AUSTRALIA[1]

Contents

Military Operations — Participation in Armed Conflicts and Australian Defence Force Deployments

As reported in the 2008, 2009, 2010 and 2011 *Yearbook of International Humanitarian Law*,[2] the Australian Defence Force (ADF) is deployed in a number of situations around the world. The largest ADF deployment continued to be to Afghanistan, concentrated in the Uruzgan Province. The transition process formally commenced in July 2011, with the objective that the Afghan National Security Forces (ANSF) will assume the security lead by the end of 2014. The commitment to transitioning full responsibility to the ANSF by the end of 2014 was confirmed by NATO member States in May 2012.[3] The main focus of the ADF effort in Afghanistan remained the development of the Afghan security forces.[4]

The year 2011–2012 saw the deaths of seven Australian soldiers in operations in Afghanistan.[5] The year also saw the first Australian civilian casualty, wounded in a suicide bomb blast.[6] It also reflected the continued increase in 'green-on-blue' or 'insider' attacks (where members wearing ANSF uniforms attacked International Security Assistance Force (ISAF) personnel).[7] As at 2012, at least seven Australians have been killed in such attacks.[8]

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[1] This entry was prepared by Nika Dharmadasa, Alison Duxbury, and James May on behalf of the Australian Red Cross International Humanitarian Law Committee (Victorian Division).

[2] 11 *YIHL* (2008) pp. 409–410; 12 *YIHL* (2009) p. 455; 13 *YIHL* (2010) p. 451; N. Dharmadasa, K. Grinberg and J. May, 'Australia', 14 *YIHL* (2011), available from <www.asser.nl/YIHL/correspondentsreports>.

[3] North Atlantic Treaty Organization, *Chicago Summit Declaration on Afghanistan* (21 May 2012) para. 7 <http://www.nato.int/cps/en/SID-E0C3D740-119C37D9/natolive/official_texts_87595.htm>.

[4] Department of Defence, 'Defence Annual Report 2011 – 2012 Department of Defence' (2012) p. 120 <http://www.defence.gov.au/budget/11-12/dar/dar_1112_full.pdf>.

[5] Department of Defence, *Global Operations — Afghanistan — Information about Australian Defence Force Personnel Wounded and Killed in Action* (2013) <http://www.defence.gov.au/op/afghanistan/info/personnel.htm>.

[6] N. Brangwin, M. Harris and D. Watt, 'Australia at War in Afghanistan: Revised Facts and Figures' (Background Note, Foreign Affairs, Defence and Security Section, Parliamentary Library, Parliament of Australia, 2012) p. 10 <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AfghanistanFacts> referring to D. Ellery, 'Canberra Man Hurt in Suicide Bombing', *The Sydney Morning Herald* (online), 28 March 2012 <http://www.smh.com.au/world/canberra-man-hurt-in-suicide-bombing-20120327-1vwx3.html>.

[7] N. Brangwin, M. Harris and D. Watt, 'Australia at War in Afghanistan: Revised Facts and Figures' (Background Note, Foreign Affairs, Defence and Security Section, Parliamentary Library, Parliament of Australia, 2012) p. 18

In late 2012, Australia assumed leadership of Combined Team-Uruzgan (CT-U), the ISAF-led multinational effort in Uruzgan province. The CT-U is intended to ensure that the right command structures, organisational structures, and resources are in place to enable the integration of the civilian and military elements of the campaign, and the achievement of both civilian and military objectives.[9]

Cases — Australian Security Intelligence Organisation (ASIO) Adverse Security Assessments

- *Plaintiff M47-2012 v Director General of Security* [2012] HCA 46 <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2012/46.html>

The plaintiff was a Sri Lankan national who had arrived in Australia in December 2009, and thereafter had been in detention. In June 2010, the plaintiff applied for a protection visa. The delegate of the Minister for Immigration and Citizenship found that the plaintiff was a refugee, but refused the application because in December 2009, the plaintiff had been assessed by ASIO to be a risk to security. As a criterion for the grant of a protection visa, the *Migration Regulations 1994* (Cth) ('Migration Regulations') require that the applicant has not been assessed as a risk to security under the *Australian Security Intelligence Organisation Act 1979* (Cth). The Minister's delegate found, and it was not subsequently disputed, that the plaintiff was not a person to whom Article 1F of the *Refugee Convention* applied. As Australia had recognised the plaintiff as a refugee, it had not applied the exclusions under Article 1F of the *Refugee Convention*.

