EXPLANATORY STATEMENT

Issued by authority of the Minister for Defence, the Hon Richard Marles MP

Explosives Act 1961

Explosives Regulations 2024

Authority

The *Explosives Act 1961* (the Act) provides for handling of explosives and control of Commonwealth explosives areas.

Section 21 of 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 or in relation to, or for or in relation to any matter arising out of or incidental to, the handling of explosives to which Part II of the Act applies; and for or in relation to 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 applies.

Subsection 10(2) of the Act requires that before making regulations for or in relation to the handling in a port of explosives to which Part II of the Act applies, the Governor‑General shall take into consideration any recommendations with respect to the proposed regulations made to the Minister by the committee known as the Council of the Association of Australian Port and Marine Authorities.

Subsection 11(1) of the Act provides that the regulations may empower a person to direct, by order, that a vessel in which explosives to which Part II of the Act applies are, or are to be, loaded may, for a purpose or purposes specified in the order, be berthed in a port so specified.

Subsection 11A(1) of the Act provides that the regulations may empower a person to give, by order, such directions as are necessary for ensuring that such explosives to which Part II of the Act applies as are specified in the order are transported by railway between such places, on such day or days and in such manner as are so specified.

Subsection 14(1) of the Act provides that the regulations may make provision for ensuring the safety of persons who are, and the protection from damage of property that is, in or in the vicinity of a Commonwealth explosives area. Subsection 14(2) of the Act sets out specific matters for which the regulations may make provision.

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.

Section 19 of the Act provides that the regulations may make provision for or in relation to the establishment, and the functions and powers, of committees to advise the Minister on matters relating to, or to the handling of, explosives.

Background

The Act authorises the *Explosives Transport Regulations 2002*, which provides for handling of explosives, and the *Explosives Areas Regulations 2003*, which provides for control of Commonwealth explosives areas.

Chapter 3, Part 4 of the *Legislation Act*2003 provides that legislative instruments sunset 10 years after commencement, subject to some exceptions. Paragraph 4 of the *Legislation (Explosives Instruments) Sunset-altering Declaration 2019* deferred this date for both regulations to 1 October 2024. The deferral of sunsetting enabled the Department of Defence to conduct a thematic review of both regulations, which ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. The review recommended replacing the regulations.

Purpose and effect

The purpose of the *Explosives Regulations 2024* (the Regulations) is to repeal and replace the *Explosives Transport Regulations 2002* and the *Explosives Areas Regulations 2003* with a single modernised instrument.

The Regulations are necessary to:

* reduce so far as reasonably practicable the risks of personal injury, property damage or harm to the environment or public safety arising from the land transport of Commonwealth explosives;
* give effect to the third edition of the *Australian Code for the Transport of Explosives by Road and Rail* endorsed by the Workplace Relations Ministers’ Council on 3 April 2009 (the AE Code);
* improve transport safety by harmonising, as far as practicable, Commonwealth explosives transport practices with those of the commercial explosives transport industry; and
* prescribe the observance of certain safety measures in the vicinity of declared explosives areas, by providing a mechanism for managing and controlling the areas for safety reasons, including the power to remove people, vessels and vehicles from a declared explosives area.

The Regulations set out detailed provisions for handling of explosives. Section 5 of the Act states that handling includes loading, unloading, discharging, stacking, stowing, storing, transporting and any operation incidental to, or arising out of, any of those operations.

The Regulations also set out detailed provisions for control of Commonwealth explosives areas. Section 13 of the Act states that Commonwealth explosives area means any Commonwealth land declared by the regulations to be an explosives area and, where any such land consists of a part of the bed of the sea, or of a bay, estuary or river, includes the waters above the land. The Regulations prescribe two areas of Commonwealth land as Commonwealth explosives areas.

Details of the Regulations are set out in Attachment A.

Consultation

Defence wrote to the Office of Impact Analysis certifying that the *Explosives Transport Regulations 2002* and the *Explosives Areas Regulations 2003* are operating effectively and efficiently. The amendments will not change the regulatory burden and as such, an Impact Analysis is not required to replace these regulations.

Subsection 10(2) of the Act requires that before making regulations for or in relation to the handling in a port of explosives to which Part II of the Act applies, the Governor‑General shall take into consideration any recommendations with respect to the proposed regulations made to the Minister by the committee known as the Council of the Association of Australian Port and Marine Authorities.

The Council of the Association of Australian Port and Marine Authorities is now Ports Australia. Ports Australia wrote to the Department of Defence confirming that, after seeking input, its membership did not raise any concerns with the replacement of the regulations.

The Department of Defence consulted the Attorney-General’s Department; Comcare; the Department of Employment and Workplace Relations; the Department of Infrastructure, Transport, Regional Development, Communications and the Arts; the Department of Home Affairs; the Australian Border Force; the Australian Federal Police and the Australian Government Solicitor.

The Department of Defence consulted State and Territory government explosive regulators through the Australian Forum of Explosive Regulators (AFER). AFER members did not raise any concerns with replacing the Regulations.

The Department of Defence contacted industry operators including Thales, Raytheon, BAE, NIOA, Lockheed Martin Australia, Kongsberg and Chemring. There was agreement that replacing the Regulations remains necessary to support the safe, secure and expedited handling of Commonwealth explosives throughout Australia.

Commencement

The Regulations commence on the day after the end of the period of 28 days beginning on the day the Regulations are registered on the Federal Register of Legislation.

Parliamentary scrutiny

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

The Regulations are subject to disallowance under section 42 of the *Legislation Act 2003*.

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is at Attachment B.

**The Hon Richard Marles MP**

**Minister for Defence**

Attachment A

Details of the *Explosives Regulations 2024*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Explosives Regulations 2024* (the Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commences.

Item 1 of the table has the effect that the whole of this instrument commences on the day after the end of the period of 28 days beginning on the day this instrument is registered on the Federal Register of Legislation.

The note under the table in subsection 2(1) indicates that the table only relates to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Section 3 – Authority

This section provides that this instrument is made under the *Explosives Act 1961* (the Act).

Section 4 – Schedule 3

This section provides that each instrument that is specified in Schedule 3 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Section 5 – Definitions

This section defines various terms used in the Regulations, and provides that:

* ***Act*** means the *Explosives Act 1961*.
* ***AE Code*** (short for Australian Explosives Code) means the third edition of the *Australian Code for the Transport of Explosives by Road and Rail* endorsed by the Workplace Relations Ministers’ Council on 3 April 2009. The note after this definition explains that the AE Code can be viewed at https://www.safeworkaustralia.gov.au.
* ***approved security plan*** for a regulated Commonwealth agency means a security plan approved by the Competent Authority under subsection 16(2), for the regulated Commonwealth agency.
* ***authorised Commonwealth explosive*** means a Commonwealth explosive, or a kind of Commonwealth explosive, specified in an order made under subsection 43(1).
* ***Commonwealth explosives*** means explosives to which Part II of the Act applies. The note after this definition refers to sections 5 and 9 of the Act for the definitions of explosives to which Part II of the Act applies.
* ***Commonwealth explosives area*** has the meaning given by section 13 of the Act. The note after this definition refers to section 7 of the Regulations.
* ***Commonwealth land*** has the meaning given by section 13 of the Act.
* ***Commonwealth public official*** has the meaning given by the *Criminal Code*.
* ***Competent Authority*** means the person appointed under section 30 as the Competent Authority. The note after this definition refers to section 6 on references in the AE Code to Competent Authority.
* ***compliance auditor*** means a person appointed under section 32 to be a compliance auditor for the purposes of this instrument.
* ***fire hazard area*** means an area of a Commonwealth explosives area to which a determination under section 39 applies.
* ***involved*** a person who is ***involved*** in the transport of Commonwealth explosives or authorised Commonwealth explosives includes:

(a) a person who does one or more of the following:

 (i) packs, or marks packages containing, Commonwealth explosives for transport by road or rail;

 (ii) marks or placards freight containers and vehicles in which Commonwealth explosives are transported by road or rail;

