



ANALYSIS

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Price \$3.00

2007, No. 35

An Act to implement the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction in the Cook Islands

(30 November 2007)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

PART 1
PRELIMINARY

1. Short Title- (1) This Act may be cited as the Anti-Personnel Mines Act 2007.

2. Interpretation - In this Act, unless the context otherwise requires -

“anti-handling device” means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine;

“anti-personnel mine” means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as apposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped;

“Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997, (a copy of extracts of the Convention from the English text which is deposited and held at the Ministry of Foreign Affairs and Immigration in the Cook Islands), as amended from time to time in accordance with Article 13 of the Convention;

“mine” means ammunition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

“mined area” means an area which is dangerous due to the presence or suspected presence of mines;

“Minister” means the Minister of Foreign Affairs;

“occupier” includes a person present at the premises who is in apparent control of the premises;

“transfer” involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

PART 2 **PROHIBITIONS AND OFFENCES**

3. Prohibited conduct - (1) Subject to section 6, no person shall -
- (a) use an anti-personnel mine;
 - (b) develop or produce an anti-personnel mine;
 - (c) acquire an anti-personnel mine;
 - (d) possess, retain or stockpile an anti-personnel mine;
 - (e) transfer to anyone, either directly or indirectly, an anti-personnel mine.
- (2) Subject to section 6, no person shall assist, encourage or induce, in any way, anyone to engage in conduct referred to in subsection (1) above.

4. Offences and Penalties - (1) Any person who contravenes section 3 shall be guilty of an offence and liable upon conviction to -

- (a) in the case of an individual, imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both;
- (b) in the case of a body corporate, a fine not exceeding \$100,000.

(2) Where an offence under subsection (1) which is committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished in accordance with subsection (1)(a).

(3) Any court which convicts a person under subsections 1(a) and (b) may order that an anti-personnel mine or component part used or otherwise involved in the commission of the offence be forfeited to the Crown.

5. Extra-territorial application - The effect and application of Section 3 extends to conduct outside the territory of the Cook Islands of citizens of the Cook Islands and body corporate incorporated under the laws of the Cook Islands.

6. Exceptions: conduct which is permitted - Section 3 does not apply to-

- (a) the placement, possession, retention or transfer of an anti-personnel mine in accordance with a permission in force under section 10;
- (b) the possession, retention or transfer of an anti-personnel mine by a member of the armed services permitted to operate in the Cook Islands, a police officer, a court official, a customs official or any other such person appointed by the Minister by notice in writing in the course of that person's duties for the purpose of -
 - (i) the conduct of criminal proceedings;
 - (ii) rendering an anti-personnel mine harmless;
 - (iii) retaining an anti-personnel mine for future destruction; and
 - (iv) delivering an anti-personnel mine to the Ministry for destruction.

PART 3
DESTRUCTION OF ANTI-PERSONNEL MINES

7. Delivery or notification of Anti-Personnel Mines - Any person who knowingly possesses an anti-personnel mine otherwise than in accordance with section 6, must, without delay, deliver it to the Ministry for destruction or notify the Minister to enable arrangements to be made for collection and destruction.

8. Destruction of Anti-Personnel Mines - Subject to section 10, the Minister shall ensure the destruction of -

- (a) all stockpiled anti-personnel mines owned or possessed by the Cook Islands or under its jurisdiction or control;
- (b) all anti-personnel mines in mined areas under the jurisdiction or control of the Cook Islands; and
- (c) all anti-personnel mines notified or delivered for destruction under section 7.

9. Marking, monitoring and protection - Where an area is identified as a mined area or is suspected to be a mined area, the Minister shall, as soon as possible, ensure that such area is perimeter-marked and protected by fencing or otherwise employ such means as are necessary to notify civilians of the presence of anti-personnel mines until all anti-personnel mines contained therein are destroyed.

10. Permission to retain or transfer - The Minister may, in writing, grant permission for a specified number of anti-personnel mines to be placed, possessed, retained, or transferred, for the development of, or training in, mine detection, mine clearance or mine destruction techniques, but the number of such mines shall not exceed the minimum number absolutely necessary for these purposes.

PART 4
FACT-FINDING MISSIONS

11. Fact-finding Missions - If a fact-finding mission to the Cook Islands is authorized under Article 8 of the Convention, the Minister shall -

- (a) issue to every member of the mission an identity card -
 - (i) identifying the member by name, containing a recent photograph of the member, and indicating the member's status and authority to conduct a fact-find mission to the Cook Islands;

- (ii) stating that the member enjoys the privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations;
- (b) take the necessary measures to receive, transport and accommodate the mission;
- (c) be responsible for ensuring the security of the mission to the maximum extent possible during their presence;
- (d) make all efforts to ensure that opportunity is given to the mission to speak with all relevant persons who may be able to provide information relevant to the alleged compliance issue; and
- (e) grant the mission access to all areas and installations under the control of the Crown where facts relevant to the alleged compliance issue could be expected to be collected.

