

# Explosives Act 2003 No 39

[2003-39]



New South Wales

## Status Information

### Currency of version

Current version for 1 September 2024 to date (accessed 27 November 2024 at 14:03)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Licensing and Registration \(Uniform Procedures\) Amendment Act 2022 No 2](#) (not commenced)

### Responsible Minister

- Minister for Work Health and Safety

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### 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](#).

File last modified 1 September 2024

# Explosives Act 2003 No 39



New South Wales

## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Definitions .....	6
4 Meaning of “regulatory authority” .....	6
4A Meaning of “supply” .....	6
5 Act not to apply to transport of dangerous goods covered by other scheme .....	7
<b>Part 2 Offences relating to explosives</b> .....	7
6 Licences required for handling explosives and explosive precursors .....	7
6A Security clearance must be held in certain circumstances .....	8
7 Transport of explosives .....	8
8 Negligent handling of explosives .....	8
9 Supply of explosives to minors .....	9
<b>Part 2A Authorisation of explosives</b> .....	9
<b>Division 1 Authorisation process</b> .....	9
9A Application to have explosive authorised .....	9
9B Authorisation .....	10
<b>Division 2 Register of explosives</b> .....	10
9C Register of explosives .....	10

9D Publication of register .....	11
<b>Division 3 Cancellation of authorisation</b> .....	11
9E Grounds to cancel an authorisation.....	11
9F Cancellation process.....	12
<b>Part 3 Explosives licences and security clearances</b> .....	12
<b>Division 1 Preliminary</b> .....	12
10 Licences may be granted under this Act .....	12
10A Security clearance a prerequisite to obtaining licence.....	12
11 Grant of licences and security clearances .....	12
12 Application to licences of Licensing and Registration (Uniform Procedures) Act 2002 .....	13
13 Commissioner of Police to report on licences and security clearances.....	13
<b>Division 2 Security clearances</b> .....	14
13A Application for security clearance .....	14
13B Grant or refusal of application for security clearance.....	15
14 Conditions of security clearances.....	15
15 Offence to contravene conditions of security clearance.....	15
16 Duration of security clearances .....	16
<b>Division 3 Licences</b> .....	16
16AA Definitions.....	16
16AB Licence types .....	16
16AC Eligibility for licence .....	17
16AD Application for licence.....	17
16AE Grounds to refuse licence.....	18
16AF Conditions of licences.....	18
16AG Offence to contravene conditions of licence .....	19
16AH Duration of licences .....	19
16A Time period for restoration of licences .....	19
<b>Division 4 Other matters relating to security clearances and licences</b> .....	20
17 Fees for licences and security clearances .....	20
18 Offences relating to licences and security clearances.....	20

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19 Regulations relating to licences .....	20
19A Regulations relating to security clearances .....	21
<b>Division 5 Suspension and cancellation</b> .....	<b>21</b>
20 Suspension of licences and security clearances .....	21
21 Cancellation of licences and security clearances .....	21
22 Special provision—suspension or cancellation of licences and security clearances where suspicions of violence .....	22
23 Suspended and cancelled licences and security clearances.....	23
23A Notification of suspended or cancelled licences or security clearances .....	23
24 Administrative review of decisions by Civil and Administrative Tribunal .....	23
24A Disclosure of criminal intelligence information.....	24
<b>Division 6 Exemptions</b> .....	<b>25</b>
24B Exemptions from requirement to hold licence .....	25
24C Exemptions from requirement to hold security clearance .....	25
24D Other exemptions .....	26
24E Cancellation of exemptions .....	26
24F Register of exemptions .....	27
<b>Part 3A Explosives retention, testing and destruction procedures</b> .....	<b>27</b>
<b>Division 1 Preliminary</b> .....	<b>27</b>
24G Interpretation .....	27
24H Application of part.....	28
<b>Division 2 Retention, testing and destruction of explosives</b> .....	<b>28</b>
24I Retention of explosives.....	28
24J Testing of explosives.....	28
24K Certificate of analysis .....	29
24L Destruction of explosives.....	29
24M Review of certificate of analysis.....	30
<b>Division 3 General</b> .....	<b>30</b>
24N Regulations relating to retention, testing, destruction and other matters .....	31

