

Queensland



Explanatory Notes for SL 2003 No. 146

Explosives Act 1999

EXPLOSIVES REGULATION 2003

SHORT TITLE

The *Explosives Regulation 2003*.

AUTHORISING LAW

This Regulation is made pursuant to the *Explosives Act 1999*, and in particular Section 135 of that Act.

Objectives of the Regulation

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

Under the *Explosives Act 1999*, the term 'explosives' represents a broad range of dangerous substances and devices including blasting explosives, fireworks, ammunition, flares, practical devices such as air-bags for motor vehicles, power tools and even novelty items such as sparklers, Christmas bon-bons and caps for toy guns.

The explosives legislation seeks to effectively control explosives and explosives activities but only to the extent necessary for community safety. Hence while tight restrictions may be placed on high explosives used for blasting, these same restrictions would not be appropriate for novelty items which pose a significantly lower risk to the community. The requirements in the regulation are therefore risk based accordingly.

The existing *Explosives Regulation 1955* has been the mechanism for controlling the use and handling of explosives in Queensland for over 47 years and, while the regulation has been amended several times during that period there remained a need to amend the existing legislation to address:

- an explosives industry using new products, new technology and new processes,
- a national approach towards uniform application of explosives safety requirements,
- an extension of the regulation to effectively cover additional requirements in the new *Explosives Act 1999*,
- consistency with fundamental legislative principles, and
- simplification of legislative language.

So that these factors could be satisfactorily addressed a complete rewrite of the regulation was required 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.

The controls are applied on a whole of life basis, consistent with the *Explosives Act 1999*, and cover import, export, manufacture, transport, storage, sale, use and possession of explosives.

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 *Explosives Regulation 2003*. It needed 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’ or whole of life view, and encompassing the activities of authorisation, importation, manufacture, storage, transport, sale, use, possession, 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 caps for toy guns, sparklers, Christmas bon-bons, 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 regulation in this area and, indeed, there were no submissions calling for major changes to the policies, format or controlling mechanisms of the existing explosives regulation.

As a result of proposed changes, in particular the requirement for easy to read legislation, there has been a complete re-write of the Regulation rather than another amendment. This allowed for ease of drafting and hopefully has resulted in a simpler yet more efficient piece of legislation. As well as drafting a completely new Explosives Regulation 2003, other necessary changes to the explosives legislation were quite numerous. Those significant amendments include:

- the adoption of the United Nations classification system for all explosives activities in Queensland (currently limited to transport of explosives),
- the adoption of safety management systems, based on risk management, for the effective control of explosives activities,
- an extension of the list of prohibited explosives, including those more dangerous fireworks such as those used at Bray Park,
- the inclusion of requirements for the quality of explosives goods handled and used in Queensland,

- the adoption of national explosives standards for;
 - the handling of explosives at ports,
 - the storage of explosives,
 - the use of explosives,
 - the use and handling of precursors,
 - the manufacture of explosives in vehicles,
 - the transport of explosives.
- the adoption of a new Code of Practice for the Control of Outdoor Fireworks displays,
- the inclusion of a new entity, a Fireworks Contractor, with increased competency requirements to provide safer fireworks displays,
- the introduction of regular maintenance of explosive competencies, e.g. Shot firer - every 5 years, Fireworks Contractor/Operator - every 3 years,
- the extension of explosives security requirements to all explosives sites, including mines and quarries,
- the inclusion of ammunition collectors licences,
- the inclusion of obligations for employees, as well as licensees and employers,
- the elimination of regulations covering ‘Fruit Ripening’ activities (these will automatically fall under the *Gas Act 1965*) and,
- the adoption of fundamental legislative principles as outlined in the *Legislative Standards Act 1992*.

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 and does 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 Handling Explosives at Ports,

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 or 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 *Explosives Act 1999* is administered in Queensland by an Inspectorate consisting of sixteen (16) Inspectors, five (5) Licensing Officers and eight (8) Explosives Magazine personnel. These officers are predominantly located in the Northern, Central and Southern Regions of the State with a small Head Office group coordinating the Inspectorate policy, legislation and functions.

Resources were provided by the Government to achieve these new levels in 2002/03 following the comprehensive investigation and Coronial inquest into the tragic Bray Park fireworks accident.

The overall cost of administering the *Explosives Act 1999* and pursuant regulations is approximately \$2.3million. However this is significantly offset by revenue from licence fees and Explosives Magazine fees in excess of \$1 million.

This new *Explosives Regulation 2003* will not significantly impact further on the resourcing necessary to administer explosives legislation in Queensland.

Fundamental Legislative Principles

This *Explosives Regulation 2003* 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 new regulations have been amended, or added to, to appropriately address fairness and justice issues, e.g. appeal mechanisms have been included where necessary, reasonable excuse has been included as necessary

In so doing it is considered the Regulation 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 *Explosives Regulation 2003* provides for penalties for breaches of up to 200 penalty units. While this level may seem high for regulatory purposes, 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.

The penalties are consistent with the *Explosives Act 1999*.

Privacy Issues

In determining a person's appropriateness to hold authorities under the existing explosives legislation enquiries can be made regarding the person's background. These enquiries are very relevant in relation to granting people access to explosives. All such information is of course protected by confidentiality provisions included in the enabling legislation. Further, any decisions made based on the information are able to be appealed to an external body (Magistrate's Court).

Consultation

- ***Community***

At the commencement of the review of the explosives legislation comments were sought from the general community via an advertised public call for submissions.

A Discussion Paper was subsequently prepared and distributed widely to all relevant parties including the various explosives industry sectors, unions, and other organisations seeking input on proposals for amendments to explosives regulations.

All submissions received were carefully considered in preparing the initial drafting instructions, which were then circulated to relevant industries and organisations for comment. The drafting instructions were also posted on the departmental web site with a request for comment.

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

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 some issues.

- ***Business Regulation Reform Unit***

The Business Regulation Reform Unit confirmed that no Regulatory Impact Statement would be required for this replacement regulation.

- ***National Competition Policy [NCP] Implementation Unit – Treasury Department***

Consultation has occurred with the National Competition Policy Implementation Unit which has, because of the nature of the legislation, excluded it from the NCP legislative review process by the National Competition Council.

- ***Office of the Queensland Parliamentary Counsel***

The office has been consulted on the proposal replacement regulation and has drafted a complete rewrite to address all relevant issues including

fundamental legislative principles and to provide the regulation in a clear and concise manner.

- ***Government***

Consultation has also been undertaken with other Government Departments, including Police, Transport, Emergency Services and Industrial Relations (Workplace Health and Safety).

Results of Consultation

There is general agreement, both within the community and within the explosives industry, for the continued existence of the explosives regulation and for its proposed direction.

Industry, in particular, supported the inclusion of appeals mechanisms, the progress towards national uniformity and the recognition of alternative safety requirements where relevant.

Significant changes have been included in the regulation with respect to the fireworks industry in Queensland following the Bray Park fireworks tragedy investigation and coronial inquest. These changes have been developed with the fireworks associations in Queensland through the monthly meetings of the Fireworks Advisory Committee. While the increased safety requirements and the increased training requirements may upset individual fireworks operators, the professional fireworks industry associations have accepted the need for change and are working closely with the Explosives Inspectorate to ensure high standards of fireworks safety in Queensland.

Fees for fireworks licences have been significantly increased, in line with the Cabinet Budget Review Committee approval, to offset the additional resources provided to the Explosives Inspectorate post Bray Park. Again, while the fireworks associations have accepted the necessity for the fee increases, individual operators may register their complaint.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Natural Resources and Mines.

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