





# **Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2007**

**No. 3, 2007**

**An Act to give effect to the Convention on the  
Marking of Plastic Explosives for the Purpose of  
Detection, and for other purposes**

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



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
<b>Schedule 1—Amendment of the Criminal Code Act 1995</b>		<b>4</b>
<b>Schedule 2—Amendment of the Customs Act 1901</b>		<b>22</b>
<b>Schedule 3—Consequential amendments</b>		<b>25</b>
	<i>Australian Federal Police Act 1979</i>	25
	<i>Australian Security Intelligence Organisation Act 1979</i>	25
	<i>Crimes Act 1914</i>	25
	<i>Foreign Evidence Act 1994</i>	25
	<i>Surveillance Devices Act 2004</i>	25
	<i>Telecommunications (Interception) Act 1979</i>	26





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## **An Act to give effect to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, and for other purposes**

*[Assented to 19 February 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Law and Justice Legislation  
Amendment (Marking of Plastic Explosives) Act 2007*.

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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 on which this Act receives the Royal Assent.	19 February 2007
2. Schedules 1 to 3	The later of: (a) the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent; and (b) the day on which the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, comes into force for Australia.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.  The Minister must announce by notice in the <i>Gazette</i> the day on which the Convention comes into force for Australia.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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—Amendment of the Criminal Code Act 1995**

### **1 Division 72 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

### **Division 72—Explosives and lethal devices**

### **2 Before section 72.1 of the *Criminal Code***

Insert:

### **Subdivision A—International terrorist activities using explosive or lethal devices**

### **3 Sections 72.1 and 72.2 of the *Criminal Code***

Omit “Division”, substitute “Subdivision”.

### **4 Subsection 72.4(1) of the *Criminal Code***

Omit “Division”, substitute “Subdivision”.

### **5 Sections 72.5 and 72.6 of the *Criminal Code***

Omit “Division”, substitute “Subdivision”.

### **6 Subsections 72.7(1), (2), (3) and (4) of the *Criminal Code***

Omit “Division”, substitute “Subdivision”.

Note: The heading to section 72.7 of the *Criminal Code* is altered by omitting “**Division**” and substituting “**Subdivision**”.

### **7 Sections 72.9 and 72.10 of the *Criminal Code***

Omit “Division”, substitute “Subdivision”.

### **8 At the end of Division 72 of the *Criminal Code***

Add:

## **Subdivision B—Plastic explosives**

### **72.11 Purpose**

The purpose of this Subdivision is to create offences relating to plastic explosives and give effect to the Convention on the Marking of Plastic Explosives.

Note: The Convention requires the introduction of detection agents into plastic explosives so as to render the explosives detectable by vapour detection means. This is known as the marking of the explosives.

### **72.12 Trafficking in unmarked plastic explosives etc.**

- (1) A person commits an offence if:
- (a) the person traffics in a substance; and
  - (b) the substance is a plastic explosive; and
  - (c) the plastic explosive breaches a marking requirement; and
  - (d) the trafficking is not authorised under section 72.18, 72.19, 72.20, 72.21, 72.22 or 72.23.

Penalty: Imprisonment for 10 years.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

### **72.13 Importing or exporting unmarked plastic explosives etc.**

- (1) A person commits an offence if:
- (a) the person imports or exports a substance; and
  - (b) the substance is a plastic explosive; and
  - (c) the plastic explosive breaches a marking requirement; and
  - (d) the import or export is not authorised under section 72.18, 72.19, 72.20, 72.22 or 72.23.

Penalty: Imprisonment for 10 years.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

### **72.14 Manufacturing unmarked plastic explosives etc.**

- (1) A person commits an offence if:
  - (a) the person:
    - (i) engages in the manufacture of a substance; or
    - (ii) exercises control or direction over the manufacture of a substance; and
  - (b) the substance is a plastic explosive; and
  - (c) the plastic explosive breaches the first marking requirement; and
  - (d) the manufacture is not authorised under section 72.18 or 72.21.

