



# ANTI-PERSONNEL MINES AND CLUSTER MUNITIONS PROHIBITION ACT 2021

## No. 354

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Schedule 1

Convention on the Prohibition of the Use, Stockpiling, Production and  
Transfer of Anti-personnel Mines and on their Destruction

Schedule 2

Convention on Cluster Munitions

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An Act to implement in the law of Niue-

- (a) the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction; and
- (b) the Convention on Cluster Munitions.

The Assembly enacts as follows -

- 1 **Title**  
This Act is the Anti-Personnel Mines and Cluster Munitions Prohibition Act 2021.
- 2 **Commencement**  
This Act comes into force on the day after the date on which it becomes law in accordance with Article 34 of the Constitution.

Part 1

Interpretation and preliminary matters

- 3 **Interpretation**
  - (1) In this Act, unless the context otherwise requires, -
    - anti-handling device** means a device -
      - (a) that is intended to protect a mine; and
      - (b) which is part of, linked to, attached to or placed under the mine; and
      - (c) which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine
    - anti-personnel mine** -
      - (a) means a mine that -
        - (i) is designed to be exploded by the presence, proximity, or contact of 1 or more persons; and
        - (ii) is capable of incapacitating, injuring, or killing 1 or more persons; but
      - (b) does not include a mine that is -
        - (i) designed to be detonated by the presence, proximity, or contact of a vehicle as opposed to person; and
        - (ii) equipped with an anti-handling device

**Anti-Personnel Mines and Cluster Munitions Prohibition Act 2021**

**Anti-Personnel Mines Convention** means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, done at Oslo on 18 September 1997 (a copy of the English text of which is set out in Schedule 1); and includes any amendments to the Convention made in accordance with Article 13 of the Convention that are, or will become, binding on Niue

**authorised training** means training authorised by the Minister for the purposes of developing or training people in techniques of mine detection, mine clearance, mine deactivation, or mine destruction

**cluster munition -**

- (a) means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms; and
- (b) includes those explosive submunitions; but
- (c) does not include -
  - (i) a munition or submunition that is designed to dispense flares, smoke, pyrotechnics or chaff, or to produce electrical or electronic effects; or
  - (ii) a munition that is designed exclusively for an air defence role; or
  - (iii) a munition that, in order to avoid indiscriminate effects and the risks posed by unexploded submunitions, has all of the following characteristics:
    - (A) each munition contains fewer than 10 explosive submunitions;
    - (B) each explosive submunition weighs more than 4 kilograms;
    - (C) each explosive submunition is designed to detect and engage a single target object;
    - (D) each explosive submunition is equipped with an electronic self-destruction mechanism;
    - (E) each explosive submunition is equipped with an electronic self-deactivating feature

**Cluster Munitions Convention** means the Convention on Cluster Munitions, done at Dublin on 30 May 2008 (a copy of the English text of which is set out in Schedule 2); and includes any amendments to the Convention made in accordance with Article 13 of the Convention that are, or will become, binding on Niue

**dispenser** means a container that is designed to disperse or release explosive bomblets and that is affixed to an aircraft at the time of dispersal or release

**explosive bomblet** means a conventional munition that -

Anti-Personnel Mines and Cluster Munitions Prohibition Act 2021

- (a) is not self-propelled; and
- (b) weighs less than 20 kilograms; and
- (c) is designed to function by detonating an explosive charge prior to, on or after impact; and
- (d) in order to perform its task, is dispersed or released by a dispenser

**explosive submunition** means a conventional munition that -

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

**mine** means a munition 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 vehicle

**mined area** means an area which is dangerous due to the presence or suspected presence of mines

**Minister** means the Minister who, with the authority of the Premier, is responsible for the administration of this Act

**occupier** includes a person present at premises who is in apparent control of the premises

**officer** means any of the following persons:

- (a) a constable;
- (b) a customs official;
- (c) any person appointed by the Minister by notice in writing for the purposes of this Act

**self-destruction mechanism** means a mechanism, incorporated into a munition, that -

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

**Secretary** means the chief executive of the department of State that with the authority of the Premier, for the time being, is responsible for this Act

**transfer**, in relation to any anti-personnel mine or cluster munition, -

- (a) includes
  - (i) its importation into, and exportation from, Niue; and
  - (ii) the transfer of title to, and control over, the anti-personnel mine, or cluster munition; but
- (b) does not include the transfer of territory containing emplaced anti-personnel mines or cluster munition remnants

**unexploded submunition** means an explosive submunition that has been dispersed, released by, or otherwise separated from a cluster munition and has failed to explode as intended.