In a majority decision, the High Court held that the criterion was invalid because the Migration Regulations could not validly prescribe the criterion as a condition for the grant of a protection visa. The Court found that to do so was inconsistent with the *Migration Act 1958* (Cth).[10] Accordingly, the decision to refuse a protection visa on those grounds had also not been made according to law.

Cases — Application of Article 1F of the Refugee Convention

- *MZYVM v Minister for Immigration and Citizenship* [2012] FMCA 762 <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FMCA/2012/762.html>

Although Australian courts and tribunals considered a number of cases in 2012 which made reference to Article 1F of the *Refugee Convention* (including *Plaintiff M 47-2012 v Director General of Security* discussed above), only one case directly raised the application of Article 1F(a). Paragraph (a) excludes a person from refugee status where there are serious reasons for considering that the person 'has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes'

<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AfghanistanFacts>.

[8] Ibid., p. 19.

[9] Department of Defence, *Global Operations — Afghanistan — Factsheet* (2013) <http://www.defence.gov.au/op/afghanistan/info/factsheet.htm>.

[10] *Plaintiff M47-2012 v Director General of Security* [2012] HCA 46.

MZYVM v Minister for Immigration and Citizenship concerned a Sri Lankan national who was a member of the Liberation Tigers of Tamil Eelam (LTTE) from 2000 to 2006.[11] The applicant arrived in Australia in 2009 and applied for refugee status. The Independent Merits Reviewer appointed to consider MZYVM's case determined that he was not a person to whom Australia owed protection obligations.

The Reviewer accepted that the applicant was an intelligence operative under the command of a Colonel Ramanan and in this role 'would approach civilians in the market, question them, direct their detention using force if necessary … knowing that those civilians would be shot on the direction of Colonel Ramanan and others … [if] "found to be questionable"'.[12]

The Reviewer also considered the country information on the LTTE and was satisfied that there were 'serious reasons' for considering that the applicant had committed crimes against humanity as defined in Article 7(1)(a) of the *Rome Statute of the International Criminal Court*.[13] In particular, the Reviewer considered Article 25(3)(c) of the *Rome Statute*, which provides for individual responsibility for the commission of a crime where a person 'aids, abets or otherwise assists in its commission ... including providing the means for its commission'.[14]

The applicant argued that he had not been accorded procedural fairness as he had not been given an opportunity to comment on 'information which was credible, relevant and significant' to his application and that the Reviewer had drawn adverse conclusions from this information.[15] The information under consideration was contained in reports of the US State Department and pointed to LTTE killings of members of anti-LTTE political groups.[16] However, the Minister argued that the country information was not new and the US State Department reports were not significant to the Reviewer's decision.[17]

The Federal Magistrate recognised that, given the serious risk of harm that the applicant would face if returned to Sri Lanka (it was recognised that he 'faced a real chance of persecution'),[18] 'the natural justice obligation must be at its highest.'[19] However, the Magistrate agreed with the Minister that it was well-known that the LTTE was involved in murders throughout the period in which the applicant was a member and therefore the information could not be described as 'novel or unexpected'.[20] Although the country information on Sri Lanka and murders by the LTTE was 'credible and relevant', it was not 'significant' in the circumstances of this case.[21] On this basis, it could not be said that the applicant had been denied procedural fairness or the opportunity to be heard on these

