



Explosives Act Thematic Review (EATR)

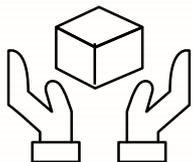
Proposing an outcomes and principle-focused explosives safety and security legislative framework

Presentation to Parari 2022
Australian Explosive Ordnance Safety Symposium
November 2022





Background to the EATR project



Impetus for reforming the *Explosives Act 1961* (Cth)

In 2018, Defence applied to the Attorney General to extend the sunseting dates of the subordinate regulations. The EATR Project was established within the Joint Capabilities Group in 2019 to deliver a ‘fit for purpose’ and contemporaneous Commonwealth explosive legislation update.



Relevant legislation

The EATR project considers the optimal interaction of Commonwealth explosives legislation with other laws relevant to Commonwealth explosive activities, including the:

- *Defence Act 1903* (Cth)
- *Safety Rehabilitation Compensation Act 1988* (Cth)
- *Work Health and Safety Act 2011* (Cth)
- *Defence (Visiting Forces) Act 1963* (Cth)



Role of EATR Task Force

Defence is undertaking the review and reform of the *Explosives Act 1961* (Cth), and its subordinate regulations (*Explosives Transport Regulation 2002* and *Explosives Areas Regulations 2003*), and the legislative ecosystem in which the Act operates.





The future legislative framework

The future legislative framework will:



refine the relationship between Commonwealth explosives laws, the *Work Health and Safety Act 2011* (Cth) and the explosives and WHS regimes of Australia's States and Territories;



establish an independent Commonwealth Explosives Regulator;



recognise that explosives activities occur in a broader ecosystem than previously contemplated in the existing legislation;



introduce new subordinate regulations, as necessary, including Commonwealth explosive storage regulations; and



create an accreditation scheme for Commonwealth contractors and a sponsorship framework for foreign government entities.

Reform activities include:

1. defining regulated activities;
2. accommodating emerging technological advancements; and
3. modernising legislation, including adopting a principles-based approach.





Features of the proposed legislative framework



Definitions will:

1. create some core definitions such as for 'Explosives', 'Commonwealth Explosives' and 'Commonwealth Explosive Activity';
2. clarify distinction between 'Commonwealth Contractors' and 'Commonwealth Suppliers'; and
3. determine how each aspect of the explosive life cycle will be regulated and how and to what extent each aspect will be regulated.



The establishment of a Commonwealth Explosives Regulator to:

1. administer the new Commonwealth Explosives Act and enforce compliance;
2. assume the role of competent authority; and
3. chair a statutory advisory body to assist the regulator.



Streamline operation of Commonwealth, State, and Territory legislation by:

1. option to be able to delegate CER powers including compliance and enforcement powers to States and Territories;
2. developing a Commonwealth framework that ensures above/below thresholds for quantities of explosives to deliver consistent safety and security outcomes; and
3. developing and implementing Commonwealth Explosive regulations including Commonwealth storage regulations.





Features of the proposed legislative framework (continued)



Impose general safety and security duties

- across the range of activities involving Commonwealth Explosives, and clarify the circumstances in which those duties arise (to promote safety and security outcomes).



Create a model for accreditation of contractors

- accreditation to provide additional requirements in addition to general safety and security duties; and
- provide a model that will streamline processes for industry.



Create a model for the sponsorship (permissioning) of Foreign Government Entities

- a model that permits a broader range of foreign government entities to enter Australia and undertake Commonwealth Explosives Activities.



Include powers to prescribe subordinate legislation

- including for the development of Commonwealth storage regulations.





Proposed definitions

The design and development of definitions for the proposed legislation is of significant importance. Specifically, it is critical we define the terms 'Explosive', 'Commonwealth Explosive' and 'Commonwealth Explosive Activity'.

An Explosive is:

- i) as defined in the United Nations Global Harmonised System (GHS) as adopted within Australia.

A Commonwealth Explosive is:

- a) an explosive that is prescribed to be an authorised Commonwealth explosive by the Commonwealth Explosives Regulator (noting delegation power to Commonwealth Explosive Agency); or
- b) a substance or material prescribed to be an authorised Commonwealth explosive by the Independent Commonwealth Explosives Regulator (*undergoing further refinement – to be determined*); or
- c) an explosive, substance, or material that a Commonwealth Explosive Agency exercising delegated authority from the Independent Commonwealth Explosive Regulator prescribes as a Commonwealth Explosive.

A Commonwealth Explosives Activity is:

- a) involving explosives conducted by:
 - i. a member of the Australian Defence Force;
 - ii. a Commonwealth officer;
 - iii. an officer or employee of an agency of the Commonwealth;
 - iv. a Commonwealth Contractor (*to be defined*); or
 - v. an officer or employee of a State or Territory, being conducted on behalf of the Commonwealth.
- b) involving explosives conducted on Commonwealth Land; or
- c) conducted by an approved Foreign Government Entity; or
- d) involving Commonwealth Explosives (*under further development*).



Proposed Commonwealth Explosive Regulator

- ❖ No decision has been made on the selection of the Commonwealth Explosives Regulator (**CER**).
- ❖ The EATR Project has received broad stakeholder support for the introduction of both:
 1. a CER; and
 2. a statutory advisory body (**SAB**) to assist the CER in developing and maintaining a sustainable system and level of technical expertise.
- ❖ The SAB will likely be made up of State and Territory regulators, CASA and AMSA, with possible inclusion of Commonwealth organisations and industry bodies on case by case basis where specific technical knowledge is required.

