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BILLS DIGEST

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Cluster Munitions (Prohibition) Bill 2009

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Portfolio:	Disarmament and Arms Control
Select Committee:	As at 28 July, 1st reading not held
Published: 28 July 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this Bill is to implement New Zealand's obligations under the Cluster Munitions Convention (the Convention) (adopted in Dublin on 30 May 2008 and signed by New Zealand in Oslo on 3 December 2008) by prohibiting the use of cluster munitions, as well as other activity including the acquisition, possession, retention, stockpiling, and transfer of such munitions. The Bill enables New Zealand's ratification of the Convention)¹.

Background

International Treaty examination and National Interest Analysis

The Foreign Affairs, Defence and Trade Committee conducted an international treaty examination of the Convention, reported that it had no matters to bring to the attention of the House and stated that it " ... would support the Minister for Disarmament's progressing the bill giving effect to the treaty expeditiously through the House"².

¹ Cluster Munitions (Prohibition) Bill, 2009 No 52-1, Explanatory note, General policy statement, p. 1.

² [Report of the Foreign Affairs, Defence and Trade Committee, International treaty examination of the Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, done at Dublin 19-30 May 2008, House of Representatives, Wellington, 2009.](#)

The Select Committee report had appended to it the National Interest Analysis prepared by the Ministry of Foreign Affairs and Trade. The executive summary of this analysis stated:

"The Convention on Cluster Munitions (the Convention), which bans the use of cluster munitions by States Parties, is a significant development in international disarmament and humanitarian measures. The Convention was concluded in Dublin on 30 May 2008, and opened for signature at a ceremony held in Oslo on 3 December 2008. New Zealand was one of 94 states to sign the Convention in Oslo.

"The new Convention's central purpose is to prohibit the use of all cluster munitions, which are canister-like munitions that encase a large number of smaller explosive devices ("bomblets"). Usually delivered from aircraft, missiles or artillery, they are designed to open above ground and release their bomblets over an area which, in some cases, can be quite large. Many of the bomblets do not explode on impact and remain on the land, potentially killing or maiming civilians for years following their use.

"The Convention also prohibits the development, production, acquisition, stockpiling, retention and transfer (which includes importation/exportation) of cluster munitions; requires stockpiles of cluster munitions to be destroyed within eight years (with limited provision for time extensions, and retention for training purposes); requires contaminated areas to be cleared within ten years, and risk reduction education to be provided in affected areas; sets out the rights of cluster munitions victims, and the obligations of States Parties for assistance to those victims; and requires States Parties in a position to do so to provide international co-operation and assistance to States Parties affected by cluster munitions.

"In addition, the Convention includes a provision on interoperability (issues surrounding combined military exercises, operations and relations with States not Party) which ensures that coalition military operations between States Parties and States not Party to the Convention are not prohibited. This provision does not, however, permit States Parties themselves to engage in banned activities during such operations.

"There are strong reasons for New Zealand to proceed to ratify the Convention. Most important among these is that a well supported Convention will have the greatest potential to help prevent the unacceptable humanitarian harm caused by the use of cluster munitions. This National Interest Analysis concludes that the benefits to New Zealand from ratifying the Convention outweigh any associated costs. There are no significant risks or disadvantages identified that would argue against New Zealand becoming party to the Convention"³.

Main Provisions

Commencement

The Bill provides that it will come into force on a date appointed by the Governor-General by Order in Council (*Clause 2*).

Purpose

The Bill provides that its purpose is to implement New Zealand's obligations under the Convention (*Part 1, Clause 3*).

Meaning of "Cluster Munition"

The Bill provides that, unless the context otherwise requires, cluster munition means a conventional weapon that contains, and is designed to disperse or release, explosive submunitions each weighing less than twenty kilograms; but does not include:

- a mine; or

³ [ibid. p. 4.](#)

- a munition or submunition that is designed to dispense flares, smoke, pyrotechnics, or chaff or to produce electrical or electronic effects; or
- a munition that is designed exclusively for an air defence role; or
- a munition that, in order to avoid indiscriminate effects and the risks posed by unexploded submunitions, has all of the following characteristics
 - each munition contains fewer than 10 explosive submunitions,
 - each explosive submunition weighs more than 4 kilograms,
 - each explosive submunition is designed to detect and engage a single target object,
 - each explosive submunition is equipped with an electronic self-destruction mechanism,
 - each explosive submunition is equipped with an electronic self-deactivating feature.

