

Explosives Act 2003 No 39

[2003-39]



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—

- **Does not include amendments by**
[Fair Trading Legislation Amendment \(Reform\) Act 2018 No 65](#) (not commenced — to commence on 1.7.2020 or earlier by proclamation)
- **Editorial note**
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

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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New South Wales

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Explosives Act 2003 No 39



New South Wales

An Act to provide for the regulation and control of the handling of explosives and explosive precursors; to provide for the regulation of certain other dangerous goods; and for related purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Explosives Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act—

container includes any receptacle and any covering.

convey includes carry, load, unload, transfer, transmit, pump or discharge.

exercise a function includes perform a duty.

explosive means any article or substance prescribed by the regulations as an explosive for the purposes of this Act.

explosive precursor means any article or substance prescribed by the regulations as an explosive precursor for the purposes of this Act.

function includes power, duty and authority.

handling includes the activities of conveying, manufacturing, processing, possessing, using, preparing for use, treating, dispensing, storing, packing, selling, supplying, importing into the State from another country, rendering harmless, abandoning, destroying and disposing.

inspector means an inspector appointed under Part 4.

licence means a licence under this Act.

manufacture, in relation to any explosive, includes the blending together of any substances to make the explosive, the breaking up of the explosive and the re-making, altering or repairing of the explosive.

premises means any land, building or enclosed place, or part of land, building or enclosed place, or any portable structure.

regulatory authority—see section 4.

responsible person for a corporation means a person nominated in accordance with the regulations to be a responsible person for the corporation.

security clearance means a security clearance granted under Part 3.

sell includes any of the following—

- (a) sell by tender,
- (b) barter or exchange,
- (c) consign or deliver for sale,
- (d) advertise for sale,
- (e) offer for sale,
- (f) have in possession for sale,
- (g) agree to sell,
- (h) sell or do any of the above—
 - (i) as an agent or broker, or
 - (ii) by an agent or broker,
- (i) cause a sale to take place or cause any of the above to be done.

In paragraphs (c)–(g), the expressions **sale** and **sell** are capable of having the extended meaning given by paragraph (a) or (b) or both.

substance means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

4 Meaning of “regulatory authority”

- (1) SafeWork NSW (as referred to in clause 1 of Schedule 2 to the *Work Health and Safety Act 2011*) is the regulatory authority for the purposes of this Act, except as provided by this section.
- (2) A public authority is the regulatory authority for a matter for which it is declared to be the regulatory authority by the regulations (subject to such conditions or limitations as are specified in the regulations).

5 Act not to apply to transport of dangerous goods covered by other scheme

To the extent to which it is regulated by the *Dangerous Goods (Road and Rail Transport) Act 2008* or any regulations made under that Act, this Act does not apply to—

- (a) the transport of dangerous goods (within the meaning of that Act) by road or rail, or
- (b) any associated activity or matter.

Part 2 Offences relating to explosives

6 Licences required for handling explosives and explosive precursors

- (1) A person must not handle an explosive or explosive precursor if—
 - (a) the regulations require the handling to be authorised by a licence under this Act, and
 - (b) the person is not authorised to do so by a licence under this Act.

Maximum penalty—

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—250 penalty units or imprisonment for 12 months, or both.

Note—

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 33.

- (2) Without limiting subsection (1) (a), the regulations may require licensing by reference to the following—
 - (a) the class or type of explosive or explosive precursor,
 - (b) the kind of handling of the explosive or explosive precursor,

(c) the circumstances of the handling of the explosive or explosive precursor.

6A Security clearance must be held in certain circumstances

A natural person must not handle any explosive or explosive precursor if—

- (a) the regulations require the person to hold a security clearance that is in force when handling the explosive or explosive precursor, and
- (b) the person does not hold a security clearance to handle the explosive or explosive precursor concerned.

Maximum penalty—250 penalty units.

7 Conveyance of explosives

A person conveying an explosive must at all times take all precautions that are necessary to prevent access to the explosive by persons not lawfully entitled to have access to the explosive.

Maximum penalty—

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—250 penalty units.

8 Negligent handling of explosives

(1) A person must not negligently handle any explosives in such a manner or in such circumstances as—

- (a) to endanger or be likely to endanger the life of any person, or
- (b) to cause or be likely to cause injury to any person, or
- (c) to damage or be likely to cause damage to any property belonging to any other person.

