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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Cluster Munitions (Prohibition) Bill 2006

No. , 2006

(Senators Allison, Bartlett, Bishop and Bob Brown)

**A Bill for an Act to prohibit the use, possession and
manufacture of cluster munitions, and for related
purposes**

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1 **A Bill for an Act to prohibit the use, possession and**
2 **manufacture of cluster munitions, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Cluster Munitions (Prohibition) Act*
9 2006.

10 **2 Commencement**

11 This Act commences on the day on which it receives the Royal
12 Assent.

1 **3 Purpose of Act**

- 2 (1) The purpose of this Act is to ensure that innocent civilians in
3 conflict zones are not maimed, killed or put at risk, as a result of
4 Australians possessing, using or manufacturing cluster munitions.
- 5 (2) In particular, this Act prevents members of the Australian Defence
6 Force, whether serving in Australia or outside Australia, and
7 whether serving with the Australian Defence Force or any other
8 defence force, from deploying cluster munitions.

9 **4 Extra-territorial operation of Act**

- 10 (1) This Act extends to acts done or omitted to be done by an
11 Australian citizen outside Australia and the external Territories or
12 to acts done on board Australian ships and aircraft.
- 13 (2) In subsection (1):
- 14 *Australian ships and aircraft* means ships and aircraft registered
15 in Australia or belonging to, or in the possession of, the
16 Commonwealth or a State.

17 **5 Act binds the Crown**

- 18 (1) This Act binds the Crown in all its capacities.
- 19 (2) Nothing in this Act renders the Crown liable to be prosecuted for
20 an offence.

21 **6 Definitions**

- 22 (1) In this Act, unless the contrary intention appears:
- 23 *cluster munition* means munition or device which is specifically
24 designed to cause death or harm by deploying one or more
25 submunitions.
- 26 *container unit* means that part of a cluster munition which is
27 intended to transport one or more submunitions from the point at
28 which the cluster munition is fired to the point at which the
29 submunitions are deployed.

1 **member of the ADF** means an officer, soldier, sailor or airman
2 under the *Defence Act 1903*.

3 **submunition** means a munition which is carried within the
4 container unit of a cluster munition, and which is deployed from
5 that container unit.

6 **7 Application of the *Criminal Code***

7 Chapter 2 of the *Criminal Code* applies to all offences against this
8 Act.

9 **8 Constitutional basis for the operation of this Act**

10 This Act applies to matters within the legislative power of the
11 Commonwealth under paragraphs 51(vi) and 51(xxix) of the
12 Constitution.

13 **9 Extended standing**

14 (1) This section extends (and does not limit) the common law in
15 relation to standing to seek writs of mandamus, prohibition or
16 certiorari, or an injunction or declaration, under the Constitution or
17 the *Judiciary Act 1903*.

18 (2) An individual is taken to have standing to seek a writ of
19 mandamus, prohibition or certiorari, or an injunction or
20 declaration, in relation to this Act, if the individual is an Australian
21 citizen and ordinarily resident in Australia or an external Territory.

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2 **Part 2—Offences**

3 **10 Offences relating to cluster munitions**

4 A person must not intentionally:

- 5 (a) develop, produce, otherwise acquire, stockpile or retain
6 cluster munitions, container units or submunitions; or
7 (b) transfer, directly or indirectly, cluster munitions, container
8 units or submunitions to another person; or
9 (c) use a cluster munition, container unit or submunition; or
10 (d) engage in military preparations to use cluster munitions,
11 container units or submunitions.

12 Penalty: Imprisonment for life.

13 **11 Support for use of cluster munitions by another country**

14 A member of the ADF must not intentionally engage in military
15 preparations to assist a member of the defence force of another
16 country to use cluster munitions, container units or submunitions.

17 **12 ADF members deployed with foreign forces**

18 To avoid doubt, sections 10 and 11 of this Act continue to apply to
19 ADF members who are attached to the defence force of another
20 country.

21 **13 Order to contravene Act**

22 To avoid doubt, an instruction given to a member of the ADF
23 which would, if obeyed, contravene section 10 or 11 of this Act is
24 not a lawful command for the purposes of section 27 of the
25 *Defence Force Discipline Act 1982*.

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Part 3—Defences

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14 Clearing of cluster munitions

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Part 2 of this Act does not apply in relation to conduct undertaken with the intention of clearing or rendering safe submunitions which have been deployed but which have not exploded.

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15 Education in relation to cluster munitions

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Part 2 of this Act does not apply in relation to conduct undertaken in order to educate civilians regarding the dangers of approaching or handling cluster munitions, container units or submunitions.

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16 Decommissioning

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Part 2 of this Act does not apply in relation to conduct undertaken in order to decommission or destroy cluster munitions, container units or submunitions in accordance with Part 4 of this Act.

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Part 4—Decommissioning

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17 Minister to decommission munitions

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The Minister with responsibility for defence must cause all cluster munitions, container units and submunitions in the possession or control of the Australian Defence Force to be decommissioned or safely destroyed within one year of the commencement of this Act.

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18 Report on stockpiles and decommissioning plan

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The Minister with responsibility for defence must cause to be tabled in both Houses of the Parliament within three months after the commencement of this Act a report which:

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(a) identifies all stockpiles of cluster munitions, container units and submunitions in the possession or control of the Australian Defence Force, whether in Australia or overseas; and

(b) sets out a plan for the decommissioning or safe destruction of all such cluster munitions, container units and submunitions within one year of the commencement of this Act.

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19 Cluster munitions which have been deployed

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If, as a result of an offence under this Act, a cluster munition is deployed, whether in Australia or in another country, then that munition must be cleared, removed or destroyed in accordance with Australia's obligations under the *Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects*.