 (iii) consigns Commonwealth explosives for transport by road or rail, including preparing any documents and giving notices or other information required by or under the AE Code for the consignment of such explosives;

 (iv) loads Commonwealth explosives onto a vehicle for transport by road or rail, including securing the explosives on the vehicle and doing anything to comply with any requirement of the AE Code limiting the quantity of such explosives that may be carried on the vehicle;

 (v) unloads Commonwealth explosives that have been transported by road or rail;

 (vi) undertakes a task that is required, in accordance with an approved security plan, to be undertaken for the security of Commonwealth explosives to which the security plan relates;

 (vii) drives a road vehicle carrying Commonwealth explosives or acts as an attendant (within the meaning of the AE Code) for the transport of those explosives;

 (viii) drives a rail vehicle carrying Commonwealth explosives or a train of which a rail vehicle carrying such explosives forms part;

 (ix) undertakes maintenance on vehicles that are used to transport Commonwealth explosives by road or rail;

 (x) undertakes a task in relation to the segregation of Commonwealth explosives from other Commonwealth explosives or other explosives including, if more than 2 rail vehicles are used to transport the explosives, a task in relation to the separation of the rail vehicles;

 (xi) in the event of an emergency of a kind referred to in the AE Code involving Commonwealth explosives—anything that is required to be done by the AE Code in such an emergency;

 (xii) provides training relating to Commonwealth explosives to drivers of vehicles transporting the explosives; and

(b) the owner (within the meaning of the AE Code) of a road vehicle that is being used to transport Commonwealth explosives; and

(c) a prime contractor (within the meaning of the AE Code) having responsibility for the transport of Commonwealth explosives by road or rail; and

(d) a rail operator (within the meaning of the AE Code) having responsibility for:

 (i) the transport of Commonwealth explosives by rail; or

 (ii) the condition of a rail vehicle transporting those explosives; and

(e) a person who:

 (i) is, within the meaning of the AE Code, a supervisor or a person in charge; and

 (ii) supervises, or is in charge of, an activity, or part of an activity, covered by this definition; and

(f) a Commonwealth public official, not covered by another paragraph of this definition, whose functions or duties include responsibility for the transport of Commonwealth explosives by road or rail.

* ***net explosive quantity*** means the actual quantity, expressed by mass, of explosive substance in an article, package or container.
* ***rail vehicle*** means a unit of rail rolling stock used for transporting goods on a railway.
* ***regulated Commonwealth agency*** means:

(a) the Australian Defence Force; or

(b) the Australian Federal Police; or

(c) the Department administered by the Minister administering Part XII of the *Customs Act 1901*; or

(d) the Department.

* ***road vehicle*** means a vehicle of a kind used for transporting goods on a road and includes a combination road vehicle (within the meaning of the AE Code).
* ***unauthorised Commonwealth explosive*** means a Commonwealth explosive, or a kind of Commonwealth explosive, that is not specified in an order made under subsection 43(1).
* ***vehicle*** means a road vehicle or a rail vehicle.

The note at the beginning of the section indicates that the following expressions used in the Regulations are defined in the Act:

* explosives
* handling; and
* vessel.

Section 6 – References in AE Code to Competent Authority

This section provides that for the purposes of the Regulations, a reference in the AE Code to the Competent Authority is to be read, in relation to any matter concerning Commonwealth explosives, as if it were a reference to the Competent Authority appointed under section 30.

The AE Code (short for Australian Explosives Code) means the third edition of the *Australian Code for the Transport of Explosives by Road and Rail* endorsed by the Workplace Relations Ministers’ Council on 3 April 2009. The AE Code contains various references to the Competent Authority in each jurisdiction, and assigns decision-making responsibilities to that role.

The effect of this section is to clarify the role of the Competent Authority appointed under section 30 of the Regulations as the ‘Competent Authority’ in the Commonwealth jurisdiction for the purposes of the AE Code.

Section 7 – Commonwealth explosives area

This section provides that for the purposes of the definition of ***Commonwealth explosives area*** in section 13 of the Act, each area of Commonwealth land mentioned in Schedule 2 of the Regulations is declared to be a Commonwealth explosives area.

Part 2 – Handling of explosives

Division 1 – Preliminary

Section 8 – Purpose of this Part

Part 2 of the Regulations provides for the handling of explosives. This section provides that Part 2 is made for the purposes of section 10 of the Act.

Subsection 10(1) of the Act provides that the regulations may make provision for or in relation to, or for or in relation to any matter arising out of or incidental to, the handling of explosives to which Part II of the Act applies; and for or in relation to 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 applies.

Section 9 – This Part not to apply in certain circumstances

This section sets out the circumstances in which Part 2 does not apply. There are some circumstances where it may not be possible for the Commonwealth to comply with the Regulations or with the AE Code, which necessitates exemption of such activities from the Regulations.

Paragraph 9(1)(a) provides that Part 2 does not apply to the packaging and marking, by the Australian Defence Force or the Department, of a Commonwealth explosive that has been recovered in an explosive ordnance disposal operation conducted by the Australian Defence Force or the Department. In these situations, it may not be possible to identify the type of explosive that has been found (due to age or deterioration of the explosive) and therefore not possible to authorise the explosive or to meet all the requirements of the AE Code.

Paragraph 9(1)(b) provides that Part 2 does not apply to a person who is involved in the transport of Commonwealth explosives during an approved special activity carried on by the Australian Defence Force or any training or other activity carried on for that approved special activity. Such activities are defined further in subsections 9(2), (3) and (4).

Paragraph 9(1)(c) provides that Part 2 does not apply to the transport of an explosives demolition kit by the Australian Defence Force or the Australian Federal Police for the demolition of explosives. Explosives demolition kits are used during emergencies and may contain unidentifiable explosives to be destroyed. In such a case, it may not be possible to comply with the Regulations and the AE Code. Work health and safety legislation and the operational and safety policies of these organisations would continue to apply during such activities.

Paragraph 9(1)(d) provides that Part 2 does not apply to a person who is involved in the transport of Commonwealth explosives during an authorised covert operation carried on by the Australian Federal Police or any training or other activity carried on for that operation. During such operations, compliance with the public information (labelling and vehicle) placarding aspects of the AE Code could expose and may hamper or reduce the rapidity of a response of the Australian Federal Police. Work health and safety legislation and Australian Federal Police operational and safety policies would continue to apply during such activities.

Paragraph 9(1)(e) provides that Part 2 does not apply to a person who is involved in the transport of Commonwealth explosives during an operation carried on by that part of the Australian Federal Police known as the AFP special operations team or any training or other activity carried on by that team for that operation. During such operations, compliance with the public information (labelling and vehicle) placarding aspects of the AE Code could expose and may hamper or reduce the rapidity of a response of the Australian Federal Police. Work health and safety legislation and Australian Federal Police operational and safety policies would continue to apply during such activities.

Paragraph 9(1)(f) provides that Part 2 does not apply to explosives subject to customs control under the *Customs Act 1901*, other than any of those explosives for which a permission to move under section 71E of that Act has been given. The intention of this exemption is not to require authorisation of explosives by the Competent Authority when explosives are only under the temporary control of the Australian Border Force for the purpose of Customs clearance. Compliance with the Regulations would be required during section 71E permitted transport. Following Customs clearance, explosives are subject to the regulatory controls of the States or Territories or, in the case of Commonwealth explosives, are subject to the requirements of these Regulations.

Paragraph 9(1)(g) provides that Part 2 does not apply to a person who is involved in the transport of Commonwealth explosives that have been detected and seized by a Commonwealth public official in circumstances in which it is reasonable to believe that there is a threat to national security or public safety. In these circumstances, including emergencies, it may not be possible to identify and authorise the explosive or to comply with certain aspects of the AE Code, such as the placarding of vehicles.

