

# Regulation of Commonwealth Explosives

Early Assessment Regulation Impact Statement  
for Consultation

**Explosives Act Thematic Review  
Department of Defence | Explosive Ordnance Branch**

## Purpose of this Document

This document examines the case for reforming the current Commonwealth Explosives Regulatory Regime, including the related costs and benefits of three viable options. It assesses the estimated regulatory impact of all options, with a particular focus on the preferred option (Option 3: New Regulatory Regime through Primary Legislation).

This RIS is being publicly released as part the Department of Defence's ongoing, broad-based consultation on regulation of Australia's current explosives regulatory regime. The release of this document aims to provide transparency on the government's decision-making process, and will enable regulatory impacts of options under consideration to be tested with stakeholders.

### Consultation Questions

Specific questions on which input is sought, and categories of information requested, are set out in this document and highlighted in orange boxes. These questions seek to:

- validate the accuracy of the regulatory impact assessment for each option;
- give stakeholders the opportunity to provide further information on the existence of the identified problem and its impacts; and
- the extent of potential impacts of proposed regulatory measures.

Input is sought on the impact of the proposed regulations only. This Early Assessment RIS is not seeking submissions on the suitability of the policy options considered or alternative approaches. These matters have been separately considered by the Explosives Act Thematic Review Project team, with ongoing consultations occurring with key stakeholders to support the resolution of these issues.

Consistent with Australian Government and Office of Best Practice Regulation guidelines, a Final Assessment RIS will be completed prior to the making of a final policy decision (either the introduction of a Bill to Parliament, or a full, formal policy announcement).

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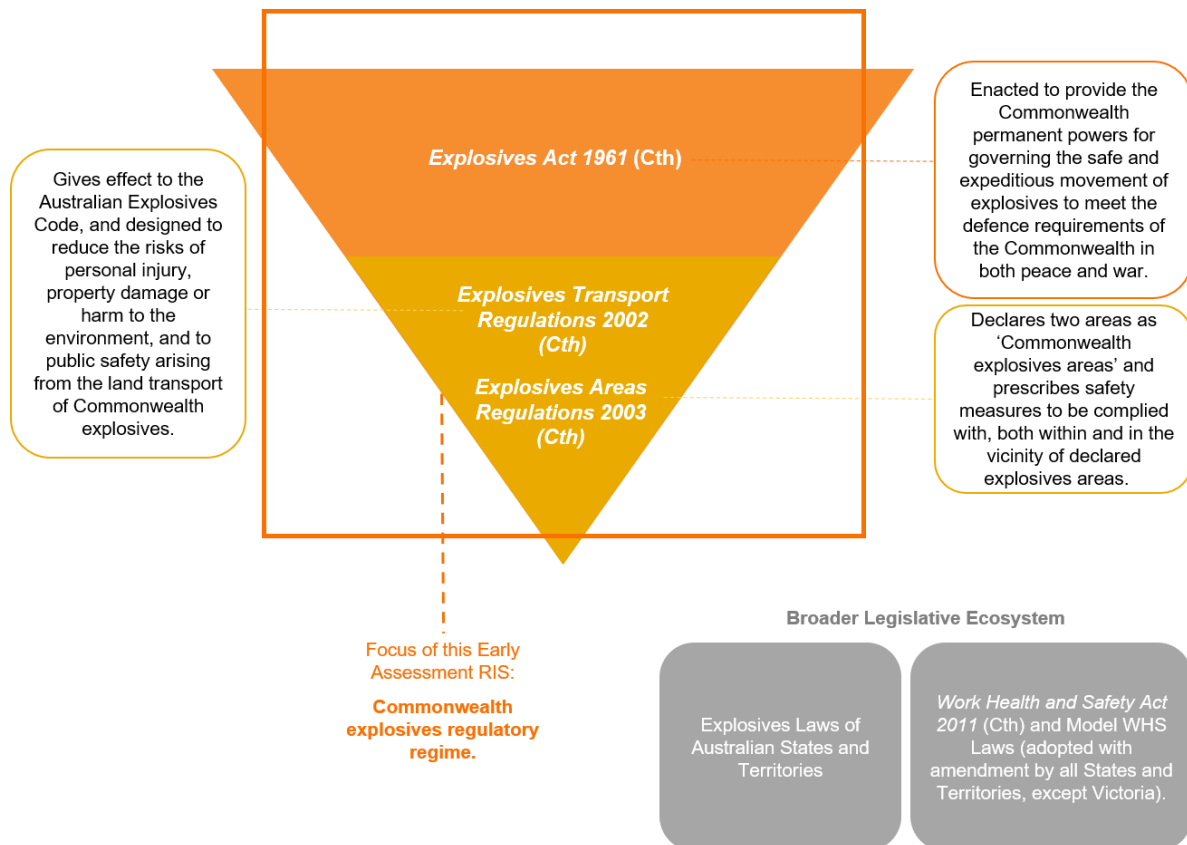
## ii. Executive Summary

The safe, secure and expedient movement of Commonwealth explosives and related explosives activities is essential for the operations of various Commonwealth Department and Agencies' operations. The Department of Defence (including the Australian Defence Force), the Australian Federal Police and the Australian Border Force, among others, rely on the use and maintenance of diverse explosives inventories within and beyond Australia, and across a range of operations environments. Similarly, foreign government officials visiting Australia have requirements to use and maintain explosives stocks to undertake and fulfil their operations in Australia.

The current Commonwealth explosives regulatory regime is comprised of a principal act, the *Explosives Act 1961*, and two subsidiary regulations – the *Explosives Transport Regulations 2002* and the *Explosives Areas Regulation 2003*. In early 2019, the Department of Defence conducted an initial review to consider whether the subsidiary regulations should sunset and if not, what action should be taken to ensure they are fit for purpose. The initial review concluded that the regulations should remain with amendment. A subsequent comprehensive review of the Commonwealth explosives regulatory regime, identified avenues for reform across the entirety of the explosives legislative ecosystem, including both the principal act and subsidiary regulations. This analysis and attached recommendations were tabled in Defence's Comprehensive Review Paper (CRP).

This Early Assessment Regulation Impact Statement (RIS) is focussed on the potential implementation of the recommendations contained in the CRP, as well as additional avenues for legislative reform which have been identified and evolved following the Paper's drafting. Figure 1 below provides an overview of the legislative ecosystem considered throughout this Early Assessment RIS.

Figure 1: Overview of Explosives Legislative Ecosystem



The Department recently completed an initial period of consultation on the topics and recommendations canvassed in the CRP. Consultation will continue on an ongoing basis, with subsequent developments made to this RIS as policy discussions progress.

This Early Assessment RIS argues that four problem elements exist in relation to the current Commonwealth explosives regulatory regime:

1. Expansions in the use and integration of Commonwealth explosives, as well as Australia's changing security environment and increased focus on domestic manufacturing capabilities, have created a new and changing risk environment. The current explosives regulatory regime, established in response to challenges faced during World War II, does not accommodate this risk profile.
2. The current regulatory regime has insufficiently clear safety and security requirements and lacks an independent governance structure capable of enforcing compliance with these requirements. This undermines the safety of persons involved in explosives activities and the security of Commonwealth explosives themselves.
3. Significant ambiguities and a lack of clarity in regulatory requirements complicates Commonwealth contractors' ability to navigate varying explosives regulatory regimes across Australia, leading to a high regulatory burden and increased risk of non-compliance.
4. The Commonwealth explosives regulatory regime's failure to maintain pace with modern legislative developments has resulted in a lack of harmony, which undermines the Commonwealth's ability to regulate and assure the safety and security of explosives activities.

This Early Assessment RIS considers three options for addressing the above problem areas – firstly, allow the Transport and Areas Regulations to sunset (no regulatory change); secondly, amend, to the extent possible, the Transport and Areas Regulations while maintaining the principal Explosives Act in its current form; or, thirdly, introduce a new Commonwealth explosives regulatory regime, including substantial amendments to the Explosives Act, the introduction of new regulations and consequential amendments to other Commonwealth acts, as necessary.

A future version of this RIS will indicate the option likely to be most effective in addressing the identified problem areas, aligning with Government's objectives for intervention, and offering the greatest overall net benefit. This version of the RIS seeks to analyse, at a high level, the costs and benefits of each option, including indicating those costs and benefits which are capable of quantification at a later stage in the RIS process.

This RIS has been developed to provide the basis for a decision to amend the existing Commonwealth explosives regulatory regime. Each of the four RIS questions for consideration at the Early Assessment stage, and the corresponding sections of this document which address them, are linked below.

RIS Question		Relevant Document Section
1	What is the problem you are trying to solve?	Section 1
2	Why is Government action needed?	Section 2
3	What policy options are you considering?	Section 3
4	What is the likely net benefit of each option?	Section 4

### iii. Background

Australia uses explosives for several reasons, including for quarrying, in the mining industry, for fireworks and ammunition purposes. This Early Assessment RIS is focussed on Commonwealth explosives – that is, those explosives required by the Commonwealth for use across various departments and agencies (including the Department of Defence, the Department of Home Affairs, Australian Border Force, and the Australian Federal Police).

Explosives are, by their nature and function to explode or ignite violently, hazardous. They vary in their sensitivity to heat, friction, shock, and impact, with their unpredictability compounded in different climatic conditions and as they deteriorate. Given the magnitude of the risk presented by explosives, and their ability to endanger public safety, the use of explosives is subject to legislation and codes of practice.

The inherent risks associated with Commonwealth explosives, and explosives generally, have not decreased since the development of the regulatory schemes under examination as part of this RIS. Instead, the Commonwealth's increasing and varying use of and requirement for explosives means these risks are changing and, if anything, increasing over time (see Section 1.1 for further discussion). Given this inherent and evolving risk profile, the ceasing of all regulation cannot be considered as a viable policy option, as it will generate a substantial net cost to the community through endangering public safety. The policy options which are considered as part of this RIS, including a quasi-non-regulatory option (in the form of allowing existing regulations to sunset) are set out in detail in Section 3.

#### A. Overview of Existing Commonwealth Explosives Regime

The existing Commonwealth explosives regulatory regime encompasses the *Explosives Act 1961* (Cth) ('the Explosives Act'), and two pieces of subordinate legislation – the *Explosives Areas Regulations 2003* (Cth) ('the Areas Regulations') and *Explosives Transport Regulations 2002* (Cth) ('the Transport Regulations').<sup>1</sup> Together, these instruments purport to regulate the safety, security, and the transport by road and rail of explosives used by the Commonwealth and foreign government officials (currently referred to in the Act as 'visiting foreign forces') in Australia.

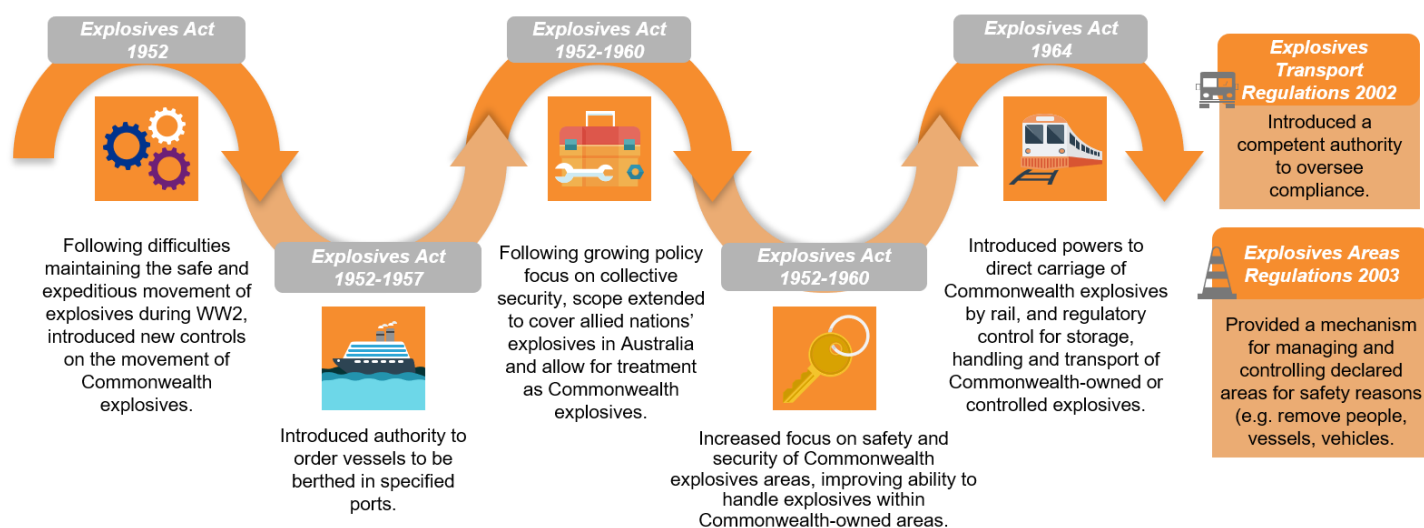
The need for specific regulation of Commonwealth explosives was first recognised in 1952, with the development of the *Explosives Act 1952* (Cth). The 1952 Act afforded the Commonwealth permanent powers to govern the safe and expeditious movement of explosives, necessary for meeting the Commonwealth's defence requirements in both peace and war times. This power's creation was prompted following World War II, where measures then in place to govern the movement of explosives by road, rail, and sea, were incompatible with the actions requirement to fulfil the Commonwealth's operational requirements.

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<sup>1</sup> **A Note on Terminology:** For the purposes of this RIS, a reference to the 'Explosives Regulations' is a reference to the Transport Regulations and Areas Regulations collectively, while a reference to the 'Commonwealth explosives regulatory regime' or 'the regulatory regime' is a reference to the Explosives Regulations and the Explosives Act.

Figure 2 below outlines the Explosives Act and Regulations' historical developments.

Figure 2: Summary of Explosives Act Developments



## B. Overview of Broader Regulatory Context

In addition to the Commonwealth explosives regulatory regime, each Australian state and territory has developed and administers its own explosives regime, or legislation within which Commonwealth explosives are captured. These instruments are set out in Table 1 below.

