

SOUTH AUSTRALIA

EXPLOSIVES ACT 1936

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **24 June 1999**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Explosives Act 1936 No. 2306 of 1936
[Assented to 19 November 1936]¹

as amended by

Explosives Act Amendment Act 1958 No. 33 of 1958 [Assented to 20 November 1958]
Explosives Act Amendment Act 1962 No. 23 of 1962 [Assented to 25 October 1962]
Explosives Act Amendment Act 1963 No. 15 of 1963 [Assented to 7 November 1963]
Harbors Act Amendment Act 1966 No. 89 of 1966 [Royal Assent proclaimed 2 March 1967]²
Explosives Act Amendment Act 1968 No. 61 of 1968 [Assented to 23 December 1968]
Explosives Act Amendment Act 1972 No. 43 of 1972 [Assented to 20 April 1972]
Explosives Act Amendment Act 1974 No. 67 of 1974 [Assented to 10 October 1974]
Explosives Act Amendment Act 1982 No. 5 of 1982 [Assented to 25 February 1982]
Explosives Act Amendment Act 1990 No. 16 of 1990 [Assented to 19 April 1990]
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]³
Statutes Amendment (Chief Inspector) Act 1993 No. 1 of 1993 [Assented to 25 February 1993]⁴
Explosives (Broad Creek) Amendment Act 1999 No. 30 of 1999 [Assented to 10 June 1999]⁵

¹ Came into operation 1 July 1937: *Gaz.* 25 March 1937, p. 644.

² Came into operation 20 March 1967: *Gaz.* 2 March 1967, p. 681.

³ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

⁴ Came into operation 1 July 1993: *Gaz.* 17 June 1993, p. 1974.

⁵ **Came into operation 24 June 1999: *Gaz.* 24 June 1999, p. 3155.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

An Act to consolidate and amend the law relating to explosives.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Explosives Act 1936*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement

3. The provisions of this Act are arranged as follows:

PART 1—Preliminary.

PART 2—Manufacture of explosives.

PART 3—Carriage of explosives.

PART 4—Storage of explosives.

PART 4A—Acquisition of Land.

PART 5—Control of explosives in ships.

PART 6—Miscellaneous.

Interpretation

4. In this Act, unless the context or subject matter otherwise requires—

"**boat**" means every vessel not a ship as herein defined which is used in navigation in any inland water or any port, whether propelled by oars or otherwise;

"**the Director**" means—

- (a) the person for the time being holding, or acting in, the office of the Chief Executive Officer of the Department of the Minister to whom the administration of this Act is committed; or
- (b) any other person directed by the Minister to exercise the powers of the Director under this Act;

"**explosive**" means—

- (a) gunpowder, nitro-glycerine, all compounds and mixtures containing nitro-glycerine, gun-cotton, blasting powder, fulminate of mercury or of other metal, coloured fires, and every other substance, whether similar to those abovementioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
- (b) fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined;

"**factory**" means a factory duly licensed for the manufacture of any explosives;

"**inspector**" means an inspector of explosives;

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"**licensed magazine**" means a magazine in respect of which a licence is in force under section 21 of this Act;

"**licensed premises**" means premises in respect of which a licence is in force under section 22 of this Act;

"**magazine**" includes any hulk appointed for the storage of explosives;

"**magazine-keeper**" means the person in charge of any Government magazine;

"**master**" includes every person (except a pilot) having command or charge of a ship, and when used in reference to any boat belonging to a ship means the master of the ship, and when used in reference to any other boat includes every person having command or charge of the boat;

"**Minister**" means the Minister of the Crown to whom for the time being the administration of this Act is committed by the Governor;

"**port**" includes harbour, haven, roadstead, channel, and navigable creek, river, or lake;

"**prescribed quantity of any explosive**" means the quantity of any particular kind of explosive or of several different kinds prescribed by regulation for the purposes of the section in which the expression is used;

"**ship**" includes every description of vessel used in sea navigation, whether propelled by oars or otherwise;