Paragraph 9(1)(h) provides that Part 2 does not apply to the transport of Commonwealth explosives on a light vehicle by a Commonwealth public official if the explosives are authorised explosives within the meaning of the AE Code, the explosives do not include detonators, and the net explosive quantity of the explosives is one kilogram or less. This would allow the transport of small quantities of up to one kilogram of low-risk and publicly available explosives (such as emergency marine flares and explosive rivets), and spare ammunition for armed Commonwealth public officials, without requiring compliance with the Regulations. Work health and safety legislation and the operational and safety policies of these organisations would continue to apply in such circumstances.

Subsection 9(2) provides that the Chief of the Defence Force, or a service chief, may, in writing, authorise a person for the purposes of this subsection, if the person is: an officer of the Navy who holds the rank of Lieutenant Commander or a higher rank; or an officer of the Army who holds the rank of Major or a higher rank; or an officer of the Air Force who holds the rank of Squadron Leader or a higher rank.

Subsection 9(3) provides that an authorised officer may, in writing, for the purposes of this subsection, approve an activity, if the activity is for the purposes of, or a purpose related to, the defence of the Commonwealth, or for any utilisation of the Australian Defence Force under Part IIIAAA of the *Defence Act 1903*.

The effect of subsection 9(2) and subsection 9(3) is to establish the process for approving an activity as an ‘approved special activity’ for the purposes of paragraph 9(1)(b).

Subsection 9(4) defines various terms used in section 9, and provides that:

* ***approved special activity*** means an activity approved under subsection 9(3);
* ***authorised covert operation*** means an operation within the functions of the Australian Federal Police that is authorised as a covert operation by a member of the Australian Federal Police at or above the rank of sergeant;
* ***authorised officer*** means an officer authorised under subsection 9(2); and
* ***light vehicle*** means a road vehicle that has a maximum laden mass, as specified by the manufacturer, of 4.5 tonnes or less.

The intention in not applying Part 2 to an approved special activity or authorised covert operation is to ensure that, where approved or authorised by a person at or above the specified ranks, operations of the Commonwealth relating to defence or counter-terrorism are not put at risk by the need to comply with the Regulations. Work health and safety legislation and the operational and safety policies of these organisations would continue to apply in such circumstances.

Division 2 – General rules relating to the transport of explosives

Section 10 – Transport of unauthorised Commonwealth explosives prohibited

This section provides that a person must not transport unauthorised Commonwealth explosives, or permit unauthorised Commonwealth explosives to be transported, by road or rail.

The note after section 10 clarifies that penalties for a failure to comply with this section are set by section 20 of the Act.

This section is necessary to ensure that the Competent Authority has authorised Commonwealth explosives prior to transport, including by identification and hazard classification of the explosives.

Section 19 sets out the circumstances in which the Competent Authority can grant an exemption from this provision.

Section 11 – Transport of certain authorised Commonwealth explosives prohibited

This section prohibits the transport of certain authorised Commonwealth explosives without written permission by the Competent Authority, or in non-compliance with a condition of the permission.

This section is necessary to ensure that certain explosives are only transported with written permission by the Competent Authority, and in compliance with any conditions of the permission.

Subsection 11(1) prohibits the transport, by road or rail, of authorised Commonwealth explosives that are:

* not stable; or
* of a kind that are classified in the AE Code as in class 1.1A (primary explosive substances that have a mass explosion hazard); or
* not capable of passing the tests, or meeting the criteria, applicable to the explosives set out or referred to in the United Nations manual called *Manual of Tests and Criteria Eighth Revised Edition* (ISBN: 9789210019033), published on October 2023, part of the periodical Recommendations on the Transport of Dangerous Goods: Tests and Criteria.

The first note after subsection 11(1) clarifies that the Manual of Tests and Criteria is available from United Nations Publications at https://www.un-ilibrary.org.

The second note after subsection 11(1) clarifies that penalties for a failure to comply with subsection (1) are set by section 20 of the Act.

Subsection 11(2) provides that the Competent Authority may grant written permission, subject to any conditions specified in the permission, to a person to transport authorised Commonwealth explosives by road or rail.

Section 19 sets out the circumstances in which the Competent Authority can grant an exemption from this provision.

Section 12 – Application of AE Code

This section provides for the application of the AE Code. This section is necessary to give effect to the requirements of the AE Code in the Regulations.

Subsection 12(1) provides that a person who is involved in the transport of authorised Commonwealth explosives must comply with any requirement of the AE Code, as modified by Schedule 1 of the Regulations, that is applicable to the person.

The note after subsection 12(1) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

Subsection 12(2) provides that if there is an inconsistency between a requirement of the AE Code, as it applies to the person, and a requirement of the Regulations, or of an order made under paragraph 44(1)(a) or (b), as it applies to the person, the requirement of the Regulations, or of the order, prevails to the extent of the inconsistency.

Section 13 – Persons around vehicles during loading and unloading of explosives

This section provides for the presence of persons around vehicles during loading and unloading of explosives. This section is necessary to ensure that unauthorised persons are not present during loading or unloading of Commonwealth explosives. Compliance with this section reduces safety risks associated with the presence of unauthorised persons.

Subsection 13(1) provides that a person (other than a person mentioned in subsection (2)) must not be in, on or in the vicinity of a vehicle without the consent of the person in charge of the vehicle if authorised Commonwealth explosives are being loaded onto, or unloaded from, the vehicle.

The first note after subsection 13(1) states that the AE Code includes provisions about persons riding in vehicles that are carrying explosives.

The second note after subsection 13(1) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

The persons mentioned in subsection 13(2) are: the driver of the vehicle; a person involved in loading or unloading the vehicle; a member of a fire brigade established by or under a law of a State or Territory; a member or special member of the Australian Federal Police; and an officer of the Police of a State or Territory.

Section 14 – Smoking and other fire hazards around vehicles prohibited

This section prohibits smoking and other fire hazards around vehicles. This section is necessary to reduce the risk to the safe handling of explosives of fire from smoking or other fire hazards.

Subsection 14(1) provides that a person contravenes this subsection if the person is within 6 metres of a vehicle on which authorised Commonwealth explosives are loaded and the person smokes or is in possession of, creates or uses any fire or naked light.

Subsection 14(2) provides that a person contravenes this subsection if the person is in the vicinity of a vehicle on which authorised Commonwealth explosives are loaded and the person engages in conduct that is likely to result in a fire or explosion affecting the explosives on the vehicle.

The first note after subsection 14(2) refers to the provisions of the AE Code about smoking and other fire hazards near vehicles that are carrying explosives.

The second note after subsection 14(2) clarifies that penalties for a failure to comply with subsections (1) or (2) are set by section 20 of the Act.

Section 15 – Sections 12 and 13 do not apply in certain circumstances

This section sets out the circumstances in which sections 12 and 13 of the Regulations do not apply. Section 12 provides for the application of the AE Code. Section 13 provides for persons around vehicles during loading and unloading of explosives. This section is necessary to exempt certain activities of the Commonwealth involving transport of explosives for which it is not possible to comply with the requirements of the AE Code.

Paragraph 15(1)(a) provides that sections 12 and 13 do not apply to a person who is involved in the transport of authorised Commonwealth explosives in a place:

* that is occupied or controlled by the Defence Force or a part of the Defence Force; or
* that was declared, under repealed regulation 49 of the *Defence Force Regulations 1952*, to be a defence practice area; or
* that is declared, under regulations made for the purposes of the *Defence Act 1903*, to be a defence area; or
* where Commonwealth explosives are manufactured or tested.

This paragraph is necessary because many Defence Force vehicles and other vehicles that transport explosive materials during a manufacturing or testing process cannot comply with the design requirements of the AE Code. The handling of explosives in manufacturing facilities is subject to State and Territory work health and safety and explosive safety legislation.

Paragraph 15(1)(b) provides that sections 12 and 13 do not apply to the transport, between a place that is occupied or controlled by a part of the Defence Force and a nearby place where a particular training exercise is being, or is to be, carried out by that part of the Defence Force, on a vehicle forming part of the equipment of that part of the Defence Force, of authorised Commonwealth explosives to be used for the purposes of that training exercise.

This paragraph is necessary because during training exercises, many Defence Force vehicles cannot comply with the design aspects of the AE Code.

