

28th February, 2011

Senator Bishop, Chair of the Senate Committee
reviewing the Cluster Munition Convention legislation

Dear Senator Bishop,

As I have long taken an interest in the twin problems of the indiscriminate weapons of landmines and cluster munitions, I was pleased when the Landmine Convention was signed by Alexander Downer in December 2007 and speedily ratified and adopted into Australian legislation a year later. I was pleased too when Australia was one of the original signatories to the Cluster Munition Treaty in December 2008, but I became concerned when the procedure towards ratification became so protracted that Australia was able to attend last November's Vientiane Conference only with Observer status rather than as a full participant.

I was relieved when the Australian government announced that is now moving towards ratification of the Convention on Cluster Munitions. However, on studying the Australian draft legislation and comparing it with the Convention I find further cause for concern. The fact that Australia has dropped the words from the opening clause of the Convention: "Never under any circumstances" fills me with foreboding. Are politics intervening in the humanitarian aim of putting an end for all time to the suffering and casualties caused by cluster munitions? Does this show the intention to introduce loopholes to undermine the spirit and intent of the Convention?

Ratification of the Convention should mean we are fully bound by its obligations "under all circumstances". Hence we must not use cluster munitions ourselves, nor assist their use, nor allow allied troops to use such weapons in joint operations, nor to store or transfer them across Australian territory (either land or sea). Yet we know that the United States resists the Convention and has leaned heavily on its allies to weaken their legislation. The UK legislation was diluted in this way. I sincerely hope that Australia will realise and act on the moral obligation to support the Convention as strongly and effectively as possible. Australia has the opportunity to earn the moral authority to become an example in the southern hemisphere and to the neighbouring countries in south-east Asia.

A further cause for concern is the omission from the draft legislation of the prohibition from investment in manufacture of cluster munitions and their components, both directly and indirectly. This has been banned in countries such as New Zealand, Luxembourg, Belgium and Ireland; it should be banned in Australia too.

Despite Australia's generosity in funding mine clearance, this draft legislation completely omits any mention of positive obligations in assisting victims and in land clearance. I know this to be an artefact of our legislation being part of the criminal code rather than 'stand-alone' legislation, but I hope there may be some way of remedying such a great flaw.

I shall continue to watch the passage of this legislation with great interest and some anxiety.

(Mrs) Helen Stanger