

EXPLOSIVES BILL 1998

EXPLANATORY NOTES

SHORT TITLE

The Explosives Bill 1998

Objectives of the Bill

The objective of explosives legislation is to ensure safety of the community from all activities associated with explosives.

The current *Explosives Act 1952* has been the mechanism for controlling the use and handling of explosives in Queensland for over 45 years and, in fact, is an update of the Explosives Act of 1906. The new Explosives Bill resulted from a need to amend the existing legislation to address:

- an explosives industry using new products, new technology and new processes;
- uniform application of explosives safety requirements;
- consistency with fundamental legislative principles, and
- simplification of legislative language.

While the existing Act has been amended several times since 1952, the latter two of the above factors necessitated a complete rewrite of the legislation on this occasion.

The Queensland explosives legislation is part of a network of national and, indeed, international control on explosives and explosives activities and hence forms an important link in a safety chain.

Recognition of the obvious hazards associated with these inherently dangerous materials and their attractiveness to an undesirable element in the community is reflected in similar explosives legislation in each State and Territory.

Means of Achieving Objectives

Explosives are used extensively in Queensland in the mining and construction industries and hence contribute significantly to the well being of the Queensland economy. It is essential for an efficient mining industry to have access to a competitive, efficient, flexible and innovative explosives industry and therefore legislative restrictions imposed on such industries in the name of safety should take into account these practical and legitimate needs. The following factors were important considerations in the review of the legislation leading to this Bill. It needs to:

- form part of a network of national controls on explosives;
- not involve itself with the business activities of explosives industry beyond provisions for safety;
- be comprehensive for effective control of explosives, adopting a ‘cradle to grave’ type view, and encompassing the activities of authorisation, importation, manufacture, storage, transport, sale, use, disposal and export;
- be broadly based, with emphasis on blasting explosives but including fireworks, ammunition, reloading powders, flares and other practical explosive devices and even toys such as rockets, caps for toy guns, party novelties, etc;
- be complimentary with other safety legislation eg Mining or Workplace, Health and Safety legislation;
- allow for greater involvement of stakeholders in the establishment of rules or codes for explosives activities;
- be consistent with fundamental legislative principles, and
- be easy to read.

It is important to note that there were no submissions, during the review process, questioning the need for legislation in this area and, indeed, there were no submissions calling for major changes to the policies, format or controlling mechanisms of the existing explosives legislation.

The proposed legislation outlined in this Bill continues the existing methodology of:

- requiring identification of all explosives and explosives activities;

- ensuring standards are established for, and obligations are imposed upon, those involved with explosives activities;
- establishing a system of licensing to authorise legitimate explosives activities;
- providing powers to Inspectors to monitor activities and encourage and where necessary enforce compliance with requirements, and
- harmonising with other State/Territory legislation for national uniformity of requirements.

As a result of proposed changes, in particular the requirement for easy to read legislation, there has been a complete re-write of the Act rather than another amendment. This allowed for ease of drafting and hopefully has resulted in a simpler yet more efficient piece of legislation. While it appears as a completely new Bill, the changes to the explosives legislation are indeed quite few. Significant amendments have been limited to:

- general application of explosives requirements in Queensland;
- appeals to an external body;
- information from and disclosures by doctors/psychologists;
- increased penalties, in line with similar legislation;
- applying the import/export restrictions on explosives only to those moving into or out of Australia, via Queensland, rather than those moving between States,
- ensuring explosives accidents/incidents are effectively investigated for community safety, and
- ensuring the legislation is consistent with fundamental legislative principles.

Alternative Options

Because of the type and scope of the legislation, there are no alternative policy instruments available which can provide the necessary assurances that safety requirements for these materials will be observed. Due to the nature of the materials, their characteristics and inherent potential for

disaster and their attractiveness to an undesirable element within the community, it is not considered to be an area that lends itself easily or sensibly to self-regulation—a point supported by industry and undoubtedly envisaged by the community.

While alternative policy instruments are employed in the effective administration of the legislation, (eg persuasion, advisory guidelines, counselling, consumer education), regulation remains the appropriate means of ensuring continued community safety.

There has however been a move away from purely regulation by Government to a system of co-regulation whereby the standards, codes of practice, guidelines employed in the legislation are drafted in close consultation and co-operation with relevant stakeholders. Hence the legislation can reference such requirements as:

- Australian Code for the Transport of Explosives;
- Australian Standard for the Storage of Explosives;
- Australian Standard for the Use of Explosives;
- Australian Standard for Fireworks Displays;

each drafted with relevant industry input leading to sensible, practical and safe standards of operation with a greater prospect of compliance by those affected.

As indicated earlier this legislation is a link in national controls on explosives. Any significant alteration in policy direction with respect to explosives legislation should ideally be taken at the national level for controls to remain effective. The explosives regulatory authorities in the various states and territories do meet regularly to address policy and national uniformity issues (inter alia).

Cost of Implementation

The existing *Explosives Act 1952* is administered in Queensland by an Inspectorate consisting of five (5) Inspectors, two (2) Administrative Officers and seven (7) Explosives Magazine personnel. With licence fees and Explosives Magazines fees being collected, the current overall cost of implementing explosives legislation is less than \$250 000 per annum. This new Explosives Bill will not significantly impact on the resourcing

necessary to administer explosives legislation.

