

BANNING CLUSTER MUNITIONS *Australia's role*

A submission by the Peace Organisation of Australia to the Senate Foreign Affairs, Defence and Trade Committee inquiry into the provisions of the Cluster Munitions (Prohibition) Bill 2006

January 2007

Contents

1	Introduction.....	2
1.1	Overview of the submission	2
1.2	About the Organisation	2
1.3	Summary of recommendations	2
2	Australia's position	3
3	The Bill	5
3.1	General comments	5
3.2	Section-by-section analysis	5
3.3	Support for the Bill	7
3.3.1	United Nations Children's Fund (Australia)	7
3.3.2	Medical Association for the Prevention of War	8
3.3.3	Australian Psychological Society	9
3.3.4	Peace Organisation of Australia	10
3.4	Similar bills.....	10
4	An international ban	11
4.1	Recent developments.....	11
4.2	Inadequacy of existing law.....	11

1 Introduction

1.1 Overview of the submission

The Peace Organisation of Australia ('Organisation') has reviewed the provisions of the Cluster Munitions (Prohibition) Bill 2006 ('Bill') and encourages the Australian Parliament to pass the Bill without amendment. Further, the Organisation urges the Australian Government to support, at all relevant international forums, moves for a legally enforceable ban on all forms of cluster munitions. This submission has been written in consultation with the membership of the Organisation. The recommendations contained herein are based on the consensus views of those who were involved in the consultation process.

The submission is divided into four main sections: (1) an introduction, which outlines the key recommendations; (2) a discussion on Australia's position in relation to cluster munitions; (3) a section-by-section analysis of the Bill and a comparison with similar legislative instruments; and (4) a discussion on Australia's possible involvement in moves for an international ban on cluster munitions.

1.2 About the Organisation

The Peace Organisation of Australia is a non-religious, non-profit organisation that promotes the non-violent resolution of disputes. It has members in every state and territory of Australia, as well as a small number of international members. It became an incorporated association within the state of Victoria in May 2005. The Organisation runs events to celebrate the International Day of Peace, publishes the *Australian Journal of Peace Studies*, awards the Australian Peace Prize, operates an education program in schools and maintains the Australian Peace Directory. It has actively campaigned for nuclear disarmament and on other weapons issues.

1.3 Summary of recommendations

The Organisation recommends that the Parliament of Australia:

1. Pass the Cluster Munitions (Prohibition) Bill 2006, without amendment; and
2. Pass a motion expressing its support for an international treaty prohibiting *inter alia* the use, possession and manufacture of all forms of cluster munitions.

The Organisation recommends that the Government of Australia:

1. Take a leading role in moves for an international treaty prohibiting *inter alia* the use, possession and manufacture of all forms of cluster munitions; and
2. Offer greater support to efforts to clear explosive remnants of war, including unexploded cluster submunitions, in countries such as Lebanon, Afghanistan, Iraq, Laos and Vietnam.

2 Australia's position

The Australian Government has an unstated policy of not using or manufacturing cluster munitions. It would seem that it no longer maintains a stockpile of cluster munitions.¹

¹ Senator Lyn Allison asked the Minister representing the Minister for Defence, upon notice, on 7 November 2006 (Question No. 2616):

