



Australian Government
Defence

TERMS OF REFERENCE

Independent Review of Part IIIAAA of the *Defence Act 1903* (Cth)

Background

Part IIIAAA of the *Defence Act 1903* (Cth) (Part IIIAAA) was inserted by the *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000*. One of the motivations for the creation of this part was the possible need to call out the Australian Defence Force (ADF) to support security arrangements during the 2000 Sydney Olympics.

Following a statutory review in 2003, the *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006* made further changes to Part IIIAAA to increase the flexibility and speed with which the ADF could be 'called out' to respond to security threats.

The Lindt Café siege in Sydney's Martin Place in 2014 prompted consideration of how ADF resources could be best utilised to respond to a terrorist or other security incident. As a result of the review of Defence support to National Counter-Terrorism Arrangements, the *Defence Amendment (Call Out of the Australian Defence Force) Act 2018* made changes to Part IIIAAA with effect from 10 June 2019. These amendments sought to further streamline the processes for call out of the ADF and to extend the ability of the ADF to protect the States, self-governing Territories and Commonwealth interests (onshore and offshore).

Current Framework of Part IIIAAA

Part IIIAAA sets out the processes under which the ADF may be called out to protect Commonwealth interests, and to protect States and self-governing Territories from domestic violence.

The key features of Part IIIAAA are:

- The Defence Force can be called out under a call out order made under this Part. The Governor-General makes a call out order if the Prime Minister, the Minister for Defence and the Attorney-General (who are called the authorising Ministers) are satisfied that the threshold for call out is met.
- There are two kinds of call out orders: Commonwealth interests orders and State protection orders. For both kinds of call out orders, the Defence Force can be called out immediately or, under a contingent call out order, if specified circumstances arise.

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- Under a Commonwealth interests order, the Defence Force is called out to protect Commonwealth interests in Australia or in the Australian offshore area. The Australian offshore area includes the territorial sea of Australia, the Australian exclusive economic zone, the sea over the continental shelf of Australia, and the airspace over each of those areas. The order might apply in a State or Territory, or in the Australian offshore area, or in more than one of those places.
- Each State or self-governing Territory in which domestic violence is occurring, or is likely to occur, must generally be consulted before the Governor-General makes a Commonwealth interests order.
- A State or self-governing Territory can apply for a State protection order to protect the State or Territory from domestic violence.
- A power under a call out order may be exercised in a State or Territory because either the State or Territory is specified in the order or because the power is exercised in the State or Territory for a purpose specified in the order.
- As far as reasonably practicable, the Chief of the Defence Force must assist and cooperate with the police force of a State or Territory affected by a call out of the ADF.
- ADF members who are called out can exercise certain powers under a call out order. There are three categories of powers:
 - powers that can be exercised generally if authorised by an authorising Minister;
 - powers that can be exercised in an area that has been declared by the authorising Ministers; and
 - powers for protecting infrastructure that has been declared by the authorising Ministers.
- Expedited call out orders, specified area declarations and infrastructure declarations can be made by the Prime Minister, or the other two authorising Minister/s, or an authorised Minister jointly with a designated alternative Minister, in sudden and extraordinary emergencies.
- Call out orders, specified area declarations, infrastructure declarations and a report on any utilisation of the Defence Force are all provided to the Presiding Officers for tabling in each House of the Parliament once the relevant call out order has ceased to be in force.

Requirement for review of Part IIIAAA

In accordance with section 51ZB of the *Defence Act 1903* (the Act), the Minister must ensure that an independent review of Part IIIAAA is commenced by one or more persons who, in the Minister's opinion, possess appropriate qualifications, before 10 June 2024.

The independent reviewer ('the Reviewer') is required to provide the Minister with a report of their findings by 20 December 2024. Subsequently, the independent review is required to be tabled in both Houses of Parliament by the Minister within 15 sitting days of receiving the review.

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Scope of the review

The reviewer is to conduct a review of the Part IIIAAA legal framework utilised by the Commonwealth for the ADF to protect the States, self-governing Territories and Commonwealth interests (onshore and offshore). The Reviewer is to examine and, if appropriate, identify any issues for further consideration relating to the reform of Part IIIAAA.

In conducting the review, the Reviewer should consider:

- whether the existing Part IIIAAA powers (including the incidental power) support the full range of activities and use of capabilities that the ADF alone possesses and may be required to use to protect the States, self-governing Territories and Commonwealth interests (onshore and offshore), where such activities may be prohibited under other Commonwealth or State/Territory legislation.
- how call out under Part IIIAAA interacts with relevant Commonwealth and State/self-governing Territory legislation.
- whether there are appropriate limitations and controls on the use of the existing Part IIIAAA powers.
- whether the current oversight, accountability and transparency mechanisms in the Part are sufficient.
- identify any anomalies, errors, inconsistencies or other drafting issues in the Part that require amendment.

Consultation

The Reviewer should adopt, where possible, a transparent and collaborative approach to consultation and at minimum seek input from States, self-governing Territories and Commonwealth agencies (including the authorising Ministers' departments (i.e. PM&C, AGD and Defence).

It is recommended that the Reviewer engages with other cross-government initiatives that may impact or influence the subject matter of Part IIIAAA such as:

1. **Defence Act Reform Project** – The point of contact is Dr Kate Chetty.
2. **National Preparedness Taskforce** – The point of contact is Mr Michael Crawford; and
3. **National Resilience Taskforce** – The point of contact is Ms Michelle Boundy.

Timeline

The Reviewer is to provide the DPM with the findings of their independent review by no later than 20 December 2024.

Updates on the progression of the review are required to be provided to the DPM, PM&C and AGD every 2 months.

In the event an extension is required under exceptional circumstances, the Reviewer should as soon as practical, formally request an extension through the appropriate channels to the office of the Deputy Prime Minister.