

## Submission by Willy Bach Convention on Cluster Munitions

At the outset, let me say, I enthusiastically welcome Australia's imminent ratification of the Convention on Cluster Munitions. I hope that the form which this ratification takes will satisfy all stake-holders.

I am a British Army veteran of the Indochina War and now a peace scholar, working on a post graduate research project in the School of History, University of Queensland, Brisbane. My topic concerns the collaboration of the British, Australian and New Zealand governments in the CIA's Secret War in Laos. I have also carried out field research in Lao PDR for a year and so have seen firsthand the effects of continuing cluster bomb and UXO injuries.

Some of my travel in Lao PDR is recorded here on this blog:

<http://tuktuklaos.blogspot.com/2009/04/ho-chi-minh-trail.html>

<http://tuktuklaos.blogspot.com/2009/04/hin-nam-no-protected-area.html>

I also refer readers to the work of anthropologist, Holly High, in her 2006 article, *Violent Landscape: Global Explosions and Lao Life-Worlds*

<http://rspas.anu.edu.au/rmap/newmandala>

On Page 66, High explains:

"“The bombs dropped like a man sowing seed” Lao saying regarding the US bombing campaign, 1964-1973. In the allusive language of military reports, the use of explosives in Laos is referred to in terms of sowing seeds. Pilots were ordered to “reseed” Nape Pass in Laos’ east, and it was said afterwards that they “reseeded other routes with bombs”.

Listen to ‘*Deadly Legacy: Cluster Bombs*’ January 11, 2011 - Elizabeth Jackson: “It was called America's Secret War”.

<http://iraqwarinquiries.blogspot.com/2011/01/deadly-legacy-cluster-bombs.html>

I recommend Kim Maudaunt's 2007 film, *Bomb Harvest*, as an Australian's view of the issue.

<http://www.bombharvest.com>

One question that needs to be asked is the *utility* of modern industrial warfare; what purpose can it still serve in the twenty-first century, as we face considerable challenges that require global cooperation. Since this question confronts anyone, especially those who go to Laos and visit the various sites of destruction and examines the after-effects of the war, as I have done. This question needs to be asked of military strategists, political decision-makers and lay persons in the Australian public. If there is an intention to design Australia's compliance with this treaty in ways that *enable* warfare, making it more possible and therefore a more

likely resort; then there needs to be an assessment of the utility with continuing the activity of war-fighting and the act of condoning the use of this particular weapon.

British General Sir Hugh Beach claims that cluster bombs are militarily useful when used against adversary combatants in achieving what is known as 'area denial' in his 2001 article, *Cluster Bombs: the Case for New Controls Briefing Paper No. 25*. I point to the flaw in this claim in both the duration of that denial, which includes a period long after the cessation of hostilities, and the actual results (with the 30% failure rate of the bomblets) of targeting future generations, which can be characterised as collective punishment. Under the 1949 Fourth Geneva Conventions, relative to the Protection of Civilian Persons in Time of War, collective punishments are a war crime. When the combatants have left the battle space, or died, the only people left in the operational area are civilians. It can be argued that no military imperative or military utility is served by maiming a child who was born decades after the conflict. It would not be credible to argue that such military utility exists; in fact it is an unconscionable argument to advance.

I believe that Australia should be ratifying the letter and the full spirit of this Convention on Cluster Munitions and closely examining other weapons that are in use, to interrogate whether these effectively breach Geneva Conventions and Customary international humanitarian law on superfluous injury and needless suffering and whether their military utility is really as essential as is claimed.

General, Sir Hugh Beach, explains in the above article, the progression of thinking on egregious weapons and the causation of "needless suffering" inflicted on combatants and/or undefended civilians beyond the imperatives of military necessity:

"The St Petersburg International Military Convention of 1868 took the first step towards qualitative arms control when it declared that "the necessities of war ought to yield to the requirements of humanity". It also decreed that states should forgo the types of weapons "which uselessly aggravate the sufferings of disabled men or render their death inevitable". The aim was to seek agreement on technical limits beyond which weapons would be deemed to produce more suffering than was necessary to render personnel hors de combat. The Brussels Conference (1874) reinforced this point: "The laws of war do not recognise in belligerents an unlimited power in the adoption of means of injuring the enemy". It also declared as especially forbidden the use of poison or poisoned weapons, as did the Hague Regulations of 1899 and 1907."