- (1) Does the Government possess a stockpile of cluster bombs as is alleged by the Cluster Munition Coalition; if so: (a) how many are in the stockpile: (i) in total, and (ii) of each type; (b) what are the different types found in the stockpile; (c) for each type in the stockpile: (i) what proportion of the bomblets, on average, are left unexploded upon detonation, and (ii) what is the approximate scatter area; (d) is it possible, or likely, that the bomblets within any of the cluster bombs could be mistaken by children as small toys, if they are left unexploded in fields or residential areas; (e) when were the cluster bombs obtained; (f) from which company or which nation were the cluster bombs obtained; (g) what other countries, if any, are storing some or all of the stockpile; (h) what is the approximate pecuniary value of the stockpile; (i) why does the Government possess the stockpile; and (j) does the Government intend to retain the stockpile indefinitely.
- (2) If the Government does not possess a stockpile of cluster bombs, has the Government ever possessed such a stockpile in the past.
- (3) Has the Government ever used a cluster bomb as a weapon of war or for testing purposes; if so: (a) how many have been used; (b) where have they been used; and (c) what types have been used.
- (4) Has the Government ever produced, or contracted an Australian company to produce, cluster bombs.
- (5) Would the Government support multilateral moves to place an international ban on the use, storage and construction of cluster bombs; if not, why not.
- (6) Has the Government been actively involved in operations to clear populated areas of unexploded cluster bomblets.
- (7) Does the Government consider the use of cluster bombs to be morally justifiable; if so, under what circumstances.
- (8) Does the Government condone the use of cluster bombs by Israel in the recent conflict with Lebanon.

Senator Ian Campbell provided the following answer to the honourable senator's question:

- (1) No.
- (2) Yes, from the 1970s to 1990s.
- (3) The Australian Defence Force has not used cluster munitions as a weapon of war, but they have been used in limited quantities for testing purposes: (a) Approximately 10 to 20 cluster munitions were tested; (b) Woomera test range in South Australia; (c) Karinga cluster bomb and American CBU-58B
- (4) Yes, in the 1970s and 1980s the Government manufactured limited numbers of cluster bombs for testing purposes.
- (5) The Australian delegation to the recent November Review Conference of the Certain Conventional Weapons Convention (the CCW) strongly supported a mandate for government experts to consider the application and implementation of International Humanitarian Law (IHL) with respect to Explosive Remnants of War, particularly focusing on cluster munitions. This is to include factors affecting the reliability of cluster munitions, and their technical and design characteristics, with a view to minimising their humanitarian effects.
- (6) Yes. The Government has also contributed \$500,000 to the United Nations Mine Action Service for clearance work in Lebanon, which will include unexploded cluster munitions.
- (7) Cluster munitions have the potential to cause great harm to civilians, and the Government supports discussions in international fora aimed at placing restrictions on their use. Cluster munitions are not

Nevertheless, the Cluster Munitions (Prohibition) Bill 2006, if it were enacted, would have significant utility, as is explained later in this submission. The Australian Government possessed a stockpile of cluster munitions from the 1970s until the 1990s. It has not used cluster munitions as a weapon of war, but approximately 10 to 20 Karinga and CBU-58B cluster munitions have been used for testing purposes at the Woomera test range in South Australia. In the 1970s and 1980s, the Australian Government manufactured limited numbers of cluster munitions.

The Australian delegation to the Review Conference of the Certain Conventional Weapons Convention held in November 2006 strongly supported a mandate for government experts to consider the application and implementation of international humanitarian law ('IHL') with respect to explosive remnants of war, particularly focusing on cluster munitions. The experts would focus on the factors affecting the reliability of cluster munitions, and their technical and design characteristics, with a view to minimising their humanitarian effects.

The Australian Government acknowledged on 4 December 2006 that cluster munitions have the potential to cause great harm to civilians and stated that it supported discussions in international forums aimed at placing restrictions on their use. However, they argued that cluster munitions are not illegal under any arms control or IHL instrument, and they have 'legitimate military utility where properly targeted, are reliable and discriminating, and deployed in compliance with IHL'.

The Australian Government stated that it was aware of reports of the use of cluster munitions by the Israel Defence Force ('IDF') in southern Lebanon in the conflict with Hezbollah from July to August 2006, and understood that an internal inquiry had been announced into the IDF's use of cluster munitions. However, beyond this, the Australian Government believed that it was not in a position to comment on the IDF's use of cluster munitions.