Table 1: Overview of State and Territory Explosives Instruments

Jurisdiction	Instrument
<b>Australian Capital Territory</b>	<i>Dangerous Substances Act 2004</i> <i>Dangerous Substances (Explosives) Regulations 2004</i>
<b>New South Wales</b>	<i>Explosives Act 2003</i> <i>Explosives Regulations 2013</i> <i>Work Health and Safety Act 2011</i>
<b>Northern Territory</b>	<i>Dangerous Goods Act 2012</i> <i>Dangerous Goods Regulations 2018</i>
<b>Queensland</b>	<i>Explosives Act 1999<sup>2</sup></i> <i>Explosives Regulations 2017</i>
<b>South Australia</b>	<i>Explosives Act 1936</i> <i>Explosives Regulations 2011</i> <i>Explosives (Security Sensitive Substances) Regulations 2006</i>
<b>Tasmania</b>	<i>Explosives Act 2012</i> <i>Explosives Regulations 2012</i> <i>Dangerous Goods (Road and Rail Transport) Act 2010</i> <i>Dangerous Goods (Road and Rail Transport) Regulations 2010</i> <i>Security-sensitive Dangerous Substances Act 2005</i> <i>Security-sensitive Dangerous Substances Regulations 2015</i>
<b>Victoria</b>	<i>Dangerous Goods Act 1985</i> <i>Dangerous Goods (Explosives) Regulations 2011</i> <i>Dangerous Goods (HCDG) Regulations 2016</i>
<b>Western Australia</b>	<i>Dangerous Goods (HCDG) Regulations 2016</i> <i>Dangerous Goods Safety (General) Regulations 2007</i> <i>Dangerous Goods Safety (Explosives) Regulations 2007</i> <i>Dangerous Goods Safety (Security Sensitive Ammonium Nitrate) Regulations 2007</i>

<sup>2</sup> Note: Queensland's Explosives Act is not applicable to explosives to which the Commonwealth Explosives Act applies.

These instruments, in many instances, diverge from the Commonwealth explosives regulatory regime and from each other in several ways, including across:

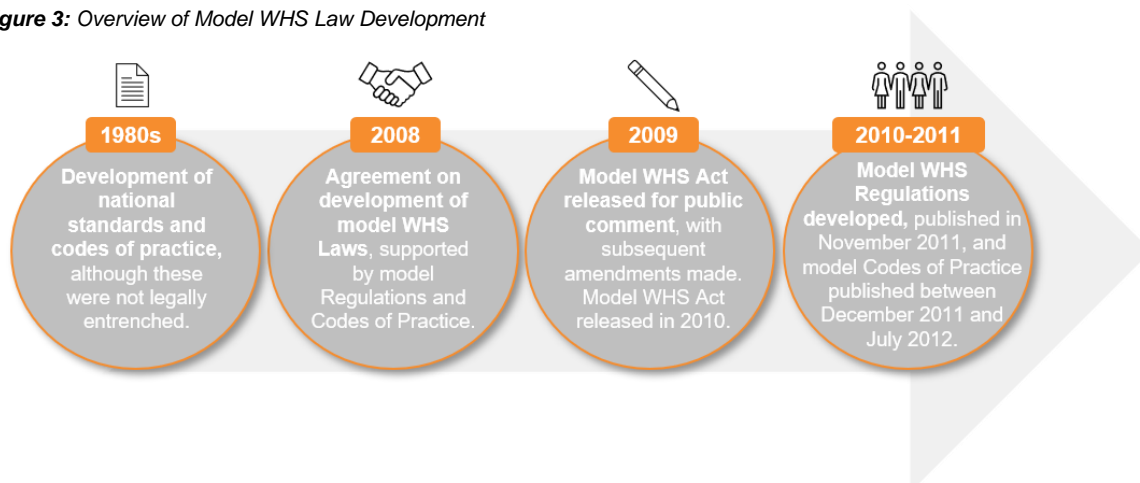
- The definition of explosives;
- Licensing arrangements;
- Rules about conduct;
- Recognition of interstate licenses and permits;
- Notification processes; and
- The application of standards and codes.

The implications of these inconsistencies are discussed further in Section 1 below.

In addition to the specific explosives regimes administered by each state and territory, these jurisdictions' work health and safety (WHS), or occupational health and safety (OHS) regimes also apply, at times, to Commonwealth explosives. The *Work Health and Safety Act 2011* (Cth) ('the WHS Act') implements model WHS laws within the Commonwealth jurisdiction. To date, the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, and Tasmania have passed laws (with some variations) to mirror the WHS Act. Western Australia's WHS Act is expected to commence in January 2022 and mirrors (at least in part) the Commonwealth WHS Act.

The development of the model WHS laws, described in Figure 3, included a range of specific and general safety duties, applicable to workplaces that deal with explosives, and addressed issues relevant to the safe use of explosives, in specified circumstances.

**Figure 3:** Overview of Model WHS Law Development



### C. Background to the Explosives Act Thematic Review

The Areas Regulations and the Transport Regulations were originally due to sunset on 1 October 2019 and 1 April 2020. Following an initial review and conclusion by Defence that the Regulations should be remade with amendment, the Commonwealth Attorney-General approved Defence's request to extend and align the sunset dates of both Explosives Regulations to 1 October 2024, to facilitate a single thematic review. This approval was given legislative effect through the *Legislation (Explosives Instruments) Sunset-Altering Declaration 2019*.

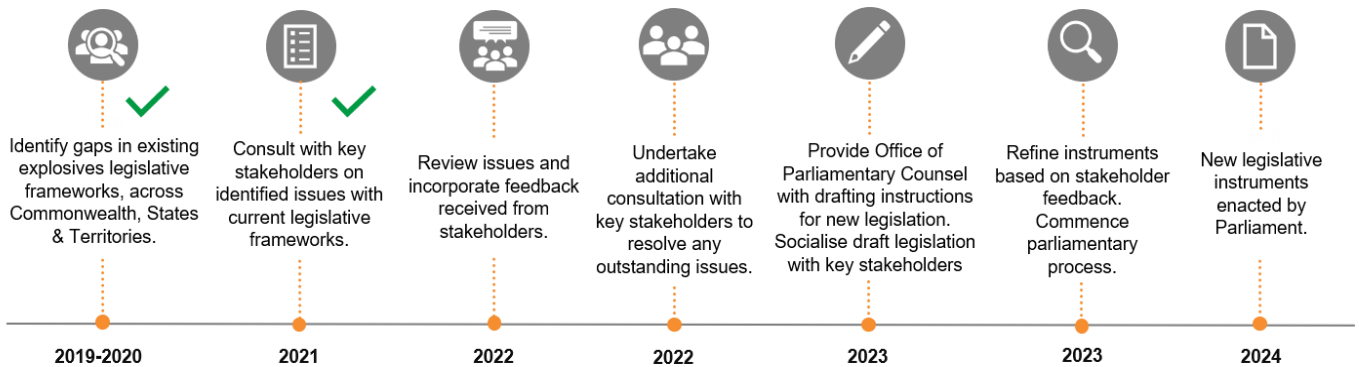
In early 2019, Defence initiated a comprehensive review of the explosives regulatory regime, known as the Explosives Act Thematic Review (EATR) Project. The purpose of the comprehensive review was to gain a detailed understanding of the current explosives legislative frameworks applicable or adjacent to the Commonwealth, and identify issues and gaps in that framework that warrant legislative reform.



These insights were tabled in the Comprehensive Review Paper (CRP), which made several high-level recommendations for discussion with a wide range of stakeholders. The recommendations were drafted in such a way as to support the evolution and refinement of the proposed reforms throughout consultation.

The activities already undertaken by the Project, and those to be completed in future, are set out in Figure 4 below. RIS development will occur alongside completion of the outstanding activities below, and in line with milestones specified by the Office of Best Practice Regulation (OBPR).

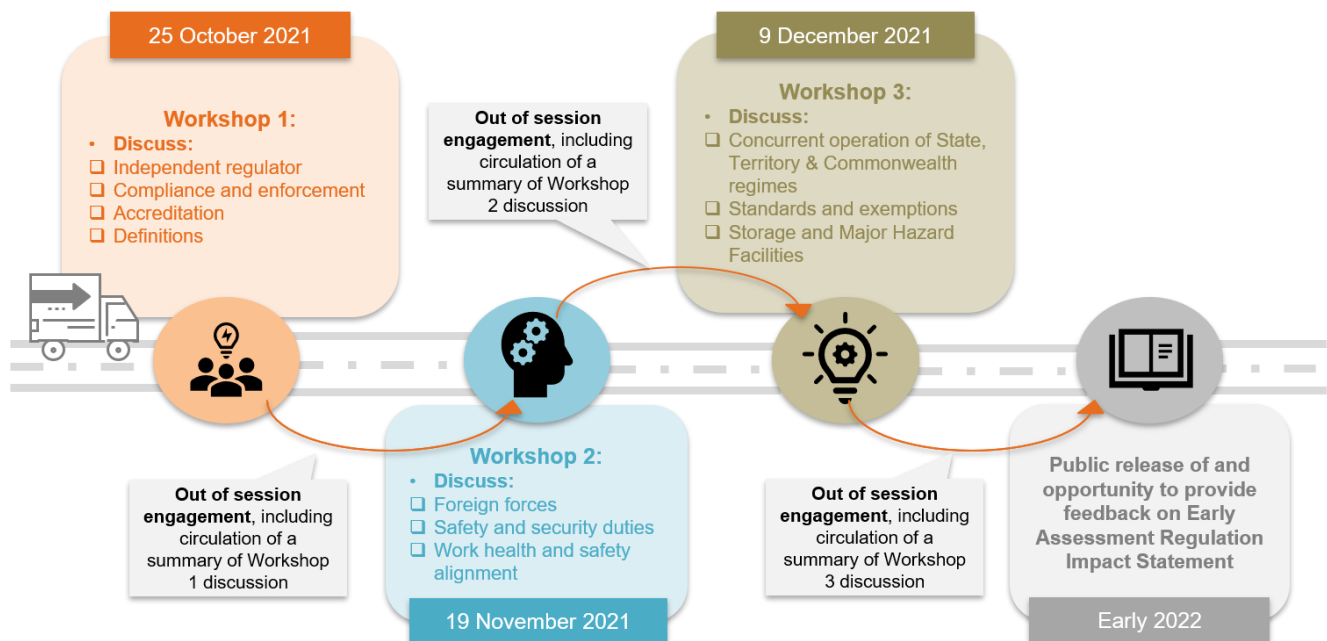
Figure 4: EATR Project Timeline



### D. A Note on Consultation

The following analysis refers to, at various points, consultation insights gathered through a recent series of workshops with Commonwealth, State, Territory and industry stakeholders. This workshop series focussed its discussions on the analysis and recommendations outlined in the CRP and canvassed throughout this RIS. Figure 5 below provides a timeline of recent consultations, including the topics discussed with stakeholders at each stage. An outline of the insights gained throughout this consultation period are set out in Appendix D.

Figure 5: Consultation Roadmap



## 1. What is the policy problem you are trying to solve?

The ability to access, transport and use explosives in a safe and secure manner is essential for fulfilling the unique operational requirements of the Commonwealth Government. Agencies such as the Department of Defence (including visiting foreign government officials), the Department of Home Affairs, the Australian Federal Police, and contractors, acting on the behalf of Commonwealth agencies. These stakeholders use explosives for training, operations, research and development, and various other purposes. The importance of explosives in achieving Commonwealth objectives creates the need for a consistent, legally entrenched, modernised explosives regulatory regime. This regime must meet the needs of the Commonwealth, as well as other impacted stakeholders, including individuals, the community, industry, State, and Territory governments.

There are four problem elements which exist for the current Commonwealth explosives regulatory regime. These are described in Table 2 below and discussed in more detail in the following sections.

*Table 2: Summary of Problem Elements*

Section	Problem Element
1.1	Expansions in the use and integration of Commonwealth explosives, as well as Australia's changing security environment and increased focus on domestic manufacturing capabilities, have created a new and changing risk environment. The current explosives regulatory regime, established in response to challenges faced during World War II, does not accommodate this risk profile.
1.2	The current regulatory regime has insufficiently clear safety and security requirements and lacks an independent governance structure capable of enforcing compliance with these requirements. This undermines the safety of persons involved in explosives activities and the security of Commonwealth explosives themselves.
1.3	Significant ambiguities and a lack of clarity in regulatory requirements complicates Commonwealth contractors' ability to navigate varying explosives regulatory regimes across Australia, leading to a high regulatory burden and increased risk of non-compliance
1.4	The Commonwealth explosives regulatory regime's failure to maintain pace with modern legislative developments has resulted in a lack of harmony, which undermines the Commonwealth's ability to regulate and assure the safety and security of explosives activities.

### 1.1 New and Evolving Risk Profile

The current explosives regulatory regime, as established in the aftermath of World War II, was reflective of the circumstances, challenges and risks associated with Commonwealth explosives at that time. While, since then, the applicable legislation has remained largely static, the risk environment in which the Commonwealth operates, has evolved substantially.

There has been a significant expansion in the use and integration of Commonwealth explosives since the development of the current Commonwealth explosives regulatory regime. This expansion has occurred in conjunction with broader changes in Australia's domestic and international security landscape, and an increased focus on expanding Australia's domestic manufacturing capabilities.

#### 1.1.1 Expanded and Integrated Use of Commonwealth Explosives

At the time of the current explosives regulatory regimes creation, in the aftermath of World War II, Commonwealth explosives were primarily dealt with by uniformed Defence personnel. However, in recent decades, Commonwealth departments and agencies (including the Department of Home Affairs, the ABF, and the AFP, in addition to the Department of Defence), foreign government officials and associated contractors all use,

interact with, and rely on Commonwealth explosives in a substantially more expanded and integrated manner. This expansion creates new and evolving risks, including the third-party handling of Commonwealth explosives, which are inadequately contemplated by the current regime.

Further, the purposes for and activities in which the Commonwealth now seeks to use explosives have also expanded significantly, beyond handling and transport. Research and development, manufacturing, testing, evaluation, long-term storage, and display are all activities which involve explosives and fall within the Commonwealth's remit. However, many of these activities did not occur, occurred less frequently or to a lesser extent at the time of the current explosives regulatory regime's inception. As such, the current regime has a limited effect on tempering the risks arising because of these activities.

**Figure 6:** Consultation Insights

*"The current Commonwealth EO regime fails to capture the EO research & development environment, **where risks are potentially greater or even unknown**. It's built around a uniform "off the shelf model" where everything fits neatly into place."*

### 1.1.2 Changing Security Landscape and Domestic Manufacturing Capabilities

In recent years, risks to Australia's national interest, including national security, have increased because of changing international relations, the international security environment, and rapid technological evolution.<sup>3</sup> Safeguarding Australia's national security and sovereignty relies on a strong Defence industry, underpinned by independent and resilient domestic manufacturing capabilities.

The Department of Defence's 2020 Strategic Update ('the Strategic Update') provides that, increasingly, '...emerging and disruptive technologies will be rapidly translated into weapons systems – such as sophisticated sensors, autonomous systems and long-range and high-speed weapons...'<sup>4</sup> While educated, mobile and qualified workforces are sought to facilitate such developments, the pace with which technology is changing inevitably increases risk. Such risks require a dynamic, adaptable regulatory framework, capable of maintaining pace with relevant developments and ensuring the safety and security of those involved with Commonwealth explosives. The increasing profile and volatility of non-state actors, including terrorists, has also complicated Australia's security environment and heighten the need to prioritise preparedness, and the safe and expeditious movement of Commonwealth explosives.<sup>5</sup>

On the issue of reform, the Strategic Update suggests it is an ongoing and purposeful process, with evolution and adaptability essential '...to meet Australia's changing strategic environment and maintain alignment of strategy, capability, and resources.'<sup>6</sup> Readiness and supply surety depend on safe and compliant operations, best achieved through a fit for purpose and comprehensive regulatory regime.<sup>7</sup>

## 1.2 Absence of Clear, Enforceable Safety and Security Standards

Within the Commonwealth, various agencies are allocated responsibility for explosives, munitions and systems (containing explosives) which are not generally available to the public or industry. This is due to the inherent dangers associated with such items. Where Commonwealth explosives are not comprehensively regulated by clear safety and security standards, community and environmental safety and security, along with the safety and security of Commonwealth explosives activities, may be compromised.