The first note after subsection 15(1) clarifies that in relation to subparagraph (1)(a)(ii): Part XI of the *Defence Force Regulations 1952* continues to apply in relation to a defence practice area that was, immediately before the repeal of those regulations, declared under subregulation 49(1) of those regulations (see subsection 87(3) of the *Defence Regulation 2016*).

The second note after subsection 15(1) states that there are also exemptions included in the AE Code (see Chapter 1 of the AE Code).

Subsection 15(2) provides that in this section, Defence Force means the Australian Defence Force or the naval, military or air forces of another country that are in the Commonwealth or a Territory, with the approval of the Commonwealth for the purposes of, or a purpose related to, the defence of the Commonwealth.

This paragraph is necessary to ensure that naval, military or air forces of another country that are in Australia with the approval of the Commonwealth and are undertaking joint defence training exercises are included in the scope of the section.

For clarity, section 15 does not affect the operation of the section 14 prohibition on smoking and other fire hazards around vehicles, and this prohibition would still apply in the circumstances set out in section 15.

Division 3 – Transport of explosives under approved security plans

Section 16 – Approved security plan required for regulated Commonwealth agencies

This section defines, and sets out the requirements for, Commonwealth agency security plans and provides for approval of the security plans by the Competent Authority.

This section is necessary to ensure that the Commonwealth transports explosives in accordance with security plans that address measures to prevent theft or access to the explosives by unauthorised persons, additional measures for emergencies, and measures to ensure consideration of the safest practicable routes.

Subsection 16(1) provides that a regulated Commonwealth agency that transports, or will transport, Commonwealth explosives by road or rail must ensure that an approved security plan for the regulated Commonwealth agency is in place and covers the transport of the Commonwealth explosives.

The note after subsection 16(1) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

Subsection 16(2) provides that the Competent Authority may approve a security plan for a regulated Commonwealth agency if the security plan covers the arrangements and procedures for the transport of Commonwealth explosives by road or rail by or for the agency and includes the matters set out in the Regulation.

The matters set out in paragraph 16(2)(b) are:

* a description of the measures for preventing the theft of Commonwealth explosives being transported by road or rail and for preventing unauthorised people from having access to those explosives;
* a statement setting out the vehicle design requirements for vehicles used to transport Commonwealth explosives, and the load securing requirements for securing and protecting those explosives;
* a description of the arrangements for emergency communications in the event of an emergency involving those explosives;
* a statement setting out the requirements for training for persons involved in the transport of Commonwealth explosives by road or rail;
* a statement setting out the requirements for ensuring that vehicles transporting Commonwealth explosives travel by the safest practicable route, including the procedures for planning transport routes;
* a statement setting out the requirements for consultation with State and Territory bodies concerned with the transport of explosives by road or rail; and
* any other matter the Competent Authority considers necessary for the transport.

Section 45 provides that an approved security plan of the Australian Customs and Border Protection Service that was in force under regulation 26 of the *Explosives Transport Regulations 2002* immediately before 1 July 2015 continues in force on and after that day as if it were an approved security plan of the Department administered by the Minister administering Part XII of the *Customs Act 1901*.

Section 17 – Compliance with approved security plans

This section provides for compliance with approved security plans. This section is necessary to give effect to approved security plans.

Subsection 17(1) provides that a person who transports authorised Commonwealth explosives for a regulated Commonwealth agency must comply with any requirement of an approved security plan for the regulated Commonwealth agency that is applicable to the person and the agency has expressly made known to the person.

There may be circumstances where a security plan of the Australian Border Force, the Australian Federal Police, the Defence Force or the Department of Defence is subject to national security classification and available only to security-assessed persons. The effect of this subsection is that the agency must expressly make known to the person any requirement that is applicable to the person, and so a person is not required to comply with a requirement that the agency has not expressly made known to the person.

The note after subsection 17(1) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

Subsection 17(2) provides that, if there is an inconsistency between a requirement of an approved security plan, as it applies to the person, and a requirement of the Regulations, or of an order made under paragraph 44(1)(a) or (b), as it applies to the person, the requirement of the Regulations, or of the order, prevails to the extent of the inconsistency.

Division 4 – Exemptions relating to transport of explosives

Section 18 – Applying for exemptions

This section provides for applying for an exemption relating to transport of explosives. An exemption process is necessary due to the prescriptive nature of the AE Code.

Subsection 18(1) provides that a person (the applicant) may apply to the Competent Authority for an exemption from compliance with a provision of the Regulations.

Subsection 18(2) provides that an application for an exemption must:

* be in writing; and
* state the applicant’s name and address; and
* specify the provision, or each provision, of the Regulations, and, if applicable, of the AE Code, to which the application relates; and
* state whether the exemption is to apply only to a specified person or to every person included in a class of persons who might otherwise be bound to comply with the provision or provisions; and
* specify the Commonwealth explosives to which the application relates; and
* state the reasons why the applicant thinks that the exemption is necessary; and
* set out details of how the applicant proposes to ensure that the explosives will be handled in a way that:

(i) reduces as far as practicable the risks of personal injury, property damage and environmental harm arising from the transport of Commonwealth explosives by road or rail, and the risk of that transport endangering public safety; and

(ii) ensures the security of the explosives; and

* if the application relates to a vehicle, equipment, packaging or other thing—describe the thing; and
* state the period for which the exemption is sought; and
* state the geographical area within which the exemption is to apply.

Subsection 18(3) provides that if the Competent Authority reasonably needs more information or another document to allow the Competent Authority to consider the application, the Competent Authority may, in writing, request the applicant to give the Competent Authority the information, the document or a copy of the document, specified in the request.

Subsection 18(4) provides that if the Competent Authority asks for information or a document under subsection (3), the Competent Authority may choose to not consider the application further until the applicant gives to the Competent Authority the information, the document or a copy.

Section 19 – Competent Authority may grant exemptions

This section provides that the Competent Authority may grant exemptions.

Subsection 19(1) provides that the Competent Authority may, on application, grant an exemption from compliance with a provision of the Regulations.

Subsection 19(2) provides that an exemption granted under subsection 19(1) must be in writing.

Subsection 19(3) provides that in deciding whether to grant the exemption, the Competent Authority must have regard to whether the explosives proposed to be covered by the exemption will be handled in a way that:

* reduces as far as practicable the risks of personal injury, property damage and environmental harm arising from the transport of the explosives by road or rail; and the risk of that transport endangering public safety; and
* ensures the security of the explosives.

This subsection is necessary to ensure that in giving permission for an applicant to not comply with a prescriptive requirement of the Regulations or AE Code, the Competent Authority nonetheless has regard to the purposes of the Regulations.

Subsection 19(4) provides that an exemption may be granted subject to the applicant, specified person or each person in the class, complying with any conditions that the Competent Authority considers necessary to:

* reduce as far as practicable the risks of personal injury, property damage and environmental harm arising from the transport of the explosives to which the exemption relates by road or rail, and the risk of that transport endangering public safety; and
* ensure the security of the explosives.

Subsection 19(5) provides that after making a decision on an application for an exemption, the Competent Authority must notify the applicant in writing as soon as practicable of the decision.

Subsection 19(6) provides that if the decision is to grant the exemption, the notice must:

* state the provision that is, or provisions that are, the subject of the exemption; and
* specify the person, or describe the class of persons, to whom the exemption applies; and
* specify the Commonwealth explosives to which the exemption relates; and
* state the period (which must be no longer than 12 months) for which the exemption is to remain in force; and
* state any conditions considered necessary under subsection (4) to which the exemption is subject; and
* specify the geographical area to which the exemption applies.

Subsection 19(7) provides that unless sooner revoked, the exemption remains in force for the period specified in the notice. This period must be no longer than 12 months.

Subsection 19(8) provides that the Competent Authority must retain a copy of each exemption granted for 2 years after the day it was given.

