



# **Nuclear Terrorism Legislation Amendment Act 2012**

**No. 3, 2012**

**An Act to implement aspects of the International  
Convention for the Suppression of Acts of Nuclear  
Terrorism, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Nuclear Terrorism Legislation Amendment Act 2012**

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## **An Act to implement aspects of the International Convention for the Suppression of Acts of Nuclear Terrorism, and for other purposes**

[Assented to 6 March 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Nuclear Terrorism Legislation  
Amendment Act 2012*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 March 2012
2. Schedule 1, Part 1	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the day the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on 13 April 2005, comes into force for Australia.</p> <p>However, if the provision(s) do not commence within the period of 1 month beginning on the day the Convention comes into force for Australia, they commence on the day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day the provision(s) commenced. The notice is not a legislative instrument.</p>	20 April 2012 ( <i>see</i> F2012L00893)
3. Schedule 1, Part 2	<p>At the same time as the provision(s) covered by table item 2.</p> <p>However, if item 33 of Schedule 2 to the <i>Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012</i> commences at or before that time, the provision(s) do not commence at all.</p>	20 April 2012
4. Schedule 2	The day this Act receives the Royal Assent.	6 March 2012

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments relating to nuclear terrorism

### Part 1—Main amendments

#### *Nuclear Non-Proliferation (Safeguards) Act 1987*

##### 1 At the end of section 3

Add:

- (3) A further object of this Act is to give effect to certain obligations that Australia has as a party to the Nuclear Terrorism Convention.

##### 2 Subsection 4(1)

Insert:

*Foreign Affairs Minister* means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

##### 3 Subsection 4(1)

Insert:

*Immigration Minister* means the Minister administering the *Migration Act 1958*.

##### 4 Subsection 4(1)

Insert:

*Nuclear Terrorism Convention* means the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on 13 April 2005, as amended and in force for Australia from time to time.

Note: In 2012, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

##### 5 Section 8 (heading)

Repeal the heading, substitute:



## **8 Application of Act (other than Division 2A of Part III)**

### **6 Before subsection 8(1)**

Insert:

- (1A) This section does not apply in relation to Division 2A of Part III (which deals with offences relating to the Nuclear Terrorism Convention).

### **7 After Division 2 of Part III**

Insert:

## **Division 2A—Offences relating to nuclear terrorism**

### **38A ADF members not liable for prosecution**

Nothing in this Division makes a member of the Australian Defence Force acting in connection with the defence or security of Australia liable to be prosecuted for an offence.

### **38B Definitions**

In this Division:

*Convention device* has the same meaning as *device* has in the Nuclear Terrorism Convention.

*government facility* has the same meaning as *State or government facility* has in the Nuclear Terrorism Convention.

*nuclear facility* has the same meaning as in the Nuclear Terrorism Convention.

*radioactive material* has the same meaning as in the Nuclear Terrorism Convention.

### **38C Possessing radioactive material or Convention device, or making Convention device**

*Possession of radioactive material or Convention device*

- (1) A person commits an offence if:
- (a) the person possesses material or a thing; and

- (b) the material or thing is radioactive material or a Convention device; and
- (c) the person intends to use the material or device, or to make it available to be used, to cause:
  - (i) the death of, or serious bodily injury to, an individual; or
  - (ii) substantial damage to property or to the environment.

Penalty: Imprisonment for 20 years.

*Making a Convention device*

- (2) A person commits an offence if:
  - (a) the person makes a thing; and
  - (b) the thing is a Convention device; and
  - (c) the person intends to use the device, or to make it available to be used, to cause:
    - (i) the death of, or serious bodily injury to, an individual; or
    - (ii) substantial damage to property or to the environment.

Penalty: Imprisonment for 20 years.

**38D Using radioactive material, or using or damaging Convention device or nuclear facility**

*Using radioactive material*

- (1) A person commits an offence if:
  - (a) the person uses material; and
  - (b) the material is radioactive material; and
  - (c) the person intends the use of the material:
    - (i) to cause the death of, or serious bodily injury to, an individual; or
    - (ii) to cause substantial damage to property or to the environment; or
    - (iii) to compel a person or group of persons (including an international organisation or a legislative, executive or judicial institution of the Commonwealth, a State or a Territory, or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 20 years.

*Using or damaging Convention device*

- (2) A person commits an offence if:
- (a) the person uses or damages a thing; and
  - (b) the thing is a Convention device; and
  - (c) the person intends the use of, or damage to, the thing:
    - (i) to cause the death of, or serious bodily injury to, an individual; or
    - (ii) to cause substantial damage to property or to the environment; or
    - (iii) to compel a person or group of persons (including an international organisation or a legislative, executive or judicial institution of the Commonwealth, a State or a Territory, or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 20 years.

