

*We are Australian Christians who seek lasting
peace for the people of Palestine and
Israel. We aim to equip and inform
Australian churches, inspired by
Christ's vision for universal reconciliation*



Submission to the Department of Foreign Affairs and Trade by the Palestine Israel Ecumenical Network (PIEN) on a possible Australia-Israel Free Trade Agreement

Introduction

1. On behalf of the Australian Government and its pursuit of new trade opportunities, the Department of Foreign Affairs and Trade (DFAT) is undertaking a feasibility study on how best to strengthen trade and investment with Israel, possibly through a Free Trade Agreement (FTA). As part of that study, DFAT has invited submissions from interested businesses, groups and individuals, and PIEN is pleased to make this submission.
2. As its logo (above) shows, PIEN is not primarily a trade related organisation, except to the extent that it recognises the actual or potential links between trade and investment on the one hand and real, lasting peace between Palestine and Israel on the other hand. This submission should be understood in that context.
3. Importantly, PIEN also recognises that the longstanding conflict between Palestine and Israel is not one of equal parties. In all respects – politically, economically, socially and militarily – Israel is by far the dominant party. This has resulted in Israel's emergence as a first world country – highly educated and technically skilled (especially in defence and intelligence related areas) and geographically in total control – while, comparatively, most Palestinians suffer the exigencies of third world conditions, largely forced upon them by Israel.
4. For that reason, while Palestinian resistance has not been without periodic acts of violence (for which Israel has exacted massive retribution many, many times, not only in the Gaza Strip), it is PIEN's firm position that Australia's policy approach (including in relation to a possible FTA and related matters) must go beyond the normal considerations that would otherwise apply and take full account of the actual situation in Israel and Palestine. In this submission, PIEN is therefore unashamedly more critical of Israel in assigning responsibility for current circumstances, and their implications for a possible Australia-Israel FTA, than of Palestine.¹
5. Accordingly, PIEN recognises two major impediments to peace between Palestine and Israel, which it argues must be taken into account in considering a possible Australia-Israel FTA:
 - Israel's occupation of Palestinian land in the West Bank; and
 - Israel's effective blockade of the Gaza Strip
6. Occupying states, such as Israel, must comply with the terms of the Fourth Geneva Convention – to which both Israel and Australia are party. Much has been written elsewhere about Israel's close-to-total non-compliance. Suffice it, for brevity, to quote from Amnesty International: *'Israel ratified the Fourth Geneva Convention in 1951. Almost every element of Israel's occupation of the Palestinian Territories violates a provision of the Fourth Geneva Convention. Many of Israel's violations are grave breaches of the Convention and are considered 'War Crimes' under International Law.'*

Addressing Specific Issues on which DFAT is Seeking Perspectives

Tariff and non-tariff barriers to goods and services trade

7. PIEN has no detailed views under this largely technical heading, except for one which concerns Israel's product labelling. Goods and services produced in or by persons or entities located in the occupied territories, which include all of the West Bank, including East Jerusalem, legally cannot be labelled as *'product of Israel'*,

¹ PIEN notes that Australia is one of the few UN member states not to have formally recognised a *'state of Palestine'*. A majority of UN member states have done so. PIEN notes that, to the extent Palestine has difficulty in meeting all the conditions traditionally expected for a state to be so recognised, that inability is almost entirely due to Israeli preventative action. In particular, no Israeli proposal for a so-called *'peace'* between them could possibly have been accepted as fair and just by Palestinian negotiators. Arguably the *'best'* of these *'deals'* – the Oslo Accords of 1993 and 1995 – has resulted in the current conflict.

yet many are. Australia should not be party to such deception, and any FTA must deal comprehensively and effectively with this ‘truth in labelling’ issue. In particular, Australia must ensure that imported goods or services purporting to be from Israel and so labelled do not, in whole or in part, include goods or services originating or derived from products or services sourced from the West Bank, including East Jerusalem, or from the Gaza Strip. Settlement goods or services necessarily must be included in this condition and never labelled as products of Israel.

