

Passed by both Houses



New South Wales

Explosives Amendment Bill 2013

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Explosives Act 2003 No 39	3
Schedule 2 Amendment of other legislation	9

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2013



New South Wales

Explosives Amendment Bill 2013

Act No , 2013

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Explosives Amendment Act 2013*.

2 Commencement

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

Schedule 1 Amendment of Explosives Act 2003 No 39

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

responsible person for a corporation means a person nominated in accordance with the regulations to be a responsible person for the corporation.

security clearance means a security clearance granted under Part 3.

[2] Section 6A

Insert after section 6:

6A Security clearance must be held in certain circumstances

A natural person must not handle any explosive or explosive precursor if:

- (a) the regulations require the person to hold a security clearance that is in force when handling the explosive or explosive precursor, and
- (b) the person does not hold a security clearance to handle the explosive or explosive precursor concerned.

Maximum penalty: 250 penalty units.

[3] Part 3, heading

Insert “**and security clearances**” after “**licences**”.

[4] Section 10A

Insert after section 10:

10A Security clearance a prerequisite to obtaining licence

- (1) A natural person is not eligible for a licence unless the person has been granted a security clearance that is in force.
- (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.
- (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.

[5] Section 11 Grant of licences and security clearances

Insert “and security clearances” after “Licences” in section 11 (1).

[6] Section 11 (2)

Insert “and security clearances” after “licences”.

[7] Section 13 Commissioner of Police to report on licences and security clearances

Omit section 13 (1). Insert instead:

- (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:
 - (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

- considers to be relevant to the application or continued holding of the licence or security clearance,
- (b) whether the applicant or holder is the subject of a firearms prohibition order within the meaning of the *Firearms Act 1996*,
 - (c) whether the applicant or holder is a fit and proper person to hold, or continue to hold, the licence or security clearance,
 - (d) whether the applicant or holder has a history of violence or threats of violence, with **violence** including behaviour referred to in section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (Stalking or intimidation with intent to cause fear of physical or mental harm),
 - (e) whether there is an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007* in force with respect to the applicant or holder,
 - (f) any available information with respect to the participation of the applicant or holder in any criminal activity,
 - (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,
 - (h) such other matters as the regulatory authority may specify in the request.

[8] Section 13 (5) and (6)

Insert after section 13 (4):

- (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.
- (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).

[9] Section 14 Conditions of licences and security clearances

Insert “and security clearances” after “Licences” in section 14 (1).

[10] Section 14 (2) and (3)

Insert “or security clearance” after “licence” wherever occurring.

[11] Section 14 (4)

Insert “to which a licence is subject” after “A condition”.

[12] Section 15 Offence to contravene conditions of licence or security clearance

Insert “or security clearance” after “licence” wherever occurring.

[13] Section 16 Duration of licences and security clearances

Insert after section 16 (2):

- (3) A security clearance remains in force (unless sooner cancelled) for the period of 5 years after it is granted.
- (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) A security clearance is not in force during any period it is suspended.

[14] Section 17 Fees for licences and security clearances

Insert “and security clearances” after “licences” in section 17 (1).

[15] Section 18 Offences relating to licences and security clearances

Insert “or security clearance” after “licence” wherever occurring.

[16] Section 20

Omit the section. Insert instead:

20 Suspension of licences and security clearances

- (1) The regulatory authority may suspend a licence or security clearance:
 - (a) if the holder of the licence or security clearance:
 - (i) is proceeded against for an offence against this Act or the regulations, or
 - (ii) is not complying with any lawful requirement imposed by or under this Act, or
 - (b) for any other reason prescribed by the regulations.
- (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.

[17] Section 21

Omit the section. Insert instead:

21 Cancellation of licences and security clearances

The regulatory authority may cancel a licence or security clearance:

- (a) if the holder of the licence or security clearance:
 - (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
 - (ii) breaches a condition of the licence or security clearance, or
 - (iii) surrenders the licence or security clearance to the regulatory authority, or
 - (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

- (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
- (c) for any other reason prescribed by the regulations.

[18] Section 22 Special provision—suspension or cancellation of licences and security clearances where suspicions of violence

Insert “or security clearance” after “licence” wherever occurring in section 22 (1)–(4).

[19] Section 22 (6)

Omit the subsection. Insert instead:

- (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.

[20] Section 23 Suspended and cancelled licences and security clearances

Insert “or security clearance” after “licence” wherever occurring.

[21] Section 24 Review of decisions by Administrative Decisions Tribunal

Insert “or security clearance” after “licence” wherever occurring in section 24 (1), (2), (7) and (9).

[22] Section 24 (5)

Omit the subsection.

[23] Section 24A

Insert after section 24:

24A Disclosure of criminal intelligence information

- (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:
 - (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
 - (b) the Tribunal is to be provided with a copy of the report of the Commissioner, and
 - (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.
- (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:
 - (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

- (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.

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 *Administrative Decisions Tribunal Act 1997* 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.

- (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.
- (4) Information that is withdrawn by the Commissioner must not be:
 - (a) disclosed to any person, or
 - (b) taken into consideration by the Tribunal in determining an application.

[24] Section 27 Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and enforcement of this Act

Omit "Part 9" from section 27 (1). Insert instead "Section 155 and Part 9".

[25] Section 27, note

Insert at the end of section 27:

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 *Law Enforcement (Powers and Responsibilities) Act 2002*. Section 211 of that Act provides for the return or forfeiture and disposal of seized things.

[26] Section 35 Disclosure of information

Insert "or to any other person or body prescribed, or of a class prescribed, by the regulations" after "explosives" in section 35 (2).

[27] Section 35 (4)

Insert after section 35 (3):

- (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.

[28] Section 36 Regulations

Omit section 36 (2A).

[29] Section 38 Review of Act

Omit “to this Act” from section 38 (2).

Insert instead “to the *Explosives Amendment Act 2013*”.

[30] Schedule 1 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (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.

[31] Schedule 1, Part 4

Insert after clause 7:

Part 4 Provisions consequent on enactment of Explosives Amendment Act 2013

8 Definition

In this Part:

amending Act means the *Explosives Amendment Act 2013*.

9 Reports by Commissioner

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.

10 Reviews by Administrative Decisions Tribunal

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.

Schedule 2 Amendment of other legislation

2.1 Explosives Regulation 2013

[1] **Clause 3 Definitions**

Omit the definition of *responsible person* from clause 3 (1).

[2] **Clause 9**

Omit the clause. Insert instead:

9 Security clearance required to handle explosives or explosive precursors

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.

[3] **Clause 13 Duration of security clearance**

Omit the clause.

[4] **Clause 34**

Omit the clause. Insert instead:

34 Security clearance not a prerequisite to obtaining a fireworks (single use) licence

For the purposes of section 10A (3) of the Act, a security clearance is not required in relation to a fireworks (single use) licence.

[5] **Schedule 2 Penalty notice offences**

Insert in appropriate order in Columns 1 and 2 under the heading “**Offences under the Act**”:

Section 6A	\$2,000
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[6] **Schedule 2**

Omit the matter relating to clause 9 in Columns 1 and 2 under the heading “**Offences under this Regulation**”.

2.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] **Section 20 Relevant offences**

Insert after section 20 (c):

(d) an offence against a provision of Part 2 of the *Explosives Act 2003*.

[2] Section 211 Application of Division

Insert after section 211 (1) (b):

- (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.