

# Explosives Amendment Regulation (No. 1) 2019

Explanatory notes for SL 2019 No. 203

made under the

*Explosives Act 1999*

## General Outline

### Short title

*Explosives Amendment Regulation (No. 1) 2019*

### Authorising law

Section 135 of the *Explosives Act 1999* (the Explosives Act)

### Policy objectives and the reasons for them

The objectives of the *Explosives Amendment Regulation (No. 1) 2019* (the Amendment Regulation) are to amend the *Explosives Regulation 2017* (the Explosives Regulation) to:

- support changes to the Explosives Act and the Explosives Regulation made by the *Land, Explosives and Other Legislation Amendment Act 2019* (the LEOLA Act) by prescribing regulatory fees for the new security clearance and explosives driver licence regimes; and
- make additional minor amendments which correct technical errors regarding approval of explosives licence competencies and fireworks contractor record keeping requirements.

#### Security clearance and explosives driver licence fees

The Explosives Inspectorate (the Inspectorate), within the Department of Natural Resources, Mines and Energy, regulates safety and security in the Queensland explosives and fireworks industries. The Inspectorate works closely with industry and the community to ensure the safety of people working in these industries and the public. The Explosives Regulation prescribes fees and charges to fund the activities of the Inspectorate on a cost recovery basis.

The LEOLA Act amends the Explosives Act and the Explosives Regulation to establish new security clearance and explosives driver licence regimes. However, the LEOLA

Act does not prescribe the required regulatory fees associated with these regimes as these had not been finalised at the time. The new regulatory fees for security clearances and explosives driver licences were determined based on a cost recovery model in line with Queensland Treasury principles and were approved in the 2019-20 State Budget process. The new fees subsequently need to be prescribed under the Explosives Regulation to support the operation of these new regimes.

#### Approval of specific explosives licence competencies

Sections 33, 37, 38 and 39 of the Explosives Regulation (and section 36A of the Explosives Regulation as amended by the LEOLA Act) specify criteria the chief inspector of explosives (the chief inspector) must be satisfied of for the issue of certain licence types and for certain activities to be authorised under a shotfirer licence. This includes that the person has satisfactorily completed specific competencies 'approved' (i.e. specified) by the chief inspector and published online. These units of competency are contained in industry training packages, approved under national vocational education and training arrangements, and delivered through registered training organisations (e.g. TAFE). Some stakeholders have commented that the current wording of these sections could be taken to imply that the industry training packages are approved by the chief inspector, which is not the case. Amendments to the Explosives Regulation are required to correct these technical errors.

#### Fireworks contractor record keeping requirements

Section 173(1)(b)(ii) of the Explosives Regulation requires a fireworks contractor licence holder to keep a record of each firework sold by the fireworks contractor. However, under section 34 of the Explosives Regulation, a fireworks contractor licence holder is not authorised to 'sell' fireworks under their licence. A separate 'licence to sell explosives' would be required for this activity, which has its own separate record keeping requirements associated with that licence type. A fireworks contractor licence holder is however authorised under section 34 of the Explosives Regulation to 'supply' fireworks to a fireworks operator for use by the fireworks operator in a fireworks display organised by the fireworks contractor. It is this activity that the record keeping requirements apply to (noting that 'supply' is including within the definition of 'sell' under the Explosives Act and also separately defined under the Explosives Regulation). To correct this technical error, an amendment to the Explosives Regulation is required.

## **Achievement of policy objectives**

The objectives of the Amendment Regulation are achieved by making amendments to the Explosives Regulation which:

- support the operation of the new security clearance and explosives driver licence regimes by prescribing regulatory fees for security clearances and explosives driver licences to fund these regimes on a cost recovery basis; and
- correct a number of minor technical errors regarding approval of explosives licence competencies and fireworks contractor record keeping requirements.

Security clearance and explosives driver licence related amendments commence immediately after the commencement of the explosives related amendments in the LEOLA Act. The remaining amendments commence on notification.