Fundamental Legislative Principles

This Explosives Bill has been drafted with due regard to fundamental legislative principles as outlined in Section 4 of the *Legislative Standards Act 1992*. As a result, provisions included in the existing legislation have been amended, or added to, to address the following matters:

- Power of entry without consent has been amended to require a warrant;
- Decisions made under the legislation have been made subject to appeal to an external body (Magistrates Court);
- Protection against self-incrimination has been included;
- The immunity of the Crown from liability has been removed;
- Legislation has been drafted in as clear and precise manner as is reasonably practical.

In so doing it is considered the Bill demonstrates sufficient regard for the rights and liberties of individuals and for the institution of Parliament, allowing inconsistencies with fundamental legislative principles only in specific situations where the safety of the community needs to take precedence.

Penalties

The Bill provides for breaches of regulations to incur penalties of up to 200 penalty units. While this level may seem high, it is essential that the deterrent level reflects the nature of the materials being regulated and the severe consequences that may result from non adherence to safety requirements in this area. Breaches of the subordinate legislation dealing with explosives may indeed lead to catastrophe within the community and controls need to be effective and enforceable.

Privacy Issues

In determining a person's appropriateness to hold authorities under the existing explosives legislation enquiries can be made regarding the person's criminal background. These enquiries have been extended to include mental and physical health as such issues are very relevant in relation to granting people access to explosives. Such provisions are consistent with those in similar pieces of legislation eg the Weapons Act. All such information is of course protected by confidentiality provisions included in the legislation. Further, any decisions made based on the information are able to be appealed to an external body (Magistrate's Court).

Reversal of Onus of Proof

To enable the actions of corporations to be effectively policed, executive officers are required to ensure the corporation complies with the legislation. Where the corporation commits an offence, each of the executive officers is taken to have committed the offence unless they can prove otherwise. This may be in effect a reverse onus of proof provision, however it is one which enables offences by corporations to be adequately addressed and is consistent with similar legislations eg Workplace Health and Safety Act.

Similar provisions are provided in the legislation placing responsibilities and accountabilities upon persons for the acts or omissions of their representatives including employees and/or agents.

Prosecutions

Proceedings for offences under the explosives legislation are restricted to those taken on the complaint of the Chief Inspector or any person authorised by the Minister or the Attorney-General. Without such restriction, it is considered the inspectorate and the Department would be involved in actions taken merely for frivolous, competitive, industrial, vengeful or other reasons which would not necessarily be in the public interest or consistent with an established non compliance policy.

Consultation

The review of the explosives legislation involved extensive consultation with a broad cross section of stakeholders.

Initially, advertisements were placed in the media advising of the review and calling for submissions from the public and industry. Further, the Minister for Mines and Energy issued press releases concerning the review in several Queensland newspapers.

Not surprisingly, few submissions were received, however these were used along with considerations for change from within the Department, to prepare a discussion paper which was distributed to a large number of relevant industry groups, unions, interested organisations and individuals. The discussion paper expanded on a number of significant issues and sought comment on these and any other issues considered relevant. A total of 22 responses was received, varying in detail and significance.

The review did suffer to some extent with a lack of representative industry groups with which to consult. It was necessary to discuss with individual manufacturers and/or suppliers to gauge overall views on issues.

A draft policy paper was prepared and further discussions held with Parliamentary Counsel and relevant stakeholders likely to be affected by the proposals.

Specialist advice was sought from:

- Crown Law with respect to
 - removing immunity of Crown;
 - appeals provisions;
 - constitutionality of imposing import/export restrictions.
- Treasury with respect to
 - removing immunity of Crown;
 - National Competition Policy.
- Police with respect to
 - police powers under the legislation;
 - ammunition.

Treasury have advised the legislation will not be subject to review under the National Competition Policy.

There is general agreement both within the community and within the explosives industry for the continued existence of the legislation in this area and for the direction of the amendments proposed. Industry, in particular, supports the new appeals mechanism, the removal of restrictions on interstate movement of explosives and the progress towards national uniformity of requirements.

The majority of the issues raised during consultation were associated with the subordinate legislation rather than the Act. Such matters will be addressed during the drafting of a new explosives regulation in coming months.

NOTES ON PROVISIONS

PART ONE—PRELIMINARY

SECTIONS 1 AND 2 specify the short title of the proposed Act and provide for its commencement on a date to be proclaimed.

SECTION 3 provides for a dictionary of particular terms used in the legislation to be included as a schedule (Schedule 2).

SECTION 4 indicates that the legislation is to apply to all persons, including Governments, as far as the Queensland Parliament has the power to do so.

SECTION 5 provides an exemption to those explosives controlled under other legislation, namely the *Explosives Act 1961 (Commonwealth)*. In the main, this would refer to those explosives under the control of the Defence forces.

SECTION 6. While this legislation is to apply to all sites, including mine sites, this Section allows for specific provisions concerning explosives to be included in Acts about mining, and for such provisions to take precedence over any inconsistent provisions of this legislation. Specific mine related issues involving explosives may still be addressed in mining legislation however, in the main, the explosives legislation will apply.

SECTION 7 enables exemptions from the Act for certain explosives or government entities. Considering the range of materials covered in this legislation from blasting explosives to Christmas bon-bons, it is evident that not all provisions should apply to all explosives eg it is considered necessary to restrict the sale of gelignite but not bon-bons or caps for toy pistols.

