



Finishing the job – Ratifying the Convention on Cluster Munitions

December 2010

In December 2008 the *Convention on Cluster Munitions* was opened for signature. By the end of October 2010, 108 countries had signed the treaty (including Australia) and 43 had ratified (meaning they are full parties to the Convention). The Convention entered into operation on 1 August 2010. Australia is yet to ratify the treaty. On 27 October 2010 the Attorney General, The Hon. Robert McClelland, introduced the *Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010* into the Australian Parliament which, if passed, would allow Australia to ratify the Convention.

The Bill has been referred to Senate Foreign Affairs, Defence and Trade Committee to seek public comment. The Committee will report back to the Senate on the Bill in early 2011.

What is a cluster munition?

A cluster munition is a bomb, artillery shell or rocket that when launched or dropped the outside canister opens to release a number of smaller bombs, submunitions, over a wide area. The submunitions are designed to explode before, on, or just after impact with the ground, although many fail to do so. The unexploded submunitions can then lie dormant for years or even decades after conflicts end until they are disturbed, often by children attracted by their small size and bright colours. A number of other characteristics also render cluster munitions inherent violators of international humanitarian law. They are often inaccurate, have a large area of effect, and the vast majority of those injured or killed by cluster submunitions are civilians.



Courtesy of Danish Christian Aid Archive

What does the *Convention on Cluster Munitions* do?

The treaty bans all cluster munitions that have been extensively used and have resulted in thousands of civilians being killed and maimed, often years after conflicts have ended. Cluster munitions are exempted if the submunitions contained weigh more than 20 kg or has all the following characteristics:

- The munitions contains less than ten submunitions;
- Each submunition weighs more than 4 kg;
- Each submunition is designed to detect and engage a single target;
- Each submunition is equipped with an electronic self-destruct mechanism; and
- Each submunition is equipped with an electronic self-deactivation mechanism.

The treaty requires that stockpiles of banned cluster munitions be destroyed within eight years of the country becoming party to the treaty. Countries that become party to the treaty agree to clear all areas contaminated by unexploded cluster munitions within 10 years. Countries can apply for extensions of up to five years for clearance.

The Australian legislation will make it illegal to use, develop, produce, acquire, stockpile, retain or sell cluster munitions or to assist, encourage or induce a person to do any of these acts. The penalty for breaking the new law will be up to 10 years imprisonment for individuals and a fine of up to \$330,000 for companies.

Improving the *Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010*

Currently the Bill makes it illegal for a person or bank to provide financial assistance to, or invest in, a company that develops or produces cluster munitions, but only where that person or bank intends to assist, encourage or induce the development or production of cluster munitions by that company.

In its 2009 report recommending the Australian Government ratify the *Convention on Cluster Munitions* the Parliamentary Joint Standing Committee on Treaties recommended that the implementing law prevent “investment by Australian entities in the development or production of cluster munitions, either directly, or through the provision of funds to companies that may develop or produce cluster munitions”. The Bill before the Parliament falls well short of implementing this recommendation.

New Zealand, Ireland, Luxembourg and Belgium have all introduced legislation to ban providing financing towards and investment in cluster munitions.

The Governments of Lebanon, Mexico, Norway and Rwanda have all publicly stated they interpret the *Convention on Cluster Munitions* as prohibiting investments in cluster munition producers.

What you can do

Write polite and respectful letters or e-mails to:

The Hon. Robert McClelland MP
Attorney General
Parliament House
Canberra, ACT, 2600
Email: R.McClelland.MP@aph.gov.au
Salutation: Dear Attorney General

The Hon. Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
Canberra, ACT, 2600
Email: Kevin.Rudd.MP@aph.gov.au
Salutation: Dear Minister

The Hon. Julie Bishop MP
Shadow Minister for Foreign Affairs
Parliament House
Canberra, ACT, 2600
Email: Julie.Bishop.MP@aph.gov.au
Salutation: Dear Ms Bishop

Senator the Hon George Brandis SC
Shadow Attorney General
Parliament House
Canberra, ACT, 2600
Email: senator.brandis@aph.gov.au
Salutation: Dear Senator the Hon George Brandis SC

Points to make in your letters or e-mails:

- Welcome the move towards ratification of the *Convention on Cluster Munitions* represented by the introduction of the *Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010* into the Parliament.
- Note that cluster munitions have caused humanitarian suffering in every conflict they have been used in and leave behind a deadly legacy that disrupts the ability of communities to recover from conflicts when they finish.
- Request that the Bill be amended in line with the recommendations made by the Joint Standing Committee on Treaties in August 2009. Specifically, the Bill should be amended so as to prohibit the direct and indirect financing of companies involved in the production of cluster munitions.
- Request that the section of the Bill that prohibits assistance in the use, production, development, stockpiling or trade in cluster munitions be amended to allow for prosecution of those who knew they were providing such assistance or reasonably should have known. (Currently this section would require the prosecution to prove that assistance was intended, which is much harder to prove).
- The maximum penalty for companies that develop, manufacture and trade in cluster munitions need to be substantially increased beyond the current \$330,000 fine, with a maximum penalty of at least \$1.1 million being far more reasonable.

You can also send a letter to the Senate Foreign Affairs, Defence and Trade Committee at:

Department of the Senate
PO Box 6100
Parliament House
Canberra, ACT, 2600