Penalty: Imprisonment for 10 years.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

### **72.15 Possessing unmarked plastic explosives etc.**

- (1) A person commits an offence if:
  - (a) the person possesses a substance; and
  - (b) the substance is a plastic explosive; and
  - (c) the plastic explosive breaches a marking requirement; and
  - (d) the possession is not authorised under section 72.18, 72.19, 72.20, 72.21, 72.22 or 72.23.

Penalty: Imprisonment for 2 years.

- (2) The fault element for paragraph (1)(b) is recklessness.
- (3) Strict liability applies to paragraphs (1)(c) and (d).

Note 1: For the marking requirements, see section 72.33.

Note 2: For defences, see section 72.16.

## **72.16 Defences**

(1) If:

- (a) a person is charged with an offence against section 72.12, 72.13, 72.14 or 72.15; and
- (b) the prosecution alleges that the plastic explosive breached a particular marking requirement;

it is a defence if the defendant proves that he or she had no reasonable grounds for suspecting that the plastic explosive breached that marking requirement.

Note 1: A defendant bears a legal burden in relation to the matter in subsection (1) (see section 13.4).

Note 2: For the marking requirements, see section 72.33.

(2) If:

- (a) a person is charged with an offence against section 72.12, 72.13 or 72.15; and
- (b) the prosecution alleges that the plastic explosive breached the second marking requirement;

it is a defence if the defendant proves that, at the time of the alleged offence:

- (c) the plastic explosive contained a detection agent; and
- (d) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent; and
- (e) the detection agent was homogeneously distributed throughout the plastic explosive.

Note 1: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

Note 2: For the marking requirements, see section 72.33.

Note 3: For *minimum manufacture concentration*, see section 72.34.

## **72.17 Packaging requirements for plastic explosives**

(1) A person commits an offence if:

- (a) the person manufactures a substance; and
- (b) the substance is a plastic explosive; and
- (c) within 24 hours after the manufacture of the plastic explosive, the person does not cause the plastic explosive to be contained, enclosed or packaged in a wrapper with:

- (i) the expression “PLASTIC EXPLOSIVE” (in upper-case lettering); and
  - (ii) the date of manufacture of the plastic explosive; and
  - (iii) if the plastic explosive is of a prescribed type—that type; and
  - (iv) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the name of the detection agent; and
  - (v) if the plastic explosive contains a detection agent for the purpose of meeting the first marking requirement—the concentration of the detection agent in the plastic explosive at the time of manufacture, expressed as a percentage by mass;
- legibly displayed on the outer surface of the wrapper.

Penalty: Imprisonment for 2 years.

- (2) The fault element for paragraphs (1)(b) and (c) is recklessness.

## **72.18 Authorisation for research etc.**

### *Authorisation*

- (1) A responsible Minister may, by writing, authorise:
- (a) the trafficking in; or
  - (b) the import, export, manufacture or possession of; an unmarked plastic explosive.
- (2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that:
- (a) the plastic explosive is for use exclusively for one or more of the following:
    - (i) research, development or testing of new or modified explosives;
    - (ii) development or testing of explosives detection equipment;
    - (iii) training in explosives detection;
    - (iv) forensic science; or
  - (b) both:

- (i) the plastic explosive is an integral part of an explosive device that was manufactured exclusively for defence purposes; and
  - (ii) the explosive device is for use exclusively for defence purposes; or
  - (c) the plastic explosive will, within 3 years after the commencement of this section, become an integral part of an explosive device manufactured exclusively for defence purposes.
- (3) An authorisation under subsection (1) must specify the grounds on which it was given.

*Conditions and restrictions*

- (4) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.
- (5) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive on grounds covered by paragraph (2)(a) unless the authorisation is subject to a condition imposing a limit as to the quantity of the plastic explosive.

*Criteria*

- (6) In exercising a power conferred by this section in relation to:
- (a) the trafficking in; or
  - (b) the import, export, manufacture or possession of;
- an unmarked plastic explosive, a responsible Minister must have regard to:
- (c) the Convention on the Marking of Plastic Explosives; and
  - (d) whether the trafficking, import, export, manufacture or possession is reasonable; and
  - (e) such other matters (if any) as the responsible Minister considers relevant.

