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The Secretary
Senate Standing Committee on Foreign Affairs, Defence and Trade
Parliament House , Canberra ACT 2600
By email: fadt.sen@aph.gov.au

13 March 2007

Dear Secretary

Thank you for the opportunity to respond to the Department of Defence's submission to the Standing Committee's **Inquiry into the Cluster Munitions (Prohibition) Bill 2006**.

In general, I note that Defence's submission agrees in large measure with the views in my submission of 19 February 2007. I address two brief matters raised by Defence's submission.

1. International Negotiations on Cluster Munitions

While freedom to negotiate in international forums is an important strategic consideration, it does not follow that it should trump considerations in favour of an immediate domestic legislative response, should the Parliament think it desirable. Domestic legislation may play an important role in shaping the international response, as evidence of a democratic parliament's considered response to the issue.

Should any international agreement on cluster munitions subsequently be reached, it is always open to Australia to modify its domestic legislation to render it compatible, or alternatively to lodge a reservation to its acceptance of the treaty to take account of its existing domestic law.

2. Operational Issues

Interoperability of coalition forces is undoubtedly vital. However, it is of some concern that Defence is seeking to exempt from liability Australian personnel who assist an ally to use (what would be) unlawful weapons under domestic law. By way of analogy, it would be neither 'imprudent' nor productive of 'excessive operational difficulties' to require ADF personnel to refrain from assisting an ally to use forbidden chemical or biological weapons, or to commit unlawful reprisals against the civilian population of an adversary.

In different contexts, ADF personnel already operate under rules of engagement which differ from those of coalition partners. The ADF may also take different approaches to its allies in matters of targeting, proportionality and other issues of legal interpretation and assessment. In this light, if the Parliament (or an international treaty to which Australia becomes party) requires ADF members to refrain from assisting in the use of cluster munitions, interoperability is not a relevant consideration.

Yours sincerely