

Land, Explosives and Other Legislation Amendment Bill 2018

Explanatory Notes

FOR

Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP

Title of the Bill

The short title of the Bill is the Land, Explosives and Other Legislation Amendment Bill 2018.

Objectives of the Amendments

The objectives of the amendments are to:

- make minor drafting corrections, including to prevent possible unintended consequences, and update cross-referencing in the *Explosives Act 1999* and *Explosives Regulation 2017* (Explosives Act and Explosives Regulation);
- ensure that amendments to the definitions of who meets the criteria for notifying the State under the *Foreign Ownership of Land Register Act 1988* do not impose onerous and impractical notification obligations where there are frequent changes of shareholding or unitholding in an entity between foreign and non-foreign persons;
- prevent automatic commencement of the prescribed terms provisions in the *Land and Other Legislation Amendment Act 2017* on 31 March 2019;
- give adequate lead-time for relevant parties to put in place alternative arrangements in those situations where they have been using paper certificates of title as a form of security; and
- ensure gas safety standards are in place for emerging biogas production facilities.

Achievement of the Objectives

The objectives of the proposed amendments will be achieved by:

- correcting the minor drafting errors and cross-references in the clauses of the Bill amending the Explosives Act and Explosives Regulation.
- clarifying that the obligation to notify change of foreign or non-foreign status applies in relation to the status on 30 June each year;

- providing that section 15DA of the *Acts Interpretation Act 1954* does not apply to the prescribed terms provisions in the *Land and Other Legislation Amendment Act 2017*;
- providing that the removal of the legal effect of paper certificates of title will take effect on 1 October 2019; and
- reinstating a provision under the *Petroleum and Gas (Production and Safety) Act 2004* that allows certain gas flares to be prescribed as a type B device which will ensure they are approved according to national safety requirements for type B devices.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives. The policy objectives can only be achieved by legislative amendment.

Estimated Cost for Government Implementation

There are no implementation costs associated with the amendments to explosives legislation, the *Foreign Ownership of Land Register Act 1988*, the *Land and Other Legislation Amendment Act 2017*, and the *Land Title Act 1994*.

The administrative cost to government for implementation of the gas safety amendment is minor and can be managed within existing budgets.

Consistency with Fundamental Legislative Principles

The amendments have been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and are consistent with these provisions.

Consultation

The Office of the Queensland Parliamentary Counsel identified the drafting errors and possible unintended consequences in the Explosives Act and Explosives Regulation.

The proposal for the amendments to the *Foreign Ownership of Land Register Act 1988* arose from consultation with the Queensland Law Society following introduction of the Bill. The Queensland Law Society supports the policy objectives of the amendments to the Foreign Ownership of Land Register Act.

The proposal to prevent automatic commencement of the prescribed terms framework in the *Land and Other Legislation Amendment Act 2017* is machinery in nature.

Proposed changes to AS3814 to include gas flares for biogas facilities by Standards Australia have been developed in consultation with industry.

NOTES ON PROVISIONS

Amendment 1 – Clause 2 (Commencement)

Amendment 1 amends clause 2 of the Bill to change the commencement date of provisions removing the legal effect of paper certificates of title to 1 October 2019.

The extension of the commencement date will benefit relevant parties in adapting to the change where they have been using paper certificates of title as a form of security.

Amendment 2 – Clause 51 (Amendment of s 46 (Government magazines))

Amendment 2 omits clause 51 of the Bill to prevent possible unintended consequences in relation to the administration of government magazines (government explosives reserves). This amendment ensures existing arrangements are maintained and continue to operate as intended.

Amendment 3 – Clause 92 (Amendment of sch 2 (Dictionary))

Amendment 3 amends clause 92 of the Bill to remove the existing definition of 'place' from schedule 2 of the Explosives Act. This ensures the new definition of 'place' which clause 92 inserts into schedule 2 will apply as intended.

