

# Explosives Regulation 2013

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New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Explosives Amendment Bill 2013](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Explosives Regulation 2013



New South Wales

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# Explosives Regulation 2013



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Explosives Regulation 2013*.

### 2 Commencement

This Regulation commences 1 September 2013 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Explosives Regulation 2005* which is repealed on 1 September 2013 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**ADG Code** means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, as published by the Australian Government, and as in force from time to time.

**ammunition** means a safety cartridge of Classification Code 1.4S for small arms, but does not include a cartridge for an explosive-powered tool.

**amorce** (or **toy pistol cap**) means dots of an explosive substance mainly consisting of any one or more of the substances potassium chlorate, amorphous phosphorus, antimony sulfide and sulfur, the explosive substance being enclosed between 2 pieces of paper or other suitable material and present in a proportion not exceeding 7.5 grams to every thousand dots.

**ANFO** means an explosive which consists of ammonium nitrate and fuel oil as manufactured in accordance with AS 2187.

**approved** means approved by the regulatory authority.

**AS 2187** means the Australian Standard AS 2187 *Explosives—Storage, transport and*

use, as in force from time to time.

**Australian Explosives Code** means the *Australian Code for the Transport of Explosives by Road and Rail*, as published by the Australian Government, and as in force from time to time.

**Australian Standard** means a standard published by Standards Australia.

**authorised explosive**—see clause 54.

**blaster ball** means a solid substrate ball coated with a pyrotechnic composition such that when two balls are struck together there is an ignition at the point of contact resulting in a low level noise.

**bon-bon cracker** means an article containing a bon-bon cracker snap which is designed to emit a low level noise when it is pulled apart.

**bon-bon cracker snap** means the component of a bon-bon cracker which is designed to produce a sound resulting from an explosion that occurs when the ends of strips (to which an initiatory explosive is applied in a quantity not exceeding 2 grams per 1000 articles) are pulled away from each other.

**Class** has the same meaning as in the Australian Explosives Code.

**Classification Code** of an explosive means the code assigned to the explosive under the Australian Explosives Code, comprising a combination of the number of the hazard division of the explosive and the letter of the compatibility group of the explosive (which identifies the kinds of explosive substances and articles that are compatible for transport or storage purposes).

**coal workplace** means a place to which the *Coal Mine Health and Safety Act 2002* or the *Work Health and Safety (Mines) Act 2013* (whichever is in force) applies.

**confetti bomb** means a pyrotechnic device designed to project confetti and to emit a report when an igniting string is pulled and containing an explosive substance with a mass not exceeding 30 milligrams, mainly consisting of any one or more of the substances potassium chlorate, amorphous phosphorus, antimony sulfide and sulfur.

**corresponding law** means any of the following laws:

*Dangerous Goods Act 1985* of Victoria

*Explosives Act 1999* of Queensland

*Explosives Act 1936* of South Australia

*Dangerous Goods Safety Act 2004* of Western Australia

*Dangerous Goods (Road and Rail Transport) Act 2010* of Tasmania



*Dangerous Goods Act of the Northern Territory*

*Dangerous Substances Act 2004 of the Australian Capital Territory*

**detonator** has the same meaning as in the Australian Explosives Code.

**display firework** means a firework (other than a distress signal or a toy firework) consisting of a case or contrivance forming a squib, gerb, cracker, serpent, mortar shell, lance, wheel, coloured fire, Roman candle or other article specially adapted for the production of a pyrotechnic effect or a sound effect.

**dispose**, in relation to explosives, includes render harmless or destroy.

**distress signal** means a pyrotechnic device intended for signalling, warning, rescue or like purposes, and includes a signal cartridge, marine flare, landing flare, highway flare, highway fusee, line-carrying rocket, anti-hail rocket, cloud seeding rocket, avalanche rocket, smoke generator, railway track signal or bird scarer.

**explosive**—see clause 4.

**explosive-powered tool** means a tool or device whereby a stud, pin, dowel, screw, rivet, spike or other object is driven against, into or through a substance by means of an explosive.

**explosive precursor**—see clause 5.

**explosives site** means any land on or in which explosives are stored.

**export** means export from the State to another country.

**firework** means an article designed to produce a sound or a pyrotechnic signal or a pyrotechnic effect by the explosion or ignition of an explosive substance, including a display firework or toy firework.

**hazard division** of an explosive means:

- (a) the hazard division of the explosive under the Australian Explosives Code, or
- (b) if the explosive is stored or transported with another explosive of a different hazard division—the precedence of hazard division determined in accordance with the Australian Explosives Code.

**import** means import into the State from another country.

**indoor table bomb** means a pyrotechnic device designed to project streamers or confetti (or both), and to emit a report when an igniting string is pulled, and containing an explosive substance with a mass not exceeding 60 milligrams, mainly consisting of any one or more of the substances potassium chlorate, amorphous phosphorus, antimony sulfide and sulfur.

**mining workplace** means a place of work:

- (a) that is a mine within the meaning of the *Mine Health and Safety Act 2004* or the *Work Health and Safety (Mines) Act 2013* (whichever is in force), or
- (b) at which activities under the *Petroleum (Onshore) Act 1991* or the *Petroleum (Offshore) Act 1982* are carried out.

**mobile processing unit** means a vehicle or mobile unit used for the manufacture of explosives.

**model rocket propellant device** means an article that:

- (a) consists of a case in which there is a substance or substances that burn rapidly when ignited, and
- (b) with or without other articles, is intended to be part of the propulsion system of a model rocket.

**NEQ** means the net explosive quantity (expressed as a mass) of an explosive, exclusive of any non-explosive components.

**package** means the complete product of the packing of any goods for transport, and consists of the goods and their packaging.

**packaging** means the container into which goods are received or held for transport, and includes anything that enables the container to receive or hold the goods or to be closed.

**possess** includes have a right to possess.

**power device cartridge** means a power device cartridge for use with an explosive-powered tool, but does not include cartridges used for rock breaking or demolition.

**prohibited explosive** has the meaning given by clause 54.

**propellant** means an explosive used as a propelling charge, including gunpowder and nitrocellulose-based deflagrating explosives.

**register of explosives** means the register of explosives kept by the regulatory authority under Division 2 of Part 4.

**responsible person** has the meaning given by clause 19.

**secure magazine** has the meaning given by clause 84.

**secure store** has the meaning given by clause 84.

**security clearance** means a security clearance granted under Part 2.

**security sensitive ammonium nitrate** has the meaning given by Schedule 1.

**security sensitive dangerous substance** means any substance listed in Schedule 1.

**sparkler** means a firework consisting of a wire or stick coated with a metallic powder in admixture with an oxidising composition.

**starting pistol caps** means dots of an explosive substance mainly consisting of any one or more of the substances potassium chlorate, amorphous phosphorus and antimony sulfide, the explosive substance being applied to sheets of paper or other suitable material and present in a quantity not exceeding 0.5 grams per dot.

**streamer cone** means a pyrotechnic device that:

- (a) is designed to project streamers, and
- (b) is designed to emit a report when an igniting string is pulled, and
- (c) contains an explosive substance with a mass not exceeding 30 milligrams, and
- (d) mainly consists of any one or more of the substances potassium chlorate, amorphous phosphorus, antimony sulfide and sulfur.

**supply** includes sell.

**the Act** means the [Explosives Act 2003](#).

**toy firework** means amorce, blaster ball, confetti bomb, bon-bon cracker, sparkler, streamer cone, toy pistol cap, starting pistol cap and indoor table bomb.

**unsupervised access**, in relation to an explosive or explosive precursor, means access to an explosive or explosive precursor in circumstances where no other person who is authorised under a licence to store or handle the explosive or explosive precursor is present, and includes:

- (a) access to a secure magazine or secure store of the explosive or explosive precursor, and
- (b) access to the keys to a secure magazine or secure store of the explosive or explosive precursor, and
- (c) access to the explosive or explosive precursor while the explosive or explosive precursor is being transported.

**vehicle** means:

- (a) a motor vehicle within the meaning of the [Road Transport Act 2013](#), and
- (b) a unit of rolling stock.

(2) Notes included in this Regulation do not form part of this Regulation.

#### **4 Prescription of explosives**

For the purposes of the definition of **explosive** in section 3 (1) of the Act, the following are prescribed:

- (a) dangerous goods of Class 1 within the meaning of the ADG Code or the Australian Explosives Code,
- (b) goods too dangerous to be transported (within the meaning of the ADG Code or the Australian Explosives Code) that can produce an explosive or pyrotechnic effect,
- (c) articles or substances that, when manufactured, mixed or assembled, can produce an explosive or pyrotechnic effect.

#### **5 Prescription of explosive precursors**

- (1) For the purposes of the definition of **explosive precursor** in section 3 (1) of the Act, security sensitive dangerous substances are prescribed.
- (2) Security sensitive dangerous substances are listed in Schedule 1.

#### **6 Regulatory authority for coal and mining workplaces**

For the purposes of section 4 (2) of the Act, the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services is declared to be the regulatory authority for coal workplaces and mining workplaces, but only in relation to the following:

- (a) the examination and inspection of explosives or explosive precursors,
- (b) notification of loss of explosives or explosive precursors,
- (c) notification of serious incidents,
- (d) the investigation of breaches of the Act, this Regulation and licences under the Act,
- (e) the appointment of inspectors under the Act in relation to coal workplaces and mining workplaces.

#### **7 Persons to co-operate to discharge duties**

If more than one person has a duty or responsibility with respect to a particular matter under this Regulation:

- (a) each such person retains the duty and responsibility for the matter, and
- (b) the duty or responsibility is to be discharged in a co-ordinated manner.

## 8 Classification of detonators

For the purposes of this Regulation, a detonator is taken to be of Classification Code 1.1B, unless the detonator is packaged in accordance with the requirements of Classification Code 1.4B or 1.4S.

## Part 2 Security clearances

### 9 Security clearance required to handle explosives or explosive precursors

- (1) A natural person must not handle any explosive or explosive precursor unless the person holds a security clearance that is in force.

Maximum penalty: 250 penalty units.

- (2) This clause does not apply if the person is not required to hold a security clearance to handle the explosives or explosive precursors concerned under this Part.

