was subsequently released by the Israeli military resulted in the sacking of two members of the military, and two other members were reprimanded.⁹³ However, Australian officials have reportedly been dissatisfied with the briefings given to date.

We welcome to the decision by the Foreign Minister to appoint Air Chief Marshal Mark Binskin to be a special adviser on Israel's response to the incident.⁹⁴ We encourage your Government to continue applying pressure on Israel and the IDF for genuine access and accountability so that the widespread concerns of Australians are properly addressed.

Mechanism:

Australia must ensure it reviews all evidence and the process for conducting the investigation to date. The Australian government must insist that a further investigation take place in the event that there are any concerns about its completeness or depth. Australia must continue to communicate with Israeli authorities that any deaths of aid workers are unacceptable. Australia must refer the incident and the situation in the Occupied Palestinian Territory to the

⁹¹ <https://www.theguardian.com/australia-news/2024/jan/15/labor-mp-urges-crackdown-on-australians-funding-israeli-settlements-in-west-bank>

⁹² Yaniv Kubovich, 'Israeli Army Sources: Gaza Aid Workers Killed Because 'IDF Officers on the Ground Do What They Want' Haaretz, 2 April 2024, <https://www.haaretz.com/israel-news/2024-04-02/ty-article/.premium/idf-sources-gaza-aid-workers-killed-because-officers-on-the-ground-do-what-they-want/0000018e-a06e-d9c2-afbe-a8fe319b0000>

⁹³ Andrew Tillett, 'Israeli officers fired over 'bungled' strike that killed aid workers,' Australian Financial Review, 5 April 2024 <https://www.afr.com/politics/federal/israel-briefs-australia-on-aid-workers-deaths-20240405-p5fhnl>

⁹⁴ See <https://www.foreignminister.gov.au/minister/penny-wong/media-release/appointment-special-adviser>

International Criminal Court where the Office of the Prosecutor has an open in the ‘Situation in Palestine’.

6. Call for the suspension of all military exports, including dual purpose supplies and services and aid exports to Israel while the risk of genocide in Gaza continues

Rationale:

The ICJ’s conclusions about South Africa’s claims in respect of the risk of genocide in Gaza has placed your Government on notice that any military aid (including dual purpose supplies and services) that Australia sends to Israel might be used in the commission of genocide in Gaza. The suspension of the provision of any military aid (including dual purpose supplies and services) to Israel in the circumstances is thus a “*means likely to deter*” and/or “*a measure to prevent*” genocide.

A number of countries have suspended arms transfers to Israel, including Belgium, Italy and Spain. A Dutch appeals court made a ruling in February ordering the government of The Netherlands to cease all export and transit of Lockheed Martin F-35 fighter jet parts to Israel within 7 days on the basis of the clear risk of violations of international humanitarian law by Israel in Gaza.⁹⁵ European Union officials have also made comments discouraging the export of arms exports to Israel.⁹⁶

While the Prime Minister and the Defence Minister have stated that “*there are no exports of weapons from Australia to Israel and there haven’t been for many, many years*”,⁹⁷ we note your Government has not ruled out the provision of dual purpose supplies and services and other technical assistance to Israel. The Defence and Strategic Goods List (DSGL) is a compilation of the military and commercial goods and technologies that Australia regulates. Part 2 of the DGSL lists “dual-use goods” – goods and technologies designed for civilian use, but which may also be used as military components, for example, computer chips, radios and other IT software and hardware.

⁹⁵ See: <https://www.reuters.com/business/aerospace-defense/dutch-court-orders-halt-export-f-35-jet-parts-israel-2024-02-12/>

⁹⁶ See: https://www.eeas.europa.eu/eeas/informal-foreign-affairs-council-development-remarks-high-representative-josep-borrell-press_en

⁹⁷ See: <https://www.pm.gov.au/media/radio-interview-abc-news-radio> and <https://www.minister.defence.gov.au/transcripts/2024-02-01/press-conference-melbourne#:~:text=Australias%20defence%20export%20control%20regime,Myanmar%20entities%20were%20announced%20today>

The Australian Government has approved 322 defence exports to Israel since 2017: it approved 49 permits for Israeli-bound exports in 2022 and 23 permits for Israeli-bound exports were approved in the first three months of 2023.⁹⁸