*Using or damaging nuclear facility*

- (3) A person commits an offence if:
- (a) the person uses or damages a facility; and
  - (b) the facility is a nuclear facility; and
  - (c) the use or damage causes radioactive material to be released, or creates a risk of radioactive material being released; and
  - (d) the person intends the use of, or damage to, the facility:
    - (i) to cause the death of, or serious bodily injury to, an individual; or
    - (ii) to cause substantial damage to property or to the environment; or
    - (iii) to compel a person or group of persons (including an international organisation or a legislative, executive or judicial institution of the Commonwealth, a State or a Territory, or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 20 years.

### **38E Threats and demands**

- (1) A person commits an offence if the person threatens to do an act that would be an offence against section 38D.

Penalty: Imprisonment for 20 years.

- (2) A person (the *offender*) commits an offence if:
- (a) the offender demands that another person:
    - (i) create material, a thing or a facility; or
    - (ii) allow the offender, or another person, access to, or control of, material, a thing or a facility; or
    - (iii) make material, a thing or a facility available to the offender or another person; and
  - (b) the material, thing or facility is (or would, if created, be) radioactive material, a Convention device or a nuclear facility; and
  - (c) the demand is made by force or threat of force, or by any form of intimidation.

Penalty: Imprisonment for 20 years.

### **38F Jurisdictional requirement**

A person commits an offence under this Division only if one or more of the following paragraphs applies:

- (a) the conduct constituting the alleged offence occurs:
  - (i) wholly or partly in Australia; or
  - (ii) wholly or partly on board an Australian ship or an Australian aircraft;
- (b) at the time of the alleged offence, the person is an Australian citizen;
- (c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;
- (d) the conduct is subject to the jurisdiction of another State Party to the Nuclear Terrorism Convention established in accordance with paragraph 1 or 2 of Article 9 of the Convention, and the person is in Australia;
- (e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;

- (f) the alleged offence is committed against:
  - (i) an Australian citizen; or
  - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
- (g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

Note: A person commits an offence under this Division even if the conduct occurs in circumstances to which the Nuclear Terrorism Convention does not apply because of Article 3.

### **38G Double jeopardy and foreign offences**

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Division in respect of that conduct.

### **38H Attorney-General's consent needed to bring proceedings for offence under this Division**

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

### **38J Evidentiary certificates**

- (1) The Foreign Affairs Minister may issue a certificate stating any of the following matters:
  - (a) that the Nuclear Terrorism Convention entered into force for Australia on a specified day;
  - (b) that the Convention remains in force for Australia or any other State Party on a specified day;
  - (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 9 of the Convention.
- (2) The Immigration Minister may issue a certificate stating that:

**Schedule 1** Amendments relating to nuclear terrorism

**Part 1** Main amendments

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- (a) a person is or was an Australian citizen at a particular time;  
or
  - (b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.
- (3) In any proceedings for an offence under this Division, a certificate under this section is prima facie evidence of the matters in the certificate.

## **Part 2—Consequential amendment**

### *Extradition Act 1988*

#### **8 Section 5 (at the end of paragraph (a) of the definition of *political offence*)**

Add:

or (x) Article 2 of the International Convention for the  
Suppression of Acts of Nuclear Terrorism, done at New  
York on 13 April 2005;

## **Schedule 2—Minor technical amendments**

### **Part 1—Amendments relating to the Legislative Instruments Act 2003**

#### ***Nuclear Non-Proliferation (Safeguards) Act 1987***

##### **1 Subsections 4(7) to (9)**

Repeal the subsections, substitute:

- (7) Declarations made under the definitions of *associated equipment*, *associated material* and *associated technology* in subsection (1) are legislative instruments.

##### **2 Subsection 11(5)**

Omit “, by notice in writing published in the *Gazette*,”, substitute “, in writing,”.

##### **3 Subsection 11(9)**

Omit “, by notice in writing published in the *Gazette*,”, substitute “, in writing,”.

##### **4 Subsections 11(10) to (12)**

Repeal the subsections, substitute:

- (10) A declaration, or a variation or revocation of a declaration, made under this section is a legislative instrument.

##### **5 Paragraph 73(1)(a)**

After “may”, insert “, by legislative instrument,”.

##### **6 Subsections 73(4) to (6)**

Repeal the subsections.



## **Part 2—Other amendments**

### ***Nuclear Non-Proliferation (Safeguards) Act 1987***

#### **7 Subsection 4(1) (paragraph (a) of the definition of *Australian aircraft*)**

Repeal the paragraph, substitute:

- (a) an aircraft registered, or required to be registered, under regulations made under the *Civil Aviation Act 1988*; or

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[*Minister's second reading speech made in—  
House of Representatives on 23 November 2011  
Senate on 27 February 2012*]

(264/11)

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