### 10 Exceptions from requirement to hold security clearance

- (1) **Fireworks** A natural person is not required to hold a security clearance to handle display fireworks if the handling is authorised by a fireworks (single use) licence.
- (2) **Supervised handlers** A natural person is not required to hold a security clearance to handle explosives or explosive precursors if:
  - (a) the person is handling the explosives or explosive precursors under the immediate supervision of a person who holds a security clearance that is in force, and
  - (b) the person is employed or engaged by, or being instructed in the handling of explosives by, the holder of a licence that authorises the holder to handle the explosives or explosive precursors concerned, and
  - (c) the person is handling the explosives or explosive precursors in the manner authorised by the licence.
- (3) **Inspectors, authorised officers, police and emergency workers** A person who is an inspector, authorised officer, police officer or officer of an emergency service is not required to hold a security clearance to handle explosives or explosive precursors in a manner for which he or she is not required to be authorised by licence under Division 4 of Part 3.

### 11 Regulatory authority may grant security clearances

- (1) The regulatory authority may, on application, grant a security clearance to any natural person.
- (2) An application for a security clearance:

- (a) must be made in the approved form and accompanied by any documents (including photographs) that are specified in the approved form as being required to be produced with the application, and
- (b) must be accompanied by the approved fee.

## **12 Grounds for refusing security clearance**

- (1) The regulatory authority may grant a security clearance to a person only if it is satisfied that the person:
  - (a) is 18 years of age or over, and
  - (b) is a fit and proper person to be granted a security clearance.
- (2) The regulatory authority must refuse to grant security clearance to a person if a report obtained in relation to the person under section 13 of the Act contains a recommendation from the Commissioner of Police that the person should not be granted a security clearance or licence on the basis of criminal or security intelligence or other information available to the Commissioner.

## **13 Duration of security clearance**

- (1) A security clearance has effect for 5 years from the date it is granted, unless sooner cancelled.
- (2) If a licence is issued to a person during the term of a security clearance, the security clearance is taken to continue to have effect while the licence has effect, unless sooner cancelled.
- (3) A security clearance ceases to have effect if it is cancelled.

## **14 Cancellation of security clearance**

- (1) The regulatory authority may, by notice in writing to the holder of a security clearance, cancel the security clearance if satisfied that the holder is not a fit and proper person to be granted a security clearance.
- (2) The cancellation takes effect on the date on which notice of the cancellation is given to the holder of the security clearance or a later date specified in the notice.
- (3) The regulatory authority may direct the holder of a cancelled security clearance to return the security clearance to the regulatory authority within a specified period.
- (4) The holder of a cancelled security clearance must not fail to return a security clearance to the regulatory authority in accordance with a direction given by the regulatory authority, unless the holder has a reasonable excuse.

Maximum penalty: 50 penalty units.

- (5) A security clearance is taken to be cancelled when a new security clearance is granted to the same person.

### **15 Suspension of security clearance**

- (1) The regulatory authority may, by notice in writing to the holder of a security clearance, suspend the security clearance for a specified period for the purpose of carrying out an investigation to determine whether the security clearance should be cancelled.
- (2) The suspension takes effect on the date on which the notice of the suspension is given to the holder of the security clearance or a later date specified in the notice.
- (3) The regulatory authority may direct the holder of a suspended security clearance to return the security clearance to the regulatory authority within a specified period.
- (4) The holder of a suspended security clearance must not fail to return a security clearance to the regulatory authority in accordance with a direction given by the regulatory authority, unless the holder has a reasonable excuse.

Maximum penalty: 50 penalty units.

### **16 Notice of cancellation or suspension to other relevant persons**

- (1) The regulatory authority may, on the cancellation or suspension of a security clearance, notify a supervising licence holder of the cancellation or suspension.
- (2) The regulatory authority must notify a supervising licence holder of a cancellation or suspension if the regulatory authority is aware that the holder of a security clearance that has been cancelled or suspended is listed as a nominated person on the supervising licence holder's security plan.
- (3) In this clause, a **supervising licence holder** is a licence holder who employs or engages, or has previously employed or engaged, the person whose security clearance has been cancelled.

## **Part 3 Licences**

### **Division 1 Activities requiring licences**

#### **17 Activities requiring licences**

A person handling an explosive or explosive precursor must be authorised to do so by a licence granted by the regulatory authority under the Act.

#### **18 Natural person must hold security clearance**

- (1) A licence granted to a natural person authorises the person to handle explosives or explosive precursors in the manner authorised by the licence only while the person

holds a security clearance that is in force.

- (2) It is a condition of a licence granted to a natural person that the licence holder holds a security clearance that is in force.
- (3) This clause does not apply to a fireworks (single use) licence.

**19 Corporation must nominate natural person to hold security clearance**

- (1) A licence granted to a corporation authorises the corporation to handle explosives or explosive precursors in the manner authorised by the licence only while there is at least one responsible person for the corporation.
- (2) It is a condition of a licence granted to a corporation that there is at least one responsible person for the corporation.
- (3) A **responsible person** for a corporation is a natural person nominated by the corporation, in accordance with this clause, to be responsible for the activities authorised by the licence.
- (4) A responsible person for a corporation must be a natural person who:
  - (a) is at least 18 years old, and
  - (b) is concerned in the management of the corporation, and
  - (c) holds a security clearance that is in force, and
  - (d) has satisfied the corporation that the person has the relevant knowledge, experience and qualifications to supervise the activities authorised by the licence, and
  - (e) consents to the nomination.
- (5) A responsible person is to be nominated by a corporation in its application for a licence.
- (6) A corporation that holds a licence may at any time, by notice in writing to the regulatory authority, nominate a natural person to be a responsible person instead of or in addition to a person previously nominated.
- (7) The regulatory authority may require the corporation to provide evidence that a proposed responsible person has the relevant knowledge, experience and qualifications to carry out the activities authorised by the licence before granting the corporation a licence.
- (8) The regulatory authority may decline to accept a nomination if it is not satisfied that the person nominated has the relevant knowledge, experience and qualifications to carry out the activities authorised by the licence.



- (9) A nomination ceases to have effect if it is declined by the regulatory authority.
- (10) A corporation that holds a licence must, within 30 days of a responsible person ceasing to be employed or otherwise engaged by the corporation, notify the regulatory authority that the responsible person has ceased to be employed or otherwise engaged by the corporation.

Maximum penalty (subclause (10)): 250 penalty units.

- (11) The nomination of a person as a responsible person for a corporation is taken to cease to have effect if the corporation ceases to employ or otherwise engage the person.

## **20 Authority conferred by licence extends to other relevant persons**

- (1) A licence is taken to authorise any person to handle explosives or explosive precursors in the same way as the licence holder is authorised to handle them by the licence, but only if the person:
  - (a) is a natural person, and
  - (b) handles the explosives or explosive precursors in the course of his or her employment by the licence holder or under the immediate supervision of a person employed or engaged by the licence holder to supervise the person, and
  - (c) holds a security clearance that is in force or is acting under the immediate supervision of a person who holds a security clearance that is in force.
- (2) This clause is subject to any restrictions or further requirements specified in the licence or in this Regulation.
- (3) In this clause:
  - employment** includes an engagement or other arrangement, whether or not constituting a contract of employment.

## **Division 2 Types of licences**

### **21 Types of licences**

The regulatory authority may grant the following types of licences:

- (a) licence to manufacture,
- (b) licence to import,
- (c) licence to supply,
- (d) licence to transport by vehicle,

- (e) licence to transport by vessel,
- (f) licence to store,
- (g) blasting explosives user's licence,
- (h) pyrotechnician's licence,
- (i) fireworks (single use) licence,
- (j) licence to use security sensitive dangerous substances.

## **22 Licence to manufacture**

A licence to manufacture authorises the licence holder to carry out the following activities:

- (a) if the licence relates to a mobile processing unit—transporting the explosive precursors specified in the licence in the mobile processing unit to the premises or location at which explosives are to be manufactured and manufacturing explosives at those premises using the mobile processing unit,
- (b) if the licence does not relate to a mobile processing unit—manufacturing, at the premises specified in the licence, the explosives or explosive precursors specified in the licence,
- (c) supplying or receiving (including importing and exporting), at the premises (if any) specified in the licence, the explosives or explosive precursors specified in the licence,
- (d) purchasing or possessing explosives or explosive precursors for the purpose of the manufacture of other explosives or explosive precursors under the licence,
- (e) possessing explosives or explosive precursors manufactured under the licence,
- (f) possessing explosives or explosive precursors for the purpose of the disposal of the explosives or explosive precursors under the licence,
- (g) if premises are specified in the licence—storing the explosives or explosive precursors at the premises.

## **23 Licence to import**

- (1) A licence to import authorises the licence holder to import the explosives or explosive precursors specified in the licence into the State from another country.
- (2) A licence to import also authorises a person to carry out the following activities for the purpose of importing explosives:
  - (a) supplying (including exporting), at the premises (if any) specified in the licence, the explosives or explosive precursors specified in the licence,

- (b) purchasing or possessing the explosives or explosive precursors for the purpose of bringing them into the State from another country,
- (c) if premises are specified in the licence—storing the explosives or explosive precursors at the premises.

#### **24 Licence to supply**

A licence to supply authorises the licence holder to carry out the following activities:

- (a) supplying (including exporting), at the premises (if any) specified in the licence, the explosives or explosive precursors specified in the licence,
- (b) purchasing or possessing explosives or explosive precursors for the purpose of supplying them under the licence,
- (c) if premises are specified in the licence—storing the explosives or explosive precursors at the premises.

#### **25 Licence to transport by vehicle**

- (1) A licence to transport by vehicle authorises the licence holder to transport, by means of a vehicle, the explosives or explosive precursors specified in the licence.
- (2) A licence to transport by vehicle also authorises a person to carry out the following activities for the purpose of transporting explosives by vehicle:
  - (a) storing, at the premises and for the period specified in the licence (if any), the explosives or explosive precursors specified in the licence,
  - (b) possessing explosives or explosive precursors for the purpose of transporting them under the licence.

#### **26 Licence to transport by vessel**

- (1) A licence to transport by vessel authorises the licence holder to transport, using a vessel, the explosives or explosive precursors specified in the licence.
- (2) A licence to transport by vessel also authorises a person to carry out the following activities for the purpose of transporting explosives by vessel:
  - (a) storing, at the premises and for the period specified in the licence (if any), the explosives or explosive precursors specified in the licence,
  - (b) possessing explosives or explosive precursors for the purpose of transporting them under the licence.