<sup>3</sup> Australian Government, 2021

<sup>4</sup> Department of Defence, 2020 pg. 13

<sup>5</sup> Department of Defence, 2020 pg. 13

<sup>6</sup> Department of Defence, 2020 pg. 13

<sup>7</sup> MP, 2020

### 1.2.1 Explosives Pose Inherent Safety Risks to the Community and Public

Explosives, designed to explode or ignite in a violent manner, are inherently hazardous. They vary in their sensitivity to heat, friction, shock, and impact, with their volatility susceptible to changes in climate and their rate of deterioration. Despite an identified need to design and manufacture explosives with safety and stability in mind, poor packaging, storage, or transportation can lead to degradation, increased sensitivity, and a heightened risk of unintended detonation, endangering nearby persons and environments. Recognising this risk, each Australian State and Territory has developed and introduced its own suite of explosives safety and security regulation, aimed at reducing the risk of serious injury or death for persons engaged in explosives activities, and mitigating the potentially adverse environmental and public safety impacts of explosives. The Commonwealth legislation, however, has not evolved in line with national and international good practice in regulation of these safety and security risks.

The case studies below provide examples of explosives incidents, their contributing or causal factors, and the regulatory lessons learned.

#### Evangelos Florakis Naval Base, Cyprus (2011)<sup>8</sup>

**Situation:** In 2009, the US Navy intercepted the Cypriot-flagged, Russian-owned vessel, Monchegorsk, travelling from Iran to Syria in the Red Sea. The ship contained a significant quantity of high explosive artillery shells, shell casings, compressed gunpowder, primers, and magnesium primers. Following pressure from the United Nations, who noted the shipment was in direct violation of UN Security Council sanctions against Iran, the ship was escorted to a Cypriot port. The Cyprian Navy took responsibility for the explosives, storing them in 98 ISO shipping containers. In 2011, it was discovered that a minor explosion and fire had occurred in one container. One week later, a fire was reported in the containers, with the containers detonating a short time after.

**Outcome:** The explosion killed a total of 13 people and injured 62 others. It also caused extensive damage in the surrounding area. The largest power facility on Cyprus, which provided approximately half the island's electricity, was severely damaged. This caused widespread power outages in the Cypriot capital of Nicosia, more than 65km from the site of the explosion. The cost of the damage caused by the blast was estimated at €2 billion with the loss of power supplies expected to cause ongoing economic loss.

**Lesson Learned:** This case study highlights the potential instability of explosives materials and the importance of safe, secure explosives storage requirements. Without these, there is a high likelihood that death, significant injury, and environmental damage will eventuate.

#### Truck Carrying Ammonium Nitrate Explodes in Queensland (2014)

**Situation:** In 2014, a vehicle transporting ammonium nitrate in south-west Queensland rolled over and became alight. While firefighters attempted to distinguish the blaze, the truck exploded.

**Outcome:** Eight people, including the truck's driver and seven bystanders, were seriously injured and required hospitalisation. The explosion was so powerful that it caused the truck itself to 'disintegrate' and destroy two nearby firefighting trucks.<sup>9</sup> The incident also caused significant damage to the Mitchell Highway, including the destruction of two road bridges and a major section of the highway, which remained closed for more than a week. In the explosion's aftermath, it was hypothesized that the truck's diesel fuel had inadvertently mixed with the ammonium nitrate, causing the explosion.

**Lesson Learned:** While officials commented, following the incident, that there were no concerns with such 'volatile' material being transported on trucks, this case study highlights the potential instability of explosives materials.<sup>10</sup> Where such precarious materials are transported on public roads without consistent, effective mitigations, there is a high likelihood that significant injury and environmental damage may eventuate.

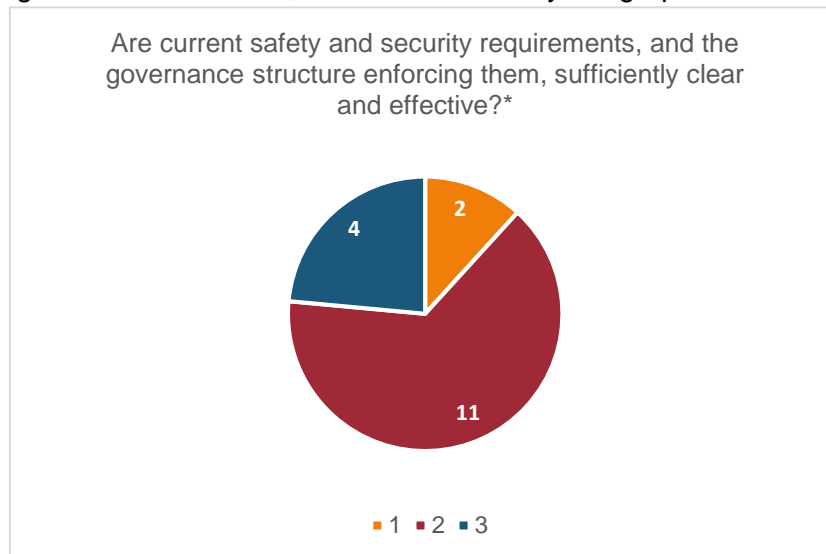
While the realisation of catastrophic explosives incidents is infrequently reported the examples above illustrate the scale and nature of the consequences when incidents occur. The evolving risk profile attached to Commonwealth explosives (as outlined above) means

<sup>8</sup> Extract from DOS Posters, April 2021.

<sup>9</sup> ABC News, 2014

<sup>10</sup> ABC News, 2014

there is an increasing presence, movement and usage of explosives within the Commonwealth thus increasing the potential exposure to such events. This demonstrates a growing need for a legislative framework commensurate with this level of risk. This sentiment is reflected in the opinion of Commonwealth, State, Territory, and industry stakeholders, surveyed during recent consultation, as demonstrated by the graph below.



\*The above relates to current Commonwealth regulation and includes responses from 7 industry respondents, 6 Commonwealth respondents, and 5 state and territory respondents.

In querying whether the current regulatory regime's safety and security requirements, and the governance structure enforcing them, are sufficiently clear and effective:

- Approximately 65% of respondents (a majority) suggested current arrangements are insufficiently clear and effective;
- Approximately 13% of respondents felt that current arrangements are sufficiently clear and effective; and
- Approximately 23% of respondents were unsure.

Examples of stakeholder identified gaps in the Commonwealth regulations include storage regulations and adoption of the Global Harmonised System of Classification and Labelling of Chemicals.

### 1.2.2 Commonwealth Explosives Pose Additional, Unique Risks

In addition to the general risks associated with all explosives as outlined above, there are specific, unique risks which arise in the case of Commonwealth explosives. Due to their broad commercial unavailability, Commonwealth explosives may be particularly attractive targets for inappropriate access and illicit diversion, if they are not adequately protected or secured. For example, there is a heightened likelihood, given the current global security climate that extremist or criminal elements may seek to target explosives storage or transportation facilities, with a desire to acquire such commercially unavailable explosives. The Global Terrorism Index's (GTI) report that global terrorism incidents increased by 17% in 2021 (from 4,458 attacks in 2020 to 5,226 in 2021, representing the highest number of attacks recovered since 2007). Between 2007 and 2021, the GTI reports that explosives were the second most common weapon of choice for terrorists, behind firearms.<sup>11</sup> In Australia, the Australian Security Intelligence Organisation (ASIO) provides that the national terrorism threat remains at 'probable', with '...credible intelligence, assessed to represent a plausible scenario, indicat[ing] an intention and capability to conduct a terrorist attack in Australia.'<sup>12</sup>

<sup>11</sup> <https://www.visionofhumanity.org/wp-content/uploads/2022/03/GTI-2022-web.pdf>

<sup>12</sup> <https://www.asio.gov.au/australias-security-environment-and-outlook.html>

Further, theft by trusted insider personnel, including Commonwealth personnel and contractors, remains a risk that can materialise in circumstances where supervision and inventory management procedures are lacking.

The case studies below highlight some of the risks associated with explosives of the nature used by the Commonwealth, particularly those that may be targets of illicit diversion or theft.

#### Former Army Captain Steals Rocket Launchers (2002-2003)

**Situation:** Between July 2002 and February 2003, a former army captain and munitions expert with 27 years of military experience, stole ten M72 rocket launchers from military stocks. The individual is alleged to have received \$60,000 from selling the single-use weapons to members of a Sydney terrorist organisation.<sup>13</sup> In the almost twenty years since the theft, only a single rocket launcher has been able to be recovered by police.

**Outcome:** At one stage, police believed the launchers had been buried in Sydney bushland by a terror cell linked to ISIL terrorists. The cell had planned to attack high-profile Sydney targets before being intercepted by police and sentenced to prison. New South Wales and Federal police remain focussed on locating the missing launchers, in response to an ongoing national terror alert level of 'high'.<sup>14</sup>

**Identified Gap:** This case study demonstrates the risk posed by not only known criminal threats, but by trusted insider personnel. Without sufficient safeguards, dangerous explosives can be intercepted and become a significant risk to the public.

#### Allegations of Stolen Ammunitions and Explosives at California Marine Base (2021)

**Situation:** In June 2021, a US Marine Corporal was faced federal investigation, following a probe into several service members for allegedly stealing ammunition and explosives from a California Marine Base. The stolen materials were discovered after one Marine Corporal attempted to sell the ammunition and explosives to federal authorities in early 2021.<sup>15</sup>

**Outcome:** The Marine was charged with offences relating to stealing ammunition and explosives. The individual admitted that, while on duty, he sought to steal the materials for recreational use. The Marine was sentenced to 16-months confinement, a rank reduction and eventual disbarment from the military.<sup>16</sup>

**Identified Gap:** This case study demonstrates the ease with which dangerous explosives materials can be stolen, if inadequate protections are in place, putting individuals, communities and the environment at significant risk. This risk remains even where the individual in question does not seek to cause harm using the explosive materials.

In addition to the heightened risk of illicit diversion and theft, described in the case studies above, Commonwealth explosives are fundamentally different from commercial or industrial explosives, creating an additional set of risks which are not currently contemplated by the Commonwealth explosives regulatory regime (given the point in time at which it was written, and the limited amendments which have since occurred). Commonwealth explosives often take the form of a weaponised system, containing its own means of initiation. The explosives are designed to produce high detonation velocity, necessary for destroying targets with brisance. The risks associated with the use, transport, and long-term storage of Commonwealth explosives require a regulatory lens of a distinctly different kind to that applied to commercial and industrial applications. Further, it is necessary that Commonwealth defence capabilities, including details on weapon effectiveness, performance parameters and guidance software, are guarded. This is essential for the maintenance of Australia's defence partnerships, ally relationships, and ensuring the integrity of Commonwealth explosives throughout their lifecycle.

### *Risks in the Defence Context*

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<sup>13</sup> The Age, 2007

<sup>14</sup> 9News, 2014

<sup>15</sup> Dyer, 2021

<sup>16</sup> Kastner, 2021

While the presence of Commonwealth explosives across Australia is expanding, the Department of Defence has historically been the primary user and of such explosives. The Department recognises the unique risks attached to Commonwealth explosives, including their enhanced attractiveness as targets of illicit diversion, theft and their differences from commercial and industrial explosives, but also the inherent safety risks attached to such explosives. Defence has a departmental governance and assurance system for explosives safety management based on international military good practice standards which represent a proactive self-regulatory regime. Data drawn from the Department's Explosives Ordnance Incident Reporting & Management reports from the preceding five years, illustrates that accidents<sup>17</sup> are low frequency incidents. However the higher rate of proactive reporting of near misses<sup>18</sup> illustrates the need for ongoing monitoring for risk controls and their effectiveness.

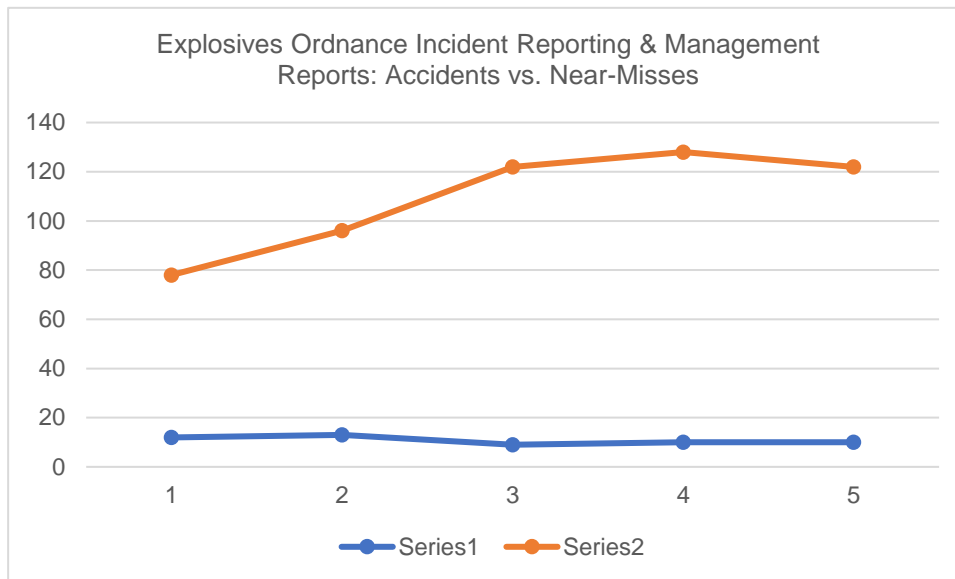


Figure 7: Accidents vs. Near Misses

It is necessary to set out the limitations of this data. The Department's safety and security database captures incidents reported by the Department and a limited range of Defence contractors (primarily Thales Australia) only. Most notably, the Department's activities are largely constrained to the storage, transport and military employment of explosives. As such, while this data is useful to develop an understanding of the efficacy of the Department's handling of explosives inventory, it lacks utility in facilitating understanding the breadth of Commonwealth explosives activities and the envisaged increase in Commonwealth explosives activities into the future.

The relative static nature of the explosives industry in Australia over the last two decades (both in terms of the kinds of explosives being manufactured, and the consistency of players within the ecosystem) means historic incident rates and identifiable trends offer little insight into the kind of regulation required.

