



Australian Government

Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

Amendment

OPS 01-1
AMDT NO 8
Complete Revision

Defence Force Aid to the Civil Authority

Department of Defence
ANBERRA ACT 2600

18 June 2010

Issued with the authority of the Chief of the Defence Force and the Secretary of the Department of Defence pursuant to section 9A of the *Defence Act 1903* for members of the Australian Defence Force.

Issued with the authority of the Secretary pursuant to section 20 of the *Public Service Act 1999* for Department of Defence Australian Public Service employees.

Secretary

Air Chief Marshal
Chief of the Defence Force

LIST B—ISSUE NO OPS B/5/2010

Single Service filing instructions

This instruction should be filed as:

1. NAVY OPS 11-1
2. ARMY OPS 23-1
3. AIR FORCE OPS 1-3

Sponsor:

Headquarters Joint Operations Command

Sponsor contact:

Director-General Plans

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Cancellation

DI(G) OPS 01-1 ISSUE NO OPS B/2/88 of 25 NOV 88 (AL7) is cancelled.

Note

This amendment incorporates a title change.

Cancelled

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 (AIR FORCE OPS 1–3
 (Complete Revision)

DEFENCE FORCE AID TO THE CIVIL AUTHORITY

INTRODUCTION

1. Within Australia's land territory, waters and offshore area, law enforcement is the responsibility of the Commonwealth, State and Territory authorities within their respective jurisdiction. Situations could arise where these law enforcement agencies lack the necessary resources or capabilities to resolve an imminent threat or an actual incident. In these situations Commonwealth aid may be requested. As part of a whole-of-Government response, the Australian Defence Force (ADF) may be tasked to provide the requested aid.
2. This Instruction details the provision of Defence Force aid potentially involving the application of force by uniformed ADF members. Requests for ADF assistance to civil agencies not encompassing the potential use of force are detailed in [Defence Instruction \(General\) \(DI\(G\) OP 05–1 Defence Assistance to the Civil Community—policy and procedures](#).
3. This Instruction sets out the policy and procedures for the provision of Defence Force Aid to the Civil Authority (DFACA) within Australia's land territory, its waters and offshore area. This Instruction does not cover routine ongoing domestic law enforcement operations being conducted by the ADF, in particular regarding Operation RESOLUTE.

POLICY STATEMENT

4. For the purposes of this Instruction, DFACA is the term used to describe the provision of Defence Force aid to Commonwealth, State or Territory law enforcement agencies under part IIIAAA of the [Defence Act 1903](#), in order to supplement their law enforcement measures. The provision of DFACA includes the likelihood that ADF members may be required to use force. Force may differ in degrees from deliberate acts of minor physical contact or restraint, to the use of weapons or other means to cause death or injury.
5. The Commonwealth will use the ADF to provide DFACA only when all civilian authority response options have been exhausted or when the situation can most appropriately be resolved by the use of military force or by military un-

SCOPE

Defence Force Aid to the Civil Authority authority

6. Australia's Constitution authorises the provision of DFACA through executive powers (sections 61 and 119) and Commonwealth legislation (section 51(vi) and 51(xxxix)). Commonwealth legislation detailing the employment of DFACA is articulated within part IIIAAA of the [Defence Act 1903](#).
7. The previous version of DI(G) OPS 01–1 preceded part IIIAAA of the [Defence Act 1903](#) and therefore encompassed the provision of DFACA more generally within the terms of the Constitution, and other relevant legislation and common law. However, DFACA outside the provisions of part IIIAAA of the [Defence Act 1903](#)—that is, pursuant to the Constitution more generally—still applies as referenced in section 51Y of part IIIAAA. As a general principle though, part IIIAAA should be used in preference to more general executive power in the Constitution wherever it applies. This Instruction covers DFACA only as it relates to part IIIAAA of the [Defence Act 1903](#). Specific legal advice must be sought in respect of circumstances outside part IIIAAA.