Importantly the Australian Government appears to be misinterpreting its obligations under the Arms Trade Treaty. The Department of Defence's Deputy Secretary of Strategy, Policy and Industry, Mr Hugh Jeffery, defined weapon as the following: "Under the UN definition, weapons are defined as whole systems, like armoured vehicles, tanks and combat helicopters. Paint and other items are not considered weapons, in and of themselves."⁹⁹ This appears to be a misreading of the Arms Trade Treaty which in Article 4 provides that the export of parts and components shall be subject to the same control system as 'conventional arms'. While it is unclear whether Australia has allowed any component parts of larger systems, such as computer chips, to Israel, it is a matter of public record, for example, that Australian parts and components are pivotal for the F-35 fighter jet. There are a number of countries that are exporting as third party countries some components like in fighter jets used by the IDF to bombard Gaza, for example — some of the chips that are built in Melbourne could be going to the Danish company that is then selling them on to Israel. It might be Australian companies may make components and then sell them to third party companies that then sell to the IDF.

However, international law is clear on this issue. The provision of any military aid (including dual purpose supplies and services) to Israel may render Australia and members of your Government complicit in genocide as well as serious breaches of IHL. Customary international law recognises the concept of '*aiding and assisting*' an international wrongful act.¹⁰⁰ A State is complicit in the commission of genocide if:

*"[I]ts organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the perpetrators of the criminal acts or to those who were on the point of committing them, enabled or facilitated the commission of the acts."*¹⁰¹

⁹⁸ See: <https://www.theguardian.com/world/2023/oct/24/australia-approved-322-defence-exports-to-israel-in-six-years-as-greens-fear-equipment-used-in-gaza-assault>

⁹⁹ Parliament of Australia, Senate, Foreign Affairs, Defence and Trade, Estimates, (14 February 2024) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F27711%2F0002;query=Id%3A%22committees%2Festimate%2F27711%2F0000%22>>.

¹⁰⁰ [Responsibility of States for Internationally Wrongful Acts](#), adopted by [United Nations General Assembly Resolution 56/83](#), 12 December 2001; See also: [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\)](#), Judgment of 26 February 2007, I.C.J. Reports 2007 ("Bosnia v Serbia"), para 420.

¹⁰¹ Bosnia v Serbia, para 432.

On 23 February 2024, 34 UN experts called for the immediate cessation of weapons exports to Israel, including export licences and military aid, observing as follows:

“Such transfers are prohibited even if the exporting State does not intend the arms to be used in violation of the law – or does not know with certainty that they would be used in such a way – as long as there is a clear risk....

*The need for an arms embargo on Israel is heightened by the International Court of Justice’s ruling on 26 January 2024 that there is a plausible risk of genocide in Gaza and the continuing serious harm to civilians since then”, the experts said. The Genocide Convention of 1948 requires States parties to employ all means reasonably available to them to prevent genocide in another state as far as possible. “This necessitates halting arms exports in the present circumstances”.*¹⁰²

On 5 April 2024, the UN Human Rights Council passed a resolution that called for the cessation of arms transfers to Israel:

12. Recognizes that the grave violations of multiple peremptory norms by Israel constitute a threat to international peace and security and result in grave breaches and human rights abuses, and calls upon all States to ensure that their arms exports do not contribute to or benefit from this unlawful situation;

*13. Calls upon all States to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel, the occupying Power, in order to prevent further violations of international humanitarian law and violations and abuses of human rights, and to refrain, in accordance with international norms and standards, from the export, sale or transfer of surveillance goods and technologies and less-lethal weapons, including “dual-use” items, when they assess that there are reasonable grounds to suspect that such goods, technologies or weapons might be used to violate or abuse human rights, and recalls the order of the International Court of Justice of 26 January 2024, determining that there is a plausible risk of genocide in Gaza.*¹⁰³

Mechanism:

The Australian Government should immediately suspend any and all military aid (including dual purpose supplies and services) to Israel, including transfers to Israel.