<sup>17</sup> EO accident. An accident is an unplanned, unintended, unexpected and/or undesired event, or series of events involving ammunition or EO, which results in:

- (1) Death, injury or occupational illness,
- (2) Substantial damage to the environment, or
- (3) Damage to equipment or property, regardless of ownership.

<sup>18</sup>EO near miss. An EO near miss is an event where no person is injured or property significantly damaged, but the event is worth analysing as:

- (1) Any repeat occurrences may result in an accident, or
- (2) The event may indicate a wider problem requiring investigation and possible remedial action to mitigate the potential of another event occurring.

Outside of the Department, data on explosives-related incidents is extremely limited. One additional data source is the Queensland Government Explosives Incident Database, which offers a monthly snapshot of ‘significant incidents’. Its December 2021 report’s annual snapshot identified a total of 380 incidents, of which 244 were misfires (predominantly occurring during mining activities). Excluding misfires, the most common incident types were vehicle incidents, unsecured explosives, explosives discrepancies (stock accounting), and exclusion zone breaches, among others.

Similarly, explosives incident databases external to Defence offer limited insight, highlighting the following as noteworthy incidents occurring between June 2019 and present:

- 7 explosive events in manufacturing facilities;
- 5 explosive events in storage depots;
- 4 events during ‘use’, including rocket motor test and weaponised drone use;
- 4 vehicle accidents involving explosives; and
- 1 mobile explosive disposal facility accident.

Many of the above incidents occurred within components of the explosives ecosystem where the Commonwealth explosives regime is, as it currently stands, largely silent.

### 1.2.3 Insufficiently Clear, Unentrenched Safety and Security Requirements

Existing Commonwealth explosives legislation is designed to provide the Commonwealth Government with certain powers to oversee the safe and expeditious movement of Commonwealth explosives (by road and rail), as distinct from commercial explosives. This supports the activities of the Commonwealth, including across Australia’s Defence Force, Border Force and Federal Police Force. However, the current regulatory framework does not include clear safety and security requirements, entrenched through an effective legislative governance structure.

This omission of a legally entrenched governance structure, capable of enforcing consistently high standards of regulatory compliance, means the regime lacks the authority to establish and enforce safety and security requirements, which are suitable for the entities and activities involved in dealing with Commonwealth explosives. For example, the Transport Regulations make provision for a Competent Authority. However, its role in monitoring and enforcing compliance with applicable safety and security regulations and codes is restricted to monitoring compliance with and granting exemptions from the provisions of the Regulations. Additionally, unlike its contemporary equivalents, the current enforcement framework contains no legislative measures that secure the Competent Authority’s independence, transparency, and accountability. As such, this role has been largely underutilised in the current regulatory framework.

Table 3 below lists identified gaps in the Explosives Instruments’ current approach to safety and security, compliance, enforcement, and its lack of specification as to the role of an overarching governance structure.

*Table 3: Gaps in Current Safety, Security, Compliance and Enforcement Regime*

Identified Gap	Related Impact
The Explosives Instruments, including the Transport Regulations’ appointment of a competent authority, do not employ a comprehensive, risk-based approach to securing compliance with desired safety and security outcomes.	While section 20 of the Explosives Act makes punishable by a term of imprisonment any contravention of the Act, it does not permit consideration of an alternative, non-criminal penalty. The current regime does not allow for: <ul style="list-style-type: none"> <li>• The appointed Competent Authority to engage with Commonwealth contractors on an education basis in the event of apparent non-compliance;</li> <li>• The consideration of graduated, proportionate administrative sanctions;</li> </ul>



	<ul style="list-style-type: none"> <li>• Continual reassessment of the appropriate approach to regulatory risk, including the ability to change priorities to reflect a fluid, evolving safety and security environment;</li> <li>• Recognition of the compliance record of regulated entities, including using earned autonomy where appropriate;</li> <li>• Management of explosives in a manner consistent with the model WHS laws, including through: <ul style="list-style-type: none"> <li>○ monitoring and enforcing compliance with obligations arising under the WHS Act;</li> <li>○ providing advice and information to duty holders and the community;</li> <li>○ fostering a cooperative, consultative relationship between duty holders, workers, and their representatives;</li> <li>○ promoting and supporting education and training on matters relating to WHS; and</li> <li>○ engaging in, promoting, and coordinating the sharing of information to achieve the objectives of the WHS Act, including the sharing of information with other health and safety regulators.</li> </ul> </li> </ul>
<p>Currently, explosives activities outside the transport of explosives by road and rail are not subject to the exercise of regulatory and compliance functions.</p>	<p>The limited functions of the Competent Authority under the current regime means there is an absence of specific regulatory oversight across the range of explosives activities involving Commonwealth explosives, agencies and visiting forces. Where the current governance structure lacks comprehensive oversight and compliance capabilities, it is not possible to ensure the ongoing safety and security of Commonwealth explosives activities.</p>
<p>The current explosives regulatory regime's provision for compliance auditors is inadequate, and does not support effective, tailored decision-making, undermining the safety and security of explosives.</p>	<p>The current regime prevents compliance auditors from taking immediate action to ensure the safety and security of explosives, including prohibiting or directing the conduct of persons engaged in explosives activities. Compliance auditors' exercise of power is dependent on their attainment of consent from the occupier of the premises and their agreement to the conduct of the audit. This approach significantly limits the current regime's effectiveness in ensuring the safety and security of explosives.</p>
<p>The current explosives regulatory regime does not make provision for a regulatory authority to prescribe alternative measures of compliance, where appropriate, to achieve a commensurate level of risk reduction.</p>	<p>Under the current regime, if domestic and international requirements related to explosives activities are deemed unfit for purpose, the regulatory authority does not have the ability to approve an alternative approach. This is the case even where such measures would enable a level of risk reduction that is equal to or better than the risk level achieved by compliance with those standards.</p> <p>This approach is currently permitted in certain areas of the model WHS law. For example, the model WHS law imposes a 'duty to test' on importers, to ensure that an imported material complies with applicable work health and safety requirements. However, if an importer does not have the means to conduct the requisite testing themselves, the model law supports an alternative course of action – that the importer can ensure that these tests are carried out elsewhere.<sup>19</sup></p>

<sup>19</sup> Safe Work Australia, 2016

<p>The current explosives regulatory regime does not impose specific safety and security duties on the full range of explosives activities and the persons involved in such activities.</p>	<p>Persons or entities dealing with Commonwealth explosives, including those employed as or engaged by contractors, are not obliged to comply with specified safety and security duties, nor does the current framework specify the circumstances in which safety and security duties apply. For example, under the current Commonwealth explosives regulatory regime, Commonwealth contractors are not required to implement, maintain or comply with a safety and security management system that aims to ensure, so far as reasonably practicable, that explosives activities are safe and secure.</p>
<p>The current explosives regulatory regime imposes no reporting requirements on the Competent Authority, and no measures to legally entrench its independence.</p>	<p>The absence of a legislative governance framework which, among other things, entrenches independence, accountability and transparency, may lead to reduced confidence in the integrity of the current legislative system. Modern enforcement frameworks recognise this, with legislative requirements to report on their activities (for example, through an annual report tabled in Parliament, or alternatively to a Minister), and independence measures to enhance public confidence (for example, clear conditions on conflict of interest, and circumstances in which staff can be appointed and removed).</p>

The table above demonstrates the significant vulnerabilities evident in the existing compliance and enforcement framework. Even where the current regime provides avenues for compliance and monitoring activities, these are not underpinned by a legally entrenched, independent and accountable regulator. Without sufficiently rigorous legislative standards for safety, security, compliance and enforcement, the individuals and entities engaged in Commonwealth explosives activities face the realisation, and associated consequences, of a major explosives incident.

### 1.3 Ambiguity Leads to High Regulatory Burdens

Ambiguity in the current Commonwealth explosives regulatory regime means that activities conducted outside of declared Commonwealth explosives areas are subject to relevant State or Territory explosives laws – notwithstanding that they may involve Commonwealth entities and explosive items. There is significant variability across Australian jurisdictions in safety and security standards and enforcement powers, including corresponding penalties. This variance undermines the extent to which a nationally consistent standard for safety and security-related conduct can be developed and enforced. This is particularly important in the context of Commonwealth explosives, for which ease of movement across and beyond jurisdictional boundaries is a pivotal requirement, due to the Commonwealth’s need to operate at a national level to discharge its functions including border protection, defence and national security.

This variation in requirements, when a Commonwealth activity happens to occur or require cross-border movement, also poses significant challenges for Commonwealth contractors seeking to navigate each system. The explosives regulatory inconsistencies between the Commonwealth and Australia’s states and territories are known to have a significant cost, both direct and indirect, on the private sector.<sup>20</sup> The need to navigate several diverging regimes imposes a significant administrative, financial and regulatory burden on those Commonwealth contractors who are required to comply with each system. In addition to the added regulatory burden, this complexity increases the risk of inadvertent regulatory non-compliance from entities that lack the resources, knowledge or financial means to fully understand the numerous requirements and ensure their compliance with each regulatory scheme. This affects the free flow of all explosives (whether intended for Commonwealth or

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<sup>20</sup> Safe Work Australia, 2015

non-Commonwealth use) across jurisdictional borders, with particularly significant potential consequences for nationwide Commonwealth operations.

The above inconsistencies and ambiguities were recognised in 2012, when the Council of Australian Government directed work health and safety ministers to proceed with reform work, targeted at achieving greater consistency across state and territory explosives regulation, with clear benefits to be derived.<sup>21</sup> These benefits were outlined in a 2016 Decision RIS, titled 'Explosives Regulation in Australia' and included:

- Significant cost savings, totalling approximately \$13.83 million, when consistency is achieved across the identified reform areas of definitions, licensing, notification arrangements and authorisation processes;
- Improved business confidence and resource capacity where Commonwealth contractors are no longer required to research and identify the regulations applicable in each jurisdiction and across their relevant activities; and
- Reduced complexity associated with obtaining multiple licenses to work across multiple jurisdictions.<sup>22</sup>

In-principal reforms agreed during the above reform process are currently being implemented (with varying stages of progress) by each State and Territory.<sup>23</sup> However, these reforms focus primarily on streamlining regulatory requirements for commercial and industrial explosives across States and Territories. Consideration of problems and improvement opportunities in the Commonwealth explosives regime were not within scope, nor was clarifying ambiguities at the many points of intersection between Commonwealth explosives and jurisdictional laws.

As a result, notwithstanding recent promising harmonisation initiatives for the commercial and industrial sector, significant inconsistencies remain when dealing with Commonwealth explosives. Such harmonisation is essential, given the large number of industry stakeholders who are required to engage with both the Commonwealth and relevant (yet often diverging) state or territory explosives regimes applicable to their commercial activities. The following subsections discuss these inconsistencies and the impediments they present to the safe, secure, and expedient conduct of Commonwealth explosives activities.

### 1.3.1 Definition of 'Explosives' and Licensing Arrangements

The explosives laws of the Commonwealth and each Australian State and Territory apply different meanings to the word 'explosives'. The term is typically defined in one of the following ways across each of the regimes:

- By adopting the definition contained in a relevant code;
- By prescribing a list of substances or articles that are explosives; or
- By applying an outcomes-based definition.

This complexity requires Commonwealth contractors to identify the relevant definition and consider the attached compliance requirements. It also creates complexity in reconciling the prevailing definition, where conflict arises between a Commonwealth definition and that imposed by a state or territory.

Similarly, the explosives laws of each Australian state and territory prescribe separate licencing and accreditation regimes. While such regimes generally seek to exempt ADF members, AFP employees and foreign government officials from compliance, they remain applicable to employees of the Australian Public Service (including those in the ABF) and Commonwealth contractors.

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<sup>21</sup> Safe Work Australia, 2015

<sup>22</sup> Safe Work Australia, 2016

<sup>23</sup> Safe Work Australia, 2018-19

As such, when involved in multi-jurisdictional operations, Commonwealth contractors are required to identify and comply with the distinct licensing arrangements imposed by the relevant jurisdiction. As the application of relevant jurisdictional requirements is largely dependent on the drafting of that jurisdiction's licencing clause (which have not been definitively legally tested), entities are required to consult the particular law and determine its applicability. This complexity is compounded by the existing lack in reciprocity arrangements across each of Australia's jurisdictions which, in many cases, means a specific licence is required for operation in each individual state or territory (see Appendix A).

Onerous licensing arrangements, where compliance is required across several systems, creates a significant administrative, financial and regulatory burden on those Commonwealth contractors who need to comply with each system. Alternatively, a high regulatory burden increases the risk that stakeholders may inadvertently forego compliance where they do not have the requisite resources or financial means – particularly when there is ambiguity in the applicable regulatory requirements.

*Figure 8: Consultation Insights*

***“The requirement to hold variety of transport licences and licences for differing work activities, for example, storage and handling and transport [creates issues when dealing with differing regulatory requirements across jurisdictions]. Surely one accreditation should be considered.”***

### 1.3.3 Conduct Rules

Each Australian State and Territory have developed and implemented their own distinct rules, offences and penalties for individuals who interact with explosives which, although intended to capture primarily industrial and commercial explosives, in some circumstances inadvertently capture Commonwealth entities and activities as described above. These rules vary considerably in severity between jurisdictions.

This inconsistency requires Commonwealth contractors, when involved in multi-jurisdictional operations, to be aware of and comply with all relevant rules. It also undermines the development of nationally consistent, comprehensive safety and security standards, which, as previously noted, is imperative for facilitating the multi-jurisdictional and often time sensitive nature of Commonwealth explosives activities.

*Figure 9: Consultation Insights*

***“[The current regime creates] confusion between industry and regulators about where the current Commonwealth legislation stops, and the states' legislation starts. Blurring of the lines of what is under the control of Defence when they contract out activities to non-government organisations.”***

### 1.3.4 Notification Requirements

The explosives laws of each state and territory each require notice of the importation of explosives to be given to the relevant authority responsible for the regulation of explosives. However, the timeframe, format and other requirements for notice differs in each jurisdiction. These variances:

- Impede the development and implementation of a nationally consistent approach to explosives activities;
- Affect the fulfilment of the operational requirements of the Commonwealth and foreign government officials in Australia; and
- Increase the resourced required to ensure compliance with differences in regimes, which might otherwise be allocated to ensure the safety and security of explosives.

### 1.3.5 Application of Standards and Codes

The application of relevant explosives standards and codes is inconsistent across all Australian jurisdictions and, in some cases, outdated. This includes exemptions applicable to Commonwealth explosives (in this case, for Defence-specific purposes). For example, Australian Standard 2187 provides that it ‘...does not apply to explosives and explosives ordnance for defence purposes which comply with the Defence Explosives Safety Manual’. However, despite this exemption, in practice this standard is often applied to explosives used in a Defence context, because of their incorporation in the applicable state or territory law. This lack of uniformity undermines the capacity of current standards and codes to support the safe and secure handling of explosives, and forgoes a critical opportunity for alignment with recognised international standards.