The Australian Government's position on cluster munitions is similar to the position adopted by many other governments and a small number of non-government organisations. Most non-government organisations, however, support a blanket ban on cluster munitions rather than a partial ban. The Peace Organisation of Australia does not believe that any cluster munition has a 'legitimate military utility' and argues that the continued use, possession and construction of cluster munitions cannot be justified.

The Organisation believes that the use of cluster munitions is, in most circumstances, illegal under existing IHL instruments. However, the Organisation argues that the current international legal regime is inadequate in preventing the use of cluster

illegal under any arms control or IHL instrument, and they have legitimate military utility where properly targeted, are reliable and discriminating, and deployed in compliance with IHL. Defence made a substantial contribution to the funding of a discussion paper for the CCW on the IHL concept of proportionality and its application to the creation of Explosive Remnants of War, including cluster munitions.

- (8) The Government is aware of reports of the use of cluster munitions by the Israel Defence Force (IDF) in southern Lebanon in the recent conflict with Hezbollah, and understands an internal inquiry has been announced into the IDF's use of cluster munitions. Beyond this, the Government is not in a position to comment on the IDF's use of cluster munitions.

munitions and, therefore, a treaty relating specifically to cluster munitions should be created at the soonest opportunity. Domestic legislation, such as the Cluster Munitions (Prohibition) Bill 2006, is also an important way of ensuring that cluster munitions are not used.

3 The Bill

3.1 *General comments*

The Organisation considers it unnecessary for the Bill to include delegation or regulation powers. There is nothing in the Bill, or in the common law or any statute, that would prevent the Minister for Defence using prerogative executive powers to undertake the decommissioning of any cluster munitions (if it were to acquire any before the commencement of the Act), in whatever way is best. There was, for instance, no regulation specifying how the Minister for Defence was to decommission the Mirage Jet Fighters, but he was able to do this nonetheless.

Any requirement for regulations would lead to an unnecessary delay, because instead of having the ability to give the instruction immediately, the Minister for Defence would have to go through the process of developing the regulations, tabling them and then awaiting the disallowance process before actually ordering the decommissioning. As the Bill stands, the Minister for Defence could issue the direction the day after the Act commences or, of course, any time before the Act commences.

Similarly, there is no need for a delegation power to be specifically inserted. Where an Act instructs the Minister for Defence to ‘cause’ something to happen, delegation is automatically implied.

3.2 *Section-by-section analysis*

Section 4 of the Bill relates to the extra-territorial operation of the Act. The Organisation believes that this is an important feature of the Bill, because any offences committed under the Act more likely than not to occur outside Australia and the external Territories (including on board a ship or aircraft).

The Bill defines a ‘cluster munition’ as a ‘munition or device which is specifically designed to cause death or harm by deploying one or more submunitions’ (section 6). The Organisation supports this definition. The definition given to ‘cluster munition’ is arguably one of the most important features of this Bill and any similar bill seeking to prohibit cluster munition use, possession and manufacture.

The Organisation considers the definition in the Bill to be sufficiently, and appropriately, broad. The definition used in the Bill is similar to the definition proposed by the Cluster Munitions Coalition and various other international organisations promoting a ban on cluster munitions.

The Organisation believes that there is a sound constitutional basis for the operation of the Act (see section 8). The Organisation supports the section relating to extended standing (section 9). This section extends, and does not limit, the common law in relation to standing to seek writs of mandamus, prohibition or certiorari, or an injunction or declaration, under the Constitution or the *Judiciary Act 1903* (Cth).

Under the Act, an individual is taken to have standing to seek a writ of mandamus, prohibition or certiorari, or an injunction or declaration, in relation to the Act, if the individual is an Australian citizen and ordinarily resident in Australia or an external Territory. This means that a person need not have been directly affected by an offence under the Act (for example, by being injured) in order to have standing.