#### **27 Licence to store**

A licence to store explosives authorises the licence holder to carry out the following

activities:

- (a) storing, at the premises and for the period specified in the licence, the explosives or explosive precursors specified in the licence,
- (b) purchasing or possessing explosives or explosive precursors for the purpose of storing them under the licence.

## **28 Blasting explosives user's licence**

- (1) A blasting explosives user's licence authorises the licence holder to carry out the following activities:
  - (a) using, at the premises or location (if any) specified in the licence, the explosives or explosive precursors specified in the licence, in such quantities as are specified in the licence,
  - (b) if specified in the licence—mixing explosive precursors for the purpose of manufacturing ANFO in accordance with AS 2187 for immediate use or for use within 24 hours,
  - (c) purchasing or possessing explosives or explosive precursors for the purpose of using them under the licence,
  - (d) transporting explosives or explosive precursors for the purpose of using them under the licence,
  - (e) disposing of explosives or explosive precursors specified in the licence in accordance with AS 2187,
  - (f) storing explosives or explosive precursors as authorised by the licence.
- (2) It is a condition of a blasting explosives user's licence that the holder of the licence:
  - (a) store only the type and quantity of explosives or explosive precursors that the licence holder is authorised to store by the licence, and
  - (b) store them at the premises specified in the licence in an appropriate storage facility or in an appropriate storage facility at a location notified to the regulatory authority.
- (3) The regulatory authority may require a licence holder to submit a security plan when the licence holder notifies it of the location of the storage facility in which explosives or explosive precursors are proposed to be stored under subclause (2) (b).
- (4) In this clause:

***appropriate storage facility*** means:

- (a) in the case of explosives, a secure magazine, and

(b) in the case of explosive precursors, a secure store.

**Note—**

Clause 84 provides that a licence holder must ensure that, when not being prepared for use, used or transported:

(a) explosives are kept in a secure magazine, and

(b) explosive precursors are kept in a secure store.

## **29 Pyrotechnician's licence**

A pyrotechnician's licence authorises the licence holder to carry out the following activities:

- (a) purchasing, possessing, using, storing and transporting display fireworks,
- (b) purchasing, possessing, using, storing and transporting a distress signal (otherwise than for the purpose of a distress signal),
- (c) purchasing, possessing, using, storing and transporting a model rocket propellant device containing an ignitable substance or ignitable substances exceeding 62.5 grams in mass.

## **30 Fireworks (single use) licence**

- (1) A fireworks (single use) licence authorises the licence holder, on only one occasion, to purchase, possess, use, store and transport display fireworks.
- (2) The regulatory authority must not grant a fireworks (single use) licence to a person on more than 4 occasions in any 12-month period.

## **31 Licence to use security sensitive dangerous substances**

A licence to use security sensitive dangerous substances authorises the licence holder to purchase, possess, use, store, transport and dispose of security sensitive dangerous substances for the purpose specified in the licence.

## **32 Matters that may be specified in licence**

A licence may specify any of the following matters:

- (a) the explosive or explosive precursor or the type or types or the class or classes of explosive or explosive precursor that is or are authorised to be handled under the licence,
- (b) the maximum quantity of explosive or explosive precursor that is authorised to be handled under the licence,
- (c) premises or a location at which the explosives or explosive precursors that are

authorised to be handled under the licence must be handled.

## **Division 3 Applications for licences**

### **33 Applications for licences**

- (1) An application for a licence is to be:
  - (a) made in the approved form, and
  - (b) accompanied by the approved fee, and
  - (c) accompanied by any other documents (including photographs) specified in the approved form.
- (2) If the applicant is a natural person, the applicant must be at least 18 years old.
- (3) If the applicant is a corporation, the applicant must nominate at least one natural person as a responsible person, being the person responsible for the activities to be authorised by the licence.

**Note—**

See clause 19 for the requirements regarding nomination of a responsible person.

### **34 Security clearance a prerequisite to obtaining licence**

- (1) A natural person is not eligible for a licence unless the person has been granted a security clearance that is in force.
- (2) A corporation is not eligible for a licence unless there is at least one responsible person for that corporation who has been granted a security clearance that is in force.
- (3) A security clearance is not required in relation to a fireworks (single use) licence.

### **35 Security plan**

- (1) An applicant for a licence must, if required to do so by the regulatory authority, submit a security plan in relation to the explosives or explosive precursors that are to be handled under the licence.
- (2) Any security plan must contain the following:
  - (a) details of the facilities, systems and procedures in place for the safe and secure handling of the explosives or explosive precursors concerned,
  - (b) a list of responsible persons who are to have unsupervised access to the explosives or explosive precursors concerned,
  - (c) a list detailing any vehicles that may carry the explosives or explosive precursors concerned,

- (d) details of the measures implemented by the applicant to ensure that the explosives cannot be removed without permission from the place in which they are being handled or stored in accordance with the licence,
- (e) such other information as required by the regulatory authority.

### **36 Safety management plan**

- (1) An applicant for a licence must, if required to do so by the regulatory authority, submit a safety management plan that describes the risk management procedures that are proposed to be implemented by the applicant in order to manage the hazards and risks to safety associated with the activities that are authorised by the licence.
- (2) A safety management plan must contain the following:
  - (a) a description of the process by which the applicant proposes to handle explosives or explosive precursors in accordance with the licence,
  - (b) an assessment of the risks that may arise from such handling,
  - (c) a description of the measures that are being implemented to manage the risks associated with the handling of explosives,
  - (d) such other information as required by the regulatory authority.

### **37 Grounds for refusing a licence**

- (1) The regulatory authority must not grant a licence unless it is satisfied that:
  - (a) the applicant is eligible for a licence, and
  - (b) if the applicant has been required to submit a security plan—the plan is appropriate for the safe and secure handling of the explosives or explosive precursors concerned, and
  - (c) if the applicant has been required to submit a safety management plan—the plan is appropriate for managing the hazards and risks to safety associated with the activities that are authorised by the licence, and
  - (d) the applicant has the appropriate facilities, systems and procedures in place for the safe and secure handling of the explosives or explosive precursors concerned, and
  - (e) any additional eligibility requirements applicable to the licence concerned have been satisfied, and
  - (f) the approved fee for the licence has been paid.
- (2) If the regulatory authority is not satisfied that a security plan or a safety management

plan submitted by the applicant is appropriate, the regulatory authority may require the applicant to amend and re-submit the security plan or safety management plan.

### **38 Additional eligibility requirements—blasting explosives user’s licence**

It is an additional eligibility requirement for a blasting explosives user’s licence that the applicant satisfy the regulatory authority that the applicant:

- (a) is a natural person, and
- (b) has such qualifications, or has passed such examinations or practical tests, or both, as the regulatory authority determines to be necessary to enable the applicant to do the work for which the licence is required, and
- (c) has been examined by a medical practitioner and has been found not to have any medical or physical condition that would impair the applicant’s ability to perform the duties of a blasting explosives user.

### **39 Additional eligibility requirements—pyrotechnician’s licence and fireworks (single use) licence**

(1) It is an additional requirement for a pyrotechnician’s licence that the applicant satisfy the regulatory authority that the applicant:

- (a) is a natural person, and
- (b) has completed a training course or attained a level of competence in the safe use of display fireworks that is recognised by the regulatory authority for the purposes of obtaining the licence.

(2) It is an additional requirement for a fireworks (single use) licence that the applicant satisfy the regulatory authority that the applicant:

- (a) is a natural person, and
- (b) is a fit and proper person to be granted a licence, and
- (c) has completed a training course or attained a level of competence in the safe use of display fireworks that is recognised by the regulatory authority for the purposes of obtaining the licence.

### **40 Additional eligibility requirements—licences relating to security sensitive dangerous substances**

(1) It is an additional requirement for any licence relating to the handling of security sensitive dangerous substances that the applicant must satisfy the regulatory authority that the applicant has a legitimate reason for obtaining the licence.

#### **Note—**

This provision applies to all licences that authorise a person to handle security sensitive dangerous



substances, not merely the type of licence referred to as a licence to use security sensitive dangerous substances.

- (2) A **legitimate reason** for obtaining a licence that authorises a person to handle security sensitive dangerous substances includes obtaining the licence for the purpose of:
- (a) use in commercial production processes, mining, quarrying, agricultural blasting, construction, civil engineering, seismic work or tunnelling, or
  - (b) the commercial manufacture of fertiliser or explosives, or
  - (c) education, research or analysis, or
  - (d) commercial agricultural use by primary producers, or
  - (e) transporting or supplying security sensitive dangerous substances for any purpose listed above.
- (3) The following are not legitimate reasons for obtaining a licence that authorises a person to handle security sensitive dangerous substances:
- (a) household domestic use,
  - (b) use as a fertiliser on outdoor recreation facilities (such as parks, golf courses, sports fields and the like).

#### **41 Licence fees**

The fee payable for a licence is the fee fixed for the time being by the regulatory authority to cover expenses in connection with the regulation of licences.

#### **42 Licence holder must remain eligible for licence**

It is a condition of a licence that the holder of the licence does not carry out any activity authorised by the licence unless the holder is still a person who, were he or she to apply for that licence for the first time, would be eligible to be granted that licence by the regulatory authority.

**Note—**

As a result of this clause, a licence holder is in breach of a licence condition if circumstances relating to the holder change (so that the licence holder would not be granted a licence if applying for the first time) and the licence holder continues to carry out activities authorised by the licence. For example, if the licence holder's security clearance is cancelled. Breach of a condition may lead to suspension or cancellation of the licence under sections 20 and 21 of the Act.

## **Division 4 Exceptions from licence requirements**

### **Subdivision 1 Exceptions for inspectors, police and others**

#### **43 Handling of explosives by inspectors and other authorised officers**

(1) An inspector or authorised officer is not required to hold a security clearance or licence to handle any explosives or explosive precursors in the course of that person's duties as an inspector or authorised officer.

(2) In this clause:

**authorised officer** means any officer of the regulatory authority authorised by the regulatory authority to handle explosives or explosive precursors in the course of his or her duties as an officer of the regulatory authority.

#### **44 Handling of explosives by police explosives technicians**

(1) A police explosives technician is not required to hold a security clearance or licence to:

- (a) possess, use or transport explosives or explosive precursors in the course of the technician's duties, or
- (b) possess explosives or explosive precursors (for the purpose of disposing of or destroying them), or
- (c) dispose of or destroy explosives or explosive precursors.

(2) In this clause, **police explosives technician** means a member of the NSW Police Force whose duties as such a member extend to the handling of explosives.

