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Aotearoa NZ CMC members:

Amnesty International Aotearoa NZ, Aotearoa Lawyers for Peace, Auckland University Students' Association, Campaign Against Landmines, Caritas Aotearoa NZ, Christian World Service, Development Resource Centre, Disarmament and Security Centre, Engineers for Social Responsibility NZ, International Physicians for the Prevention of Nuclear War NZ, National Council of Women NZ, National Consultative Committee on Disarmament, Oxfam NZ, Parliamentarians for Nuclear Nonproliferation and Disarmament NZ, Pax Christi Aotearoa-NZ, Peace Foundation NZ, Peace Movement Aotearoa, Soroptimist International NZ, Umma Trust, UN Association NZ, UN Youth Association NZ, UNICEF NZ, Women's International League for Peace and Freedom, Aotearoa



Submission on the Cluster Munitions (Prohibition) Bill

To the Foreign Affairs, Defence and Trade Select Committee

9 September 2009

About this Submission

This submission in support of the Cluster Munitions (Prohibition) Bill is provided by Mary Wareham on behalf of the Aotearoa New Zealand Cluster Muniton Coalition (ANZCMC). It reflects input received on the Bill from ANZCMC members and at public meetings held in Auckland, Christchurch, and Wellington. This submission has been reviewed and endorsed by ANZCMC members (see Annex I).

This submission includes legal review of the Cluster Munitions (Prohibition) Bill provided by international law experts:

- Mr. Alexander Breitegger (CMC Austria), an international law lecturer at the University of Vienna;
- Ms. Bonnie Docherty (Human Rights Watch), who also teaches at Harvard Law School;
- Mr. Steve Goose (Human Rights Watch), co-chair of the international Cluster Muniton Coalition (CMC);
- Mr. Thomas Nash (CMC Global Coordinator), originally from New Zealand; and
- Mr. Virgil Wiebe, law professor at the University of St. Thomas in Minnesota.

We are grateful to the Foreign Affairs, Defence and Trade Select Committee for the opportunity to provide our views on the Bill. On behalf of the ANZCMC, I would like to appear before the committee to speak to our submission.

Thank you.

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I. Convention on Cluster Munitions

A Longstanding Concern

1. The Aotearoa New Zealand Cluster Munition Coalition (ANZCMC) reflects New Zealanders' longstanding concern over the negative humanitarian consequences of cluster munition use. Many of our member organisations have condemned the use of cluster munitions in conflicts, from the Vietnam War to the US invasions of Afghanistan (2002) and Iraq (2003). We took note when the UN's humanitarian coordinator in Lebanon, David Shearer, deplored as "outrageous and unnecessary" the decision by Israel to drop 90 percent of its four million cluster submunitions in South Lebanon during the last three days of its conflict with Hezbollah in 2006.¹ We supported the September 2006 decision by then Minister for Disarmament and Arms Control, Hon. Phil Goff, to campaign for the creation of a legally binding agreement on cluster munitions.

Oslo Process

2. The ANZCMC has strongly supported New Zealand's involvement in the international efforts to tackle cluster munitions through the "Oslo Process." Initiated by Norwegian Minister of Foreign Affairs Jonas Gahr Støre in February 2007, this fast-track diplomatic process saw the 2008 Convention on Cluster Munitions (the "Convention") negotiated and opened for signature in a period of less than two years. The Convention is a landmark legal instrument that prohibits use, production, transfer, and stockpiling of cluster munitions and establishes a robust framework for humanitarian assistance to those affected by the weapon, including clearance of contaminated areas and assistance to victims. As of 1 September 2009, a total of 98 states have signed the Convention, of which seventeen have ratified.²

New Zealand's Involvement

3. New Zealand played an active leadership role as a member of the Oslo Process core group.³ Our Geneva-based disarmament representative, Ambassador Don MacKay, represented New Zealand throughout the Oslo Process, leading the negotiation on complex issues including the definition of a cluster munition. The Ministry of Foreign Affairs and Trade functioned as the secretariat for the Wellington Conference on Cluster Munitions held at the Wellington Town Hall from 18-22 February 2008 and attended by 106 states. The New Zealand Defence Force contributed personnel to participate in the Oslo Process and has a long record of engagement in mine and unexploded ordnance (UXO) clearance, including in Lebanon.

