

Australians fighting overseas

A SAMVOA policy on Australians fighting overseas

The International South African Military Veterans Organisation; referred to as SAMVO

2013

SAMVO



South African
Military Veterans Organisation

Updated January, 2022

SAMVO's dedication, motto and inspiration:

This Veteran Organisation, through its subordinate organisations, globally, dedicates itself, in grateful recognition and memory of our countrymen, the Immortal Dead of South Africa, who, at the call of duty, made the supreme sacrifice on the battlefields of Africa, Europe and Asia, on land, at sea and in the air.

Their ideal is our legacy, their sacrifice our inspiration.

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Version 3

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AUSTRALIAN CITIZENSHIP ACT 2007 - SECT 35

Service in armed forces of an enemy country

(1) A person ceases to be an Australian citizen if the person:

- (a) is a national or citizen of a foreign country; and
- (b) serves in the armed forces of a country at war with Australia.

(2) The person ceases to be an Australian citizen at the time the person commences to so serve.

Note: A child of the person may also cease to be an Australian citizen: see [section 36](#).

Australians fighting overseas: how the foreign incursion laws work

This Act has broad implications for Australians fighting in international conflicts

Two Australian men have been charged with a number of foreign incursion offences relating to the Syrian conflict. It's the first time anyone has been charged under Australia's foreign incursion laws specifically in relation to Syria.

The act the men have been charged under, is the Crimes (Incursions and Recruitment) Act, which has broad provisions relating to the support and financing of armed foreign groups.

Australia's diversity means many citizens have strong views on international conflicts. Australians have fought on the side of non-government forces in East Timor, Sudan, Afghanistan, Cambodia and Sri Lanka, among others. Could they have committed offences? Here's a short guide to how the act works.

What kind of activities are offences under the act?

If an Australian citizen enters a foreign country intending to engage in hostile activity on behalf of armed forces that are not part of the foreign government, they could be charged. They can also be charged for intentionally supporting these hostile activities. The type of support can include preparations by training or drilling, accumulating arms or giving money for goods that could be used to support incursions. It can also include giving money to people or associations that may be intending to engage in hostilities.

Is it possible more Australians fighting in Syria could be charged under the act?

Curiously, Australians who go to fight for the Syrian government forces may not be committing an offence. This is because the act provides a defence for people who go to fight on behalf of a nation's armed forces. The attorney general has the power to declare the forces of certain nations to be outside the scope of the defence, but it does not appear there have been any regulations proscribing the forces of the Syrian government (or any other government) since the act was created.

It would be more likely for individuals fighting for non-government forces to be charged under the act, because no automatic defence applies to fighting for non-government forces.

The attorney general can also declare some non-government armed groups as acceptable. Australia opposes the Syrian government, but obviously there are some rebel forces that are seen as acceptable and some, affiliated with extremists, that are not. The act allows the attorney general to declare which are acceptable.

Eighteen organisations listed under the 2002 Security Legislation Amendment (Terrorism) Act would clearly not be deemed acceptable.

What about dual Australian citizens that join the government army of their other country of citizenship?

Australians can engage in armed service with other government forces without needing to worry about being charged. So, Australians could fight with the Israeli Defence Force or in the Italian armed forces, for example, without needing to worry about legal action.

The act talks about giving money or goods to an organisation that may be involved in foreign hostilities. What if you have donated money to a group that turns out to be supporting a separatist group in an armed conflict?

A person needs to have intended to support another person engaging in hostile activities in a foreign state. Without that intention it seems unlikely there would be a prosecution.