12. General powers of Fact-finding Missions in relation to premises - (1) A fact-finding mission authorized under Article 8 of the Convention may enter the Cook Islands to collect information relevant to the alleged compliance issue and in particular shall have the power to -

- (a) search the premises and anything on the premises;
- (b) inspect, examine, take measurements of, or conduct tests (including taking samples) concerning anything on the premises that relates to an anti-personnel mine;
- (c) take photographs or make video or audio recordings or sketches of the premises or anything on the premises;
- (d) inspect any book, record or document on the premises;
- (e) take extracts from or make copies of any such book, record or document;
- (f) take any equipment and materials onto premises as required to exercise powers in relation to the premises; and
- (g) require the occupier or any persons present on the premises to answer any questions put by the member of the fact-finding mission or produce any book, record or document requested by the member of the fact-finding mission.

(2) The Minister may designate a person to accompany any member of a fact-finding mission in order to facilitate the carrying out of the functions of the mission.

13. Power of a member of a Fact-finding Mission to enter premises - (1) For the purpose of collecting information relevant to the alleged compliance issue, a member of a fact-finding mission may, subject to subsection (2) -

- (a) enter any premises; and
- (b) exercise therein the powers set out in Section 12 (1).

(2) A member of a fact-finding mission is not authorized to enter premises under subsection (1) unless -

- (a) the occupier of the premises has consented to the entry; or
- (b) the entry is made under a warrant issued under section 17.

14. Member of fact-finding mission must produce identity card on request - Subject to section 15, a member of a fact-finding mission is not entitled to exercise any powers under this part of the Act in relation to premises if -

- (a) the occupier of the premises has required the member of a fact-finding mission to produce his or her identity card for inspection by the occupier; and
- (b) the member of a fact-finding mission fails to comply with the requirement.

15. Announcement before entry - (1) A member of a fact-finding mission must, before entering the premises under a warrant issued under section 17 -

- (a) announce that he or she is authorized to enter the premises;
- (b) identify himself or herself by producing his or her identity card to the occupier;
- (c) make available to the occupier or another person who apparently represents the occupier who is present on the premises, a copy of the warrant;
- (d) give any person at the premises an opportunity to allow entry to the premises.

(2) A member of a fact-finding mission is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required -

- (a) to ensure the safety of a person; or
- (b) to prevent serious damage to the environment; or
- (c) to ensure that the effective execution of the warrant is not frustrated.

16. Occupier entitled to be present during search - (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent two or more areas of the premises being searched at the same time.

17. Monitoring warrants - (1) A member of a fact-find mission may apply to a magistrate for a warrant to enter premises under this section.

(2) The magistrate may issue the warrant if the magistrate is satisfied, on information given on oath, that it is reasonably necessary that one or more members of a fact-finding mission should have access to the premises for purposes relevant to the alleged compliance issue. This subsection has effect subject to subsection (3).

(3) The magistrate must not issue the warrant unless the member of a fact-finding mission or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must -

- (a) authorize one or more members of a fact-finding mission (whether or not named in the warrant), with such assistance and by such force as necessary and reasonable-
 - (i) to enter the premises; and
 - (iii) to exercise the powers set out in subsection 12(1) in relation to the premises; and
- (b) state whether the entry is authorized to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

18. Equipment for Fact-finding Missions - A member of a fact-finding mission authorized under Article 8 of the Convention may import on written notice to the Minister the necessary equipment to be used exclusively in carrying out a fact-finding mission, and may export the equipment at the end of the mission. Such import and export shall be exempt from duty and tax.

19. Offences and Penalties -

- (a) any person who knowingly makes a false or misleading Statement in an application for a warrant under section 17 commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$5,000 or both.
- (b) any person who willfully obstructs, hinders, resists or deceives any member of a fact-finding mission undertaking an inspection in the Cook Islands commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$5,000 or both.

PART 5**INFORMATION-GATHERING POWERS**

20. Obtaining information and documents - This Minister may, by written notice served on any person, require him or her to give the Minister such information or documents as is specified in the notice if the Minister has reason to believe that he has information or a document relevant to -

- (a) the administration or enforcement of this Act;
- (b) Cook Islands' obligation to report under Article 7 of the Convention; or
- (c) Cook Islands' obligation to provide information under Article 8 of the Convention.

21. Failure to Comply and Providing False Information - Any person who -

- (a) without reasonable excuse fails to comply with a notice served on him or her by the Minister; or
- (b) knowingly makes a false or misleading Statement in response to a notice served on him or her, shall be guilty of an offence and liable, on conviction, to a term of imprisonment not exceeding 1 years or a fine of \$5,000 or both.

PART 6

PART 6
MISCELLANEOUS

22. Regulations - The Queen's Representative may from time to time, by Order in Executive Council, make regulations -

- (a) prescribing such things (including fees) as are required by this Act to be prescribed;
- (b) prescribing such matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

23. Act binding on the Crown - This Act binds the Crown.

This Act is administered by the Ministry of Immigration and Foreign Affairs