

**GOVERNMENT RESPONSE TO  
JOINT STANDING COMMITTEE ON TREATIES REPORT NO 103  
ON THE CONVENTION ON CLUSTER MUNITIONS**

**Recommendation 2**

*The Committee recommends that the Australian Government and the Australian Defence Force (ADF) have regard to the following issues when drafting the legislation required to implement the Convention on Cluster Munitions, and when developing policies under which the personnel of the ADF operate:*

- *the definition of the terms ‘use’, ‘retain’, ‘assist’, ‘encourage’ and ‘induce’ as they apply in Articles 1, 2 and 21 of the Convention on Cluster Munitions;*
- *preventing inadvertent participation in the use, or assistance in the use, of cluster munitions by Australia; and*
- *preventing investment by Australian entities in the development or production of cluster munitions, either directly, or through the provision of funds to companies that may develop or produce cluster munitions.*

**Government response**

*Dot point 1*

Noted.

In developing the legislation required to implement the Convention, the Government will have regard to the meaning of the terms ‘use’, ‘retain’, ‘assist’, ‘encourage’ and ‘induce’ as they apply in the Convention. The Department of Defence will also have regard to the meaning of these terms in developing policies under which ADF personnel will operate.

*Dot point 2*

Noted.

Article 1 of the Convention prohibits States Parties from using cluster munitions and also prohibits assistance in the use of cluster munitions. However, this prohibition is subject to the exception contained in Article 21 that allows States Parties, their military personnel and nationals to engage in military cooperation and operations with States not party to the Convention that may use cluster munitions. This provision allows States Parties to continue to conduct operations with allies not party to the Convention who may be using prohibited cluster munitions, such as the United States. The Convention does not prohibit inadvertent participation in the use, or assistance in the use, of cluster munitions. During military cooperation and operations with States not party to the Convention,

Australian personnel will nonetheless be prohibited from themselves using cluster munitions or expressly requesting the use of cluster munitions in cases where the choice of munitions used is within their exclusive control.

*Dot point 3*

Noted.

Article 9 of the Convention requires Australia to enact criminal offences to prevent and suppress any activity prohibited to a State Party under the Convention undertaken by persons or on territory under its jurisdiction or control. Article 1 of the Convention prohibits States Parties from directly or indirectly developing or producing cluster munitions, or assisting, encouraging or inducing anyone to develop or produce cluster munitions. While the terms of the legislation required to implement the Convention are still under consideration, the offences included in the legislation will reflect the obligations contained in Article 1 of the Convention.