The treaty provides that signatories should apply moral suasion on allies to provide an example that may lead to these allies adding their signatures to this treaty, thereby making the treaty more effective; but we have to make more than a token gesture in order that this should eventually lead to the non signatory nations willingly joining with the rest of the world's nations. Australia's alliance with the USA should not deflect this country from the task of compliance with this treaty.

To this effect, I think that Australia should *not* be taking the same approach that the British government took when they were reluctantly brought around to the signing of this treaty. Britain sought ways of circumventing the treaty for the purpose of conforming to the requirements of interoperability with US forces, whilst the US has to date not yet agreed to sign the treaty. This circumvention was performed without the knowledge of the British general public and thereby failed to meet standards of transparency. It was also not in the spirit of ratification for Australia to take this approach.

I refer readers to this article in *The Guardian*, dated 1 December 2010:

**‘WikiLeaks cables: Secret deal let Americans sidestep cluster bomb ban’** - “Officials concealed from parliament how US is allowed to bring weapons on to British soil in defiance of treaty”.

<http://www.guardian.co.uk/world/2010/dec/01/wikileaks-cables-cluster-bombs-britain>

It is acknowledged that Australia, as an ally of the USA requires that Australian troops routinely perform roles in US military operations in which the US command structure supervises Australian military tasks. Therefore, I find the wording perhaps intentionally broad, and would prefer a less broad and more precise interpretation (Point 15 in the *National Interest Analysis - Convention on Cluster Munitions Adopted at Dublin on 30 May 2008 [2008] ATNIF 24*):

“Australia would not be permitted to physically use or transfer prohibited cluster munitions in the course of a Coalition operation and would not be authorised to expressly request the use of cluster munitions **in cases where the choice of munitions used is within its exclusive control. Australia will continue to work with allies and partners on a common understanding of how Article 21 will operate** in practice and in compliance with the Convention by Australia and other States parties.”

I believe that the provisions relating to the movement and storage of US cluster bombs should be both compliant with the terms of ratification of the treaty and these must be transparent to both the Australian public and the treaty signatories at large. No efforts should be made to circumvent the treaty or deceive the public. This approach should be adhered to in relation to both US stockpiles, which should *not* be located on Australian territory, and joint forces exercises on Australian soil, such as Talisman Saber. In the field, in any actual military conflict, US use of cluster munitions should not be as part of any Australian military task.

I would also flag for clarification (from Point 3): “Australia to retain non-operational stocks for counter-measures and training purposes.” The military utility of ‘training purposes’ can be readily appreciated, but the words ‘counter-measures’ require more clarity regarding the intent in using this military term. I do not believe that it is either necessary or desirable for Australian forces to retain any cluster munitions for actual use.

Australia should be striving to comply with both the treaty and The Equator Principles, as shown in this document, *An overview of BankTrack-EPFI engagement on the Equator*

*Principles*, from BankTrack in Zürich, Switzerland, February 2010. This document can be found here:

[http://www.banktrack.org/download/going\\_round\\_in\\_circles\\_an\\_overview\\_of\\_bank\\_ngo\\_engagement\\_with\\_the\\_equator\\_principles/100128\\_going\\_around\\_in\\_circles.pdf](http://www.banktrack.org/download/going_round_in_circles_an_overview_of_bank_ngo_engagement_with_the_equator_principles/100128_going_around_in_circles.pdf)

Ratifying this treaty is an act designed for the worthwhile and humanitarian purpose of preventing needless suffering; but also to enhance transparency. This ratification is also fundamentally connected with the investment of funds in the development, manufacture or marketing of these weapons and the continued production of cluster munitions both with Australian funds and on Australian territory.