**72.19 Authorisation for defence and police purposes—15 year limit**

*Authorisation*

- (1) A responsible Minister may, by writing, authorise:
-

- (a) the trafficking in; or
  - (b) the import, export or possession of;
- an unmarked plastic explosive that was:
- (c) manufactured before the commencement of this section; or
  - (d) manufactured after the commencement of this section in accordance with an authorisation given under subsection 72.21(2).
- (2) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:
- (a) the operation of the Australian Defence Force; or
  - (b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or
  - (c) the operation of:
    - (i) the Australian Federal Police; or
    - (ii) the police force or police service of a State or Territory.

*Conditions and restrictions*

- (3) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.

*Criteria*

- (4) In exercising a power conferred by this section in relation to:
- (a) the trafficking in; or
  - (b) the import, export or possession of;
- an unmarked plastic explosive, a responsible Minister must have regard to:
- (c) the Convention on the Marking of Plastic Explosives; and
  - (d) whether the trafficking, import, export or possession is reasonable; and
  - (e) such other matters (if any) as the responsible Minister considers relevant.

*Sunset*

- (5) This section ceases to have effect at the end of 15 years after its commencement.
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## **72.20 Authorisation for existing stocks—3 year limit**

### *Authorisation*

- (1) A responsible Minister may, by writing, authorise:
  - (a) the trafficking in; or
  - (b) the import, export or possession of;  
an unmarked plastic explosive that was manufactured before the commencement of this section.

### *Conditions and restrictions*

- (2) An authorisation under subsection (1) is subject to such conditions and restrictions as are specified in the authorisation.
- (3) A responsible Minister must not give an authorisation under subsection (1) in relation to an unmarked plastic explosive unless the authorisation is subject to a condition that, within 3 years after the commencement of this section:
  - (a) the plastic explosive will not exist; or
  - (b) the plastic explosive will be made permanently ineffective.

### *Criteria*

- (4) In exercising a power conferred by this section in relation to:
  - (a) the trafficking in; or
  - (b) the import, export or possession of;  
an unmarked plastic explosive, a responsible Minister must have regard to:
    - (c) the Convention on the Marking of Plastic Explosives; and
    - (d) whether the trafficking, import, export or possession is reasonable; and
    - (e) such other matters (if any) as the responsible Minister considers relevant.

## 72.21 Authorisation of manufacturers—6 month transitional period

### *Object*

- (1) The object of this section is to allow manufacturers a 6 month transitional period for compliance with sections 72.12, 72.14 and 72.15.

### *Authorisation*

- (2) A responsible Minister may, by writing, authorise:
- (a) the manufacture of an unmarked plastic explosive after the commencement of this section; or
  - (b) the trafficking in an unmarked plastic explosive manufactured after the commencement of this section; or
  - (c) the possession of an unmarked plastic explosive manufactured after the commencement of this section.
- (3) A responsible Minister must not give an authorisation under subsection (2) in relation to an unmarked plastic explosive unless the responsible Minister is satisfied that the plastic explosive is exclusively for use in connection with:
- (a) the operation of the Australian Defence Force; or
  - (b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or
  - (c) the operation of:
    - (i) the Australian Federal Police; or
    - (ii) the police force or police service of a State or Territory.

### *Conditions and restrictions*

- (4) An authorisation under subsection (2) is subject to such conditions and restrictions as are specified in the authorisation.

### *Sunset*

- (5) This section ceases to have effect at the end of 6 months after its commencement.