Figure 10: Consultation Insights

*“[The current regime’s] reference to exemption from the Australian Explosives Code is **very problematic** as the Code is **significantly out of date** and **out of alignment** with international standards.”*

The identified inconsistencies and ambiguities impose a substantial burden on Commonwealth contractors, and those who are not currently exempt from compliance with state and territory explosives regulatory regimes, including ABF employees. To ensure their compliance, these stakeholders are forced to engage significant resources to understand and comply with the relevant regulations, or run the risk of inadvertent non-compliance due to lack of awareness of applicable regulations.

More broadly, the identified variations prevent the development and implementation of a nationally consistent set of standards for the safe, secure, and expedient movement of explosives across Australia and negatively impact on the fulfilment of key operations.

Figure 11: Consultation Insights

*“Various things need clarification in the legislation but **alignment to international standards for the classification of explosives is needed**. Reference to the international requirements for the marking of plastic explosives is also needed. Classification that aligns with the international system of classification for the air transport of explosives is needed for transport of Commonwealth explosives on civil aircraft and all civil transport modes.”*

*“If standards adopted are accepted international standards, **it sets a good baseline for international harmonisation**, with recognised best practice for safety and security.”*

## 1.4 Failure to Maintain Pace with Modern Legislative Developments

Australia’s current explosives regulatory regime is silent on many critical matters relating to modern explosives activities, or offers outdated, unharmonized regulation, which fails to leverage modern safety and security standards, potentially impacting the operational requirements of the Commonwealth. This issue is particularly evident in the examples of explosives storage and major hazard facilities (MHF), work health and safety, and visiting forces.

### 1.4.1 Explosives Storage and Major Hazard Facilities (MHF)

The current Commonwealth explosives regime makes no provision for the storage of explosives. This means there is no specific Commonwealth legislative standard for the storage of explosives in quantities that do not exceed the threshold quantity specified in Schedule 15 of the *Work Health and Safety Regulations 2011* (Cth) (‘WHS Regulations’).

The nature of Commonwealth explosives activities and associated operational needs means the Commonwealth is likely to store varying quantities of explosives including, in some cases, quantities which fall short of the quantities specified by the WHS Regulations.

This legislative gap undermines the safety and security of Commonwealth explosives which, due to their inherent vulnerabilities and attached risks, remains a prominent concern regardless of the quantity of explosives to be stored. Further, with technological developments in the composition of explosives materials, even small quantities of Commonwealth explosives can cause considerable destruction. As demonstrated through the case studies earlier in this section, explosives storage – if not undertaken in accordance with high safety and security standards – poses risks to individuals and the broader community.

Figure 12: Consultation Insights

*“The consequences from [issues with] security or storage even below MHF thresholds is a **significant risk**. Public perception is also a factor. **How many people can you kill and have the risk level tolerable?** Storage below MHF thresholds is very important.”*

Currently, the storage of quantities of explosives below the WHS Regulation specifications is left to the application of State and Territory explosives laws, to the extent they apply to that activity and are not displaced by a Commonwealth exemption. Where the relevant State or Territory law is displaced (or otherwise not applicable), it is arguable that no specific regulatory measures will apply to the storage of explosives.

In addition, where State and Territory laws do apply, there are significant inconsistencies across each jurisdiction's regime. In some jurisdictions, storage is regulated under the relevant state or territory's WHS regime. While, in other jurisdictions such as Queensland and South Australia, storage regulation falls to the State or Territory's explosives legislation.

Further inconsistency arises in the specific application of each State and Territory's storage regulation. For example, in Western Australia, the *Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007*, do not apply to a storage facility if the only dangerous goods that are or are likely to be present are explosives, in circumstances where an explosives storage licence is already required. In other jurisdictions, compliance with storage regulations is required in addition to, or instead of, a storage licence. These regulatory gaps create significant complexity, for Commonwealth contractors operating across multiple jurisdictions, and for Commonwealth stakeholders seeking to ensure the safety and security of explosives through compliance.

#### 1.4.2 Work Health and Safety

The introduction and subsequent adoption of the model WHS laws by Australia's states and territories (excluding Victoria) occurred after the most recent amendments to Australia's current explosives regulatory regime. As a result, the Commonwealth explosives regulatory regime does not reflect the modern legislative developments contained in the model WHS law, nor does it leverage the safety and security standards it contains.

For example, the *Work Health and Safety Act 2011* (Cth) makes provision for:

- Part 8: Functions and Powers of a Regulator;
- Part 9: Security Compliance – Appointment, Functions and Powers of Inspectors; Powers Relating to Entry, Damage and Compensation; and
- Part 10: Enforcement Measures – Improvement and Prohibition Notices; Remedial Action.

These sections, focussed on promoting compliance with safety and security requirements, and reflective of Australia's modern approach to safety regulation, are not recognised in the current Commonwealth explosives regulatory regime. Instead, there exists a significant gap

in the monitoring and compliance tools available to the Competent Authority, whose own position is largely undefined (as detailed below).

Similarly, where modern developments in the WHS regime does not adequately address or accommodate the needs of persons or activities involving Commonwealth explosives, the current explosives regulatory regime fails to provide adequate clarification. For example, regulation 329 of the WHS Regulations specifies:

*The manufacturer or importer of a substance, mixture or article must, before first supplying it to a workplace:*

- (a) Determine whether the substance, mixture or article is a hazardous chemical; and*
- (b) If the substance, mixture or article is a hazardous chemical – ensure that the hazardous chemical is correctly classified in accordance with Part 1 of Schedule 9.*

However, regulation 328(3) of the WHS Regulations provides that this obligation does not apply to explosives being transport by road, rail, sea, or air if the transport is regulated under a relevant law of a state or territory specified in a corresponding WHS Law. This means the requirement to classify explosives for transport is typically left for Australia's State and Territory explosives laws, which, as detailed in preceding sections, are not consistent in their approach to explosives regulation.

*Figure 13: Consultation Insights*

*“[The current system, with respect to current Commonwealth, State and Territory WHS regimes] means an additional burden ensuring staff are aware of state or territory specific requirements. It also becomes an issue if staff are sent to work in another State / Territory. While Commonwealth law takes precedence, it doesn't always apply.”*

This need for clarification of the inter-relationship between these legislative regimes is further evidenced in the Commonwealth explosive regime's application to Australia's territorial sea and airspace. While the Commonwealth routinely uses explosives outside of those limits, there is not a specific Commonwealth regime which applies. The WHS Act may apply in those circumstances. However, such application would not address the hazards of Commonwealth explosives, as compared with other general workplace hazards. Currently, the Explosives Instruments fail to address this distinction.

Ultimately, these examples demonstrate that there is a clear lack of harmony and clarity on the relationship between the Explosives Instruments and Australia's state and territory WHS laws. Under the current regime, it is not clear:

- Whether the Commonwealth Explosives Instruments apply in addition to, or instead of, the requirements contained in the Commonwealth WHS Act and state and territory WHS laws;
- If the Commonwealth WHS Act, state and territory WHS laws, or the Commonwealth Explosives Instruments prevail when an inconsistency arises (and if it is intended to be the former, this should be specified given the operation of s 109 of the Commonwealth Constitution);
- Whether an offence which falls under both the Commonwealth Explosives Instruments, and the Commonwealth WHS Act or state and territory WHS laws is punishable under each regime, or only one.

Resolution of these ambiguities, and reconciliation between the Explosives Instruments and the modern legislative developments contained in the model WHS law, is necessary to ensure the ongoing safety, security and expedient movement of Commonwealth explosives, essential for Australia's defence, border protection and other Commonwealth activities.

### 1.4.3 Visiting Foreign Government Officials

Currently, the Explosives Act only contemplates the presence of ‘visiting forces’ in Australia for the purpose of, or related to, ‘the defence of the Commonwealth’.<sup>24</sup> While the legal meaning and boundaries of this phrase has not been definitively clarified nor tested, a plain English interpretation indicates it is too narrow to accommodate Australia’s relationships, in both a military and non-military context, with foreign government officials. For example, Australia’s rotation of US Marines through military bases in Darwin, to support air and maritime capabilities and overall force posture, will be ‘significantly enhanced’ in the coming years.<sup>25</sup> In 2021, 2,200 US Marines participated in exercised in Darwin, the number reflecting strict limitations in place due to COVID-19.<sup>26</sup> Comparable initiatives across Australia are likely to expand in the face of Australia’s changing security environment.

Since the Explosives Act’s drafting, Australia’s strategic partnerships have evolved. As such, it is likely that:

- (a) Visiting forces (as a subset of foreign government officials) are, or may be, present in Australia for a broader range of purposes not captured by ‘defence of the Commonwealth’; and
- (b) Foreign personnel, other than those part of a visiting foreign force, are or may be present in Australia for purposes not contemplated by the current regulatory regime.

These circumstances include, for example, where Australia hosts foreign forces in Australia for training purposes or, more broadly, where foreign government officials are present in Australia for non-military purposes (for example, for policing or space related matters). While these purposes are clearly aligned with Australia’s growing strategic interests, they are unlikely to be supported by the current explosives regulatory regime.

Consequently, the use of explosives by foreign government officials in Australia for purposes other than the defence of the Commonwealth may not be subject to the application of the Explosives Instruments, but nevertheless subject to applicable explosives laws of the States and Territories as well as Commonwealth WHS laws. This result exacerbates inconsistencies, ambiguities and regulatory gaps identified throughout this section. Specifically, under the current Commonwealth regime, the operations of visiting foreign government officials in Australia are impeded by the regime’s:

- Lack of explicit provision for visiting forces in Australia, including their authorisation to engage in Commonwealth explosives activities in the course of their duties;
- Complex approach to authorising Commonwealth explosives for use by foreign government officials in Australia; and
- Lack of explicit provision for monitoring and enforcement tools applicable to visiting forces in Australia, including the ability to assess their competence and capacity to safety and securely conduct Commonwealth explosives activities.

These impediments highlight additional vulnerabilities in the current Commonwealth explosives regulatory regime and its unfitness for the purpose of regulating the explosives activities of visiting forces in Australia.

**Figure 14:** Consultation Insights

*“‘Commonwealth defence only’ needs defining because training, participation in exercises etc. should be permitted. **The definition should not be unnecessarily prescriptive.**”*

*“[The ‘Commonwealth defence only’ requirement] **should be broadened.** We need to understand the impact if the definition is broadened to wider foreign government activities.”*

<sup>24</sup> Section 9(b), Explosives Act 1964 (Cth).

<sup>25</sup> Aljazeera News - More US Troops to Come (2021)

<sup>26</sup> Aljazeera News - More US Troops to Come (2021)



*“May need to **consider how we define foreign forces**, or shift to ‘foreign government agencies’.”*

## 1.5 Conclusion

The problem with the Commonwealth explosives regulatory regime, as it currently stands, is four-fold:

1. Expansions in the use and integration of Commonwealth explosives, as well as Australia’s changing security environment and increased focus on domestic manufacturing capabilities, have created a new and changing risk environment. The current explosives regulatory regime, established in response to challenges faced during World War II, does not accommodate this risk profile.
2. The current regulatory regime has insufficiently clear safety and security requirements and lacks an independent governance structure capable of enforcing compliance with these requirements. This undermines the safety of persons involved in explosives activities and the security of Commonwealth explosives themselves.
3. Significant ambiguities and a lack of clarity in regulatory requirements complicates Commonwealth contractors’ ability to navigate the current explosives regulatory regimes across Australia, leading to a high regulatory burden and increased risk of non-compliance.
4. The Commonwealth explosives regulatory regime’s failure to maintain pace with modern legislative developments has resulted in a lack of harmony and unfitness for purpose, which undermines the Commonwealth’s ability to regulate and assure the safety and security of explosives activities.

These problem areas highlight the need for a comprehensive, modern explosives regulatory regime, underpinned by a legally entrenched compliance framework, capable of meeting the unique needs of the Commonwealth as well as additional stakeholders including individuals, the community, industry and state and territory governments.

### Consultation question(s)

- (1) Are the problems set out above accurately described as related to your entity? Are there other elements of the problem which have not been mentioned above?
- (2) Do you have any key examples from your experience which demonstrate or mitigate the significance of each problem component as identified in the RIS?

## 2. Why is government intervention required?

Government has a legitimate ongoing role in regulating the explosives used, possessed and controlled by Commonwealth agencies and visiting forces. These entities have unique operational requirements to use explosives across domestic and international jurisdictional boundaries, undertaking activities posing different risks compared to the commercial and industrial usages that are the focus of State and Territory regulatory frameworks.

Government, in particular the Commonwealth Government, is the only entity capable of establishing a regulatory framework that is both:

- (a) Consistent across jurisdictional boundaries; and
- (b) Tailored for the specific entities, activities and risks posed by Commonwealth explosives.

The need for Commonwealth action in this area has been recognised for over 70 years since the original introduction of Commonwealth explosives legislation in 1952. This regulatory scheme has evolved over time to account for the broadening requirements of the Commonwealth and visiting forces, including by the *Explosives Act 1961* and its two subordinate regulations. Therefore, this RIS does not seek to explore and justify a new regulatory intervention, but rather re-validate the legitimacy of government's continued role in maintaining, enforcing and enhancing a Commonwealth explosives regulatory framework.

### 2.1 Government's Current Role

The existing regulatory regime captures explosives within the Commonwealth domain – that is, owned, possessed or controlled by the Commonwealth, manufactured by the Commonwealth for export, or those owned, possessed or controlled by visiting forces in the Commonwealth for defence purposes. Such items are primarily used by the Department of Defence, but also by other Commonwealth agencies such as the ABF and the AFP.

Explosives not falling within this definition, such as those used primarily in the commercial or industrial domains, are regulated by State and Territory legislation. Explosives which are the subject of state and territory legislation are not just used for different activities, but often have inherently different characteristics to Commonwealth explosives which significantly alter their risk profile. For example, unlike their counterparts used for industrial and commercial means, Commonwealth explosives are often weaponised systems, which may provide insights on Commonwealth defence capabilities, including details on weapon effectiveness, performance parameters and guidance software. These insights are highly sensitive and must be protected.

As described in 'Background', the Commonwealth explosives regulatory regime incorporates some international and domestic codes and appoints a Competent Authority (currently residing within the Defence) specifically to monitor compliance with and grant exemptions to the Transport Regulations.

Government also plays a role through the work health and safety regime. However, the regulatory reach of these laws is limited through their focus on protecting persons from harm arising where work is performed, or processes or things are used for work or in relation to workplaces. Importantly, the WHS Act is not intended to extend these protections in circumstances that are not related to work and public health and safety more broadly. For this reason, the Commonwealth and each State and Territory maintains a separate regime which recognises the specific harms and risks that explosives pose to the public, property and the environment, beyond the limitations of workplaces.