#### Security clearance and explosives driver licence fees

To achieve its objective of prescribing regulatory fees for security clearances and explosives driver licences to fund these new regimes on a cost recovery basis, the Amendment Regulation will amend Schedule 2 of the Explosives Regulation to prescribe fees payable. For security clearances, a fee of \$200 for first-time applications and \$160 for renewals will be payable; and for an explosives driver licence, a fee of \$62.80 for 1 year will be payable.

The recovery of costs through these regulatory fees is required to enable the operation of the security clearance and explosives driver licence regimes.

#### Approval of certain explosives licence competencies

To achieve its objective of correcting technical errors regarding approval of explosives licence competencies; the Amendment Regulation will amend sections 33, 36A, 37, 38 and 39 of the Explosives Regulation to clarify that the chief inspector is not approving 'industry training packages', rather approving (i.e. identifying) certain units of competency within industry training packages as criteria, that if successfully completed, will satisfy the chief inspector for the purpose of issuing certain licence types and for certain activities to be authorised under a shotfirer licence.

The amendments are needed because the sections, as drafted, could be taken to imply that the industry training packages are approved by the chief inspector, which is not the case. The amendments will not change the intent, application or effect of the legislation.

#### Fireworks contractor record keeping requirements

To achieve its objective of correcting technical errors regarding fireworks contractor record keeping requirements, the Amendment Regulation will amend section 173 of the Explosives Regulation to replace 'sold' with 'supplied' to clarify that the fireworks contractor must keep a record of each firework supplied by the fireworks contractor to a fireworks operator for use by the fireworks operator in a fireworks display organised by the fireworks contractor.

This amendment is needed because, under section 34 of the Explosives Regulation, a fireworks contractor is not authorised to 'sell' fireworks under a fireworks contractor licence; however, they are authorised to 'supply' fireworks to a fireworks operator under prescribed circumstances. The amendment will not change the intent, application or effect of the legislation.

### **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the objects of the Explosives Act.

## **Inconsistency with policy objectives of other legislation**

There is no inconsistency with policy objectives of other legislation.

## **Benefits and costs of implementation**

The prescription of security clearance and explosives driver licence fees is required to fund the operation of these new regimes introduced via the LEOLA Act. The fees reflect cost recovery and are in accordance with Queensland Treasury's *Principles for Fees and Charges*. The fees are also broadly consistent with fees for equivalent occupational licences (such as a shottfirer licence and licence to use explosives) and security clearances in other jurisdictions. The security clearance fees replace amounts payable under the existing security screening arrangements. The explosives driver licence fees will save time and money for industry when employing a new driver and remove the requirement for them to hold an interstate licence when transporting explosives across state borders.

While these fees will be borne by persons working within the explosives industry, the advantages gained through replacing the current duplicative system and the increased safety and security of explosives; the reduction of administrative burden on industry and workers; and improved capacity for worker mobility, more than off-sets the associated costs.

The proposed new security clearance and explosives driver licence fees were considered and approved as part of the 2019-20 State Budget.

There are no additional costs expected to industry, the community or government from the remaining amendments, which correct a number of minor technical errors.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

Consultation was undertaken with industry stakeholders in early 2019 regarding the fees for the new security clearance and explosives driver licence regimes. Industry stakeholders raised no concerns regarding the fees.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted regarding the need to prepare a Regulatory Impact Statement under the *Queensland Government Guide to Better Regulation* (the guidelines) in relation to the prescription of security clearance and explosives driver licence fees. OBPR advised that the proposals to prescribe security clearance and

explosives driver licence fees are unlikely to result in significant adverse impacts, and no further assessment is required under the guidelines.

In accordance with the guidelines, OBPR was not consulted in relation to the minor regulatory proposals. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (category (f) - Regulatory proposals that correct technical errors) regarding the approval of explosives licence competencies and fireworks contractor record keeping requirements.