8. In this context, Israel’s deception regarding agricultural products continues to have a longstanding egregious impact for Palestinian farmers, and represents for them a seriously damaging non-tariff barrier. As long ago as 2013, Palestinian farming and civil society organisations were appealing to the international community to launch campaigns to end trade by Israeli agricultural companies in produce from illegal Israeli settlements. That Israeli trade plays a key role in the ongoing destruction of Palestinian agriculture, dispossession of Palestinian farmland and theft of natural resources. Palestine foregoes more in lost agricultural revenue than it receives from all its international aid, with the negative effect of Israeli policies which so damage Palestinian agriculture in the occupied Palestinian territories resulting in a loss of about 10% of Palestinian GDP and more than 100,000 Palestinian jobs. Israeli agricultural export companies such as Mehadrin and Hadiklaim are among the primary beneficiaries of this destruction of Palestinian agriculture.

Barriers to Investment

9. Principle Two of the United Nations Global Compact calls on all businesses to ‘*ensure that they are not complicit in human rights abuses.*’ To support the operation of this principle in the Israel-Palestine context, the United Nations Human Rights Council (UNHRC) recently published an initial list of companies, more than one hundred so far, the majority being Israeli companies, that are complicit in the building and maintenance of (internationally illegal) Israeli settlements in the occupied Palestinian territories. The UNHRC media release and internet link to its report on this matter are at [Attachment 1](#) to this submission.

10. From the perspective of an FTA, investment contrary to the UN Global Compact and in explicit or implicit support of Israeli settlements has a two-way implication. Australian companies and their related business entities should not invest in, nor accept investment from, any of the UNHRC-listed Israeli companies. Since that list is far from complete, it can be expected that other companies will be added to it. This is not a trivial matter and the Australian framers of a possible Australia-Israel FTA should exercise extensive care to ensure compliance.

Specific Trade and Investment Challenges

11. PIEN notes DFAT’s reporting that in 2019-20 Israel was Australia’s 45th 2-way trading partner and 50th ranked export market, and that in the DFAT publication of Australia’s ‘*Trade and Investment at a Glance – 2020*’, Israel is not mentioned at all. Given that, and Australia’s current pre-occupation with some ten other FTAs (such as the ASEAN-Australia-New Zealand FTA, the China-Australia FTA, the Regional Comprehensive Economic Partnership, etc), and DFAT’s current feasibility study related to the European Free Trade Association, PIEN questions the need for any priority and expert trade-related resources to be allocated to a possible Australia-Israel FTA.

12. It is, moreover, clear from DFAT’s description of existing trade-related links to Israel (including the Australian Trade and Defence Office in West Jerusalem, the 2019 Tax Treaty, the 2016 Tel Aviv Landing Pad, the 2017 Technological Innovation Agreement and the MOU on Cyberspace Cooperation), that Australia’s central motivation *vis-à-vis* Israel (notwithstanding the very low overall levels of bilateral trade between them) relates to trade and investment in the specialised areas of national security, defence and cyber security – all of which are already well catered for. PIEN therefore questions the need to extend those arrangements through an FTA when to do so risks violation by Australia of the various principles and Australian policy objectives this submission discusses – all the more so when it is acknowledged that Israeli expertise in these areas has been largely developed to sustain the occupation of the Palestinian territories and the Gaza blockade, and violate Palestinian human rights.

13. One such example relates to Iran. Australia has sustained a long term, effective political and trading relationship with Iran, including, *inter alia*, support for the Joint Comprehensive Plan of Action (JCPOA) on nuclear controls, which Israel bitterly opposed and sought to prevent. With the new US (Biden) administration seeking to overturn the Trump administration’s withdrawal from the JCPOA, the reinstatement of which is clearly in Australia’s strategic interest, the possible establishment of an Australia-Israel FTA is likely to damage Australia-Iran relations at just the wrong time.

Trade and Investment Opportunities Between Australia and Israel, Including Sector-specific Opportunities

14. PIEN has strong reservations about the merit and ethical justification of furthering Australia-Israel trade through an FTA, because of Israel's occupation of the Palestinian territories and blockade of the Gaza Strip. On the other hand, Australian trade and investment opportunities in the *region* would be very substantially augmented were Australia's trade and investment extended to all of historic (formerly British-mandated) Palestine, including the West Bank and Gaza.

