

The Secretary
Senate Committee on Foreign Affairs, Defense and Trade
Department of the Senate
PO Box 6100, Parliament House
Canberra, ACT, 2600

Dear Committee Secretary,

Please find below a submission regarding the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010.

I am an Australian citizen working internationally as a victim assistance specialist in the field of mine action. Since 2003 I have undertaken various research projects on victim assistance provided to the survivors of landmines, cluster munitions and other explosive remnants of war. My experience in these matters includes contributing to many internationally distributed publications, several of which received funding from the Australian Government. These publications have shown the great needs of the survivors their families and the communities affected while also recognizing and recording the efforts of governments and civil society organizations to begin to respond to these needs. Additionally, the groundbreaking reports on the global human impact of cluster munitions, *Fatal Footprint (2006)* and *Circle of Impact (2007)* helped reveal the extent of civilian casualties caused both during cluster munition strikes and by remnants. Through this research I have been in regular contact with cluster munition survivors from around the world and have collaborated with the “Ban Advocates” cluster munition victims’ initiative since its inception. Australia has supported initiatives to give voice to survivors. I have often heard from survivors the need for concrete ongoing support by donor states as well as clear commitments by all States Parties on issues of interoperability and investments. Although I am currently based in Serbia, I am willing to make an oral submission if that could be made possible, or alternatively I could respond to questions through electronic communications.

Sincerely,

I would like to express the following concerns regarding the Cluster Munitions Prohibition Bill (2010) and propose recommendations to address them:

Victim assistance is one of the key obligations in the Convention on Cluster Munitions (CCM) and a central component of the treaty’s humanitarian goals. The CCM ensures the full realization of rights of all cluster munition victims by obligating states, in accordance with

applicable humanitarian and human rights law, to adequately provide assistance, including medical care, rehabilitation and psychological support, and provide for their economic and social inclusion. A key message from the Cluster Munition Coalition is that victim assistance is a legal obligation under the CCM both for States Parties with victims and States Parties in a position to give international assistance.

The Explanatory Memorandum to the Bill (2010) states that the Convention does not impose any financial obligations on Australia regarding clearance or the provision of assistance to victims of cluster munitions outside of Australia. However, it must be made clear that as a future state party “in a position” to provide assistance Australia will have an obligation to contribute according to Article 6 of the Convention and to do its “utmost in providing assistance to cluster munition victims.”

Article 6 Paragraph 7 of the Convention on Cluster Munitions specifically refers to the obligation of States Parties to provide assistance for the fulfilment of the victim assistance Article 5 obligations of states with cluster munitions victims in their jurisdiction. Australia could include references to its commitment to respond to the needs expressed by states with responsibility for cluster munitions victims in their areas of jurisdiction.

I am also concerned by provisions of the Bill that would allow activities which prohibited by the convention. These contradict both the intentions of the convention and undermine the hard work of survivors, their families and representatives from affected communities to prevent further use of the weapon under any circumstances. These provisions include: allowing Australians to assist with cluster munitions during joint military operations; allowing stockpiling and transfer of cluster munitions by foreign forces in Australia; allowing Australia to retain cluster munitions without adequate reason or and inadequate limitations on the number; not adequately prohibiting investment in the production of cluster munitions.

I would like to propose the following recommendations to be in addition to the existing Bill:

I encourage Australia to use appropriate methods to inscribe clear provisions on cooperation and assistance as well as for universalisation of the convention in accordance with Article 9 of the Convention on Cluster munitions which obliges State Parties to take “*all appropriate legal, administrative and other measures*” to implement the Convention.

- Make reference to victim assistance obligations under Article 6.7 and a commitment to respond to the national plans and budgets and steps taken to mobilise resources which states with responsibilities for cluster munition victims must develop according Article 5.2.c. and 5.2.d. Text to this affect could be adopted by Australia, in a more concrete and lasting manner than a five-year mine action strategy.
- In conformity with the victim assistance principles of the Convention on Cluster munitions these measures should be coherently linked to Australia’s obligations under the Convention on the Rights of Persons with Disabilities, as applied in AusAID’s 2008 disability inclusive strategy.

- Designate an appropriate focal agency responsible for the implementation of positive obligations including those under Article 6.

I would also like to propose the following recommendations for amendments to the Bill:

In order to fulfill its legal responsibility to implement the convention's vital obligations. I believe that it is in the best interests of Australia and the Convention that the Bill should be amended to prohibit these activities and demonstrate that Australia is truly "*Determined to put an end for all time to the suffering and casualties caused by cluster munitions...*" as stated in the Conventions preamble (my emphasis).

- Section (72.41) regarding Defence-Acts done by Australians in military cooperation with countries not party to Convention on Cluster Munitions should be changed and the legislation explicitly state that the prohibitions listed under Article 1 of the Convention apply at all times and under all circumstances, including during joint operations with a country not Party to the Convention. It must be made clear that Australian personnel cannot request the use of cluster munitions under any circumstances.
- Delete the exemptions under defence-acts in Section 72.42 for military personnel of non-states parties from the convention's prohibitions while they are on Australian territory. Instead, include text prohibiting transit or stockpiling of any cluster munitions, including those under foreign control, on Australian territory.
- Remove the provision under Section 72.39 allowing retention on the authorization of the Minister. Include wording stating that no live clusters will be retained or if it is decided that cluster munitions or submunitions are to be retained specify the maximum number, must be the " the minimum number absolutely necessary" and include wording on the purpose and associated reporting conditions.
- Include specific wording prohibiting both public and private investment in the manufacture of cluster munitions and specific legislation prohibiting Australian investment in the production of components for use in cluster munitions.