



12 April 2007

Senate Standing Committee on Foreign Affairs, Defence and Trade

Dr Kathleen Dermody
Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Dr Dermody,

Austcare is concerned about the long-term humanitarian impact of cluster munitions on civilian populations in conflict and post-conflict situations. In February 2007 Austcare took the opportunity to submit a paper to the Senate Standing Committee on Foreign Affairs, Defence and Trade in support of the *Cluster Munitions (Prohibition) Bill 2006*. Austcare appreciated the opportunity to contribute to the Senate Committee's Inquiry on such an important matter.

Austcare was disappointed to learn of the Senate Committee's decision *not* to hold a public hearing to deliberate the bill, but rather called for responses to the Department of Defence arguments on the provisions of the bill, as outlined in Defence's submission. Austcare considers that those parties affected by cluster munitions and/or involved in the mine action sector were not given adequate opportunity to voice their opinions and experiences, particularly given the purpose of the bill: "*to ensure that innocent civilians in conflict zones are not maimed, killed, or put at risk as a result of Australians possessing, using, or manufacturing cluster munitions*". Austcare takes this opportunity to comment on Defence's submission.

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Austcare's response to the submission by Defence is as follows:¹

Defence

1 The bill calls for a ban on cluster munitions and this is not consistent with any of the international proposals under discussion, such as those from ICRC or Norway which call for restrictions on use or bans on some kinds of cluster munitions.

Austcare's response

The Oslo Declaration calls for a prohibition on "cluster munitions that cause unacceptable harm to civilians". It can be argued that certain types of cluster munitions may not cause unacceptable harm to civilians. Nevertheless, it is the responsibility of those governments acquiring or intending to acquire cluster munitions to demonstrate that the weapon system in question does not cause unacceptable civilian harm. The track record to date has been poor, resulting in death and injury to civilians from the use of cluster munitions.

Defence

2 Protocol V provides a substantial response to the problems of cluster munitions and this bill would appear to duplicate some of the obligations in that protocol.

Austcare's response

Protocol V does not provide an adequate response to the humanitarian problem resultant from the use of cluster munitions. Protocol V is limited to the post-conflict context and falls short of providing regulatory measures to control the use of ERW-producing weapons during conflict situations. There is therefore no restriction or regulation on the use of cluster munitions during times of hostility. Moreover, although the provisions of Protocol V are binding on all signatory States, there is no mechanism to enforce compliance. A new cluster munitions treaty would not duplicate existing obligations. Rather its obligations to provide assistance and protect civilians from the post-conflict threat would be complementary, would reinforce existing and emerging international standards of practice and would be integrated into national practice on clearance of mines and other explosive remnants of war (ERW), as well as assist survivors and affected communities.

Defence

3 Because of its broad definition, the passage of the bill would prevent Australia from obtaining an advanced sub-munition capability and may prevent it from being able to obtain unmanned weapons systems.

Austcare's response

The definition is broad and would capture certain advanced weapons systems such as the sensor-fuzed weapon, however it is the responsibility of

¹ Austcare's position on cluster munitions is generally consistent with the views of the International Cluster Munitions Coalition (CMC), of which Austcare is a member.

the government to provide evidence that the advanced submunition capability it intends to acquire/is acquiring does not pose serious humanitarian problems.

Defence

4 The bill would put Australia at a disadvantage against future adversaries and make it necessary to use higher yield, less accurate weapons which pose greater humanitarian risks.

Austcare's response

It is the responsibility of the acquiring party to provide evidence to substantiate the claim that the use of a specific weapon system would pose a greater humanitarian risk had cluster munitions not been available for use.

Defence

5 The bill would place imprudent limits on Australia's ability to operate with partners in military operations, particularly in terms of calling in appropriate support from these partners during combat and gaining experience during planning of operations.

Austcare's response

Austcare appreciates the need for partnership during military operations. However, Australia should view this 'necessity' in light of its commitment to the principles of international humanitarian law (i.e. that weapons which pose unacceptable consequences for civilians not be used.) Australia should use its influence as a coalition partner to stigmatise the use of cluster munitions which cause unacceptable humanitarian harm. Moreover, the ADF is able to work successfully with a number of nations not signatory to other arms control conventions, including the United States.

Defence

6 The bill would not allow for Australian Defence Forces to retain cluster munitions for training in disposal or countermeasures.

Austcare's response

The bill could easily be amended to allow for ADF to retain cluster munitions for training in disposal or countermeasures, although the numbers retained for training would need to be very limited. This would mirror the provisions already in place for landmines, and is considered sensible by Austcare.

In summary, Austcare does not support Defence's submission on the Draft Bill. These claims by Defence are similar to their initial opposition to the banning of landmines, the result of which has not impeded ADF operational capability and has saved countless lives, both civilian and military.

Austcare urges that more attention be placed on this vexed issue and encourages parliamentarians to support the draft *Cluster Munitions (Prohibition) Bill 2006*.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Smith". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Michael G. Smith AO
Chief Executive Officer
Major General (Rtd)