The note after subsection 19(8) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

Section 20 – AAT review of decisions

This section provides that applications may be made to the Administrative Appeals Tribunal for review of decisions of the Competent Authority under section 19 to:

* refuse to grant an exemption; or
* grant an exemption on terms not sought by the applicant; or
* impose a particular condition on an exemption.

Section 21 – Carriage of exemptions in vehicles

This section provides that sections 8.2.8 and 8.2.9 of Chapter 8 of the AE Code apply in relation to an exemption granted under section 19 as if a reference to transport documentation in those sections were a reference to the exemption.

This section has the effect of requiring an exemption to be carried in the vehicle as part of the transport documentation or train manifest required by the AE Code.

Division 5 – Containers previously containing Commonwealth explosives

Section 22 – Certification that containers are free from explosives

This section provides for certification that containers are free from explosives. This section is necessary to ensure that any container that may still contain residues of explosive material is treated as if it contains explosive.

Subsection 22(1) provides that if a consignor consigns a container that previously contained Commonwealth explosives and the container is free from explosives, the consignor must certify that the container is free from explosives.

Subsection 22(2) provides that if the consignor certifies a container as free from explosives, the consignor must remove from the container, deface or cover, any label or marking that specifies a classification code or United Nations number.

Subsection 22(3) provides that if a container or package that has contained Commonwealth explosives, or purports to have contained Commonwealth explosives, has not been certified in accordance with subsection 22(1), a person must not cause any label affixed to, or marking on, the container or package specifying a classification code or United Nations number to be defaced or obscured.

Subsection 22(4) provides that if a container or package that has contained Commonwealth explosives, or purports to have contained Commonwealth explosives, has not been certified as free from explosives in accordance with subsection 22(1), a person must handle the package or container as if it contains explosives.

The note after subsection 22(4) clarifies that penalties for a failure to comply with subsection (1), (2), (3) or (4) are set by section 20 of the Act.

Subsection 22(5) provides definitions for the following terms:

* ***classification code*** has the meaning given by the AE Code;
* ***consignor*** has the meaning given by the AE Code; and
* ***United Nations number*** has the meaning given by the AE Code.

Part 3 – Control of Commonwealth explosives areas

Division 1 – Preliminary

Section 23 – Purpose of this Part

Part 3 of the Regulations provide for the control of Commonwealth explosives areas. This section provides that Part 3 is made for the purposes of section 14 of the Act.

Subsection 14(1) of the Act allows the regulations to make provision for ensuring the safety of persons who are, and the protection from damage of property that is, in or in the vicinity of a Commonwealth explosives area. Subsection 14(2) of the Act sets out specific matters for which the regulations may make provision.

Section 5 of the Regulations provides that the term Commonwealth explosives area has the meaning given by section 13 of the Act. Section 13 of the Act provides that the term Commonwealth explosives area means any Commonwealth land declared by the regulations to be an explosives area and, where any such land consists of a part of the bed of the sea, or of a bay, estuary or river, includes the waters above the land.

Section 7 of the Regulations provides that for the purposes of the definition of Commonwealth explosives area in section 13 of the Act, each area of Commonwealth land mentioned in Schedule 2 of the Regulations is declared to be a Commonwealth explosives area.

Division 2 – Prohibited activities

Section 24 – Entry into a Commonwealth explosives area

This section provides for entry into a Commonwealth explosives area. This section is necessary to ensure that unauthorised persons are not present within Commonwealth explosives areas. Compliance with this section reduces safety risks associated with the presence of unauthorised persons.

Subsection 24(1) provides that a person must not enter or remain within a Commonwealth explosives area.

Subsection 24(2) provides that subsection 24(1) does not apply if the person is:

* the area manager for the Commonwealth explosives area, appointed under section 35; or
* acting in accordance with written consent provided by the area manager for the area under section 36.

The first note after subsection 24(2) states that a defendant bears an evidential burden in relation to the matter in subsection 24(2) (see subsection 13.3(3) of the *Criminal Code*).

The second note after subsection 24(2) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

Section 25 – Hindrance, obstruction and failure to comply with direction

This section provides for hindrance, obstruction and failure to comply with a direction under section 38. This section is necessary to provide an enforcement mechanism to support the exercise of the area manager’s powers and functions, including the power to give directions within a Commonwealth explosives area in section 40.

Subsection 25(1) provides that a person in a Commonwealth explosives area must not hinder or obstruct the area manager of a Commonwealth explosives area in the exercise of the area manager’s powers or functions, or fail to comply with a direction under section 40.

The note after subsection 25(1) clarifies that penalties for a failure to comply with this subsection are set by section 20 of the Act.

Subsection 25(2) provides that paragraph 25(1)(b) does not apply if the person has a reasonable excuse.

The note after subsection 25(2) states that a defendant bears an evidential burden in relation to the matter in subsection 24(2) (see subsection 13.3(3) of the *Criminal Code*).

Section 26 – Parking, stopping and mooring

This section provides that a person in a Commonwealth explosives area must not park or stop a vehicle, or moor or stop a vessel in contravention of a sign erected by the area manager or in a way that would unreasonably obstruct the passage of other vehicles or vessels.

This section is necessary to provide an enforcement mechanism to support the exercise of the area manager’s powers and functions, including the power to make determinations and erect signs for vehicles and vessels in section 40.

The note after section 26 clarifies that penalties for a failure to comply with this section are set by section 20 of the Act.

Section 27 – Maximum speed limits

This section provides that a person in a Commonwealth explosives area must not drive or ride a vehicle, or operate a vessel, on a part of a Commonwealth explosives area at more than the maximum speed permitted for the vehicle or vessel in that part of the area, as indicated by any sign erected by the area manager.

This section is necessary to provide an enforcement mechanism to support the exercise of the area manager’s powers and functions, including the power to make determinations and erect signs for vehicles and vessels in section 40.

The note after section 27 clarifies that penalties for a failure to comply with this section are set by section 20 of the Act.

Section 28 – Smoking and other fire hazards

This section provides that a person contravenes this section if the person is in a Commonwealth explosives area, and the person is either within 6 metres of explosives or in a fire hazard area, and the person smokes, or is in possession of, creates or uses any fire or naked light, or engages in conduct that is likely to result in a fire or an explosion.

This section is necessary to reduce the risk to the safe handling of explosives of fire from smoking or other fire hazards.

The note after section 28 clarifies that penalties for a failure to comply with this section are set by section 20 of the Act.

Section 29 – Persons under the influence of alcohol or drugs

This section provides that a person must not be under the influence of alcohol or a drug in or near a part of a Commonwealth explosives area in which explosives are being handled.

This section is necessary to reduce the risk to the safe handling of explosives of the actions from persons under the influence of alcohol or drugs.

The note after section 29 clarifies that penalties for a failure to comply with this section are set by section 20 of the Act.

Part 4 – Other matters

Division 1 – Competent Authority

Section 30 – Appointment and powers of Competent Authority

This section provides for the appointment and powers of the Competent Authority. This section is necessary to ensure that the Minister can appoint a Competent Authority to exercise powers and perform functions under the Regulations, and fulfil the functions of Competent Authority set out in the AE Code.

Subsection 30(1) provides that the Minister may, in writing, appoint as the Competent Authority for the purposes of this instrument:

* an SES employee, or acting SES employee, in the Department; or
* an officer of the Navy who holds the rank of Commodore or a higher rank; or
* an officer of the Army who holds the rank of Brigadier or a higher rank; or
* an officer of the Air Force who holds the rank of Air Commodore or a higher rank.

Subsection 30(2) provides that the Competent Authority may exercise all the powers of a compliance auditor.

Subsection 30(3) provides that an appointment under subsection 30(1) may be made subject to conditions stated in the instrument of appointment.

Section 31 – Delegation by Competent Authority

This section provides for delegation by the Competent Authority.

Subsection 31(1) provides that the Competent Authority may, in writing, delegate to a person referred to in subsection 31(2) all or any of the duties, functions and powers (however described) of the Competent Authority under the Regulations other than:

* the power to appoint a person to be a compliance auditor under section 32; and
* the power to grant exemptions under section 19; and
* the power to make an order under section 43.

