

Recent provision of military assistance to civil authorities in Australia



David Leece¹

The Australian Defence Force assisted the Australian community during the major bushfires and then the COVID-19 global pandemic in 2019-20. This briefing explains the difference between ‘aid to the civil power’ and ‘assistance to the civil community’; and the constitutional basis for providing such assistance. It then summarises the assistance provided up to mid-May 2020.

Key words: Australia; Australian Defence Force; aid to the civil power; assistance to the civil community; Operation Bushfire Assist 2019-2020; Operation COVID-19 Assist.

Types of Assistance Military Forces May Render to Civil Authorities

In a democracy, the primary role of the defence forces of a nation-state is external security – to deter or, if necessary, to defend the state and its interests from aggression by other nation-states; or to assist neighbours and other allies to protect their territory and interests. As deterrence requires a contemporary high-end warfighting capability, high-end warfighting becomes the primary mission for which the defence forces train.

In contrast, the primary responsibility for internal security, including maintenance of law and order, normally rests with the civil authorities and their civilian agencies, such as police and emergency services. At times, though, the civil authorities become overwhelmed by their security responsibilities and seek military assistance to meet the challenges the civil authorities face. Such military assistance to civil authorities can be categorised either as:

- **aid to the civil power** – where it is for law enforcement purposes, *i.e.* paramilitary missions beyond the capability or capacity of the civilian police forces – it can include riot control, counter-terrorism, border protection, peacekeeping and peace enforcement tasks; or as
- **assistance to the civil community** – where it is for provision of humanitarian assistance and/or disaster relief during or following earthquakes, hurricanes, droughts, floods, bushfires, medical emergencies and the like.

The warfighting skills maintained by the Australian Defence Force (ADF) usually are directly transferable to paramilitary missions, although additional training in relevant law and the rules of engagement applicable to the mission may be needed pre-deployment. As an example, the Front Cover of this issue shows Royal Australian Navy (RAN) clearance divers, who in this instance are posted to the 2nd Commando Regiment, training for counter-terrorism operations – namely, to board a hijacked ship while it is underway.

While the ADF usually does not train for fighting bushfires or emergency management, many of their skills, capabilities and equipment can be very useful to civil

authorities dealing with emergencies, such as provision of: command and control; communications; intelligence; reconnaissance and surveillance; light infantry manpower; engineering; medical; movement and transport (maritime, land and air); and other logistics support (including food, water and emergency accommodation). The RAN’s three amphibious ships, for example, are designed to deliver such assistance both around Australia’s coastline and to the island states in our neighbourhood; and, in particular, have excellent on-board medical facilities.

In the first two decades of this century, the ADF has been called on numerous times to provide both aid to the civil power and assistance to the civil community, both at home and abroad – the frequency of disaster relief requests, in particular, having increased as the impact of climate change on severe weather events has become more pronounced.

Most of these missions have been joint ones (*i.e.* have utilised all three Services in a joint task force specifically designed, staffed and equipped for the mission) and have involved both permanent (full-time) service-people and part-time reservists on full-time service for the duration of the emergency. Indeed, the civilian skills of reservists – doctors, nurses, engineers, tradesmen, lawyers, administrators and the like – often prove invaluable on such missions.

So far this year, the ADF has been formally asked to provide ‘assistance to the civil community’ in Australia twice: for Operation Bushfire Assist 2019-2020; and for Operation COVID-19 Assist.

Relations between the Commonwealth and State Governments in Australia

The term “Australian Government” is very useful when describing relations between Australia and foreign countries. It is less helpful when used within Australia which, while constituting a single nation-state, is internally a federation containing seven sovereign governments – the governments of the six states and the “Government of the Commonwealth of Australia”. Internally, when inter-governmental arrangements are being discussed, the “Government of the Commonwealth of Australia” is usually best described in short-hand as the “Commonwealth Government” or the “federal government” or simply as the “Commonwealth” (the term used in the Australian

¹Dr David Leece is editor of *United Service*. These are his personal views.
E-mail: office@rusinw.org.au

constitution), rather than as the “Australian Government”, because there are seven such governments.

Each of the seven sovereign Australian governments is empowered by a constitution and can only exercise power in accordance with its constitution. At federation in 1901, the states reserved to themselves all matters which did not necessitate action on their collective behalf which became powers they ceded to the Commonwealth – often referred to as the Commonwealth’s “heads of power” which are spelled out in section 51 of the constitution. They include, *inter alia*, powers such as:

- trade and commerce with other countries, and among the States;
- taxation – but so as not to discriminate between States or parts of States;
- postal, telegraphic, telephonic, and other like services;
- the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
- quarantine;
- immigration and emigration;
- the influx of criminals; and
- external affairs.