240 Presumption on appeal .....	31
<b>Part 4 Administration</b> .....	<b>31</b>
25 Appointment of inspectors .....	31
26 Identification .....	32
27 Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and enforcement of this Act .....	32
27A Unauthorised entry to place explosives or explosive precursors are manufactured or stored .....	32
28 Offence of obstructing or intimidating inspectors.....	33
28A Delegation by regulatory authority .....	33
<b>Part 5 Miscellaneous</b> .....	<b>34</b>
29 Act to bind Crown .....	34
30 Fees to be paid into Workers Compensation Operational Fund.....	34
30A Disposal of unwanted or unusable explosives .....	34
31 Regulations relating to dangerous goods .....	34
32 Proceedings for offences .....	35
33 Liability of directors etc for offences by corporation—offences attracting executive liability .....	35
33A Liability of directors etc for offences by corporation—accessory to the commission of the offences .....	36
34 Penalty notices .....	37
35 Disclosure of information.....	38
36 Regulations.....	39
37 Savings, transitional and other provisions.....	40
38 Review of Act.....	40
<b>Schedule 1 Savings, transitional and other provisions</b> .....	<b>41</b>
<b>Schedule 2 Exemptions</b> .....	<b>44</b>
<b>Schedule 3 Dictionary</b> .....	<b>47</b>

# 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

The dictionary in Schedule 3 defines words used in this Act.

#### Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application 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).

#### 4A Meaning of “supply”

- (1) A person supplies an explosive or explosive precursor by—
  - (a) transferring ownership of the explosive or explosive precursor to another person, whether by sale, gift or otherwise, or

- (b) transferring possession of the explosive or explosive precursor to another person, or
- (c) providing another person with the means to take possession of the explosive or explosive precursor, or
- (d) offering or negotiating to supply the explosive or explosive precursor, or
- (e) receiving the explosive or explosive precursor for supply, or
- (f) having the explosive or explosive precursor in the person's possession for supply, or
- (g) exposing or exhibiting the explosive or explosive precursor for supply, or
- (h) consigning or delivering the explosive or explosive precursor for supply, or
- (i) arranging for or allowing another person to supply the explosive or explosive precursor.

(2) Subsection (1)(b) and (c) do not apply to persons acting under the authority of the same licence.

#### **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) this Act or 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—700 penalty units, or
- (b) in the case of an individual—350 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) this Act or 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—350 penalty units.

#### **7 Transport of explosives**

A person transporting 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—700 penalty units, or
- (b) in the case of an individual—350 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—700 penalty units, or



(b) in the case of an individual—350 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 supply an explosive to a person who is under the age of 18 years (*a minor*).

Maximum penalty—70 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 2A Authorisation of explosives**

### **Division 1 Authorisation process**

#### **9A Application to have explosive authorised**

(1) A person may apply to the regulatory authority for the authorisation of an explosive.

(2) An application must be—

(a) made in the approved form, and

(b) accompanied by—

(i) the documents specified in the approved form, and

(ii) the application fee determined by the regulatory authority.

(3) The applicant must, if asked by the regulatory authority, give the regulatory authority—

(a) additional information the regulatory authority reasonably requires to determine the application, and

(b) 1 or more samples of the explosive for testing.

(4) A sample of an explosive given to the regulatory authority under subsection (3)(b) must be given at no cost to the regulatory authority.

## **9B Authorisation**

- (1) The regulatory authority may, after receiving an application under section 9A, by written notice to the applicant—
  - (a) grant the application and authorise the explosive, with or without conditions, or
  - (b) refuse the application.
- (2) An application is taken to have been refused if the regulatory authority has not decided the application within 3 months after receiving the application.
- (3) After authorising an explosive, the regulatory authority may, by written notice to the applicant—
  - (a) impose conditions or further conditions on the authorisation, or
  - (b) vary or revoke a condition of the authorisation.
- (4) Without limiting the grounds on which an application may be refused, an application may be refused if—
  - (a) the application has not been properly made, or
  - (b) the applicant has failed to give the regulatory authority additional information requested by the regulatory authority, or
  - (c) the applicant has failed to give the regulatory authority a sample of the explosive requested by the regulatory authority.
- (5) An authorisation remains in force until cancelled by the regulatory authority.

## **Division 2 Register of explosives**

### **9C Register of explosives**

- (1) The regulatory authority must keep a register of explosives.
- (2) The register of explosives must be kept in the way determined by the regulatory authority.
- (3) The register of explosives must include the following particulars for each authorised explosive—
  - (a) the commercial name,
  - (b) the proper shipping name,
  - (c) the UN number,
  - (d) the classification code,

- (e) the name of the applicant,
- (f) the conditions of the authorisation,
- (g) the information prescribed by the regulations.