#### **45 Transport of explosives by police officers**

A police officer is not required to hold a security clearance or licence to transport by vehicle or vessel any explosives or explosive precursors that have been confiscated or received by, and are under the immediate supervision of, the police officer.

#### **46 Possession and storage of certain explosives by emergency services**

(1) An emergency service is not required to be authorised by a licence in order to transport, possess or store explosives or explosive precursors that have come into the possession of the emergency service in an emergency situation.

(2) An officer of an emergency service is not required to be authorised by a licence in order to transport, possess or store, in the course of his or her duties as an officer, explosives or explosive precursors that have come into the possession of the emergency service or officer in an emergency situation.

- (3) In this clause, **emergency service** includes any of the following:
- (a) the Ambulance Service of New South Wales,
  - (b) Fire and Rescue NSW,
  - (c) the NSW Rural Fire Service,
  - (d) the NSW Police Force,
  - (e) the State Emergency Service of New South Wales,
  - (f) the New South Wales Volunteer Rescue Association Incorporated,
  - (g) the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*,
  - (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

## **Subdivision 2 Other exceptions from licence requirements**

### **47 Power device cartridges, distress signals, life-saving appliances and toy fireworks**

- (1) A person is not required to be authorised by a licence in order to possess, transport, store, use, sell or supply the following explosives:
- (a) power device cartridges,
  - (b) distress signals,
  - (c) life-saving appliances, including air bag inflators and seatbelt pretensioners,
  - (d) toy fireworks.
- (2) Despite subclause (1), a person is required to be authorised by a licence in order to possess, transport, store, use, sell or supply explosives or explosive precursors specified in the Table to this clause if the quantity possessed, transported, stored, used, sold or supplied exceeds the quantity specified in that Table.
- (3) This clause does not extend to the handling of any explosives in connection with any use that is not a use for which the explosive was designed.

#### **Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Type of explosive</b>	<b>Quantity</b>
Power device cartridges	10,000 in number

Distress signals	10 kg NEQ
Life-saving appliances (including air bag inflators, air bag modules and seatbelt pretensioners of hazard division 1.4) that are: (a) not installed in vehicles, or  (b) not in complete vehicle components.	10 kg NEQ
Explosives of hazard division 1.4 (not being detonators or safety cartridges of Class 1.4S, percussion caps of Class 1.4S for firearms, or fireworks)	10 kg NEQ
Toy fireworks	1 tonne (including packaging)

#### **48 Ammunition**

- (1) A person who is a licensed firearms dealer under the *Firearms Act 1996* is not required to be authorised by a licence in order to possess, store, transport, sell or supply:
  - (a) ammunition, or
  - (b) percussion caps, or
  - (c) not more than 12 kg of propellant powder.
- (2) A person who holds a licence or a permit under the *Firearms Act 1996* (other than a firearms collector licence) that authorises the person to possess or use a firearm is not required to be authorised by a licence in order to possess, use, store or transport:
  - (a) ammunition, or
  - (b) percussion caps, or
  - (c) not more than 12 kg of propellant powder.
- (3) A person who holds an ammunition collection permit under the *Firearms Act 1996* is not required to be authorised by a licence in order to possess or store ammunition that is authorised to be possessed under the permit.

#### **49 Import of certain explosives**

A person is not required to be authorised by a licence in order to import the following explosives:

- (a) life-saving appliances, including air bag inflators, air bag modules and seatbelt pretensioners,

(b) distress signals that are part of the safety system of a vessel or aircraft.

#### **50 Transport of explosives by private road**

A person is not required to be authorised by a licence to transport in order to transport any explosives or explosive precursors by motor vehicle if the motor vehicle concerned is travelling on a private road within an explosives site and the possession of the explosives by the person is otherwise authorised under this Regulation.

#### **51 Voyages outside the State**

A person is not required to be authorised by a licence in order to transport by vessel any explosives or explosive precursors if the vessel concerned is proceeding on an overseas voyage or an interstate voyage.

#### **52 Activities in port operational areas**

- (1) A person is not required to be authorised by a licence to handle an explosive or explosive precursor in a port operational area under the control of a port authority.
- (2) In this clause:

**port authority** means a body established under Part 2 of the *Ports and Maritime Administration Act 1995* or Roads and Maritime Services.

**port operational area** means the land and sea, including the fixed facilities and vessels, located in any area defined in Schedule 1 to the *Ports and Maritime Administration Regulation 2012* and includes any berths adjacent to such an area.

#### **53 Use of small quantities of security sensitive ammonium nitrate**

A person is not required to be authorised by a licence to use security sensitive dangerous substances in order:

- (a) to use and otherwise handle security sensitive ammonium nitrate for educational, research or analytical purposes at a school or at a commercial laboratory, university or other research institution if the amount of security sensitive ammonium nitrate used or otherwise handled does not exceed 3 kg, or
- (b) to transport up to 20 kg of security sensitive ammonium nitrate.

### **Part 4 Prohibited explosives**

#### **Division 1 Prohibited explosives**

##### **54 Prohibited and authorised explosives—meaning**

- (1) A **prohibited explosive** is any explosive that is not an authorised explosive.
- (2) An **authorised explosive** is any explosive registered as an authorised explosive in

the register of explosives.

#### **55 Prohibited explosives not to be handled**

A person must not handle any prohibited explosive.

Maximum penalty: 250 penalty units.

#### **56 Use and modification of authorised explosives for unauthorised purposes**

A person must not use, modify, or attempt to use or modify, an authorised explosive to produce an explosive effect other than that for which the particular explosive was designed.

Maximum penalty: 250 penalty units.

#### **57 Exception for research and development**

- (1) A person who handles or modifies an explosive does not commit an offence under this Division if the person:
  - (a) is authorised to handle that explosive by a licence to manufacture, and
  - (b) handles or modifies the explosive in the course of a permitted research and development project, and
  - (c) handles or modifies the explosive in accordance with the applicable safety standards.
- (2) A **research and development project** is a project carried out for the sole purpose of testing and developing an explosive (being either a new explosive or a modified version of an existing explosive) that is intended to be registered as an authorised explosive on completion of the project.
- (3) A research and development project is **permitted** only if the project is carried out for a maximum period of 6 months, or such longer period as may be approved by the regulatory authority in the particular case.
- (4) The **applicable safety standards** are the requirements of hazard division 1.1 or any other requirements approved by the regulatory authority in the particular case.
- (5) This clause authorises a person to possess, manufacture, process, treat, transport, use and dispose of an explosive in the course of a permitted research and development project but does not authorise the sale or supply of an explosive.
- (6) This clause does not apply to any explosives that are goods too dangerous to be transported under the Australian Explosives Code or ADG Code that can produce an explosive or pyrotechnic effect.

## Division 2 Registration of explosives

### 58 Registration of authorised explosives

- (1) The regulatory authority may register an explosive as an authorised explosive.
- (2) The regulatory authority is to keep a register of explosives in which it records the particulars of those explosives that it registers as authorised explosives.
- (3) Registration remains in force until it is revoked by the regulatory authority.

### 59 Application to have explosives registered as authorised

- (1) A person may apply to the regulatory authority to have an explosive registered as an authorised explosive.
- (2) The application must be accompanied by the approved fee.
- (3) An applicant must furnish to the regulatory authority:
  - (a) such additional information about the explosive as it may request, and
  - (b) without charge, such sample or samples of the explosive as it may require for the purpose of testing.
- (4) The regulatory authority may register the explosive as an authorised explosive or refuse to register the explosive as an authorised explosive.
- (5) An application is taken to have been refused if the regulatory authority has not registered the explosive as an authorised explosive within 3 months of receipt of the application.

### 60 Registration details

- (1) The regulatory authority is to record in the register of explosives, in relation to each explosive that it decides to register as an authorised explosive, details that describe the explosive, including:
  - (a) the name of the person who has applied to the regulatory authority to have an explosive registered as an authorised explosive, and
  - (b) the commercial name of the explosive, and
  - (c) the explosive's UN Number, Proper Shipping Name and Classification Code.
- (2) In this clause:

**Proper Shipping Name** has the same meaning as in the Australian Explosives Code.

**UN Number** (or **United Nations Number**) means the identification number shown in

the Australian Explosives Code in relation to the explosive.

#### **61 Alteration of register**

The regulatory authority may alter the register of explosives by correcting any error in or omission from the register.

#### **62 Revocation of registration**

- (1) The regulatory authority may revoke the registration of an authorised explosive.
- (2) The regulatory authority must not revoke the registration of an authorised explosive unless, before doing so, it gives the person who applied to the regulatory authority for registration:
  - (a) at least 30 days' notice of its intention to revoke registration, and
  - (b) an opportunity to make submissions to the regulatory authority about the proposed revocation.
- (3) The regulatory authority revokes registration by:
  - (a) publishing notice of the revocation in the Gazette, and
  - (b) removing the particulars of the explosive from the register of explosives.

#### **63 Publication of register**

The regulatory authority must from time to time, but at intervals of not more than one year, publish a copy of the register of explosives in the Gazette.

#### **64 Falsely representing explosives as authorised**

A person must not falsely represent an explosive as being an authorised explosive.

Maximum penalty: 250 penalty units.

### **Part 5 Safety and security measures**

#### **Division 1 Compliance with codes and standards**

##### **65 Duty to comply with certain standards or codes**

A person who carries out an activity to which any of the following standards or codes applies must ensure the activity is carried out in compliance with that standard or code:

- (a) in relation to explosives:
  - (i) AS 2187, and
  - (ii) the Australian Explosives Code,



(b) in relation to explosive precursors:

(i) the ADG Code, and

(ii) the Australian Standard AS 4326 *The storage and handling of oxidizing agents*, as in force from time to time.

Maximum penalty: 250 penalty units.

#### **66 Application of codes and standards**

(1) If any code or standard referred to in this Division imposes a duty or responsibility but does not indicate clearly the person, or class of people, on whom that duty or responsibility falls or lies, the duty or responsibility must be observed or discharged (as the case requires) by the person undertaking the relevant activity.

(2) If, under any code or standard referred to in this Division, a duty or some other form of responsibility is placed on more than one person or class of people, the duty or obligation must be observed or discharged (as the case requires) by each person or each person in that class only in relation to those matters for which the person has management or control and whether or not any other person is also responsible for undertaking the duty.

(3) A provision of this Regulation prevails over any inconsistent provision of a standard or code.

