

Tabled, by leave,

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Clerk of the Parliaments

13/9/23
and stakeholder input?

Statement Of Public Interest

Need: why is the policy needed based on factual evidence

The *Explosives Act 2003* (the Act) and the *Explosives Regulation 2013* provide the regulatory framework for the full life cycle of explosives, fireworks and explosive precursors in NSW.

The *Explosives Amendment Bill 2023* (the Bill) is a result of the Statutory Review of the *Explosives Act 2003* (the Review), which was tabled in the Legislative Council and Legislative Assembly on 29 October 2019, as well as further analysis of the legislative framework by the Department and Parliamentary Counsel.

The Review was required by section 38 of the Act, which provides that the Minister must review the Act after five years from the date of commencement of the last major amendments to the Act in 2013. As part of the Review, a Discussion Paper was developed in consultation with the government agencies responsible for administering and enforcing the Act. A Discussion Paper was released for public consultation, setting out the key features of the Act, including questions to guide feedback.

The submissions and feedback from the stakeholder forum were carefully considered by the Review, along with input from the regulatory authorities under the Act. The Review found that the Act's objectives remained valid, and that its terms remain appropriate and effective for securing those objectives, subject to four amendments.

In June 2022, the Department and Parliamentary Counsel identified issues with the Regulation, with certain provisions considered to be inadequately empowered and more appropriate for inclusion within the Act. The *Building and Other Fair Trading Legislation Amendment Bill 2022* addressed concerns related to regulation making power, however, failed to uplift the identified provisions.

The Bill is required to address these concerns and allow for the Regulation to be remade before its scheduled repeal on 1 September 2024.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill seeks to make improvements to key areas of the explosives regulatory framework, including:

- Clarifying and collating definitions within the Act
- Reduced financial burden and increased safety from reduced storage of bulk quantities of explosives by the regulatory authority
- Improvements to the functionality and structure of the Act
- Increased transparency for exemptions and regulatory authority powers, and
- Appropriate delegations to regulations and regulatory authority.

This is to be achieved through the following amendments:

- Inserting and clarifying the definition of 'supply' within the Act, to also include circumstances where supply occurs without money being exchanged.
- Enabling the regulatory authority to destroy forfeited explosives after analysing, certifying and retaining sample evidence for use in proceedings.
- Transferring certain provisions from the Regulation to the Act to appropriately structure delegations within the legislation and ensure that key elements of the regulatory regime are empowered under the Act, including:
 - Authorisation, registration, and prohibition of explosives,
 - Powers for the regulatory authority to grant security clearances,
 - Classes of licences that may be granted , and
 - Procedures and powers related to the granting of exemptions.
- Establishing powers for the disposal of unwanted and unusable explosives, and the authorisation of NSW police officers to exercise functions and powers of an inspector in certain circumstances.

The amendments within the Bill ensure the regulatory framework remains fit-for-purpose, appropriately empowered, with the regulatory authority able to efficiently exercise their role.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Based on the recommendations of the Review, no alternate mechanisms are available to address the identified issues. The Act, as the chief legislative instrument responsible for the regulation of explosives, is appropriate for the inclusion of these amendments. Non regulatory options were not considered appropriate to address definitional issues, nor to establish procedures in relation to the destruction of forfeited explosives.

Similarly, the administrative transfer of provisions from the Regulation to the Act is not suitable for any alternative mechanism. Amendments to the Act are required to appropriately structure and delegate authority within the regulatory framework.

Further, consequential amendments to the Regulation are required to give effect to certain provisions of the Bill. This is expected to be developed as part of the remake of the Regulation, which is scheduled to occur before 1 September 2024.

Analysis: What were the pros/cons and benefits/costs of each option considered?

As above, there are no alternative options or mechanisms available to address the identified issues within the regulatory framework.

The Bill proposes amendments to restructure and formalise delegations within the Act through the transfer of provisions from the Regulation. The benefits of this are the enabling of the regulatory framework to function in a more consistent and appropriate manner, with greater transparency and oversight of powers and requirements. No costs are expected to be associated with this, as it is transferring existing provisions with minimal changes. As a result, the requirements placed upon industry and licence

holders will not be affected. The proposed amendments improve the administrative function of the Act.

By enabling the regulatory authority to destroy forfeited explosives after analysing, certifying and retaining sample evidence for use in proceedings, the Bill ensures that the regulatory regime will remain efficient. Further, the amendments will reduce the financial burden on the regulatory authority. Not only in terms of storage, but also when destruction does occur – as explosives may have deteriorated to a point that they become too hazardous to transport or destroy through conventional means. The resulting positive impact on safety is a further benefit of the amendments. No new costs are expected to be placed on industry or licence holders as a result of the proposal.

If the legislative amendments are not made, the Act will continue to function as is, however, the remake of the Regulation, scheduled to occur by 1 September 2024, will be substantially compromised. This represents a significant hazard in the regulation of explosives and poses a threat to the safety of workers, communities and the public.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Minister for Work Health and Safety is responsible for administering the legislation being amended, with support from the Department of Customer Service, SafeWork NSW and the NSW Resources Regulator as the regulatory authorities.

The Bill is currently proposed to commence via proclamation.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Stakeholder views were essential to the formation of the Review's recommendations and implementation and design of those elements of the Bill.

The Department of Customer Service conducted a public consultation as part of the Statutory Review, in which stakeholders were asked to respond to a Discussion Paper which set out the framework of the Act and included questions to guide discussion. The Discussion Paper was available online via SafeWork NSW's website and the NSW Government 'Have Your Say' portal. Submissions were accepted through an online form, by post and by e-mail from 19 July to 16 August 2019.

Key stakeholders were notified of the release of the Discussion Paper. The Review received six submissions, from the NSW Police Force, the Pyrotechnics Industry Association of Australia (PIAA), the NSW Minerals Council (NSWMC), Orica Ltd, and the Australian Explosives Industry Safety Group (AEISG).

Key industry stakeholders were also invited to an industry forum, which was attended by representatives from NSWMC, PIAA, AEISG and the Sporting Shooters Association of Australia (NSW), and facilitated by the Department, SafeWork NSW and the NSW Resources Regulator.

The transferred elements of the Bill have not been consulted on as there is not expected to be any affected stakeholders. The amendments transfer existing requirements under

the legislative framework to the Act, as a result, there will be no changes to the way that industry and business undertake their activities.