



CHIEF OF JOINT OPERATIONS

Headquarters Joint Operations Command

Directive

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See distribution

CJOPS DIRECTIVE 25/22 – EXPECTATIONS OF ALL PERSONS ASSIGNED FOR DUTY ON OPERATIONS, ACTIVITIES AND EXERCISES

References:

- A. *Defence Force Discipline Act 1982*
- B. *Public Service Act 1999*
- C. Inspector-General of the Australian Defence Force Afghanistan Inquiry Report of November 2020 (The Afghanistan Inquiry Report)
- D. *The Geneva Conventions and Additional Protocols of 1949 and 1977*
- E. *Rome Statute of the International Criminal Court, 17 July 1998*
- F. *Criminal Code Act 1995 (Cth)*
- G. Law of Armed Conflict Training Policy, 10 Oct 21
- H. Australian Defence Force – Philosophical – 0 - Military Ethics (Ed. 1)
- I. Australian Defence Force – Philosophical – 0 - ADF Leadership (Ed. 3)
- J. CJOPS Directive 32/21 – Expectations of All Persons Assigned for Duty on Operations, Activities and Exercises dated 01 Dec 21

Aim

1. This Directive outlines Defence requirements and my expectations of all persons assigned for duty on operations, activities and exercises. This Directive supersedes Reference J (which is cancelled) and contains additional direction regards the collection, handling and destruction of captured materiel during operations.

Scope

2. This Directive applies to all Defence personnel while force assigned or temporarily assigned to Joint Operations Command (JOC) for duty on an operation, activity or exercise. 'Defence personnel' for the purposes of this Directive means ADF members, Defence civilians as defined in Reference A, Australian Public Service employees as defined in Reference B and employed by Defence, and civilian contractors deploying on ADF operations, activities or exercises.
3. This Directive addresses those aspects of the Afghanistan Inquiry Report Implementation process captured by Enterprise Initiatives 8 and 10, and Enterprise Recommendations 1, 3 and 21 while supporting the implementation of Enterprise Recommendation 2. The relevant concerns raised in the Report were:
 - a. Inappropriate terminology was being used on operational deployments that created perceptions that were not necessarily correct and had not been subject to any proper analysis;

- b. It was alleged that 'throwdowns' (weapons and ammunition, radios, equipment) had been used by Defence personnel to create an impression that casualties were combatants when that had not been properly established;
- c. It was alleged that Defence members had used unauthorised weapon systems and ammunition while deployed on operations;
- d. Training of Defence personnel about aspects of the Laws of Armed Conflict (LOAC) may have been insufficient, and
- e. The Report recommended:
 - i. all ADF members about to deploy on operations receive training on their responsibilities for reporting of breaches of LOAC;
 - ii. ADF Commanders be held more accountable for breaches of LOAC; and
 - iii. the above be incorporated into operational orders and instructions and that Commanders acknowledge their responsibility.

CJOPS intent

4. **Intent statement.** The Australian public expects that those persons entrusted with undertaking operations, activities and exercises on behalf of Australia conduct themselves in an ethical and lawful manner.

5. The public release of the Inspector-General of the Australian Defence Force Afghanistan Inquiry Report (The Afghanistan Inquiry Report), at Reference C, affords a timely opportunity to re-emphasise Defence requirements and my expectations for all persons involved with operations, activities and exercises.

6. This Directive provides guidance and includes mandatory provisions that must be complied with. I require all personnel appointed to a Command position¹ that are force assigned to JOC for duty on operations, activities and exercises to sign the acknowledgement form at Enclosure 1. This deliberate process underlines the importance that I place on compliance with the legal and ethical responsibilities inherent in the conduct of armed conflict² in particular, but also in the conduct of relevant operations, activities and exercises outside of armed conflict. Subsequently, Commanders are to personally ensure that the direction within is conveyed to all personnel within their Command at the first opportunity.

7. **Individual circumstances.** Where relevant to individual members, such as exceptional or select deployments to operations that are not subject to the standard processes contemplated by this Directive, CJOPS may provide more specific and detailed guidance in individual Directives. The HQJOC J3 branch is the appropriate point of contact in these situations.

¹ Commander: Navy: Commanding Officers of HMA Ships; Army: A member of the ADF that lawfully exercises authority over subordinates by virtue of rank or assignment. This includes members that are responsible for health, welfare, morale and discipline of assigned personnel (Derived from the ADF-P-O *Command and Control*); Air Force: Officers receiving a Directive from DGAIR who are conducting CJOPS Force Assigned activities.