Section 10 of the Bill makes it an offence for a person to intentionally (a) develop, produce, otherwise acquire, stockpile or retain cluster munitions, container units or submunitions; or (b) transfer, directly or indirectly, cluster munitions, container units or submunitions to another person; or (c) use a cluster munition, container unit or submunition; or (d) engage in military preparations to use cluster munitions, container units or submunitions.

The Organisation believes that these offences are sufficiently, and appropriately, broad and that the maximum penalty of life imprisonment for the commission an offence under the Bill is suitable given the potential gravity of the offences. It seems unnecessary to include 'recklessly' in the *mens rea* element of the offences. It is difficult to conceive, for example, that a person would 'recklessly develop' cluster munitions, container units or submunitions.

The Organisation considers section 11 to be a particularly important section of the Bill. Media reports suggest that members of the Australian Defence Force have, on a number of occasions, engaged in military preparations to assist a member of the defence force of another country to use cluster munitions, container units and/or submunitions. This would be prohibited under the Act. Australia would not, for example, be lawfully permitted to assist the United Kingdom or the United States in preparations for cluster munition use.

The Organisation believes that the defences outlined in sections 14, 15 and 16 of the Bill are a sensible inclusion. These relate to the clearing of unexploded submunitions, education and decommissioning, respectively. The Organisation cannot foresee that the inclusion of any other defence in the Bill would be either appropriate or desirable.

Assuming that the Australian Government does not currently possess a stockpile of cluster munitions (see above Part 2.3),² Part 4 of the Act is of no practical effect unless the Australian Government were to acquire a stockpile before the commencement of the Act. The Organisation believes that one year is an appropriate timeframe for decommissioning and that three months is an appropriate timeframe for the tabling in both Houses of the Parliament of a report on stockpiles and a decommissioning plan.

The Organisation recommends the Australian Government for its recent ratification of the *Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*. In the relatively unlikely event that an offence is committed under the Act, section 19 will be a useful inclusion.

3.3 Support for the Bill

The Cluster Munitions (Prohibition) Bill 2006 has support for a large number of Australian non-government organisations. Several such organisations have expressed their support publicly. This is a summary of some comments made in response to, or in anticipation of, the tabling of the Bill. Media releases were also issued by the Australian Network to Ban Landmines, Women for Palestine and Australians for Lebanon. The International Committee of the Red Cross (Australia) and Amnesty International (Australia) also expressed informal support for a cluster munition ban.

3.3.1 United Nations Children’s Fund (Australia)

On 5 December 2006, the United Nations Children’s Fund (Australia) (‘UNICEF Australia’) voiced its support for the Bill. UNICEF Australia Chief Executive Carolyn Hardy said unexploded cluster bombs left over from conflict violate a number of articles of the Convention on the Rights of the Child, including those which relate to a child’s right to life, to a safe environment in which to play, to health, to clean water, to sanitary conditions and to adequate education.

Ms Hardy said that unexploded bomblets from cluster bombs pose a risk to civilians for years after a conflict has ended, and children are most at risk because they do not understand the threat the bomblets pose. She went on to say that children who are fortunate enough to survive a cluster bomb blast often have permanent physical scars, as well as emotional trauma that haunts them for years.

Moreover, experience in conflict zones such as Lebanon has shown that it is predominantly the young who are injured and who die from cluster munitions. She

² It might be worth noting that Senator Lyn Allison’s questions on notice asked whether the Australian Government was in possession of a stockpile of ‘cluster bombs’ rather than ‘cluster munitions’. The latter term refers to a wider range of weapons, for example, artillery that is deployed from the ground. Presumably, however, the Australian Government does not possess such weapons.

pointed out that children are being killed because they see a shiny metal object from a cluster bomb and then often they go and pick it up and play with it.

Ms Hardy said that UNICEF Australia hoped that the Bill will raise awareness of an issue that is crucial for the safety and protection of children. She applauded Senator Lyn Allison's leadership and strong commitment to banning the use, possession, manufacture and stockpiling of cluster bombs.