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8. The employment of ADF personnel in DFACA tasks generally involves the Governor-General of Australia, on advice from the authorising ministers, 'CALL(ing) OUT' the ADF. The exception is 'expedited CALL-OUT'. There are occasions when the Prime Minister, or the Defence Minister and Attorney-General jointly or an authorising minister and another specified Minister may order a CALL-OUT because a sudden and extraordinary emergency exists, and the ADF is required to protect the states or territories from domestic violence, or the ADF is required to protect Commonwealth interests. The 'CALL-OUT' procedures do not constrain Chief of the Defence Force (CDF), or an authorised delegate, in pre-positioning ADF assets prior to 'CALL-OUT'.

9. Select Commonwealth Acts contain authorisations which allow for ADF employment to execute and maintain the laws of the Commonwealth. These authorisations are independent of part IIIAAA of the *Defence Act 1903*. The *Customs Act 1901*, *Crimes Act 1914*, *Quarantine Act 1908*, *Crimes (Internationally Protected Persons) Act 1976*, *Fisheries Management Act 1991*, *Corrosion and Trait Fisheries Act 1984* and *Offshore Petroleum (Royalty) Act 2006* contain such provisions. Further details of these maritime enforcement laws are beyond the scope of this Instruction.

Defence Force Aid to the Civil Authority restrictions

10. The following restrictions apply to the provision of DFACA:

- a. **Applicable law.** Part IIIAAA modifies the law that applies to members of the ADF when they are 'CALL(ed) OUT'. However, such members remain subject to civil and military jurisdiction and may be prosecuted for offences committed, or allegedly committed, when they were 'CALL(ed) OUT'.
- b. **Military command.** ADF members involved in DFACA tasks remain under Defence Force command. A military Joint Task Force (JTF) Commander will be appointed by the CDF and is to act in accordance with directions given by CDF, or authorised delegate, on behalf of the National Security Committee of Cabinet (NSC). In executing the directions given, the JTF Commander, in co-ordinating with civil authorities, remains fully accountable for their actions in law. Wherever practicable and appropriate, the JTF Commander will arrange for ADF personnel involved to be accompanied by police.
- c. **Military control.** Defence is a supporting agency unless otherwise directed.
- d. **Minimum force.** Members of the ADF employed on a DFACA task must not use excessive force. The amount of permissible force must be reasonable and necessary in the circumstances as they were known at the time the force was used. There are significant limitations on the degree of force that may be used by an ADF member, depending on the provisions of Part IIIAAA that are relevant in the circumstances prevailing at the time. The use of minimum force does not imply the use of a minimum number of troops.
- e. **Military employment.** Military Forces shall not be 'CALL(ed) OUT' in connection with an industrial dispute, except where there is a reasonable likelihood of the death of, or serious injury to, persons or serious damage to property.

Nature of possible Defence Force Aid to the Civil Authority tasks

11. The spectrum of DFACA tasks which ADF members may be tasked to conduct range from: an assault on a location, through to assisting police in protecting the public. Possible DFACA tasks include:

- a. Protect or recover personnel or hostages.
- b. Protect or recover infrastructure or installations.
- c. Recover Chemical, Biological, Radiological, Nuclear and High Yielding Explosive devices.
- d. Disable Chemical, Biological, Radiological and High Yielding Explosive devices.
- e. Secure complex urban terrain.

- f. Deny movement.
- g. Control movement.
- h. Search.

12. DFACA is to be constrained to those situations where the ADF has particular skills, training and equipment appropriate to the task.

13. Greater fidelity to the employment of ADF Force Elements is detailed in Headquarters Joint Operations Command (HQJOC) sponsored Australian Operating Concepts and Operational Plans.

PROCEDURES

14. Before the ADF can be employed on DFACA tasks the Governor-General, acting on the advice of authorising Ministers, or the relevant ministers for 'expedited CALL-OUT' (see [Paragraph 9](#)) must order a 'CALL-OUT' of the ADF. Any direct approach to the ADF made by a law enforcement authority requesting the use of military force is to be referred to HQJOC for direction. The procedure for 'CALL-OUT' and expedited 'CALL-OUT' is articulated in the *National Counter Terrorism Handbook*.