Maximum penalty—

- (a) in the case of a corporation—500 penalty units, or
 - (b) in the case of an individual—250 penalty units or imprisonment for 12 months, or both.
- (2) A person is not guilty of an offence under subsection (1) (c) if the person satisfies the court that the owner of the property concerned had consented to its damage.

9 Supply of explosives to minors

(1) Subject to subsection (2), a person must not sell or otherwise supply any explosive to

a person who is under the age of 18 years (**a minor**).

Maximum penalty—50 penalty units.

- (2) A person is not guilty of an offence under this section if the person satisfies the court that—
- (a) the person believed on reasonable grounds that the minor concerned had attained the age of 18 years, or
 - (b) the minor concerned purchased or otherwise received the explosive in the course of the minor's employment.

Part 3 Explosives licences and security clearances

10 Licences may be granted under this Act

- (1) Licences authorising the carrying out of an activity that constitutes handling an explosive or explosive precursor may be granted and otherwise dealt with in accordance with this Part.
- (2) Licences may be granted or varied so as to cover one or more activities involving explosives or explosive precursors.

10A 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) The regulations may provide that subsections (1) and (2) do not apply to or in respect of a specified class or type of licence.

11 Grant of licences and security clearances

- (1) Licences and security clearances are to be granted by the regulatory authority.
- (2) The regulatory authority may approve or refuse applications for licences and security clearances in accordance with this Act and the regulations.

12 Application to licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)

- (1) Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) (**the applied Act**) applies to and in respect of a licence, subject to the modifications and limitations prescribed by or under this Act.
- (2) For the purpose of applying Part 2 of the applied Act to a licence—

- (a) the licence may be amended under that Act, and
 - (b) the licence may be transferred under that Act.
- (3) Subject to this section, the regulations may make provision for or with respect to such matters concerning a licence as are relevant to the operation of Part 2 of the applied Act.

13 Commissioner of Police to report on licences and security clearances

- (1) The regulatory authority may request the Commissioner of Police to furnish the regulatory authority with a report in respect of any one or more of the following matters relating to an applicant for the grant or renewal of a licence or security clearance or the holder of a licence or security clearance—
- (a) whether the applicant or holder has been found guilty or convicted of an offence (whether in New South Wales or elsewhere) and any available information concerning any such conviction that the Commissioner considers to be relevant to the application or continued holding of the licence or security clearance,
 - (b) whether the applicant or holder is the subject of a firearms prohibition order within the meaning of the *Firearms Act 1996*,
 - (c) whether the applicant or holder is a fit and proper person to hold, or continue to hold, the licence or security clearance,
 - (d) whether the applicant or holder has a history of violence or threats of violence, with **violence** including behaviour referred to in section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (Stalking or intimidation with intent to cause fear of physical or mental harm),
 - (e) whether there is an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007* in force with respect to the applicant or holder,
 - (f) any available information with respect to the participation of the applicant or holder in any criminal activity,
 - (g) whether the Commissioner considers that it is contrary to the public interest for the applicant or holder to hold, or continue to hold, the licence or security clearance,
 - (h) such other matters as the regulatory authority may specify in the request.
- (2) The Commissioner of Police, on receiving a request made under subsection (1), is to investigate the person to which the request relates and furnish to the regulatory authority a report in respect of the matter or matters that were the subject of the request.

- (3) The report of the Commissioner of Police may include any of the following information—
 - (a) information in the Commissioner’s possession,
 - (b) information to which the Commissioner ordinarily has access through arrangements with the police service of the Commonwealth or another State or Territory.
- (4) A reference in this section to an applicant for the grant or renewal of a licence or the holder of a licence includes, if that applicant or holder is a corporation, a reference to each director and manager of the corporation.
- (5) The Commissioner of Police may identify any information included in a report under this section as information that could disclose the existence or content of a criminal or security intelligence report or other confidential criminal information.
- (6) The regulatory authority is not, under this or any other Act or law, required to give any reasons for not granting a licence or security clearance to (or for suspending or cancelling a licence or security clearance of) a person on the basis of a report made by the Commissioner about the person under this section if the giving of those reasons would disclose any criminal or security intelligence report or other confidential criminal information as referred to in subsection (5).

