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On the Front Foot? Preserving Australia's security against the threat posed by returning foreign fighters

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Abstract

This paper examines the potential threat to Australia's security posed by the return of foreign fighters. It argues that a number of these individuals will return to Australia over the next ten years with the know-how and wherewithal to cause harm through a terrorist act—and that the numbers are expected to increase. The implications for Australia's security are serious, including the potential for innocent Australians to be killed.

The paper examines the Australian Government's response to this strategic-level security threat, which has included the introduction of pioneering legislation, additional funding of intelligence and law enforcement agencies, and the introduction of a range of complementary approaches. It concludes that while the Australian Government is taking seriously the risk posed to national security—and is effectively managing the domestic risk associated with the return of foreign fighters—it needs also to collaborate in managing the issue at an international level.

On the Front Foot? Preserving Australia's security against the threat posed by returning foreign fighters ¹

Introduction

In early February 2015, Australia's Foreign Minister and the UK's Foreign Secretary jointly asserted that:

There is no more pressing matter of national and international security for our countries than the terrorist threat ... [within which] the greatest threat comes from Da'ish's ability to attract foreign fighters from around the globe in unprecedented numbers, including Australia and the UK.²

Over the next decade, the return of these foreign fighters is likely to pose a serious threat to Australia's national security. But are the mitigation strategies being implemented by the Australian Government effective in managing the security risk?³

This paper will begin by defining and quantifying the phenomenon of foreign fighters, including looking at the likely implications for Australia's national security. It will argue that the consequences for Australia's security are extreme, including the likelihood of Australian community members being killed. This is a 'wicked problem' and, consequently, one to manage rather than resolve.

The second section of the paper will review the role of the Australian Government in tackling the problem, positing that it has moved swiftly and assertively to implement a number of initiatives, including its introduction of the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* and the Countering Violent Extremism Programme.

In implementing these two initiatives, the paper will note that the Australian Government has been subjected to a degree of criticism, including concerns regarding human rights. It concludes that the Australian Government is taking seriously the risk posed to national security, both now and over the next decade, and that it is effectively managing the risk associated with the return of foreign fighters, albeit there is probably more that can be done at the international level.

The security implications for Australia

Over the past year or so, it has been reported that Australia has the highest per capita rate of foreign fighters and that the numbers are growing.⁴ It is estimated that around 90 Australians are currently fighting abroad, higher than the mid 2014 estimate of 70.⁵ In January 2015, the Attorney-General said '[t]he Australian people should be aware that this is a real and growing problem'.⁶

Even more worryingly, Thomas Hegghammer concluded in a 2013 article that 'about one in nine foreign fighters returned for an attack in the West', further asserting that:

[M]ilitants usually do not leave intending to return for a domestic attack, but a small minority acquire that motivation along the way and become more effective operatives on their return.⁷

Hegghammer's conservative estimate (of 11%) has at times been more 'cast in stone' than the author probably intended.⁸ However, in 2014, it was reported in the media that estimates from the Australian Security Intelligence Organisation (ASIO) were as high as eight in thirty (around 27%), citing that it had investigated 30 people who travelled to Afghanistan or Pakistan between 1999 and 2010 to train in extremist camps—25 of them returned to Australia, and 19 of those engaged in 'behaviour of concern', with eight convicted of terrorism-related offences, five of whom are still serving prison sentences.⁹

Applying Hegghammer's ratio to the 90 Australians currently fighting abroad suggests that at least ten foreign fighters could return to Australia with the intention of carrying out a terrorist act. As identified by Rachel Briggs and Tanya Silverman, a particular concern is that returning foreign fighters have the operational competency to mount such an attack, as well as the necessary international networks to support them in doing so.¹⁰

For example, there is evidence to suggest that almost half of Australian foreign fighters typically undergo training at what Western security agencies would describe as terrorist training camps, with a researcher from Monash University's Global Terrorism Research Centre asserting that:

[I]n most successful attacks (such as 9/11 and 7/7), the majority of terrorists went through advanced levels of training camps. Overseas training camps instruct participants in bomb-making, weapons use, and other related teachings giving them specialist knowledge and capabilities.... Of the Australian sample, 24 of the 57 (42%) had completed some level of training at an overseas camp, making them more valuable resources to the network.¹¹

Hegghammer contends that this type of training, coupled with 'the presence of a veteran, increases by a factor of around 1.5 the probability that a plot will come to execution, and it doubles the likelihood that the plot will kill people'.¹²

