



COMMONWEALTH POLICY ON THE MANAGEMENT OF LAND IN AUSTRALIA AFFECTED BY UNEXPLODED ORDNANCE

INTRODUCTION

1. There are many areas throughout Australia confirmed as, or suspected of being, affected by unexploded ordnance (UXO) as a result of military activities by both Australian and allied military forces, particularly during World War II.
2. UXO is any explosive ordnance (EO) (ammunition, projectile, mortar, bomb, grenade, torpedo etc.) which has been fired and failed to function as intended. EO that has functioned but which contains residual explosive is also treated as UXO. For the purpose of this Policy, UXO also includes EO which has not been fired and has been found, for example, on land used for the temporary storage and disposal of ammunition.
3. Areas affected by UXO are potentially hazardous to the public, and could influence the nature of future land use.
4. The Commonwealth remains the owner or occupier of many of the areas confirmed or suspected of being affected by UXO. Land which is owned or occupied by State, Territory or local governments or the private sector which was previously used for military purposes, including under wartime legislation, may also be affected by residual UXO.

AIMS OF THIS POLICY

5. The Commonwealth has developed this Policy on the management of land affected by UXO, which aims to:
 - a. outline the Commonwealth's general approach towards land affected by UXO;
 - b. provide guidance on the management measures to protect the public from the hazards of UXO; and
 - c. describe the Commonwealth's approach in relation to land known or suspected to be affected by UXO arising from military activities and:
 - i. in which the Commonwealth is proposing to divest itself of a legal interest; or
 - ii. in which the Commonwealth no longer holds, or has never held, a legal interest.
6. The Commonwealth acknowledges that it owes a duty of care to third parties to avoid reasonably foreseeable risks of injury or loss arising from the presence of UXO resulting from military activities. The Commonwealth considers that the steps outlined in this Policy, and undertaken by the Commonwealth, ordinarily discharge this duty of care.

PROTECTING THE PUBLIC FROM THE DANGERS OF UXO

7. Important objectives of this Policy are to protect 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.

Rendering safe UXO

8. Because of the extreme hazards associated with handling UXO, any item of UXO that is found, or any item that is reasonably suspected to be an item of UXO, should not be approached, handled or disturbed by members of the public. Such items should only be handled by individuals who are trained to do so.

9. If any suspected UXO is found, contact the POLICE as soon as possible. Defence has personnel whose task it is to render safe UXO. Assistance from those personnel will be requested by the POLICE if necessary.

Control of public access to UXO contaminated areas

10. Because of the nature of the hazards associated with UXO, where areas controlled by the Commonwealth are believed to be affected by UXO, the Commonwealth will take all reasonable and practicable measures to prevent unauthorised access.

11. In circumstances where the Commonwealth does not control such land, controlling authorities and landowners are encouraged to seek advice from Defence, including in relation to restricting public access to that land, the risks arising from the presence (or potential presence) of UXO on the land, and the precautions that should be taken in relation to such risks.

Recording of Land affected by UXO

12. The Commonwealth will seek to inform the public where it knows of dangers considered to have arisen from UXO.

13. Defence maintains a record of sites confirmed as, or reasonably suspected of, being affected by UXO. Defence updates this record as and when information on areas affected by UXO becomes available. Defence does not warrant that these records are complete or that they are the only possible records. A land parcel search can be conducted on the [Department of Defence website](http://www.defence.gov.au/uxo) (www.defence.gov.au/uxo) to determine whether that land has been recorded by Defence as potentially affected by UXO.

14. In order to warn landowners and prospective purchasers of land believed to be affected by UXO, some States and Territories make a notation on land titles. Notations on title are a matter controlled by States and Territories under the rules of the various land registries.

15. The Commonwealth does not provide an assurance that if no warning or notation on title about the potential presence of UXO is given, that the land will be free of UXO.

Development and zoning proposals

16. In order to reduce the hazards associated with changes to the use of land affected by UXO, planning and other local authorities are encouraged to consult with Defence as early as practicable in relation to planning and zoning controls and development proposals in respect of sites that are known or reasonably suspected to be affected by UXO.

COMMONWEALTH RESPONSIBILITY FOR UXO

17. The Commonwealth is generally under no legal obligation to commit resources beyond those contemplated in this Policy to reduce known hazards associated with UXO on land that it does not own, occupy or control.

18. Notwithstanding this, the Commonwealth may take action to reduce UXO hazards on such land in appropriate cases and subject to appropriate cost sharing arrangements.

