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2011, No. 8

An Act to implement the Convention on Cluster munitions in the Cook Islands and related matters

(14 July 2011)

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

**PART I
PRELIMINARY MATTERS**

1. Short title – This Act may be cited as the Cluster Munitions Act 2011.
2. Interpretation - In this Act, unless the context otherwise requires -

“Cluster munition” means –

- (a) a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms; and
- (b) includes those explosives submunition; but
- (c) does not include specialist munition;

“Convention” means the 2008 Convention on Cluster Munitions, done at Dublin on 30 May 2008; and includes any amendments to the Convention made in accordance with Article 13 of the Convention that are, or will become, binding on the Cook Islands from time to time;

“Dispenser” means a container that is designed to disperse or release explosives bomblets and is affixed to an aircraft at the time of dispersal or release;

“Explosive bomblet” means a conventional munition, weighing less than 20 kilograms, that –

- (a) is not self-propelled; and
- (b) in order to perform its task, is dispersed or released by a dispenser; and
- (c) is designed to function by detonating an explosive charge prior to, on or after impact;

“Explosive submunition” means a conventional munition that, –

- (a) in order to perform its task, is dispersed or released by a cluster munition; and
- (b) is designed to function by detonating an explosive charge before, on, or after impact;

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

“Minister” means the Minister responsible for Foreign Affairs and Immigration.

“Self-destruction mechanism” in relation to a munition, means a mechanism incorporated into the munition that –

- (a) functions automatically; and
- (b) is in addition to the primary initiating mechanism of the munition; and
- (c) secures the destruction of the munition;

“Specialist munition” means a device that is –

- (a) a mine; or
- (b) a munition or submunition designed to dispense flares, smoke, pyrotechnics, or chaff; or
- (c) a munition designed exclusively for an air defence role; or
- (d) a munition or submunition designed to produce electrical or electronic effects; or
- (e) a munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics -
 - (i) each munition contains fewer than 10 explosive submunitions;
 - (ii) each explosive submunition weighs more than 4 kilograms;
 - (iii) each explosive submunition is designed to detect and engage a single target object;

- (iv) each explosive submunition is equipped with an electronic self-destruction mechanism;
- (v) each explosive submunition is equipped with an electronic self-deactivating feature;

“Transfer”, in relation to any cluster munitions or explosive bomblets, –

- (a) includes -
 - (i) the physical movement of the munitions or bomblets into or out of the territory of the Cook Islands; and
 - (ii) the transfer of title to and control over the munitions or bomblets; but
- (b) does not include the transfer of territory containing remnants of the munitions or bomblets.

3. Act to bind the Crown - This Act binds the Crown.

PART II PROHIBITIONS AND OFFENCES

4. Prohibited conduct - (1) A person commits an offence who -
- (a) uses cluster munitions or explosive bomblets; or
 - (b) develops or produces cluster munitions or explosive bomblets; or
 - (c) acquires cluster munitions or explosive bomblets; or
 - (d) possesses, retains, or stockpiles cluster munitions or explosive bomblets; or
 - (e) transfers cluster munitions or explosive bomblets to any other person.
- (2) A person commits an offence who, being a director, manager or other similar officer of a body corporate (or purporting to act as a director, manager or other similar officer of a body corporate) fails or refuses to take all reasonable practicable steps to ensure that the body corporate does not commit an offence against subsection (1).
- (3) Subsection (2) does not limit the circumstances in which a person may be prosecuted as a party to the commission of an offence against subsection (1).

5. Penalty - (1) A person who contravenes section 4 commits an offence and is liable upon conviction -

- (a) in the case of an individual, to imprisonment for a term not exceeding 10 years, a fine not exceeding \$10,000.00 or both;
- (b) in the case of a body corporate, to a fine not exceeding \$20,000.00.

(2) On conviction of a person for an offence against section 4, any court may order that cluster munitions or explosive bomblets used or otherwise involved in the commission of the offence be forfeited to the Crown.

6. Extra-territorial application - Section 4 applies to conduct outside the territory of the Cook Islands by body corporate incorporated under the laws of the Cook Islands or residents of the Cook Islands.

7. Exceptions - permitted conduct - (1) Section 4 does not apply to -
- (a) the acquisition, possession, retention or transfer of cluster munitions, or explosive bomblets permitted by or under section 9; or
 - (b) the possession, retention or transfer of cluster munitions or explosive bomblets by a person of a kind described in subsection (2) in the course of that person's duties for the purpose of -
 - (i) the conduct of criminal proceedings; or
 - (ii) rendering them harmless; or
 - (iii) retaining them for future destruction; or
 - (iv) delivering them to the Commissioner of Police for destruction.
- (2) The kinds of person referred to in subsection (1) are -
- (a) members of the New Zealand or Australian Defence Forces;
 - (b) police officers;
 - (c) court officials;
 - (d) customs officials;
 - (e) other officials specified for the purposes of this section by the Minister by notice in writing.

PART III

COLLECTION AND DESTRUCTION OF CLUSTER MUNITIONS

8. Notification of cluster munitions - (1) A person who possesses cluster munitions or explosive bomblets immediately before the commencement of this Act must, promptly after that commencement notify the Commissioner of Police to enable arrangements to be made for their collection and destruction.

(2) A person who comes into possession of cluster munitions or explosive bomblets after the commencement of this Act must promptly notify the Commissioner of Police to enable arrangements to be made for their collection and destruction.

(3) Subsections (1) and (2) do not apply to the possession of cluster munitions or explosive bomblets if it is -

- (a) possession by a person of a kind described in section 7(2) in the course of that person's duties for a purpose described in section 7(1)(b); or
- (b) possession permitted by or under section 9.

9. Permission to acquire, retain, or transfer - (1) The Minister may give any person written permission to retain or acquire a specified number of cluster munitions or explosive bomblets for -

- (a) the development of techniques for the detection, clearance, or destruction of cluster munitions or explosive bomblets; or
- (b) training in the detection, clearance, or destruction of cluster munitions or explosive bomblets; or
- (c) the development of cluster-munition counter-measures.

(2) The Minister must not give permission under subsection (1) unless satisfied that the number of cluster munitions or explosive bomblets specified does not exceed the minimum number absolutely necessary for the purpose for which it is given.

(3) The transfer of cluster munitions or explosive bomblets to another state for the purpose of destruction is permitted.

PART IV INFORMATION-GATHERING POWERS

10. Obtaining information and documents - The Minister may, by written notice served on any person, require the person to give the Minister any information or documents specified in the notice that the Minister has reason to believe is in the person's possession, and is relevant to -

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

11. Offences relating to section 10 - A person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding \$5,000.00 or both, who -

- (a) without reasonable excuse fails or refuses to comply with a notice under section 10; or
- (b) knowingly makes a false or misleading statement in response to a notice under section 10.

PART V ADMINISTRATION OF THE ACT

12. Regulations - The Queen's Representative may, by Order in Executive Council, may make regulations providing for such other 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.

13. High Court jurisdiction - All criminal jurisdiction conferred by this Act may be exercised by the High Court in the ordinary course of its criminal jurisdiction.

14. Copies free of charge - The Ministry of Foreign Affairs -

- (a) must make a copy of the Convention available for inspection free of charge at the head office of the Ministry; and
- (b) where practicable, must supply a copy of the Convention free of charge to any person who asks for it.

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