Briggs and Silverman also note that, in addition to the threat of death while fighting abroad, foreign fighters face the medium- to long-term threat of psychological scarring from what they have seen and endured abroad, contending that:

There is the risk of post traumatic stress disorder (PTSD) among those returning from conflict zones—whether they have fought or not—which can leave them traumatised, vulnerable to radicalisation, and potentially a danger to themselves or society.¹³

To address that risk, the UK's Home Affairs Committee recently made recommendations for rehabilitation programs for returning individuals, in conjunction with legal penalties, stating that '[w]e are concerned that their experiences may well make them vulnerable to Post-Traumatic Stress Disorder thereby increasing their vulnerability to radicalisation'.¹⁴

Because foreign fighters might also 'accrue status in their home communities for having fought in defence of Islam in countries of historical significance to the faith',¹⁵ they can be influential, on returning to their home country, in recruiting others for the fight abroad.¹⁶ They can also offer the extremist network knowledge of Western culture, 'which can increase the likelihood that an attempted attack could be successful'.¹⁷

In summary, it can be expected that the impact of this strategic-level security issue will increase over the next decade. Australia will likely experience increasing numbers of returning foreign fighters. Some of them will be further radicalised and some will bring with them the know-how and wherewithal to carry out an act of terrorism with serious consequences for Australia and its people. The problem is persistent, serious and 'wicked'.¹⁸ And [w]hile the scale of the threat posed by those returning ... is not yet known, the potential is significant', posing a complex challenge for authorities who are unlikely to have a perfect or simple solution.¹⁹

Mitigation strategies being undertaken by Australia

In June 2014, Australian Prime Minister Tony Abbott, said:

We will do everything we humanly can to stop jihadist terrorists coming into this country and if they do return to this country, we will do everything we reasonably can to ensure that they are not moving amongst the Australian community. We will ensure we stop the jihadists as well because the last thing we want is people who have been radicalised and militarised by experience with these Al Qaeda offshoots in the Middle East returning to create mischief here in Australia.²⁰

In August 2014, the Government announced a multifaceted counter-terrorism response that included new legislation and a package of funding to strengthen intelligence and law enforcement agencies involved in counter-terrorist activities.²¹ In December 2014, the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* was introduced, together with a A\$630 million suite of reforms under the Countering Violent Extremism Programme.²² Australia's Attorney-General declared that the legislation addresses 'the most pressing gaps in our counter-terrorism legislative framework', with some arguing that it represents the '[m]ost comprehensive legislative approach among Western countries'.²³

The *Bill* specifically addresses ‘the escalating threats posed by persons who have participated in foreign conflicts or undertaken training with extremist groups overseas, and also by those who they influence’.²⁴ It legislates two new criminal offences (‘advocating for terrorism’ and ‘entering a declared area’), as well as ‘new powers to suspend the travel documents of those suspected of joining foreign terrorist groups’ and ‘the extension of the special investigative powers ... to combat terrorism’.²⁵ The new powers include changes to how search warrants can be issued and conducted; how arrests can be conducted; the conduct of prosecution and surveillance on return; the admission of evidence; and border security rules.

Two of the associated measures have triggered considerable debate, namely the suspension and cancellation of passports, and stopping welfare payments. Although the media and critics of these initiatives have expressed concerns regarding human rights and the freedom of Australians to travel wherever they wish, the Australian Government has asserted that the human rights of the broader Australian community are paramount, and has remained steadfast in its commitment to managing the issue.

The provision to suspend a passport or visa without the need to notify that person is aimed at prohibiting the movement in or out of Australia’s borders by persons of security concern. Critics have claimed, for example, that this ‘undermines that fundamental freedom of movement that all of us who possess such a document enjoy’ and that an individual could be ‘left stranded in a hostile environment because of the passport suspension’.²⁶

However, embedded in the process of introducing any legislation is the requirement to assess the compatibility of the legislation in terms of the *Human Rights (Parliamentary Scrutiny) Act 2011*. In addressing this requirement, the *Bill* acknowledged that it imposed limitations to human rights and the freedom of persons of suspicion but concluded that those limitations ‘are reasonable, necessary and proportionate to achieving a legitimate objective’, notably protecting Australians from terrorism threats, and that overall the *Bill* is compatible with the requirements of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²⁷

Another requirement for the *Bill*’s introduction was endorsement by the bipartisan Parliamentary Joint Committee on Intelligence and Security. In accepting the Committee’s unanimous recommendation of the *Bill*, the Government asserted that ‘[i]mplementing the recommendations will further strengthen the provisions of the *Bill* including the safeguards, transparency and oversight mechanisms’.²⁸

