

Explosives Regulation 2017

Explanatory notes for SL 2017 No. 150

made under the

Explosives Act 1999

General Outline

Short title

Explosives Regulation 2017.

Authorising law

Section 135 of the *Explosives Act 1999*

Policy objectives and the reasons for them

The objectives of the *Explosives Regulation 2017* are to:

1. Keep Queensland's explosives legislation current with contemporary safety and security standards
2. Ensure Queensland's explosives legislation meets community and industry expectations

Section 54 of the *Statutory Instruments Act 1992* provides that subordinate legislation expires 10 years after its making, unless a regulation is made exempting it from expiry. The *Explosives Regulation 2003* came into effect in 2003, and has been exempted from expiry since 2013 because the *Explosives Act 1999* was under ongoing review. The exemption from expiry ends on 31 August 2017.

Rather than further delay the remaking of the *Explosives Regulation 2003* pending the completion of any review of the *Explosives Act 1999*, the objective is to remake the regulation predominantly with changes that update references, correct any errors, update drafting style or remove redundant transitional provisions. There are also a number of amendments in addition to these administrative updates.

Achievement of policy objectives

The *Explosives Regulation 2017* is made in substantially similar form to the *Explosives Regulation 2003*, except where amendments were necessary to address anomalies and gaps, broaden exemptions that apply under the *Explosives Act 1999*, remove unnecessary or redundant provisions, make minor amendments to improve the currency and effectiveness of regulation, update out of date references, clarify various provisions to provide certainty, renumber sections or update wording based on current drafting style.

Consistency with policy objectives of authorising law

The *Explosives Regulation 2017* is consistent with the objective of the *Explosives Act 1999*, which is to ensure safety of the community from all activities associated with explosives.

Inconsistency with policy objectives of other legislation

The *Explosives Regulation 2017* is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The remade *Explosives Regulation 2017* will update out of date references, correct errors, broaden exemptions, remove unnecessary or redundant provisions, make minor amendments to improve the currency and effectiveness of regulation and clarify various provisions to provide certainty. The remade *Explosives Regulation 2017* will ensure that the regulatory framework supporting the *Explosives Act 1999* continues appropriately.

Implementing the *Explosives Regulation 2017* will not result in any increase in costs for government or industry.

Consistency with fundamental legislative principles

The *Explosives Regulation 2017* has been drafted with regard to fundamental legislative principles.

The *Explosives Regulation 2017* continues to include some offences that exceed a maximum of 20 penalty units. The continuation of penalties at this level may be seen to conflict with the fundamental legislative principle of having regard to the institution of Parliament and the rights and liberties of individuals by placing a penalty of greater than 20 penalty units in subordinate legislation.

The Legislative Assembly has previously endorsed an approach for including penalty units greater than 20 through acceptance of section 135(5) of the *Explosives Act 1999* which states “a regulation may also create offences and impose penalties of not more than 200 penalty units for an offence”.

There are a number of provisions that have increased penalties over those existing in the *Explosives Regulation 2003* that are greater than 20 penalty units. These increases to existing penalties could also be seen as a breach of fundamental legislative principles in regard to the rights and liberties of individuals. However the increased penalties are proportionate to similar breaches in the *Explosives Regulation 2017* and are therefore not breaches of fundamental legislative principles. The specific sections of the *Explosives Regulation 2017* that increase the existing penalties are outlined in the following paragraphs.

Section 92 of the *Explosives Regulation 2017* provides the security plan obligations of a holder of a licence to sell explosives. Section 92(4) of the *Explosives Regulation 2017* states the licence holder must give the chief inspector a copy of their security plan, or any revised security plan, as soon as practicable after the chief inspector asks for a copy, with a penalty of 200 penalty units. This is the same penalty as the previous section 79B in the *Explosives Regulation 2003* requiring the holder after making a plan to give a copy to the chief inspector, but greater than the 20 penalty units for not providing a revised plan as soon as practicable after being asked. The increased penalty is consistent with other penalties associated with security plans.