Ratification Status

4. Throughout 2009, the ANZCMC has called on the government to ratify the Convention on

¹ UN Office for the Coordination of Humanitarian Affairs (OCHA), "Situation Report 38 – Lebanon Response – 13-19 September 2006.

[http://www.reliefweb.int/rw/RWFiles2006.nsf/FilesByRWDocUNIDFileName/EGUA-6TTSQE-ocha-lbn-20sep.pdf/\\$File/ocha-lbn-20sep.pdf](http://www.reliefweb.int/rw/RWFiles2006.nsf/FilesByRWDocUNIDFileName/EGUA-6TTSQE-ocha-lbn-20sep.pdf/$File/ocha-lbn-20sep.pdf) [Accessed 18 April 2009]

² Albania, Austria, Croatia, Germany, Holy See, Ireland, Japan, Lao PDR, Luxembourg, Mexico, Niger, Norway, San Marino, Sierra Leone, Slovenia, Spain, and Zambia.

³ The other Oslo Process Core Group members were Austria, Holy See, Ireland, Mexico, Norway and Peru.

Cluster Munitions without delay.⁴ Entry into force is crucial to ensuring that the life-saving provisions of the Convention become binding international law. On 12 August, the Convention passed the half-way milestone to the 30 ratifications needed for it to become binding international law when Zambia became the fifteenth country to ratify. The ratifying states include six Oslo Process leaders (Austria, Ireland, Holy See, Mexico, Norway, and Zambia), four countries where cluster munitions have been used (Albania, Croatia, Sierra Leone, and Lao PDR), and several states with significant cluster munition stockpiles including Germany, Japan, and Spain (the first treaty signatory to complete stockpile destruction). Several signatories are expected to deposit their ratification instruments in the next couple of weeks including Nicaragua and Uruguay.

National Implementation Measures

5. We support the goal stated by Minister for Disarmament and Arms Control Hon. Georgina Te Heuheu to complete New Zealand's ratification by the first anniversary of treaty signing (3 December 2009).⁵ This requires the rapid enactment of domestic legislation to implement the Convention on Cluster Munitions. Ireland, Austria, and others have completed their legislation to implement the Convention, while a number of signatories are drafting new implementation laws including Canada, Denmark, France, Sweden, and the UK. On 18 August 2009, Australia's parliamentary Joint Standing Committee on Treaties issued a report supporting the Convention on Cluster Munitions and recommending that binding treaty action be taken.⁶ If passed in 2009, New Zealand's Cluster Munitions (Prohibition) Bill will be among the first implementation legislation in the world; it is therefore crucial that the law be strong and clear.

Pacific Support

6. We understand that New Zealand intends to share its implementing legislation with Pacific signatories and others to encourage national implementation measures. The Cook Islands, Fiji, Nauru, Palau and Samoa signed the Convention on Cluster Munitions on 3 December 2008, but have not yet ratified. Five other Pacific states participated in the Oslo Process, but have not signed (Marshall Islands, Niue, Papua New Guinea, Tonga and Vanuatu).⁷ The other Pacific non-signatories are Kiribati, Federated States of Micronesia, Solomon Islands, and Tuvalu. With encouragement, Pacific nations should embrace the cluster munition prohibition. All but three Pacific states (FS Micronesia, Tonga, Tuvalu) have banned antipersonnel landmines and are members of the 1997 Mine Ban Treaty, while the Marshall Islands has signed this treaty, but not yet ratified. The Final Communiqué of the 40th Pacific

⁴ See, for example, ANZCMC Press Release, "New Zealand Urged to Ratify Cluster Bomb Ban," 29 May 2009. <http://www.stopclusterbombs.org.nz/2009/05/29/nz-ratify-cluster-bomb-ban/>

⁵ Letter to ANZCMC from Hon. Georgina Te Heuheu, Minister for Disarmament and Arms Control, 19 June 2009.