[11] The following description of the facts is taken from the decision of the Federal Magistrate in *MZYVM v Minister for Immigration and Citizenship* [2012] FMCA 762, paras. 1–5.
[12] Ibid., para. 5 (quoting from the findings of the IMR).
[13] Ibid.
[14] Ibid., para. 44. The quoted paragraph from the Reviewer's reasons refers to Article 25(3)(d) rather than (c), however this would appear to be an error.
[15] Ibid., para. 2.
[16] Ibid., para. 6.
[17] Ibid., para. 10.
[18] Ibid., para. 37.
[19] Ibid., para. 45.
[20] Ibid., para. 51.
[21] Ibid., para. 50.

allegations. The applicant appealed this decision to the Federal Court of Australia, which dismissed the appeal in February 2013.[22]

Cases — Extradition

- *Minister for Home Affairs of the Commonwealth v Zentai* [2012] HCATrans 82 (28 March 2012) <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCATrans/2012/82.html>
- *Minister for Home Affairs of the Commonwealth v Zentai* [2012] HCA 28 (15 August 2012) <www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2012/28.html>

As reported in the 2008, 2009, 2010 and 2011 *Yearbook of International Humanitarian Law*,[23] Charles Zentai was alleged by Hungary to have committed a war crime in Budapest on 8 November 1944, namely the killing of a Jewish man while Zentai was a member of the Hungarian Royal Army. In 2005, a provisional warrant for Mr Zentai's arrest was issued under the *Extradition Act 1988* (Cth), pursuant to an extradition treaty between Hungary and Australia ('the treaty') and there were subsequently a series of legal proceedings and appeals between 2008 and 2011.[24] Originally, the Minister had found there were grounds to extradite Mr Zentai. In 2010, McKerracher J of the Federal Court of Australia overturned the Minister's decision including on the ground there was no extradition offence. Mr Zentai was released from custody pending an appeal by the Australian government.

On 16 August 2011, the Full Court of the Federal Court of Australia overturned the decision of McKerracher J. As explained in the 2011 *Yearbook of International Humanitarian Law*, the Full Federal Court however divided on the interpretation of Article 2.5 of the treaty, which sets out a dual criminality requirement.[25] Article 2.5 provides that extradition can be sought irrespective of when the offence was committed according to the following conditions: (a) as long as it was an offence in the Requesting State (Hungary) at the time; and (b) the conduct, if committed in the Requested State (Australia) at the time of the extradition request, would constitute an offence in that country. The Full Federal Court set aside McKerracher J's decision. It ordered the Minister to determine whether Zentai should be surrendered to the Republic of Hungary for the alleged war crime.

On 9 December 2011, the Minister for Home Affairs was granted special leave to appeal to the High Court of Australia.[26]

Following submissions in March, on 15 August 2012 a majority of the High Court of Australia dismissed the Minister's appeal.

French CJ, in a single judgment, and Gummow, Crennan, Kiefel and Bell JJ, in a joint judgment, dismissed the appeal by the Minister. The two judgments found that dual criminality under Article 2.5 of the treaty required consideration of whether, at the time of

[22] *MZYVM v Minister for Immigration and Citizenship* [2013] FCA 79. The decision of the Federal Court of Australia will be considered in more detail in the next correspondents' report.
[23] 11 *YIHL* (2008) pp. 417–418; 12 *YIHL* (2009) p. 457–459; 13 *YIHL* (2010) p. 455–457; N. Dharmadasa, K. Grinberg and J. May, 'Australia', 14 *YIHL* (2011) pp. 4–5, available from <www.asser.nl/YIHL/correspondentsreports>.
[24] Ibid.
[25] N. Dharmadasa, K. Grinberg and J. May, 'Australia', 14 *YIHL* (2011) pp. 4–5, available from <www.asser.nl/YIHL/correspondentsreports>.
[26] *The Honourable Brendan O'Connor Commonwealth Minister for Home Affairs v Zentai* [2011] HCATrans 339.

alleged acts or omissions giving rise to criminal liability, they constituted *the offence for which extradition was sought.* In other words, the issue was whether 'war crime' was an offence in both Australia and Hungary in 1944. The joint judgment in particular found textual support in Article 2.5(a) of the treaty against an interpretation that *any* equivalent criminal offence (such as murder or assault causing death) between Australia and Hungary was sufficient to support extradition.[27]

French CJ said that the conduct could not be equated to the offence 'in relation to which extradition is sought' if the conduct constituted any form of criminal liability, especially where the request for extradition is 'in relation to any species of offence later created by law and retroactively covering that conduct'.[28] The retroactive nature of the Hungarian war crime legislation was also of critical relevance in forming a conclusion against dual criminality being satisfied. The majority found that the conduct at the time was a war crime in Australia but not in Hungary, hence dual criminality could not exist as required.