**72.22 Authorisation for overseas defence purposes—7 day limit**

- (1) A member of the Australian Defence Force is authorised to possess, import or traffic in an unmarked plastic explosive if:
  - (a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force; and
  - (b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:
    - (i) an emergency; or
    - (ii) any other sudden or unexpected circumstances.
- (2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

**72.23 Authorisation for overseas Australian Federal Police purposes—7 day limit**

- (1) A member of the Australian Federal Police is authorised to possess, import or traffic in an unmarked plastic explosive if:
  - (a) the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police; and
  - (b) the member believes on reasonable grounds that there is insufficient time to obtain an authorisation under this Subdivision because of:
    - (i) an emergency; or
    - (ii) any other sudden or unexpected circumstances.
- (2) An authorisation under subsection (1) ceases to have effect at the end of the seventh day after the day on which the plastic explosive was obtained.

**72.24 Forfeited plastic explosives**

- (1) If a court:
  - (a) convicts a person of an offence against this Subdivision in relation to a plastic explosive; or

- (b) makes an order under section 19B of the *Crimes Act 1914* in respect of a person charged with an offence against this Subdivision in relation to a plastic explosive;  
the court may order the forfeiture to the Commonwealth of the plastic explosive.
- (2) A plastic explosive forfeited to the Commonwealth under subsection (1) becomes the property of the Commonwealth.
- (3) A plastic explosive forfeited to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.
- (4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive forfeited to the Commonwealth under subsection (1) be:
- (a) destroyed; or
  - (b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note 1: See also section 10.5 (lawful authority).

Note 2: See also section 229 of the *Customs Act 1901* (forfeiture of goods that have been unlawfully imported or exported).

### **72.25 Surrendered plastic explosives**

- (1) A person may surrender a plastic explosive to the Commonwealth at a place, and in a manner, prescribed for the purposes of this subsection.
- (2) A plastic explosive surrendered to the Commonwealth under subsection (1) becomes the property of the Commonwealth.
- (3) A plastic explosive surrendered to the Commonwealth under subsection (1) is to be dealt with in such manner as a responsible Minister directs.
- (4) Without limiting subsection (3), a responsible Minister may direct that a plastic explosive surrendered to the Commonwealth under subsection (1) be:
- (a) destroyed; or
  - (b) used exclusively for one or more of the purposes covered by paragraph 72.18(2)(a).

Note: See also section 10.5 (lawful authority).

**72.26 Destruction of plastic explosives obtained overseas for defence purposes**

A member of the Australian Defence Force may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Defence Force.

**72.27 Destruction of plastic explosives obtained overseas for Australian Federal Police purposes**

A member of the Australian Federal Police may destroy an unmarked plastic explosive if the plastic explosive was obtained in the course of the operation outside Australia of the Australian Federal Police.

**72.28 Delegation by Minister**

- (1) The Minister may, by writing, delegate to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or an acting SES employee, in the Department, where the employee occupies or acts in a position with a classification of Senior Executive Band 3;all or any of the Minister's powers under sections 72.18, 72.19, 72.20, 72.21, 72.24 and 72.25.
- (2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister.

**72.29 Delegation by Minister for Defence**

- (1) The Minister for Defence may, by writing, delegate to:
    - (a) an SES employee, or an acting SES employee, in the Department of Defence, where the employee occupies or acts in a position with a classification of Senior Executive Band 3; or
    - (b) an officer of the Australian Navy who holds the rank of Vice-Admiral or a higher rank; or
    - (c) an officer of the Australian Army who holds the rank of Lieutenant-General or a higher rank; or
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- (d) an officer of the Australian Air Force who holds the rank of Air Marshal or a higher rank; or
- (e) an officer of the Australian Defence Force who is on deployment as the Commander of an Australian Task Force, contingent or force element that is operating outside Australia;

all or any of the powers of the Minister for Defence under sections 72.18, 72.19, 72.20, 72.21, 72.24 and 72.25.

- (2) A delegate must not exercise a power delegated under subsection (1) unless the exercise of the power relates to:
  - (a) the operation of the Australian Defence Force; or
  - (b) the operation in Australia of a visiting force (within the meaning of the *Defence (Visiting Forces) Act 1963*); or
  - (c) the operation outside Australia of a person who, under a contract, performs services for the Australian Defence Force.
- (3) A delegate is, in the exercise of a power delegated under subsection (1), subject to the written directions of the Minister for Defence.