Further, it may be that certain entities eg the police or the explosives Inspectors may need to be exempted from certain of the provisions of the legislation for the effective carrying out of their duties.

It is important to note, any exemption to the Act is to be given only via regulation.

PART TWO—AUTHORISED AND PROHIBITED EXPLOSIVES

This part continues the existing provision of requiring all explosives to be authorised (or approved) by the Chief Inspector of Explosives prior to use. This is to ensure unsafe explosives are not permitted or allowed to be handled or marketed in the State.

SECTION 8 enables the Chief Inspector to declare explosives to be authorised only after properly defining the explosives and classifying it (ie placing it in a defined category of explosives whereby its properties would be known).

SECTION 9 requires the Chief Inspector to keep a register of all authorised explosives in the manner outlined and to make generally available a list of such authorised explosives. This list is of names only and

not of formulations or other information which is to be treated confidentially.

SECTION 10 provides for the regulations to declare certain explosives to be prohibited explosives eg where they are known to present unacceptable hazards, such as extreme sensitivity or instability.

SECTION 11 makes it an offence for persons to handle explosives which are not yet evaluated (ie unauthorised) or prohibited (ie considered too dangerous for use).

SECTION 12 enables the regulations to allow the Chief Inspector to issue an authority to handle and use unauthorised or prohibited explosives in certain circumstances eg trial, experiment or examination. When developing new explosives products, suppliers need to carry out trials prior to establishing a fixed formulation or design of an explosive product. Any such proposal is carefully evaluated by the Explosives Inspectorate prior to the Chief Inspector issuing an authority to proceed. Further, the authority where issued is subject to conditions which tightly limit the extent of handling and any risk of exposure.

PART THREE—AUTHORITIES

DIVISION 1—AUTHORITIES

This Division of this Part provides for various authorities to be issued for explosives activities such as manufacture, transport, sale, etc, following assessment by the regulatory authority.

SECTION 13 enables the regulations to define the various types of authorities which may be issued.

SECTION 14 provides for applications for authorities under the Act to

be made to the Chief Inspector in an approved form and with a fee prescribed in the regulations.

SECTION 15 enables the Chief Inspector to make inquiries about a person making application for or holding an authority under the Act. Bearing in mind that such authority will authorise access to explosives, it is essential that any assessment include details concerning a person's appropriateness to have such access. The reasonable inquiries would be similar to those applied to persons seeking a shooter's licence under the Weapons Act. Those persons employed by the applicant or authority holder and having access to explosives would also be subject to this section.

As will be indicated later, any adverse decision made by the Chief Inspector using such information may be appealed to a Magistrate's Court. Further, any information gained is subject to confidentiality provisions.

SECTION 16 enables the Chief Inspector to ask, in writing for further information to assist the assessment process, and to reject the application if the applicant, without reasonable excuse, fails to supply such information. (Appealable).

SECTION 17 requires the Chief Inspector to deal appropriately with an application ie the Chief Inspector must:

- make a decision;
- consider certain matters;
- when a decision has been made, advise the applicant accordingly, with reasons. (Appealable).

SECTION 18 makes it a requirement for the authority holder to comply with any conditions imposed on the issue of that authority.

SECTION 19 limits any authority granted to a term not greater than that outlined within the regulations, at the end of which the authority expires. Renewal is covered by Section 21.

SECTION 20 enables the transfer of a licence with the approval of the Chief Inspector. A licence to use explosives, which is based on an individual's competence and expertise, cannot be transferred to another person. Other authorities eg permits, approvals, cannot be transferred as these would be issued for specific purposes.

SECTION 21 enables renewal of licences issued for ongoing activities eg plant for manufacturing explosives, but not for other authorities issued for specific purposes, eg approval for trials of an unauthorised explosives.

SECTION 22 indicates that application must be made for the renewal of a licence prior to its expiry and that such application is subject to all the clauses of this division ie Clauses 13 to 22 (Appealable).

DIVISION 2—SUSPENSION AND CANCELLATION OF AUTHORITIES

This Division outlines provisions for suspending and/or cancelling authorities issued under the Act.

SECTION 23 lists the grounds for suspending or cancelling authorities. Items (a) to (f) in this section are self-explanatory.

SECTION 24 outlines the procedures which must be adopted when the Chief Inspector considers suspension or cancellation might be warranted. Action is required before the decision is made, to allow natural justice to the authority holder. Action is not mandatory where a ground exists, it remains the decision of the Chief Inspector (appealable). Any decision must be notified to the authority holder, along with reasons and information concerning an appeals mechanism.

SECTION 25 provides for urgent suspension or cancellation in situations of potential harm to the public. In such cases the Chief Inspector may suspend or cancel without prior notice however the authority holder must be advised immediately with reasons and information concerning an appeals mechanism.

SECTION 26 requires the authority holder to return the authority to the Chief Inspector within a reasonable time after suspension or cancellation, and requires the Chief Inspector to return it at the end of a period of suspension.

DIVISION 3—OTHER PROVISIONS ABOUT AUTHORITIES

SECTION 27 outlines the process for an authority holder to obtain replacement of a lost, stolen or destroyed authority. Any decision by the Chief Inspector to refuse replacement must be advised in writing stating reasons. Such a decision is appealable.

SECTION 28 outlines the manner in which an authority holder may apply for an amendment to the authority and how the Chief Inspector must respond. Again should any application for amendment be refused, the Chief Inspector is required to advise the applicant in writing, stating reasons and advising the decision is appealable.