Roles and functions of the Commonwealth Explosives Regulator (CER)

The role of the CER will be to administer the reformed Commonwealth Explosives Act and enforce compliance with the obligations it creates.

Enabling functions:

- consultation and cooperation with States, Territories and other entities;
- conduct and oversee education and training;
- collect and disseminate data and statistics;
- collect and disseminate information and advice;
- report on the effectiveness of the Act; and
- delegate regulatory functions as appropriate .

Compliance and Enforcement activities

Authorise Commonwealth Explosives

Assume the role of the Competent Authority

Sponsorship of foreign government entities

Support the Statutory Advisory Body

Maintain Standards and Codes of Practice

Accreditation of Contractors





Proposed accreditation model



What is the current problem?

- current Explosives Instruments do not have sufficiently clear safety and security requirements and lack an independent governance structure capable of enforcing compliance with the requirements; and
- some Commonwealth Explosive Activities require diligence above and beyond what the general safety and security duties can regulate.



What is the objective?

1. to establish a framework for the accreditation of contractors that **deliver services** for the Commonwealth and members of foreign forces in Australia (including the operations at Commonwealth owned manufacturing facilities, storage, and transport by road and rail of explosives); and
2. provide a means to determine, and regulate the **competence and capacity** of contractors to safely and securely **deliver services** in relation to explosives.

What is the proposed solution?

An accreditation scheme that permits the CER to determine whether a contractor is '*capable and competent*' to perform activities '*safely and securely*.'



Do Parari delegates have suggestions for the accreditation model?



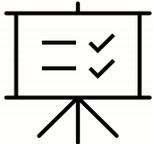


Proposed storage regulations



What is the current problem?

- Commonwealth Explosive instruments do not currently regulate the safe and secure storage of explosives; and
- Major Hazard Facility (MHF) regulations are not uniform across Commonwealth, State and Territories and only regulate from a minimum threshold of stored explosives.



What is the objective?

The new Commonwealth legislative framework should:

- specify that safety and security duties extend to the storage of explosives in quantities below MHF minimum thresholds;
- enable operators of MHFs, at which explosives are present, to fall within the regulatory control of the *WHS Act 2011* (Cth); and
- specify requirements for the safe and secure siting of explosives storage facilities.



What is the proposed solution?

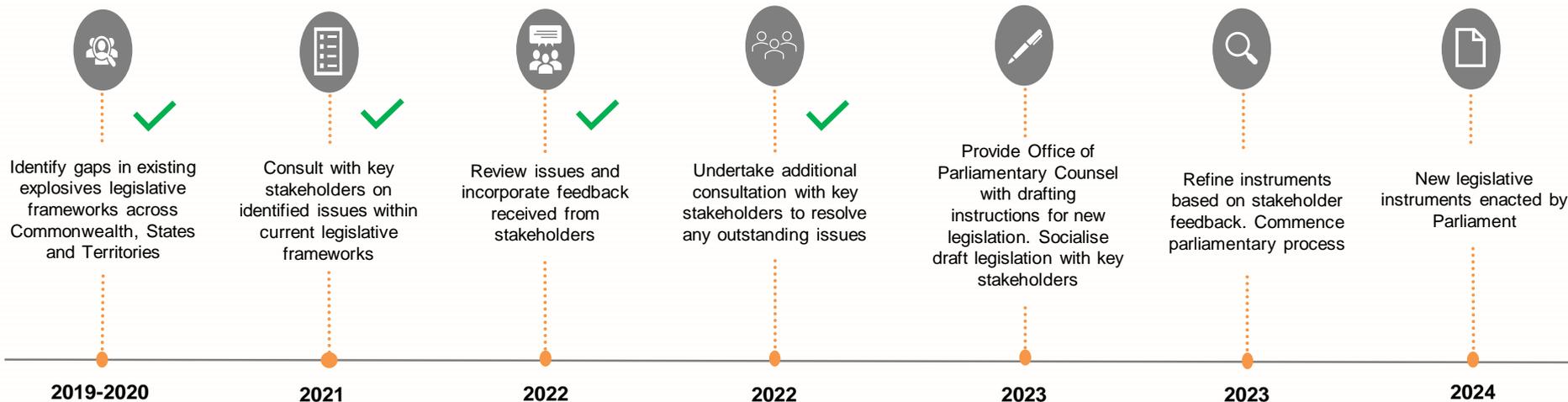
- the introduction of 'fit-for-purpose' storage regulations that apply to all quantities of Commonwealth stored explosives.

Do Parari delegates have suggestions for the storage regulations that are suitable for military and non military munitions?





Next steps: reform roadmap





Questions and concluding comments

Should you have any further questions for the EATR Project team, please contact us by emailing au-fmeatrreview@kpmg.com.au.

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Please
contact:



Jacqueline King
Head of EATR Taskforce
+61 438 369 765
jacqui.king@defence.gov.au



Philip Jones-Hope
Partner and Head of the
Government & Defence Practice -
KPMG Law
+61 2 6248 1388
pjhope@kpmg.com.au

