Depleted Uranium (Prohibition) Bill

16 September 2010

ATTORNEY-GENERAL

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
DEPLETED URANIUM (PROHIBITION) BILL

1. We have considered whether the Depleted Uranium (Prohibition) Bill (‘the Bill’), a Member’s bill in the name of Phil Twyford MP, is consistent with the New Zealand Bill of Rights Act 1990 (‘Bill of Rights Act’). The Bill was introduced into the House of Representatives on 9 September 2010 and is currently awaiting its first reading. We understand that the next Members’ day is scheduled for Wednesday, 22 September 2010.

2. The Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching this conclusion, we have considered a potential issue of consistency with s 21 (unreasonable search and seizure) of that Act. Our analysis is set out below.

PURPOSE OF THE BILL

3. The stated purpose of the Bill is to ban the possession, use, sale, manufacture, testing, and transit of uranium in all conventional munitions and armour within New Zealand and by agents of the New Zealand Government. Depleted uranium is a by-product of uranium processed for use in nuclear reactors and nuclear weapons. The explanatory note to the Bill states that depleted uranium has been used in recent military conflicts and there is a growing international concern about the unacceptable harm to military and civilian personnel exposed to its radiation and toxicity.

4. Clause 7 of the Bill provides for the development, production, acquisition, stockpiling, direct or indirect transfer, use, or military preparations for use, of uranium ammunition, armour, or weapons to be a criminal offence under Zealand law, with a penalty of up to 10 years imprisonment or a fine of $500,000. The Bill also provides for the extraterritorial application of the offence.

UNREASONABLE SEARCH AND SEIZURE

5. Section 21 of the Bill of Rights Act provides the right to be secure against unreasonable search and seizure. There are two limbs to the s 21 right. First, s 21 is applicable only in respect of those activities that constitute a ‘search or seizure’. Secondly, where certain actions do constitute a search or seizure, s 21 protects only against those searches or seizures that are ‘unreasonable’ in the circumstances.

6. Clause 8 of the Bill provides that any uranium ammunition, armour, or weapon in respect of which an offence has been committed is to be forfeited to the Crown, may
be seized without a warrant by any officer of the Crown, and must be stored pending disposal, and disposed of, as the Minister thinks fit.

7. The powers granted under cl 8 of the Bill constitute a ‘seizure’ for the purposes of s 21 of the Bill of Rights Act. In determining whether these powers are consistent with s 21, we noted that the seizure power is limited to uranium ammunition, armour and weapons only, possession of which is made inherently unlawful by the Bill. The scope of the seizure power is therefore closely linked to the stated purpose of the Bill, which is to limit the potential harm caused by depleted uranium to human health and the environment because of its radioactive and toxic qualities. We therefore consider the seizure power to be reasonable for the purpose of s 21 of the Bill of Rights Act.

8. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990. This advice has been prepared by the Public Law Group and the Office of Legal Counsel.

Jeff Orr
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Office of Legal Counsel

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