(4) In this section—

***proper shipping name*** has the same meaning as in the ADG Code.

***UN number***, for an explosive, means the identification number shown in the ADG Code in relation to the explosive.

#### **9D Publication of register**

- (1) The regulatory authority must make the register of explosives publicly available in the way prescribed by the regulations.
- (2) When making the register publicly available, the regulatory authority—
  - (a) must not include the name of an applicant, and
  - (b) need not include the conditions of an authorisation.
- (3) The regulatory authority must keep the register up to date.

### **Division 3 Cancellation of authorisation**

#### **9E Grounds to cancel an authorisation**

- (1) The regulatory authority may cancel the authorisation of an explosive on 1 or more of the following grounds—
  - (a) the authorisation of the explosive in another State or Territory has been cancelled,
  - (b) the regulatory authority reasonably considers the authorisation should be cancelled—
    - (i) on safety grounds, or
    - (ii) on public interest grounds, or
    - (iii) because the regulatory authority considers the authorisation to have no ongoing effect, or
    - (iv) on grounds prescribed by the regulations.
- (2) The cancellation of an authorisation does not entitle a person to compensation.

## **9F Cancellation process**

- (1) Before cancelling the authorisation of an explosive, the regulatory authority must make reasonable efforts to give the applicant—
  - (a) at least 30 days written notice of the regulatory authority's intention to cancel the authorisation, and
  - (b) an opportunity to make submissions to the regulatory authority, in the way and within the time specified in the notice, about the proposed cancellation.
- (2) The regulatory authority cancels the authorisation of an explosive by—
  - (a) giving public notice of the cancellation in the way prescribed by the regulations, and
  - (b) removing the particulars of the explosive from the register of explosives.
- (3) The regulatory authority must make reasonable efforts to give the applicant written notice that the authorisation of the explosive has been cancelled.

## **Part 3 Explosives licences and security clearances**

### **Division 1 Preliminary**

#### **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 (other than section 10) 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).

## **Division 2 Security clearances**

### **13A Application for security clearance**

- (1) An individual may apply to the regulatory authority for a security clearance.
- (2) An application for a security clearance must be—
- (a) made in the approved form, and
  - (b) accompanied by—
    - (i) the documents, including photographs, specified in the approved form, and
    - (ii) the fee determined under section 17.

### **13B Grant or refusal of application for security clearance**

- (1) The regulatory authority must consider an application made under section 13A and decide to—
  - (a) grant the application and issue a security clearance, or
  - (b) refuse the application.
- (2) The regulatory authority must refuse the application if—
  - (a) the regulatory authority is not satisfied the individual applying for the security clearance is—
    - (i) at least 18 years of age, and
    - (ii) a fit and proper person to be granted a security clearance, or
  - (b) the Commissioner of Police, in a report given under section 13, recommends that the application should be refused on the basis of criminal or security intelligence or other information available to the Commissioner.
- (3) The regulations may prescribe additional grounds on which an application for a security clearance must or may be refused.

### **14 Conditions of security clearances**

- (1) Security clearances may be granted unconditionally or subject to conditions.
- (2) After granting a security clearance, the regulatory authority may, by notice in writing to the holder of the security clearance—
  - (a) impose conditions or further conditions on the security clearance, or
  - (b) vary or revoke any of the conditions to which the security clearance is subject.
- (3) A 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) (Repealed)

### **15 Offence to contravene conditions of security clearance**

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

Maximum penalty—70 penalty units.

## 16 Duration of security clearances

- (1), (2) (Repealed)
- (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.

## Division 3 Licences

### 16AA Definitions

In this division—

***safety management plan*** means a plan—

- (a) describing the procedures in place to manage hazards and risks to safety associated with the activities that are to be authorised by a licence, and
- (b) prepared in accordance with the regulations.

***security plan*** means a plan—

- (a) describing the facilities, systems and procedures in place for the safe and secure handling of explosives or explosive precursors under a licence, and
- (b) prepared in accordance with the regulations.

### 16AB Licence types

- (1) The following types of licences may be granted by the regulatory authority—
  - (a) blasting explosives user's licence,
  - (b) fireworks, single use, licence,
  - (c) licence to import,
  - (d) licence to manufacture,
  - (e) licence to store,
  - (f) licence to supply,
  - (g) licence to transport by vehicle,



- (h) licence to transport by vessel,
- (i) licence to use security sensitive dangerous substances,
- (j) pyrotechnician's licence,
- (k) a type of licence prescribed by the regulations.

