

**From:** FADT, Committee (SEN)  
**Sent:** Wednesday, 11 April 2007 8:24 AM  
**To:** Corrigan, Pamela (SEN)  
**Subject:** FW: draft bill to ban cluster munitions

**Importance:** High

-----Original Message-----

**From:** Marion LIBERTUCCI [mailto:mllibertucci@handicap-international.org]  
**Sent:** Wednesday, 11 April 2007 2:03 AM  
**To:** Johnston, David (Senator); FADT, Committee (SEN)  
**Cc:** Thomas Nash; Stan BRABANT (Belgique); Anne VILLENEUVE (paris)  
**Subject:** draft bill to ban cluster munitions  
**Importance:** High

Dear Senator Johnston,

Please allow us to introduce our organizations, Handicap International and the Cluster Munition Coalition (CMC).

Co-recipient of the 1997 Nobel Peace Prize, Handicap International is active in more than 60 countries around the world, providing assistance to persons with disabilities, in particular victims of landmines and cluster munitions. Handicap International is also a founding member and a member of the Steering Committee of the Cluster Munition Coalition (CMC), a network of almost 200 non-governmental organizations that work together to rid the world of cluster munitions and raise the voice of their victims.

As we are informed that a draft bill to ban cluster munitions is currently before the Senate Committee of Foreign Affairs, Defence and Trade at the moment, we would like to draw your attention to the humanitarian threat posed by these weapons, and to show that the position of the Australian Department of Defence opposing the draft bill can hardly be substantiated.

Indeed, as with landmines, cluster munitions pose a serious threat to civilians during and after the conflicts. There are three main reasons for this: cluster munitions strikes are not precise and cover considerably wider areas than other weapons; they contain large numbers of submunitions, some of which fail to explode as intended and become particularly instable unexploded ordnance; and finally, cluster munitions do not distinguish between targets and civilians within their strike range.

Moreover, cluster munitions pose serious problems under the three fundamental rules of customary International Humanitarian Law: distinction, proportionality and feasible

precautions. The overwhelming humanitarian evidence is that these sorts of weapons inherently pose unacceptable risks to civilians. These facts have been confirmed over the past 40 years by alarming reports from countries such as Laos, Cambodia, Vietnam, Afghanistan and Iraq. On this regards, we wish to express our disappointment that the Senate Committee of Foreign Affairs, Defence and Trade did not feel the need to hear first-hand from witnesses who have been involved in clearing cluster munitions in the field or who have experienced first-hand the humanitarian impact. The 2006 Handicap International report, *Fatal Footprint: Humanitarian impact of Cluster Munitions*, showed that more than 98% of known casualties are civilians, of which 69% are children. For these reasons, 46 governments agreed in February 2007 in Oslo to work towards a legally binding international instrument of prohibition by 2008.

Contrary to the assertion of the Australian Department of Defence submission opposing the Bill, Australia has not been involved in negotiations internationally on cluster munitions because the Convention on Conventional Weapons has only been engaged in discussions on cluster munitions and only as part of a broader working group on explosive remnants of war. Belgium has banned cluster munitions nationally and Norway and Austria have national moratoria in place; yet these national steps have not affected their ability to play strong constructive and leading roles in international negotiations on cluster munitions.

The Australian Department of Defence also asserts that Protocol V already provides an adequate response to the problems of cluster munitions. However this protocol is limited to the post-conflict context and does not cover their indiscriminate effects during attacks and allows for the use of cluster munitions to continue. Moreover, although the provisions of Protocol V are binding on all State Parties, there is no mechanism to enforce compliance. Thus, a new cluster munition 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 UXO and assistance to survivors and affected communities. On top of that, the bill could easily be amended to allow Australian Defence Forces to retain cluster munitions for training in disposal or countermeasures, although the number retained for training would need to be very limited.

Moreover, what evidence can the government provide to substantiate the claim that the use of a specific weapon system would have posed greater humanitarian risks in a specific situation in a specific conflict had cluster munitions not been available for use? It is not the case that the only military alternatives to cluster munitions pose greater risks to civilians – other alternatives exist, including precision-guided weapons. In any case,

an attack with cluster munitions that would be illegal because it is indiscriminate during and after attacks cannot be replaced by an attack with another weapon that would be even more indiscriminate and thus also illegal.

Furthermore, what studies, tests and evaluations have been undertaken regarding the potential humanitarian risks of the advanced sub-munition capability Australia is in the process of acquiring? Has a review been or is one being undertaken of this new weapon in accordance with article 36 of Additional Protocol I of the Geneva Conventions?

As a partner in military operations, Australia should also be setting an example based on its commitment to humanitarian law that weapons that are indiscriminate should not be used. Australia should use its influence as a coalition partner to stigmatise the use of cluster munitions and to prevent them from being deployed by other partners. This would mean that no imprudent limits would be placed on Australia's ability to operate in military coalitions.

**Dear Senator Johnston, we are honoured to invite the Senate Committee on Foreign Affairs, Defence and Trade to join this noble cause, aiming to end the human suffering caused by cluster munitions. Considering our experience in the humanitarian impact resulting from the use of this deadly weapon at the international level, we would like you to encourage the adoption of the draft bill to ban cluster munitions which is before the Senate Committee at the moment.**

Yours sincerely,

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