² The term 'armed conflict' is used here and throughout this Directive to capture operations classed as either an international armed conflict (IAC) or a non-international armed conflict (NIAC).

Requirement to comply with LOAC

8. LOAC governs the conduct of hostilities in times of armed conflict. Rules of Engagement (ROE) are reflective of law and policy including LOAC principles. The content of the ROE will differ between operations, activities and exercises depending on the applicable legal framework and the policy settings established by the Australian government and endorsed by the Chief of the Defence Force (CDF) when 'signing off' on the ROE.
9. LOAC and ROE function as a protective measure for our forces and aid in the successful completion of the mission, to the standards expected by the Australian government.
10. As part of Australia's obligations under the Geneva Conventions, the Rome Statute and the Criminal Code at References D, E and F, there is a requirement to effectively investigate and (if thresholds are met) prosecute those individuals that are suspected of breaching LOAC during times of armed conflict. Where Australia may be unwilling or unable to effectively investigate and (if necessary) prosecute such individuals, the International Criminal Court (ICC) may be able to exercise jurisdiction.
11. The Military Law Centre (MLC), in consultation with HQJOC, has recently revised the campus course 00015212 *Introduction to the Law of Armed Conflict*. In accordance with Reference G, this is a foundational level training course that establishes a baseline level of understanding of LOAC concepts. Additional training may be delivered prior to deployment on specific operations, activities and exercises.
12. **Direction.** You are to meet your legal obligations to comply with LOAC and ROE at all relevant times. In the event that you are issued orders that are contrary to (or appear to be) your legal obligations under LOAC and/or ROE, you are to report such occurrences through the chain of command.
13. I require all members deploying to an armed conflict to complete the MLC Campus Course (above) training prior to any deployment. For those currently deployed on an applicable operation, I require you to complete this course at the first available opportunity.

Ethical leadership and command

14. Drawing directly from the Australian Defence Force – Philosophical – Military Ethics publication at Reference H, the application of ethical leadership and command is vital to the successful conduct of our operations, exercises and activities. Leadership is exercised at all rank levels and it follows that all persons have a responsibility to speak up and draw attention to any instances of unethical decision making that they identify, and in a timely manner. Commanders carry an additional level of individual responsibility, because their responsibility is backed by legal authority. They can compel and they can exercise judgement to correct and punish wrongdoing. Commanders are responsible for what happens 'on their watch,' above the individual responsibility of each of their subordinates.

Use of unauthorised weapon systems and ammunition

15. Under Article 36 of Reference D, Australia must certify that weapons and means and methods of warfare (including ammunition) used in armed conflict comply with LOAC and various other treaty obligations – some of which preclude the use of certain weapons and ammunition (e.g. anti-personnel mines). To meet our international obligations and ensure that risks are mitigated so far as reasonably practical, each weapon or weapon system used in warfare must be certified by Australian Article 36 review. The Directorate of Operations and

International Law (DOIL) at Defence Legal is the appropriate point of contact for greater clarity on the Article 36 review process.

16. **Direction.** I direct all persons covered by this Directive to only make use of those weapons systems and ammunition that have been supplied through the Australian supply chain or have been otherwise authorised by CDF, CJOPS or DCJOPS.

The use of ‘throwdowns’

17. Throwdowns are defined in Reference C, within the glossary, and include a weapon, communication device, or electronic device deliberately placed at the scene of an incident³ to support a narrative that the incident was justified and was within the scope of ROE and LOAC. The use of a throwdown implies an intent to deceive.

18. This description in Reference C is non-exhaustive with the key element identified as the intent to deceive.

19. **Direction.** The use of throwdowns is prohibited. All persons **must** report any use or suspected use of throwdowns through their chain of command or to their command legal officer (particularly if the order originates from within your chain of command) at the first opportunity. The use of throwdowns, directing, encouraging and/or permitting the use of throwdowns and/or failing to report the use of throwdowns to an appropriate member of the chain of command or command legal officer are all actions that may be subject to disciplinary, administrative and/or criminal action.