(2) The regulations may prescribe the activities permitted to be carried out under each type of licence.

**16AC Eligibility for licence**

(1) A person is eligible to be granted a licence if—

(a) for an individual—the individual—

(i) is at least 18 years of age, and

(ii) holds a security clearance, and

(iii) complies with the eligibility criteria prescribed by the regulations for the type of licence, or

(b) for a corporation—

(i) a responsible person for the corporation holds a security clearance, and

(ii) the corporation complies with the eligibility criteria prescribed by the regulations for the type of licence.

(2) Subsection (1)(a)(ii) and (b) do not apply to a fireworks, single use, licence.

**16AD Application for licence**

(1) An application for a licence must be—

(a) made in the approved form, and

(b) accompanied by—

(i) the documents, including photographs, specified in the approved form, and

(ii) the fee determined under section 17.

(2) The regulatory authority may require an applicant to lodge the following—

(a) a safety management plan,

(b) a security plan.

(3) If the applicant is a corporation, the applicant must nominate a responsible person for

the corporation.

- (4) The applicant must, if asked by the regulatory authority, give the regulatory authority additional information the regulatory authority reasonably requires to determine the application.

**16AE Grounds to refuse licence**

- (1) The regulatory authority must not grant a licence unless the regulatory authority is satisfied of the following—
  - (a) the applicant is eligible for the licence,
  - (b) the application has been properly made in accordance with section 16AD,
  - (c) if the regulatory authority required the applicant to lodge a safety management plan—the plan is appropriate for managing the hazards and risks to safety associated with the activities authorised by the licence,
  - (d) if the regulatory authority required the applicant to lodge a security plan—the plan is appropriate for the safe and secure handling of the explosives or explosive precursors to be handled under the licence,
  - (e) the applicant has appropriate facilities, systems and procedures in place for the safe and secure handling of the explosives and explosive precursors to be handled under the licence.
- (2) The regulations may prescribe additional grounds on which a licence must or may be refused.

**16AF Conditions of licences**

- (1) A licence is subject to—
  - (a) conditions prescribed by the regulations for the licence, and
  - (b) conditions imposed by the regulatory authority.
- (2) The regulatory authority may impose conditions on a licence—
  - (a) when granting the licence, or
  - (b) at another time by written notice to the licence holder.
- (3) The regulatory authority may, by written notice to the licence holder, vary or revoke a condition imposed on the licence.
- (4) The regulatory authority may not vary or revoke a condition prescribed by the regulations.

**16AG Offence to contravene conditions of licence**

A licence holder must not contravene a condition to which the licence is subject.

Maximum penalty—50 penalty units.

**16AH Duration of licences**

- (1) A licence remains in force—
  - (a) for the period specified in the licence, or
  - (b) if no period is specified in the licence—until cancelled under Division 5.
- (2) Also, a licence is not in force during a period in which the licence is suspended.

**16A Time period for restoration of licences**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the regulatory authority on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the regulatory authority may extend the period within which an application for the restoration of a licence may be made if the regulatory authority is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A licence restored at any time is taken to have been restored on and from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

## **Division 4 Other matters relating to security clearances and licences**

### **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—70 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, including applications for the restoration of 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 licence documents that are lost, destroyed or defaced,
- (i) the return of licence documents that require alteration,
- (j) procedures relating to the suspension or cancellation of licences,
- (k) fees payable in connection with licences and applications for licences.

### **19A Regulations relating to security clearances**

The regulations may make provision for security clearances, including for the following—

- (a) applications for security clearances and the restoration of security clearances, including fees,
- (b) the eligibility of individuals to apply for a security clearance,
- (c) continuing education and training for persons who hold security clearances,
- (d) the replacement of lost, destroyed or defaced security clearance documents,
- (e) the return of security clearance documents requiring alteration,
- (f) procedures relating to the suspension or cancellation of security clearances.

## **Division 5 Suspension and cancellation**

### **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—15 penalty units.

#### **23A Notification of suspended or cancelled licences or security clearances**

The regulatory authority must give notice of the suspension or cancellation of a licence or security clearance to the persons, and in the way, prescribed by the regulations.

### **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.

## **Division 6 Exemptions**

### **24B Exemptions from requirement to hold licence**

A person is exempt from the requirement to hold a licence—

- (a) as set out in Schedule 2, Part 1, or
- (b) as prescribed by the regulations.