The Albanese government should provide a full transparent accounting to the Australian people of what support, direct or indirect, Australians (government, corporate or individuals), are

¹⁰² See: <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>

¹⁰³ UN Human Rights Council, ‘Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice’ UN Doc A/HRC/55/L.30
<<https://www.un.org/unispal/document/human-rights-situation-in-the-opt-obligation-to-ensure-accountability-and-justice-end-to-arms-transfer-human-rights-council-draft-resolution/>>.

providing and have provided to Israel and the IDF since 7 October 2023 through, inter alia, the export licence scheme.

7. Call for a suspension of intelligence sharing with the Israeli Defence Force via Pine Gap Joint Defence Facility

Rationale:

There have been credible reports of the use of Artificial Intelligence by the Israeli military in target selection. We refer in particular to the use of the Lavender system, which generates a list of targets using a variety of personal information and military data, including “*visual information, cellular information, social media connections, battlefield information, phone contacts, [and] photos.*”¹⁰⁴ Reports suggest that there is no independent or real time verification of this data, but instead bombing campaigns are undertaken by the Israeli military of homes and entire buildings associated with the target.

Based on this reporting, it appears that there is no attempt at compliance with IHL by the Israeli military, and there is an almost complete failure to apply the necessity and proportionality tests. This is a highly alarming development in the practice of warfare.

Mechanism:

Australia shares intelligence with the United States via the facility at Pine Gap in the Northern Territory with ‘full knowledge and concurrence.’ In circumstances where there is a risk that such intelligence will be shared by the US with Israel,¹⁰⁵ and subsequently used in Lavender and associated systems, Australia should suspend all sharing until it can be satisfied that this intelligence is not being used in violations of IHL.

8. Cancel of all defence contracts with any Israeli defence contractors involved in Gaza such as Elbit Systems and cancellation of any arms purchases/imports from Israel while the risk of genocide in Gaza continues

Rationale:

Israel has not ratified the Arms Trade Treaty, which prohibits the sale of weapons at risk of being used in genocide and crimes against humanity. Australia has previously purchased arms

¹⁰⁴ Yuval Abraham, ‘‘Lavender’’: The AI machine directing Israel’s bombing spree in Gaza,’ 972 Magazine, 3 April 2024, <https://www.972mag.com/lavender-ai-israeli-army-gaza/>

¹⁰⁵ Tyler McBrian, ‘U.S. Intelligence Sharing With Israel Deserves the Same Scrutiny as Arms Transfers,’ 14 December 2023, Lawfare, <https://www.lawfaremedia.org/article/u.s.-intelligence-sharing-with-israel-deserves-the-same-scrutiny-as-arms-transfers>

from Israel including 10 Heron drones from the Israeli state owned Israel Aerospace Industries (IAI).¹⁰⁶

Israeli arms manufacturer and defence contractor, Elbit Systems and its Australian subsidiary, Elbit Systems of Australia (ELSA), is a branch of Israel's largest drone manufacturer whose weapons have been used to kill civilians and an Australian citizen in Gaza.¹⁰⁷ According to Database of Israeli Military and Security Export (DIMSE), Elbit provides up to 85% of the land-based equipment procured by the Israeli military and about 85% of its drones.¹⁰⁸

Elbit Systems is the manufacturer of the Hermes 450 drone which was reported to have killed Australian Zomi Frankcom and her aid worker colleagues from World Central Kitchen.¹⁰⁹

We note that in December this year, your Government awarded a fresh defence contract worth \$917 million to Elbit Systems for which the company confirmed it will provide "advanced protection, fighting capabilities and sensors" for new Korean-designed Infantry Fighting Vehicles (IFVs) to be constructed in the Victorian electorate of the Defence Minister.¹¹⁰ Following the ICJ ruling of plausible genocide on 26 January 2024, Japanese company, Itochu, ended its cooperation with Elbit Systems.¹¹¹

We note that the *UN Guiding Principles on Business and Human Rights*, provide *inter alia* that:

“States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”

Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses... ”¹¹²

¹⁰⁶ See: <https://dronewarsuk.files.wordpress.com/2014/01/israel-and-the-drone-wars.pdf> and

¹⁰⁷ See: <https://www.aljazeera.com/features/2023/11/17/israels-weapons-industry-is-the-gaza-war-its-latest-test-lab>