- (2) In this Act, a reference to the destruction of an anti-personnel mine means the deactivation or destruction of the anti-personnel mine, or both.

**4 Act binds the Government**

This Act binds the Government.

**5 Application of Act in Niue and elsewhere**

- (1) This Act applies to all acts done or omitted in Niue.
- (2) This Act also applies to all acts done or omitted outside Niue by -
- (a) a person who is a national of Niue;
  - (b) a body corporate incorporated under the laws of Niue.

**6 This Act applies to certain explosive bomblets**

This Act applies, with any necessary modifications, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft, as if those explosive bomblets were cluster munitions.

**Part 2**

**Prohibitions against anti-personnel mines and cluster munitions**

**Subpart 1**

**Prohibitions, offences, and exceptions**

**7 Prohibited conduct**

- (1) No person may -
- (a) use an anti-personnel mine or cluster munition;
  - (b) develop or produce an anti-personnel mine or cluster munition;
  - (c) acquire an anti-personnel mine or cluster munition;
  - (d) possess, retain, or stockpile an anti-personnel mine or cluster munition;
  - (e) transfer to anyone, either directly or indirectly, an anti-personnel mine or cluster munition;
  - (f) in any way assist or encourage any other person to engage in conduct described in any of paragraphs (a) to (e).
- (2) A person who engages in conduct prohibited by subsection (1) commits an offence and is liable on conviction to -
- (a) in the case of an individual, a fine not exceeding 5 000 penalty units, or imprisonment for a term not exceeding 7 years, or both;

- (b) in the case of a body corporate, a fine not exceeding 5 000 penalty units.
- (3) This section is subject to sections 8 and 10.
- (4) If a body corporate has committed an offence under this section and the offence 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 of any person purporting to act in that capacity, that person (as well as the body corporate) -
  - (a) is guilty of the offence; and
  - (b) is liable to be proceeded against and punished in accordance with subsection (2)(a).

**8 Exceptions**

Despite section 7(1) -

- (a) an officer may, in the course of duty, -
    - (i) use, develop, produce, acquire, possess, retain, or transfer an anti-personnel mine or cluster munition for authorised training purposes; or
    - (ii) seize, collect, receive, or acquire an anti-personnel mine or cluster munition for the purposes of destroying it; or
    - (iii) transfer an anti-personnel mine or cluster munition for the purposes of destroying it; and
  - (b) a person may possess an anti-personnel mine or cluster munition until its collection or destruction under paragraph (a)(ii), but only if the person complies with subsection (2).
- (2) A person to whom subsection (1)(b) applies must -
- (a) as soon as practicable after learning that he or she possesses an anti-personnel mine or cluster munition, -
    - (i) notify the Secretary in writing; and
    - (ii) take all reasonable steps to ensure the anti-personnel mine or cluster munition will not be exploded before it is collected or destroyed; and
  - (b) comply with any requirements of the Secretary given under section 11.

**9 Seizure, forfeiture, and destruction of anti-personnel mine or cluster munition**

An anti-personnel mine or cluster munition, in respect of which an offence under section 7 has been committed -

- (a) may be seized without warrant by an officer; and

- (b) if not owned by the Government, is forfeit to the Government; and
  - (c) must be either -
    - (i) authorised under section 10; or
    - (ii) destroyed by an officer, and pending destruction, be retained as the Minister thinks fit.
- 10 Minister may authorise anti-personnel mine or cluster munitions for specified purposes**
- (1) The Minister may, for authorised training purposes, authorise a specified number of anti-personnel mines or cluster munitions to be used, developed, produced, otherwise acquired, possessed, retained, or transferred.
  - (2) The Minister may permit the transfer for a specified number of anti-personnel mines to another State party to the Anti-Personnel Mines Convention for the purposes of destruction of those anti-personnel mines.
  - (3) The Minister may permit the transfer of a specified number of cluster munitions to another State party to the Cluster Munitions Convention for the purposes of destruction of those cluster munitions.
  - (4) The number of anti-personnel mines or cluster munitions retained under subsection (1) must not exceed the minimum number absolutely necessary for the purposes of that subsection.