#### **67 Duty to ensure others comply with Australian Explosives Code**

A licence holder, and any person who manages or supervises the transport of explosives, must ensure that any person employed, engaged or otherwise involved in the transport of explosives who is employed or engaged by the licence holder or the person managing or supervising that transport:

(a) is trained in the relevant requirements of the Australian Explosives Code, and

(b) as far as is practicable, complies with the applicable requirements of the Australian Explosives Code.

Maximum penalty: 250 penalty units.

#### **68 Prohibition on entering contracts, etc that are not in accordance with the Australian Explosives Code**

A person must not enter into a contract, agreement or arrangement with another person by which that other person agrees to transport explosives otherwise than in accordance with the Australian Explosives Code.

Maximum penalty: 250 penalty units.

## Division 2 Compliance with plans submitted to regulatory authority

### 69 Approved plans

In this Division:

**safety management plan** means any safety management plan submitted to the regulatory authority in or in connection with an application for a licence.

**security plan** means any security plan submitted to the regulatory authority in or in connection with an application for a licence.

### 70 Compliance with security plan

A licence holder must ensure that:

- (a) the requirements of, and procedures specified in, the licence holder's security plan are observed, and
- (b) all activities under the licence are undertaken in accordance with the security plan.

Maximum penalty: 250 penalty units.

### 71 Explosives to be accessed only as authorised by security plan

- (1) A person must not handle, or gain unsupervised access to, any explosives or explosive precursors at premises regulated by a security plan unless the person:
  - (a) is the holder of a security clearance that is in force and is listed on the security plan as a person authorised to have unsupervised access to the explosive or explosive precursor, or
  - (b) is the holder of a licence that authorises the person to handle the explosive or explosive precursor concerned.

Maximum penalty: 250 penalty units.

- (2) In this clause, **premises** means premises at which explosives or explosive precursors are handled under the authority of a licence.
- (3) Premises are **regulated by a security plan** if the licence holder has submitted to the regulatory authority a security plan in relation to the activities at those premises.

### 72 Compliance with safety management plan

A licence holder must ensure that:

- (a) the requirements of, and procedures specified in, the licence holder's safety management plan are observed, and
- (b) all activities under the licence are undertaken in accordance with that safety

management plan.

Maximum penalty: 250 penalty units.

## **Division 3 Manufacture, supply and import of explosives**

### **73 Meaning of “authorised supplier”**

In this Division, **authorised supplier** means the holder of any licence that authorises the holder to supply explosives or explosive precursors.

### **74 Design of building where explosives manufactured**

A person who holds a licence to manufacture must not manufacture explosives, or prepare for the manufacture of explosives, in any building or any area that has not been designed and constructed to minimise the consequences of an accidental explosion.

Maximum penalty: 250 penalty units.

### **75 Explosives to be supplied only to persons authorised to receive explosives**

(1) An authorised supplier must not supply explosives or explosive precursors to another person (**the receiver**) unless the receiver produces to the authorised supplier:

(a) proof of identity of the receiver (such as a passport or a motor vehicle driver licence issued in Australia that displays a photograph of the person), and

(b) evidence that:

(i) the receiver is authorised by a licence or otherwise authorised under a corresponding law to possess the explosives or explosive precursors of the quantity and type supplied, or

(ii) the receiver is not required to be authorised by a licence to possess the explosives or explosive precursors, or

(iii) the explosives or explosive precursors are to be supplied to the receiver outside Australia.

Maximum penalty (subclause (1)): 100 penalty units.

(2) An authorised supplier must keep a record of each supply of explosives or explosive precursors.

Maximum penalty (subclause (2)): 100 penalty units.

(3) The record must include the following information:

(a) the date of supply,

(b) the name, address and telephone number of the person to whom the explosive or

explosive precursor is supplied,

- (c) details of the licence produced to the supplier or the receiver's authority under a corresponding law to possess the explosives or explosive precursors (if required),
- (d) the name, address and telephone number of the licence holder in whose premises the explosives or explosive precursors are to be stored,
- (e) the kind and quantity of the explosives or explosive precursors supplied.

#### **76 Retention of supply records**

- (1) An authorised supplier must keep, for at least 5 years after each supply of explosives or explosive precursors, the record made in relation to the supply.
- (2) In this clause, an **authorised supplier** includes a person who was formerly an authorised supplier.

Maximum penalty: 100 penalty units.

#### **77 Supply records to be made available for inspection**

- (1) An authorised supplier must make all records made by the supplier about supplies of explosives or explosive precursors available for examination at the direction of an inspector or police officer as soon as is reasonably practicable after a direction is given, but no later than 7 days after the direction is given.
- (2) In this clause, an **authorised supplier** includes a person who was formerly an authorised supplier.

Maximum penalty: 100 penalty units.

#### **78 Packaging and marking of explosives and explosive precursors**

- (1) A person who holds a licence to manufacture must ensure that, before any explosives or explosive precursors are supplied or used, they are packaged and marked in accordance with the applicable requirements of the Australian Explosives Code.

Maximum penalty (subclause (1)): 250 penalty units.

- (2) A person must not import, supply, store or transport any explosive or explosive precursor unless it is packaged and marked in accordance with the applicable requirements of the Australian Explosives Code or the ADG Code.

Maximum penalty (subclause (2)): 250 penalty units.

- (3) The markings referred to in this clause must be in the English language.
- (4) This clause does not apply to any explosives or explosive precursors that are:

- (a) in the process of being manufactured or are semi-finished goods at the premises or place where they are being manufactured, or
  - (b) for use at, and are not to be transported beyond the boundaries of, the premises or place where they were manufactured, but only if the containers are clearly and conspicuously marked with the name of the contents, or
  - (c) blasting explosives that are manufactured at the place at which they are about to be used, or
  - (d) bulk explosives being transported in compliance with the provisions of the Australian Explosives Code, or
  - (e) distress signals, power device cartridges or ammunition that do not exceed 5 kg and are being or are to be stored or transported by a person for that person's own use.
- (5) This clause does not prevent explosives or explosive precursors that have been imported from being transported from an airport or a wharf to a place specified in a licence for the purposes of packaging and marking in accordance with the applicable requirements of the Australian Explosives Code.
- (6) Subclause (2) does not apply to a police officer acting in the course of his or her duties as a police officer.
- (7) In this clause, **marking** includes labelling.

## **79 Consignment of explosives and explosive precursors**

- (1) A licence holder must not send or cause to be sent to any other person a consignment of explosives or explosive precursors otherwise than in accordance with the consignment requirements.
- (2) The **consignment requirements** are as follows:
- (a) the licence holder must ensure that the person to whom the explosives or explosive precursors are sent (**the consignee**) is authorised under the Act to possess the explosives or explosive precursors,
  - (b) the licence holder must, before sending the explosives or explosive precursors, give to the consignee a notice which sets out a description of, and quantity of, the explosives or explosive precursors to be sent,
  - (c) the consignee has informed the licence holder that the consignee will be prepared to receive the explosives or explosive precursors on a specified day or within a specified period,
  - (d) the explosives or explosive precursors are sent at such a time and by such means

that in the ordinary course of transport the consignee will receive them on the specified day or within the specified period.

Maximum penalty: 250 penalty units.

### **80 Export of explosives and explosive precursors**

- (1) An authorised supplier must not export explosives or explosive precursors unless the person has given the regulatory authority notice of the export of the explosives or explosive precursors.
- (2) A notice must be given on each occasion that explosives or explosive precursors are exported.
- (3) The notice must be given no later than 5 business days before the day on which the explosives or explosive precursors are intended to be exported from the State.
- (4) The notice must include the following information:
  - (a) the name and licence number of the licence holder,
  - (b) the intended date of export of the explosives or explosive precursors,
  - (c) the port, facility or airport from where the explosives or explosive precursors are to be exported,
  - (d) the name of, and classification assigned to, the explosives or explosive precursors,
  - (e) details of the kind and quantity of explosives or explosive precursors to be exported,
  - (f) the name of the consignee and the consignor (if not the licence holder) of the explosives or explosive precursors.
- (5) If the licence holder becomes aware that any of the information given in such a notice is no longer accurate, the licence holder must give the regulatory authority notice of the relevant change of information.
- (6) A notice under this clause may be given in writing or electronically.

Maximum penalty: 250 penalty units.

### **81 Import of explosives and explosive precursors**

- (1) A person who holds a licence to import must not import explosives or explosive precursors unless the person has given the regulatory authority notice of the import of the explosives or explosive precursors.
- (2) A notice must be given on each occasion that explosives or explosive precursors are imported.

- (3) The notice must be given no later than 5 business days before the day on which the explosives or explosive precursors are intended to arrive in the State and must be accompanied by the fee fixed by the regulatory authority.
- (4) The notice must include the following information:
  - (a) the name and licence number of the licence holder,
  - (b) the intended date of import of the explosives or explosive precursors,
  - (c) the identity of the vessel or aircraft in which the explosives or explosive precursors are to be imported,
  - (d) the port, facility or airport where the explosives or explosive precursors are to be received,
  - (e) the name of, and the classification assigned to, the explosives or explosive precursors,
  - (f) details of the kind and quantity of explosives or explosive precursors to be imported,
  - (g) the name of the consignee (if not the licence holder) and the consignor of the explosives or explosive precursors,
  - (h) the address of the place where the explosives or explosive precursors are to be stored in the State.
- (5) If the licence holder becomes aware that any of the information given in such a notice is no longer accurate, the licence holder must give the regulatory authority notice of the relevant change of information.
- (6) A notice under this clause may be given in writing or electronically.

Maximum penalty: 250 penalty units.

## **82 Transport of imported explosives or explosive precursors**

- (1) A person who is an importer, importer's agent or consignee of explosives must not transport explosives or explosive precursors, or cause or permit explosives or explosive precursors to be transported, from a port, facility or airport where they are received to premises specified in a licence for the storage or handling of explosives unless the regulatory authority has approved the transport of the explosives or explosive precursors to those premises.
- (2) An approval given by the regulatory authority for the purposes of this clause may be given in writing or electronically.

Maximum penalty: 250 penalty units.