### **24C Exemptions from requirement to hold security clearance**

A person is exempt from the requirement to hold a security clearance—

- (a) as set out in Schedule 2, Part 2, or

- (b) as prescribed by the regulations.

#### **24D Other exemptions**

- (1) A person may apply to the regulatory authority for an exemption from a provision of this Act or the regulations.
- (2) An application for an exemption must be—
  - (a) in writing, and
  - (b) accompanied by the fee determined by the regulatory authority.
- (3) The regulatory authority may, when considering an application for an exemption, consult the persons or bodies the regulatory authority considers appropriate.
- (4) The regulatory authority may, by written notice to the person who applied for the exemption—
  - (a) approve the application and grant the exemption with or without conditions, or
  - (b) refuse the application.
- (5) The regulatory authority must refuse an application if the regulatory authority is not satisfied—
  - (a) the applicant is capable of achieving at least an equivalent level of safety and security as would be achieved by complying with the relevant provision, or
  - (b) the application of the provision to the applicant is inappropriate or unnecessary in the circumstances.
- (6) An exemption applies for—
  - (a) the period, not longer than 5 years, specified in the written notice, or
  - (b) if no period is specified—5 years from the date of the written notice.

#### **24E Cancellation of exemptions**

- (1) The regulatory authority may cancel an exemption—
  - (a) if the holder of the exemption fails to comply with a condition of the exemption, or
  - (b) if satisfied cancellation is justified on safety or security grounds, or
  - (c) if satisfied the exemption is of no practical effect, or
  - (d) on other grounds prescribed by the regulations.
- (2) Before cancelling an exemption, the regulatory authority must make reasonable

efforts to give the holder of the exemption—

- (a) reasonable notice of the regulatory authority's intention to cancel the exemption, and
  - (b) an opportunity to make submissions to the regulatory authority about the proposed cancellation.
- (3) The regulatory authority must make reasonable efforts to give the exemption holder written notice the exemption has been cancelled.

#### **24F Register of exemptions**

- (1) The regulatory authority must keep a register of exemptions granted under section 24D.
- (2) The register must—
  - (a) be kept in the way determined by the regulatory authority, and
  - (b) include the information prescribed by the regulations, and
  - (c) be made publicly available in the way prescribed by the regulations.

### **Part 3A Explosives retention, testing and destruction procedures**

#### **Division 1 Preliminary**

##### **24G Interpretation**

- (1) In this part—

**affected person** means—

- (a) an eligible person, or
- (b) a defendant or accused person in proceedings relating to a forfeited explosive.

**analyst** means—

- (a) a person appointed in writing by the regulatory authority as an analyst for this Act, or
- (b) a person belonging to a class of persons prescribed by the regulations for this definition.

**certificate of analysis** means a certificate under section 24K.

**destroy** means dispose of by destruction or other means.

**destruction order**—see section 24L(1).

**eligible person**, for a forfeited explosive, means a person who was the person entitled to the forfeited explosive immediately before the explosive or explosive precursor was forfeited to the State.

**forfeited explosive** means an explosive or explosive precursor forfeited to the State under the *Work Health and Safety Act 2011*, section 179(1)(c), as applied by this Act, section 27.

**Note—**

The *Work Health and Safety Act 2011*, section 179(1)(c), as applied by this Act, section 27, provides a thing is forfeited to the State if the regulator reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.

**person entitled** has the same meaning as in the *Work Health and Safety Act 2011*, section 179(9).

- (2) In this part, a reference to the quantity of a forfeited explosive is a reference to the quantity of the explosive or explosive precursor immediately before the explosive or explosive precursor was forfeited to the State.

#### **24H Application of part**

- (1) This part applies to a forfeited explosive if an eligible person—
- (a) has not applied to the Industrial Relations Commission for a review of the decision to forfeit the explosive or explosive precursor under the *Work Health and Safety Act 2011*, section 229 within the time provided for by that section, or
  - (b) has applied to the Industrial Relations Commission for a review of the decision and the decision has been confirmed by the Commission constituted by a single member or, on appeal against the decision, by the Full Bench of the Commission.
- (2) This part is not intended to limit or exclude the rights and powers of the regulatory authority to destroy explosives or explosive precursors forfeited to the State under the *Work Health and Safety Act 2011*, section 179(1)(a) or (b).

## **Division 2 Retention, testing and destruction of explosives**

### **24I Retention of explosives**

The regulatory authority may keep all or part of a forfeited explosive for the purpose of dealing with the explosive in accordance with this part and the regulations.