## Subpart 2

### Secretary may require information

- 11 Secretary may require information**
- (1) This section applies if the Secretary is notified by a person under section 8(2)(a)(i), or the Secretary considers that a person is capable of giving information that is relevant to -
    - (a) a report or clarification required to be given by Niue to the Secretary-General under the Anti-Personnel Mines Convention or Cluster Munitions Convention; or
    - (b) the implementation of the Anti-Personnel Mines Convention; or
    - (c) the implementation of the Cluster Munitions Convention; or
    - (d) the enforcement of this Act.
  - (2) The Secretary may by written notice require the person to give the Secretary any information or document specified in the notice, within a reasonable period and in manner specified in the notice.
- 12 Offence to fail to comply with notice under section 11**
- (1) Every person commits an offence who -

- (a) without reasonable excuse fails to comply with a notice given under section 11; or
  - (b) knowingly makes a false or misleading statement in response to that notice.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 1 year or a fine of [to come] penalty units or both.

### Part 3

#### Fact-finding missions and regulations

##### Subpart 1

##### Fact-finding missions under Anti-Personnel Mines Convention

**13 Purpose of subpart**

The purpose of this subpart is to facilitate fact-finding missions under the Anti-Personnel Mines Convention.

**14 Fact-finding missions under Anti-Personnel Mines Convention**

(1) Before entering any premises for the purpose of exercising a function or power provided for in the Anti-Personnel Mines Convention, a member of the fact finding mission must -

- (a) obtain the consent of the occupier to enter; or
- (b) obtain a warrant issued under section 16.

(2) The Minister may appoint any person to accompany a member of a fact-finding mission for the purpose of facilitating that mission.

**15 Obstruction of member of fact-finding mission**

(1) Every person commits an offence who wilfully obstructs, hinders, resists, or deceives any -

- (a) member of a fact-finding mission who is exercising in Niue any function contemplated, or any power provided for, in the Anti-Personnel Mines Convention; or
- (b) any person appointed by the Minister to accompany the member.

(2) Nothing in subsection (1) applies to a refusal to give consent to entry by a member of a fact-finding mission who is not acting pursuant to a search warrant.

(3) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding [to come] penalty units.

**16 Warrants**

(1) This section applies if a search warrant is required for the purposes of the fact-finding mission.



- (2) A Judge or Commissioner of the Court, or any 2 Justices of the Peace acting together may, on application, issue a warrant if satisfied that there are reasonable grounds for believing it is necessary for the purpose for which the application has been made.
- (3) The application must be made in writing by a member of the fact-finding mission or a constable.

## Subpart 2 Regulations

### 17 Regulations

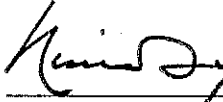
Cabinet may make regulations -

- (a) for the purpose of facilitating Niue's compliance with the Anti-Personnel Mines Convention or Cluster Munitions Convention;
- (b) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

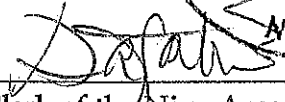
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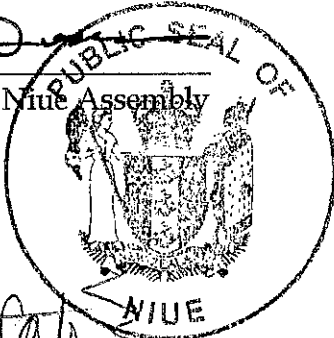
I, HIMA DOUGLAS, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

SIGNED AND SEALED at the Assembly Chambers this 17<sup>th</sup> day of March 2021.

  
\_\_\_\_\_  
Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker

  
\_\_\_\_\_  
Clerk of the Niue Assembly



The seal is circular with the text 'PUBLIC SEAL OF NIUE' around the perimeter. In the center is a coat of arms featuring a shield with a palm tree and a bird, flanked by two figures. Below the shield is a banner with the word 'NIUE'.

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This Act is administered by the Office of the Secretary of Government.  
This Act was passed by the Niue Assembly on the 17<sup>th</sup> day of March 2021.