### **72.30 Review by Administrative Appeals Tribunal of authorisation decisions**

- (1) An application may be made to the Administrative Appeals Tribunal for review of a decision refusing to give an authorisation under subsection 72.18(1), 72.19(1), 72.20(1) or 72.21(2).
- (2) An application may be made to the Administrative Appeals Tribunal for review of a decision to specify a condition or restriction in an authorisation under subsection 72.18(1), 72.19(1), 72.20(1) or 72.21(2), but such an application may only be made by a person to whom the authorisation applies.

### **72.31 Geographical jurisdiction**

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Subdivision.

### **72.32 Saving of other laws**

This Subdivision is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

### **72.33 Marking requirements**

- (1) This section sets out the 2 *marking requirements* for a plastic explosive.

*Concentration of detection agent at time of manufacture*

- (2) The *first marking requirement* is that, at the time of the manufacture of the plastic explosive, all of the following conditions were satisfied:
- (a) the plastic explosive contained a detection agent;
  - (b) the concentration of the detection agent in the plastic explosive was not less than the minimum manufacture concentration for the detection agent;
  - (c) the detection agent was homogenously distributed throughout the plastic explosive.

Note: For *minimum manufacture concentration*, see section 72.34.

*Freshness*

- (3) The *second marking requirement* is that less than 10 years have elapsed since the manufacture of the plastic explosive.

*Interpretation*

- (4) In determining whether a plastic explosive manufactured before the commencement of this section breached the first marking requirement, assume that this section and sections 72.34 and 72.36 had been in force at the time of manufacture.

### **72.34 Detection agents and minimum manufacture concentrations**

For the purposes of this Subdivision, the following table defines:

- (a) *detection agent*; and
- (b) the *minimum manufacture concentration* for each detection agent.

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**Detection agents and minimum manufacture concentrations**

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<b>Item</b>	<b>Detection agent</b>	<b>Minimum manufacture concentration</b>
1	Ethylene glycol dinitrate (EGDN) (molecular formula: C <sub>2</sub> H <sub>4</sub> (NO <sub>3</sub> ) <sub>2</sub> ) (molecular weight: 152)	0.2% by mass
2	2,3-Dimethyl-2,3-dinitrobutane (DMNB) (molecular formula: C <sub>6</sub> H <sub>12</sub> (NO <sub>2</sub> ) <sub>2</sub> ) (molecular weight: 176)	1% by mass
3	para-Mononitrotoluene (p-MNT) (molecular formula: C <sub>7</sub> H <sub>7</sub> NO <sub>2</sub> ) (molecular weight: 137)	0.5% by mass
4	a substance prescribed for the purposes of this table item	the concentration prescribed for the purposes of this table item in relation to the substance

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**72.35 Presumption as to concentration of detection agent**

- (1) This section applies in relation to a prosecution for an offence against this Subdivision.
- (2) If no detection agent can be detected in a sample of a plastic explosive when tested using:
  - (a) a method generally accepted in the scientific community as a reliable means of measuring the concentration of detection agents in plastic explosives; or
  - (b) a method prescribed for the purposes of this paragraph;it is presumed, unless the contrary is proved, that the plastic explosive breaches the first marking requirement.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

**72.36 Definitions**

In this Subdivision:

***Convention on the Marking of Plastic Explosives*** means:

- (a) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; or

- (b) if:
- (i) the Convention is amended; and
  - (ii) the amendment binds Australia;
- the Convention as so amended.

Note: In 2006, the text of the Convention was accessible through the Australian Treaties Library on the AustLII Internet site ([www.austlii.edu.au](http://www.austlii.edu.au)).

***Department of Defence*** means the Department that deals with matters relating to defence.

***detection agent*** has the meaning given by section 72.34.

***explosive device*** includes the following:

- (a) a bomb;
- (b) a grenade;
- (c) a mine;
- (d) a missile;
- (e) a perforator;
- (f) a projectile;
- (g) a rocket;
- (h) a shaped charge;
- (i) a shell.