The importance of government playing a regulatory role in relation to Commonwealth explosives has not diminished over time. Rather, it has increased in importance alongside technological advances, broadening application and enhanced explosive magnitude of these items. With these advances, explosives used in the Commonwealth domain have become increasingly attractive targets for theft and illicit diversion, with the consequences of their misuse correspondingly more severe. A robust regulatory framework focused upon safety

and security is only becoming more critical over time. Just as it was 70 years ago, the Commonwealth Government remains best-placed to regulate this area, both due to its unique appreciation of the types of entities and operational activities these regulations need to cover, and its ability to legislate consistently on a national basis.

However, the effectiveness of Government’s role in regulating Commonwealth explosives has, to date, been limited by regulatory settings in the existing regime. As described in the ‘problem’ statement above, these limitations include:

- Insufficient clarity on the applicable safety and security standards, as well as the lack of an independent governance structure capable of enforcing compliance with applicable safety and security requirements;
- Ambiguities and inconsistencies across the current Commonwealth, State and Territory regimes, and their burden on Commonwealth contractors seeking to apply with the appropriate requirements; and
- Failure to maintain pace with and leverage modern legislative developments, undermining the Commonwealth’s ability to regulate and assure the safety and security of explosives activities.

## 2.2 Capacity and Objectives of Government Intervention

With the appropriate legislative and regulatory settings, government has the capacity to intervene more successfully and directly address the problems identified. The Commonwealth Government is best placed to establish a regulatory scheme for Commonwealth explosives that is both consistent across jurisdictional boundaries, and tailored for the specific entities, activities and risks that explosives used in the Commonwealth domain pose.

The objectives for Government intervention, as relevant to the three identified elements of the problem statement, are as follows:

Problem Element		Government Objective
1.1	Expansions in the use and integration of Commonwealth explosives, as well as Australia’s changing security environment and increased focus on domestic manufacturing capabilities, have created a new and changing risk environment. The current explosives regulatory regime, established in response to challenges faced during World War II, does not accommodate this risk profile.	<ul style="list-style-type: none"> <li>• Create a Commonwealth explosives regulatory regime with modern, enduring mechanisms for accommodating Australia’s strategic needs and responding to evolving risks.</li> </ul>
1.2	The current regulatory regime has insufficiently clear safety and security requirements and lacks an independent governance structure capable of enforcing compliance with these requirements. This undermines the safety of persons involved in explosives activities and the security of Commonwealth explosives themselves.	<ul style="list-style-type: none"> <li>• Reduction in the likelihood of explosives-related safety and security incidents, through increased compliance and independent oversight.</li> </ul>
1.3	Significant ambiguities and a lack of clarity in regulatory requirements complicates Commonwealth contractors’ ability to navigate the current explosives regulatory regimes across Australia, leading to a high regulatory burden and increased risk of non-compliance.	<ul style="list-style-type: none"> <li>• Reduction in regulatory burden, resulting in fewer costs, greater clarity, and improved competition across industry.</li> </ul>
1.4	The Commonwealth explosives regulatory regime’s failure to maintain pace with modern legislative developments has resulted in a lack of harmony and unfitness for purpose, which undermines the Commonwealth’s ability to regulate and assure the safety and security of explosives activities.	<ul style="list-style-type: none"> <li>• Reduction in the likelihood of explosives-related safety and security incidents, through increased compliance and independent oversight.</li> </ul>

### 2.3 Constraints or Barriers to Achieving Goal

Government action in this space may be constrained by cross-jurisdictional complexities, given that each Australian State and Territory has its own system for regulating explosives activities. While, theoretically, State and Territory legislation primarily applies to commercial or industrial explosives, and Commonwealth legislation applies to legislation in the Commonwealth regulatory remit, there are areas of ambiguity and disharmony in the detail. For example:

- the items that are captured within the definition of ‘explosives’ varies across Commonwealth, State and Territory explosives legislation. In addition, some State and Territory weapons legislation captures several items (such as grenades) which are considered ‘explosives’ in the Commonwealth context;
- the law is not clear on the application of State and Territory laws to some entities engaged in activities relating to Commonwealth explosives – in particular, Commonwealth contractors and visiting forces.

These complexities, which are also elements of the policy problem, may constrain the Commonwealth Government in achieving its goals. To overcome this potential constraint, it is recognised that close collaboration is required with State and Territory explosives (and, where applicable, weapons) regulators, for the Commonwealth to effectively establish a nationally consistent regulatory regime for the full scope of Commonwealth explosives, entities and activities.

### 3. What policy options are you considering?

Three options have been considered in response to the identified problem elements:

- **Option 1:** Maintain the status quo, by taking no action to either amend or extend the existing Explosives Regulations and as such, allowing them to sunset in October 2024.
- **Option 2:** Maintain the *Explosives Act 1961* in its current form and amend the subsidiary regulations ahead of their sunset in October 2024.
- **Option 3:** Establish a new regulatory regime, through substantial amendment to the *Explosives Act 1961*, the Explosives Regulations, and consequential amendments to other relevant legislation.

Each of these options are discussed in greater detail in the following sub-sections. It should be noted that as policy discussions and decision-making progresses beyond the Early Assessment phase, greater specificity will be provided in relation to each policy option under consideration, particularly for Option 3.

#### 3.1 Option 1: Allow Regulations to Sunset (Status Quo)

Option 1 is the status quo option. Under Option 1, no action would be taken to either amend or extend the operation of the existing Explosives Regulations, which are due to sunset in October 2024. As the Regulations' sunset arrangements do not apply to the Explosives Act, this primary legislation would remain in force, albeit without support from the operation of the subsidiary regulations.

Should the Regulations be allowed to sunset, the existing Commonwealth explosives regulatory framework would be affected in several ways, as set out in the table below.

Affected Legislation*	Implications
<b>Explosives Act 1961</b> S 5 – Interpretation	No regulations would be in place to specify those substances or articles considered 'explosives' for the purpose of the Commonwealth explosives regulatory framework.
<b>Explosives Act 1961</b> Part II – Handling of Explosives	The provisions contained in Part II would not be operationalised, including regulations pertaining to the making of orders and powers related to the handling of explosives, relevant safety measures, the berthing of vessels and the transport of explosives by rail.
<b>Explosives Act 1961</b> Part III – Control of Commonwealth Explosives Areas	No regulations would be in place to declare specific locations as 'Commonwealth explosives areas', as contemplated by Part III of the Act.
<b>Explosives Act 1961</b> S 20 – Offences	As the offence provisions set out in s 20 impose offences for contraventions of subsidiary legislation, these provisions would be rendered unenforceable as no regulations would be in force to stipulate the circumstances in which such offence provisions will apply.

\*'Affected Legislation' refers to the sections contained within the Explosives Act which are reliant on regulations to be operationalised.

Option 1 has been included in this RIS as a baseline 'non-regulatory' option against which the likely net benefit of Options 2 and 3 can be measured.

#### 3.2 Maintain Explosives Act and Amend Subsidiary Legislation

Option 2 involves retaining the Explosives Act, in its current form, as the principal legislation establishing the existing regulatory framework. The subsidiary Transport and Areas Regulations would be amended, to the extent possible with the principal Explosives Act remaining unamended. As such, proposed amendments must be in keeping with the current

regulations' focus on transport by road and rail (the Transport Regulations), and the declaration of Commonwealth Explosives Areas (CEAs) (the Areas Regulations). This approach would create limitations in achieving the objectives set out above in 2.2 as this option does not support amendment of the principal act, which is required to create an explosives regulatory regime with modern, enduring mechanisms for accommodating Australia's strategic needs and responding to evolving risks, and to meaningfully improve safety conditions.

Without amending the principal act, the following changes may occur within the Transport and Areas Regulations:

- Procedural, efficiency improvements to the processes involved in the classification of Commonwealth explosives;
- Procedural, efficiency improvements to the awarding of exemptions for the transportation of Commonwealth explosives; and
- The prescription of additional areas as Commonwealth Explosives Areas, to enliven the administration and management regulations, as well as the offence provisions set out in the Areas Regulations.

The following changes cannot be achieved through amendment to the subsidiary Transport and Areas Regulations, without amendment to the principal Explosives Act:

- Additional compliance and enforcement powers, related to matters outside the current regulations;
- The introduction of a Commonwealth independent regulator, who operates outside Defence;
- Harmonisation with or, where relevant, references to the WHS Act;
- The introduction of an accreditation scheme, or similar statutorily entrenched permissions for the undertaking of Commonwealth explosives activities; and
- The introduction of storage regulations, including regulations for explosives quantities which sit below the current MHF threshold.

### 3.3 New Regulatory Regime Through Primary Legislation

Option 3 contemplates the introduction of a new Commonwealth explosives regulatory regime, established through primary legislation (an amended Explosives Act), and supported by subsidiary regulations and any consequential legislative amendments required to support the regime's operation. The new regime will introduce changes across several areas, set out below, and allow for the creation of modern, enduring mechanisms for accommodating Australia's strategic needs and responding to evolving risks, as well as improving current safety conditions.

#### 3.3.1 Creation of an Accreditation Scheme for Commonwealth Contractors

The Explosives Act and supporting regulations will make provision for an accreditation scheme applicable to Commonwealth contractors, which:

- Requires applicants for accreditation to demonstrate competence and capacity to engage in Commonwealth explosives activities safely and securely;
- Includes arrangements for issuing, varying, suspending, and cancelling a contractor's accreditation status;
- Specifies safety and security duties;
- Prescribes the Commonwealth agencies that use explosives and are to be subject to the scheme;
- Specifies the persons who are employed or engaged by those agencies and the subject of the new scheme; and
- Specifies the classes of persons who are authorised to engage in regulated activities involving explosives, including persons employed, or otherwise engaged by

Commonwealth agencies, and Commonwealth contractors who are required to engage in regulated activities involving explosives in the course of their duties.

The accreditation scheme will be comprehensive, statutorily entrenched permissions system, which is not a feature of the current Commonwealth explosives regulatory regime.

### 3.3.2 Establishment of an Independent Regulator

The Explosives Act and supporting regulations will establish a Commonwealth independent regulator to replace the current regime's provision for a Competent Authority, situated in Defence (as stipulated by the current Transport Regulations).

The independent regulator's powers and functions will be broader than those available under the current regime and include:

- A focus on safety and security, operationalised through the implementation and enforcement of WHS obligations in a manner consistent with the model WHS laws;
- Responsibility for the regulation of the activities involving explosives used by Commonwealth agencies, Commonwealth contractors, and foreign government officials in Australia;
- Empowerment to make administrative decisions on the variation, suspension, and cancellation of Commonwealth contractors' accreditation;
- The creation of fault-based and strict liability offences for serious breaches of the new explosives law; and
- Regulatory and compliance powers and functions across the range of activities involving Commonwealth explosives and used by Commonwealth agencies, contractors and foreign government officials in Australia.

### 3.3.3 Modernisation and Harmonisation

The Explosives Act and supporting regulations will seek to ensure legislative coverage of all modern Commonwealth explosives activities and relevant personnel. The new regime will also seek to operate in harmony with other legislative frameworks, ensuring compatibility with other applicable Commonwealth legislation, including the WHS Act, as well as State and Territory explosives regimes and WHS laws.

To ensure coverage of all modern Commonwealth explosives activities and personnel, the new framework would:

- Introduce Commonwealth regulations for the storage of Commonwealth explosives, including regulations applicable to explosives currently outside the stipulated MHF threshold;
- Maintain Commonwealth regulations for the transportation of Commonwealth explosives, including by road, rail and other means of transportation;
- Dispenses with the requirement that the presence of foreign forces in Australia be 'for the purposes of, or a purpose related to, the defence of the Commonwealth';
- Make provision for visiting foreign government officials in Australia, including visitation for military and non-military purposes; and
- Enables an officer of a Commonwealth Explosives Agency to authorise explosives for use by visiting foreign government officials.

To ensure the new regime operates in a harmonised manner, it would:

- Apply to the exclusion of the explosives laws of the States and Territories;
- Clarify the relationship between that law and the WHS laws of the States and Territories, by providing:
  - The new explosives law applies in addition to the WHS Act and the WHS/OHS laws of the States and Territories;

- The WHS Act and the WHS or OHS laws of the States and Territories take priority where an inconsistency arises; and
- The conduct of a person that is an offence against the new explosives law and the WHS Act and the WHS or OHS laws of the States and Territories can only be punished by a court once.

#### 3.3.4 Additional Amendments

In addition to the preceding identified categories of reform, the following amendments will also feature in the new Commonwealth explosives regulatory regime:

- Provision for appropriate officers of Commonwealth agencies to determine and authorise which explosives are required for the performance of the functions of each agency and members of visiting foreign forces in Australia;
- Requirements for appropriate officers of Commonwealth agencies to keep and maintain a register of those explosives;
- Creation of offences in relation to the use of an explosive that is not authorised in accordance with the new explosives law;
- Definition of the activities relating to explosives that are to be regulated by the new Commonwealth explosives law;
- Prescription of safety and security duties of specified persons across the range of activities involving explosives, and the circumstances in which those duties arise; and
- As part of those duties, obligations to implement, maintain and comply with a safety and security management system that ensures regulated activities involving explosives are, so far as reasonably practicable, safe and secure.



## 4. What is the likely net benefit of each option?

This section contains an impact analysis, including costs and benefits, associated with each option considered in this RIS, to determine (in a future RIS version) the likely net benefit of each option. At this stage in the RIS and broader policy development process, focus has been placed on identifying the relevant categories of costs and benefits. Where possible, the below analysis indicates those costs and benefits which may be capable of quantification in a later version of the RIS. Discussion of qualitative benefits will supplement this analysis.

### 4.1 Methodology

#### 4.1.1 Determining Costs and Benefits

The following impact analysis has been considered across two levels:

- **Overall impacts**, including economic, competition, social, environmental or other.
- **Regulatory impacts**, a subset of the overall impacts, specifically focused upon the regulatory impacts involved in each option and the anticipated burden on regulated entities.

Each level of analysis takes a different approach, and focuses on different stakeholder groups, as set out in further detail below.

#### *Regulatory Impacts*

Regulatory costs form a subset of the overall impacts (costs and benefits) of each option considered by this RIS. It is an Australian Government requirement that any proposed new or changed regulation includes quantification of the anticipated impact on the regulatory costs imposed on businesses, community organisations and individuals. The identification and quantification of regulatory costs must be conducted in accordance with the Regulatory Burden Measurement Framework.<sup>27</sup>

In accordance with these government requirements, a future version of this RIS will calculate the estimated regulatory burden for each policy option. Under the Regulatory Burden Measurement Framework, only certain costs associated with the proposed changes to the Commonwealth explosives regulatory regime are categorised as 'regulatory'. The primary categories of regulatory costs are:

- **Administrative Compliance Costs:** Costs incurred by regulated entities primarily to demonstrate compliance with the regulation. For example, the time and costs associated with keeping records, making an application and notifying government of certain activities.
- **Substantive Compliance Costs:** Costs incurred to deliver the regulated outcomes being sought. Examples include the costs of training employees on regulatory requirements, professional services required to meet regulatory requirements.
- **Delay Costs:** The expenses and loss of income incurred by a regulated income resulting from an application delay, or an approval delay.