The Bill also provides that explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft are also subject to the provisions of the Bill as if they were cluster munitions (*Part 1, Clauses 6 and 10*).

Offences related to cluster munitions

The Bill provides that a person who does any of the following things commits an offence:

- uses a cluster munition;
- develops, produces, or otherwise acquires a cluster munition;
- possesses, retains, or stockpiles a cluster munition;
- transfers a cluster munition, directly or indirectly, to another person;
- in any way assists, encourages, or induces another person to engage in any of this conduct (*Part 2, Subpart 1, Clause 11(1)*).

The Bill also provides that a member of the Armed Forces also commits an offence if he or she expressly requests the use of cluster munitions when he or she is engaged in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention and the choice of munitions used is within the exclusive control of the Armed Forces (*Part 2, Subpart 1, Clause 11(2)*).

A person who commits any of these offences is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine not exceeding \$500,000, or both (*Part 2, Subpart 1, Clause 11(3)*).

The offence provision does not limit: the Anti-Personnel Mines Prohibition Act 1998; the provisions of the Arms Act 1983 relating to restricted weapons; and the Hazardous Substances and New Organisms Act 1996 (*Part 2, Subpart 1, Clause 11(5)*).

Exceptions

The Bill sets out the circumstances when officers (i.e. a Police employee, a member of the Armed Forces, a Customs Officer, or an enforcement officer) do not commit offences, despite engaging in activities that would otherwise be offences. Such exempt activities include:

- using, acquiring, possessing, retaining, or transferring an authorised cluster munition (i.e. a cluster munition authorised by the Minister for certain purposes such as training persons in detection or clearance) in the course of the relevant person's employment or duties for those purposes; or
- seizing, receiving, or acquiring a cluster munition in the course of employment or duties for the purpose of destroying it, retaining it for destruction or transferring it for destruction (*Part 2, Subpart 1, Clause 12; Clause 7 (definition of "officer")*).

Actions in relation to cluster munitions

The Bill specifies what may be done with cluster munitions in respect of which offences have been committed and provides for cluster munitions to be treated in most respects as prohibited imports and prohibited exports under the Customs and Excise Act 1996. There is specific provision for the Minister to authorise certain activities involving cluster munitions for specific purposes, such as training people in the destruction of cluster munitions (*Part 2, Subpart 2, Clauses 13-15*).

Information

The Bill requires people who acquire, possess, retain, or transfer cluster munitions to provide information and keep records and notify the Minister. A person commits an offence who, without reasonable excuse refuses or fails to comply with these provisions and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000 or both (*Part 2, Subpart 3, Clause 17*).

Regulations

The Bill provides that the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- providing for any matter that is necessary or desirable for the purpose of implementing the Convention;
- prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under the Bill;
- prescribing penalties on summary conviction not exceeding \$5,000 for offences against regulations made under the Bill;
- providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect (*Part 2, Subpart 4, Clause 18(1)*).

Updates of Convention to be added to Bill

The Bill provides that the Governor-General may from time to time, by Order in Council, amend the Schedule by making any amendments to the text of the Convention set out in the Schedule as are required to bring it up to date or revoke the Schedule and substitute a new schedule setting out in an up-to-date form the text of the Convention and that such an order is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989 (*Part 2, Subpart 4, Clause 18(2); the Schedule*).

Arms Act 1983

The Bill amends the Arms Act 1983, so that similar restrictions apply to cluster munitions to those that apply to anti-personnel mines (*Part 2, Subpart 4, Clause 19*).

Schedule

The Convention on Cluster Munitions is appended as a Schedule to the Bill (*the Schedule*).

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