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Dr Kathleen Dermody
Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

April 5, 2007

Dear Dr. Dermody,

I am writing on behalf of Mines Action Canada, a coalition of over forty Canadian NGOs, and a founder and Steering Committee of the Cluster Munition Coalition (CMC). Mines Action Canada (MAC) is deeply concerned about the humanitarian impacts of cluster munitions and is committed to advocating in favour of the Oslo Declaration and a new international instrument to ban cluster munitions.

As you are no doubt aware, over the past 40 years cluster munitions have caused a consistent pattern of humanitarian harm both during and after conflicts. In countries where they have been used agricultural land, water resources, schools and power supplies have been contaminated by hundreds of thousands of deadly unexploded munitions that remain deadly for decades. The latest example of the terrible humanitarian harm that results when people use cluster munitions is of course in Lebanon, where hundreds of civilians have been killed and maimed by failed clusters – explosive remnants of war that act as de facto landmines. Moreover, unexploded cluster munitions pose a real danger to Australian personnel operating in conflict zones such as Iraq and Afghanistan, or in former conflict zones throughout the world.

The devastating humanitarian suffering from cluster munitions now being felt in southern Lebanon and the 40 years of previous civilian harm in Cambodia, Laos, Vietnam, Chechnya, Kosovo, Afghanistan and Iraq makes it clear that cluster munitions stand out as the class of weapons most in need of strong new international rules.

While it was with pleasure that I heard of the draft bill to ban cluster munitions submitted before the Senate Foreign Affairs, Defence and Trade Committee, I was soon disappointed to learn that the Committee had not felt the need to hear first hand from witnesses who have been involved in clearing cluster munitions in the field or have experienced first-hand the humanitarian impact. Evidence provided by such witnesses would be instrumental for a truly informed and balanced debate on the issue.

I would like to take this opportunity to respond to the Department of Defence submission to the Committee. The submission states that Australia is “in the process of acquiring an advanced sub-munition capability for use against mobile armoured vehicles”, which would make Australia country number 76 on the list of states stockpiling cluster munitions, contains some points that

are misleading. With the world's attention focused on the devastating humanitarian impact of these inaccurate and unreliable weapons, this seems to be a very questionable procurement.

The Defence submission's opposition to the bill is based on the following main points, in italics, with my comments following:

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.*

In fact, the Oslo declaration calls for a prohibition on "cluster munitions that cause unacceptable harm to civilians". While it could be argued that some weapons currently known as cluster munitions do not cause unacceptable harm to civilians, it is up to governments to prove this by demonstrating conclusively that a particular weapon system does not cause unacceptable harm. The overwhelming humanitarian evidence is that these sorts of weapons inherently pose unacceptable risks to civilians and that is why governments agreed in Oslo to work towards a prohibition by 2008.

2. *"Australia is presently involved in negotiations internationally on cluster munitions, including within the CCW" and this bill would prejudice the government's position in these negotiations.*

In fact, Australia has not been involved in negotiations internationally on cluster munitions, as the Convention on Conventional Weapons discusses 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. In Canada, our own stockpiles of unreliable Rockeye submunitions have been removed from service and the Canadian Government is currently reviewing the use of M864 and M483A1 submunitions for our 155mm artillery (submunitions that have already been removed from service by the UK, Germany, Belgium and the Netherlands). Canada is also destroying these.

3. *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.*

Protocol V does not provide an adequate response to the problems of cluster munitions, since it 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 States Parties, there is no mechanism to enforce compliance. 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. Many countries which have ratified Protocol V have also signed the Oslo Declaration.

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

What studies, tests and evaluations have been undertaken regarding the potential humanitarian risks of the advanced sub-munition capability? 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?

5. *This 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.*

What evidence can the Department of Defence 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 fact, the use of precision guided weapons, especially in dense, heavily populated urban areas where recent conflicts have been taking place would not only limit humanitarian risks to civilian populations, but also limit the risk to follow-on Australian military personnel and humanitarian workers.

6. *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.*

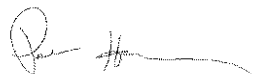
As a partner in military operations, Australia should be setting an example based on its commitment to humanitarian law that weapons posing an unacceptable risk to civilians should not be used. Australia should use its influence as a coalition partner to stigmatize the use of cluster munitions, and to prevent their deployment by other partners. This would mean that no imprudent limits would be placed on Australia's ability to operate in military coalitions.

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

As with the Ottawa Treaty, there is no reason the bill could not be amended to allow the Australian Defence Forces to retain cluster munitions for training in disposal or countermeasures, although the numbers retained for training would understandably be limited. Under the Ottawa Treaty, States Parties are able to retain a small number of landmines with which to maintain training programs that support operational readiness. The experience of the landmines treaty, of which Australia is President this year, is that few states and no NGOs use live landmines in their disposal training.

This is an opportunity for Australia to be a global leader in the international movement to ban these weapons that cause foreseeable and preventable harm to civilians. I hope this letter clearly demonstrates Mines Action Canada's concerns, and our desire to see Australia become an active partner for positive change.

Yours sincerely,



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Cc: Mr. Mark Zirnsak, Australian Network - ICBL