The Government would argue that the compatibility assessment under the *Human Rights (Parliamentary Scrutiny) Act 2011*, combined with bipartisan endorsement, sufficiently rebut the claims that human rights will be violated as a result of the legislation. Although the current number of cancelled passports or visa is not publicly known, the media reported in late 2014 that ‘[s]ince the start of the Syrian conflict in 2011, ASIO has recommended the cancellation of 100 passports, 50 [of which] took place in 2014’.²⁹ By early 2015, there were reports that approximately 80 Australians had their passports cancelled as part of this clamp down on terrorism.³⁰

In relation to the cancellation of welfare payments, the *Bill* provided authority for the Australian Government to cancel or suspend welfare payments ‘for individuals whose passports have been cancelled or refused, or whose visas have been refused, on national security grounds’.³¹ In arguing the need for the legislation, the Minister for Social Services said ‘[i]t is designed to make sure taxpayers’ money is not being used to undermine Australia’s national security’.³²

Debate during the introduction of the *Bill* included concerns from welfare groups, human rights organisations and academics, as well as the former National Security Legislation Monitor, about the impact on families. While most were broadly supportive of the intention of the measure, they wanted to ensure the adequacy of safeguards around how it would be implemented.³³ As a result of such concerns, the Parliamentary Joint Committee on Intelligence and Security recommended an amendment to the *Bill*, requiring the Attorney-General to ‘have regard [as to] the likely effect of cancellation of welfare payments on dependents’.³⁴ As with passports, it is not clear how many, if any, welfare payments have been stopped.³⁵ Nevertheless, the legislation clearly shows the Government’s intent to deter Australians from venturing abroad as foreign fighters.

As well as the legislative changes, A\$600 million in additional funding has been allocated under the Countering Violent Extremism Programme to agencies involved in counter-terrorism, notably ASIO, the Australian Federal Police, the Australian Secret Intelligence Service, the Office of National Assessments, and Customs and Border Protection, intended to strengthen the 'hard power' of border security, policing and military responses.³⁶

The extra funding is intended to ensure that the relevant agencies have the resources to meet the demand of increased intelligence and law enforcement requirements resulting from the departure and prospective return of foreign fighters. An additional A\$30m has been set aside for a range of 'soft power' measures, aimed at reducing radicalisation rates through increased social cohesion such as the Living Together Safe website and the National Security Hotline.³⁷ Both initiatives have an 'emphasis on intelligence whereby the contact between police and community is considered a key link for generating local intelligence to assist in early intervention and prevention or the application of law enforcement'.³⁸

Conclusion

Regardless of the formula used to estimate the numbers involved, this paper has highlighted the certainty that a number of foreign fighters will return to Australia with the know-how and wherewithal to cause harm through terrorist acts—and that, over the next ten years, the numbers are expected to increase. It is likely that they will return with supportive networks and the knowledge of how to carry out acts of terrorism on Australian soil, with their radicalisation exacerbated by post-traumatic stress disorder as a result of their experiences overseas. The implications for Australia's security are serious, including the potential for innocent Australians to be killed.

The Australian Government's response to this strategic-level security threat has been multifaceted and has included the introduction of pioneering legislation, the additional funding of intelligence and law enforcement agencies, and the introduction of a range of complementary approaches. Two initiatives have been briefly examined to illustrate the Government's obvious commitment to tackling this 'wicked' problem. While neither has proceeded without controversy, mostly around human rights, it is evident that the Government is placing a high priority on national security in order to tackle the inevitable challenges that lie ahead.

While these initiatives bode well for curtailing the immediate threat posed by returning foreign fighters to Australia, there are a number of other initiatives that could also be explored, including the unprecedented requirement for international and national law enforcement and intelligence agencies to cooperate more closely than ever before to protect each other's populations from this threat.

Notes

¹ Editor's note: this paper pre-dates announcements by the Australian Government regarding the establishment of a counter-terrorism Joint Agency Task Force, the appointment of a National Counter-Terrorism Coordinator and other initiatives aimed at strengthening Australia's counter-terrorism strategy and improving coordination with at-risk communities.

² Brendan Nicholson, 'Joint focus on foreign fighters at AUKMIN talks', *The Australian*, 2 February 2015.