⁶ Parliament of the Commonwealth of Australia, Joint Standing Committee on Treaties, "Report 103: Treaties tabled on 12 March and 13 May 2009 - Convention on Cluster Munitions (Dublin, 30 May 2008)." <http://www.aph.gov.au/house/committee/jsct/13may2009/hearings.htm> [Accessed 19 Aug 09]

⁷ All Pacific states participating in the Oslo Process except Tonga subscribed to the Wellington Declaration on 22 February 2008 affirming their support for the negotiation of an instrument prohibiting cluster munitions that cause unacceptable harm to civilians. Six Pacific states participated in the negotiations held in Dublin, Ireland, that resulted in the successful and unanimous adoption of the Convention on Cluster Munitions on 30 May 2008 (Cook Islands, Fiji, Palau, Papua New Guinea, Samoa, and Vanuatu).

Islands Forum contains a welcome reference to small arms, but New Zealand has been reluctant to promote the Convention and other disarmament issues with Forum leaders.⁸ The ANZCMC will continue to seek Pacific support for both treaties, including by cooperating with Pacific partners such as the Suva-based Pacific Concerns Resource Centre and the Disability Promotion & Advocacy Association Vanuatu.⁹

A Long-Term Commitment

7. While this submission supports New Zealand's swift ratification, we urge the government to consider implementation of the Convention on Cluster Munitions as a long-term commitment. The ANZCMC hopes that New Zealand can provide significant support to Lao PDR, which will host the Convention's first meeting of states parties within the first year of entry into force. We urge New Zealand to support implementation of the Convention as well as clearance of cluster munitions and assistance to survivors of the weapon.

II. Comments on the Proposed Legislation

Overview

8. The ANZCMC supports the intent of the Cluster Munitions (Prohibition) Bill (the "Bill") to give effect to New Zealand's implementation of the 2008 Convention on Cluster Munitions (the "Convention"). Overall, the ANZCMC views the Bill as appropriate legislation that could be passed with minor revisions. This submission does not seek to provide an exhaustive analysis of the Bill, instead it identifies key sections where the ANZCMC believes further revision or clarification would be helpful.

Title

9. Unlike the Antipersonnel Mines Prohibition Act 1998, the Cluster Munitions (Prohibition) Bill has brackets around the word "Prohibition."

► *Action:* Remove the brackets around "(Prohibition)" in the title of the Bill to more strongly reflect what the legislation does.

Definition of Transit - Clause 5(1)

10. The Bill's definition of transfer of cluster munitions would be stronger if it also included transit of the weapon. The Convention's prohibitions on assistance and transfer should be read to prohibit the transit of cluster munitions across, above, or through national territory, and the Bill should state this more explicitly. On antipersonnel landmines, the Mine Ban Treaty contains the same language on assistance and transfer and most states parties have interpreted this as banning transit. New Zealand's position is that transit of antipersonnel mines is banned.¹⁰ Austria's cluster munition legislation explicitly prohibits transit of cluster

⁸ Final Communiqué of 40th Pacific Islands Forum, Cairns, 6 August 2009.

