

05/18657

Mrs Margaret May MP
Acting Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Madam Acting Chair

I refer to the Committee's review of the Convention on the Marking of Plastic Explosives for the Purpose of Detection (the Convention) and the hearing on 7 November 2005.

As advised at that hearing, the Government has prepared draft legislation implementing the obligations under the Convention. The legislation is entitled *Law and Justice Legislation Amendment (Marking of Plastic Explosives) Bill 2005* (the Draft Bill).

The object of the Draft Bill is to require plastic explosives to be marked. Section 72.24 specifies two 'marking requirements'. The first marking requirement is that the plastic explosive contains a minimum concentration of one of four listed marking agents and that the detection agent is distributed homogeneously throughout the plastic explosive. The detection agents listed in section 72.25 of the Draft Bill are identical to those listed in the Technical Annex (as amended) to the Convention.

The second marking requirement is that the plastic explosive was manufactured not more than 10 years ago. Research indicates a detection agent can deteriorate and evaporate over time, resulting in a lower, potentially undetectable concentration at a later time. The second marking requirement is intended to ensure that marked plastic explosives are consumed or destroyed within the shelf life of the detection agent.

The Draft Bill inserts new offences dealing with 'unmarked' plastic explosives into Division 72 of Chapter 4 of the *Criminal Code Act 1995* (the Criminal Code). The new offences relate to trafficking, importing and exporting, manufacturing, and possessing plastic explosives that do not satisfy the 'marking requirements' specified in the Draft Bill, and for failing to include specified information on the packaging of the explosive (sections 72.12 to 72.16).

The trafficking, import and export and manufacturing offences carry penalties of 10 years imprisonment, which is consistent with comparable Commonwealth criminal offences (for

example, importation of child pornography and serious drug offences), and are also comparable to penalties for similar offences in the United States and New Zealand. The offences for possession and breaching the packaging requirements carry penalties of 2 years' imprisonment, reflecting the relative seriousness of the conduct.

The Technical Annex of the Convention provides that plastic explosives manufactured and used for research (and related purposes) are not required to be marked. In addition, Article IV of the Convention provides for particular exemptions from compliance with the Convention. These exemptions include use of unmarked plastic explosives for research purposes, for defence and police purposes and the using up of existing stocks. Sections 72.17, 72.18 and 72.18A give effect to these exceptions. In addition, section 72.19 provides for an additional exemption of up to 12 months to allow for any necessary changes to the manufacturing processes to comply with the legislation and 72.19A provides an exemption for use by overseas defence personnel. This provision is designed to allow Defence personnel to seize unmarked explosives they may come across in the course of their duties. The exemptions are only available upon the issue of an authorisation by the responsible Ministers, being the Attorney-General or the Minister for Defence.

The Draft Bill also amends other Commonwealth legislation including the *Customs Act 1901* to provide Customs officers with appropriate regulatory and arrest powers over the import and export of unmarked plastic explosives.

The Draft Bill also makes consequential amendments to the *Australian Federal Police Act 1979*, the *Australian Security Intelligence Organisation Act 1979*, the *Crimes Act 1914*, the *Surveillance Devices Act 1979* and the *Telecommunications (Interception) Act 1979*.

I attach a copy of an Exposure Draft of the Bill for the Committee's information.

Yours sincerely

Philip Ruddock