I have encountered considerable resistance to the application of such provisions among Australian financial institutions. I attach my letter to the ANZ Bank and my letter to Q Super Socially Responsible Superannuation Funds. In the latter case I decided to withdraw my superannuation funds to another fund that agreed to Australia's compliance.

Here I will refer readers to MAPW's *Fact Sheet 8 - Lockheed Martin*, as an example of how odious investments could be avoided:

<http://www.mapw.org.au/files/downloads/factsheet8%20Lockheed.pdf>

It is in my view imperative for the Australian government to mandate that all Australia-domiciled financial institutions divest from both readily identifiable cluster munition manufacturers like Lockheed Martin and those corporations whose business is partly derived from this sector.

I trust that this submission will be of assistance in determining the way forward for the Australian government's principled, transparent and sincere ratification of the Convention on Cluster Munitions.

Willy Bach

School of History

University of Queensland

Dear Genevieve Holmes 20 11 09

Thank you for this detailed explanation of the QSuper Socially Responsible fund investment policies. I do normally prefer to invest in ethical companies and did hope to do as well as I could with your Socially Responsible fund. I understand that AMP Capital Investors are managing the portfolio, as this was previously explained to me. I also understand the generalist approach that AMP Capital Investors take to placing investments that earn investors a healthy return with less emphasis on ethical concerns.

You inform me that QSuper Socially Responsible fund restrict to 10% any investment in the categories in paragraph 2, which include armaments. I have a problem with armaments per se, especially at this time when Australia is engaged in wars that are not for the defence of this country, but in aid of military adventures on behalf of allies.

But a far more serious issue arises from the fact that the Uniting Church has identified the ANZ Bank as investing in Lockheed Martin and therefore in the production of cluster bombs, which are an egregious weapon, subject to worldwide bans, that mainly kill civilians, especially children and are left to explode at a later time, perhaps forty or more years after the conflict has finished.

I am a veteran of the CIA's Secret War in Laos, so I am aware of Australia's role in that war. Laos lost one third of its population and was the most heavily bombed nation on planet earth. Cluster bombs were extensively used in Laos between 1964 and 1975; the countryside is littered with millions of cluster bombs. The USAF is not even able to produce bombing data figures for several months of the war. As many of these as 35% were duds, faulty, did not explode. So, poor peasant farmers finding them in their fields might assume that they were valuable as scrap. If this was a child they might additionally be attractive as a plaything, since they resemble a fruit or a ball.

Thousands have died from delayed explosions; many more have lost limbs, eyes and worse. People in remote parts of Laos have no other livelihood except growing rice and gathering forest foods. They have little money and communications can be very slow and unreliable. They may not obtain medical assistance in a timely manner. If they lose limbs they cannot work and become a burden to their families and communities. I have just spent a year there and have documented the situation for my research. I describe this as intergenerational collective punishment. The Nuremberg Principles declare the targeting of civilians and collective punishment to be war crimes.

COPE is a wonderful organisation in Vientiane busy making prosthetic limbs for victims of UXO and cluster munitions and rehabilitating victims <http://www.copelaos.org/index.html>

If you have a look at the National Regulatory Authority site you can install Google Earth on your computer and go to the various Provinces of Laos and see for yourself how widespread and heavy the USAF bombing was. There is also a map. <http://www.nra.gov.la/>

Please watch the DVD Bomb Harvest, which features a courageous Australian who is helping to clear UXO and cluster munitions in Laos <http://www.bombharvest.com/>

You might also spend some time on the site of Cluster Munition Coalition <http://www.stopclustermunitions.org/> You will note that the worldwide ban on these

egregious weapons is backed by the UN and that Australia is a signatory. I am delighted to know that Australian military personnel will never again be required to deploy these weapons.

I have written to our Foreign Minister, Stephen Smith to ask when the Rudd government is going to ratify the Convention. When that ratification happens in our parliament it will no longer be appropriate to Australia's compliance with the Convention for Australian-domiciled companies to invest in the production of cluster bombs. It is probably enlightened self-interest to be ahead of the curve and disinvest now.