<http://www.forumsec.org/fj/pages.cfm/newsroom/press-statements/2009/final-communication-of-40th-pacific-islands-forum-cairns.html>

⁹ See "Pacific Support for the Cluster Munition Ban" Fact Sheet prepared by Aotearoa New Zealand Cluster Munition Coalition, Disability Promotion & Advocacy Association (Vanuatu) & Pacific Concerns Resource Centre, August 2008. http://www.stopclusterbombs.org.nz/wp-content/uploads/2008/08/factsheet_pacificclusters_11aug08.pdf

¹⁰ In October 2002, the Campaign Against Landmines (CALM) received a letter from the New Zealand

munitions.¹¹

► The ANZCMC recommends that Clause 5(1) be amended to include transit of cluster munitions under the definition of transfer. Under transfer, add "(a)(iii) - transit of cluster munitions across, above, or through national territory and territorial waters."

Definitions of Submunitions and Bomblets - Clause 5(1)

11. The Bill's definitions of the terms "explosive submunitions" and "explosive bomblets" are problematic because they differ significantly from the definitions used in the Convention. The Bill states that explosive submunitions are released from a dispenser, and in doing so excludes most kinds of submunitions, including those released from bombs, rockets, or missiles. The Bill's structure also differs from the Convention in making explosive "bomblets" a subset of explosive "submunitions." On a positive note, however, the Bill does make clear that all of its provisions apply to both terms.

► The ANZCMC recommends that Clause 5(1) be amended to use the exact language provided in Article 2 of the Convention (both 3. Submunition and 13. Bomblet)

Application - Clauses 9, 12, 5

12. Clause 9 dealing with application of the Bill abroad, when read with clause 12, may inadvertently criminalize humanitarian action by New Zealand citizens/residents working for clearance operators. Clause 12 creates exceptions to the Clause 9 prohibitions that in limited circumstances allow government 'officers' (police employees, members of the armed forces, customs officers, or enforcement officers) to engage in otherwise prohibited activities. A person who is not an officer can possess a cluster munition only for as long as it takes to call up the authorities and hand it over to a New Zealand officer. How would this apply for a New Zealander working as a clearance specialist for an international NGO or commercial clearance firm in Lao PDR or elsewhere? In addition, the reference to "handing a cluster munition over" implies a physical act of picking a cluster munition or submunition up and handing it over. This is not a safe practice; it would be better to contact a New Zealand officer and request that the cluster munition be removed by a professional clearance expert.

► The ANZCMC recommends that Clause 12 be amended to include deminers and that the definition for deminer be added to the definitions contained in Clause 5.

Divestment - Clause 11(1)

13. The Bill does not directly prohibit investment in the production of cluster munitions and this should be added. While the Convention does not explicitly ban investment, New Zealand should clarify that it accepts that the prohibition on assistance in Article 1(1)(c) prohibits investments in cluster munitions producers. Legislation passed by Austria, Belgium, and

Ministry of Foreign Affairs that stated the government's position that the transit of antipersonnel mines through New Zealand's territorial waters is prohibited by domestic laws. It also noted that efforts to enforce these laws against a vessel exercising the right of innocent passage were limited. Letter to John V Head, Convenor, CALM, from Geoff Randal, Director of the Disarmament Division, Ministry of Foreign Affairs, 15 October 2002. See ICBL, *Landmine Monitor Report 2003* (Washington DC: Human Rights Watch, 2003).

¹¹ Other states that have made their views known on transit of cluster munitions include Bulgaria, Burkina Faso, Ecuador, Lebanon, Madagascar, Malta, Mexico, The Netherlands, South Africa, UK, and Zambia. See Human Rights Watch and Landmine Action, *Banning Cluster Munitions: Government Policy and Practice* (Ottawa: Mines Action Canada), May 2009, pp. 24-25.

Luxembourg explicitly states that such investments are prohibited.¹² In August 2009, Australia's parliamentary Joint Standing Committee on Treaties recommended "preventing 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."¹³

► The ANZCMC recommends that Clause 11(1) be amended to prohibit investment in the production of cluster munitions. Under the list of offences, add "(f) invests, directly or indirectly, in the production of cluster munitions or components used exclusively/primarily for cluster munitions."