### **24J Testing of explosives**

The regulatory authority may, in accordance with the regulations, direct an analyst to—

- (a) determine the quantity or mass of a forfeited explosive, and
- (b) test and analyse a representative sample of the forfeited explosive to determine the

identity of the explosive, and

(c) give a certificate of analysis for the forfeited explosive.

#### **24K Certificate of analysis**

(1) An analyst responsible for the analysis of a forfeited explosive may give a certificate specifying the following—

(a) the physical description of the explosive,

(b) the identity of the explosive,

(c) the quantity or mass of the explosive,

(d) the result of the analysis.

(2) In proceedings under this Act, a certificate purporting to be signed by an analyst is—

(a) admissible in the proceedings without proof of the signature, employment or appointment of the person appearing to have signed the certificate, and

(b) prima facie evidence of the matters certified.

#### **24L Destruction of explosives**

(1) The regulatory authority may, by written order, direct that a forfeited explosive be destroyed (a **destruction order**).

(2) A destruction order may be made—

(a) subject to the requirements of this part or the regulations, and

(b) if the regulatory authority is satisfied of the following—

(i) a representative sample of the forfeited explosive has been taken and kept as required by the regulations,

(ii) particulars of the forfeited explosive have been recorded as required by the regulations,

(iii) an analyst has given a certificate of analysis in relation to the forfeited explosive,

(iv) a copy of the certificate of analysis has been given to an affected person.

(3) A destruction order must not authorise the destruction of an amount of a forfeited explosive that is required by the regulations to be kept.

(4) A forfeited explosive must not be destroyed earlier than 28 days after the day on which the certificate of analysis in relation to the forfeited explosive was given to an

affected person.

- (5) The Local Court may, on the application of the regulatory authority, make an order authorising the destruction of a forfeited explosive under this section if the Court is satisfied of the following—
  - (a) a copy of the certificate of analysis cannot practicably be served on the affected person,
  - (b) the destruction order has otherwise been made in accordance with this section.
- (6) The regulatory authority may destroy a forfeited explosive without complying with this section in circumstances prescribed by the regulations.

#### **24M Review of certificate of analysis**

- (1) This section applies if a certificate of analysis in relation to a forfeited explosive is given by an analyst.
- (2) The Local Court may, on the application of an affected person for the forfeited explosive, make a review order.
- (3) An application for a review order must be made no later than 28 days after a copy of the certificate of analysis in relation to the forfeited explosive is given to the affected person.
- (4) The Local Court may make a review order only if the Court is satisfied that in relation to the forfeited explosive—
  - (a) there has been a substantial failure to comply with this Act or the regulations, or
  - (b) there is a reasonable doubt about the accuracy of the certificate of analysis.
- (5) A review order made by the Local Court may require that—
  - (a) the forfeited explosive be given to a second analyst for determination of the identity or the quantity or mass of the explosive, or
  - (b) a further certificate of analysis in relation to the forfeited explosive be given to the applicant.
- (6) If, despite section 24L, an application has been made under this section, the forfeited explosive may be destroyed under this part or the regulations only if—
  - (a) the application is withdrawn or refused, or
  - (b) the application is granted and a certificate of analysis is given to the applicant and the regulatory authority in accordance with the review order.

### **Division 3 General**

#### **24N Regulations relating to retention, testing, destruction and other matters**

- (1) The regulations may provide for the retention, testing and destruction of forfeited explosives.
- (2) Without limiting subsection (1), the regulations may provide for the following matters—
  - (a) the retention of all or part of a forfeited explosive,
  - (b) the weighing, testing and analysis of a forfeited explosive,
  - (c) the recording, handling, storage, transport and destruction of a forfeited explosive,
  - (d) evidentiary certificates, and prima facie evidence, relating to the identity, quantity, mass, testing, analysis, retention, handling, storage and transport of forfeited explosives,
  - (e) the qualifications required for appointment as an analyst.

#### **24O Presumption on appeal**

- (1) This section applies to a person who—
  - (a) was legally represented before the Local Court on the trial of an offence in relation to a forfeited explosive, and
  - (b) appeals a determination made by the Court in relation to the offence.
- (2) On appeal, a particular in the court attendance notice about the identity, quantity or mass of the forfeited explosive is, for the appeal, presumed to be correct if—
  - (a) the person pleaded guilty to the offence, and
  - (b) before the appeal is heard, the forfeited explosive is destroyed after a destruction order is made under this part.

