



# AUSTRALIAN NETWORK TO BAN LANDMINES AND CLUSTER MUNITIONS INC

## Australia's Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010

The Australian Network to Ban Landmines and Cluster Munitions (ANBLC) recognizes that drafting new legislation is a complex process.

Therefore we ask that the current draft legislation on cluster munitions is openly discussed, that interpretations offered by civil society are given credence and that above all Australia looks to comply with both the spirit and intent of the Convention on Cluster Munitions.

Civil society campaigners believe that our obligations under the Convention on Cluster Munitions are clearly laid out and that our domestic legislation must faithfully abide by them.

The ANBLC has worked cooperatively with the government in the past and hopes to do so again in the future, particularly in regard to mine action.

We recognize the importance of Australian ratification of the convention. However, ratification with weak legislation is not what we seek.

The ANBLC understands the government's wishes to preserve military cooperation with our allies. This cooperation is preserved by the convention, which does not jeopardize our alliance and our military cooperation with our allies, even if they are not party to the convention. In this we are in agreement with the government. We further agree that inadvertent use of cluster munitions in the course of this cooperation is not an offence.

However, we continue to maintain that Article 21 does not indemnify assistance to use cluster munitions in the course of joint operations. Australian soldiers have a responsibility to refrain from any known or reckless involvement in cluster munitions use at all times. Identifying targets for cluster munitions strikes or refueling aircraft in preparation for a cluster munitions strike must surely be seen as "assistance" and therefore be prohibited activities. The government has made it clear that words such as "use" "assist" and "induce" are to be read in accordance with their everyday meanings. This cannot then be distorted and clear assistance somehow be read in another way.

Government representatives from the Department of Foreign Affairs and Trade have stated that as our relationship with the US differs from that of other countries, our interpretation of our obligations differs. We have always allowed for interpretation of the convention but ask that Australia shows a clear lead by enacting a strong interpretation, sending a message of unequivocal condemnation of any use of cluster munitions. We have a responsibility to preserve the integrity of our obligations.

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- *Recommendation:*

*Amend 72.41 of the bill to clearly prohibit the ADF from involvement in the use of cluster munitions. A good guide here is the New Zealand legislation which has achieved the goal of allowing joint operations, but still maintaining the integrity of the convention's obligations.*

Similarly the proposed legislation, allowing Australian territory to be used for the stockpiling and transit of cluster munitions makes a mockery of our obligation to dissuade states not party from cluster munitions use. Again, it can also be argued that such actions provide further evidence of assistance and as such are prohibited.

We find it particularly worrying that the Australian government has seen fit to isolate Australia, being the only country to specifically allow transit of foreign cluster bombs across our territory. This could have the unfortunate effect of damaging Australia's international reputation and standing with regard to the convention.

- *Recommendation:*

*Remove Section 42.42 and replace it with wording specifically prohibiting transit across or stockpiling on, our territory.*

We have argued against the need for retention of cluster bombs. This is still our ideal position. We believe that this is an achievable goal as many countries have already enacted legislation specifically prohibiting retention.

However, if the government does not amend our legislation to specifically prohibit retention, certain amendments still need to be made. Retention cannot be open ended and unreported.

- *Recommendation.*

*Include a prohibition on retention or at the very least stipulate, as Ireland has done,*

*that only the "minimum number absolutely necessary" will be retained. In addition the convention requires rigorous and transparent reporting measures to be clearly documented in domestic legislation.*

Recognition of our positive obligations under the convention.

We commend the government on its on-going commitment to mine action. Unfortunately, our positive obligations under the convention, while reflected by our actions, are not reflected in the wording of our legislation.

Despite that age old adage that "actions speak louder than words" we would still encourage the government to include our positive obligations in some way. This will both reflect our current values and enshrine our on-going commitment to these obligations in legislation. The many survivors of cluster munitions accidents will require long term, sometimes lifelong, care and land clearance funding will be needed for many years. A stated legislative commitment by

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Australia to fulfill our positive obligations will ensure our continued aid in these areas and will do much to enhance Australia's reputation as a humanitarian nation.

We sincerely hope that the Senate Committee of Foreign Affairs, Defence and Trade will accept the significance and validity of our concerns and will recommend amendments to the Amendment to Criminal Code (Cluster Munitions Prohibition ) Act 2010.

Yours sincerely,

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