TAYLOR McKELLAR

16 March 2011

Re. Provisions of the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010

Submission by N.A.J. Taylor[1]

I am concerned that the Australian Government is introducing a bill into the Senate that fails to fulfil its commitments to the international community.
The Rudd Australian Government was among the small number of norm entrepreneurs that signed the *Cluster Munitions Convention* in December 2008. Repeated statements by the Government since have conceded that the use of cluster munitions presents the risk of "unacceptable harm to civilians" and must therefore be subject to an internationally-binding ban. But since the Convention came into effect in August 2010, the Gillard Government seem to have seemingly reneged on its responsibilities to prohibit the use of cluster munitions by prohibiting their production, use, stockpiling and transfer as well as to prohibit signatories from any activity that may "assist and encourage" any other countries to do so.
In particular, there are two related loopholes in the bill:

1. the bill undermines that part of the Convention that requires Australia to "never under any circumstances" act contrary to the Convention by adding phrases that explicitly allow those of our military allies that are not party to the Convention unfettered access to stockpile, retain and transit cluster munitions within Australia.

   No other signatory country in the world has expressly permitted such unfettered free access to its territories as this. It is unprecedented. The legislation further allows Australian military personnel to actively assist in cluster munitions-related activities during joint military operations with our non-signatory allies to the extent where Australians may do everything but pull the trigger.

2. Article 1c of the Convention is widely understood to further prohibit any direct or indirect investment in companies that either develop or produce cluster bombs. However the bill presently only prohibits direct investment, which will have little to no effect given the six corporations involved in this activity overseas are all diversified businesses whose solely purpose is not the development or production of cluster bombs.

   This is a view held by the respective governments of New Zealand, Ireland, Luxembourg and Belgium who have all enshrined in their domestic legislation statements specifically banning investment and provision of other financial services – such as banking, loans and equity – to companies that either develop or produce cluster munitions. Other governments, including those of Lebanon, Mexico, Norway and Rwanda, have all publicly stated that they interpret the Convention as including a prohibition of direct and indirect investment.

1 N.A.J. Taylor is a PhD candidate in International Relations at the University of Queensland, Casual Lecturer at La Trobe University's Graduate School of Management, and Principal of Taylor McKellar, an international political risk consultancy.

And yet, in research I published as recently as November last year, I explained how the $32 billion Australia Super and $10 billion Health Super pension funds as well as the $71 billion Australian Government Future Fund are likely to have – in the absence of publicly-available ethical principles excluding such investments – exposure to companies that produce cluster munitions.[2] A review of these funds annual reports and websites this week does little to change the conclusions I first aired in 2009.[3]

The legislation in front of parliament therefore must be amended to dictate for investors what they can and can't invest in. Arguably the extent to which the international Convention is successful rests on it. For with $1.4 trillion locked away in retirement savings and in government funds, Australia has the fourth largest investment market in the world. We can't stop companies overseas developing and producing cluster munitions, but the bill we prevent this vast pool of Australian retirement savings investing in them.

Kind regards,

N.A.J. Taylor

PhD candidate in International Relations, University of Queensland
Principal, Taylor McKellar
Casual Lecturer, La Trobe University
Email: webform@najtaylor.com
Web: http://najtaylor.com and http://taylormckellar.com

2 Taylor, N.A.J., "Not quite so super", *Australian Broadcasting Corporation: The Drum/Unleashed*, 6 December 2010, accessed at http://www.abc.net.au/unleashed/41758.html on 10 March 2011.
3 Taylor, N.A.J., "Holdings of the $65 Australian Future Fund", Taylor McKellar Client Note, 30 December 2009, accessed at http://taylormckellar.com/?p=390 on 10 March 2011.