***export*** includes take from Australia.

***first marking requirement*** has the meaning given by subsection 72.33(2).

***high explosive*** means an explosive with a velocity of detonation that is greater than the velocity of sound in the explosive (typically greater than 340 metres per second), and includes the following:

- (a) cyclotetramethylenetetranitramine (HMX);
- (b) pentaerythritol tetranitrate (PETN);
- (c) cyclotrimethylenetrinitramine (RDX).

***import*** includes bring into Australia.

***manufacture a substance*** means any process by which a substance is produced, and includes the following:

- (a) the process of transforming a substance into a different substance;

(b) the reprocessing of a substance.

**marking requirement** has the meaning given by section 72.33.

**minimum manufacture concentration** has the meaning given by section 72.34.

**Minister for Defence** means the Minister administering the *Defence Act 1903*.

**plastic explosive** means an explosive product (including an explosive product in flexible or elastic sheet form) that is:

- (a) formulated with:
  - (i) one or more high explosives which in their pure form have a vapour pressure less than  $10^{-4}$  Pa at a temperature of 25°C; and
  - (ii) a binder material; and
- (b) as a mixture, malleable or flexible at normal room temperature.

**possess** a substance includes the following:

- (a) receive or obtain possession of the substance;
- (b) have control over the disposition of the substance (whether or not the substance is in the custody of the person);
- (c) have joint possession of the substance.

**responsible Minister** means:

- (a) the Minister; or
- (b) the Minister for Defence.

**second marking requirement** has the meaning given by subsection 72.33(3).

**traffic** in a substance means:

- (a) transfer the substance; or
- (b) offer the substance for sale; or
- (c) invite the making of offers to buy the substance; or
- (d) prepare the substance for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or

- (e) transport or deliver the substance with the intention of transferring any of it or believing that another person intends to transfer any of it; or
- (f) guard or conceal the substance with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or
- (g) possess the substance with the intention of transferring any of it.

For the purposes of paragraph (d), preparing a substance for transfer includes packaging the substance or separating the substance into discrete units.

***transfer*** means transfer ownership or possession.

***unmarked plastic explosive*** means a plastic explosive that breaches a marking requirement.

***wrapper***, in relation to a plastic explosive, means a wrapper the inner surface of which is in contact with the plastic explosive.

## Schedule 2—Amendment of the Customs Act 1901

### 1 Subsection 4(1)

Insert:

*unmarked plastic explosive* has the same meaning as in  
Subdivision B of Division 72 of the *Criminal Code*.

### 2 Section 4B (after paragraph (b) of the definition of *Customs-related law*)

Insert:

(baa) section 72.13 of the *Criminal Code*; or

### 3 Subsection 183UA(1) (paragraph (c) of the definition of *offence*)

Before “Division 307”, insert “section 72.13 or”.

### 4 After subsection 183UA(2)

Insert:

(2AA) For the purposes of this Part, an offence against section 6 of the  
*Crimes Act 1914* that relates to an offence against section 72.13 of  
the *Criminal Code* is taken to be an offence against section 72.13  
of the *Criminal Code*.

### 5 After paragraph 183UA(3)(a)

Insert:

(aa) an offence against section 141.1, 142.1, 142.2 or 149.1 of the  
*Criminal Code* that relates to section 72.13 of the *Criminal  
Code* is taken to be an offence against section 72.13 of the  
*Criminal Code*; and

### 6 Subparagraphs 184A(2)(c)(i) and (ii)

Before “Division 307”, insert “section 72.13 or”.

### 7 Subparagraph 184A(4)(c)(ii)

Before “Division 307”, insert “section 72.13 or”.

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**8 Paragraph 184A(5)(c)**

Before “Division 307”, insert “section 72.13 or”.

**9 Paragraph 184D(3)(b)**

Before “Division 307”, insert “section 72.13 or”.

