



New South Wales

Explosives Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Explosives Act 2003* (the **Principal Act**) as follows:
 - (i) to require security clearances to be held by natural persons who handle explosives or explosive precursors and by licence holders, and to provide for the grant, suspension and cancellation of security clearances (**Schedule 1 [1]–[6], [9]–[21] and [28]**),
 - (ii) to enable regulations to be made authorising the disclosure of information obtained in the administration or execution of the Act to persons or bodies, or persons or bodies of a class, prescribed by the regulations (**Schedule 1 [26]**),
 - (iii) to enable the regulatory authority under the Act to communicate (subject to any conditions or limitations prescribed by the regulations) to persons or bodies and persons or bodies of a class prescribed by the regulations, any information which comes to its knowledge in the exercise of its functions with respect to licences and security clearances and holders of licences and security clearances (**Schedule 1 [27]**),
 - (iv) to enable the Commissioner of Police, at the request of the regulatory authority, to report under section 13 of the Act on whether there is any available information with respect to the participation of an applicant for a licence or security clearance or holder of a licence or security clearance in any criminal activity and any available information concerning any such conviction that the Commissioner considers to be relevant to the application or continued holding of the licence or security clearance, on whether the applicant or holder is a fit and proper person to hold a licence or

- security clearance and whether it is contrary to the public interest for the person to do so (**Schedule 1 [7]**),
- (v) to remove the ability of the Commissioner of Police to make such a report in relation to whether the applicant or holder has a good reason for holding such a licence or can be trusted to handle explosives in the manner authorised by the licence without danger to the public safety or the peace (**Schedule 1 [7]**),
 - (vi) to ensure that any part of such a report that could disclose the existence or content of a criminal or security intelligence report or other confidential criminal information is not disclosed by the Administrative Decisions Tribunal in giving reasons for its decisions, or in proceedings before it, without the approval of the Commissioner of Police (**Schedule 1 [8] and [23]**),
 - (vii) to provide for the internal review of decisions concerning licences and security clearances that are reviewable decisions under the *Administrative Decisions Tribunal Act 1997* by removing a provision that currently prevents such a review (**Schedule 1 [22]**),
 - (viii) to enable inspectors appointed under the *Explosives Act 2003* to exercise the kind of information-gathering powers set out in section 155 of the *Work Health and Safety Act 2011* (**Schedule 1 [24]**),
 - (ix) to provide for the making of savings and transitional regulations and to enact certain savings provisions (**Schedule 1 [29]–[31]**), and
- (b) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable police officers to seize, retain and destroy explosives, explosive precursors or certain dangerous goods (**Schedule 2.2 and Schedule 1 [25]**).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Explosives Act 2003 No 39

Schedule 1 contains the amendments to the Principal Act described in paragraph (a) of the Overview above.

Schedule 2 Amendment of other legislation

Schedule 2.1 makes amendments to the *Explosives Regulation 2013* that are consequential on the amendments to the Principal Act described in paragraph (a) (i) of the Overview above.

Schedule 2.2 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* as described in paragraph (b) of the Overview above. It amends section 20 of that Act so that the powers for police officers under Division 1 of Part 4 of that Act to search persons and seize and detain things without warrant will apply if a police officer suspects on reasonable grounds that a person has in his or her possession any explosive, explosive precursor or dangerous good to which section 31 of the Principal Act applies used or intended to be used in connection with an offence under Part 2 of the Principal Act. It also amends section 211 of the *Law Enforcement (Powers and Responsibilities) Act 2002* so that seized explosives, explosive precursors and dangerous goods may be forfeited and destroyed (if not returned).