### **83 Sale of distress signals, power device cartridges or ammunition**

- (1) A person must not sell a distress signal, railway track signal, power device cartridge or ammunition unless the person is satisfied that the purchaser:
  - (a) is a bona fide user of the explosive concerned, and
  - (b) if a natural person—is over the age of 18 years.
- (2) **Bona fide user—meaning** For the purposes of this clause:
  - (a) a person is a bona fide user of a distress signal if the person:
    - (i) intends to use the distress signal as a safety device on a vessel, or
    - (ii) holds a pyrotechnician’s licence and is authorised to use a distress signal under such licence, and
  - (b) a person is a bona fide user of a power device cartridge if the person intends to use the power device cartridges for use with an explosive-powered tool, and
  - (c) a person is a bona fide user of a railway track signal if the person intends to use railway track signal as a warning signal in connection with railway work, and
  - (d) a person is a bona fide user of ammunition if the person holds a firearms licence under the *Firearms Act 1996*, and
  - (e) a person is a bona fide user of a distress signal, railway track signal, power device cartridge or ammunition if the person is the holder of a licence to supply the explosive concerned.

Maximum penalty: 250 penalty units.

## **Division 4 Storage and transport of explosives**

### **84 Storage**

- (1) A licence holder must ensure that explosives and explosive precursors, when not being prepared for use, used or transported, are kept:
  - (a) in a secure magazine (in the case of explosives), or
  - (b) in a secure store (in the case of explosive precursors).

Maximum penalty (subclause (1)): 250 penalty units.

- (2) A **secure magazine** is a magazine (that is, a specially constructed store used exclusively for the keeping of explosives) that complies with the following requirements:
  - (a) the magazine must be designed, constructed, located and used in accordance



with the provisions of AS 2187,

- (b) the method of storage in the magazine (including the design, construction and location of the magazine) must be safe, secure and fit for its purpose,
- (c) the magazine must be marked, maintained and used in a manner that provides for the safety of the licence holder's employees and contractors and members of the public and of property.

(3) A **secure store** is a physically secure place for the keeping of explosive precursors that complies with the following requirements:

- (a) the secure store must be kept secure by lock or constant surveillance,
- (b) the secure store must be inaccessible to persons not authorised under a licence to possess the explosive precursors being stored,
- (c) procedures for the following must be in place:
  - (i) control of access,
  - (ii) control of keys (if any),
  - (iii) documenting the movement into and out of the secure store.

(4) A person who removes explosives or explosive precursors from a secure magazine or secure store or who, after removal, prepares explosives or explosive precursors for use or uses them, must ensure that:

- (a) the explosives or explosive precursors are kept under direct supervision until they are used or placed in a secure magazine or secure store, and
- (b) after use, any explosives or explosive precursors that are not used are placed in a secure magazine or secure store.

Maximum penalty (subclause (4)): 250 penalty units.

(5) A person ensures that explosives or explosive precursors are **kept under direct supervision** if:

- (a) the person keeps them under his or her immediate supervision, or
- (b) the person causes them to be kept by, and under the immediate supervision of, a natural person who holds a security clearance that is in force.

(6) If any additional or alternative requirements for the storage of explosives or explosive precursors are imposed on a licence holder by the conditions of the licence, those requirements apply in addition to, or instead of, the requirements provided for by this clause, as the case requires.

- (7) A person who holds a licence or permit under the *Firearms Act 1996* (other than a firearms collector licence) authorising the person to sell or possess a firearm or who holds an ammunition collection permit under that Act is not required to comply with this clause with respect to the storage of ammunition, percussion caps or not more than 12 kg of propellant powder.

#### **85 Storage of explosives that have been prepared for use**

A licence holder must ensure that any explosive that cannot be used, or loaded into blast holes, on the day it is prepared for use is:

- (a) kept in closed, clean, secure containers or packagings, conspicuously labelled "EXPLOSIVES", and
- (b) stored in a secure magazine until the explosive can be used, and
- (c) used as soon as is practicable.

Maximum penalty: 250 penalty units.

#### **86 Storage of explosives in rail yards or sidings**

A person controlling a rail yard or siding at which any units of rail rolling stock are held must ensure that:

- (a) the maximum amount of explosive of any hazard division (except hazard division 1.4) does not exceed 40,000 kg NEQ, and
- (b) the explosives are not kept in the rail yard or siding:
  - (i) for longer than 2 consecutive working days, or
  - (ii) for longer than 4 days if a weekend or public holiday occurs between 2 consecutive working days.

Maximum penalty: 250 penalty units.

#### **87 Storage of explosives in stationary vehicles**

- (1) A person who has control of a vehicle and is transporting explosives under the authority of a licence to transport by vehicle must ensure that the explosives are unloaded from the vehicle and stored in a secure magazine if the vehicle remains stationary at premises for more than the maximum stationary period.
- (2) The ***maximum stationary period*** is:
  - (a) 2 consecutive working days, or
  - (b) 4 days, if a weekend or a public holiday occurs between 2 consecutive working days.

- (3) For the purposes of this Regulation, a vehicle that holds, contains or is otherwise loaded with explosives:
- (a) is taken to be transporting explosives even when it is stationary, and
  - (b) is subject to the applicable requirements of the Australian Explosives Code unless otherwise provided by that Code.

Maximum penalty: 250 penalty units.

**88 Storage or transport of explosives of more than one hazard division together**

- (1) A person who stores or transports an explosive of one hazard division with an explosive of another hazard division must store or transport the explosive in accordance with the requirements of the hazard division that has precedence in the circumstances.
- (2) Precedence of hazard division is to be determined in accordance with the Australian Explosives Code.

Maximum penalty: 250 penalty units.

**89 Transport of explosives by vehicles in certain areas**

- (1) A person must not transport an explosive in or on a vehicle in a quantity greater than the maximum load limit for the explosive as set out in the Australian Explosives Code in or on any of the following areas, roads or districts:
- (a) the area of the State west of the eastern boundary of the Newell Highway,
  - (b) the roads on a more or less direct route from the Newell Highway to the following:
    - (i) the Port of Yamba via Jackadgery,
    - (ii) the Port of Newcastle,
    - (iii) the Hunter Valley via Merriwa,
    - (iv) the Woodlawn Mining District via Hay,
  - (c) the roads on a more or less direct route from the Newell Highway to the following Commonwealth of Australia defence facilities:
    - (i) the Singleton Military Area,
    - (ii) Myambat (being the Defence Establishment facility) via Muswellbrook,
    - (iii) Wallangarra (being the Australian Defence Force Explosive Ordnance Depot Jennings) via Glen Innes and Tenterfield,
    - (iv) Orchard Hills (being the Defence Establishment facility),

- (v) Williamstown (being a RAAF base),
  - (vi) Nowra (being HMAS Albatross),
  - (vii) Eden (being the Australian Defence Force Explosive Ordinance Depot Twofold Bay).
- (2) A person must not transport more than 10 tonnes of explosives of Class 1.1, 1.2 or 1.5 in or on a vehicle in the area of the State east of the eastern boundary of the Newell Highway, except:
- (a) on the roads referred to in subclause (1) (b) and (c), or
  - (b) with the approval of the regulatory authority.
- (3) A person must not transport explosives of Class 1.1, 1.2 or 1.5 in or on a vehicle in the following districts, on the following bridges or in the following road tunnels except with the approval of the regulatory authority:
- (a) the central business districts of Sydney, North Sydney, Penrith, Newcastle and Wollongong,
  - (b) the Sydney Harbour Bridge, the Anzac Bridge and the Gladesville Bridge,
  - (c) any road tunnels in the greater Sydney metropolitan area.
- (4) The regulatory authority may not grant approval under subclause (3) to transport more than 6 tonnes of explosives of Class 1.1, 1.2 or 1.5.
- (5) A person carrying explosives of Class 1.1, 1.2 or 1.5 in or on a vehicle must bypass the central business districts and the main shopping areas of any other city or of any town not mentioned in subclauses (2) and (3) whenever it is practicable and no less safe to do so.
- (6) In this clause:

**central business district**, in relation to Sydney, North Sydney, Penrith, Newcastle and Wollongong, means the areas defined by the boundaries of postcodes 2000, 2060, 2750, 2300 and 2500, respectively.

**greater Sydney metropolitan area** means the area constituted by the local government areas of Ashfield, City of Auburn, Bankstown City, Blacktown City, Botany Bay City, Burwood, Camden, Campbelltown City, Canada Bay, Canterbury City, Fairfield City, Hawkesbury City, Holroyd City, Hornsby, Hunter's Hill, Hurstville City, City of Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool City, Manly, Marrickville, Mosman, North Sydney, Parramatta City, Penrith City, Pittwater, Randwick City, Rockdale City, Ryde City, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Warringah, Waverley, Willoughby City and Woollahra.

Maximum penalty: 250 penalty units.

**90 Emergency plan required if large quantities of explosives or explosive precursors are stored**

- (1) A licence holder who stores more than 50 kg NEQ of explosives, or more than 50 tonnes of security sensitive dangerous substances, or both, at premises must ensure that there are adequate arrangements for dealing with an emergency.
- (2) Arrangements for dealing with an emergency are not adequate unless:
  - (a) the licence holder has a written plan in place for dealing with any emergency associated with the storage and handling of the explosives or security sensitive dangerous substances, or both, on the premises (an **emergency plan**), and
  - (b) the emergency plan is implemented and kept up to date, and
  - (c) the emergency plan is reviewed by the licence holder:
    - (i) if there is a change in circumstances at the premises such as to raise the possibility of an emergency of a kind that is not dealt with by the plan, and
    - (ii) at intervals of not more than 5 years from the date on which the plan was developed or last reviewed, and
  - (d) in the course of developing or reviewing an emergency plan the licence holder:
    - (i) provides a draft of the emergency plan to the Commissioner of Fire and Rescue NSW, and
    - (ii) has regard to any written advice received from the regulatory authority or the Commissioner of Fire and Rescue NSW, and
  - (e) arrangements under the emergency plan, and any changes to the plan, are communicated to:
    - (i) persons who are engaged to work at the premises and who may be exposed to risk as a result of an emergency, and
    - (ii) persons in adjacent premises, if persons or property on the adjacent premises may be exposed to risk as a result of an emergency, and
  - (f) a copy of the emergency plan, and any changes to the plan, is provided:
    - (i) in the case of premises in a rural fire district within the meaning of the *Rural Fires Act 1997*—to the NSW Rural Fire Service, or
    - (ii) in any other case—to the Commissioner of Fire and Rescue NSW.

Maximum penalty: 250 penalty units.