SECTION 29 provides for the Chief Inspector to amend an authority where considered appropriate. Such an example might be where development of a site has made it inappropriate for the storage of a particular quantity of explosives. For safety reasons the quantity may need to be reduced. Any adverse decision is appealable.

SECTION 30 enables the Chief Inspector to require an authority to be returned for amendment.

SECTION 31 provides for a holder voluntarily surrendering an authority.

PART FOUR—HANDLING EXPLOSIVES

DIVISION 1—PRELIMINARY

SECTION 32 places a responsibility on anyone doing anything with explosives to “take reasonable precautions and use reasonable care” so that injury or damage might be avoided. Given the potential of the materials being regulated, it is essential that care is exercised and that the penalty be sufficient to encourage that care.

SECTION 33 requires an employer to ensure that an employee who has access to explosives is an appropriate person for the task, and allows the regulations to stipulate minimum steps in this regard. Examples of such

considerations might include age and training.

DIVISION 2—POSSESSION OF EXPLOSIVES

SECTION 34 makes it an offence to possess explosives without authority. Provision is included for the regulations to exempt certain explosives eg caps for toy guns, sparklers and other small firework types or practical items such as flares, automobile air bags, etc.

DIVISION 3—MOVING EXPLOSIVES INTO AND OUT OF THE STATE

SECTION 35 indicates that this Division applies to explosives that can be legally imported into and/or exported from Australia. Authorities obtained under this legislation do not then permit traffic in other (eg illegal, prohibited) explosives.

SECTION 36 requires a person to obtain an authority to import or export explosives prior to bringing into or sending out explosives. This section restricts the need for an authority only to dealings with another country and does not apply to any explosives movements between States.

SECTION 37 requires the authority holder to advise the Chief Inspector in writing of the planned import of explosives and when those explosives arrive. This is to ensure imported products can be effectively monitored and controlled. Similarly, it requires the authority holder to advise the Chief Inspector of any export of explosives for monitoring purposes.

DIVISION 4—MANUFACTURING EXPLOSIVES

SECTION 38 makes it illegal for any person to manufacture explosives unless that person holds an authority to do so under this Act. Subsections 2 to 4 provide for this requirement not to apply to:

- the manufacture of small quantities for chemical experimentation eg Universities;

- the reconditioning of explosives under supervision eg rectification of an imported product to make it suitable for local use;
- reloading ammunition for personal use;
- manufacture of a prescribed explosive, eg ANFO, by a person authorised to use that explosive, for immediate use, and
- manufacture of prescribed explosives by an Inspector.

SECTION 39 makes it an offence to unlawfully enter an explosives factory site or to carry a weapon on such site (other than a police officer or security officer). Any person doing so may be removed from the site by the owner, inspector or police officer.

SECTION 40 places an obligation on persons in control of, or working at explosives factories, to take reasonable precautions and use reasonable care to prevent fire or explosions, and makes it the responsibility of the owner to ensure each person is aware of such obligation.

DIVISION 5—SELLING EXPLOSIVES

This Division seeks to control the traffic of explosives.

SECTION 41 requires a seller of explosives to hold an authority under the Act to do so.

SECTION 42 restricts the sale of explosives only to those authorised to have the explosives.

SECTION 43 does not allow explosives to be sold in a public place because of the risk to the community.

The regulations will provide for exemptions from the requirements of this division for those explosives which do not present a significant risk to the community, including novelty fireworks, practical safety devices, etc.

DIVISION 6—STORING EXPLOSIVES

Because of the nature of these materials and the potential consequences of an incident, it is necessary to control the siting of storages to minimise

risk to the community.

SECTION 44 requires a person to obtain an authority to store an explosive. The regulations will define which explosives are relevant here as it is intended to apply this section to those explosives which pose a significant risk only.

SECTION 45 makes it an offence to store explosives other than at a place authorised, ie a manufacturing plant, storage magazine or place otherwise approved by the Chief Inspector.

It may be necessary to store explosives in emergency situations or for temporary stoppages however such situations should be assessed and approved, where considered appropriate, by the Chief Inspector.

This section would not apply to explosives stored for purposes prescribed under a regulation eg explosives on a vessel pending export, or explosives at a location immediately prior to use or by Inspectors for testing purposes.

SECTION 46 provides for the Minister to declare places to be Government Magazines. These are areas of land used as centralised storage depots for the purposes of storing large quantities of explosives on behalf of any authorised suppliers, manufacturers, importers, users, etc. They provide safe storage areas and ideal monitoring facilities for explosives on a cost neutral basis (fee for service). There are currently four (4) in Queensland, Helidon (near Toowoomba), Bajool (south of Rockhampton), Brookhill (Townsville) and Queerah (Cairns).

SECTION 47 makes it an offence to unlawfully enter a magazine whether in possession of a weapon or not. This does not apply to police officers in the course of their duty. This section also enables police officers, Inspectors or the owner of the magazine to take steps to remove any such person from the magazine or the site.

SECTION 48 places an obligation on persons in control of or working at magazines to take reasonable precautions and use reasonable care to prevent accidents. The owner is required to take steps to ensure persons are aware of these obligations and hence their liabilities.

SECTION 49 places an obligation on any person storing explosives to take precautions to prevent fire, explosion or theft of the explosives and also

to minimise the effects should an incident occur.