She pointed out that, during the recent crisis in Lebanon, 3000 to 6000 missiles and rockets arrived in the southern area of the country on a daily basis. Some experts estimated that 10 per cent of all munitions fired during hostilities did not explode. She feared that, as more farmers and families started returning to work in the fields to harvest tobacco and olive crops, many more injuries will result.

Ms Hardy concluded her public statement by emphasising that the impact of explosive remnants of war, including unexploded cluster submunitions, is far worse for children, who have a natural curiosity to play, touch and explore. Ordinary daily activities for families also become deadly as people venture out to herd livestock, fetch water and find food or firewood.

She said that a child is far more likely than an adult to die as a result of a mine blast, and a child who survives is less likely to have access to rehabilitation, unlikely to have access to school and almost certain to be vulnerable into adulthood. Children and women are also more likely to become more vulnerable if other family members are killed or injured.

3.3.2 Medical Association for the Prevention of War

The Medical Association for Prevention of War ('MAPW') — whose umbrella organisation won the Nobel Peace Prize in 1985 — announced its support for a ban on Australia's involvement in the use of cluster bombs the day before Senator Allison introduced the Bill. The president of MAPW, Associate Professor Tilman Ruff, said: 'As an organisation of doctors, we are well aware of the dreadful effects of cluster bomb use around the world.'

He went on to state that MAPW deplores the use of cluster munitions and encourages the Australian Government to support the Bill. He noted that the Government has a general policy of not using cluster bombs, but argued that this is not a strong enough guarantee for the Australian people, and noted that Australian soldiers collaborate with armies which do use them.

He said that the Australian Government must put its full weight behind moves for an international cluster bomb ban and made particular reference to the Norwegian initiative that had, at that time, received support from some 25 nations.

He said: 'Just like landmines, cluster bombs are indiscriminate killers. Even the most sophisticated ones have an unacceptably large dispersal area and an unacceptably high

failure rate. Just like landmines, the unexploded sub-munitions, or bomblets, are left to terrorise civilians and animals long after conflicts end.'

He went on to note that many of the bomblets dropped by Israel in the recent Lebanon war were brightly coloured and easily mistakable by children for toys and that those dropped by the United States in Afghanistan and Iraq were the same colour as the humanitarian daily rations they also dropped from the sky. He said: 'Since the ceasefire in Lebanon took effect, dozens of people have been killed from unexploded bomblets. More than two hundred have been maimed. So long as the colourful killers lie unexploded in the fields and rubble of southern Lebanon, the war has effectively not finished as new casualties go on occurring.'

He emphasised that cluster bombs have placed an enormous burden on Lebanon's healthcare system. They have prevented agricultural production in some parts of the country, and many people have been unable to rebuild their homes for fear of losing their lives, he said.

He welcomed the fact that the Australian Government is helping the United Nations and non-government organisations to clear the unexploded remnants of that war but said that this is treating the problem rather than addressing its cause. He said: 'A ban on cluster bombs would be an exercise in preventive medicine, and prevention is always better than cure.'

3.3.3 Australian Psychological Society

Psychologists for Peace, which is an Australian Psychological Society interest group, expressed its support for Senator Lyn Allison's bill prohibiting the use of cluster munitions by members of the Australian Defence Force. The group's national coordinator, Dr Susie Burke, said that psychologists are all too aware of the short- and long-term trauma caused by war for civilians and military personnel. She said that the use of cluster munitions has a devastating impact on civilians.

She said: 'These weapons are imprecise, and send out highly explosive submunitions that can scatter over a much wider area of land than conventional weapons. Many of these submunitions fail to explode on impact, leaving lethal debris in the land that leads to countless deaths in the weeks, months and even years following the conflict. Some communities are still being devastated by explosions decades after the weapons were used.'