Natural resource management, environmental protection, emergency response to natural disasters, health, education, the policing of state laws, and the like, are known as “residual powers” and remain powers reserved to the several states, unless a state requests Commonwealth assistance in its exercising of a residual power. The external affairs power, in particular, to the extent that the Commonwealth has entered into relevant international agreements, has enabled the Commonwealth to extend its powers into some specific areas reserved for the states, but this does not include the provision of “aid to the civil power” or “assistance to the civil community”, unless requested to do so by the relevant state or states – the one exception being within a Commonwealth-administered territory.

Operation Bushfire Assist 2019-2020

The 2019-2020 bushfire season in Australia was the worst in living memory, a consequence of a lengthy severe drought enhanced by climate change, and, at times, high temperatures and strong winds. It began in June 2019 (the start of winter) and continued through spring and summer until early autumn when widespread heavy rainfalls finally brought the fires under control. The fires became especially bad from early-November to mid-February in south-eastern Australia, progressively moving south along the east coast from southern Queensland, through New South Wales and Victoria, to South Australia and Tasmania. By early March, the fires had burnt some 18.6 million hectares (including 53 per cent of the Gondwana world heritage rain forests in southern Queensland and 80 per cent of the Blue Mountains world heritage area in New South Wales), destroyed some 5900 buildings (including 2779 homes) and killed 36 people. The impact on native flora and fauna is yet to be quantitated but was severe. At their peak, the fires seriously reduced air quality in eastern Australia and, subsequently, the Southern Hemisphere.

The primary responsibility for fighting the fires and managing the crisis rested with the relevant state/territory authorities. Reinforcements from all over Australia were called in to assist in fighting the fires and to relieve exhausted local volunteer firefighters. Firefighters, supplies and equipment also from Canada, New Zealand, Singapore and the United States, among others, helped fight the fires, especially in New South Wales.

ADF assistance

Up to December 2019, the Commonwealth Government played no active role but its emergency management agencies, including ADF, responded to requests to the Commonwealth from the states for assistance. Indeed, the ADF began assisting the Queensland authorities in September².

Please note that the ADF is not trained, equipped or certified to undertake ground-based or aerial bush firefighting and does not get involved in the direct act of fighting bushfires outside Defence property. The state and territory governments have primary responsibility for the protection of life, property and the environment, and for co-ordinating and planning emergency responses or recovery actions in disaster-affected areas within their jurisdictions. The ADF is able to support the states and territories, within resource limitations, in accordance with Defence Assistance to the Civil Community arrangements as part of a whole-of-government response, where state or territory capacity or resources do not exist, or are not available in sufficient time.

On 5 December, Defence appointed Major General Justin Ellwood as Emergency ADF National Support Co-ordinator to work in support of state and territory authorities. Concurrently, the ADF commenced **Operation Bushfire Assist** to support state fire services in logistics, planning and operational support. Activities the ADF undertook included:

- Air Force aircraft transporting firefighters and their equipment interstate;
- Army and Navy helicopters transporting firefighters, conducting night fire mapping, impact assessments and search and rescue flights;
- use of various defence facilities as co-ordination and information centres and for catering and accommodation for firefighters;
- liaison between state and federal government agencies;
- reloading and refuelling of waterbombing aircraft;
- deployment of personnel to assess fire damage and severity; and
- provision of humanitarian supplies.

Additionally, 23 reservists were compulsorily called-out in Queensland and placed on continuous full-time service from 28 November to 7 December as reinforcements for Operation Bushfire Assist in that state. This was done as a validation exercise in the event that a much larger call-out of reservists would be needed later in the bushfire season – as eventuated on 3 January 2020.

On 31 December, the Defence Minister announced the ADF would support the isolated high-fire-risk town of Mallacoota in East Gippsland, Victoria, with aircraft [helicopters (including a CH-47 Chinook) and C-27J Spartan military transport aircraft from their base at RAAF

²The information which follows on Operation Bushfire Assist is a synopsis of Department of Defence media releases.

Base East Sale, Victoria] and two naval vessels, HMAS *Choules* and MV *Sycamore*. On 3 January 2020, *Choules* and *Sycamore* evacuated civilians from Mallacoota bound for Westernport.

