



## National Security College

### POLICY OPTIONS PAPER

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## The citizen as enemy combatant: dealing with foreign terrorist fighters

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### Key points

- > Foreign terrorist fighters are a complex problem: traitor, invader, child soldier, war criminal, 'jihad by family'. Some are both perpetrators and victims of terrorism.
- > Prosecution is problematic because it's hard to get evidence, and foreign fighters aren't returning. If brought home to face justice, their presence may increase the terrorist threat.
- > The public debate incorrectly distinguishes between combatants and others, especially women, and oversimplifies how authorities deal with them. This feeds the terrorist narrative.
- > Australia has a comprehensive approach to dealing with foreign terrorist fighters but this is not communicated well publicly.

### Policy recommendations

- > Australian counter-terrorism officials should publicise Australia's approach to foreign fighters and use case studies to illustrate the range of roles, including women and children, and the individual nature of each case.
- > The Australian Government should explain how Australians may be prosecuted by countries where crimes were committed, and also publicise Australia's support for international efforts including the United Nations Investigative Team examining IS war crimes, and the International Criminal Court.
- > Commonwealth, state and territory governments should provide anonymised case studies on disengagement programs, including how these would work for foreign fighters and their dependents who might return to Australia.

### Foreign terrorist fighters

Salafi-jihadi terrorist movements experienced a boon in the fallout from the Arab Spring, with the so-called 'Islamic State' (IS) in particular establishing control over substantial territory and populations in Iraq and Syria. It's estimated these groups attracted more than 40,000 foreign recruits.

While it's not unusual for foreign irregulars to volunteer for conflict, the very high numbers,

and the ongoing threat posed by Islamist terrorism, saw the international community—including Australia—commit to take action against foreign terrorist fighters. This includes stopping people from travelling to join terrorist organisations, preventing financial and other support, and prosecuting foreign fighters and supporters.

Global efforts have seen IS lose its territory in the Middle East and have reduced the group's

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numbers to an estimated 14-15,000, including around 3000 foreigners. The focus now is to track, prosecute, rehabilitate and reintegrate foreign fighters. Some have dispersed to other conflict zones or safe havens, making them difficult to find.

Despite strong international will to deal with foreign fighters, putting this into action has proven difficult. The UN Counter Terrorism Committee says few countries have made substantial progress, but Australia, the United States and Canada are amongst those that have. The committee observed such countries were able to develop complex and nuanced approaches due to the strength of their democratic governance, civil society and integrated migrant communities.

The path is not easy. While bringing suspected terrorists to justice in their home countries appears the right thing to do, issues include:

- Where the individual is, whether they're in a conflict zone, detained by another authority or returned to their home country.
- The future threat they might pose.
- What criminal charges may be laid, and where.
- What evidence is available.
- Any extenuating circumstances, such as being a minor or a hostage.

High-profile cases illustrating these complexities are discussed further below.

### Australia's approach to foreign terrorist fighters

Around 230 Australians have travelled to the Middle East to join IS and other Islamist terrorist groups. Authorities estimate around 100 are still in the region; the others having been killed or captured, or moved elsewhere. Some children were also taken to the conflict zone by their parents, while others were born there to Australians.

Australia has comprehensive legislation, including dedicated foreign fighter laws, developed in a bipartisan and considered manner since 2001, and subject to regular review and external scrutiny. The 'declared areas' offence addresses the difficulty of obtaining evidence from the conflict zone in a creative yet sensible way, by specifying that being in a designated area under IS control is

sufficient to prove someone is a foreign fighter. Only Mosul in Iraq and Raqqa in Syria have been 'declared'.

A clear definition in the Criminal Code covers the full suite of direct and indirect support for terrorism. It includes advocating, recruiting and providing other support, and is not limited to those who undertake direct action roles. This accords with international norms. Australia is also party to international arrangements to share information and to bring foreign fighters to justice.

For suspected foreign fighters seeking to return to Australia but not yet charged, there are new mechanisms to manage their return—a sensible move to protect the public from a potential threat. For children of foreign fighters, there are arrangements for individualised case management once they are back, focussed on support and reintegration. These mirror arrangements already in place to assist deradicalisation and disengagement.

These laws and policies are wide-ranging and reasonable, and the review and oversight mechanisms provide scrutiny and balance.

### All good in theory...

While Australia's approach is good in theory, complexities remain.

Few Australian foreign fighters have elected to come home to face justice, and none to date were involved with IS. The first successful prosecution relating to IS foreign fighters involved an Australian-based recruiter. It's been over two years since the declared areas legislation was passed, but there have as yet been no charges. Citizenship loss on terrorism grounds was enacted in late 2015, with 12 people subject to this to date, including IS fighters.

Public perception—and official rhetoric—on Australia's approach to foreign fighters appears to overly focus on citizenship loss, with little attention given to the full range of efforts. This is problematic on a range of fronts. First, in terms of overall impact on terrorism, citizenship loss could only apply to the small proportion of Australian terrorists who are dual citizens. Secondly, loss of citizenship can be interpreted as shirking Australia's responsibility both for its citizens and for bringing terrorists to justice. Third, the high profile of this tool has detracted from other mechanisms. Combined,

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this presents a flawed view of Australia's ethical and legal approach to dealing with terrorism, which feeds the terrorist narrative.

### A case (or two) in point

As IS's occupation of parts of Iraq and Syria has come to an end, some foreign fighters are emerging in refugee camps, prisons, and the media.