She said that cluster munitions are also particularly harrowing for military personnel and noted that the use of indiscriminate weapons adds to the already shocking trauma of using force to destroy human lives. 'It's hard to think of anything more likely to perpetuate cycles of violence, breed long-term bitterness and hatred in war torn regions, and nurture the next generation of enemy combatants,' Dr Burke said.

She announced that her group supports the prohibition of these indiscriminate weapons of war that injure and kill innocent civilians every day. She said that she hoped that the

Australian Government would demonstrate a commitment to human rights by supporting the Bill and take a leading role in protecting innocent people.

3.3.4 Peace Organisation of Australia

The Organisation also issued a press release in response to the Bill. Tim Wright, president of the Organisation, said that the Bill, if enacted, would provide impetus to international moves for a legally enforceable treaty on cluster bombs. He said that the Bill is more than just symbolic because, although Australia has a policy of not using cluster munitions, it stood by in Afghanistan and Iraq as its coalition partners dropped nearly two million cluster bomblets from planes or fired them from ground artillery.

He described cluster bombs as morally unacceptable weapons and said that their use arguably violates the fourth Geneva Convention, but a treaty dealing specifically with cluster bombs — similar in form to the landmines treaty — is long overdue. Domestic legislation, like that proposed by Senator Allison, is also very important, he commented. 'Cluster munitions are among the worst excesses of militarism. Leaders who authorise their use know full well that unexploded sub-munitions will traumatise civilians for decades after fighting has ended,' he said.

3.4 *Similar bills*

The Parliament of Belgium is the only parliament to have passed legislation specifically relating to cluster munitions. At least one other parliament, the United Kingdom Parliament, is currently considering the passage of cluster munition legislation. The Bill was introduced by Lord Dubs, and in his second reading speech he spoke of the humanitarian aspects of cluster munitions, his belief that there is no real military justification for the use of cluster munitions, the international aspects and the arguments as between smart and dumb weapons which, he said, have featured strongly in some of the discussions both in this House of Lords and in the other place in recent times.

Senator Lyn Allison, leader of the Australian Democrats, is actively encouraging other national legislatures to adopt legislation similar to the Cluster Munitions (Prohibition) Bill 2006 (Cth). The Organisation prefers Senator Allison's Bill to the Belgian and United Kingdom bills, as it believes that cluster munition use is unacceptable in all circumstances and regardless of whether the dud rate for the submunitions is high or low. It supports a blanket ban rather than a partial ban.

4 An international ban

4.1 *Recent developments*

On 17 November 2006, states parties to the Convention on Certain Conventional Weapons ('CCW') ended their third review conference with significant developments on the issue of cluster munitions. During the course of the two-week meeting, an increasing number of states parties called for a new protocol to the CCW to address the humanitarian problems associated with cluster munitions. In the first week, 15 states parties joined an Austrian proposal calling for the negotiation of a new international agreement.

However, the conference was eventually able only to agree to convene a meeting of governmental experts in June 2007 'with a particular focus' on cluster bombs. The meeting has no mandate to develop recommendations or negotiate new rules; it will report back to the CCW states parties on its proceedings late next year.

Twenty-five countries (Austria, Belgium, Croatia, Costa Rica, Czech Republic, Denmark, Germany, Holy See, Hungary, Ireland, Liechtenstein, Lithuania, Luxemburg, Malta, Mexico, New Zealand, Norway, Peru, Portugal, Serbia, Slovakia, Slovenia, Sweden and Switzerland) joined in a political declaration committing themselves to a new international agreement to regulate cluster munitions.

They called for a new international instrument that would prohibit the use of cluster munitions in concentrations of civilians; prohibit the use, production, stockpiling and transfer of cluster munitions that pose serious humanitarian hazards; and assure the destruction of stockpiles of these weapons. The Organisation expresses its disappointment that the Australian Government did not actively support this initiative.