### **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) The [Work Health and Safety Act 2011](#), Part 8, Division 2 and Part 9, other than section 187, apply 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.

## 27A Unauthorised entry to place explosives or explosive precursors are manufactured or stored

- (1) A person must not enter premises used to manufacture or store an explosive or explosive precursor unless the person—



(a) is authorised to enter the premises by the licence holder responsible for the premises, or

(b) otherwise enters the premises with lawful authority.

Maximum penalty—250 penalty units.

(2) An authorised person may—

(a) direct a person who enters premises in contravention of this section to leave the premises, and

(b) if the person fails, without reasonable excuse, to leave the premises immediately after being directed to leave—use reasonable force to remove the person.

(3) In this section—

**authorised person** means the following—

(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.

## **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) for a corporation—1,050 penalty units, or

(b) for an individual—315 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](#).

### **30A Disposal of unwanted or unusable explosives**

A person may dispose of unwanted or unusable explosives—

- (a) by surrendering the explosives to the regulatory authority at the place and in the way determined by the regulatory authority, or
- (b) in the way prescribed by the regulations.

### **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 Industrial Relations Commission in Court Session.
- (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—7 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—
    - (iaa) the registration of explosives as authorised explosives, including keeping and publishing a register of authorised explosives,
    - (iab) prohibiting the use of unauthorised explosives,
    - (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,
      - (iia) safety and security measures relating to explosives and explosive precursors, including storage,
      - (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,

- (a1) the transport of explosives and explosive precursors, including by regulating, restricting or prohibiting the transport of explosives and explosive precursors in particular areas,
  - (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,
  - (d1) the functions and powers of inspectors, including—
    - (i) giving directions to persons, and
    - (ii) requiring persons to provide information or documents,
  - (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) The regulations may provide for a police officer to exercise specific functions and powers of an inspector under this Act or the regulations.
- (3) The regulations may create offences punishable by a penalty not exceeding 350 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.

## **Part 6 Provision consequent on enactment of [Explosives Amendment Act 2023](#)**

### **14 Exemptions**

An exemption granted under the [Explosives Regulation 2013](#), clause 112 or 113, and in force immediately before the commencement of this clause, is taken to be an exemption under section 24D.

## **Schedule 2 Exemptions**

sections 24B and 24C

### **Part 1 Licences**

#### **1 Inspectors and authorised officers**

(1) An inspector or authorised officer who handles an explosive or explosive precursor for the inspector's or officer's duties is not required to hold—

- (a) a security clearance, or
- (b) a licence.

(2) In this clause—

**authorised officer** means an officer of the regulatory authority authorised by the regulatory authority to handle an explosive or explosive precursor during the officer's duties.

## 2 Emergency services

(1) An officer of an emergency service who comes into possession of an explosive or explosive precursor in an emergency situation is not required to hold the following to handle the explosive or explosive precursor—

- (a) a security clearance,
- (b) a licence.

(2) An emergency service coming into possession of an explosive or explosive precursor in an emergency situation is not required to hold a licence to handle the explosive or explosive precursor.

(3) An exemption under this clause applies only to handling for the following purposes—

- (a) transporting,
- (b) possessing,
- (c) storing,
- (d) transferring possession of an explosive or explosive precursor to a person authorised to possess the explosive or explosive precursor.

(4) In this clause—

**emergency service** means the following—

- (a) the Ambulance Service of NSW,
- (b) Fire and Rescue NSW,
- (c) the New South Wales Mines Rescue Brigade established by the [Coal Industry Act 2001](#), section 33,
- (d) the New South Wales Volunteer Rescue Association Incorporated, ABN 68 767 393 968,
- (e) the NSW Police Force,

- (f) the NSW Rural Fire Service,
- (g) the State Emergency Service,
- (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*,
- (i) a body prescribed by the regulations for this definition.

### **3 Police officers**

- (1) A police officer who comes into possession of an explosive or explosive precursor during the officer's duties is not required to hold the following to handle the explosive or explosive precursor—
  - (a) a security clearance,
  - (b) a licence.
- (2) An exemption under this clause applies only to handling for the following purposes—
  - (a) transporting,
  - (b) possessing,
  - (c) storing,
  - (d) transferring possession of an explosive or explosive precursor to a person authorised to possess the explosive or explosive precursor.
- (3) Explosives or explosive precursors stored under an exemption must be stored in accordance with the regulations.