New South Wales

Explosives Amendment Bill 2013

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New South Wales

Explosives Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Explosives Act 2003* to implement certain recommendations arising from a statutory review of the Act; to make further provision with respect to security clearances; to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* with respect to the seizure of explosives, explosive precursors or dangerous goods used in the commission of offences; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Explosives Amendment Act 2013*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Explosives Act 2003 No 39	1
[1] Section 3 Definitions		2
Insert in alphabetical order in section 3 (1):		3
<i>responsible person</i> for a corporation means a person nominated in accordance with the regulations to be a responsible person for the corporation.		4
<i>security clearance</i> means a security clearance granted under Part 3.		5
[2] Section 6A		6
Insert after section 6:		7
6A Security clearance must be held in certain circumstances		8
A natural person must not handle any explosive or explosive precursor if:		9
(a) the regulations require the person to hold a security clearance that is in force when handling the explosive or explosive precursor, and		10
(b) the person does not hold a security clearance to handle the explosive or explosive precursor concerned.		11
Maximum penalty: 250 penalty units.		12
[3] Part 3, heading		13
Insert “ and security clearances ” after “ licences ”.		14
[4] Section 10A		15
Insert after section 10:		16
10A Security clearance a prerequisite to obtaining licence		17
(1) A natural person is not eligible for a licence unless the person has been granted a security clearance that is in force.		18
(2) A corporation is not eligible for a licence unless there is at least one responsible person for that corporation who has been granted a security clearance that is in force.		19
(3) The regulations may provide that subsections (1) and (2) do not apply to or in respect of a specified class or type of licence.		20
[5] Section 11 Grant of licences and security clearances		21
Insert “and security clearances” after “Licences” in section 11 (1).		22
[6] Section 11 (2)		23
Insert “and security clearances” after “licences”.		24
[7] Section 13 Commissioner of Police to report on licences and security clearances		25
Omit section 13 (1). Insert instead:		26
(1) The regulatory authority may request the Commissioner of Police to furnish the regulatory authority with a report in respect of any one or more of the following matters relating to an applicant for the grant or renewal of a licence or security clearance or the holder of a licence or security clearance:		27
(a) whether the applicant or holder has been found guilty or convicted of an offence (whether in New South Wales or elsewhere) and any available information concerning any such conviction that the Commissioner		28

	considers to be relevant to the application or continued holding of the licence or security clearance,	1 2
	(b) whether the applicant or holder is the subject of a firearms prohibition order within the meaning of the <i>Firearms Act 1996</i> ,	3 4
	(c) whether the applicant or holder is a fit and proper person to hold, or continue to hold, the licence or security clearance,	5 6
	(d) whether the applicant or holder has a history of violence or threats of violence, with <i>violence</i> including behaviour referred to in section 13 of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (Stalking or intimidation with intent to cause fear of physical or mental harm),	7 8 9 10
	(e) whether there is an apprehended violence order under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> in force with respect to the applicant or holder,	11 12 13
	(f) any available information with respect to the participation of the applicant or holder in any criminal activity,	14 15
	(g) whether the Commissioner considers that it is contrary to the public interest for the applicant or holder to hold, or continue to hold, the licence or security clearance,	16 17 18
	(h) such other matters as the regulatory authority may specify in the request.	19 20
[8]	Section 13 (5) and (6)	21
	Insert after section 13 (4):	22
	(5) The Commissioner of Police may identify any information included in a report under this section as information that could disclose the existence or content of a criminal or security intelligence report or other confidential criminal information.	23 24 25 26
	(6) The regulatory authority is not, under this or any other Act or law, required to give any reasons for not granting a licence or security clearance to (or for suspending or cancelling a licence or security clearance of) a person on the basis of a report made by the Commissioner about the person under this section if the giving of those reasons would disclose any criminal or security intelligence report or other confidential criminal information as referred to in subsection (5).	27 28 29 30 31 32 33
[9]	Section 14 Conditions of licences and security clearances	34
	Insert “and security clearances” after “Licences” in section 14 (1).	35
[10]	Section 14 (2) and (3)	36
	Insert “or security clearance” after “licence” wherever occurring.	37
[11]	Section 14 (4)	38
	Insert “to which a licence is subject” after “A condition”.	39
[12]	Section 15 Offence to contravene conditions of licence or security clearance	40
	Insert “or security clearance” after “licence” wherever occurring.	41