Divesting by the Commonwealth of a legal interest in land

19. When divesting itself of a legal interest in land confirmed or suspected to be affected by UXO:

- a. the Commonwealth will, so far as is reasonably practicable, take steps to safely identify and reduce the hazards from UXO, for example, by undertaking UXO surveys and, if necessary, removing any detected UXO;
- b. the proposed transferee will be advised of the nature and extent of the presence of UXO and the associated hazards, of which the Commonwealth is aware; and
- c. the Commonwealth may, in appropriate cases, seek to have the transferee indemnify the Commonwealth against potential legal and financial liabilities that may arise as a consequence of UXO.

20. Where hazards from UXO are to be reduced by the Commonwealth as a condition of transferring a legal interest in land, cost sharing arrangements for the associated costs are to be agreed beforehand with the proposed transferee.

Land in which the Commonwealth has never had or has disposed of its legal interest

21. Where the presence of UXO has resulted from military activities on land that the Commonwealth either never has had an interest in, or has disposed of its legal interest, the Commonwealth still expects the POLICE to be notified of any UXO found so it can be made safe.

22. Notwithstanding that the Commonwealth may not be legally obliged to do so, the Commonwealth may determine in particular cases to take steps to reduce the hazards from UXO.

23. In such cases, the following will be agreed between the Commonwealth and the relevant owner or occupier:

- a. the extent of UXO hazard reduction, taking into account relevant factors such as the prospective use of the land in question;
- b. cost sharing arrangements; and
- c. any other legal terms as to access and liability for personal injury and property damage.

Cost sharing arrangements

24. The extent to which the Commonwealth will consider contributing to the costs of reducing UXO hazards on land in which the Commonwealth does not have a legal interest will depend on the particular facts and circumstances, including:

- a. the nature of previous compensation paid (if any);
- b. the terms of transfer of any previous Commonwealth legal interest in the land; and
- c. any price discounting that may have occurred in the transfer of the land, as a consequence of the presence of UXO on that land.

25. Where land is being considered for development, the Commonwealth generally expects that the land owner or the proponent of the development would bear the costs of any UXO hazard reduction activities.

26. Further details about land that is potentially affected by UXO can be obtained from the Department of Defence website.

Situations in which the presence of UXO on land is unlawful

27. In situations where UXO is deposited on land without any lawful authority (eg where Explosive Ordnance (EO)) fired on a military training range lands on third party property outside the boundaries of the range), the Commonwealth will take action to remove or reduce UXO hazards on such land.

28. The presence of UXO on land is considered to be lawful where it is a result of military activities undertaken under wartime legislation, or was deposited on the land when the land was owned or lawfully occupied by the Commonwealth, or otherwise lawfully used by the Commonwealth for military activities.

COMMONWEALTH INDEMNITY FOR PERSONAL INJURY OR PROPERTY DAMAGE

29. Although, in light of the steps outlined above, the Commonwealth is not generally considered to be legally obliged to do so, the Commonwealth may at its discretion and on a case by case basis agree to indemnify landowners/occupiers for:

- a. personal injury or property damage that they suffer; or
- b. claims made against them in respect of personal injury or property damage,

as a result of the detonation of UXO which is present on their land as a result of Commonwealth or allied military activities.

30. Circumstances where such an indemnity would be inappropriate include, for example, where a landowner or occupier:

- a. engages in irresponsible conduct that leads to an injury or damage as a result of the presence of UXO;
- b. has prior knowledge of the potential presence of UXO on their land, and has accepted that risk;
- c. develops land affected by UXO; or
- d. has a claim against another party in relation to the presence of UXO, such as, for example, a contractor who fails to take proper precautions when undertaking work on the land and disturbs UXO of which they had been advised.

31. Should a landowner/occupier wish to make a claim as a result of the detonation of UXO on their land, present as a result of military activities, the landowner/occupier should apply to Commonwealth. Any claim should outline all the relevant circumstances, and provide details in relation to the loss, so that it may be assessed.

INTERNATIONAL OBLIGATIONS

32. The Commonwealth has international obligations in relation to the removal and destruction of certain types of UXO under a number of international Conventions.

33. To the extent that any UXO is identified that falls under these Conventions, the Commonwealth will comply with its international obligations to remove and destroy that UXO.

THE ROLE OF THE DEPARTMENT OF DEFENCE

34. The existence of UXO is usually a consequence of military activities. The Department of Defence (Defence) is primarily responsible for advising on, and implementing Commonwealth policy on 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.

Technical Advice and Rendering Safe UXO

35. Any object of suspected UXO must be reported to the POLICE as soon as possible.

36. Defence has personnel whose task it is to render safe UXO. Assistance from those personnel will be requested by the POLICE if necessary.

37. Defence will provide authorities or individuals with technical advice on the hazards associated with UXO and the management of land affected or suspected to be affected with UXO.

38. Further information is available on the [Department of Defence website](http://www.defence.gov.au/uxo) (www.defence.gov.au/uxo)

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