Australian Government

Department of Defence

Defence Reference: FOI 187/20/21

Reference: BN23995233

FOI 187/20/21 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [redacted], under the *Freedom of Information Act 1982* (FOI Act), for access to:

> *"Department of Defence, Defence Instruction (General) OPS 44-1: Legal Review of New Weapons - 2020 updated version"*

FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. Following the review, the Defence Instruction (General) OPS 44-1 was not updated because it was incorporated within another document; the "Defence Instruction Administrative Policy" (the new Instruction), dated 25 July 2020. I note that page iv of the new Instruction specifies it is available for public release.

4. AG7.6 of the new Instruction references a second document; the "Defence Legal Review of New Weapons Guide" (the Guide). Specifically, AG7.7 states the new Instruction should be read in conjunction with the Guide.

5. Taking the above into account, I have interpreted that Document 1 (the new Instruction) and Document 2 (the Guide) fall within the scope of the request.

Decision

6. I have decided to release Documents 1 and 2 intact.

7. Information which is not considered relevant to the scope has been removed in accordance with subsection 22(1)(a)(ii) [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act.

Material taken into account

8. In making my decision, I had regard to:

   a. the terms of the request;

   b. the content of the identified documents in issue;

   c. relevant provisions in the FOI Act;

   d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and

   e. clarification received from Director Operations and International Law (DOIL).

Clarification

9. DOIL has advised that there is one identified error in the Guide, which will be addressed in the next version as follows:

   a. Paragraph 12(4) incorrectly quotes 57(2)(a)(iii), whereas it should quote 57(2)(a)(ii).

10. Further, it must be reiterated that the issue for a Weapons Review is never whether weapons are 'proportional' or 'be used proportionally', but whether the weapon is 'capable of being used proportionally' (or capable of being used in a way that avoids or in any event minimises collateral damage). This aspect will also be clarified in the next version.

[redacted]

CM Taylor
Group Captain

Accredited Decision Maker
Associate Secretary Group

23 November 2020