Australian Zaynab Sharrouf was taken to the conflict zone in 2014 by her parents when she was 13. She later appeared as a propagandist for IS, posting photos of herself and other veiled women posing with guns and a BMW celebrating their 'luxury jihad' life in Syria. She also posted messages supporting IS atrocities, including those against Yazidis, the imposition of the IS version of 'sharia' law, and celebrating the activities of her terrorist father and first husband. Now 17, she is widowed, reportedly married for a second time to another fighter, has two children and is pregnant.

The nature of Sharrouf's recruitment to IS complicates both her liability and her prospects for deradicalisation. While she did not independently choose to be a foreign fighter, she has been radicalised and for a time played a high-profile role supporting IS. She is well-known as part of Australia's most infamous terrorist family, and could continue to have drawing power amongst terrorist supporters. Sharrouf's is a complex case: both a victim and supporter of terrorism; the child and wife of IS fighters, mother to IS children, and a leading and influential member of IS's Australian cohort.

Zehra Duman voluntarily left Australia to join IS in 2014 as an adult and recently appeared in media from a refugee camp in Syria. Duman had a strong social media profile as an IS recruiter, including advocating for women in particular to travel to the Middle East to join IS and, if unable to do so, to undertake attacks on Australia and other Western countries. Her prolific Twitter and Ask.fm profiles eulogised her 'martyred' IS fighter husband, and justified IS atrocities. A close friend of the Sharroufs, she also propagandised a glamorous and powerful role for women in IS as wives, widows and mothers creating the 'caliphate'.

Duman benefited from IS's occupation and was a high-profile propagandist recruiter. She presents herself, however, as a passive wife

of an IS fighter, to be pitied due to her current uncomfortable situation in a refugee camp, and not responsible for anything IS has done.

These cases demonstrate the challenges of dealing with foreign fighters. And these complicating factors are playing out in public.

Both Duman and Sharrouf benefit from a gendered representation of their roles in IS—and for Sharrouf being a child—emphasising passive roles as 'mere' wives and daughters rather than foreign fighters. While this approach is not uncommon, it misrepresents the important and active role of women in terrorist groups, and their culpability.

More broadly, the unconventional role of terrorists being combatants and supporters in a war has blurred perceptions of culpability—and that benefits terrorist propaganda and capability.

Neither has denounced IS or taken responsibility for their actions and both are in their present difficult situations only because IS has been territorially defeated. It appears unlikely that they'd choose to disown the group and its ideology, and there were no reports of either seeking to leave IS prior to its defeat in Syria.

While both meet international and Australian definitions of terrorists due to their known actions with IS, they are in an active conflict zone and not accessible to Australian authorities. Collecting evidence for prosecution is problematic as they've been living in IS territory for years, although the 'declared areas' offence could apply and their online presence provides some supporting information. And under Australian law, terrorism charges can be laid against 14 year olds and over, with additional protections.

### "I was just a guard..."

The loss of IS territory has seen many foreign fighters in refugee camps or captivity presenting themselves as merely spectators or low-level personnel, part of a larger machine of human rights violations and warfare, but not active players—and therefore not responsible. New Zealander Mark Taylor has, like many others, declared he 'was only a guard, not a fighter'—taking no responsibility for his ongoing commitment to IS or the actions he undertook, unaware of the principle of 'superior orders', confirming individual

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responsibility for illegal actions even if these followed higher command. Media coverage of some IS members in refugee camps following the IS defeat at Borghuz similarly removes culpability by describing them as ‘fleeing’ IS, rather than as part of a defeated terrorist group.

It’s vital to the global counter-terrorism effort that IS members and supporters face the consequences of their actions, and that this is demonstrably well-known. They must also be provided the opportunity—should they wish—to disengage from terrorism and reintegrate into society. This supports the legal principle of just punishment while providing general deterrence.

### The way ahead: getting the message out

Australia should publicise its comprehensive arrangements for dealing with foreign terrorist fighters, highlighting plans to prosecute returning fighters, and supporting their disengagement from terrorism—while cautioning there are no guarantees they’ll turn away from terrorism and crime. Authorities should highlight both the range of roles undertaken by IS members, including women and children, and the individualised nature of each case, requiring tailored responses.

As with other crimes committed overseas, justice may be served outside Australia. Authorities should explain how Australian terrorists may be prosecuted by countries where the crimes were committed, and that Australia assists these and broader efforts, such as the UN Investigative Team examining IS war crimes, and the International Criminal

Court. Public statements should include illustrative case studies.

Terrorism disengagement programs in each state and territory provide a useful basis for similar casework to assist foreign fighters and their dependents who might return to Australia. But the existence of these programs is not well known, partly due to concerns about the individual’s privacy. State and territory governments, supported by the Commonwealth, should develop anonymised case studies to explain how these programs provide psychological, social and other services to affected individuals.

Foreign terrorist fighters present a significant challenge to both the global community and their home countries. Australia’s mechanisms to deal with this issue are comparable with the best in the world, but they are not well known or understood. This limits public awareness of the extensive work done to address this headline issue and thereby also feeds an unhelpful narrative of counter-terrorism overreach along with terrorists’ apparent invincibility. Authorities, communities and the media should get the message out about the complex issues presented by foreign fighters, and the varied means available to investigate them, bring them to justice, and assist rehabilitation.

Australia has a good story to tell of governments, community and academia working together on this complex issue. It just needs to be told.

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### About this publication

This series of National Security College Policy Options Papers offers short, evidence-based and forward-looking insights for policy-makers on topical security, foreign affairs and geostrategic issues facing Australia domestically, in the Indo-Pacific region and globally. We seek contributions from and collaborations with qualified researchers and experts in these fields.

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