

Appendix 2

Questions for the Department of Defence

1. Paragraph six of the Defence submission, relating to current international negotiations on cluster munitions notes that:

Australia is presently involved in negotiations internationally on cluster munitions, including within the Conventional Weapons Convention. It is not possible at this stage to predict the likely outcomes of these negotiations and if domestic legislation is enacted, our negotiating position in international forums may be prematurely restricted and/or compromised. We also note that none of Australia's current obligations under the Conventional Weapons Convention and its five Protocols have required domestic implementing legislation.

The international humanitarian law pertaining to use of cluster munitions, the adverse humanitarian effect of these weapons, the international positions of various countries such as in the Conventional Weapons Convention and the positions of non-government humanitarian organisations are all well known. Noting that although domestic legislation may not be necessary and that other countries have undertaken unilateral measures:

- Could the bill be amended to conform to Australia's international position?
- Is the Australian Government's position in international fora firmly established or is it still evolving?

2. Paragraphs 16-18 delineate the ADF's ambitions to acquire an advanced submunition weapon system, noting:

The ADF does not presently use or produce cluster munitions. Defence is, however, in the process of acquiring an advanced sub-munition capability for use against mobile armoured vehicles. Such advanced sub-munitions, when properly used, have a lower risk of adverse humanitarian effects than older generation cluster munitions, but would potentially be captured by the terms of the proposed Cluster Munitions (Prohibition) Bill. The Bill defines 'cluster munition' very broadly in Section 6(1) to include all munitions which deploy 'one or more sub-munitions'. The passage of this Bill would, therefore, prevent the ADF from obtaining an advanced sub-munition capability.

Older generation cluster munitions technologies are unreliable, lack autonomous target detection, and usually include a large number of small, low yield, "dumb" bomblets. Such cluster munitions, by virtue of their unreliability, also have the potential to become Explosive Remnants of War.

In contrast, modern, advanced sub-munitions, are more discriminating because they are designed to be effective against specific targets, such as armoured vehicles, while minimising anti-personnel effects. They also have

small numbers of sub-munitions – usually less than ten, and sometimes as few as two. In addition, each sub-munition possesses a capacity for autonomous target detection and will self-destruct or self-neutralise (not detonate) if a target is not found. Advanced smart sub-munitions are more reliable than older cluster munitions and are an efficient method of attacking identified and specific targets at a greater range and with less consequent risk to the attacking force and third parties than would otherwise be possible. Their self-destructing and self-neutralising capability also means that they pose less of a threat to civilians as an explosive remnant of war.

These paragraphs note that Defence is in the process of acquiring an 'advanced sub-munition capability' and then proceed to describe the generic attributes of these kinds of weapons.

- Will the specific 'advanced submunition' weapon system to be acquired by Defence possess technical criteria related to this generic class designed to minimise impact on humanitarian populations, such as low failure rates, precision guided capabilities and self-destruction requirements?
- If so, which attributes?
- What such criteria is used in the acquisition of submunition based weapon systems, noting that Defence may also pursue new, similar emergent technologies?

3. Paragraphs 23 and 24 denote Australia's requirement to comply with international humanitarian law and the elements of the bill that would prohibit engagement with foreign forces in the planning for use of cluster munitions. These indicate:

All ADF personnel are required to adhere to Australia's international obligations and domestic law including the principles of International Humanitarian Law, with particular regard to special consideration of the principle of proportionality. ADF personnel would also have to comply with Australia's obligations as a State Party to Protocol V of the Conventional Weapons Convention relating to minimising the risks and effects posed by explosive remnants of war.

Sections 11 and 12 of the Bill prohibit a member of the ADF intentionally engaging 'in military preparations to assist a member of the defence force of another country to use cluster munitions, container units or sub-munitions'. This would create excessive operational difficulties.

- Considering the overall, global trend of past use of cluster munitions has had little consideration for civilian populations, would Australian involvement with planning cluster munitions use result in a greater consideration for their humanitarian impact than otherwise would be the case?

4. Paragraphs 26 and 27 note the potential impact of exclusion of the ADF from command situations due to this constraint on involvement with cluster munitions. These sections state:

When ADF commanders and personnel are integrated into coalition task forces, they would be likely to be employed in planning and conducting operations, including offensive support. In these instances, the ADF officers may need to call on coalition support in circumstances in which the coalition unit that responds determines the types of weapons to be used. This may include cluster munitions, as defined by the proposed Bill. If the Bill were to be adopted, ADF personnel would be either unable to call in appropriate support or exposed to prosecution under the Bill.

The Bill would compromise the ADF's ability to contribute personnel to Coalition Headquarters where the use of cluster munitions and advanced sub-munitions may be incidentally planned. Should this Bill become law it would add significantly to the scope of restrictions and inhibitions on Australian personnel and reduce the effectiveness of their contribution to coalition headquarters.

- Noting that Part 2 of the bill, relating to the offences, only considers activities related to cluster munitions to be offences when they are 'intentional', would inadvertent support to cluster munitions operations, such as when the responding unit determines the weapons used, result in a breach of the bill?
- Have or are Australians routinely involved in military preparations for cluster munition use with allied partners?
- If Australian personnel were in command situations and unable to call in cluster munition support, what would be the effect on the troops in these situations and would they be at greater risk?

5. Paragraph 31 notes that the ADF needs to develop countermeasures to adversaries' use of various weapon systems including cluster munitions. It indicates:

Were Australia to be involved in a conflict with another State that had cluster munitions in its inventory, the ADF would need countermeasures against those munitions. In fact, Defence currently holds some inert cluster bombs and inert cluster munitions for the purposes of training explosive ordnance specialists in the identification and disposal of such ordnance. While section 14 of the Bill allows work to be done for rendering cluster munitions safe, it does not permit the acquisition of cluster munitions for research or training purposes, and section 17 of the Bill requires all cluster munitions held by Defence to be destroyed. The Bill makes no exception for using, producing or stockpiling cluster munitions purely for the purpose of developing such countermeasures. Part 3 does not address this concern.

- Do the countermeasures simply refer to the training for removal of cluster munitions as explosive remnants of war, or do they refer to a wider array of research and system development?
- If this refers simply to training for removal of cluster munitions as explosive remnants of war, would that be covered by the existing defences in Part 3 of the bill pertaining to conduct related to clearing submunitions?
- If not, why not and how could the existing language be amended to remedy this situation?