Subsection 31(2) provides that for the purposes of subsection 31(1), the persons are as follows:

* an APS employee in the Department who is classified as Executive Level 2, or equivalent, or higher; or acting in a position usually occupied by an APS employee who is so classified;
* an officer of the Navy who holds the rank of Captain or a higher rank;
* an officer of the Army who holds the rank of Colonel or a higher rank;
* an officer of the Air Force who holds the rank of Group Captain or a higher rank.

Division 2 – Compliance auditors

Section 32 – Appointment of compliance auditors

This section provides for the appointment of compliance auditors. The appointment of compliance auditors may be subject to conditions. This section is necessary so that the Competent Authority can appoint persons to monitor compliance with the Regulations.

Subsection 32(1) provides that the Competent Authority may, in writing, appoint as a compliance auditor a person who is experienced and trained in the safe handling of explosives and has practical knowledge of Commonwealth explosives and of the legislation relating to the transport of such explosives by road or rail.

Subsection 32(2) provides that an appointment may be made subject to conditions stated in the instrument of appointment.

Section 33 – Compliance audits

This section provides for the conduct of compliance audits. This section is necessary to set out the powers of a compliance auditor, and to ensure these powers are circumscribed.

Subsection 33(1) provides that for the purposes of finding out if the appropriate legislation is being complied with, a compliance auditor may:

* enter premises connected with, or used for the purposes of, activities carried on in relation to, or in relation to any matter incidental to, the transport of Commonwealth explosives by road or rail, or where any documents relating to those activities are kept; and
* conduct an audit by way of an examination or review of any aspect of those activities.

Subsection 33(2) provides that a compliance auditor is not authorised to enter premises unless the auditor produces the auditor’s identity card for inspection by the occupier of the premises and the occupier of the premises has consented to the entry.

Subsection 33(3) provides that in conducting the audit, the compliance auditor may exercise the following powers:

* the power to inspect the premises or anything found there that is connected with, or has been, is being or is likely to be used for the purposes of, the transport of Commonwealth explosives by road or rail;
* the power to take copies of or extracts from any documents inspected;
* the power to take measurements of anything in or on the premises concerning the explosives; and
* the power to make sketches or take photographs of anything in or on the premises concerning the explosives.

Subsection 33(4) provides that nothing in this section authorises a compliance auditor to use force to any extent for the purpose of conducting the audit or to conduct the audit against the expressed wishes of the occupier.

Subsection 33(5) provides that a compliance auditor must, within 14 days after completing an audit, give to the Competent Authority a written report of the audit setting out the results of the audit.

Subsection 33(6) provides definitions for the purposes of this section, including that:

* appropriate legislation means Part 2 of this instrument or orders made under paragraph 44(1)(a) or (b).
* occupier, in relation to a vehicle, means the person in charge or apparently in charge of the vehicle.
* premises includes any place, whether enclosed, built on or not, any vehicle and any part of premises.

The note after subsection 33(6) clarifies that penalties for a failure to comply with subsections (2), (4) or (5) of this section are set by section 20 of the Act.

In the context of the Commonwealth’s explosive transport activities, it is unnecessary to provide for inspection without prior permission from the occupier of premises, or for the use of force. If a coercive inspection regime were considered necessary in the future, the Act would require amendment to provide the necessary powers.

The 14-day period for a written report would allow time for completion of the report, and ensure that the Competent Authority receives such a report in a reasonable time.

Section 34 – Identity cards for compliance auditors

This section provides for the Competent Authority to issue identity cards to compliance auditors. This section is necessary to provide a mechanism for the occupier of premises in which an audit will be conducted to identify compliance auditors.

Subsection 34(1) provides that the Competent Authority must issue to a compliance auditor an identity card that shows a recent photograph of the compliance auditor and includes the signature of the compliance auditor, the name and office of the compliance auditor, and the date that the card expires.

Subsection 34(2) provides that a person who ceases to be a compliance auditor must, as soon as practicable, return the person’s identity card to the Competent Authority.

The note after subsection 34(2) clarifies that penalties for a failure to comply with subsection (1) or (2) are set by section 20 of the Act.

Division 3 – Area managers

Section 35 – Area manager

This section provides for the appointment and powers of area managers. This section is necessary so that the Competent Authority can appoint persons to manage Commonwealth explosives areas.

Subsection 35(1) provides that the Competent Authority must, in writing, appoint an area manager for each Commonwealth explosives area.

Subsection 35(2) provides that the area manager of a Commonwealth explosives area is responsible for the management and control of the area, and may carry out the area manager’s duties under Division 3 with any assistance the area manager thinks necessary.

Subsection 35(3) provides that an appointment may be made subject to conditions specified in the instrument of appointment.

Section 36 – Consent to enter area

This section provides for the area manager to provide consent to enter a Commonwealth explosives area for the purposes of paragraph 24(2)(b) of the Regulations. This section is necessary to ensure the safety of people and property within a Commonwealth explosives area.

Subsection 36(1) provides that an area manager for a Commonwealth explosives area may, for the purposes of paragraph 24(2)(b), give written consent to a person to enter the area.

Subsection 36(2) provides that consent may be given subject to conditions specified in the instrument of consent.

Subsection 36(3) provides that without limiting subsection 36(2), conditions may include requiring the person to observe signs displayed in the area indicating times during which persons with consent may or may not access the area.

Section 37 – Signs relating to entering Commonwealth explosives areas

This section provides that the area manager may erect a sign in a Commonwealth explosives area, including to indicate any restrictions that apply in relation to entering the area. This section is necessary to empower the area manager to erect signs for the purposes of section 36 of the Regulations.

Section 38 – Determinations and signs for vehicles or vessels

This section provides for determinations and signs for vehicles or vessels. This section is necessary to empower the area manager to make determinations and erect signs for the purposes of section 26 and section 27 of the Regulations.

Subsection 38(1) provides that the area manager of a Commonwealth explosives area may, in writing, determine:

* places in the area where a person is, or is not, permitted to park or stop a vehicle or a class of vehicles or to moor or stop a vessel or a class of vessels; and
* the conditions under which a person is, or is not, permitted to park or stop a vehicle or a class of vehicles, or to moor or stop a vessel or a class of vessels, in those places; and
* the maximum speed for a vehicle or vessel, or a class of vehicles or vessels, in all or part of the area.

Subsection 38(2) provides that the area manager must erect prominently displayed signs in relation to any determinations made under subsection 38(1).

Section 39 – Determinations and signs in relation to fire hazard areas

This section provides for determinations and signs in relation to fire hazard areas. This section is necessary to empower the area manager to make determinations and erect signs.

Subsection 39(1) provides that the area manager may, in writing, determine an area of a Commonwealth explosives area as a fire hazard area.

Subsection 39(2) provides that the area manager must erect prominently displayed signs in relation to any determinations made under subsection 39(1).

Section 40 – Directions

This section provides for the area manager to give directions. This section is necessary to ensure the safety of people and property within a Commonwealth explosives area.

Subsection 40(1) provides that the area manager for a Commonwealth explosives area may give directions to a person in the area to ensure the safety of any person in or near the area or protection from damage of any property in or near the area.

Subsection 40(2) provides that the area manager for a Commonwealth explosives area may give directions to a person about handling explosives in or near the area if the explosives have spilled from their container or the explosives are in a damaged container.

Section 41 – Removal of persons, vehicles etc.

This section provides for the removal of persons or vehicles from a Commonwealth explosives area. This section is necessary to ensure the safety of people and property within a Commonwealth explosives area.

Subsection 41(1) provides that the area manager of a Commonwealth explosives area may remove from the area:

* a person who has entered the area without consent and any vehicle or vessel used by the person; or
* a person who the area manager reasonably believes has endangered or may endanger the safety of persons, or has damaged or may damage property, in or near the area.