15. There are certainly serious impediments to this in the foreseeable future, principally Israeli opposition. However, consistent with the Australian Government's support for a two-state solution to the Israel-Palestine conflict, there are measures Australia should explore that, over time, could open up this region to new trade and investment opportunities. These include preconditions for establishing an Australia-Israel FTA, such as:

- Providing for Australian access for trade and investment in the whole region on equitable terms for both Israeli and Palestinian business entities;
- Removing current Israeli prohibitions on various international and Palestinian business entities, such as Airbnb, PayPal, and certain banking and telcom/internet companies, etc, from operating in the West Bank and Gaza on equitable terms;
- Opening up the whole region to equitable operation in the tourism sector by Palestinian companies. At present, tourism in the so-called Holy Land is dominated by Israeli companies, with significant adverse implications for Palestinian/Arab tourist visits to and from the region.

Potential Benefits and Costs of Pursuing an FTA with Israel

16. PIEN acknowledges the claimed benefits from trade with and investment in Israel, but as stated above believes that existing arrangements which focus on defence and security are more than sufficient in the context of the relatively low overall ranking Australia accords to imports from and exports to Israel.

17. As to costs, some have already been described above, including the potential such an FTA would have for damaging Australian trade, investment and general relations with Iran, and the possibility of failure to comply with UN human rights sanctions against UNHRC-listed Israeli companies if investments are made in or from those companies. Other likely costs include:

- Possible significant damage to Australian trade, investment and general relations with at least some predominantly Islamic/Arab countries currently ranked well above Israel, such as Indonesia, Malaysia and the Gulf and African Arab states.
- The loss of Australia's domestic and international reputation as a country which (repeatedly) claims the vital importance it attaches to the observance of the rule of law. Currently, Australia emphasises its grave concern for non-adherence to the rule of law in countries such as the Russian Federation, Myanmar (both in terms of mistreatment of Rohingyas and the denial of rights arising from the current military coup), North Korea and China. Yet it never publicly holds Israel to account for its systematic violation, in relation to Palestinians, of the Fourth Geneva Convention, UN Security Council resolutions and other human rights conventions and protocols (including, *inter alia*, the International Convention on the rights of the Child²). By adopting a 'business as usual' approach to its relations with Israel – including on trade and investment – Australia effectively becomes complicit in Israel's continued aggression and human rights violations against the Palestinians, contrary to the rule of law.
- An expansion, via an FTA, of major military weapons or equipment production in Australia or Israel could threaten social and political stability in the Middle East, particularly given Israel's likely nuclear weapons capability and inventory. Australia's adherence, as a party, to the nuclear non-proliferation treaty – which Israel has refused to join - and Australia's longstanding policy of calling on all states to join the treaty and accept inspections by the International Atomic Energy Agency, limits the nature and extent of further bilateral trade and investment in militarily sensitive areas which risk furthering the pursuit of peace.

² International human rights organisations frequently raise the abuse of children detained by the Israeli military occupation forces. The Israeli government applies military law to all Palestinians, including children, who can be detained without charge for any alleged offence. Up to 700 minors are arrested annually, and many juveniles are held in solitary confinement, without access to family or legal representation. The Australian Government needs to protest against these infringements of international law in any negotiations with their Israeli counterparts and ensure that significant agreements, such as a possible FTA, are conditional on Israeli compliance, *inter alia*, with the International Convention on the Rights of the Child.

More General Issues Associated with a Possible FTA

18. There are several issues which, while not directly associated with a possible FTA, have the potential to significantly affect the timing and nature of it. Despite there having been four national elections in Israel in the past two years – each with indeterminate outcomes, and the likelihood of a fifth election soon – certainty and stability in Israel’s Government have been seriously lacking. Moreover, the Israeli Prime Minister, Netanyahu, is currently before Israeli courts on serious charges of corruption. In these circumstances, now is not the time to be considering major new policy initiatives, such as an FTA.