14 Conditions of licences and security clearances

- (1) Licences and security clearances may be granted unconditionally or subject to conditions.
- (2) After granting a licence or security clearance, the regulatory authority may, by notice in writing to the holder of the licence or security clearance—
 - (a) impose conditions or further conditions on the licence or security clearance, or
 - (b) vary or revoke any of the conditions to which the licence or security clearance is subject.
- (3) A licence or security clearance is also subject to such conditions as are prescribed by the regulations. Any such prescribed condition cannot be varied or revoked by the regulatory authority under this section.
- (4) A condition to which a licence is subject under this section may restrict or limit an activity authorised by the licence.

15 Offence to contravene conditions of licence or security clearance

The holder of a licence or security clearance must not contravene any condition to which the licence or security clearance is subject.

Maximum penalty—50 penalty units.

16 Duration of licences and security clearances

- (1) A licence remains in force (unless sooner cancelled) for the period specified in the licence or (if no such period is specified) until cancelled.
- (2) A licence is not in force during any period it is suspended.
- (3) A security clearance remains in force (unless sooner cancelled) for the period of 5 years after it is granted.
- (4) If a licence is issued to a person during the term of a security clearance, the security clearance is taken to continue in force while the licence is in force, unless the security clearance is sooner cancelled.
- (5) A security clearance is not in force during any period it is suspended.

17 Fees for licences and security clearances

- (1) The fees payable in respect of applications for licences and security clearances are to be determined by the regulatory authority.
- (2) Any such fee is not to exceed the maximum amount prescribed by the regulations.

18 Offences relating to licences and security clearances

- (1) A person must not pretend to hold a licence or security clearance.
- (2) A person must not, for the purpose of obtaining a licence or security clearance, provide any information or produce any document that the person knows is false or misleading in a material particular.
- (3) A person must not, with intent to deceive, forge or alter a licence or security clearance.
- (4) A person must not, without reasonable excuse, have another person's licence or security clearance in his or her possession.
- (5) A holder of a licence or security clearance must not lend the licence or security clearance or allow it to be used by any other person.

Maximum penalty—50 penalty units.

19 Regulations relating to licences

- (1) The regulations may make provision for or with respect to licences.
- (2) In particular, the regulations may make provision for or with respect to the following—

- (a) the classes or types of licence,
- (b) restrictions on the authority conferred by a particular type of licence or class of licence, whether by reference to the activity involving an explosive or explosive precursor authorised by the licence or otherwise,
- (c) applications for licences,
- (d) the eligibility of applicants (including age, qualifications, knowledge, experience, training and health),
- (e) the testing or examination of applicants or the holders of licences to determine whether they are, or continue to be, eligible to hold a licence,
- (f) the continuing education and training of holders of licences or employees of holders of licences,
- (g) the granting of different types of licences in the same document,
- (h) the replacement of licences that are lost, destroyed or defaced,
- (i) the return of licences that require alteration,
- (j) procedures relating to the suspension or cancellation of licences,
- (k) fees payable in connection with licences and applications for licences.

20 Suspension of licences and security clearances

- (1) The regulatory authority may suspend a licence or security clearance—
 - (a) if the holder of the licence or security clearance—
 - (i) is proceeded against for an offence against this Act or the regulations, or
 - (ii) is not complying with any lawful requirement imposed by or under this Act, or
 - (b) for any other reason prescribed by the regulations.
- (2) The regulatory authority may suspend a licence or security clearance under subsection (1) (a) until the relevant proceeding has been disposed of or requirement complied with.

21 Cancellation of licences and security clearances

The regulatory authority may cancel a licence or security clearance—

- (a) if the holder of the licence or security clearance—
 - (i) is convicted of or found guilty of an offence against this Act or the regulations or a provision of a corresponding Act or regulation of the Commonwealth or of another

State or Territory relating to explosives, or

(ii) breaches a condition of the licence or security clearance, or

(iii) surrenders the licence or security clearance to the regulatory authority, or

(iv) supplied information which was (to the holder's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence or security clearance, or

(b) if the regulatory authority is of the opinion that the holder is no longer a fit and proper person to hold, or to continue to hold, the licence or security clearance, or

(c) for any other reason prescribed by the regulations.