DIVISION 7—TRANSPORTING EXPLOSIVES

This Division covers an area of explosives activity where these materials are brought into the public domain, on wharves, on public roads and hence it is essential that the risks of such activities be minimised to acceptable levels to enable the essential movements of explosives to take place.

SECTION 50 requires a person to hold an authority to transport explosives. This authority may be under this Act or may be under a corresponding law eg the Explosives Act in another State. As there are now national standards for the transport of explosives, interstate transport can be more safely facilitated. This Section also places an obligation on those transporting explosives to comply with the transport requirements of this Act (the national requirements for transport of explosives are proposed for adoption in the regulations) and to ensure the explosives are delivered to appropriate places. The control of certain explosives remains essential.

Subsection (3) of this Section provides for an exemption of certain explosives if transported in the quantities and under the conditions prescribed in regulations. Such tight controls are not required for those explosives considered of less hazard or low security rating eg novelty fireworks.

Subsection (4) provides protection from liability for a person unable to comply with requirements because of the actions of others, and subsection (5) then transfers liability to those preventing compliance.

Subsection (6) merely defines the term “corresponding law” used in this section.

SECTION 51. There exists a class of explosives which by virtue of their sensitivity or instability are too dangerous to transport. Such explosives are listed in national codes. This section makes it an offence to transport such dangerous explosives declared in the regulations.

SECTION 52 provides for this division not to apply to a particular mode of transport where that transport is regulated under another Act eg

transport of explosives by air under Civil Aviation legislation, transport of explosives by sea under the *Commonwealth Navigation Act 1912* or transport of explosives by rail under the Transport Infrastructure (*Rail*) Act, and hence prevents duplication of controls.

DIVISION 8—USING EXPLOSIVES

This division places controls on the use of explosives where there is, obviously, great potential for damage.

SECTION 53 requires a person to be authorised to use explosives but allows for the regulations to exempt certain explosives from this restriction. This would apply to those explosives of low to insignificant hazard, eg ammunition, novelty fireworks, or those designed for use by the public eg emergency flares for boating, air bag actuators.

SECTION 54 outlines the requirements for use of explosives.

Subsection (1) requires explosives to be used in the manner prescribed in the regulations eg for blasting explosives it will be proposed that the national standard (*Australian Standard AS2187 Part 2, Use of Explosives*), be adopted.

Subsection (2) creates the offence for any person, whether legally using explosives or otherwise, to use explosives where it may reasonably be expected to endanger safety, health or property.

PART FIVE—INVESTIGATIONS AND INQUIRIES INTO EXPLOSIVES INCIDENTS

DIVISION 1—INVESTIGATIONS INTO EXPLOSIVES INCIDENTS

This Division seeks to ensure explosives incidents are advised to the appropriate authorities and to ensure that such are properly investigated so

that steps may be taken to prevent a recurrence.

SECTION 55 makes it a requirement for the authority holder to notify the Chief Inspector immediately of an explosives incident and resultant effects. This is to ensure an appropriate response and to enable the matter to be investigated.

SECTION 56 provides for an Inspector to require the site of an explosives incident to be secured against interference so that proper investigation may take place. An obligation is placed on the authority holder to comply with the direction in this regard.

SECTION 57 makes it an offence to interfere with the site of an explosives incident without prior approval. Action to save life or prevent injury is exempted from this provision.

SECTION 58 enables the Chief Inspector to investigate the explosives incident or to require the authority holder to carry out an investigation into the causes of the explosives incident and to prepare a report with recommendations to prevent recurrence. An obligation is placed upon the authority holder to comply, including preservation of the site of the incident until relevant and necessary information is obtained.

SECTION 59 requires a person to answer questions from an Inspector about a serious explosives incident. Self-incrimination is an excuse to fail to answer any questions.

DIVISION 2—INQUIRIES INTO SERIOUS EXPLOSIVES INCIDENTS BY BOARD OF INQUIRY

SECTION 60 enables the Minister in particular circumstances, eg type of incident, extent of damage or injuries, to establish a board of inquiry about a serious explosives incident.

SECTION 61 outlines the membership of any board of inquiry and subsection (3) provides each member of that board with the powers of Inspectors for the purposes of the inquiry.

SECTION 62 defines the role of the board of inquiry, what may be included in the report from the board to the Minister and requires the report to be published by the Minister.

SECTION 63 places obligations on the board of inquiry to observe natural justice and to act quickly and informally, consistent with a fair and proper consideration of issues.

Subsection (2) provides for the board not to be bound by the rules of evidence or to only holding hearings to gather information and gives it scope to determine how the inquiry will be carried out. This scope is however limited to the extent that the board must comply with this division ie Sections 57 to 75 and any procedural rules prescribed by regulation.

Subsection (4) provides for the magistrate to be chairperson at the inquiry.

SECTION 64 requires the inquiry to be held in public but does provide the board with the authority, whether of its own initiative or on the application of a person represented at the inquiry, to hold the inquiry or part of it in private in special circumstances.

SECTION 65 provides protection for board members, legal representatives and witnesses involved in any inquiry.

SECTION 66 requires the board of inquiry to keep records of proceeding.

SECTION 67 provides for fairness in proceedings by requiring the board to give the relevant authority holder the opportunity to defend any claims made against the person either in person or by representation.

SECTION 68 provides powers to the board of inquiry to enable it to reasonably perform its role and functions.