There are several types of costs specifically excluded from the Regulatory Burden Measurement Framework. These include, for example, opportunity costs, business-as-usual costs, enforcement and compliance costs (such as fines for failing to comply with regulation), government-to-government regulation, and fees for services. These categories of costs will not be quantified under this RIS.

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<sup>27</sup> Office of Best Practice Regulation, 2021

#### 4.1.2 Future Analysis

This Early Assessment RIS version is focussed on identifying the broad categories of anticipated costs and benefits arising from the proposed policy options. A comprehensive scan has been conducted of available literature and evidence on the impacts of the proposed regulatory changes to the Commonwealth explosives regime (including accreditation and an independent regulator) – on both its potential benefits for individuals, businesses, government, community, and the economy, and the potential regulatory costs of each policy option. Further, recent consultation on the analysis and recommendations contained in the CRP, as well as out-of-session engagement surveys, have provided valuable, preliminary insights on the anticipated regulatory costs and benefits attached to each option.

A future version of this RIS (the First Pass RIS), will attach greater specificity (i.e., quantification) to the regulatory costs identified in this version. Following formal submission to OBPR, the Early Assessment RIS will be published for a period of public consultation, to:

1. Validate the expected overall impacts; and
2. Better understand, and more accurately quantify, the attached regulatory costs.

The purpose of public consultation on the following sections is to:

From here, as the RIS develops beyond an Early Assessment version, it will be updated to include additional economic, social or other costs identified through the consultation process. Similarly, information provided by stakeholders on the regulatory burden of each proposed option will inform quantification of these costs.

The following three sections describe the costs, benefits and overall likely net benefit for each option, in accordance with the methodology described above.

## 4.2 Likely Net Benefit of Each Option

### 4.2.1 Option 1: Allow Regulations to Sunset (Status Quo)

This option involves allowing the Transport and Areas Regulations to sunset. The principal Explosives Act would continue to operate; however, it would do so without the specificity provided by the subsidiary regulations. While this option has been canvassed as the ‘status quo’ option, it presents some regulatory change, in that the Transport and Areas Regulations, which are currently in force, would cease to operate.

#### **Overall Impacts**

The significant safety and security risks associated with allowing the Transport and Areas Regulations to sunset, without an appropriate replacement, means few benefits have been identified in analysing Option 1. The regulatory saving (equal to the total regulatory impacts of the Transport and Area Regulations) arising through allowing the Regulations to sunset has been accounted for as part of the ‘Regulatory Impacts’ section below. As such, the following analysis focusses largely on the negative impacts associated with allowing the Regulations to sunset.

#### **Individuals**

The absence of the Transport and Areas Regulations creates significant safety and security risks for individuals. Specifically, without these Regulations, individuals face an increased risk of harm, injury or death due to Commonwealth explosives activities. For example, if the Areas Regulations are no longer in force, Commonwealth Explosives Areas will no longer be declared, and subsequent administration and maintenance duties would no longer apply. This creates a risk that individuals will find themselves near high-risk areas, in which Commonwealth explosives activities are undertaken, without the baseline risk-reduction measured imposed by the Areas Regulations.

However, this risk extends beyond instances where individuals find themselves in areas where Commonwealth explosives activities are undertaken. This risk extends to anywhere explosives are stored, transported (including public roads) or otherwise handled.

#### Businesses (Engaged in Explosives Activities)

For businesses engaged in explosives activities, the sunseting of the Transport and Areas Regulations will create significant uncertainty, associated with an absence of a common standard governing both declared Commonwealth Explosives Areas, and the transport of Commonwealth explosives by road and rail. Further, businesses may face an increased likelihood of WHS incident occurrence, due to the regulatory gap left by the Regulations' sunseting, and the subsequent increased risk posed by explosives activities.

Further, businesses engaged in explosives activities will experience the ongoing impacts of Explosives Act's ongoing, concurrent operation with State and Territory explosives laws.

These impacts include:

- The ongoing administrative, financial and compliance burdens associated with deciphering and abiding by differing jurisdictional requirements;
- A competitive disadvantage (especially for small businesses) arising from a new to invest financial and staffing resourcing into managing the burdens mentioned above.

While the absence of the Transport and Areas Regulations may allow businesses to produce explosives at a lower cost, this potential benefit is greatly offset by the risks outlined above.

#### Governments

The sunseting of the Transport and Areas Regulations presents a severe reputational risk to the Australian Government. This risk arises due to the increased dangers faced by individuals, the community and environment, as well as from failures to ratify internationally accepted explosives standards. This includes, for example, transport standards such as the UN Model Regulations currently referred to by Australia's Explosives Code.

From an operational perspective, the Australian Government would have reduced visibility and increased ambiguity surrounding the governance of Commonwealth explosives activities (as the role of the Competent Authority is provided for in the Transport Regulations). The Australian Government and relevant delegates would also forgo their authority to remove people from explosives areas, or employ punitive measures for unsafe or insecure explosives activities, which place individuals, the environment and the community at risk.

Australian Government agencies would also experience a lack of certainty in understanding responsibility for explosives transport, handing and activities.

As identified in the context of businesses, while the absence of the Transport and Areas Regulations may allow the Australian Government to produce explosives at a lower cost, this potential benefit is greatly offset by the risks outlined above.

#### Community and Environment

The absence of the Transport and Areas Regulations creates significant safety and security risks for the community and the environment. Specifically, without these Regulations, the community and environment face an increased risk of harm due to Commonwealth explosives activities. In particular, there is a substantial increase in the likelihood of unfavourable environmental impacts, associated with the absence of an ability to declare areas as Commonwealth Explosives Areas and subsequently employ suitable safety mitigations.

**Assessment of Net Expected Benefit:** The above analysis indicates that the net expected benefit of Option 1 is low, given the significant safety and security risks which arise in the absence of the Transport and Areas Regulations.

### **Regulatory Impacts**

As Option 1 envisages the sunseting of the Transport and Areas Regulations which are currently in operation, in line with OBPR's guidance on sunseting instruments,<sup>28</sup> Option 1's regulatory impacts may reflect a regulatory saving equal to the total regulatory impacts of the Transport and Areas Regulations.

However, it is necessary to distinguish between the administrative costs incurred by industry because of the current Regulations' requirements, and the operational and capital costs incurred through industry's safety mitigation actions. While the administrative cost component may cease upon the Regulations' sunseting, it is likely that industry will continue to incur operational and capital costs associated with safety mitigation actions. This is because, even in an unregulated environment, the risks attached to Commonwealth explosives activities remain, as do incentives for risk mitigation (for example, the need to protect against injury, loss of life, or environmental damage). As such, any cost saving arising due to the Regulations' sunseting is likely minimal.

**Likely Net Benefit:** Given the above analysis of overall and regulatory impacts, the likely net benefit of Option 1 is low. While the sunseting of the Transport and Areas Regulations may offer a small regulatory saving (as it represents the removal of an administrative layer of regulation), industry is likely to continue to engage in safety mitigations, meaning the ongoing incurrence of capital and operational costs. Further, even where Option 1 presented a substantial cost saving because of the Regulations' sunseting, the safety and security risks arising in their absence is too significant.

#### **Consultation question(s)**

- (2) Are the impacts of Option 1 accurately described as related to your entity? Are there any other impacts (negative, positive or neutral) of allowing the regulations to sunset, which have not been mentioned above?

#### **4.2.2 Option 2: Maintain Explosives Act and Amend Subsidiary Legislation**

Option 2 involves retaining the Explosives Act, in its current form, as the principal legislation establishing the existing regulatory framework. The subsidiary Transport and Areas Regulations would be amended, to the extent possible with the principal Explosives Act remaining unamended.

### **Overall Impacts**

#### **Individuals**

Given the limited extent of amendments permitted to the Transport and Areas Regulations (without amendment to the principal Act) the impacts outside of those occurring in the status quo setting are limited. However, Option 2 could support the declaration of additional Commonwealth Explosives Areas and the subsequent enlivenment of safety mitigations, which may work to offer additional protection to individuals in their vicinity.

For completeness, the impacts on individuals under the status quo arrangement (i.e., the ongoing operation of the Explosives Act, the Transport and Areas Regulations in their current form) include:

- Ongoing risks of harm, injury or death associated with unregulated storage of Commonwealth explosives, including storage of explosives in quantities beneath the current MHF threshold; and

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<sup>28</sup> Office of Best Practice Regulation, 2020

- Ongoing risks associated with under-regulated security of explosives, including the absence of a comprehensive, statutorily entrenched accreditation scheme, and an independent regulatory with visibility over all explosives activities and involved personnel.

#### Businesses (Engaged in Explosives Activities)

Given the limited extent of amendments permitted to the Transport and Areas Regulations (without amendment to the principal Act) the impacts outside of those occurring in the status quo setting are limited. For completeness, these impacts are set out below:

- Ongoing administrative, financial and compliance burdens arising from need to abide by differing jurisdictional requirements.
- Ongoing competitive disadvantage for small businesses who are unable to participate in explosives market.
- Ongoing uncertainty around mitigation and penalties for WHS incidents, due to complex and overlapping State, Territory and Commonwealth requirements.
- Ongoing risks associated with unregulated storage, and underregulated security, of explosives.

However, the limited scope for change means businesses may experience ongoing certainty and familiarity, associated with the continuance of existing processes and procedures. They may also benefit from gained efficiencies in the classification and approval processes for transport of explosives by road and rail. Businesses will also benefit from avoiding the regulatory costs associated with applying to and complying with a new accreditation framework for Commonwealth contractors.

#### Governments

Given the limited extent of amendments permitted to the Transport and Areas Regulations (without amendment to the principal Act) the impacts outside of those occurring in the status quo setting are limited. For completeness, these impacts are set out below:

- Ongoing ambiguity and complexity surrounding governance arrangements, with no legally entrenched competent authority, with independence, accountability & transparency.
- Lack of certainty for Commonwealth agencies responsible for explosives transport, handling and other activities.
- Ongoing potential duplication of regulator activity across Commonwealth and jurisdictional governments.

However, the Australian Government may benefit from ongoing certainty and familiarity, arising from the continuance of existing processes and procedures, noting this certainty and familiarity is inherently limited but the lack of a legally entrenched regulator. Similarly, the Australian Government may avoid costs associated with establishing an independent regulator.

#### Community and Environment

Given the limited extent of amendments permitted to the Transport and Areas Regulations (without amendment to the principal Act) the impacts outside of those occurring in the status quo setting are limited. However, Option 2 could support the declaration of additional Commonwealth Explosives Areas and the subsequent enlivenment of safety mitigations, which may work to offer additional protection to the community and the environment.

For completeness, the impacts on individuals under the status quo arrangement (i.e., the ongoing operation of the Explosives Act, the Transport and Areas Regulations in their current form) include:

- Ongoing risks of community and environmental damage associated with unregulated storage of Commonwealth explosives, including storage of explosives in quantities beneath the current MHF threshold; and
- Ongoing risks associated with under-regulated security of explosives, including the absence of a comprehensive, statutorily entrenched accreditation scheme, and an independent regulatory with visibility over all explosives activities and involved personnel.

**Assessment of Net Expected Benefit:** The above analysis indicates that while Option 2 may provide qualitative benefits in the form of ongoing certainty and familiarity, the limited scope of amendments permitted under the Regulations means the net expected benefit is low. However, the net expected benefit of Option 2 is higher than that offered by Option 1, given Option 2's provision for ongoing baseline (and some limited enhancements) to the safety and security measures contained in the current Commonwealth explosives regulatory regime.

### **Regulatory Impacts**

A future version of this RIS will provide specific, quantified regulatory impacts against Option 2. In line with Australian Government requirements, these regulatory impacts will be focussed on the administrative and substantive compliance costs for businesses engaged in Commonwealth explosives activities, as well as the delay costs attached to Option 2. These include:

- Firstly, any uplift in compliance associated with the declaration of additional Commonwealth Explosives Areas. The extent of this uplift will depend on the number of new Areas declared, and the subsequent number of businesses affected, the size of the businesses (as smaller businesses are likely to incur additional costs from the required uplift), and the degree of uplift imposed by the declaration of a new Area.
- Secondly, any uplift in compliance associated with amendments to the Transport Regulations, which allow for efficiencies in the classification and approval of Commonwealth explosives for transportation. While this change is most likely to manifest as an administrative cost saving, it may impose a cost on industry if, for example, additional administrative work or condensed timeframes were imposed on industry to create these efficiencies.

**Likely Net Benefit:** Given the above analysis of overall and regulatory impacts, the likely net benefit of Option 2, when compared with Option 1, is moderate. The ongoing operation of the Regulations with minor amendment offers substantially more safety and security protections than that afforded under Option 1. However, the limitations on amending the Transport and Areas Regulations, without amendment to the principal act, means Option 2 presents little change from the status quo arrangement. As such, identified efficiencies and ambiguities will be ongoing. This likely outweighs any benefit provided through continued familiarity and certainty associated with the current framework.

### **Consultation question(s)**

- (3) Are the impacts of Option 2 accurately described as related to your entity? Are there any other impacts (negative, positive or neutral) of maintaining the principal act and amending the subsidiary regulation which have not been mentioned above?

### 4.2.3 Option 3: New Regulatory Regime Through Primary Legislation

#### **Overall Impacts**

Option 3 contemplates the introduction of a new Commonwealth explosives regulatory regime, established through primary legislation (an amended Explosives Act), and supported by subsidiary regulations and any consequential legislative amendments required to support the regime's operation. The new regime will introduce several regulatory mechanisms, including an accreditation scheme, an independent Commonwealth regulator, safety and security duties for Commonwealth contractors, and storage regulations, among others.

#### **Individuals**

For individuals, Option 3 offers improved safety and security outcomes, resulting in a reduced risk of injury or death. Option 3's introduction of an accreditation scheme, independent regulator, safety and security duties, and storage regulations (among other regulatory mechanisms) will incite an industry-wide uplift in the undertaking of Commonwealth explosives activities. This uplift, in turn, offers individuals greater protection from unfavourable safety and security outcomes.

Individuals are unlikely to bear any costs from the introduction of Option 3.

#### **Businesses (Engaged in Explosives Activities)**

The regulatory costs which may be incurred by industry under Option 3 are considered as part of the 'Regulatory Impacts' section below. In addition to these regulatory costs, industry may experience temporary disruption associated with a shift to a new regulatory scheme. The extent of this disruption, and associated transitional costs, are dependent on the maturity of each individual business (as this maturity will dictate the level of uplift required).

Under Option 3, industry is likely to benefit from the introduction of a single, nationally consistent regime, include consistent definitions, a Commonwealth accreditation framework and attached notification, authorisation and classification processes. Where businesses have previously been deterred from engaging in Commonwealth explosives activities, due to the need to decipher the diverging regulations of each Australian jurisdiction, Option 3 presents an opportunity for improved market accessibility and greater competition. Similarly, increased clarity for employers and employees surrounding applicable WHS obligations may reduce the regulatory burden for existing industry participants, and incentivise entry from new participants.