## 91 Carriage of explosives on public passenger vehicles

- (1) A person must not:
  - (a) possess explosives while in or on a public passenger vehicle, or
  - (b) place explosives in or on a public passenger vehicle.
- (2) This clause does not apply to the following:
  - (a) toy fireworks,
  - (b) police officers acting in the course of their duties,
  - (c) a member of staff of a rail authority (within the meaning of the *Transport Administration Act 1988*), in relation to railway track signals, if that person carries the explosives in an area that is not accessible to any passenger,
  - (d) a person who holds a licence or a permit under the *Firearms Act 1996* (other than a firearms collector licence) that authorises the person to possess or use a firearm, in relation to ammunition for the firearm.
- (3) In this clause, **public passenger vehicle** means a vehicle or vessel that transports or may transport persons and is available for use by the public.

Maximum penalty: 250 penalty units.

## 92 Person transporting explosives to avoid hazards

A person transporting explosives by vehicle must ensure that, while the explosives are being carried in or on the vehicle, they are kept away from anything, whether in or on the vehicle or elsewhere, that might cause them to ignite or explode.

Maximum penalty: 250 penalty units.

## 93 Smoking prohibited on or near vehicles used to transport explosives

- (1) A person must not smoke in or on, or within 6 metres of, a vehicle in or on which explosives are being carried and on which signs that are required by the Australian Explosives Code to be exhibited are displayed.

Maximum penalty (subclause (1)): 250 penalty units.

- (2) The person in charge of a vehicle in or on which explosives are being carried must take all practicable steps to ensure that no person smokes in or on, or within 6 metres of, the vehicle.

Maximum penalty (subclause (2)): 250 penalty units.

#### **94 Additional requirements—licence to transport by vehicle**

- (1) The holder of a licence to transport by vehicle must ensure that each individual who is authorised by the licence holder to drive a vehicle containing explosives or explosive precursors:
  - (a) complies with the requirements of the Australian Explosives Code relating to the transport of explosives by road and rail, and
  - (b) is of or above the age of 21 years, and
  - (c) has sufficient training and experience to drive the vehicle or vehicles concerned, and
  - (d) has been examined by a medical practitioner, as required by subclause (2), and found not to have any medical or physical condition that would impair the individual's ability to perform the duties of a driver of a vehicle that transports explosives or explosive precursors.

Maximum penalty: 250 penalty units.

- (2) A medical examination referred to subclause (1) (d) must occur:
  - (a) no more than 6 months before the first occasion on which the driver is authorised by the licence holder to drive a vehicle containing explosives or explosive precursors, and
  - (b) at least every 5 years after that.

### **Division 5 Use of explosives**

#### **95 Setting of explosives**

- (1) A person who has set, or caused to be set, an explosive to explode must not leave the explosive unsupervised until it has exploded or been destroyed or rendered harmless.
- (2) This clause extends to an explosive that has failed to fire or has misfired.
- (3) This clause does not apply to an explosive that is set to explode at a place in connection with any mining work while the explosive remains at that place.
- (4) In this clause, **mining work** means:
  - (a) work to which the which the [Coal Mine Health and Safety Act 2002](#) or the [Mine Health and Safety Act 2004](#) applies, or
  - (b) on the commencement of the [Work Health and Safety \(Mines\) Act 2013](#), work to which that Act applies.

Maximum penalty: 250 penalty units.

## **96 Use of distress signals for other purposes**

A person must not use a distress signal other than as a distress signal unless the person is the holder of a pyrotechnician's licence that authorises the person to use the distress signal for the purpose.

Maximum penalty: 250 penalty units.

## **Division 6 Disposal of explosives**

### **97 Disposal under blasting explosives user's licence**

(1) A person must not dispose of explosives unless:

- (a) the person is the holder of a blasting explosives user's licence or acting under the immediate supervision of the holder of a blasting explosives user's licence, and
- (b) the blasting explosives user's licence authorises the use of the explosives being disposed of, and
- (c) the explosives are surplus stock that have not been used on the day that they were prepared for use, and
- (d) the explosives are not disposed of for fee or reward, and
- (e) the person disposes of the explosives or explosive precursors in accordance with AS 2187.

Maximum penalty: 250 penalty units.

- (2) This clause does not prevent a person from disposing of unused explosives by returning those explosives to the supplier, if the supplier has consented to the return of the explosives.
- (3) This clause does not prevent the disposal of explosives or explosive precursors as authorised by a licence to manufacture.

### **98 Explosives must be disposed of safely**

A person disposing of explosives must, in addition to complying with the requirements imposed under this Division:

- (a) ensure that the method of disposal used provides the greatest degree of safety possible, and
- (b) ensure that the method of disposal is appropriate to the type of explosives and the condition of the explosives, and
- (c) take adequate precautions against causing injury to any person or damage to any property, and



- (d) if an appropriate and safe method of disposal is not known, seek and act according to the advice of the manufacturer or the regulatory authority.

Maximum penalty: 250 penalty units.

### **99 Explosives not to be discarded**

A person must not throw away, bury, abandon or discard explosives.

Maximum penalty: 250 penalty units.

### **100 Restrictions on vacating explosives site**

- (1) A person must not vacate an explosives site unless all explosives stored at the site are removed from the site.

Maximum penalty: 250 penalty units.

- (2) The explosives must be disposed of lawfully or transferred to another place at which they can lawfully be stored.

- (3) A person who fails to remove explosives from a site does not commit an offence against this clause if the new occupier of the site knowingly takes possession of the explosives concerned and is authorised by a licence to store the explosives.

- (4) In this clause:

**vacate** includes sell, lease, transfer or abandon.

## **Division 7 Other miscellaneous safety and security measures**

### **101 Access to explosives or explosive precursors by unauthorised persons**

A person must not allow another person to have unsupervised access to an explosive or explosive precursor unless that other person holds a security clearance that is in force.

Maximum penalty: 250 penalty units.

### **102 Notification of loss or theft of explosives or explosive precursors**

- (1) A licence holder must immediately notify each relevant authority if any explosive or explosive precursor in the possession, custody or control of a licence holder:

(a) is lost, or

(b) is stolen, or

(c) is the subject of an attempted theft or any other suspicious incident that threatens the security of the explosive or explosive precursor.

- (2) In this clause, a **relevant authority** means:

- (a) the regulatory authority, and
- (b) a police officer, and
- (c) in the case of an explosive or explosive precursor located at a coal workplace or mining workplace, the WorkCover Authority (in addition to the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services).

Maximum penalty: 250 penalty units.

**Note—**

The Director-General of the Department of Trade and Investment, Regional Infrastructure and Services is the regulatory authority in relation to coal workplaces and mining workplaces.

**103 Notification of serious incidents involving explosives or explosive precursors**

- (1) A licence holder must give the regulatory authority notice of any serious incident relating to the handling of any explosives or explosive precursors to which the licence relates.

**Note—**

The regulatory authority in relation to coal workplaces and mining workplaces is the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services.

Maximum penalty (subclause (1)): 250 penalty units.

- (2) In this clause, **serious incident** means:
  - (a) an uncontrolled explosion or fire, or
  - (b) an incident resulting in the death of, or serious injury to, a person or substantial damage to property, or
  - (c) any other incident involving risk of an uncontrolled explosion or fire or of any such death, injury or damage.
- (3) Notice of a serious incident must contain full particulars of the incident including, if it has resulted in the death of or serious injury to a person or substantial damage to property, the particulars of that death, injury or damage.
- (4) The notice must be given as soon as practicable after the licence holder becomes aware of the incident.
- (5) Notice required to be given under this clause must be given in any of the following ways:
  - (a) by electronic communication (using a mode of electronic communication approved by the regulatory authority),
  - (b) by telephone to the regulatory authority, giving such information as may be

requested of the caller.

- (6) A licence holder must take measures to ensure that the following areas are not used, interfered with or disturbed for a period of 36 hours after notice of a serious incident is given:
- (a) the area within a radius of 4 metres of the place where the serious incident occurred,
  - (b) the area within a radius of 4 metres of a place affected by the serious incident.

Maximum penalty (subclause (6)): 250 penalty units.

- (7) A licence holder who has notified an incident as a notifiable incident under the [Work Health and Safety Act 2011](#) is not required to notify the regulatory authority of the incident under this clause.
- (8) However, subclause (6) applies as if a reference to a serious incident were a reference to the notifiable incident notified under the [Work Health and Safety Act 2011](#).
- (9) This clause does not prevent any action:
- (a) to help or remove a trapped or injured person or to remove a body, or
  - (b) to avoid injury to a person or damage to property, or
  - (c) for the purposes of any police investigation, or
  - (d) in accordance with a direction or permission of an inspector.

#### **104 Entry to place where explosives or explosive precursors manufactured or stored**

- (1) A person must not enter, or remain in or on, a place authorised under a licence to manufacture or store explosives or explosive precursors, or any part of, or any building in or on, such a place, unless he or she is authorised to do so by the licence holder or by or under an Act or other law.

Maximum penalty: 250 penalty units.

- (2) An authorised person may:
- (a) request a person who enters or remains in a place or building in contravention of this clause to leave the place or part of the place or the building, and
  - (b) if the person fails to do so immediately after being so requested, may remove the person by the use of such reasonable force as is necessary for the purpose.
- (3) In this clause, an **authorised person** means any of the following persons:
- (a) a licence holder,

- (b) an employee of the licence holder,
- (c) a person acting with the authority of the licence holder,
- (d) an inspector,
- (e) a police officer.

#### **105 Fire hazards**

A person must not:

- (a) take any substance or article or thing that might spontaneously ignite or cause fire or explosion into, or within 10 metres of, a place where explosives are handled, or
- (b) smoke or conduct any other activity that may generate an ignition source in, or within 10 metres of, a place where explosives are handled.

Maximum penalty: 250 penalty units.

#### **106 Interference with signs and labels**

A person must not intentionally or recklessly pull down, erase, mutilate or otherwise interfere with a sign, label or marking erected, fixed or made in relation to the control or regulation of explosives or explosive precursors.

Maximum penalty: 250 penalty units.

### **Part 6 Enforcement powers**

#### **107 Certain powers of inspectors and police officers to give directions**

- (1) An inspector or police officer may direct a person to do any of the following:
  - (a) to remove a hazard to an explosive or explosive precursor (such as an ignition source),
  - (b) to dispose of unsafe explosives in a safe manner,
  - (c) to remove a person from premises where that person's presence is contrary to a security plan,
  - (d) to institute immediate interim security arrangements to ensure the security of any premises,
  - (e) to do any other activity or thing that, in the opinion of the inspector or police officer, is necessary to ensure the safety or security of any persons or property arising from the handling of explosives or explosive precursors.
- (2) A direction that requires a person to handle explosives may only be given to the

following persons:

- (a) a licence holder,
- (b) an employee, contractor or other person engaged, or apparently engaged, by a licence holder,
- (c) a person whom the inspector or officer reasonably suspects to be engaged in activities that require a licence.