SECTION 69 enables the chairperson of the board of inquiry to require persons to attend proceedings and to give evidence and/or produce documents and other things. Further the section provides for the persons appearing as witnesses to be entitled to witness fees.

SECTION 70 outlines what the board of inquiry may do with documents or things produced at the inquiry. Where it keeps a document or thing while it is necessary for the inquiry the board must allow a person, who is otherwise entitled to possession, reasonable access to the document or thing.

SECTION 71 enables a board to start or continue an inquiry regardless

of any relevant proceeding before a court or tribunal unless properly ordered otherwise.

SECTION 72 makes it an offence for any person to fail to attend an enquiry, to answer questions or to produce documents or things without reasonable excuse as required by the inquiry.

SECTION 73 makes it an offence for a person to state anything to the board of inquiry which the person knows is false or misleading.

SECTION 74 makes it an offence for a person to provide a document which the person knows is false, misleading or incomplete, unless the person so informs the board and, where reasonably practical, gives the correct information to the board.

SECTION 75 makes it an offence to insult the board, interrupt the inquiry, create a disturbance or do anything that would otherwise constitute contempt of court.

SECTION 76 enables the board to report any suspected offences disclosed during the inquiry and to make available relevant material to the appropriate person or body.

SECTION 77 provides for the possibility of changed membership of the board of inquiry during the inquiry.

PART SIX—ADMINISTRATION AND ENFORCEMENT

DIVISION 1—INSPECTORS

SECTION 78 provides for Inspectors to be appointed under this Act by the Chief Executive where satisfied that person has the necessary qualifications, and provides for the Chief Executive to designate one of those Inspectors as the Chief Inspector.

SECTION 79 requires the Chief Executive to provide each inspector

with an identity card, containing a photo of the person plus other relevant particulars, indicating such person is an inspector under and for the purposes of this Act. Any person who ceases to be an inspector is required by this section to return the identity card provided. A single identity card for this and other purposes is acceptable.

SECTION 80 requires an inspector to first produce or display the inspector's identity card before exercising any powers under the Act. However, necessarily, provision is made for the inspector to produce the card at the first reasonable opportunity where it is not immediately practical to do so (eg giving a direction by phone).

SECTION 81 outlines the reporting arrangements for the administration of this Act. Further, provision is made for limiting any of the powers of an inspector by regulation, by condition of appointment or by written notice given by the Minister or the Chief Inspector.

SECTION 82 outlines the appointment conditions for Inspectors and enables appointment to be for a term, or for a period the person holds another position eg a position as a public servant.

DIVISION 2—POWERS OF INSPECTORS

This division outlines the powers of an inspector in ensuring continued safety of explosives operations or activities involving explosives. In so doing, it also provides the necessary limitations or restrictions on such powers for the purpose of natural justice, fairness and a person's civil liberties.

Sub-Division 1—Entry of places

SECTION 83 outlines the situations in which an inspector may enter a place under this Act. The three situations which do not require either consent or warrant are :

- open to the public,
- dangerous situations, or
- investigations of explosives incidents.

Sub-Division 2—Procedure for entry

SECTION 84 outlines the process an inspector must follow when seeking consent to enter any place. Further it provides for a court to presume (should the question arise during proceedings), that consent was not given unless it can be proved otherwise.

SECTION 85 outlines the procedure to follow when an inspector makes application to a Magistrate for a warrant to enter a place.

SECTION 86 outlines the procedure for issue of a warrant by a Magistrate and the information that must be contained on a warrant.

SECTION 87 outlines the procedure to follow when an inspector makes application for such a warrant by phone, fax, radio or other form of communication because of urgent or other special circumstances eg remote locations. Further it provides for a court to presume that there was no authorisation by warrant unless proved otherwise.

SECTION 88 outlines the procedures required to be carried out by an Inspector prior to entry of a place under a warrant.

Sub-Division 3—Powers after entry

SECTION 89 outlines the powers of an inspector who has legally entered a place for the purposes of monitoring or enforcing compliance with this Act or investigating accidents involving explosives. It becomes an offence for a person not to give reasonable help to an inspector when required, unless the person has a reasonable excuse. Further, any person required to provide information may fail to do so if complying with that requirement might tend to incriminate the person.

SECTION 90 provides an inspector with the power to seize certain things which constitute evidence of an offence where such was consistent with the purpose of entry. The inspector may seize evidence for which a warrant was issued or may seize other things the inspector believes are evidence of an offence against this Act and which need to be seized to secure evidence or to prevent repeat offences.

SECTION 91 requires an inspector to leave a receipt for any seized thing with the person from whom it was seized or at the place of seizure.

SECTION 92 enables the Minister to recover costs of seizing, holding

and dealing with any seized things under the Act from the owner.

SECTION 93 provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is either forfeited or returned.

SECTION 94 provides for any seized thing to be forfeited to the State if the owner cannot be found (after making reasonable enquiries) or if it cannot be returned (after making reasonable efforts).

SECTION 95 requires the inspector to return the seized thing to its owner after 6 months, or after any proceeding involving it or immediately the inspector stops thinking its retention is necessary. This section does not apply to things forfeited to the State under this Act or dealt with in a dangerous situation, eg deteriorated explosives.

Sub-Division 4—Power to require information

SECTION 96 provides an inspector, where an offence has or appears to have been committed against this Act, with the power to require a person to state the person's name and address and to produce evidence of same. However, a person does not commit an offence by not complying if an offence is not proved.

