



**Australian Government**  
**Department of Defence**  
Associate Secretary

# The Legal Review of Weapons, Means and Methods of Warfare

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## Legislative and policy framework

- 7 Dec 1978 – Australia signed API
- 21 Jun 1991 – Australia ratified API (with declarations)
  - *Geneva Conventions Amendment Act 1991*(Cth) incorporated API into Schedule 5 of the *Geneva Conventions Act 1957* (Cth)
- The Department of Defence conducts weapon reviews
  - Directorate of International and Operations Law (Defence Legal)
    - 1994-2005 ad hoc approach to weapon reviews
    - 2 Jun 2005 Defence Instruction was promulgated
      - updated regularly, most recently in May 2020
        - » Not publically available

## What is subjected to a legal weapon review?

### API Art 36:

‘In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.’

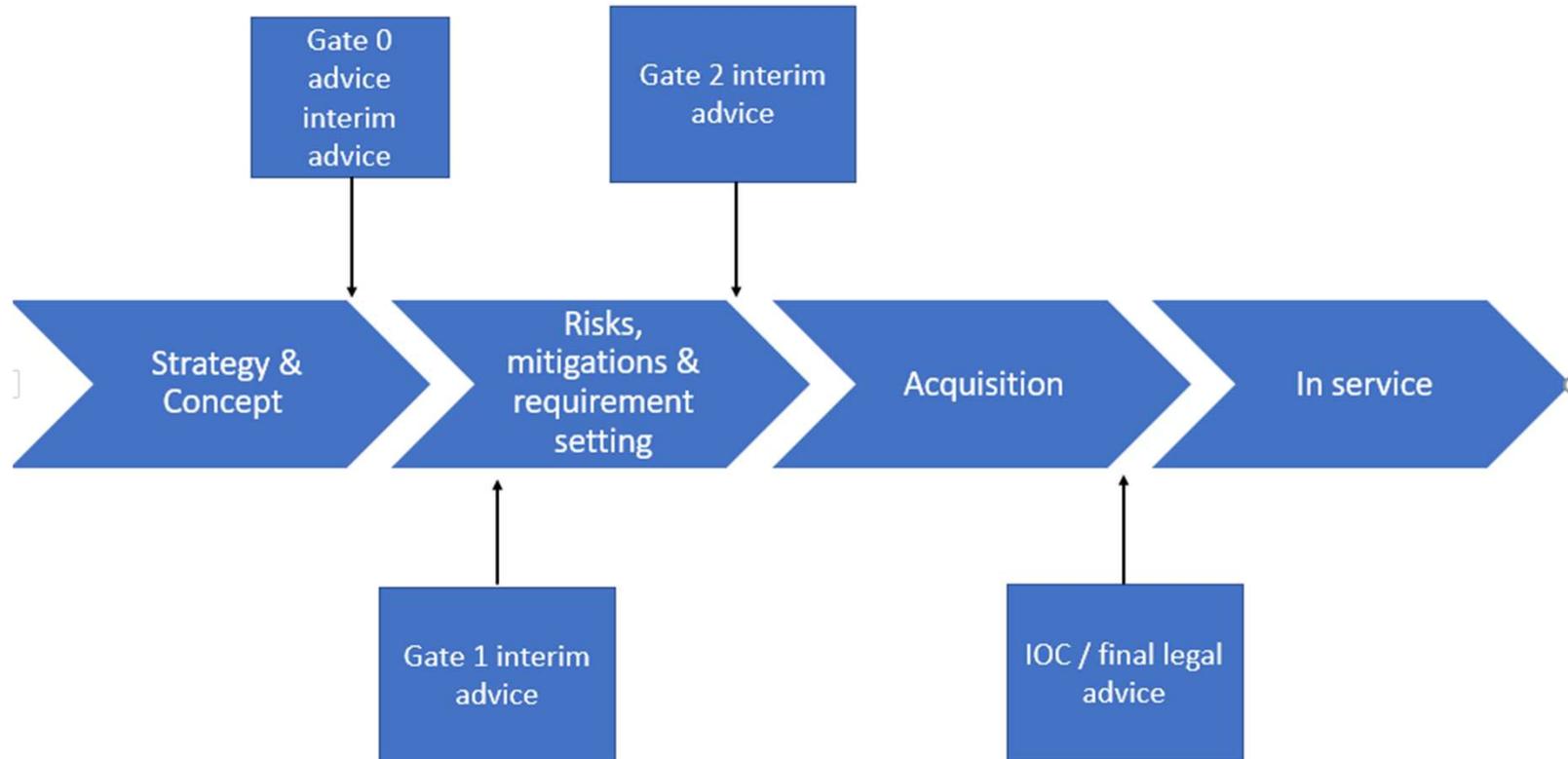
## What is subjected to a legal weapon review?

- Defence Article 36 Reviews of New Weapons Guide:
  - weapon = any device, whether tangible or intangible, designed or intended to be used in warfare to cause:
    - Injury to, or death of, persons; or
    - Damage to
  - means of warfare = weapons or weapon systems
  - methods of warfare = the way or manner in which weapons and weapon systems are to be used

## Who is responsible?

- The Director of Operations and International Law (DOIL) is responsible for the conduct of Article 36 review of weapons.
  - The majority of reviews will be conducted by a small team of Legal Officers
  - However a Multi-Disciplinary Review Committee may be stood up for the review of complex weapons or weapon systems

# The process



## Article 36 Review Criteria

- An Article 36 review conducted by DOIL will consider:
  - Whether the device is a weapon, means or method of warfare;
  - The normal and anticipated use of the weapon;
  - The technical details of the weapon, including its composition and effects;
  - Whether the weapon is prohibited, or its use restricted by a particular provision of API;
    - Is the weapon prohibited, or its use restricted by any other treaty to which Australia is a party, or other specific applicable rule of customary international law?
  - Whether the weapon is prohibited by general principles of international law;
  - Whether the weapon is subject to any public policy or other relevant consideration (such as the Martens Clause).

## **'Best Practice' and 'Challenges'**

- Best practice = Multi-Disciplinary Review Committee
- Challenge = Multi-Disciplinary Review Committee



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**Thank you**

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