Section 108 of the *Explosives Regulation 2017* requires the licence holder to inspect a storage facility, the premises where it is located, and the explosives stored there, every three months, with a penalty of 50 penalty units. It also requires keeping records of the inspection, with the same penalty. Section 95 of the *Explosives Regulation 2003* required the same inspection timeframes, the same record keeping and had the same penalty. However the penalty could be seen only to apply to failing to keep a record of the inspections. The change ensures the penalty clearly also applies to not undertaking inspections.

Section 109 of the *Explosives Regulation 2017* requires record keeping of explosives at a storage facility and requires regular stocktakes of explosives stored at the facility to identify discrepancies, with a penalty of 50 penalty units. Section 96 of the *Explosives Regulation 2003* did not include a penalty for not undertaking regular stocktakes. This penalty is consistent with other penalties under section 109 of the *Explosives Regulation 2017* and is consistent with penalties for similar breaches under the *Explosives Regulation 2017*.

Section 168 of the *Explosives Regulation 2017* requires a fireworks contractor give the display host a notice about safety obligations, outlining what is stated in the notice, with a penalty of 50 penalty units. Section 140 of the *Explosives Regulation 2003* only had a penalty of 50 penalty units for not providing a notice, and did not apply a penalty for not including the required information. The change ensures the penalty applies for not providing a notice with the required information.

Section 188 of the *Explosives Regulation 2017* increases the penalty from 50 to 100 penalty units for a person that states in an application for an authority anything the person knows is false or misleading, or omit information without which the application

is misleading. This is an adequate deterrent from committing deliberate fraud, and discourages persons from providing false and misleading information. This penalty is consistent with other penalties for providing false or misleading information.

Section 189 of the *Explosives Regulation 2017* increases the penalty from 20 to 100 penalty units for a person giving false or misleading information when acquiring an explosive. This is a very serious security matter that could aid a criminal or terrorist activity and it is essential to have a strong deterrent in place. This penalty is consistent with other penalties for providing false or misleading information.

Section 190 of the *Explosives Regulation 2017* increases the penalty from 20 to 100 penalty units for a person giving false or misleading information to an employer about the type of authority they hold or the type of explosive they are authorised to deal with, any condition of the authority or their name or identity. This is an important safety issue to prevent harm to the public where an authority holder gives false or misleading information that could lead to death, injury or property damage due to an incompetent or inexperienced person conducting an explosives activity. This penalty is consistent with other penalties for providing false or misleading information.

Section 191 of the *Explosives Regulation 2017* increases the penalty from 20 to 100 penalty units for a person altering an authority issued to another person. This is a similar penalty to other dishonesty offences.

Consultation

Extensive consultation with explosives stakeholders was conducted during 2011-12 and further targeted stakeholder consultation was undertaken in 2015. Stakeholders generally supported the proposed amendments. Consultation on an early draft of the *Explosives Regulation 2017* was conducted with the Australian Explosives Industry and Safety Group. All parties consulted agree with the proposal.

Some of the regulatory proposals in the *Explosives Regulation 2017* required consultation with the Office of Best Practice Regulation, Queensland Productivity Commission regarding Regulatory Impact Statement system requirements.

Further, in accordance with the Queensland Government Guide to Better Regulation; the Office of Best Practice Regulation was not consulted in relation to eligible minor regulatory proposals for which the Department of Natural Resources and Mines applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (d) – regulatory proposals that are of a savings nature and category (f) – regulatory proposals that correct technical errors and amend legislation to take account of current drafting practice).

In relation to the proposed amendments that required the Department of Natural Resources and Mines to consult with the Queensland Productivity Commission, the Queensland Productivity Commission determined that the proposed amendments were unlikely to result in adverse impacts on stakeholders, and that further analysis was not required.

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