22 Special provision—suspension or cancellation of licences and security clearances where suspicions of violence

- (1) If the regulatory authority believes that the holder of a licence or security clearance cannot be trusted to handle explosives or explosive precursors because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the regulatory authority may, by notice in writing served on the holder, require the holder, within the time specified in the notice, to show cause why the licence or security clearance should not be cancelled.
- (2) The regulatory authority may also, at any time, suspend the licence or security clearance pending determination of the matter under subsection (3).
- (3) If the regulatory authority is not satisfied with the matters, if any, put to the regulatory authority by the holder of the licence or security clearance, the regulatory authority may cancel the licence or security clearance.
- (4) If the regulatory authority is satisfied that an apprehended violence order is in force under the *Crimes (Domestic and Personal Violence) Act 2007* against the holder of a licence or security clearance (whether or not the person has been served with a notice under subsection (1)), the regulatory authority may suspend the licence or security clearance for any period determined by the regulatory authority.
- (5) A period must not be determined under subsection (4) that extends beyond the period during which the apprehended violence order remains in force.
- (6) This section does not limit any powers of the regulatory authority under section 20 or 21 with respect to a licence or security clearance.
- (7) In this section, **violence** includes behaviour referred to in section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (Stalking or intimidation with intent to cause fear of physical or mental harm).

23 Suspended and cancelled licences and security clearances

The holder of a licence or security clearance suspended or cancelled under this Act must not use the licence or security clearance and must deliver the licence or security clearance to the regulatory authority as soon as practicable after the licence or security clearance is suspended or cancelled.

Maximum penalty—10 penalty units.

24 Administrative review of decisions by Civil and Administrative Tribunal

- (1) A person who is aggrieved with a decision under this Act or the regulations relating to a licence or security clearance may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (2) For the purposes of this section, an application for the grant of a licence or security clearance is taken to have been refused if the licence or security clearance is not granted within 60 days (or such other period as is prescribed by the regulations) after the application was duly made.
- (3) An application under subsection (1) must be made within 28 days after the directly aggrieved person is notified of the decision (or in a case of the kind referred to in subsection (2), within 28 days after the expiry of the 60-day period referred to in that subsection).
- (4) Section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Review Act 1997* is taken to require notification of a decision to be made only to a directly aggrieved person.
- (5) (Repealed)
- (6) If an application is made to the Tribunal under subsection (1) by an aggrieved person who is not a directly aggrieved person, the Tribunal must notify the directly aggrieved person of the application (or may order the regulatory authority to notify the person of the application) as soon as is reasonably practicable after the application is made.
- (7) In addition to the restrictions set out in section 61 (Restrictions on ordering stay of proceedings) of the *Administrative Decisions Review Act 1997*, the Tribunal may not make an order under section 60 (Operation and implementation of decisions pending applications for administrative review) of that Act relating to a decision to suspend or cancel a person's licence or security clearance unless the Tribunal is satisfied that the person does not present a risk to the health or safety of any other person.
- (8) Without limiting section 44 (Parties and intervention) of the *Civil and Administrative Tribunal Act 2013*, the Tribunal may do either or both of the following—
 - (a) join an aggrieved person as a party to proceedings in the Tribunal brought by any

other aggrieved person in respect of the same decision,

- (b) allow an aggrieved person to make submissions to the Tribunal concerning a decision under review in proceedings brought by another aggrieved person and take those submissions into account in determining the proceedings.

(9) In this section—

aggrieved person, in relation to a decision relating to a licence or security clearance, means—

- (a) a directly aggrieved person, or
- (b) any other person aggrieved by the decision as referred to in subsection (1).

directly aggrieved person, in relation to a decision relating to a licence or security clearance, means—

- (a) the person who holds (or held) the licence or security clearance, or
- (b) a person who has applied for the licence or security clearance.