Prohibition on Assistance - Clause 11(1)

14. As with the Convention, the Bill includes the prohibition on assistance with acts banned by the Convention without qualification or limitation (e.g. "direct" or "active" assistance). This reflects the nature of the prohibition on assistance as a core and absolute obligation of the Convention. The inclusion of the phrase "in any way" is consistent with other international law. It would strengthen Clause 11, however, to add the phrase "under any circumstances" to the chapeau of Clause 11(1) to apply to all of the prohibitions, as the Convention does.

► The ANZCMC recommends that the chapeau of Clause 11(1) be amended to include "under any circumstances" (i.e. "A person who does any of the following things under any circumstances commits an offence")

Interoperability - Clause 11(2)

15. In a more problematic provision of the Bill, a member of the Armed Forces participating in a joint operation with a non-state party commits an offense if she/he "expressly requests" cluster munition use. This language ("expressly requests") is drawn from Article 21(4) of the Convention, but the intent is unclear and should be clarified. Clause 11(2) appears to suggest that it may be permissible for a member of the armed forces to request a cluster munition strike so long the choice of munitions is not in their "exclusive control."

► The ANZCMC recommends the deletion of subparagraph 11(2)(b) of the Bill.

Interoperability - Clause 12(5)

16. The Bill's helpful addition of "merely" before "engage in operations, etc" suggests that participation in a joint military operation is permitted, but anything more than that is not. Using the term "that might engage" in banned acts rather than "that engage," however, would cover a wider range of non-states parties and situations and make the Bill more consistent

¹² For example, the Luxembourg law reads as follows: "Il est interdit à toute personne physique ou morale de financer, en connaissance de cause, des armes à sous-munitions ou des sous-munitions explosives." ("It is prohibited for all persons, or businesses or corporal entities, to knowingly/intentionally finance cluster munitions or explosive submunitions.") Loi du 4 juin 2009 portant approbation de la Convention sur les armes à sous-munitions, ouverte à la signature à Oslo le 3 décembre 2008, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4325L10000000/FTSShowAttachment?mime=application%2fdf&id=998826&fn=998826.pdf.

¹³ Parliament of the Commonwealth of Australia, Joint Standing Committee on Treaties, "Report 103: Treaties tabled on 12 March and 13 May 2009 - Convention on Cluster Munitions (Dublin, 30 May 2008)," p. 27. <http://www.aph.gov.au/house/committee/jsct/13may2009/hearings.htm> [Accessed 19 Aug 09]

with the Convention's Article 21(3).

► The ANZCMC recommends that Clause 12(5) be amended to say "that might engage in conduct prohibited by section 11(1)" rather than "that engage" in such conduct.

Retention of Cluster Munitions for Training - Clause 15

17. Overall, the Bill's extensive language exempting cluster munitions for training purposes contrasts starkly with New Zealand's diplomatic stance against the retention of cluster munitions. Furthermore within the Mine Ban Treaty, New Zealand has also led calls for no live antipersonnel mines to be retained for training. As currently worded, the Bill may inadvertently allow for the production and development of cluster munitions and explosive bomblets in violation of the Convention's Article 1(1) prohibitions on development and production.

► The ANZCMC recommends that the legislation state that, as with antipersonnel mines, New Zealand will never seek to import, develop or produce cluster munitions or submunitions/bomblets for training purposes.

Positive Obligations

18. The Bill makes no mention of the Convention's positive obligations (Article 21) to promote universalisation of the Convention with states not party, "make best efforts" to discourage prohibited acts such as cluster munition use, and notify non-state party allies of its obligations under the Convention. In the National Interest Analysis (para 20), these obligations were described as potential "disadvantages," but Australia, Germany, Norway and other members of the Convention on Cluster Munitions view these provisions as obligations. The deployment of New Zealand troops to Afghanistan exemplifies a situation in which we need to ensure (through the rules of engagement for example) that cluster munitions are not used by the United States, a non-signatory to the Convention.¹⁴ Preventive measures would help clarify that assistance with prohibited acts is banned during joint operations, and, most importantly, help avoid civilian casualties and strengthen the norm against the weapon.