Heydon J dissented. His Honour said it was irrelevant that the acts or omissions that Hungary alleged constituted different modes of criminal liability under each respective jurisdiction.[29] Rather, the crucial question was whether the conduct allegedly committed by Mr Zentai 'in assaulting a person until he died was *an* offence against the law of both Australia and Hungary'.[30] On this interpretation of the treaty, dual criminality was satisfied. The effect of the majority's decision was that the Minister was precluded from surrendering Mr Zentai for extradition unless the Minister was satisfied that the offence of 'war crime' was an offence against the law of Hungary on 8 November 1944. As it was not such an offence, the extradition proceedings ended in August 2012.

Legislation — Australian Military Justice

- Military Court of Australia Bill 2012 (Cth) <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4854>

As reported in the 2009, 2010 and 2011 *Yearbook of International Humanitarian Law*, the Australian government introduced the Military Court of Australia Bill 2010 (Cth) but it lapsed in 2010 due to a federal election.[31] In 2011, the legislation was re-drafted and then formally introduced in 2012.

On 21 June 2012, the Attorney-General, Nicola Roxon MP, introduced the Military Court of Australia Bill ('the Bill') and the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill into parliament. On 29 June 2012, the legislation was referred to the Senate Standing Committee on Legal and Constitutional Affairs for review and on 9 October 2012 the Committee reported on the legislation.[32]

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[27] *Minister for Home Affairs of the Commonwealth v Zentai* [2012] HCA 28 paras. 28–37, 68–70.
[28] Ibid., para. 32 (French CJ).
[29] Ibid., para. 87 (Heydon J).
[30] Ibid. (emphasis added).
[31] 12 *YIHL* (2009) pp. 460–461; 13 *YIHL* (2010) pp. 459–460; N. Dharmadasa, K. Grinberg and J. May, 'Australia', 14 *YIHL* (2011) p. 7, available from <www.asser.nl/YIHL/correspondentsreports>.
[32] Senate Standing Committee on Legal and Constitutional Affairs, Commonwealth Parliament <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/report/index>. Similarly, on 29 June 2012, the legislation was also referred for scrutiny by the Senate Foreign Affairs, Defence and Trade Legislation Committee but it only met once privately.

The legislation establishes the Military Court of Australia ('Military Court') under Chapter III of the *Commonwealth Constitution* and provides for, among other things, the structure, jurisdiction and procedure of the Court. The Attorney-General explained that 'the Military Court of Australia will be a separate and uniquely identifiable federal court. This specialist court to hear Defence Force service offences will strengthen morale and operational effectiveness in the Australian Defence Force'.[33]

The Military Court would consist of two divisions, the General Division, and the Appellate and Superior Division. The General Division would comprise judicial officers at the level of Federal Magistrate who would hear serious service offences at first instance. The General Division of the Military Court may try less serious offences. The Appellate and Superior Division would consist of judicial officers at the level of a Federal Court judge who would hear serious service offences at first instance. The Appellate and Superior Division would also hear appeals from first instance decisions of the Military Court, and decisions of a court martial or Defence Force magistrate made overseas.