24A Disclosure of criminal intelligence information

- (1) If an application for a licence or security clearance was refused or a licence or security clearance was suspended or cancelled by the regulatory authority on the ground of a report made by the Commissioner of Police under section 13—
 - (a) the Commissioner (as well as the regulatory authority) is to be a party to any proceedings in the Civil and Administrative Tribunal for an administrative review of the decision of the regulatory authority, and
 - (b) the Tribunal is to be provided with a copy of the report of the Commissioner, and
 - (c) the Tribunal is not prevented from determining whether the regulatory authority made the correct and preferable decision regarding the application or the licence or security clearance concerned merely because of the report.
- (2) In determining an application for an administrative review of any decision to refuse to grant a licence or security clearance or to suspend or cancel a licence or security clearance that was made on the ground of a report under section 13 made by the Commissioner of Police, the Civil and Administrative Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the *Civil and Administrative Tribunal Act 2013*)—
 - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any information identified in the Commissioner's report under section 13 (5) as being from a criminal or security intelligence report or other confidential criminal information without the approval of the Commissioner,

and

- (b) in order to prevent the disclosure of any such report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review, the applicant's representative and any other interested party, unless the Commissioner approves otherwise.

Note—

Section 13 (6) of this Act provides that the regulatory authority and the Commissioner are not, under this or any other Act or law, required to give any reasons in connection with the refusal to grant a licence or security clearance or the suspension or cancellation of a licence or security clearance on the ground of a report under section 13 if the giving of those reasons would disclose the existence or content of any criminal or security intelligence report or other confidential criminal information referred to in section 13 (5). Accordingly, Part 2 of Chapter 3 of the *Administrative Decisions Review Act 1997* does not apply to any decision to refuse to grant a licence or security clearance based on such information to the extent that it would require disclosure of the existence or content of any criminal or security intelligence report or other confidential criminal information.

- (3) If the Tribunal considers that information identified in the Commissioner's determination as being from a criminal or security intelligence report or other confidential criminal information referred to in section 13 (5) has not been properly identified as such, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of an application.
- (4) Information that is withdrawn by the Commissioner must not be—
- (a) disclosed to any person, or
 - (b) taken into consideration by the Tribunal in determining an application.

Part 4 Administration

25 Appointment of inspectors

The regulatory authority may appoint as inspectors any of the following persons—

- (a) a statutory officer,
- (b) a member of staff of a Department,
- (c) a person employed by a public or local authority,
- (d) a person belonging to a class of persons prescribed by the regulations.

26 Identification

- (1) Every inspector is to be issued with an identification card as an inspector by the regulatory authority.

(2) The identification card must—

- (a) state that it is issued under this Act, and
- (b) give the name of the person to whom it is issued, and
- (c) state the date (if any) on which it expires, and
- (d) describe the kind of premises to which the powers of the inspector extend, and
- (e) be signed by the head of the regulatory authority or an officer approved by the head of the regulatory authority for the purposes of this paragraph.

27 Extension of certain provisions of [Work Health and Safety Act 2011](#) relating to inspectors and enforcement of this Act

- (1) Section 155 and Part 9 (Securing compliance), other than section 187, of the [Work Health and Safety Act 2011](#) applies to inspectors (within the meaning of this Act) for the purposes of the administration of this Act and the regulations.
- (2) For the purpose of the application of those provisions—
 - (a) a reference in the [Work Health and Safety Act 2011](#) to “this Act or the regulations” is taken to be a reference to this Act or the regulations under this Act, and
 - (b) a reference in the [Work Health and Safety Act 2011](#) to a workplace is taken to be a reference to premises in which the handling of explosives, explosive precursors or dangerous goods to which section 31 of this Act applies is occurring, and
 - (c) a reference in the [Work Health and Safety Act 2011](#) to an inspector (within the meaning of that Act) is taken to be a reference to an inspector (within the meaning of this Act).

Note—

Police officers have powers to search for, seize and detain anything in the possession of a person that the police officer has reasonable grounds to believe has been used in or in connection with an offence under Part 2 of this Act—see Division 1 of Part 4 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#). Section 211 of that Act provides for the return or forfeiture and disposal of seized things.

28 Offence of obstructing or intimidating inspectors

A person must not—

- (a) obstruct, hinder or impede an inspector in the exercise of the inspector’s functions under this Act or the regulations, or
- (b) intimidate or threaten or attempt to intimidate an inspector in the exercise of the inspector’s functions under this Act or the regulations.

Maximum penalty—

- (a) in the case of a corporation—750 penalty units, or
- (b) in the case of an individual—225 penalty units.