### **4 Police explosives technicians**

- (1) A police explosives technician who handles an explosive or explosive precursor during the technician's duties is not required to hold the following—
  - (a) a security clearance,
  - (b) a licence.
- (2) An exemption under this clause applies only to handling an explosive or explosive precursor for the following purposes—
  - (a) transporting,
  - (b) possessing,
  - (c) storing,

(d) transferring possession of an explosive or explosive precursor to a person authorised to possess the explosive or explosive precursor,

(e) using,

(f) disposing.

(3) In this clause—

**police explosives technician** means a member of the NSW Police Force whose duties include handling explosives and explosive precursors.

## Part 2 Security clearances

### 5 Supervised handlers

A person is not required to hold a security clearance to handle an explosive or explosive precursor if—

(a) the person is—

(i) employed or engaged by a licence holder who is authorised to handle the explosive or explosive precursor, or

(ii) being instructed in the handling of explosives by a licence holder who holds a licence authorising the handling of the explosive or explosive precursor, and

(b) the person is handling the explosive or explosive precursor under the immediate supervision of another person who holds an in force security clearance, and

(c) the explosive or explosive precursor is handled in a way authorised by the licence.

### 6 Fireworks

A person is not required to hold a security clearance to handle display fireworks if the handling is authorised by a fireworks, single use, licence.

## Schedule 3 Dictionary

section 3

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

**affected person**, for Part 3A—see section 24G(1).

**analyst**, for Part 3A—see section 24G(1).

**applicant**, for an explosive, means the person who applied for authorisation of the explosive.

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

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

**authorised explosive** means an explosive authorised under Part 2A.

**certificate of analysis**, for Part 3A—see section 24G(1).

**Class 1 dangerous good** means a Class 1 dangerous good under the ADG Code or the Australian Explosives Code.

**classification code** means the code assigned to an explosive under the ADG Code, which—

- (a) comprises a combination of the number of the hazard division of the explosive under the ADG Code and the letter of the compatibility group of the explosive, and
- (b) identifies the kinds of explosive substances and articles that are compatible for transport or storage purposes.

**destroy**, for Part 3A—see section 24G(1).

**eligible person**, for Part 3A—see section 24G(1).

**exercise** a function includes perform a duty.

**explosive** includes the following—

- (a) a substance, or a thing containing a substance, manufactured or used with a view to produce—
  - (i) a practical effect by explosion, or
  - (ii) a pyrotechnic effect,
- (b) an article or substance that—
  - (i) is classified under the ADG Code as too dangerous to transport, and
  - (ii) can produce an explosive or pyrotechnic effect,
- (c) a Class 1 dangerous good,
- (d) an article or substance prescribed by the regulations.

**explosive precursor** means the following—

- (a) security sensitive ammonium nitrate,
- (b) a thing prescribed by the regulations.

**forfeited explosive**, for Part 3A—see section 24G(1).

**function** includes power, duty and authority.

**handling** includes transporting, 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.

**licence holder** means the holder of a licence under this Act.

**manufacture**, in relation to an explosive, includes—

- (a) blending substances to make the explosive, and
- (b) breaking up the explosive, and
- (c) re-making, altering or repairing the explosive.

**person entitled**, for Part 3A—see section 24G(1).

**premises** means—

- (a) land, a building or an enclosed place, and
- (b) a portable structure.

**prohibited explosive** means an explosive that is not authorised under Part 2A.

**register of explosives** means the register kept under section 9C.

**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.

**safety management plan**, for Part 3, Division 3—see section 16AA.

**security clearance** means a security clearance granted under Part 3.

**security plan**, for Part 3, Division 3—see section 16AA.

**security sensitive ammonium nitrate**—

- (a) includes the following—
  - (i) ammonium nitrate that is not a Class 1 dangerous good,
  - (ii) ammonium nitrate emulsions, suspensions, gels or mixtures containing more than 45% ammonium nitrate,
  - (iii) ammonium nitrate prescribed by the regulations for this definition, and
- (b) does not include ammonium nitrate solution.

**security sensitive dangerous substance** means the following—

- (a) security sensitive ammonium nitrate,
- (b) another substance prescribed by the regulations.

**supply**—see section 4A.

**transport** includes—

- (a) loading for transport, and
- (b) unloading after transport.

**vehicle** means the following—

- (a) a motor vehicle within the meaning of the *Road Transport Act 2013*,
- (b) a unit of rolling stock within the meaning of the *Rail Safety National Law (NSW)*.

**vessel** has the same meaning as in the *Ports and Maritime Administration Act 1995*.