

Senator Mark Bishop

Dear Senator Bishop

I congratulate the government on its moves to ratify the Convention on Cluster Munitions.

However, I am concerned with a number of points in our draft legislation as I feel they undermine the spirit and intent of the treaty.

The convention begins with the words

Each State Party undertakes never under any circumstances to:

- (a) Use cluster munitions;
- (b) Develop, produce, otherwise\acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;
- (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.

By omitting the words 'under any circumstances' in the Australian draft legislation the way is opened for the inclusion of loopholes and exemptions which expressly contradict the convention's intention to 'put an end for all time to the suffering and casualties caused by cluster munitions.'

My specific concerns are:

Interoperability

I believe that the proposed legislation is ignoring the words 'under any circumstances' in the current interpretation of the treaty. The proposed legislation allows Australian troops wide latitude regarding cluster munitions use when working with allied forces, most probably from the United States. Our government must be prepared to act on a humanitarian basis, not a political one and stand firm against any use of cluster munitions. It is simply not acceptable to overtly express our opposition to the use of cluster munitions and yet allow Australian troops to call for a cluster munitions strike as long as the decision is not ultimately under our control.

Jurisdiction

The proposed legislation allows foreign forces to use Australian territory to stockpile and transit cluster bombs. Disgracefully, the draft Australian legislation is the only domestic legislation so far to specifically include an item allowing foreign transit of cluster bombs. Clearly this is both 'assisting' and 'encouraging' engagement in an activity prohibited to a state party.

Retention

The proposed legislation allows Australia to retain cluster bombs without specifying any reporting obligations and setting a minimum number. Retention without qualification allows other countries to justify retention and opens the door for abuse. Australia does not currently possess live cluster munitions, with training and research being carried out on inert bombs and should not now acquire them.

Investment

I am most concerned that the Australian legislation does not specifically prohibit the investment of both public and private funds in the manufacture of cluster munitions or their principal

component parts. I do not think that the majority of Australians would be happy with the prospect of their superannuation funds being used for such destructive purposes.

Finally, it seems a shame that our legislation is an amendment to the criminal code and thus includes no mention of our positive obligations under the convention, such as victim assistance and land clearance. I hope there is some way to remedy this.

Yours sincerely

Form letters received from:

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Three illegible submitters