28A Delegation by regulatory authority

The regulatory authority may delegate any of the regulatory authority's functions under this Act or the regulations (other than this power of delegation) to—

- (a) any person employed in the Public Service, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

Part 5 Miscellaneous

29 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

30 Fees to be paid into Workers Compensation Operational Fund

Any fees paid to SafeWork NSW as the regulatory authority under this Act or the regulations are to be paid into the Workers Compensation Operational Fund under the [Workplace Injury Management and Workers Compensation Act 1998](#).

31 Regulations relating to dangerous goods

- (1) This section applies to dangerous goods within the meaning of Schedule 1 to the [Work Health and Safety Act 2011](#) that are not dangerous goods to which that Schedule applies.
- (2) The regulations may make provision for or with respect to the control and regulation of dangerous goods to which this section applies, including but not limited to the following—
 - (a) the handling of dangerous goods,
 - (b) premises, vehicles, vessels, containers and any other equipment or things that are intended for use, are being used or have been used in connection with dangerous goods,
 - (c) smoking, the lighting or use of fire and any other dangerous, or potentially dangerous, activities in the vicinity of dangerous goods,
 - (d) the inspection, examination and testing of dangerous goods and equipment intended for use or used in connection with dangerous goods,
 - (e) records relating to dangerous goods and the furnishing of returns and other

information relating to dangerous goods.

32 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before—
 - (a) the Local Court, or
 - (b) the District Court.
- (2) Proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

33 Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation—
 - section 6 (1)
- (2) A person commits an offence against this section if—
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is—
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person—
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty—The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section—

director has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances—

- (a) action towards—
 - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that—
 - (i) the plant, equipment and other resources, and
 - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

33A Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it

is an executive liability offence referred to in section 33.

- (2) A person commits an offence against this section if—
- (a) a corporation commits a corporate offence, and
 - (b) the person is—
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person—
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

34 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) The *Fines Act 1996* applies to a penalty notice issued under this section.

Note—

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means—
- (a) an inspector, or
 - (b) a police officer, or
 - (c) a person belonging to a class of persons specified in the regulations.

35 Disclosure of information

- (1) Except as provided by subsection (2) or (3), a person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—
- (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) to a person or body prescribed by the regulations, or
 - (f) with other lawful excuse.

Maximum penalty—5 penalty units.

- (2) The regulatory authority may communicate any matter which comes to its knowledge in the exercise or performance of its functions under this Act to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to dangerous goods or explosives or to any other person or body prescribed, or of a class prescribed, by the regulations.
- (3) The regulatory authority may communicate any information concerning the location,

type and quantity of explosives, which comes to its knowledge in the exercise of its functions under this Act, to any person or authority requiring the information to provide an emergency or rescue service or some other lawful service.

- (4) The regulatory authority may (subject to any conditions or limitations prescribed by the regulations) communicate any information which comes to its knowledge in the exercise of its functions under this Act with respect to licences and security clearances and the holders of licences and security clearances to any person or body prescribed, or of a class prescribed, by the regulations.

36 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following—
- (a) the control and regulation of explosives and explosive precursors, including but not limited to the following—
 - (i) the handling of explosives or explosive precursors,
 - (ia) the security clearances required to be held by persons who handle explosives or explosive precursors,
 - (ii) premises, vehicles, vessels, containers and any other equipment or things which are intended for use, are being used or have been used in connection with explosives or explosive precursors,
 - (iii) smoking, the lighting or use of fire and any other dangerous, or potentially dangerous, prescribed activities in the vicinity of explosives or explosive precursors,
 - (iv) the inspection, examination and testing of explosives or explosive precursors and equipment intended for use or used in connection with explosives or explosive precursors,
 - (v) records relating to explosives or explosive precursors and the furnishing of returns and other information relating to explosives or explosive precursors,
 - (b) the fees chargeable or payable for doing any act or providing any service in connection with this Act or the regulations,
 - (b1) the waiver, reduction, postponement or refund by the regulatory authority of fees payable or paid under this Act or the regulations,

- (c) forms for the purposes of this Act or the regulations,
- (d) the manner of serving notices under this Act or the regulations,
- (e) the review of actions and determinations of an inspector or other person who has functions under this Act,
- (f) any information to be provided to any person by an inspector or other person exercising functions relating to the administration of this Act.

