

## EXPLANATORY STATEMENT

### DEFENCE (DECLARED EXPLOSIVE ORDNANCE DEPOTS) INSTRUMENT 2012

#### *Defence Act 1903*

In October 2011 legislation came into force that inserted a new Part VIA into the Defence Act to give effect to the Government's initiative to enhance the security of Defence bases, facilities, assets and personnel within Australia in response to the changing nature of security threats.

Subsection 71L(2) of the *Defence Act 1903* provides that the Minister may, by legislative instrument, specify an area of land or any other place (whether or not it is enclosed or built on), or a building or other structure if:

- a) the area of land or the place, building or structure is defence premises used wholly or partly for the storage of explosive ordnance; and
- b) members of the Defence Force are not normally present at the area of land or the place, building or structure.

Subsection 71L(3) provides that the instrument may specify more than one area of land, place, building or structure. Subsection 71L(4) provides that each area of land, place, building or structure specified in an instrument under subsection (2) must specify by reference to one of the following:

- a) its geographical location;
- b) a unique code or number.

Subsection 71L(5) provides that if an area of land or a place, building or structure is specified by a unique code or number as mentioned in subsection 71L(4), the code or number must correspond with a code or number that is held in the records of the Department as a code or number applicable to that area of land or that place, building or structure.

The purpose of this Instrument is to list the Declared Explosive Ordnance Depots by using a unique code. The unique code is held in the records of the Department of Defence.

This instrument is a legislative Instrument for the purpose of the *Legislative Instruments Act 2003*.

This instrument commences on the day after registration.

#### **Consultation**

In identifying the Declared Explosive Ordnance Depots under Section 71L, consultation was undertaken with Thales who is the Defence contractor managing the various explosive ordnance depots on behalf of Defence.

## **Statement of Compatibility with Human Rights**

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Instrument engages the following human rights:

- *the right to privacy and reputation* (article 17 of the International Covenant on Civil and Political Rights);
- *the right to freedom of movement* (article 12 International Covenant on Civil and Political Rights);
- *the right to just and favourable conditions of work, including safe and healthy working conditions* (article 7 of the International Covenant on Economic, Social and Cultural Rights);
- *the right to security of the person and freedom from arbitrary detention* (article 9 of the International Covenant on Civil and Political Rights).

The Instrument lists the areas of land, places, buildings or structures on which a search process can occur in accordance with sections 71M and 71N of the *Defence Act 1903*. Sections 71M and 71N enable a contracted defence security guard to conduct limited searches of persons with their consent and consensual searches of vehicles, vessels or aircrafts that are entering or exiting a ‘declared explosive ordnance depot’. These sections also provide for contracted defence security guard to restrain or detain a person who does not consent to a search, for the purpose of placing in police custody.

This means that the instrument exposes persons to search and potentially, detention in a larger number of places than would otherwise be the case. By prescribing an area, Defence is placing a limit on a person’s freedom of movement in and out of those areas. It is also increasing the chance that a person could be found to have breached the rules about ordnance and they would then be subject to possible criminal sanction and confinement of their freedom of movement.

*Legitimate objective:* These powers constitute an interface with the right to privacy, the right to move freely within a country and right to freedom from arbitrary detention. Conducting searches of persons and vehicles and restraining and detaining person pursuant to an authorisation is necessary in the interests of Australia’s national security and will reduce the risk of unauthorised items entering Defence premises or dangerous items being unlawfully removed from Defence premises.

*Reasonable, necessary and proportionate:* Given the inherent risk to public safety posed by the unlawful removal of weapons, munitions and explosive ordnance from Defence premises and the risk to the national security of Australia, the engagement of these rights are considered reasonable, necessary and proportionate to protect Defence premises and national interests of Australia.

The expansion of the area will only affect those dealing with the ordnance or otherwise required to attend the depot (e.g. fireman, electrical contractor). Except for members, most people in the groups can choose not to enter if they do not want to be

subjected to the search and other actions. These precautions help to keep any potentially dangerous material in the set area and away from the general public.

There are a number of safeguards in place, in relation to the exercise of search powers, with demonstrate that the exercise of these powers is reasonable, necessary and proportionate (e.g. strict liability offences where search powers are exercised without consent).

These powers advance the right to security of a person, which requires the country to provide reasonable and appropriate measures to protect a person's physical security and the right to safe and healthy working conditions. The powers advance these rights by reducing the risk of dangerous items entering or being unlawfully removed from Defence facilities.

This Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Authority: Subsection 71L (2)  
of the *Defence Act 1903*