¹⁰⁸ See: <https://www.aljazeera.com/features/2023/11/17/israels-weapons-industry-is-the-gaza-war-its-latest-test-lab>

¹⁰⁹ See: <https://www.sbs.com.au/news/article/does-australia-send-weapons-to-israel-heres-what-you-need-to-know/1ibxf74e>

¹¹⁰ See: <https://www.abc.net.au/news/2024-02-28/israeli-weapons-company-awarded-australian-army-contract/103519558>

¹¹¹ <https://www.reuters.com/business/japans-itochu-end-cooperation-with-israels-elbit-over-gaza-war-2024-02-05/>

¹¹² See: https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

We further note that the Australian Government co-sponsored the resolution at the United Nations to adopt the *UN Guiding Principles on Business and Human Rights*.

Mechanism:

The Australian government should immediately suspend all contracts and commercial relationships with Israeli defence contractors involved in Gaza and the Occupied Palestinian Territory such as Elbit Systems and cancel any arms purchases/imports from Israel and undertake a full audit of IHL and international human rights law compliance by Elbit Systems and make those results public.

9. Significantly increase the categories of humanitarian visas for Palestinians in Gaza for permanent resettlement in Australia;

Rationale:

We note the reports of over 70 people who had to cancel or postpone flights due to the cancellation of their visas and further reports of 160 people refused visas in the first three months of the war.¹¹³ We reiterate the concerns raised by civil society organisations, including the Refugee Council of Australia, about the cancellations of visas for people fleeing the conflict.¹¹⁴

We reiterate the need for Australia to provide a timely, fair and accessible approach to assisting people fleeing conflict.

Mechanism:

Australia must significantly increase the availability of visas for people fleeing the conflict, and refrain from any further cancellations without a just cause and a provision of procedural fairness.

10. Commit to investigating the conduct of any Australian citizens or residents who have travelled to Israel to serve in the IDF since 7 October 2023 for possible

¹¹³ Paul Karp and Daisy Dumas, 'Palestinians were refused Australian visitor visas due to concerns they would not 'stay temporarily,' The Guardian, 16 April 2024 <https://www.theguardian.com/australia-news/2024/apr/16/palestinians-were-refused-australian-visitor-visas-due-to-concerns-they-would-not-stay-temporarily>

¹¹⁴ Refugee Council of Australia 'Our Letter to Ministers regarding the cancellation of visas for Palestinians from Gaza' 18 March 2024 <https://www.refugeecouncil.org.au/our-letter-to-ministers-regarding-the-cancellation-of-visas-for-palestinians-from-gaza/>

atrocities crimes including pursuant to Chapter 8, Division 268 of the *Criminal Code Act 1995* (Cth).

Rationale:

Following the establishment of the International Criminal Court, the Australian Government amended the *Criminal Code Act 1995* (Cth) 1995 to include “Offences against humanity and related offences”.¹¹⁵ Divisions 268 provides jurisdiction to Australian law enforcement to investigate and charge international crimes that occur offshore, including: war crimes; crimes against community and genocide.

Although Israel does not disclose official statistics of the numbers of foreign nationals who are serving in the IDF, in December 2023 it was reported that there could be up to 1000 Australians serving in the IDF or as active reservists.¹¹⁶ Considering the International Court of Justice’s findings in respect of genocide as well as evidence that suggests possible war crimes committed by the IDF in Gaza and the West Bank, it is imperative that the Australian government commits to investigating the conduct of any Australian citizen or resident who has travelled to Israel to serve in the IDF since 7 October 2023.

Mechanism:

The Australian Government must ensure that those returning from Gaza and the West Bank who have served in the IDF since 7 October 2023, are investigated and charged if appropriate under the *Criminal Code Act 1995* (Cth).

¹¹⁵ Higgins Chambers, ‘Australians at risk if they serve in the IDF’ <https://www.higginschambers.com.au/australians-at-risk-gaza/>.

¹¹⁶ Australian Centre for International Justice, ‘Letter: Australia should investigate citizens fighting in the IDF,’ 22 December 2023 <https://acij.org.au/letter-australia-should-investigate-citizens-fighting-in-the-idf/>.