SECTION 97 enables the Chief Inspector to require a person to attend before an Inspector to answer questions. Such requirement must be in writing, state a reasonable time and place for attendance and be relevant to explosives safety or other matters pertaining to this Act.

SECTION 98 places an obligation on any person of whom a requirement to attend is made to comply with that requirement (to attend and to answer questions) unless the person has a reasonable excuse. It is an excuse if answering the question might tend to incriminate the person. In situations involving serious explosives incidents however, refer to Section 59.

SECTION 99 makes it an offence for a person to state anything to an Inspector that the person knows is false or misleading.

SECTION 100 provides an inspector with the power to require production of documents which this Act requires to be kept. Further it creates an offence for non compliance with the inspector's requirement. It also outlines how an inspector may handle such documentation produced.

SECTION 101 makes it an offence for a person to produce documents to Inspectors which the person knows are false or misleading. This does not of course apply to a person who indicates to the inspector that such documents are false or misleading and provides, if possible the correct information.

Sub-Division 5—Power to give direction or to take direct action

SECTION 102 covers those situations where an inspector suspects a person is contravening or has contravened the Act. It provides power to the inspector to give directions, via a written notice (a remedial action notice), to remedy the situation. The notice may be given to the person or attached to the thing to which the notice relates. It is an offence for the person not to comply with the notice or to remove the notice from a thing prior to rectification.

SECTION 103 covers those cases where an inspector believes a dangerous situation exists and a person is in a position to remedy the situation. In such cases, the section provides power to the inspector to give the person directions, via a written notice (dangerous situation notice), to rectify the situation. The notice may be given to the person or attached to a thing to which the notice relates. It is an offence for a person not to comply with such notice or to remove the notice prior to rectification.

SECTION 104 covers those cases where an inspector believes a dangerous situation exists and a person has failed to comply with a previous notice or the giving of a notice is not the appropriate course of action, eg immediate danger and the responsible person is absent or time is a factor. In these cases, an inspector is given power under the section to take action the inspector believes necessary to remedy the situation ie prevent, remove or minimise the danger. The inspector may call someone to assist him in this action and any such person has the necessary power under the Act to render such assistance.

Sub-Division 6—General enforcement offence

SECTION 105 makes it an offence for a person to hinder, attempt to obstruct or obstruct an inspector in the exercise of a power under this Act. Where necessary the inspector must advise a person it is an offence to obstruct and indicate that the person's conduct is considered to be an obstruction.

DIVISION 3—ADDITIONAL POWER OF MINISTER

SECTION 106 covers things which have been seized under this Act (refer Section 89) and it provides power to the Minister to declare such thing, where it is an explosive, an ingredient or a package containing an explosive, forfeited to the State even if no one has been prosecuted for any offence in relation to it. Further, the Minister may deal with the seized thing as the Minister considers appropriate and may recover the costs of dealing with it from the owner. Examples of such things include dangerous or deteriorated explosives.

PART SEVEN—REVIEW OF DECISIONS AND APPEALS***DIVISION 1—REVIEW OF DECISIONS***

SECTION 107 provides for decisions of Inspectors to issue notices to be reviewed by the Chief Inspector if a person so applies.

SECTION 108 provides for decisions of Inspectors to take action to be reviewed by the Chief Inspector if a person so applies.

SECTION 109 outlines how such an application is to be made and how the Chief Inspector is to respond to such an application. The review decision may be appealed to a Magistrate's Court.

SECTION 110 provides for an applicant, who is seeking review of a decision, to also be capable of applying to a Magistrates Court for a stay of that original decision.

DIVISION 2—APPEALS

SECTION 111 outlines the various decisions of the Chief Inspector which may be appealed by an applicant or an authority holder to the Magistrates Court.

SECTION 112 outlines the necessary steps in initiating an appeal under the Act and provides timeframes for lodgement of such appeals.

SECTION 113 provides power to the Magistrates Court to stay a decision appealed against with or without conditions. A decision appealed against must continue to be implemented unless there is a stay.

SECTION 114 indicates the procedure for an appeal is under the rules of court or the directions of the Magistrates Court and takes the form of a rehearing unaffected by the Chief Inspector's decision.

SECTION 115 provides power to the Magistrates Court to decide the appeal in a number of ways and in so doing provides the court with the same powers as the Chief Inspector.

SECTION 116 limits appeals against decisions of the Magistrates Court made to the District Court to question of law only.

PART EIGHT—GENERAL

DIVISION 1—GENERAL PROVISIONS ABOUT OFFENCES.

SECTION 117 places an obligation on Executive Officers of a Corporation to ensure compliance with this Act by that Corporation. As such, it creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. It does enable an executive officer to defend the offence if the officer:

— was not in a position to influence the conduct of the corporation in

relation to the offence, or

- took reasonable steps to ensure compliance with the Act.

Such an approach is to enable and facilitate effective action for breaches of the legislation by corporations.

SECTION 118 outlines how proceedings for offences against this Act are to be initiated and handled. Proceedings may be initiated on the complaint of the Chief Inspector, a person authorised by the Minister or the Attorney-General. Without such a limitation it is considered the Inspectorate and the Department would be involved in actions taken for reasons other than the public interest and not consistent with an established compliance policy.