► The ANZCMC recommends that language from Article 21 (1) and (2) be inserted into the Bill. For example,

"1. New Zealand shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.

2. New Zealand shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not

¹⁴ On 24 April 2009, the ANZCMC wrote to Hon. Murray McCully, Minister of Foreign Affairs to seek confirmation that New Zealand troops in Afghanistan will not be expected to assist the United States or others with acts prohibited by the Convention such as use, transfer, and stockpiling of cluster munitions. Minister McCully responded that this issue falls under the responsibility of our Minister for Disarmament and Arms Control, Hon. Georgina Te Heuheu. On 19 June 2009, Minister Te Heuheu replied that, "It would be premature for me to discuss issues concerning Article 21 of the Convention in the context of a potential deployment of the SAS before a decision on New Zealand's commitments to Afghanistan has been made." See: ANZCMC, "New Zealand and Cluster Bombs in Afghanistan," <http://www.stopclusterbombs.org.nz/2009/05/06/nz-and-cluster-munitions-in-afghanistan/>

party to this Convention from using cluster munitions."

19. While implementation legislation does not always address positive obligations under international law, the positive obligations contained in Articles 21 (1) and (2) are distinguishable. These provisions of the Convention on Cluster Munitions require that states parties promote the whole treaty and call for its universalisation, rather than implement a specific positive obligation. In addition, they are linked explicitly to provisions on relations with states not party, which are included elsewhere in the Bill under Clause 11(2) and 12(5).

► The ANZCMC urges the government to frequently undertake notification at both the military and political levels. We call on the Foreign Affairs, Defence, and Trade Select Committee to state in its report that New Zealand must:

1. Specify the range of measures that will be taken to discourage prohibited acts and encourage universalization;
2. Detail the form and content that notification will take, as well as the levels and frequency of notification;
3. Detail how the implementation of these obligations will be made public, including through the Convention's annual transparency reporting mechanism.

III. The ANZCMC

About the ANZCMC

20. This submission is provided on behalf of the Aotearoa New Zealand Cluster Munition Coalition (ANZCMC), a national campaign established in Wellington on 22 March 2007 to support the international call to stop cluster munitions from harming civilians. The ANZCMC is comprised of 23 non-governmental organisations (NGOs) and networks representing a range of constituencies concerned at the impact of cluster munitions, including development, disarmament, faith, human rights, peace, women, and youth.¹⁵ Mary Wareham has coordinated the ANZCMC since its inception (until June 2008 on behalf of Oxfam NZ and then in her personal capacity and not on behalf of her current employer Human Rights Watch). The ANZCMC meets regularly in Wellington, communicates primarily by email, and issues regular updates via a content-filled website.¹⁶ Once New Zealand has ratified the 2008 Convention on Cluster Munitions, the ANZCMC intends to close down its active campaigning and form a "Working Group on Landmines and Cluster Munitions" to continue communications on issues relating to New Zealand's compliance with the Convention and the 1997 Mine Ban Treaty.

¹⁵ ANZCMC members: Amnesty International Aotearoa NZ, Aotearoa Lawyers for Peace, Auckland University Students' Association, Campaign Against Landmines, Caritas Aotearoa NZ, Christian World Service, Development Resource Centre, Engineers for Social Responsibility Inc, International Physicians for the Prevention of Nuclear War NZ, National Council of Women NZ, National Consultative Committee on Disarmament, Oxfam NZ, Parliamentarians for Nuclear Nonproliferation and Disarmament NZ, Pax Christi Aotearoa-NZ, Peace Foundation NZ, Peace Foundation Disarmament and Security Centre, Peace Movement Aotearoa, Soroptimist International NZ, Umma Trust, UN Association NZ, UN Youth Association NZ, UNICEF NZ, Women's International League for Peace and Freedom, Aotearoa. See the membership list available online at: <http://www.stopclusterbombs.org.nz/about/>