[13] Section 16 Duration of licences and security clearances	1
Insert after section 16 (2):	2
(3) A security clearance remains in force (unless sooner cancelled) for the period of 5 years after it is granted.	3 4
(4) If a licence is issued to a person during the term of a security clearance, the security clearance is taken to continue in force while the licence is in force, unless the security clearance is sooner cancelled.	5 6 7
(5) A security clearance is not in force during any period it is suspended.	8
[14] Section 17 Fees for licences and security clearances	9
Insert “and security clearances” after “licences” in section 17 (1).	10
[15] Section 18 Offences relating to licences and security clearances	11
Insert “or security clearance” after “licence” wherever occurring.	12
[16] Section 20	13
Omit the section. Insert instead:	14
20 Suspension of licences and security clearances	15
(1) The regulatory authority may suspend a licence or security clearance:	16
(a) if the holder of the licence or security clearance:	17
(i) is proceeded against for an offence against this Act or the regulations, or	18 19
(ii) is not complying with any lawful requirement imposed by or under this Act, or	20 21
(b) for any other reason prescribed by the regulations.	22
(2) The regulatory authority may suspend a licence or security clearance under subsection (1) (a) until the relevant proceeding has been disposed of or requirement complied with.	23 24 25
[17] Section 21	26
Omit the section. Insert instead:	27
21 Cancellation of licences and security clearances	28
The regulatory authority may cancel a licence or security clearance:	29
(a) if the holder of the licence or security clearance:	30
(i) is convicted of or found guilty of an offence against this Act or the regulations or a provision of a corresponding Act or regulation of the Commonwealth or of another State or Territory relating to explosives, or	31 32 33 34
(ii) breaches a condition of the licence or security clearance, or	35
(iii) surrenders the licence or security clearance to the regulatory authority, or	36 37
(iv) supplied information which was (to the holder’s knowledge) false or misleading in a material particular in, or in connection with, the application for the licence or security clearance, or	38 39 40

	(b) if the regulatory authority is of the opinion that the holder is no longer a fit and proper person to hold, or to continue to hold, the licence or security clearance, or	1 2 3
	(c) for any other reason prescribed by the regulations.	4
[18]	Section 22 Special provision—suspension or cancellation of licences and security clearances where suspicions of violence	5 6
	Insert “or security clearance” after “licence” wherever occurring in section 22 (1)–(4).	7
[19]	Section 22 (6)	8
	Omit the subsection. Insert instead:	9
	(6) This section does not limit any powers of the regulatory authority under section 20 or 21 with respect to a licence or security clearance.	10 11
[20]	Section 23 Suspended and cancelled licences and security clearances	12
	Insert “or security clearance” after “licence” wherever occurring.	13
[21]	Section 24 Review of decisions by Administrative Decisions Tribunal	14
	Insert “or security clearance” after “licence” wherever occurring in section 24 (1), (2), (7) and (9).	15 16
[22]	Section 24 (5)	17
	Omit the subsection.	18
[23]	Section 24A	19
	Insert after section 24:	20
24A	Disclosure of criminal intelligence information	21
	(1) If an application for a licence or security clearance was refused or a licence or security clearance was suspended or cancelled by the regulatory authority on the ground of a report made by the Commissioner of Police under section 13:	22 23 24
	(a) the Commissioner (as well as the regulatory authority) is to be a party to any proceedings in the Administrative Decisions Tribunal for a review of the decision of the regulatory authority, and	25 26 27
	(b) the Tribunal is to be provided with a copy of the report of the Commissioner, and	28 29
	(c) the Tribunal is not prevented from determining whether the regulatory authority made the correct and preferable decision regarding the application or the licence or security clearance concerned merely because of the report.	30 31 32 33
	(2) In determining an application for a review of any decision to refuse to grant a licence or security clearance or to suspend or cancel a licence or security clearance that was made on the ground of a report under section 13 made by the Commissioner of Police, the Administrative Decisions Tribunal:	34 35 36 37
	(a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any information identified in the Commissioner’s report under section 13 (5) as being from a criminal or security intelligence report or other confidential criminal information without the approval of the Commissioner, and	38 39 40 41 42