Captured Materiel, Equipment or Weapons – collection, handling and destruction

20. During operations, there exists the high probability that personnel may capture weapons, ammunition and/or equipment in the field. The following direction is to be adhered to by all personnel on operations when this situation arises:

a. Collection of Items – if the item is targeted for collection or deemed to be of intelligence value, then the item should be made safe (if required), retained (with Command informed) and, as soon as practicable, handed in for analysis and further exploitation to the J2, EOD, Q-Store, Supply Clerk or relevant team as per Annex B of the relevant OPORD. Items are not to be handled in any fashion that could cause damage or reduce intelligence value when analysed. Commanders are to ensure suitable chain of custody procedures are in place to account for this scenario so that the item(s) can be protected, documented and accounted for, stored safely and routinely accounted for until a decision is made about their future.

b. Destruction of Items – under no circumstances are any captured item(s) to be destroyed before a decision can be made about their intelligence value. Procedures at Paragraph 20.a. are to be followed at all times until a decision is made about the future of the item(s). If destruction is authorised, then a description of the item(s) (including any discernible serial numbers or distinctive features or markings and photographs) are to be recorded for subsequent inclusion in operational reports and for passing to the J2 team for data capture purposes.

c. Retention of Items – unless being collected as per Paragraph 20.a. under no circumstances are any captured items to be retained by personnel in contravention of domestic

³ In the context of the Afghanistan Inquiry Report, an ‘incident’ may be understood as an interaction or engagement with an Afghan national by an Australian soldier.

and international law. Disciplinary, criminal or administrative action may be taken against any personnel found to be breaching this direction.

Use of professional terminology and language in operational reporting

21. The Afghanistan Inquiry Report identified occasions where some leaders and commanders responsible for accurate operational reporting instead provided sanitised reporting intended to negate any opportunity for higher command interest to be aroused. It is fundamental to the good conduct of operations, activities and exercises that operational reporting is accurate, timely and reflects the operational reality.
22. The purpose of operational reporting is to inform relevant analysts, planners and decision makers of the events that took place during an operation, action or activity. Such reporting should not include unprofessional and/or inappropriate terminology.
23. The use of unprofessional and/or inappropriate terminology may undermine the mission and morale. This style of language breeds cynicism and erodes compassion towards protected persons. This applies equally to all domains.
24. I acknowledge that there are certain forms of language – including brevity words, for example - used by members for valid reasons. One such valid reason may be that the use of this language may enhance interoperability with partner forces in certain circumstances. Individual terms and language that are consistent with Defence Values and/or that may appear within the Australian Defence Glossary (ADG) will not be considered unprofessional and/or inappropriate.
25. For acceptance within the ADG, a term must appear in an ADF authorised publication.⁴ Such publications may include, but are not limited to, doctrine (Joint or single-service), Defence Manuals, Defence Handbooks, Standing Orders and Standing Instructions. The ADG includes only those terms that are capable of use at the OFFICIAL classification. If the brevity term is at a higher classification then such terms should also appear in relevant publications at the appropriate level, and are permitted to be used without inclusion in the ADG.
26. **Direction.** Operational reporting is not to include unprofessional and/or inappropriate terminology. I request relevant Service Headquarters and other stakeholders to progress the identification and definition of key brevity words and other operational language or terms for inclusion in the ADG at the first available opportunity. This direction encompasses those terms that are capable of use at the OFFICIAL classification. I further direct that those terms at a higher classification should also appear in relevant publications at the appropriate level. I acknowledge that the same term may have a different meaning in different domains and a consultation process involving individual Service Headquarters and other stakeholders may need to be undertaken before this process can be finalised.

Assurance framework

27. This Directive is to be incorporated into the HQJOC Standing Instructions.
28. HQJOC Group Governance and Performance will incorporate this Directive into their annual assurance program and liaise with IGADF as necessary.

⁴ For more information on the process for including terms in the ADG, please refer here:
<http://adg.dpe.protected.mil.au/Home/FAQ>

Acknowledgement

29. Commanders at all levels conducting operations, activities and exercises coordinated, authorised and/or directed by HQJOC and their subordinate Commanders, are to sign their acknowledgement of this Directive as a mandatory pre-condition of their participation. These signed acknowledgment forms are to be returned to and held on file by the HQJOC J1/4 Branch.

s22

GC Bilton, AO, CSC
LTGEN
Chief of Joint Operations

W May 22

Enclosure:

1. Acknowledgement form

Distribution:

All CJTFs
All CTFs
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ENCLOSURE 1 TO CJOPS DIRECTIVE 25/22**ACKNOWLEDGEMENT**

I hereby acknowledge that I have read, understood and agree to comply with all of the mandatory provisions of CJOPS Directive 25/22.

In exercising any command role I acknowledge that I may be liable and responsible for the actions of those that serve under my command.

I understand that signing this acknowledgment is a mandatory pre-condition of my participation in any relevant operation, activity or exercise.

I understand that failure to comply with any of the mandatory provisions of this Directive may result in disciplinary, administrative and/or criminal action taken against me.

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Signed

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Name (Print)

.....
Rank/Title

.....
Date