SECTION 119 applies to proceedings for offences against the Act and covers actions or omissions by representatives of persons. In such cases, the person is taken to have committed an offence also if the actions or omissions were done for the person by a representative of the person within the scope of the representative's actual or apparent authority. A person is provided with a defence for actions of the person's representatives, if the person proves:

- the person took reasonable steps to prevent the act or omission, or
- the person was not in a position to influence the conduct of the representative in relation to the act or omission.

Again, such an approach is to enable and facilitate effective action for breaches of legislation.

SECTION 120 provides for an offence against this Act which is proved for a sample or part of an explosive, applying to all the explosives from which the sample or part was taken.

SECTION 121 provides for offences against certain sections of the Act relating to false or misleading information or documents. This section allows for an offence to be proved without specifying either false or misleading.

SECTION 122 provides power to a court convicting a person of an offence against this Act, to also order the person to pay costs to a government entity, reasonably incurred because of the offence. This may

include the costs of testing, transporting, storing and disposing of explosives.

SECTION 123 provides power to a court convicting a person for an offence against this Act to order explosives, ingredients and packagings be forfeited to the State.

DIVISION 2—OTHER GENERAL PROVISIONS

SECTION 124 authorises the Minister to dispose of things forfeited to the State in the way the Minister directs. Further, it indicates that compensation is not payable for things forfeited to the State under this Act.

SECTION 125 provides for a government entity which has incurred costs because of an explosives incident to recover such costs, jointly and severally from a number of persons involved in the incident. Protection is given to persons who establish that the incident was not attributable to them, or that they could not have prevented it.

SECTION 126 provides protection for any doctor or psychologist, who is of the opinion that a patient is an unsuitable person to possess an explosive, to provide information to the Chief Inspector about the patient's condition and identity. This section reflects similar provisions in the Weapons Act and because of the nature of the materials in question, it is considered similar reasoning applies.

SECTION 127 provides protection from liability for relevant persons operating honestly and without negligence under this Act, but allows for any civil liability to, instead, attach to the State.

SECTION 128 allows the Minister to delegate the Minister's powers under this Act to an appropriate public service officer or employee, except those powers establishing government magazines and boards of inquiry.

SECTION 129 allows the chief executive to delegate the chief executive's powers under this Act to an appropriate public service officer or employee.

SECTION 130 allows the Chief Inspector to delegate the Chief Inspector's powers under this Act to an Inspector.

SECTION 131 provides the power for the Chief Inspector to require reasonable information from a person about the handling of explosives by or for the person. It is an offence not to comply with such a request. However, it is a reasonable excuse not to comply where the information sought is not available, not required by this Act to be kept or may tend to incriminate the person.

SECTION 132 makes it an offence for persons involved in the administration of this Act to disclose any information obtained, unless:

- the person providing the information consents;
- the disclosure is part of administering the Act;
- in a proceeding under this Act, or
- in a proceeding before a court where the information is relevant to the issue at hand.

The Chief Inspector may communicate information to an officer or authority responsible for administering a law of Queensland, the Commonwealth or another State about explosives.

The Freedom of Information Act continues to apply.

SECTION 133 allows for certain evidentiary provisions as outlined.

SECTION 134 enables forms employed under this Act to be approved by the Chief Inspector.

SECTION 135 provides power for the Governor in Council to make regulations under this Act and, without limiting the power, outlines the scope of the regulations. It provides for regulations to create offences with penalties up to 200 penalty provisions. While this may seem high for regulations, as indicated earlier, given the nature of the materials in question and the extreme potential for disaster, it is essential that the deterrent level reflects the gravity of non compliance with requirements.

PART NINE—REPEAL AND CONSEQUENTIAL AMENDMENTS

This Part repeals the existing legislation in this area and provides for consequential amendments to other legislations.

SECTION 136 repeals the existing *Explosives Act 1952*.

SECTION 137 provides for the consequential amendment of several other pieces of legislation outlined in Schedule 1 of the Bill. In all legislations the amendment refers to a reference to the new “*Explosives Act 1998*”.

Amendment is also made to the *Police Powers and Responsibilities Act 1997* to include “explosives” as a basis for police carrying out searches of persons and vehicles and for fingerprinting. Police powers have therefore been removed from the explosives legislation. Such a move is essential in providing police with the ability to effectively carry out their role of protecting the community.

PART TEN—TRANSITIONAL PROVISIONS

SECTION 138 allows for licences, permits and other authorities in force immediately before the commencement of this section to continue in force as if they were authorities under this Act.

SECTION 139 allows for the existing register of authorised explosives to continue in force under this Act.

SECTION 140 provides for the existing regulations to remain in force for this Act. However this section expires 1 year after it commences, thereby requiring new regulations to be prepared within that period.

This section applies despite the *Statutory Instruments Act 1992* which had extended the explosives regulations until the 30 June 1999.

SECTION 141 provides for exemptions in force under existing regulations to continue under this Act.

SECTION 142 provides for the existing Chief Inspector and Inspectors to continue under this Act.

SECTION 143 provides for references in other Acts or documents to the *Explosives Act 1952* to be taken as reference to this Act.

SCHEDULE 1—AMENDMENT OF OTHER ACTS

This Schedule lists those legislations which have need for consequential amendments on the introduction of the new Explosives Act.

SCHEDULE 2—DICTIONARY

The schedule to this Act provides definitions for various terms used throughout the text.