On 1 January 2020, the ADF established Joint Task Force 646 in Victoria, based on the Army Reserve's 4th Brigade. The following day, it established Joint Task Force 1110 in New South Wales and the Australian Capital Territory, based on the Army Reserve's 5th Brigade. Two days later, it established Joint Task Force 1111 in South Australia and Tasmania, based on the Army Reserve's 9th Brigade. These three Army Reserve brigades were to command and control all ADF assets in the jurisdictions that they were supporting by providing civil aid (humanitarian, medical, civil emergency) and disaster assistance as needed. The three brigades had four key priorities:

- to provide isolated communities with supplies for immediate relief;
- to provide evacuation for vulnerable people in isolated communities;
- to assist with assessments and re-opening of vital roads; and
- to assist fire services with preparation of fire breaks away from the fire fronts.

On 3 January (with effect from 4 January), the government also announced the compulsory call-out of all Army Reservists in the 4th, 5th and 9th Brigades, as well as reserve logistic elements from 17th Sustainment Brigade, while exempting those members of those brigades who were already contributing to the bushfire response in their civilian capacities as firefighters, police, emergency service staff, Red Cross workers and the like. It was anticipated that the compulsory call-out would involve up to 3000 reserve personnel full-time to man the 4th, 5th and 9th Brigades and otherwise enable the ADF response to be sustained for the duration of the crisis.

Additionally, on 4 January, Defence announced that it would deploy the amphibious ship, HMAS *Adelaide*, to support other Navy ships in evacuations and relief, as well as additional Chinook helicopters and military transport aircraft to RAAF Base East Sale. The same day, Chinook helicopters evacuated civilians from Omeo; and Spartan aircraft evacuated civilians from Mallacoota on 5 January.



Australian Army soldiers connect hoses to a Bega Valley Shire Council water tank while installing an Army water purification and desalination system to supplement Bega Valley's drinking water supplies during Operation Bushfire Assist 2019-2020. [Photo: Sergeant Andrew Eddie, Department of Defence]

By 11 January, the bushfire crisis had become the ADF's main effort, with several thousand full-time and reserve personnel providing direct support in the field, at sea, in the air and from Defence bases across fire-affected regions. The three joint task forces were now in full operation. They were utilising about 2000 reservists, drawing support elements from across the ADF as needed and were supporting emergency management agencies in the following jurisdictions:

- **Victoria** – JTF 646, based on the 4th Brigade located at RAAF Base East Sale;
- **New South Wales and the Australian Capital Territory** – JTF 1110, based on the 5th Brigade located at Holsworthy Barracks, Sydney; and
- **South Australia and Tasmania** – JTF 1111, based on the 9th Brigade located at Keswick Barracks, Adelaide.

On 27 January, the Prime Minister announced that the compulsory call-out of reservists would revert to a voluntary call-out on 7 February.

By mid-March, the emergency response phase of the operation had ended. Now, the ADF was contributing to the recovery operations, although it remained postured to mobilise its forces quickly in response to emerging threats and emergencies. About 200 ADF personnel, including about 100 reservists, were still supporting Operation Bushfire Assist.

Major General Ellwood remained the Emergency ADF National Support Co-ordinator, working with local, state and territory authorities to determine where support was most needed, which he continued to provide through three enhanced Emergency Support Forces:

- **Victoria** – 4th Brigade, now located at Simpson Barracks, Melbourne;
- **New South Wales and the Australian Capital Territory** – 5th Brigade at Holsworthy Barracks, Sydney; and
- **South Australia and Tasmania** – 9th Brigade at Keswick Barracks, Adelaide.

Further, Air Force continued to provide air transport support, moving personnel and cargo across all states using the C-17 Globemaster, C-130J Hercules and C-27J Spartan transport aircraft. The amphibious ship, HMAS *Canberra*, was now the designated humanitarian assistance vessel and was available to provide support if required. ADF bases across the nation had resumed normal operations, but continued to provide food, accommodation and general logistics support to forces involved in Operation Bushfire Assist.

International support to Operation Bushfire Assist had, by now, concluded. It had been provided by the New Zealand Defence Force, the Republic of Singapore Air Force, the Japanese Self-Defence Force, the Papua New Guinea Defence Force, the United States Air Force, the Indonesian National Armed Forces, and the Royal Canadian Air Force.