Amendment 4 – Clause 113 (Amendment of s 71 (Prescribed explosives and conditions – Act, s 38))

Amendment 4 amends clause 113 of the Bill to correct a minor drafting error. This ensures section 71(2)(b) of the Explosives Regulation will be replaced with a new subsection (2)(b) as intended.

Amendment 5 – Clause 135 (Amendment of s 136 (Conditions for transporting explosives under s 50(3) of Act))

Amendment 5 amends clause 135 of the Bill to update a reference to section 50 of the Explosives Act in section 136 of the Explosives Regulation as a result of amendments to section 50 contained in clause 53 of the Bill.

Clause 135 amends section 136 of the Explosives Regulation which prescribes conditions for transporting explosives under section 50(3) of the Explosives Act.

Clause 53 of the Bill shifts the power to make conditions for transporting explosives from section 50(3) to section 50(2) of the Explosives Act.

A minor amendment to clause 135 is needed to ensure all references to section 50(3) in section 136 of the Explosives Regulation are updated to refer to section 50(2).

This ensures accurate cross referencing in both the Explosive Act and Regulation.

Amendments 6 & 7 – Clause 163 (Replacement of ss 18 – 21)

Amendment 6 amends clause 163 by providing (in new section 19) that a person recorded in the foreign ownership of land register as holding a relevant interest in land must notify the registrar if, on 30 June in any year, they are no longer a foreign person. Notification is required by 30 September in that year. The amendment is to ensure that the obligation to notify change from foreign to non-foreign status is not unduly onerous and impractical to comply with.

Amendment 7 further amends clause 163 by providing (in new section 20) that a person holding a relevant interest in land but not recorded in the foreign ownership of land register must notify the registrar if, on 30 June in any year, they have become a foreign person. Notification is required by 30 September in that year. The amendment is to ensure that the obligation to notify from non-foreign to foreign status is not unduly onerous and impractical to comply with.

Amendment 8 – After clause 220

Amendment 8 amends section 2 of the *Land and Other Legislation Amendment Act 2017* to prevent automatic commencement of the prescribed terms provisions under section 15DA of the *Acts Interpretation Act 1954* to allow time for amendments to the framework to be made before it commences. These amendments will clarify the drafting, and ensure the framework operates effectively.

Amendment 9 – Part 9, division 3, (Amendments commencing on 1 July 2019)

Amendment 9 is a consequential amendment reflecting the extended commencement date of the amendments to remove the legal effect of paper certificates of title.

Amendment 10 – Schedule 1 (Other amendments)

Amendment 10 amends Schedule 1 (Other amendments) to omit the amendment that proposed to repeal provisions to confirm that gas flares are not a type B gas device. This amendment will reinstate the legislative position prior to the Bill, that gas flares are a type B gas device if they use combustion to dispose of fuel gas and are prescribed under regulation. A Type B gas device is any gas device that is not a badged appliance gas device. This includes industrial gas plants and many commercial gas devices, and fuel gas systems for a vehicle or vessel.

This reversal of policy responds to emerging changes to a national gas safety standard (AS3814) called up under the *Petroleum and Gas (Production and Safety) Act 2004*. AS3814 sets safety and technical requirements for approving type B devices. The Bill amendment in the schedule 1 provision would mean changes to AS3814 setting standards for biogas flares would not apply in Queensland as these flares would not be defined as a type B gas devices.

The changes to AS3814 respond to the emerging biogas industry and the need to ensure design standards are adequate for preventing workers being exposed to potentially harmful contaminants. This approach will also ensure Queensland is consistent with regulators in other States.

Amendment 11 – Schedule 1 (Other amendments)

Amendment 11 is a consequential amendment reflecting the extended commencement date of the amendments to remove the legal effect of paper certificates of title.

Amendment 12 – Long Title

Amendment 12 amends the long title of the Bill to include the *Land and Other Legislation Amendment Act 2017*.