¹⁶ ANZCMC Website, www.banclusterbombs.org.nz

ANZCMC Activities

21. Since its establishment, the ANZCMC has focused on two specific objectives: 1) To ensure that New Zealand plays a strong and positive role in the Oslo Process to secure an international agreement tackling cluster munitions (including by hosting a successful Wellington Conference on Cluster Munitions); and 2) To build Pacific support for the cluster munition ban. The ANZCMC has engaged in a range of advocacy in support of these objectives including direct lobbying, popular campaigning, media outreach, and public education.¹⁷ Activities include a national speaking tour by Australian photographer John Rodsted (Nov 2007), several award-winning campaign stunts, a Ban Cluster Bombs petition that secured more than 3,367 signatures, two innovative print advertisements, and two Adshel poster campaigns. In February 2008, the ANZCMC played a major role in hosting the international civil society delegation to the Wellington Conference on Cluster Munitions. A range of partners have assisted the ANZCMC, most notably Auckland-based creative agency DraftFCB, which has provided free award-winning advertising and support to the coalition. The campaign acknowledges funding support provided by the Peace and Disarmament Education Trust (PADET), Human Rights Watch, and Cluster Munition Coalition (CMC).

Acknowledgments

22. The ANZCMC is grateful for the partnership and cooperation that it experienced throughout the Oslo Process with New Zealand diplomats and officials. We have enjoyed good, working relationships with Ministry of Foreign Affairs and Trade officials including Ambassador Don MacKay, Caroline McDonald, Jillian Dempster, and Charlotte Darlow. We are pleased to have cooperated with New Zealand Defence Force personnel Brigadier Kevin Riodran, Lt. Col. Martin Donoghue, and Sgt. Andrew Stott to increase public awareness about cluster munitions. In addition, the ANZCMC notes that several individual New Zealanders have played central roles in the international effort to tackle cluster munitions, including:

- Mr. John Borrie, of the United Nations Institute for Disarmament Research (UNIDIR), a former New Zealand diplomat who participated in the negotiations of the Convention on Cluster Munitions¹⁸;
- Mr. Tim Caughley, New Zealand's former disarmament ambassador who headed the Geneva office of the UN Department of Disarmament Affairs during the Oslo Process;
- Major John Flanagan (retired), who has led UN efforts to clear areas contaminated by cluster munition duds and played an important role in providing UN agency support for the Oslo Process;
- Ms. Jamila Homayun, who organized the CMC delegation to the Wellington Conference on Cluster Munitions, as well as the Dublin negotiations of the Convention;
- Mr. Thomas Nash, who has coordinated the international Cluster Munition Coalition since its inception in November 2003.

¹⁷ See the ANZCMC chronology at: <http://www.stopclusterbombs.org.nz/take-action/>

¹⁸ Borrie recently completed a negotiating history of the Convention on Cluster Munitions. See John Borrie, *Unacceptable Harm: How the International Treaty to Ban Cluster Munitions Was Won* (forthcoming) Geneva, United Nations, December 2009.

IV. Conclusion

23. We understand that implementation of any international treaty involves a combination of legislation, policy, and practice, and ANZCMC members look forward to engaging with the government on implementation and universalisation of the Convention on Cluster Munitions in the months and years to come. Good policy implementation is however based on binding, specific rules that clarify New Zealand's treaty obligations and ensure that we uphold our commitment to the Convention on Cluster Munitions.

To summarise, the ANZCMC supports New Zealand's swift ratification of the Convention on Cluster Munitions. We view the Cluster Munitions (Prohibition) Bill as appropriate legislation that, with minor revisions, should be passed without delay. Our summary list of suggested amendments follows.