The legislation is similar, but different in some key respects, from the legislation previously considered in the *Yearbook of International Humanitarian Law*. One change, for example, is that there would be no appeal by the Director of Military Prosecutions from the acquittal of an accused person. Secondly, the appointment of judicial officers to the Military Court have been changed in order to reduce any risk that the legislation will be declared constitutionally invalid by the High Court of Australia as occurred in 2009.[34]

As with the previous legislation, the Court would be an independent federal court under Chapter III of the *Commonwealth Constitution*. However, under the legislation introduced in 2012, judicial officers would have tenure under until 70 years of age, as per constitutional requirements. Further, judicial officers cannot be appointed if they are currently serving in the ADF. To be appointed, the judicial officer must, by reason of experience or training, understand the nature of service in the ADF. The Attorney-General explained this requirement 'will ensure that all who are appointed to the Military Court will have a proper appreciation of the nature of service offences and the impact that they can have on maintaining service discipline.'[35] As part of the review by the Senate Standing Committee on Legal and Constitutional Affairs, several submissions criticised the criteria of 'by reason of experience or training' as being unclear because it is undefined.[36] The Attorney-General's Department noted the appointment requires consultation with the Minister for Defence and that experience or training would assessed on a case-by-case basis including any prior military service.[37]

Cases in the Military Court will be tried other than on indictment, and therefore a judicial officer would give reasons for the verdict and any sentence. In this context, one key feature of

[33] Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2012, pp. 7415–7416 (Nicola Roxon MP, Attorney-General).
[34] See 12 *YIHL* (2009) pp. 460–461.
[35] Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2012, pp. 7415–7416 (Nicola Roxon MP, Attorney-General).
[36] Senate Standing Committee on Legal and Constitutional Affairs, Commonwealth Parliament, *Submissions received by the Committee*
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/submissions>.
[37] Parliament of Australia, *Submissions received by the Committee — Answers to Questions on Notice*,
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/submissions>.

the legislation is that it does not include a right for jury trial. The Attorney-General explained that service offences are created for the purpose of maintaining discipline in the ADF. However, the military justice system does not replace the civilian justice system in relation to offences committed in Australia, including the civilian jury trial process. Second, the Attorney-General explained there were 'significant practical barriers to the prosecution of offences' to hold jury trials for services offences committed overseas.[38] In exceptional circumstances where the Military Court cannot try an offence overseas, the current system of courts martial and Defence Force magistrates would be used.[39]

As part of the review by the Senate Legal and Constitutional Affairs Legislation Committee, some submissions argued the legislation risked constitutional invalidity because federal indictable offences would be tried before a single judicial officer without a jury. For example, Alexander Street QC argued clause 64 of the Bill, which provides that charges for service offences are to be dealt with otherwise than on indictment, may be open to challenge and also raised other concerns including jurisdictional issues.[40] Another submission said the provision appeared constitutionally valid but questioned the government's decision to exclude jury trials.[41] The Opposition Australian Liberal Party recommended that the legislation be amended 'to provide a right to trial by jury before the Military Court of Australia for all service offences punishable by a term of imprisonment exceeding 12 months', being a federal indictable offence.[42]

The Attorney-General's Department explained the reasons for excluding jury trials in the Bill. First, it argued a judicial officer was in a better position to reinforce discipline in the military justice system than a civilian jury. Further, the Department argued that using juries to try service offences would blur the distinction between service offences and criminal offences, where service offences supplement, and do not replace, civilian criminal law.[43]

On 9 October 2012, the Senate Legal and Constitutional Affairs Legislation Committee, by majority, recommended the legislation be passed by parliament.[44] At the end of 2012, the legislation remained before the Australian parliament.

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[38] Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2012, pp. 7413–7414 (Nicola Roxon MP, Attorney-General).
[39] Ibid.
[40] A. Street SC, 'Submission of Alexander W. Street SC' (11 July 2012), available from <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/submissions>. See also Law Council of Australia, 'Submission' (13 April 2012), available from <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/submissions>.
[41] G. Appleby and J. Williams, 'Submission' (12 July 2012), available from <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/submissions>.
[42] Senate Standing Committee on Legal and Constitutional Affairs, Commonwealth Parliament, 'Dissenting Report by Liberal Senators', Recommendation 1 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/report/d01>.
[43] Parliament of Australia, *Submissions received by the Committee — Answers to Questions on Notice*, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/submissions>.
[44] 'Report of the Senate Standing Committee on Legal and Constitutional Affairs' (9 October 2012) Recommendation 2