Subsection 41(2) provides that the area manager of a Commonwealth explosives area may move a vehicle or vessel to another place in the area if:

* the person in control of the vehicle or vessel refuses or fails to comply with a direction under section 40 to remove the vehicle or vessel from the place where it is parked, moored or stopped; or
* for a parked vehicle or moored vessel: the area manager cannot communicate with the driver or master after taking reasonable steps to do so; and had the area manager been able to communicate with the driver or master, the area manager would have given the driver or master a direction under section 40 to move the vehicle or vessel.

Division 4 – Committees of advice

Section 42 – Committees of advice

This section provides that the Minister may, in writing, establish a committee or committees, consisting of persons appointed by the Minister, to advise the Minister on matters relating to explosives and the handling of explosives.

Section 19 of the Act allows the regulations to make provision for or in relation to the establishment, and the functions and powers, of committees to advise the Minister on matters relating to, or to the handling of, explosives.

Division 5 – Orders

Section 43 – List of authorised Commonwealth explosives

This section provides for the list of authorised Commonwealth explosives.

Subsection 43(1) provides that the Competent Authority must specify, by order, Commonwealth explosives, or kinds of Commonwealth explosives, for the purposes of this subsection.

The note after subsection 43(1) states that orders are legislative instruments (see subsection 16(1) of the Act). This ensures that orders are subject to Parliamentary scrutiny in accordance with section 42 of the *Legislation Act 2003*.

Subsection 43(2) provides that for the purposes of section 17 of the Act, an order made under subsection 43(1) takes effect at the start of the day after the day the instrument is registered.

Section 44 – Circumstances requiring special provision

This section provides for the Minister to make provision by order for certain matters.

Subsection 44(1) provides that if the Minister is satisfied that there are circumstances requiring special provision to be made under this section, the Minister may make provision, by order:

* in relation to, or in relation to any matter incidental to, the handling of Commonwealth explosives; and
* in relation to safety measures to be observed at, in or on a place, vehicle, aircraft or vessel at, in, on or in the vicinity of which there are Commonwealth explosives; and
* for safety measures to be observed in or near a Commonwealth explosives area.

The first note after subsection 44(1) clarifies that penalties for a failure to comply with an order are set by section 20 of the Act.

The second note after subsection 44(1) states that orders are legislative instruments (see subsection 16(1) of the Act). This ensures that orders are subject to Parliamentary scrutiny in accordance with section 42 of the *Legislation Act 2003*.

Subsection 44(2) provides that for the purposes of section 17 of the Act, an order made under subsection 44(1) takes effect at the start of the day after the day the instrument is registered.

Subsection 44(3) provides that if there is an inconsistency between a provision of this instrument and a provision of an order made by the Minister under this section, the order prevails to the extent of the inconsistency.

Subsection 44(4) provides that an order ceases to have effect at the earliest of the following:

* the end of 12 months after the day on which the order takes effect;
* the end of any shorter period that is specified in the order;
* the order is revoked.

Subsection 11(1) of the Act allows the regulations to empower a person to direct, by order, that a vessel in which explosives to which Part II of the Act applies are, or are to be, loaded may, for a purpose or purposes specified in the order, be berthed in a port so specified.

Subsection 11A(1) of the Act allows the regulations to empower a person to give, by order, such directions as are necessary for ensuring that such explosives to which Part II of the Act applies as are specified in the order are transported by railway between such places, on such day or days and in such manner as are so specified.

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

Part 5 – Application and transitional provisions

Division 1 – Amendments made by the Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015

Section 45 – Amendments made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015*

This section provides that an approved security plan of the Australian Customs and Border Protection Service that was in force under regulation 26 of the *Explosives Transport Regulations 2002* immediately before 1 July 2015 continues in force on and after that day as if it were an approved security plan of the Department administered by the Minister administering Part XII of the *Customs Act 1901*.

Division 2 – Transitional provisions in relation to the commencement of this instrument

Section 46 – Definitions

This section defines terms used in this division:

* ***old area regulations*** means the *Explosives Areas Regulations 2003*, as in force immediately before the commencement of this section.
* ***old transport regulations*** means the *Explosives Transport Regulations 2002*, as in force immediately before the commencement of this section.

Section 47 – Things done under the old area regulations and the old transport regulations

This section provides for things done under the old area regulations and the old transport regulations.

Subsection 47(1) provides that if a thing was done for a particular purpose under the old area regulations or the old transport regulations and the thing could be done for that purpose under the Regulations, the thing has effect for the purposes of the Regulations as if it had been done for that purpose under the Regulations.

Subsection 47(2) provides that without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to an application, appointment, determination, direction exemption, notice or order being given or made.

Section 48 – Audits

This section provides that despite the repeal of the old transport regulations, regulation 13 of the old transport regulations continues to apply, after the commencement of this section, in relation to an audit that was commenced but not concluded at that commencement as if that repeal had not happened.

Section 49 – Review by the Administrative Appeals Tribunal of exemption decisions of the Competent Authority

This section provides for review by the Administrative Appeals Tribunal of exemption decisions of the Competent Authority.

Subsection 49(1) provides that this section applies if:

* the Competent Authority makes a decision under regulation 16 of the old transport regulations before the commencement of this section; and
* immediately before that commencement, an application has not been made under regulation 19 of the old transport regulations for review by the Administrative Appeals Tribunal of that decision; and
* immediately before that commencement, the time for a person to make such an application has not ended (including any extensions of that time under section 29 of the *Administrative Appeals Tribunal Act 1975*).

Subsection 49(2) provides that despite the repeal of regulation 19 of the old transport regulations, that regulation, as in force immediately before the commencement of this section, continues to apply in relation to the Competent Authority’s decision as if that repeal had not happened.

Schedule 1 – Modifications of the AE Code in relation to Commonwealth explosives

This schedule sets out modifications of the AE Code in relation to Commonwealth explosives.

Item 1 – After section 3.6(3)

This item inserts new section 3.6(4). This section modifies the AE Code to specify that a Class label for Commonwealth explosives that are included in Division 1.4, 1.5 or 1.6, and were manufactured before 9 May 2002, may also display the symbol depicting an exploding bomb that is displayed on the label for explosives included in Division 1.1, 1.2 or 1.3.

Item 2 – Section 6.2(5)

This item substitutes section 6.2(5) of the AE Code with new sections 6.2(5), (6) and (7).

New section 6.2(5) provides that the requirements of section 6.2 do not apply to Commonwealth explosives when transported in or on a Commonwealth vehicle, within the meaning of the *Commonwealth Vehicles (Registration and Exemption from Taxation) Act 1997*, that displays registration plates issued for the Australian Defence Force.

New section 6.2(6) provides that the requirements of section 6.2 do not apply to Commonwealth explosives that are being transported in or on a vehicle forming part of the naval, military or air forces of another country that are in the Commonwealth or a Territory with the approval of the Commonwealth for the purposes of, or a purpose related to, the defence of the Commonwealth.

New section 6.2(7) provides that despite anything else in this Chapter, a load of Commonwealth explosives may be transported in or on a vehicle that is approved for that purpose by the Competent Authority if it is impracticable to transport the load in an enclosed vehicle body that meets the applicable requirements of this Chapter because of the size or shape of the load or the way in which the vehicle is to be loaded or unloaded.

Item 3 – Table 7.2, including the notes

This item substitutes Table 7.2 of the AE Code, including the notes, with Table 7.2 in the Regulations, including the notes.

Schedule 2 – Commonwealth explosives areas

This schedule provides for Commonwealth explosives areas for the purposes of section 7.

Part 1 – Hut Forest Road, South Kiah

Section 1.1 identifies the land acquired by the Commonwealth as being 151.8 ha at Hut Forest Road, South Kiah, being in the parish of Wonboyn, county of Auckland and State of New South Wales being about 15 kms south of Eden, about 1.9kms east of the junction of the Princes Highway and Edrom Road.

Section 1.2 is a plan of the area described in section 1.1.

Section 1.3 describes the land over which the Commonwealth has rights, namely 555.84 ha of land over which the Commonwealth has rights adjacent to the land described in section 1.1. It also identifies the boundaries as those shown on the plan.

Section 1.4 is a plan of the area described in section 1.3.

