

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 89

Issued by the authority of the Parliamentary Secretary for Defence

Explosives Act 1961

Explosives Transport Amendment Regulations 2011 (No. 1)

Section 21 of the *Explosives Act 1961* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 10(1) of the Act provides that the regulations may make provision for matters arising out of or incidental to the handling of explosives to which Part II of the Act – handling of explosives – applies. They may also make provision for safety measures to be observed at, in or upon a place, vehicle, aircraft or vessel at, in, upon or in the vicinity of which there are explosives to which Part II of the Act applies.

Section 15 of the Act provides that the regulations may empower a person to provide, by order, for any matter that may be provided for by the regulations.

The Regulations would amend the *Explosives Transport Regulations 2002* (Principal Regulations) to give effect to the ‘Australian Code for the Transport of Explosives by Road and Rail Third Edition 2009 (the AE Code).

The third edition of the AE Code was prepared by the Australian Forum of Explosives Regulators and was endorsed by the Workplace Relations Minister’s Council in April 2009. The third edition of the AE Code replaces the second edition of the AE Code that is currently referred to in the *Explosives Transport Regulations 2002*. The third edition aligns the AE Code with current international transport documents.

The objective of the AE Code is to provide a uniform basis for Commonwealth, State and Territory legislation governing the transport of explosives, and is designed to apply to all road and rail transport in Australia. The AE Code is applicable to civilian and military explosives transport.

The Regulations would also update the ‘List of Authorised Commonwealth Explosives’, published by the Department of Defence, to include additional explosives.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

During drafting of the third edition of the AE Code extensive consultation occurred with the draft code released for public comment. Commonwealth agencies replying in the public comment period were the Department of Defence and Australian Federal

Police. A Regulatory Impact Statement on the adoption of the revised AE Code was prepared, and accepted by the Office of Best Practice Regulation in September 2008.

Details of the Regulations are set out in the Attachment

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after which they are registered on the Federal Register of Legislative Instruments.

ATTACHMENT**Details of the *Explosives Transport Amendment Regulations 2011 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Explosives Transport Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence the day following registration.

Regulation 3 – Amendment of Explosives Transport Regulations 2002

This regulation provides that Schedule 1 amends the *Explosive Transport Regulations 2002*.

Schedule 1 – Amendments

Item [1] updates note 2 in regulation 3, which lists State and Territory laws relating to the transport of Commonwealth explosives to reflect changes since the Principal Regulations were made in 2002.

Item [2] revises the definition of the Australian Explosives Code in regulation 5 to reflect the third edition, which was published in 2009.

Item [3] amends regulation 5 to update the effective date of the *List of Authorised Commonwealth Explosives* from the list published by the Department of Defence on 1 February 2002 to the one published on 1 November 2010.

Item [4] amends the note in subregulation 16(4) to update an internet link to the Code of Practice for the Administrative Appeals Tribunal.

Item [5] upgrades regulation 17 to reflect changes in paragraph numbering in the third edition of the AE Code.

Item [6] updates paragraph 24(1)(b) to reflect the change of name of a referenced United Nations Manual.

Item [7] replaces the existing note 2 in regulation 24 with two new notes to include an internet link to the United Nations Manual of Test and Criteria and defines the edition as it exists on 1 February 2011.

Items [8] and [9] amend subregulation 26(3) and note 3 in regulation 27 to update the name of the Australian Customs Service to the Australian Customs and Border Protection Service.

Item [10] replaces Schedule 1 to the Principal Regulations to reflect changes in paragraph numbering in the third edition of the Australian Explosives Code. It combines existing clauses 2 and 3 in the Principal Regulations into new clause 2 and deletes existing clause 4 because that provision was removed from the third edition of the Code.