The following statistics provide a snapshot of ADF contributions to Operation Bushfire Assist (up to 12 March 2020):

- length of roads cleared: 4848km;
- length of fences cleared/repaired: 1286.5km;
- length of firebreaks cleared: 240km;

- total amount of water purified on Kangaroo Island: 3880kL;
- total amount of water purified at Bega: 6100kL;
- cargo delivered: water 5409.5kL, fuel (all types) 73.3kL, fodder 1344 tonnes; and
- number of meals provided on Defence bases to emergency services personnel and evacuees: >77,262.

Operation COVID-19 Assist

The viral disease, COVID-19, is caused by Severe Acute Respiratory Syndrome Coronavirus No. 2 (SARS-CoV-2), a virus in the zoonotic coronavirus³ family. This novel virus, discovered in 2019, was previously unidentified in humans. It would appear to have transferred from animals to humans in Wuhan, capital city of Hubei Province in central China, from whence it has spread rapidly among humans since January 2020. By April, it had reached pandemic level in the global human population. By 11 May, some 4.64 million people had contracted the disease globally, of whom 312,000 had died.

ADF Operation COVID-19 Assist⁴ is the ADF's contribution to Australia's whole-of-government effort to address the COVID-19 pandemic. It commenced in March 2020⁵ led by Major General Paul Kenny, and, at the time of writing (mid-May), is ongoing.

The ADF is co-ordinating its provision of support through Emergency Management Australia and is delivering the support via seven state-and territory-based ADF task groups. These task groups are providing customised support to the state/territory authorities, reinforcing and expanding their capacity to respond to the pandemic.

By 21 April, some 2000 ADF members were providing support, including:

- providing contact tracing and planning support teams to all state and territory governments;
- supporting police and other law enforcement agencies with mandatory quarantine arrangements for international air arrivals; and
- embedding more than 100 ADF and Defence civilian personnel in various federal agencies, including the Department of Home Affairs and Services Australia.

Additionally, the ADF had established an internal COVID-19 task force led by Lieutenant General John Frewen to co-ordinate Defence's internal response to the pandemic and the whole-of-government effort. This involved, *inter alia*, the ADF supporting the Emergency Management Australia-led planning for the 'National Communicable Disease Incidence of National Significance Plan'; and providing logistics and specialist staff to the Department of Health, including clinical and epidemiological staff to the National Incident Room.

³A zoonotic disease is one that is normally resident in animals but can be transmitted to humans. A coronavirus is one of a group of ribonucleic acid viruses that cause diseases in mammals and birds.

⁴The information which follows on Operation COVID-19 Assist is a synopsis of Department of Defence media releases.

⁵It was formally announced by the Defence Minister on 1 April 2020.

The ADF also had provided health, logistics and movements support to the Department of Foreign Affairs and Trade and the Australian Border Force in the repatriation and care of Australian nationals on Christmas Island and at Howard Springs, via RAAF Bases Learmonth and Darwin.



Royal Australian Air Force medical technician, Corporal Megan Macauslan, checks an emergency trolley in the North West Regional Hospital, Burnie, Tasmania, during Operation COVID-19 Assist as part of the re-opening of the hospital's emergency department.

[Photo: Corporal Nicci Freeman, Department of Defence]

As of 8 May 2020, approximately 2000 personnel remained deployed on Operation COVID-19 Assist nationwide. As an example of the customised support provided to the states and territories, in Queensland:

- 156 ADF personnel were supporting Queensland Police with Queensland border controls;
- 70 personnel were assisting Queensland Police to protect Indigenous communities;
- 60 personnel were conducting self-isolation compliance checks;
- 27 personnel were assisting Queensland Police with the reception of international arrivals at airports; and
- 16 personnel were involved in planning support and contact tracing teams.

Defence remained well-positioned to scale-up support to federal, state and territory agencies, as needed, for the duration of this effort. The ADF, however, will not be authorised as law enforcement officers as this remains the responsibility of the states and territories.

Conclusion

Of the types of assistance that the ADF is called on to give to civil authorities from time to time, aid to the civil power is a part of its pre-1901 colonial heritage and assistance to the civil community has become increasingly important in the last 75 years.

While the constitutional and legal distinctions between them are quite clear at the theoretical level, in practice they can become blurred at the interface. An example is when ADF personnel are asked to assist police with a policing function when operating under an 'assistance to the civil community' legal framework as occurred at times during Operation COVID-19 Assist. If this is to become a more regular occurrence, then more attention to the relevant powers may be warranted.