- 3 For the purposes of this paper, the definition of 'foreign fighter' is 'Australians who have participated in foreign conflicts or undertaken training with extremist groups overseas', which has been derived from The Parliament of the Commonwealth of Australia, *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014: Explanatory Memorandum*, Commonwealth of Australia: Canberra, 2014, p. 1.
- 4 Chris Uhlmann, 'Number of Australian jihadists serving with terrorists in Iraq and Syria prompts security rethink', *ABC News*, 23 June 2014; also Rachel Briggs and Tanya Silverman, 'Western Foreign Fighters: innovations in responding to the threat', Institute for Strategic Dialogue: London, 2014, p. 9, available at <http://www.strategicdialogue.org/ISD/2784_Western_foreign_fighters_V7_WEB.pdf> accessed 19 July 2015.
- 5 'Australian Federal Police, "Australian women joining IS foreign fighters"', *AustraliaNews.com* [website], 24 January 2015, available at <<http://australia.news.net/article/2734988/australian-women-joining-is-foreign>> accessed 14 February 2015.
- 6 Attorney-General for Australia, 'Counter-Terrorism Legislation Amendment Foreign Fighters Bill', *Attorney-General's Department* [website], 23 September 2014, available at <<http://www.attorneygeneral.gov.au/MediaReleases/Pages/2014/ThirdQuarter/23September2014Counter-TerrorismLegislationAmendmentForeignFightersBill.aspx>> accessed 14 February 2015.
- 7 Thomas Hegghammer, 'Should I Stay or Should I Go? Explaining Variation in Western Jihadist Choice between Domestic and Foreign Fighting', *American Political Science Review*, Vol. 107, No. 1, February 2013, pp. 1-13. Hegghammer takes account of difficulties in obtaining accurate data to estimate foreign fighters numbers. He looks at potential reasons for and consequences of under and over estimating, and difficulty with reporting biases. The security classification of data is also widely recognised as a hurdle to obtaining accurate data. Hegghammer states that 'good data on jihadism are notoriously difficult to obtain and that this study was a modest and transparent attempt to make the most of the available sources. Partial data are not always better than no data at all, but in this particular case I believe they are, because policies are already being informed by empirically unfounded assumptions about the threat posed by foreign fighters': Hegghammer, 'Should I Stay or Should I Go?', p. 13.
- 8 Jeanine de Roy van Zuijdewijn, 'The Foreign Fighter's Threat: what history can(not) tell us', *Perspectives on Terrorism*, Vol. 8, No. 5, October 2014, p. 63.
- 9 Shalailah Medhora, 'Australia a significant source of foreign fighters in Syria and Iraq, Senate told', *The Guardian*, 11 December 2014.
- 10 Briggs and Silverman, 'Western Foreign Fighters', p. 37.
- 11 Shandon Harris-Hogan, 'The Australian Neojihadist network: origins, evolution and structure', *Dynamics of Asymmetric Conflict*, Vol. 5, No. 1, 2012, p. 28.
- 12 Hegghammer, 'Should I Stay or Should I Go?', p. 11.
- 13 Briggs and Silverman, 'Western Foreign Fighters', p. 37.
- 14 Anthony Bergin, 'Foreign fighters in Syria and the challenges of reintegration', *Australian Strategic Policy Institute* [blog], 13 May 2014, available at <<http://www.aspistrategist.org.au/foreign-fighters-in-syria-and-the-challenges-of-reintegration/>> accessed 13 February 2015.
- 15 Rodger Shanahan, *Sectarian Violence: the threat to Australia*, Occasional Paper No. 7, National Security College: Canberra, July 2014, p. 8.
- 16 Zuijdewijn, 'The Foreign Fighter's Threat', p. 64.
- 17 Briggs and Silverman, 'Western Foreign Fighters', p. 37.
- 18 John Camillus, 'Strategy as a Wicked Problem', *Harvard Business Review*, May 2008, notes that '[i]n their interpretation, wicked problems feature innumerable causes, are tough to adequately describe, and by definition have no "right" answers. In fact, solutions to wicked problems are impossible to objectively evaluate; rather, it is better to evaluate solutions to these problems as being shades of good and bad'.
- 19 Briggs and Silverman, 'Western Foreign Fighters', p. 39; Shanahan, *Sectarian Violence*, p. 11.
- 20 Uhlmann, 'Number of Australian jihadists serving with terrorists in Iraq and Syria prompts security rethink'.
- 21 Prime Minister of Australia, 'New Counter-Terrorism Measures for a Safer Australia', *Prime Minister of Australia* [website], 5 August 2014, available at <<https://www.pm.gov.au/media/2014-08-05/new-counter-terrorism-measures-safer-australia-0>> accessed 19 July 2015.
- 22 See, for example, Department of The Prime Minister and Cabinet, *Review of Australia's Counter Terrorism Machinery*, Commonwealth of Australia: Canberra, January 2015, available at <https://www.dpmc.gov.au/sites/default/files/publications/190215_CT_Review_0.pdf> accessed 19 July 2015.

