



## COMMONWEALTH POLICY ON THE MANAGEMENT OF LAND AFFECTED BY UNEXPLODED ORDNANCE

### INTRODUCTION

1. Throughout Australia there are many areas confirmed or suspected of being contaminated by unexploded ordnance as a result of military training activities by both Australian and allied military forces, particularly during World War II. Areas of UXO contamination are potentially hazardous to the public, and could influence the nature of future land use.
2. Although the Commonwealth still has a legal interest in many of these sites, a large number of previous interests have been disposed of. In addition, there are sites which were owned by State Governments or private individuals and which were used by the Commonwealth for military training under wartime legislation.
3. The Commonwealth is generally under no legal obligation to commit resources to reduce known hazards associated with UXO contamination. Notwithstanding this, the Commonwealth may take action to reduce UXO hazards in some cases.

### AIM

4. The aim of this paper is to describe those management measures that are to be implemented to protect the public from the hazards of UXO, and to describe the Commonwealth's policy with respect to land known or suspected to be contaminated by UXO arising from military training activities:
  - a. which is occupied by the Commonwealth,
  - b. wherein the Commonwealth is proposing to divest itself of a legal interest, and
  - c. wherein the Commonwealth no longer possesses, or never has possessed a legal interest.

### PROTECTING THE PUBLIC FROM THE DANGERS OF UXO

5. The existence of UXO is usually a consequence of military activities. Therefore, the Department of Defence has the principal responsibility for advising on, and implementing Commonwealth policy in respect to UXO related matters. Other Commonwealth Departments with a direct interest in these policy matters are the Attorney-General's Department and the Department of Finance and Administration. Important objectives of this policy are the protection of members of the public from the hazards associated with UXO, and to increase public awareness of these hazards. Management practices that are to be adopted in pursuit of these objectives are described in the following paragraphs.

#### Data collection and analysis

6. The Department of Defence is to maintain a comprehensive record of sites confirmed as, or suspected of being contaminated by UXO. The sites so recorded will be considered individually with a view to the possibility of instituting measures to reduce UXO related hazards. To this end it may be appropriate to make available to planning authorities, extracts from these records in order to influence local land use planning.

#### **Development and zoning proposals**

7. In attempting to reduce the hazards associated with changes to the use of UXO contaminated land, the Commonwealth may, when it becomes aware of development or land zoning proposals involving land confirmed as, or suspected of being contaminated by UXO, seek to influence the nature of such proposals through consultation with the appropriate planning authorities.

#### **Rendering safe UXO**

8. Because of the extreme hazards associated with handling UXO, any item of UXO that is found should not be handled by members of the public. UXO should only be handled by individuals who are trained in that particular skill. Consequently, and notwithstanding the Commonwealth's legal position expressed at paragraph 3 above, the Department of Defence has staff whose task it is to render safe UXO and will make that staff available upon request.

#### **Warnings on title**

9. In order to forewarn prospective purchasers of land believed to be contaminated by UXO, the Commonwealth will seek to inform the public where it knows of dangers considered to have arisen from particular UXO contamination. In some cases this can be done by appropriate notation on land titles. Where this is not possible other means of conveying a warning may be adopted. The Commonwealth cannot however provide an assurance to all prospective purchases that in the absence of a warning with respect to their land that it will be free of UXO.

#### **Control of public access to UXO contaminated areas**

10. Because of the nature of the hazards associated with UXO, the Department of Defence will take all reasonable measures to prevent unauthorised access to areas controlled by it that are believed to be contaminated by UXO. In circumstances where the Department of Defence does not control such land the Department of Defence will in appropriate cases seek to influence decisions concerning public access to that land through consultation with the appropriate controlling authority.

#### **Technical Advice**

11. Consistent with its concern for public safety, the Commonwealth will provide to other authorities or individuals, technical advice on the hazards associated with UXO.