- (3) A person must not, without reasonable excuse, fail to comply with a direction given under this clause.

Maximum penalty: 250 penalty units.

#### **108 Powers of inspectors in relation to explosives that have been set**

- (1) An inspector may direct a person who has set an explosive to explode or caused an explosive to be set to explode:
  - (a) to explode it, or
  - (b) to render it harmless, destroy it or otherwise dispose of it in accordance with this Regulation.
- (2) This clause extends to an explosive that has failed to fire or has misfired.
- (3) A person must not, without reasonable cause, fail to comply with a direction given by an inspector under this clause.

Maximum penalty: 250 penalty units.

#### **109 Evidence of licence or security clearance to be produced**

- (1) A person who holds a licence or a security clearance must, on demand made by a police officer or an inspector at any time:
  - (a) if the person has the licence or security clearance in his or her immediate possession—produce the licence or security clearance for inspection by the police officer or inspector, or
  - (b) if the person does not have the licence or security clearance in his or her immediate possession—produce it as soon as practicable (but not more than 48 hours) after the demand is made to the police officer or inspector who made the demand or to another police officer or inspector nominated by the original police officer or inspector.

Maximum penalty (subclause (1)): 5 penalty units.

- (2) A person who is in immediate possession of an explosive or explosive precursor must,

unless the person has a reasonable excuse:

- (a) carry the licence, or a copy of the licence, that authorises that possession, and
- (b) produce the licence, or a copy of the licence, on demand being made by a police officer or an inspector.

Maximum penalty (subclause (2)): 5 penalty units.

- (3) A person who holds a security clearance and is in immediate possession of an explosive or explosive precursor must, unless the person has a reasonable excuse:

- (a) carry the security clearance or a copy of the security clearance, and
- (b) produce the security clearance, or a copy of the security clearance, on demand being made by a police officer or an inspector.

Maximum penalty (subclause (3)): 5 penalty units.

#### **110 Penalty notice offences and penalties**

- (1) For the purposes of section 34 of the Act:
  - (a) each offence created by a provision specified in Column 1 of Schedule 2 is an offence for which a penalty notice may be served, and
  - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 2 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

### **Part 7 Miscellaneous**

#### **111 Onus of proof concerning reasonable excuse**

In any proceedings for an offence against a provision of this Regulation, the onus of proving that a person had a reasonable excuse is on the person asserting it.

#### **112 Exemptions for particular persons on application**

- (1) A person may apply in writing to the regulatory authority for an exemption from any provision of this Regulation.
- (2) On receipt of the application, the regulatory authority may:
  - (a) by order in writing, exempt the person from a specified provision of this Regulation, or

- (b) dismiss the application.
- (3) The regulatory authority must not grant an exemption to a person unless it is satisfied that:
  - (a) the person is capable of achieving at least an equivalent level of safety and security as would be achieved if the provision had been complied with, or
  - (b) the application of the provision to the person is inappropriate or unnecessary in the circumstances.
- (4) An exemption may be given unconditionally or subject to such conditions as the regulatory authority considers appropriate and specifies in the order.
- (5) An exemption under this clause has effect for such period (not exceeding 5 years) as is specified in the exemption, unless sooner revoked. If no such period is specified, the exemption has effect for a period of 5 years after it is granted.
- (6) The regulatory authority may revoke an exemption if it is satisfied that the withdrawal is justified on safety or security grounds.

### **113 Exemptions for classes of persons or things**

- (1) The regulatory authority may, by order published in the Gazette, exempt any class of persons or things from a specified provision of this Regulation.
- (2) An exemption may be unconditional or subject to such conditions as the regulatory authority considers appropriate and specifies in the order.
- (3) An exemption under this clause has effect for such period (not exceeding 5 years) as is specified in the exemption, unless sooner revoked. If no such period is specified, the exemption has effect for a period of 5 years after it is granted.
- (4) The regulatory authority may, before granting an exemption under this clause, give notice of the proposed exemption to such persons or bodies as it considers appropriate.
- (5) The regulatory authority may revoke an exemption if it is satisfied that the withdrawal is justified on safety or security grounds.

### **114 Register of exemptions**

- (1) The regulatory authority is required to keep and make available for public inspection a register of all exemptions granted under this Division that are in force.
- (2) The regulatory authority is not required to include in the register confidential personal information about an individual or information relating to manufacturing or commercial secrets or working processes.

## Schedule 1 Security sensitive dangerous substances

(Clause 3)

### 1 Security sensitive ammonium nitrate

- (1) Security sensitive ammonium nitrate is a security sensitive dangerous substance.
- (2) In this Regulation, **security sensitive ammonium nitrate** means any of the following (but does not include ammonium nitrate solutions):
  - (a) ammonium nitrate that is not a dangerous good of Class 1,
  - (b) ammonium nitrate emulsions, suspensions or gels containing greater than 45% ammonium nitrate,
  - (c) ammonium nitrate mixtures containing greater than 45% ammonium nitrate.
- (3) An ammonium nitrate solution is not a security sensitive ammonium nitrate.

## Schedule 2 Penalty notice offences

(Clause 110)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 6—for an offence committed by a corporation	\$2,000
Section 6—for an offence committed by an individual	\$1,000
Section 7—for an offence committed by a corporation	\$2,000
Section 7—for an offence committed by an individual	\$1,000
Section 8—for an offence committed by a corporation	\$2,000
Section 8—for an offence committed by an individual	\$1,000
Section 9	\$1,000
Section 15	\$1,000
Section 18	\$1,000
Section 23	\$200
Section 28—for an offence committed by a corporation	\$2,500
Section 28—for an offence committed by an individual	\$800
Section 35	\$200



**Offences under this Regulation**

Clause 9	\$2,000
Clause 14 (4)	\$100
Clause 15 (4)	\$100
Clause 19 (10)	\$1,000
Clause 55	\$1,000
Clause 56	\$1,000
Clause 64	\$2,000
Clause 65	\$1,000
Clause 67	\$1,000
Clause 68	\$1,000
Clause 70	\$1,000
Clause 71	\$1,000
Clause 72	\$1,000
Clause 74	\$1,000
Clause 75 (1)	\$1,000
Clause 75 (2)	\$1,000
Clause 76	\$1,000
Clause 77	\$1,000
Clause 78 (1)	\$1,000
Clause 78 (2)	\$1,000
Clause 79	\$1,000
Clause 80	\$1,000
Clause 81	\$1,000
Clause 82	\$1,000
Clause 83	\$1,000
Clause 84 (1)	\$1,000
Clause 84 (4)	\$1,000
Clause 85	\$1,000
Clause 86	\$1,000
Clause 87	\$1,000

Clause 88	\$1,000
Clause 89	\$1,000
Clause 90	\$1,000
Clause 91	\$1,000
Clause 92	\$1,000
Clause 93 (1)	\$500
Clause 93 (2)	\$500
Clause 94	\$1,000
Clause 95	\$1,000
Clause 96	\$1,000
Clause 97	\$1,000
Clause 98	\$1,000
Clause 99	\$1,000
Clause 100	\$1,000
Clause 101	\$1,000
Clause 102	\$1,000
Clause 103 (1)	\$1,000
Clause 103 (6)	\$1,000
Clause 104	\$1,000
Clause 105	\$500
Clause 106	\$1,000
Clause 107	\$1,000
Clause 108	\$1,000
Clause 109 (1)	\$200
Clause 109 (2)	\$100
Clause 109 (3)	\$100

## **Schedule 3 Savings and transitional**

### **1 General saving**

Any act, matter or thing that, immediately before the repeal of the *Explosives Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

## **2 Licences generally**

- (1) A licence of a kind referred to in clause 16 of the *Explosives Regulation 2005* that is in force immediately before the repeal of that Regulation is taken, on that repeal, to be a licence of a corresponding kind referred to in clause 21 of this Regulation.
- (2) This clause does not apply to a blasting explosives learner's licence or an unsupervised handling licence.

## **3 Blasting explosives learner's licence**

A blasting explosives learner's licence that is in force immediately before the repeal of the *Explosives Regulation 2005* ceases to have effect on that repeal.

## **4 Unsupervised handling licences**

- (1) An unsupervised handling licence that is in force immediately before the repeal of the *Explosives Regulation 2005* is taken, on that repeal, to be a security clearance granted by the regulatory authority under Part 2 of this Regulation.
- (2) The security clearance has effect until the date of expiry specified in the licence, unless sooner cancelled under this Regulation.
- (3) Subclauses (1) and (2) extend to an unsupervised handling licence granted by the Administrative Decisions Tribunal (before or after the commencement of this Regulation) on a review of a decision of the regulatory authority to refuse to grant the licence.
- (4) An application for an unsupervised handling licence that is pending before the regulatory authority immediately before the commencement of this Regulation is taken, on that commencement, to be an application for a security clearance.

## **5 Conditions and restrictions extend to existing licences**

Any conditions or restrictions imposed on a licence, or on the authority conferred by a licence, by this Regulation extend to a licence granted before the commencement of this Regulation.

## **6 Storage of blasting explosives**

Clause 28 (2) (b) does not have effect until 1 March 2014.

## **7 Safety management plans**

- (1) Clause 36 applies only in respect of applications submitted to the regulatory authority on or after 1 March 2014.
- (2) Accordingly, clause 72 applies only in respect of safety management plans required to be submitted after that date.

## **8 Saving of exemptions**

- (1) An exemption from a provision of the *Explosives Regulation 2005* that was granted to a person under clause 93 of that Regulation, and which is in force immediately before the repeal of that Regulation, is taken, on that repeal:
  - (a) to have been granted under clause 112 of this Regulation, and
  - (b) to exempt the person from the provision of this Regulation that corresponds to the provision for which the exemption was granted.
  
- (2) An exemption from a provision of the *Explosives Regulation 2005* that was granted for a class of persons or things under clause 94 of that Regulation, and which is in force immediately before the repeal of that Regulation, is taken, on that repeal:
  - (a) to have been granted under clause 113 of this Regulation, and
  - (b) to exempt the class of persons or things concerned from the provision of this Regulation that corresponds to the provision for which the exemption was granted.