**10 Subparagraph 185(2)(c)(iii)**

Before “Division 307”, insert “section 72.13 or”.

**11 Subparagraph 185(2)(d)(i)**

Before “Division 307”, insert “section 72.13 or”.

**12 Sub-subparagraph 185(2)(d)(ii)(A)**

Before “Division 307”, insert “section 72.13 or”.

**13 Subparagraph 185(2)(d)(iii)**

Before “Division 307”, insert “section 72.13 or”.

**14 Paragraph 185(3)(a)**

Before “Division 307”, insert “section 72.13 or”.

**15 Subparagraph 185(3)(c)(i)**

Before “Division 307”, insert “section 72.13 or”.

**16 Paragraph 185(3)(d)**

Before “Division 307”, insert “section 72.13 or”.

**17 Subsection 185B(1)**

Before “Division 307”, insert “section 72.13 or”.

**18 Paragraph 185B(2)(b)**

Before “Division 307”, insert “section 72.13 or”.

**19 Subparagraph 185B(2)(c)(i)**

Before “Division 307”, insert “section 72.13 or”.

**20 Paragraph 210(1)(c)**

Before “Division 307”, insert “section 72.13 or”.

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**21 Section 227AA**

Before “To avoid”, insert “(1)”.

**22 At the end of section 227AA**

Add:

- (2) To avoid doubt, if, when exercising powers under this Act, an officer obtains evidence of the commission of an offence against Subdivision B of Division 72 of the *Criminal Code*, then that evidence may be used, or given to another body for use, in:
- (a) investigating the offence; or
  - (b) proceedings for the prosecution for the offence.

**23 After subsection 231(2)**

Insert:

- (2A) This section does not apply to, or in relation to, unmarked plastic explosives.

Note: Section 72.13 of the *Criminal Code* creates an offence of importing or exporting unmarked plastic explosives.

**24 After subsection 233A(1A)**

Insert:

- (1B) Subsection (1) does not apply if the goods smuggled, imported, exported or conveyed are unmarked plastic explosives.

Note: Section 72.13 of the *Criminal Code* creates an offence of importing or exporting unmarked plastic explosives.

## Schedule 3—Consequential amendments

### *Australian Federal Police Act 1979*

**1 Subsection 4(1) (paragraph (c) of the definition of *protective service offence*)**

Before “Division 72”, insert “Subdivision A of”.

### *Australian Security Intelligence Organisation Act 1979*

**2 Section 4 (definition of *terrorism offence*)**

Repeal the definition, substitute:

*terrorism offence* means:

- (a) an offence against Subdivision A of Division 72 of the *Criminal Code*; or
- (b) an offence against Part 5.3 of the *Criminal Code*.

Note: A person can commit a terrorism offence against Part 5.3 of the *Criminal Code* even if no terrorist act (as defined in that Part) occurs.

### *Crimes Act 1914*

**3 Subsection 3(1) (paragraph (a) of the definition of *terrorism offence*)**

Before “Division 72”, insert “Subdivision A of”.

**4 Paragraph 15YU(1)(d)**

Before “Division 72”, insert “Subdivision A of”.

### *Foreign Evidence Act 1994*

**5 Subsection 3(1) (paragraph (d) of the definition of *designated offence*)**

Before “Division 72”, insert “Subdivision A of”.

### *Surveillance Devices Act 2004*

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**6 Subparagraph 30(1)(a)(viii)**

Omit “Division 72”, substitute “Subdivision A of Division 72 or Division”.

***Telecommunications (Interception) Act 1979***

**7 Paragraph 5D(1)(e)**

Repeal the paragraph, substitute:

(e) an offence against:

- (i) Subdivision A of Division 72 of the *Criminal Code*; or
  - (ii) Division 101 of the *Criminal Code*; or
  - (iii) Division 102 of the *Criminal Code*; or
  - (iv) Division 103 of the *Criminal Code*; or
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[*Minister’s second reading speech made in—  
House of Representatives on 7 September 2006  
Senate on 7 December 2006*]

(113/06)

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