Legislation — Cluster Munitions

- ☛ *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012* (Cth) <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1011a/11bd072>

As reported in the 2009, 2010 and 2011 *Yearbook of International Humanitarian Law*, the Australian parliament has been considering proposed legislation aimed at implementing the *Convention on Cluster Munitions*, which Australia ratified in 2010 and which entered into force in the same year. [45]

Following the introduction of the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 (Cth) into the Australian parliament in 2010, the Bill was referred to and considered by the Senate Foreign Affairs, Defence and Trade Legislation Committee. As the 2011 *Yearbook of International Humanitarian Law* explained, a majority of the Committee recommended that the Bill be passed by parliament.[46]

In August 2012, the formal debate over the merits of the Bill occurred in the Senate. The Deputy Leader of the Opposition, for the Australian Liberal Party-National Party Coalition, stated that the Coalition supported the Bill.[47] The Australian Greens party, through Senator Scott Ludlam, proposed amendments because the 'the bill, as it is drafted, allows Australian forces to store, transport and assist in the use of cluster weapons. It does not allow outlaw direct and indirect investment in companies producing these weapons'.[48] However, the Greens' amendments did not receive any support.

During the parliamentary debate on the legislation, the question of joint military operations involving Australia and the United States, which uses cluster munitions and has not signed the *Cluster Munitions Convention*, was subject to particular discussion. The Parliamentary Secretary for Defence, Senator Feeney explained that section 72.41 of the Bill provides that certain acts by Australian citizens, Australian Defence Force (ADF) members or Commonwealth contractors do not incur criminal liability if the act is done in the course of military cooperation or operations with a country that is not a party to the Convention. Senator Feeney nonetheless stated:

> ADF personnel will not be permitted to use, develop, produce or otherwise acquire cluster munitions or make the decision to use, develop, produce or otherwise acquire

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<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/militarycourt2012/report/index>.

[45] 11 *YIHL* (2008) pp. 462–463; 12 *YIHL* (2009) p. 460–462; 13 *YIHL* (2010) pp. 7–10; N. Dharmadasa, K. Grinberg and J. May, 'Australia', 14 *YIHL* (2011), available from <www.asser.nl/YIHL/correspondentsreports>. See also Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1011a/11bd072>.

[46] Ibid.

[47] Commonwealth, *Parliamentary Debates*, Senate, 20 August 2012, p. 5821 (George Brandis MP) <http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/36885766-09eb-423d-8597-f2b0a8957b25/0144/hansard_frag.pdf;fileType=application%2Fpdf>.

[48] Commonwealth, *Parliamentary Debates*, Senate, 20 August 2012, p. 5823 (Scott Ludlam MP) <http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/36885766-09eb-423d-8597-f2b0a8957b25/0145/hansard_frag.pdf;fileType=application%2Fpdf>.

> cluster munitions *including while serving on combined operations with defence forces of other countries*, in combined headquarters or on exchange with a foreign force.[49]

The Australian government representative argued that joint operations with non-party States were permitted by Article 21 of that Convention and that these interoperability provisions were 'central to the protection of Australia's national security'.[50]

On 21 August 2012, the Bill was passed by parliament. The *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012* received Royal Assent on 8 September 2012. On 19 February 2013, the Attorney-General, The Hon. Mark Dreyfus QC MP, announced that the *Cluster Munitions Convention* would enter into force on 1 April 2013.[51] At that time, Australia would formally complete ratification of the Convention.

NIKA DHARMADASA, ALISON DUXBURY, AND JAMES MAY

[49] Commonwealth, *Parliamentary Debates*, Senate, 20 August 2012, p. 5832–5833 (David Feeney MP) (emphasis added) <http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/36885766-09eb-423d-8597-f2b0a8957b25/0148/hansard_frag.pdf;fileType=application%2Fpdf>.
[50] Ibid.
[51] Commonwealth, *Gazette*, No GN11, 2013 <http://www.comlaw.gov.au/Details/C2013G00417>.