#### **Commonwealth indemnity for personal injury or property damage**

12. Although the Commonwealth is not considered legally liable to do so, the Commonwealth will indemnify landowners/occupiers for:

- a. claims made against them in respect of personal injury and/or damage to property arising from detonation of UXO which is present on their land as a result of Commonwealth or allied military activities; or

- b. such injury or damage suffered by themselves;

unless the circumstances of a particular case render it inappropriate for the Commonwealth to give such an indemnity. Circumstances where an indemnity would be inappropriate include irresponsible conduct on the part of a landowner/occupier, a landowner/occupier's prior knowledge and acceptance of a UXO risk, or the existence of an effective claim by the landowner/occupier against another party.

13. Each application for an indemnity will be individually assessed. Should a landowner/occupier wish to apply for an indemnity from the Commonwealth in respect of a personal injury or property damage which has arisen from detonation of UXO, the landowner/occupier should apply to the Department of Defence outlining all the relevant circumstances.

### **MANAGEMENT OF UXO AFFECTED AREAS**

14. The following paragraphs describe Commonwealth policy with respect to UXO contaminated land occupied by the Commonwealth and land in which the Commonwealth is divesting itself of a legal interest, has never had a legal interest or has disposed of its interest.

#### **Land occupied by the Commonwealth**

15. All land occupied by the Commonwealth which has been, or continues to be used for the purpose of firing live ammunitions, is to be managed so that the level of UXO and the scope for unauthorised trespass onto such land is minimised. In selecting land required for the purpose of firing live ammunition, preference is to be given to using land already contaminated by UXO, rather than uncontaminated land.

#### **Divesting by the Commonwealth of a legal interest in land**

16. It has been stated at paragraph 3 that the Commonwealth is generally under no legal obligation to commit resources to reduce the hazards associated with land contaminated by UXO. Nevertheless, when divesting itself of a legal interest in land confirmed or suspected to be affected by UXO, the Commonwealth will take whatever steps are seen as being reasonable in the circumstances to reduce the hazards from UXO. Further, any proposal to transfer an interest in land known or suspected to be contaminated by UXO, will require the proposed transferee to be advised of the nature and extent of the contamination and the associated hazards. The Commonwealth will in appropriate cases also seek to have the transferee indemnify the Commonwealth against potential legal and financial liabilities that may arise as a consequence of UXO.

17. Where the level of hazard from UXO contamination is to be reduced by the Commonwealth as a condition of transferring a legal interest in land, the associated cost sharing arrangements are to be agreed beforehand.

#### **Land wherein the Commonwealth has never had, or has disposed of its legal interest**

18. The Commonwealth is not considered to be liable for the continuing effects of UXO contamination to lands wherein the Commonwealth has never had, or has disposed of, a legal interest. The Commonwealth may however as a matter of policy, determine in particular cases to reduce the level of UXO contamination and in these cases action will not commence until:

- a. the extent of UXO hazard reduction is agreed taking account of the prospective use of the land in question,
- b. cost sharing arrangements are agreed noting the general principle contained in paragraph 3, and
- c. associated legal liabilities concerning personal injury and property damage are agreed.

#### **Cost sharing arrangements**

19. In assessing the Commonwealth's contribution to the costs of reducing the hazards of UXO contamination to land in which the Commonwealth does not have a legal interest, the Commonwealth's position will be influenced by the nature of the situation. For example:

- a. In situations involving land being considered for development by an owner or user reasonably expected to be aware of the existence of UXO contamination, and where a necessary condition of that development is a reduction in the level of UXO-related hazard, the Commonwealth would expect the land owner or the proponent of the development as the potential beneficiary, to bear the costs of any UXO hazard reduction activities.
- b. Other factors which may be taken into account include the nature of previous compensation, considerations arising from Commonwealth use, the terms of transfer of previous Commonwealth legal interest in the land, and price discounting that may have occurred in the transfer of a legal interest in the land as a consequence of the presence of UXO on that land.

Department of Defence  
CANBERRA ACT 2600

19 May 1999