#### **Governments**

Both the Commonwealth, and State and Territory governments will be impacted because of Option 3. These impacts are analysed separately below.

##### *a. Commonwealth*

The most significant cost which the Commonwealth Government will incur under Option 3 is the establishment and ongoing operation of the independent regulator, and the regulator's functions. This includes funding for the creation of processes and systems, the acquisition of technology, and staff training, which will be required for the initial set up and ongoing operation of the independent regulator.

Further, given Option 3 likely requires a regulatory uplift, 'passed on' regulatory costs may mean the manufacture, storage, transport and other Commonwealth explosives activities become more expensive. However, this is unlikely to be a substantial cost, when considered against the Commonwealth's overall level of spending on Commonwealth explosives activities.

Under Option 3, the Commonwealth is likely to benefit from the introduction of improved governance arrangements, including stronger visibility over industry operations and more comprehensive safety and security mechanisms, supported by a legally entrenched

independent regulator, focussed on compliance and transparency. Similarly, Option 3 represents alignment with the Commonwealth's strategic interests, including its desire to develop a more mature, robust and resilient domestic manufacturing capability. Option 3 will offer regulation that is sufficiently comprehensive and modern, to meet the requirements of an evolving risk environment arising from expansion in Commonwealth explosives activities and involved personnel.

#### *b. States and Territories*

The costs incurred by State and Territory governments under Option 3 is largely dependent on the extent to which those governments seek to harmonise their jurisdiction's legislation with the new Commonwealth regime. Where State and Territory governments do seek to harmonise their legislation, they may incur costs associated with the introduction of new accreditation requirements (in alignment with the Commonwealth accreditation scheme), as well as other transitional costs, administrative costs attached to the establishment of new regulatory mechanisms.

However, where states and territories choose to align their explosives regimes with that of the Commonwealth, reciprocity arrangements may ultimately reduce their administrative burdens as recognition of Commonwealth accreditation will mitigate the need for states and territories to undertake their own application processes for accreditation.

#### *Community and Environment*

For individuals, Option 3 offers improved safety and security outcomes, resulting in a reduced risk of community disruption or environmental damage. Option 3's introduction of an accreditation scheme, independent regulator, safety and security duties, and storage regulations (among other regulatory mechanisms) will incite an industry-wide uplift in the undertaking of Commonwealth explosives activities. This uplift, in turn, offers the community and environment greater protection from unfavourable safety and security outcomes.

The community and environment are unlikely to bear any costs from the introduction of Option 3.

#### *Regulatory Impacts*

A future version of this RIS will provide specific, quantified regulatory impacts against Option 3. In line with Australian Government requirements, these regulatory impacts will be focussed on the administrative and substantive compliance costs for businesses engaged in Commonwealth explosives activities, as well as the delay costs attached to Option 3.

The most substantial regulatory costs are likely to arise from:

- The need to initially apply for and maintain, on an ongoing basis, accreditation status, including the completion of an application for accreditation and ongoing compliance assessments;
- Costs attached to industry's development of processes and systems, the acquisition of technology, the need to train staff in new regulatory requirements, and ongoing auditing; and
- Costs associated with the general regulatory uplift imposed by Option 3, including new storage regulations and the introduction of regulations for explosives materials currently below the specified MHF quantity threshold.

The extent of the costs incurred because of the above is largely dependent on each industry player's existing levels of safety and security activities and their level of maturity. For example, it is likely that the costs incurred by a new, less mature industry player, would be higher than that of an established industry participant. However, it should be noted that given the level of risk attached to explosives activities, it is likely many industry players already engage in a high, comprehensive standard of safety and security practice. Where this is the case, the level of uplift required, and subsequent regulatory costs will be minimal.



### Consultation question(s)

- (4) Are the impacts of Option 3 accurately described as related to your entity? Are there any other impacts (negative, positive or neutral) of introducing a new regulatory regime through primary legislation which have not been mentioned above?

## 5. Who will you consult about these options and how will you consult with them?

**Note:** This question will be answered in full as part of a future version of this RIS. However, the below information provides an overview of past and upcoming consultation activities (which form part of the broader EATR Project activities), which will continue to inform the development of this RIS, in addition to its publication.

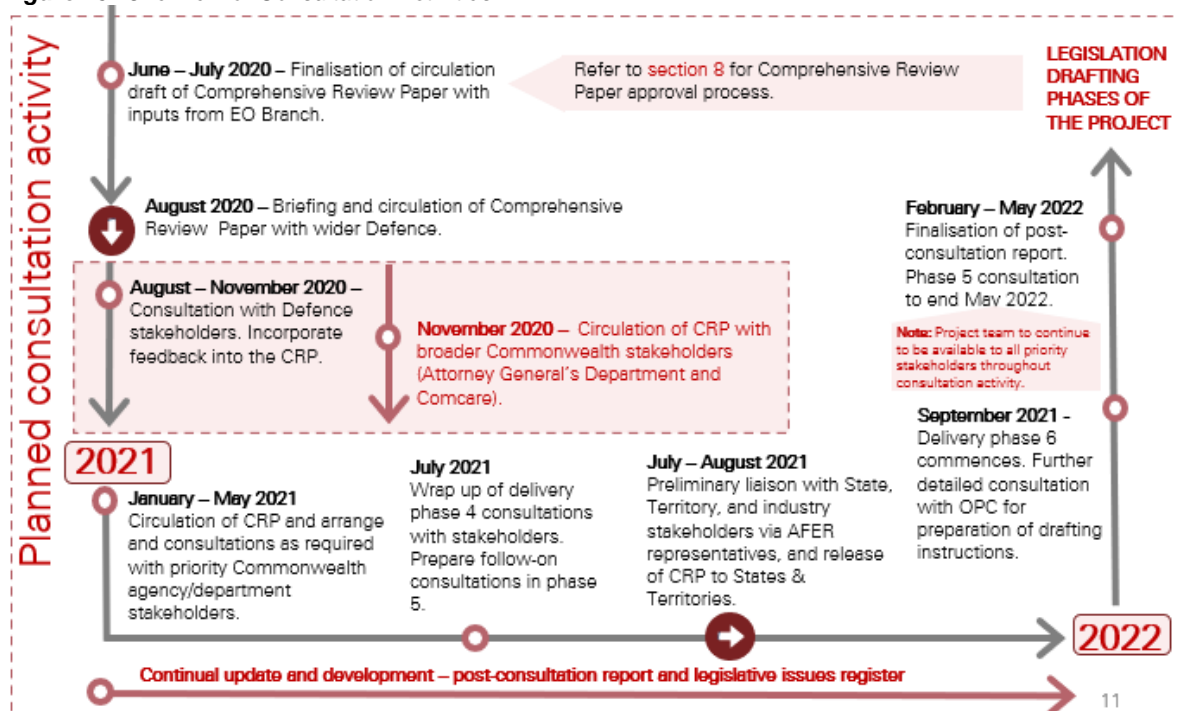
### A. Preliminary Consultation Activities

In its preliminary phases throughout 2019 and early 2020, the EATR Project commenced consultation activities to gain initial stakeholder insights whilst drafting the CRP. These activities included:

- Support of Defence in PARARI 2019 conference (liaison with international 5-eyes partners);
- Support of Defence in AFER 2019 conference (liaison with States and Territories);
- Liaison with industry providers (Thales, NTSS, Toll, ChemTrans);
- Engagement with Defence Explosive Ordnance Committee (DEOC) points of contact to facilitate requests for information;
- Defence facility visitation to further understand operational considerations surrounding storage and transport; and
- Requests for further consultation activity with wider Commonwealth Agencies and Departments.

The image below provides an overview of consultation activities which have occurred between 2020 and 2022.

**Figure 15: Overview of Consultation Activities**



As indicated by Figure 15, circulation of the CRP and consultation with key stakeholders on related themes and issues occurred throughout 2021. This included an intensive period of consultation during October to December 2021 (including 3 workshops with each stakeholder group, being industry, States and Territories and Commonwealth stakeholders). This consultation period provided key inputs for this iteration of the Early Assessment RIS.

The publication of this RIS document will coincide with a further period of consultation with key State and Territory stakeholders, as set out in the table below.

Date	Location	Stakeholder
<b>23 May 2022</b>	Sydney	NSW
<b>24 May 2022</b>	Newcastle	Australian Explosives Industry Safety Group (AEISG)
<b>25 May 2022</b>	Brisbane	QLD
<b>27 May 2022</b>	Darwin	NT
<b>2 June 2022</b>	Canberra	ACT
<b>6 June 2022</b>	Melbourne	VIC
<b>7 June 2022</b>	Adelaide	SA
<b>9 June 2022</b>	Perth	WA

During each of these consultation sessions, stakeholders will be invited to provide their feedback both as part of their relevant session, and in response to this RIS document while it is published for public consultation. The RIS will also be provided to all industry and Commonwealth stakeholders for their review and comment.

Following the conclusion of this RIS document's public consultation period, the contents of this document will be refined to account for progress in policy discussions, informed by stakeholder feedback. Where necessary, consultation with stakeholders will continue, especially to inform calculation of the likely net benefit of each option tabled in this RIS.

## 6. What is the best option from those you have considered?

**Note:** This question will be answered as part of a future version of this RIS, following the progression of policy discussions and decisions.

## 7. How will you implement and evaluate your chosen option?

**Note:** This question will be answered as part of a future version of this RIS, following the progression of policy discussions and decisions.

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## Appendix C: Summary of Consultation Insights

The following tables summarises the insight gained through consultation with Commonwealth, State, Territory and industry stakeholders on the analysis and recommendations tabled in the CRP. In addition to the questions and answers set out below, each session involved extensive discussion on each topic area. Key insights have been extracted into the body of this RIS. Names have been redacted to ensure stakeholders' anonymity.

### Workshop 1

#### Commonwealth Stakeholders

Topic	Question	Responses
Definitions	Do you agree or disagree with the themes we have identified as emerging from your feedback forms?	I agree with the issues and themes identified. No further suggestions.
	How do you anticipate our ideas for reform (purpose and principles-based definitions) will impact your agency/organisation?	The impact on CASA is only that classification of Commonwealth explosives for air transport on civil aircraft will need to have been conducted in accordance with the ICAO Technical Instructions (basically UN model regulations).
	Do you agree or disagree with the issues regarding definitions identified in the CRP?	The existing definition doesn't cause CASA an issue. Classification for transport doesn't need including in the definition.
Accreditation	Do you agree or disagree with the themes we have identified as emerging from your feedback forms?	Additional accreditation not needed as explosives normally forbidden for air transport are subject to specific approval (accreditation) for that flight. (Adrian-CASA)
	Do you have other questions or suggestions related to accreditation?	
	Do you agree or disagree with the issues identified in the CRP regarding the current framework?	Are we comfortable that Commonwealth agencies would not be accredited? Is this the model that ARPANSA use?
	How do you anticipate our ideas for reform (implementation of accreditation scheme) will impact your agency/organisation?	At CASA we regulate air operators and foreign air operators coming into Australia. This basically includes accreditation to carry or not carry dangerous good including explosives that aren't forbidden for air transport. Additional accreditation not.

<b>Independent Regulator</b>	How do you anticipate our ideas for reform (establishment of an independent regulator) will impact your agency/organisation?	An Independent Regulator for Commonwealth explosives will be essential under the new legislation. The role and responsibilities avoiding unnecessary burden and overreach is needed.
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### State and Territory Stakeholders

*Verbal discussion only – no written responses submitted.*

### Industry Stakeholders

Topic	Question	Responses
<b>Definitions</b>	Do you agree or disagree with the issues regarding definitions identified in the CRP?	Would an item ever stop being a Commonwealth Explosive – for example, after being transferred to a disposal organisation?
	How do you anticipate our ideas for reform (purpose and principles-based definitions) will impact your agency/organisation?	It's positive to have mentioned disposals in the definition of activities. Disposals are broad and evolving, unlikely to encourage or see innovation in Commonwealth facilities. The discussion must consider SME involvement and value to this ecosystem

## Workshop 2

### Commonwealth Stakeholders

*Verbal discussion only – no written responses submitted.*

### State and Territory Stakeholders

Topic	Question	Responses
<b>Outstanding Questions from Workshop 1</b>	Do you have any outstanding questions or comments from workshop 1?	As a regulator, I am interested in this intending to take over the regulation of all explosives and explosive related MHF's in the states/territory (as indicated in sections 1.16 and 1.17 of the original consultation document.
		When foreign force explosives come into Australia are they imported under the Commonwealth control?

### Industry Stakeholders

*Verbal discussion only – no written responses submitted.*

## Workshop 3

### Commonwealth Stakeholders

Topic	Question	Responses
<b>Concurrent Operation</b>	Should the Commonwealth explosives regime apply to the exclusion of the States and Territories?	Yes. The Commonwealth must override the State legislation unless the state regulation is fully harmonised with the Commonwealth legislation. The Commonwealth should not be hampered in its operations due to State/territory differences.
	Should the Commonwealth explosives regime apply to the exclusion of the States and Territories?	Some of the Commonwealth explosives regime will need to apply beyond Australian territory especially in circumstances where local legislation in those areas is non-existent or unsafe. E.g. for packing, transport or storage.
	Should the Commonwealth explosives law leverage, where appropriate, Australia's WHS regime	Yes, to the extent it complements the Commonwealth activity e.g. Codes of Practice.
<b>Standards &amp; Exemptions</b>	How can standards and exemptions best support the safe, secure and expedient movement of explosives?	Adopt the ability to issue an 'exemption' that achieves an 'equivalent level of safety or security' that's required if you don't have the exemption.
		For MHF the importance is performance-based requirements that allow safety and security to be achieved through means appropriate for the facility.
		Use the requirements for a 'safety case' or 'risk analysis' to accompany an application for an exemption.
		If standards adopted are accepted international standards it sets a good base for international harmonisation, with recognised best practice for safety and transportation.
<b>Storage of Explosives</b>	Should safety and security duties apply to storage of explosives below MHF thresholds?	Consequences from security or storage even below MHF thresholds is a significant risk. Public perception is also a factor. How many people can you kill and have the risk level tolerable? Storage below MHF thresholds is very important.

<b>Domestic and International Standards</b>	How can we leverage domestic and international standards related to explosives storage and manufacture?	Storage requirements that can also use overpressure computer modelling helps but the biggest consideration for storage should be to adopt a zero-hazard quantity distance methodology so that the public is not hurt in the event of an explosion.
		A good reference is the UK manufacture and storage of explosives regulations Code of Practice.
<b>Alternative Measures</b>	Should we allow approval of alternative measures which achieve a comparable level of risk mitigation?	Measures that achieve an equivalent level of safety or security should be permitted whenever they don't increase the risk.