Part 2 – Twofold Bay, Eden

Section 2.1 describes the land over which the Commonwealth has rights, namely, 598.285 ha at Twofold Bay, Eden in the parish of Kiah, county of Auckland and in the State of New South Wales and being about 5 kms south of Eden. It also identifies the boundaries as being those shown in the plan.

Section 2.2 is a plan of the area described in section 2.1.

Schedule 3 – Repeals

Item 1 repeals the *Explosives Area Regulations 2003*.

Item 2 repeals the *Explosives Transport Regulations 2002*.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Explosives Regulations 2024***

The *Explosives Regulations 2024* (the Regulations) are 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*.

**Overview of the Instrument**

The purpose of the *Explosives Regulations 2024* (the Regulations) is to repeal and replace the *Explosives Transport Regulations 2002* and the *Explosives Areas Regulations 2003* with a single instrument.

The Regulations are necessary to:

* reduce so far as reasonably practicable the risks of personal injury, property damage or harm to the environment or public safety arising from the land transport of Commonwealth explosives;
* give effect to the third edition of the *Australian Code for the Transport of Explosives by Road and Rail* endorsed by the Workplace Relations Ministers’ Council on 3 April 2009 (the AE Code);
* improve transport safety by harmonising, as far as practicable, Commonwealth explosive transport practices with those of the commercial explosive transport industry; and
* prescribe the observance of certain safety measures in the vicinity of declared explosives areas, by providing a mechanism for managing and controlling the areas for safety reasons, including the power to remove people, vessels and vehicles from a declared explosives area.

The Regulations set out detailed provisions for handling of explosives. Section 5 of the Act states that handling includes loading, unloading, discharging, stacking, stowing, storing, transporting and any operation incidental to, or arising out of, any of those operations.

The Regulations also set out detailed provisions for control of Commonwealth explosives areas. Section 13 of the Act states that Commonwealth explosives area means any Commonwealth land declared by the regulations to be an explosives area and, where any such land consists of a part of the bed of the sea, or of a bay, estuary or river, includes the waters above the land. The Regulations prescribe two areas of Commonwealth land as Commonwealth explosives areas.

**Human rights implications**

The Regulations engage the following human rights:

* the right to life;
* the right to safe and healthy working conditions;
* the right to liberty;
* the right to freedom of movement;
* the right to privacy; and
* the right to an effective remedy and right to a fair hearing.

Right to life

Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) sets out the right to life, including that no one shall be arbitrarily deprived of their life. Under international human rights law, the right to life must be respected at all times and no derogation is permitted.

Article 6(1) of the Convention on the Rights of the Child similarly provides that “every child has the inherent right to life”, and article 6(2) commits State Parties to “ensure to the maximum extent possible the survival and development of the child”.

Article 10 of the Convention on the Rights of Persons with Disabilities similarly provides that “every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others”.

The Regulations would positively engage this human right.

The purposes of the Regulations include to reduce, so far as reasonably practicable, the risks of personal injury from the handling of explosives, to improve transport safety, and to prescribe the observance of certain safety measures in the vicinity of declared explosives areas. These purposes support the right to life.

Right to safe and healthy working conditions

Article 7 of the International Covenant on Economic, Social and Cultural Rights sets out the right to safe and healthy working conditions.

The Regulations would positively engage this human right.

The purposes of the Regulations include to reduce, so far as reasonably practicable, the risks of personal injury from the handling of explosives, to improve transport safety, and to prescribe the observance of certain safety measures in the vicinity of declared explosives areas. These purposes support the right to safe and healthy working conditions for people involved in the handling of explosives and people working in Commonwealth explosives areas.

Right to liberty

Article 9 of the ICCPR sets out the right to liberty, including that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.

The Regulations contain a permissible limitation of this human right.

The Regulations set out detailed provisions for control of Commonwealth explosives areas. These provisions include the power for the Competent Authority to appoint, in writing, an area manager for the Commonwealth explosives area. The Regulations provide that the area manager may remove from a Commonwealth explosives area a person who has entered the area without consent and any vehicle or vessel used by the person. The Regulations also provide that the area manager may remove from a Commonwealth explosives area a person who the area manager reasonably believes has endangered or may endanger the safety of persons, or has damaged or may damage property, in or near the area.

These provisions do not include a power for an area manager to arrest or detain a person in a Commonwealth explosives area.

These provisions are necessary to reduce, so far as reasonably practicable, the risks of personal injury from the handling of explosives, to improve transport safety, and to prescribe the observance of certain safety measures in the vicinity of declared explosives areas.

To the extent that any of these provisions impact on the right to liberty, the provisions are established by law, and are necessary to protect national security. As such, the limitations are reasonable, necessary and proportionate.

Right to freedom of movement

Article 12 of the ICCPR sets out the right to freedom of movement. Article 12(3) provides that these “rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant”.

The Regulations contain permissible limitations of this human right.

The Regulations set out detailed provisions for handling of explosives, including provisions for the transport of explosives. Contravention of these provisions in the transport of explosives is a criminal offence under the Act. These provisions are proportionate to the risks involved, and only apply to persons involved in the transport of explosives.

The Regulations also prohibit entry into a Commonwealth explosives area without the written consent of the area manager, and control movement within a Commonwealth explosives area, with limits on parking, stopping and mooring, and maximum speed limits. Contravention of these provisions within a Commonwealth explosives area is a criminal offence under the Act. These provisions are proportionate to the risks involved, and only apply to persons in a Commonwealth explosives area.

These provisions are necessary to reduce, so far as reasonably practicable, the risks of personal injury from the handling of explosives, to improve transport safety, and to prescribe the observance of certain safety measures in the vicinity of declared explosives areas.

To the extent that any of these provisions impact on the right to freedom of movement, the provisions are provided by law, and are necessary to protect national security. As such, the limitations are reasonable, necessary and proportionate.

Right to privacy

Article 17 of the ICCPR provides the right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence.

The Regulations contain permissible limitations of this human right.

The Regulations permit the Competent Authority to appoint in writing a person as a compliance auditor, and to exercise the power of a compliance auditor. A compliance auditor may:

* enter premises connected with, or used for the purposes of, activities carried on in relation to, or in relation to any matter incidental to, the transport of Commonwealth explosives by road or rail, or where any documents relating to those activities are kept; and
* conduct an audit by way of an examination or review of any aspect of those activities.

While on the premises, a compliance auditor may exercise the power to:

* inspect the premises or anything found there that is connected with, or has been, is being or is likely to be used for the purposes of, the transport of Commonwealth explosives by road or rail;
* take copies of or extracts from any documents inspected;
* take measurements of anything in or on the premises concerning the explosives; and
* make sketches or take photographs of anything in or on the premises concerning the explosives.

These powers are limited, as a compliance auditor:

* may only exercise the powers for the purposes of finding out if the appropriate legislation is being complied with;
* is not authorised to enter premises unless the auditor produces the auditor’s identity card for inspection by the occupier of the premises; and the occupier of the premises has consented to the entry;
* is not authorised to use force to any extent for the purpose of conducting the audit; and
* is not authorised to conduct the audit against the expressed wishes of the occupier.

To the extent that any of these provisions impact on the right to privacy, the provisions are provided by law, and are necessary to protect national security. As such, the limitations are reasonable, necessary and proportionate.

Right to an effective remedy and right to a fair hearing

Article 2(3) of the ICCPR provides the right to an effective remedy if persons have suffered human rights violations. Article 14(1) of the ICCPR provides that, in the determination of rights and obligations in a suit at law, all persons have a right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

The Regulations would positively engage this human right by including a right to external merits review through the Administrative Appeals Tribunal of decisions by the Competent Authority to refuse to grant an exemption from a provision of the Regulations. Further, the decisions of the Competent Authority under the Regulations are decisions made under an enactment for the purposes of judicial review of administrative decisions.

**Conclusion**

The Regulations are compatible with human rights because the Regulations promote the protection of human rights, and to the extent that the Regulations may limit human rights, those limitations are reasonable, necessary and proportionate.