19. In addition, the International Criminal Court (ICC) has moved forward, despite the protests of Australia and some other countries, in running a case under the Rome Statute against possible war crimes, crimes against humanity and the crime of aggression, in the West Bank and Gaza. The case is primarily against Israelis but also, potentially, against some Hamas leaders. Palestinian authorities have welcomed this matter proceeding, while Israel is doing all it can to stop it. By siding, in effect, as it has, with Israel, Australia risks international criticism, whether the case proceeds or not –all the more so if it does proceed and verify that Israelis have indeed committed these international crimes.

20. The Australian Government continues, regrettably at reduced levels, to support humanitarian programs in the West Bank and Gaza, including through the United Nations Relief and Works Agency (UNRWA) and through several Australian NGOs, including World Vision. Almost five years ago, Israel arrested and imprisoned Mohammad el Halabi, World Vision’s Gaza representative on charges of misappropriation of millions of dollars. He has been subjected to more than 150 court appearances and enormous Israeli pressure to plead guilty, despite both World Vision and an Australian Government investigation finding no evidence for the wrongdoing Israel is still asserting. Since justice delayed is justice denied, and in the light of World Vision and Australian Government assessments, the Government’s reluctance to make public any diplomatic representations (in contrast to its very public position on the recent Myanmar junta’s treatment of Australian nationals) is inexcusable and another (valid and concerning) reason for loss of international reputation. As a constructive step, the Australian Government should reinstate its financial support for World Vision’s important humanitarian work in Gaza and make the strong representations at the highest possible level for the release and rehabilitation of Mr Halabi.

Other Mechanisms to Strengthen the Bilateral Trade and Investment Relationship Beyond the Negotiation of an FTA

21. On that issue, this submission refers to paragraphs 14 and 15 above, which outline PIEN’s views on the desirability of extending Australia’s current and potential trade and investment relationship with Israel to the whole region, west of the river Jordan, formerly designated British-mandated Palestine – essentially what is now Israel, the West Bank (including East Jerusalem) and the Gaza Strip.

Status of PIEN’s Submission

22. PIEN has no objection to this submission being made public as per the conditions in DFAT’s invitation to submit comments on the feasibility study.

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**UN Human Rights Office Issues Report on Business Activities
Related to Settlements in the Occupied Palestinian Territory**

GENEVA (12 February, 2020) – The UN Human Rights Office on Wednesday issued a report on business enterprises involved in certain activities relating to settlements in the Occupied Palestinian Territory, in response to a specific request by the UN Human Rights Council, contained in a March 2016 resolution, that mandated the Office to produce a database of business enterprises involved in such activities.

In an interim report presented to the Human Rights Council in March 2018 by the then High Commissioner, Zeid Ra'ad Al Hussein, the UN Human Rights Office noted it had reviewed information that was publicly available, or had been received from a variety of sources, about an initial 307 companies. After further research, the total number reviewed increased to 321. Of these, a total of 206 companies were considered for further assessment.

The report released on Wednesday sets out conclusions following further communications with business entities, as well as a thorough review and assessment of all information available. It identifies 112 business entities which the UN Human Rights Office, on the basis of the information it has gathered, has reasonable grounds to conclude have been involved in one or more of the specific activities referenced in Human Rights Council resolution 31/36.

Of the 112 business entities identified in the report, 94 are domiciled in Israel and 18 in six other States. During the complex process of drawing up the database, the Office consulted the UN Working Group on Business and Human Rights, and held widespread discussions with numerous States, civil society organizations, think tanks, academics and others, as well as having extensive interactions with the companies themselves.

The report makes clear that the reference to these business entities is not, and does not purport to be, a judicial or quasi-judicial process. While the settlements as such are regarded as illegal under international law, this report does not provide a legal characterization of the activities in question, or of business enterprises' involvement in them. Any further steps with respect to the continuation of this mandate will be a matter for the Member States of the Human Rights Council, which will consider the report during the Council's next session, beginning on 24 February.

"I am conscious this issue has been, and will continue to be, highly contentious," said Michelle Bachelet, the current High Commissioner for Human Rights. "However, after an extensive and meticulous review process, we are satisfied this fact-based report reflects the serious consideration that has been given to this unprecedented and highly complex mandate, and that it responds appropriately to the Human Rights Council's request contained in resolution 31/36," Bachelet said.

ENDS

To view the full report, go to <https://undocs.org/en/A/HRC/43/71>