Norway announced that it would invite states committed to such an international instrument to a meeting in Oslo early in 2007, with a view to deciding how to pursue that goal. The International Committee of the Red Cross ('ICRC') will also sponsor an informal international expert meeting in March or April 2007. The ICRC has reiterated its belief that both national policy changes and specific new international humanitarian law rules are urgently needed to address the specific problems of cluster munitions.

4.2 *Inadequacy of existing law*

There is currently no treaty that specifically regulates cluster munitions. However, there are certain aspects of existing international humanitarian law that regulate their use. The cornerstone documents of international humanitarian law are the four Geneva Conventions and their associated protocols. Many of the articles of these conventions are now considered to be customary international law, which means that they bind even

countries that are not states parties to them. Another key legal instrument relevant to cluster munitions is the *Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*.

Protocol I and the Fourth Geneva Convention lay out the law that protects civilians during times of war. These legal instruments distinguish between civilians and combatants. They prohibit attacks that strike military objects and civilians or civilian objects without distinction. Such acts are referred to as being indiscriminate. Although they acknowledge that some civilian casualties in war are inevitable, they prevent states from targeting civilians or engaging in civilian attacks.

Cluster munitions are prone to being indiscriminate, particularly when certain methods of attack or particular models are used. According to Article 51(5)(b) of Protocol I, an attack is disproportionate, and thus indiscriminate, if it 'may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'. The Organisation believes that it is unlikely that any strike in a populated area would be lawful under this article.

Cluster munition strikes also have the potential to be indiscriminate because the weapons cannot be precisely targeted. Article 51(4)(b) of Protocol I prohibits attacks 'which employ a method or means of combat which cannot be directed at a specific military objective'. Article 51(5)(a), drafted in response to the carpet bombings of World War II, similarly prohibits bombings that treat 'separated and distinct' military objectives as one. Cluster munitions are area weapons and cannot be directed at specific soldiers or tanks, a limitation that is particularly troublesome in populated areas.

The after effects of cluster munitions also raise concerns under international humanitarian law. Unexploded submunitions cause greater loss of civilian life, injury to civilians, and damage to civilian objects than most types of unexploded ordnance. Taking into account both strike and post-strike casualties greatly increases the likelihood that the loss would be excessive in relation to the military advantage, especially if an attack occurred in a populated area or an area to which people might return.

Despite the fact that cluster munition use is generally prohibited under existing international humanitarian law, the Organisation believes that civilians would enjoy greater protection if a treaty dealing specifically with cluster munitions were formed. The International Committee of the Red Cross has acknowledged in relation to explosive remnants of war that, although it could be argued that the general rules of international humanitarian law are sufficient, it is unlikely that they will be applied in an adequate or consistent manner unless specific rules are adopted. It said, further, that clear rules will help identify the minimum norms expected of parties to a conflict and promote their implementation on a broad scale. The same could be said for cluster munitions.

The Organisation considers cluster munitions to be unlike other weapons in three significant ways. The first is that their explosive impact is magnified by the fact that they are large weapons consisting of dozens, or often hundreds, of smaller submunitions, and

as such their humanitarian impact is usually greater than for other classes of weapons. The second is that cluster munitions produce an area effect that is difficult or near impossible to contain. In some cases, submunitions spread over 1 km square. When used in populated areas, it is highly likely that cluster strikes will involve civilian casualties. The third is that each cluster munition leaves some unexploded ordnance because the submunitions have a certain dud rates. These three factors make cluster munitions unique and justify the formation of a specific legal instrument to prevent their continued use.

A new legal regime to deal with cluster munitions would improve compliance and enforceability. It would also clarify state obligations. The Organisation supports the formation of a legal instrument that prohibits the use, possession and construction of all forms of cluster munitions. It urges the Australian Government to be actively involved in the formation of such an instrument. The passage of the Cluster Munitions (Prohibition) Bill 2006 would be an important way for the Australian Government to demonstrate its concern about the grave humanitarian consequences of cluster munition use.