Thank you for your kind consideration of these suggested revisions. The Aotearoa New Zealand Cluster Munition Coalition is grateful for this opportunity to provide input on the Cluster Munitions (Prohibition) Bill.

Proposed Amendments for the Cluster Munitions (Prohibition) Bill

1. Remove the brackets around "(Prohibition)" in the title of the Bill.
2. Amend Clause 5(1) to include transit of cluster munitions under the definition of transfer. Under transfer, add "(a)(iii) - transit of cluster munitions across, above, or through national territory and territorial waters."
3. Amend Clause 5(1) to use the exact language provided in Article 2 of the Convention (both 3. Submunition and 13. Bomblet).
4. Amend Clause 12 to include deminers and add the definition for deminer to the definitions contained in Clause 5.
5. Amend Clause 11(1) to prohibit investment in the production of cluster munitions. Under the list of offences, add "(f) invests, directly or indirectly, in the production of cluster munitions or components used exclusively/primarily for cluster munitions."
6. Amend Clause 11(1) to include "under any circumstances" (i.e. "A person who does any of the following things under any circumstances commits an offence").
7. Amend Clause 11(2) by deleting subparagraph (b).
8. Amend Clause 12(5) to say "that might engage in conduct prohibited by section 11(1)" rather than "that engage ..." in such conduct.
9. Clarify that New Zealand will *never* seek to import cluster munitions or submunitions/bomblets for training purposes.
10. Amend Clause 15(1) by deleting the words "developed" and "produced."
11. Amend the Bill by inserting language from Article 21 (1) and (2) from the Convention on Cluster Munitions and clarifying how New Zealand will implement these obligations.

Annex I - ANZCMC Submission Endorsers

This submission reflects input received from discussions with ANZCMC members and in public meetings held in Auckland (26 August), Christchurch (13-14 August), and Wellington (12 August, 14 September).¹⁹ This submission has been endorsed by the following ANZCMC member organisations. The letters of endorsement provided with the hard-copy submission are available from the contacts listed or Wareham.

List of Endorsements

- Amnesty International Aotearoa New Zealand – submitted by Rebecca Emery, 3 Aug.
- Aotearoa Lawyers for Peace –Alyn Ware, 7 Sep.
- Auckland University Students' Association – Yasmin Chilmeran, 1 Sep.
- New Zealand Campaign Against Landmines – Nathan Donaldson, Aug.
- Caritas Aotearoa New Zealand – Martin de Jong, 8 Sep.
- Christian World Service - Pauline McKay, 10 Sep.
- Development Resource Centre – Tim O’Donovan, 5 Aug.
- Disarmament and Security Centre - Kate Dewes and Rob Green, 6 Aug.
- Engineers for Social Responsibility Inc – Neil Mander, 7 Aug.
- National Consultative Committee on Disarmament – Rod Alley, 7 Sep.
- National Council of Women – Lynda Sutherland, 14 Sep.
- Oxfam New Zealand – Barry Coates, 5 Aug.
- Pax Christi Aotearoa- New Zealand – Kevin McBride, 11 Aug.
- Peace Foundation– Richard Northey, 12 Aug.
- Peace Movement Aotearoa – Edwina Hughes, 9 Sep.
- Soroptimist International New Zealand – Kathy Glass, 17 Aug.
- UN Association of New Zealand – Antony Vallyon, 20 Aug.
- UNICEF New Zealand – Dennis McKinlay, 26 Aug.
- Women’s International League for Peace and Freedom (WILPF) Aotearoa Section – Megan Hutching, 8 Sep.

As a parliamentary network, Parliamentarians for Nuclear Nonproliferation and Disarmament NZ is not in a position to endorse this submission.

¹⁹ See ANZCMC website report, “Actions in August against cluster bombs,” 18 August 2009. <http://www.stopclusterbombs.org.nz/2009/08/18/august-actions-against-cluster-bombs/>