CALL-OUT

15. The process for DFACA 'CALL-OUT' is detailed in the *National Counter Terrorism Handbook*. The Governor-General, or the relevant ministers, as the case may be, may 'CALL-OUT' Permanent ADF elements or Reserve Forces. 'CALL-OUT' can be made under the following circumstances:

- a. **Commonwealth initiated.** The Commonwealth, in certain circumstances, may elect to use the ADF to conduct DFACA tasks.
- b. **State initiated.** A State or Territory may apply to the NSC through the Crisis Coordination Branch of the Attorney-General's Department (AGD) for protection against domestic violence.

16. Potential ADF activity is detailed under the *National Counter Terrorism Plan* as articulated in the *National Counter Terrorism Handbook*. Both documents are administered by the AGD. Subordinate Defence doctrine to this Instruction is to be appropriately aligned with the *National Counter Terrorism Handbook*.

17. CDF, or CDF's authorised delegate, may order the pre-positioning of ADF personnel to an area prior to 'CALL-OUT'.

18. **Carriage of weapons** DF elements providing DFACA will be advised separately by HQJOC on matters relating to weapon readiness, weapon control and rules of engagement.

LEGAL

19. Other than those powers contained within part IIIA, 'CALL-OUT' pursuant to the *Defence Act 1903* does not confer general law enforcement authority upon ADF members. ADF members given specific lawful authority to undertake certain tasks, which may include the use of force, however, in the absence of such specific lawful authority, ADF members have no greater power than the ordinary citizen.

FINANCE

20. DFACA is provided without the recovery of costs or financial imposition upon the assisted authority. Costs associated with aid beyond the scope of DFACA tasks, or those types of tasks which would be categorised as Defence Assistance to the Civil Community, are calculated under the financial provisions of [DI\(G\) OPS 05-1](#).

TRAINING, SECURITY AND PUBLICITY

Training

21. Requests or proposals for training with Commonwealth, State or Territory police forces are to be forwarded to HQJOC. Requests for significant assistance (exercise participation) will be coordinated by HQJOC with other Defence and Commonwealth agencies.

22. HQJOC is responsible for initiating any necessary action to obtain Ministerial clearance for training and liaison activities.

Security

23. Particular care is to be taken with the security of details of training and of operating procedures which may be used during an operation. Information of this nature is to be handled on a need to know basis.

Public Affairs

24. Director-General Public Affairs (DGPA) is to be consulted in advance of any training activities related to DFACA which could attract publicity. In the event that publicity is unavoidable, DGPA will be responsible for the coordination of all strategic communication including consultation with other elements of Defence and relevant departments. Where DFACA is provided under 'CALL-OUT' provisions, strategic communications are to be coordinated through the AGD. DGPA is to coordinate Defence aspects and responses with the AGD strategic communications.

RELATED POLICY AND LEGISLATION

25. The following legislation may be referred in relation to this Instruction:

- a. *Constitution Act 1901*;
 - b. *Crimes Act 1914*;
 - c. *Crimes (Internationally Protected Persons) Act 1976*;
 - d. *Customs Act 1901*;
 - e. *Defence Act 1903*;
 - f. *Fisheries Management Act 1991*;
 - g. *Offshore Petroleum (Royalty) Act 2006*;
 - h. *Quarantine Act 1908*;
 - i. *Torres Strait Fisheries Act 1984*;
 - j. *National Counter Terrorism Handbook*;
- DI(G) OPS 05-1.

Sponsor: CJOPS

Annex:

- A. *Defence Force Aid to the Civil Authority Acronyms*

**ANNEX A TO
DI(G) OPS 01-1**File as: (NAVY OPS 11-1
(ARMY OPS 23-1
(AIR FORCE OPS 1-3
(Complete Revision)**DEFENCE FORCE AID TO THE CIVIL AUTHORITY ACRONYMS**

ADF	Australian Defence Force
AGD	Attorney-Generals Department
CBRE	Chemical, Biological, Radiological and High Yielding Explosive
CBRNE	Chemical, Biological, Radiological, Nuclear and High Yielding Explosive
CCB	Crisis Coordination Branch
CDF	Chief of the Defence Force
DACC	Defence Assistance to the Civil Community
DFACA	Defence Force Aid to the Civil Authority
DGPA	Director General public Affairs
HQJOC	Headquarters Joint Operations Command
JTF	Joint Task Force
NSC	National Security Committee of Cabin
WoG	Whole of Australian Government

Cancelled