

EXPLANATORY STATEMENT

Issued by authority of the Competent Authority, Commodore James Nash

Explosives Regulations 2024

Explosives (Authorised Commonwealth Explosives) Order 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.

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.

Subsection 43(1) of the *Explosives Regulations 2024* (Regulations) provides that the Competent Authority must specify, by order, Commonwealth explosives, or kinds of Commonwealth explosives, for the purposes of this subsection.

Background

The Act authorises the Regulations, which provide for handling of explosives and control of Commonwealth explosives areas.

Section 5 of the Regulations defines that ***authorised Commonwealth explosive*** means a Commonwealth explosive, or a kind of Commonwealth explosive, specified in an order made under subsection 43(1). Section 5 of the Regulations also defines that ***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).

The specification of an explosive as an authorised Commonwealth explosive affects:

- whether and in what circumstances transport of that explosive is prohibited;
- whether requirements of 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) apply;
- whether offence provisions apply to certain conduct involving the explosive; and
- whether a person who transports that explosive must comply with the requirements of an approved security plan.

Purpose and effect

The purpose of the *Explosives (Authorised Commonwealth Explosives) Order 2024* is to specify, by order, Commonwealth explosives, or kinds of Commonwealth explosives, for the purposes of subsection 43(1) of the Regulations.

Details of the instrument are set out in Attachment A.

Consultation

Consultation on the making of the order was not undertaken as there were no substantive changes made to the content of the list of authorised Commonwealth explosives that was applied prior to the repeal of the *Explosives Transport Regulations 2002*. The list is primarily relevant to the transport of Commonwealth explosives by Defence. It does not apply to the transport of non-Commonwealth explosives meaning that consultation with wider industry bodies would not be appropriate.

Commencement

The instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Parliamentary scrutiny

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

The instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

The instrument is 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.

Details of the *Explosives (Authorised Commonwealth Explosives) Order 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Explosives (Authorised Commonwealth Explosives) Order 2024*.

Section 2 – Commencement

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

Item 1 of the table has the effect that the whole of this instrument commences on the day after the 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 subsection 43(1) of the *Explosives Regulations 2024*.

Section 4 – Definitions

This section defines various terms used in the instrument:

- **classification code** has the meaning given by the AE Code.
- **UN number** has the meaning given by the AE Code.

The note at section 4 states that the expression AE Code used in this instrument is defined in the *Explosives Regulations 2024*. Those regulations provide that **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.

Section 5 – List of Authorised Commonwealth Explosives

This section provides that for the purposes of subsection 43(1) of the *Explosives Regulations 2024*, the Commonwealth explosives, or kinds of Commonwealth explosives, set out in the table are specified. Column 1 of the table sets out the UN number. Column 2 of the table sets out the name of the explosive. Column 3 of the table sets out the classification code for the explosive, within the meaning given by the AE Code.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Explosives (Authorised Commonwealth Explosives) Order 2024

The *Explosives (Authorised Commonwealth Explosives) Order 2024* (the Order) 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*.

Overview of the Instrument

The purpose of the *Explosives (Authorised Commonwealth Explosives) Order 2024* is to specify, by order, Commonwealth explosives, or kinds of Commonwealth explosives, for the purposes of subsection 43(1) of the *Explosives Regulations 2024*.

The specification of an explosive as an authorised Commonwealth explosive affects whether and in what circumstances transport of that explosive is prohibited, whether requirements of 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) apply, whether offence provisions apply to certain conduct involving the explosive, and whether a person who transports that explosive must comply with the requirements of an approved security plan.

Human rights implications

The Regulations engage the following human rights:

- the right to life; and
- the right to safe and healthy working conditions.

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 Order would positively engage this human right.

Specification of an explosive in the Order would engage regulatory obligations that would 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 Order would positively engage this human right.

Specification of an explosive in the Order would engage regulatory obligations that would 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.

Conclusion

The Order is compatible with human rights because the Order would promote the protection of human rights, namely the right to life and the right to safe and health working conditions, in relation to the explosives specified in the Order.