- 23 Australian Government, 'Counter-Terrorism Legislation Amendment Foreign Fighters Bill'; also Harry Oppenheimer, 'Returning ISIS Fighters: forgiveness or punishment', *Newsweek.com* [website], 26 December 2014, available at <<http://www.newsweek.com/returning-isis-fighters-forgiveness-or-punishment-294497>> accessed 13 February 2015. Oppenheimer reviews policies and initiatives of other countries, concluding that 'these various policy options do not fully consider the international nature of the foreign fighter problem. The piecemeal approach by individual countries has created a number of loopholes that allow fighters to return by traveling through other countries with their Western passports'.
- 24 Attorney-General of Australia, 'Government response to committee report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014', *Attorney-General's Department* [website], 22 October 2014, available at <<http://www.attorneygeneral.gov.au/MediaReleases/Pages/2014/FourthQuarter/22October2014-GovernmentResponseToCommitteeReportOnTheCounterTerrorismLegislationAmendmentForeignFightersBill.aspx>> accessed 15 February 2015.
- 25 Oppenheimer, 'Returning ISIS Fighters'.
- 26 Greg Barns, 'Draconian anti-terrorism bid an affront to freedom', *The ABC Drum* [website], 6 August 2014, available at <<http://www.abc.net.au/news/2014-08-06/barns-draconian-anti-terror-plan-goes-too-far/5651156>> accessed on 15 February 2015.
- 27 Commonwealth of Australia, *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014: Bills Digest No. 34, 2014-15*, Commonwealth of Australia: Canberra, 17 October 2014.
- 28 Attorney-General of Australia, 'Parliament passes counter-terrorism legislation', *Attorney-General's Department* [website], 2 December 2014, available at <<http://www.attorneygeneral.gov.au/MediaReleases/Pages/2014/FourthQuarter/2December2014-ParliamentPassesCounter-TerrorismLegislation.aspx>> accessed 14 February 2015; also Attorney-General of Australia, 'Government response to committee report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014'.
- 29 Medhora, 'Australia a significant source of foreign fighters in Syria and Iraq, Senate told'.
- 30 Grant Taylor, 'Passports cancelled in terror fear', *The West Australian*, 12 January 2015.
- 31 The Parliament of the Commonwealth of Australia, *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014: Explanatory Memorandum*, p. 54.
- 32 Australian Government, 'New Counter-Terrorism Measures for a Safer Australia - Cancelling Welfare Payments to Extremists', *Minister for Social Services* [website], 16 August 2014, available at <<http://kevinandrews.com.au/latest-news/2014/08/16/new-counter-terrorism-measures-safer-australia-cancelling-welfare-payments-extremists/>> accessed 15 February 2015.
- 33 Commonwealth of Australia, *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, p. 51.
- 34 Attorney-General of Australia, 'Government response to committee report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014'.
- 35 There are conflicting reports in the media about whether any welfare payments have been cancelled. For instance, in August 2014, it was reported that 'more than a dozen suspected Jihadists' had welfare payments ceased, however there is no formal reporting to confirm this: Mark Dunn, 'Suspected jihadists have welfare payments cut to stop Australia taxes financing terror', *Herald Sun*, 14 August 2014.
- 36 This program builds on the strategy introduced by the Rudd-Gillard Government in 2011. While the new program is similar to the previous strategy, it focused more on early-intervention (combat the threat posed by home-grown terrorism), whereas the new program also focuses on restricting the movement of foreign fighters in and out of Australia: see <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/Quick_Guides/Extremism> More information on the current program can be found at <<http://www.ag.gov.au/NationalSecurity/CounteringViolentExtremism/Pages/default.aspx>>
- 37 M. Nasser-Eddine *et al*, *Countering Violent Extremism Literature Review*, Defence Science and Technology Organisation: Canberra, 2011, p. 18, available at <<http://dspace.dsto.defence.gov.au/dspace/handle/1947/10150>> accessed 19 July 2015.
- 38 Nasser-Eddine, *Countering Violent Extremism Literature Review*, p. 42.



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