(b)	in order to prevent the disclosure of any such report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for review, the applicant’s representative and any other interested party, unless the Commissioner approves otherwise.	1 2 3 4 5
	Note. Section 13 (6) of this Act provides that the regulatory authority and the Commissioner are not, under this or any other Act or law, required to give any reasons in connection with the refusal to grant a licence or security clearance or the suspension or cancellation of a licence or security clearance on the ground of a report under section 13 if the giving of those reasons would disclose the existence or content of any criminal or security intelligence report or other confidential criminal information referred to in section 13 (5). Accordingly, Part 2 of Chapter 5 of the <i>Administrative Decisions Tribunal Act 1997</i> does not apply to any decision to refuse to grant a licence or security clearance based on such information to the extent that it would require disclosure of the existence or content of any criminal or security intelligence report or other confidential criminal information.	6 7 8 9 10 11 12 13 14 15 16
(3)	If the Tribunal considers that information identified in the Commissioner’s determination as being from a criminal or security intelligence report or other confidential criminal information referred to in section 13 (5) has not been properly identified as such, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of an application.	17 18 19 20 21 22
(4)	Information that is withdrawn by the Commissioner must not be:	23
(a)	disclosed to any person, or	24
(b)	taken into consideration by the Tribunal in determining an application.	25
[24]	Section 27 Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and enforcement of this Act	26 27
	Omit “Part 9” from section 27 (1). Insert instead “Section 155 and Part 9”.	28
[25]	Section 27, note	29
	Insert at the end of section 27:	30
	Note. Police officers have powers to search for, seize and detain anything in the possession of a person that the police officer has reasonable grounds to believe has been used in or in connection with an offence under Part 2 of this Act—see Division 1 of Part 4 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> . Section 211 of that Act provides for the return or forfeiture and disposal of seized things.	31 32 33 34 35
[26]	Section 35 Disclosure of information	36
	Insert “or to any other person or body prescribed, or of a class prescribed, by the regulations” after “explosives” in section 35 (2).	37 38
[27]	Section 35 (4)	39
	Insert after section 35 (3):	40
(4)	The regulatory authority may (subject to any conditions or limitations prescribed by the regulations) communicate any information which comes to its knowledge in the exercise of its functions under this Act with respect to licences and security clearances and the holders of licences and security clearances to any person or body prescribed, or of a class prescribed, by the regulations.	41 42 43 44 45 46
[28]	Section 36 Regulations	47
	Omit section 36 (2A).	48

[29] Section 38 Review of Act	1
Omit “to this Act” from section 38 (2).	2
Insert instead “to the <i>Explosives Amendment Act 2013</i> ”.	3
[30] Schedule 1 Savings, transitional and other provisions	4
Omit clause 1 (1). Insert instead:	5
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	6 7
[31] Schedule 1, Part 4	8
Insert after clause 7:	9
Part 4 Provisions consequent on enactment of Explosives Amendment Act 2013	10 11
8 Definition	12
In this Part:	13
<i>amending Act</i> means the <i>Explosives Amendment Act 2013</i> .	14
9 Reports by Commissioner	15
Section 13 (as amended by the amending Act) and section 24A extend to a report made after the commencement of the amending Act that was requested before that commencement.	16 17 18
10 Reviews by Administrative Decisions Tribunal	19
Subject to the regulations, a review under section 24 that was pending immediately before the omission of section 24 (5) by the amending Act is to continue to be dealt with as if that subsection were still in force.	20 21 22

Schedule 2	Amendment of other legislation	1
2.1	Explosives Regulation 2013	2
[1]	Clause 3 Definitions	3
	Omit the definition of <i>responsible person</i> from clause 3 (1).	4
[2]	Clause 9	5
	Omit the clause. Insert instead:	6
	9 Security clearance required to handle explosives or explosive precursors	7
	Except as provided by clause 10, a natural person is required to hold a security clearance that is in force to handle any explosive or explosive precursor.	8 9
[3]	Clause 13 Duration of security clearance	10
	Omit the clause.	11
[4]	Clause 34	12
	Omit the clause. Insert instead:	13
	34 Security clearance not a prerequisite to obtaining a fireworks (single use) licence	14 15
	For the purposes of section 10A (3) of the Act, a security clearance is not required in relation to a fireworks (single use) licence.	16 17
[5]	Schedule 2 Penalty notice offences	18
	Insert in appropriate order in Columns 1 and 2 under the heading “ Offences under the Act ”:	19 20
	Section 6A	\$2,000
[6]	Schedule 2	21
	Omit the matter relating to clause 9 in Columns 1 and 2 under the heading “ Offences under this Regulation ”.	22 23
2.2	Law Enforcement (Powers and Responsibilities) Act 2002 No 103	24
[1]	Section 20 Relevant offences	25
	Insert after section 20 (c):	26
	(d) an offence against a provision of Part 2 of the <i>Explosives Act 2003</i> .	27

[2] Section 211 Application of Division

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Insert after section 211 (1) (b):

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- (c) an explosive, explosive precursor or dangerous good to which section 31 of the *Explosives Act 2003* applies that is seized under Division 1 of Part 4 of this Act.

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