My year among the Lao people has taught me that we owe it to these people to end the use of these dreadful weapons, which are used to target civilians in what is known as 'area denial' - which means they starve if they can't grow food.

I would be obliged if you would have a thorough look at the evidence I have presented with your investment managers and let me know if you have come to a decision to disinvest in egregious weapons like cluster bombs. I would be happy with a signed letter from the ANZ Bank announcing that they have disinvested. I would be happy if QSuper disinvested from the ANZ Bank. You may have other solutions that I would find acceptable.

Thank you for your attention to this matter. I look forward to hearing from you soon

Regards  
Willy Bach

2009/11/19 <QSuper\_CustomerService@qsuper.qld.gov.au>

Dear Mr Bach

Thank you for your email.

The QSuper Socially Responsible option invests in the Responsible Investment Leaders (RIL) Balanced Fund which is managed by AMP Capital Investors.

A portfolio listing of companies the RIL Balanced Fund invests in is available from their website. This information can also be accessed via the QSuper website, if you select the *Performance* tab at the top of our homepage, you will see a link titled *Socially Responsible* which will take you to the *Socially Responsible quarterly update* page. On this page, under *Share holdings* you will see a pdf document title *Australia*.

Whilst the RIL Balanced Fund portfolio listing includes investment in the Australia & New Zealand Banking Group (ANZ) it is important to take into account AMP Capital Investors' socially responsible investment (SRI) approach. Their approach assesses labour standards, together with environmental, social and ethical considerations, as part of deciding whether to buy, hold, or sell shares in a company. In addition, AMP selects SRI managers based on three key criteria:

1. financial assessment process and ability to factor labour standards, ethical, social and environmental factors into company selection

2. 2. avoiding exposure to companies with a material exposure (greater than 10% on key financial measures) to the production or manufacture of tobacco, uranium, armaments, gambling, alcohol or pornography
3. 3. selecting optimal manager combination

Based on the assessment criteria outlined, and in particular 2. above, ANZ remains under the 10% of revenue or profit generated from the production or manufacture of tobacco, uranium, armaments, gambling, alcohol, or pornography. This method of assessment, also known as negative screening, is an accepted assessment method adopted by SRI funds generally.

As ANZ is one of the largest companies in Australia, QSuper will have exposure to ANZ in some form or other across the our range of investment options. However, due to the benefits of diversification, not all of your funds are invested in ANZ, they are spread across a number of companies as outlined in the RIL portfolio listing.

If you have any further enquiries, please call Member Services on +61 7 3239 1004.

Yours faithfully

**Genevieve Holmes**  
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The information has been prepared for general purposes only without taking into account your financial objectives, situation or needs, so it may not be appropriate for your circumstances. You should read the product disclosure statement (PDS) and consider your circumstances before you make an investment decision. You can get a PDS from the QSuper website, or call us and we'll send you one.

Is your super out of control? Keep track of all your super in one account by rolling over to QSuper today. Visit our website or call 1300 360 750 for an *Easy transfer* form.

**From:** QSuper  
**To:**  
**cc:**  
**bcc:**  
**Subject:** Member webmail

**Message:** I have super funds in you socially responsible fund. I have just read Uniting

Church slams ANZ terror link BARNEY ZWARTZ

<http://www.theage.com.au/national/uniting-church-slams-anz-terror-link-20091104-hy1j.html>

The ANZ Bank is investing in internationally banned cluster bombs. I am disgusted but not surprised at the ANZ Bank. I want to be sure that none of my money is lent to Lockheed Martin. I am forwarding this to my financial advisers and the Australian Ethical Investment Super fund, where I have some Super, and to my friends in Vientiane, Laos, where the ANZ bank has a big presence. ANZ Bank and Lockheed Martin are absolutely not to be anywhere in my portfolio, please. I am sending a copy to the ANZ Bank, as I have questioned them previously on their shamelessly amoral investment policies. Cluster bombs have wrought a terrible legacy in Laos. I am enraged that they are still being manufactured and used.