(2A) (Repealed)

- (3) The regulations may create offences punishable by a penalty not exceeding 250 penalty units.
- (4) The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.

37 Savings, transitional and other provisions

Schedule 1 has effect.

38 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the [Explosives Amendment Act 2013](#).
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 37)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

existing licence means a licence—

- (a) that was issued under a provision of the former Act, and
- (b) that was in force immediately before the provision was repealed.

existing permit means a permit—

- (a) that was issued under a provision of the former Act, and
- (b) that was in force immediately before the provision was repealed.

former Act means the *Dangerous Goods Act 1975*.

3 Saving of existing licences and permits relating to explosives

Subject to the regulations, an existing licence or existing permit that authorised an activity involving explosives—

- (a) is taken to be a licence of the corresponding kind (as determined by the regulatory authority) granted under this Act, and
- (b) continues to authorise the activity involving explosives in respect of which it was granted for the period of 12 months after the commencement of this clause (unless its term expires during that period or it is sooner surrendered or cancelled in accordance with this Act).

4 Conditions of existing licences and permits

Subject to the regulations, the conditions to which an existing licence or existing permit is subject are taken to be conditions imposed by the regulatory authority under this Act, and any such condition may be varied or revoked in accordance with this Act.

5 Reviews by Administrative Decisions Tribunal

Subject to the regulations, a review under section 29 of the former Act that was pending

immediately before the repeal of that Act is to continue to be dealt with under section 24 of this Act.

6 Electronic applications for licences

- (1) Despite Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 12 of this Act), an application referred to in section 41 of that Act may not be made by means of electronic communication.
- (2) Subclause (1) does not limit the effect of the *Electronic Transactions Act 2000*.
- (3) This clause ceases to have effect on a day to be appointed by proclamation published on the NSW legislation website.

Part 3 Provisions consequent on establishment of Security Licensing and Enforcement Directorate

7 Delegations

The delegation by the Commissioner under section 31 of the *Police Act 1990* dated 24 October 2006 of the Commissioner's functions under section 13 of this Act is taken to include, and to have included from 21 March 2011, a delegation to the persons holding the following offices in the Security Licensing and Enforcement Directorate, State Crime Command, NSW Police Force—

- (a) Director,
- (b) General Manager, Industry Regulation,
- (c) General Manager, Operations,
- (d) Manager, Adjudication,
- (e) Manager, Assessment and Prevention,
- (f) Manager, Licensing Services,
- (g) Senior Assessment Officer,
- (h) Assessment Officer,
- (i) Adjudication Officer.

Part 4 Provisions consequent on enactment of Explosives Amendment Act 2013

8 Definition

In this Part—

amending Act means the *Explosives Amendment Act 2013*.

9 Reports by Commissioner

Section 13 (as amended by the amending Act) and section 24A extend to a report made after the commencement of the amending Act that was requested before that commencement.

10 Reviews by Administrative Decisions Tribunal

Subject to the regulations, a review under section 24 that was pending immediately before the omission of section 24 (5) by the amending Act is to continue to be dealt with as if that subsection were still in force.

Part 5 Provisions consequent on enactment of **Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Act 2020**

11 Definitions

In this Part—

amendment Act means the *Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Act 2020*.

relevant period means the period—

- (a) starting on 18 July 2019, and
- (b) ending immediately before the commencement of the amendment Act.

12 Waiver, reduction, postponement or refund of fees before commencement

(1) This clause applies if, during the relevant period, the regulatory authority waived, reduced, postponed or refunded, in whole or part, a fee payable or paid by a person under this Act or the regulations on the ground the regulatory authority was satisfied it was appropriate because—

- (a) the person was suffering financial hardship, or
- (b) special circumstances existed.

(2) The waiver, reduction, postponement or refund is taken to have been as valid as if it had happened after the commencement of the amendment Act.

13 Power to waive, reduce, postpone or refund fees applies to events before commencement

To remove any doubt, the power of the regulatory authority to waive, reduce, postpone or refund, in whole or part, a fee payable or paid under this Act or the regulations applies in relation to—

- (a) a person who was suffering financial hardship—
 - (i) during the relevant period, or
 - (ii) because of events that happened during the relevant period, or
- (b) special circumstances—
 - (i) that existed during the relevant period, or
 - (ii) that exist because of events that happened during the relevant period.