"**vehicle**" includes any carriage, wagon, cart, truck, vehicle, or other means of conveying goods or passengers by land in whatever manner the same may be propelled.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Extension of definition of explosive to other explosive substances

5. (1) The Governor may from time to time by proclamation declare that any substance which appears to be specially dangerous to life or property by reason of its explosive properties or any component of any such substance shall be deemed to be an explosive within the meaning of this Act or any Part of this Act, and the provisions of this Act, or, as the case may be, the Part (subject to such exemptions, limitations, and restrictions as may be specified in the proclamation) shall accordingly extend to that substance in like manner as if it were included in the term "**explosive**".

(2) The Governor may by proclamation revoke any such proclamation.

Definition and classification of explosives

6. (1) The Director may from time to time, with the consent of the Governor, define for the purposes of this Act the composition, quality, and character of any explosive, and may classify explosives.

(2) Where the composition, quality, or character of any explosive has been defined as aforesaid, any article alleged to be that explosive which differs from the definition in composition, quality, or character, whether by reason of deterioration or otherwise, shall not be deemed for the purposes of this Act to be the explosive so defined.

(3) Any definition made pursuant to section 364 of the *Marine Board and Navigation Act 1881* shall, until varied or revoked by a definition made pursuant to this section, be deemed to be a definition made pursuant to this section.

Exemption of ammunition the property of His Majesty

7. Nothing in this Act shall extend to or be construed to apply to any ammunition the property of His Majesty or of His Majesty's Government of the Commonwealth of Australia or of His Majesty's Government of South Australia, nor to the authorised carriage of ammunition to or from any of the King's ships or to or from any ships belonging to or used in the service of His Majesty's Government of the Commonwealth or of South Australia, or the King's magazines.

Filling, etc., of safety cartridges

8. Nothing in this Act shall be deemed to prohibit the filling, carrying, conveying, or storing of any safety cartridges for private use only, and not for sale, in such quantities as may be prescribed by regulation.

Inspectors

9. (1) The Minister may, by notice in the *Gazette*, appoint a person to be an inspector of explosives for the purposes of this Act.

(2) Each inspector must be furnished with an appropriate identity card.

(3) An inspector must produce the identity card for inspection by any person who questions his or her authority to exercise the powers of an inspector under this Act.

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**PART 2
MANUFACTURE OF EXPLOSIVES**

Persons carrying on certain processes to be deemed manufacturers

10. Every person who carries on any of the following processes, namely, the process of dividing into its component parts or otherwise breaking up or unmaking any explosive or making fit for use any damaged explosive, or the process of remaking, altering, or repairing any explosive, shall be subject to the provisions of this Part, as if he manufactured an explosive, and the expression "**manufacture**" shall in this Part be construed accordingly.

Special rules for regulation of workmen in factory

11. (1) Every occupier of a factory shall, with the sanction of the Minister, make special rules for the regulation of the persons managing or employed in or about the factory with a view to secure the observance of this Part therein and the safety and proper discipline of the said persons and the safety of the public.

(2) There may be annexed to any breach of special rules made in pursuance of this section such penalties not exceeding a division 9 fine for each offence as may be deemed just.

(3) The occupier may, and if required by the Minister shall, with the sanction of the Minister repeal, alter, or add to any special rules made in pursuance of this section.

(4) If an occupier is required by the Minister to make, repeal, alter, or add to any rules under this section, and fails within three months after such requisition to comply therewith to the satisfaction of the Minister, the Minister may make, repeal, alter, or add to the special rules, and anything so done by the Minister shall have effect as if done by the occupier with the sanction of the Minister.

(5) Section 38 of the *Acts Interpretation Act 1915* shall apply to all such rules and to the repeal, alteration, or addition to any such rules.

Licensing of factories

12. (1) The manufacture of any explosive shall not nor shall any process of such manufacture be carried on except at a factory licensed for the same under regulations made or for the time being in force under this Act: Provided that nothing in this section shall apply to the making of a small quantity of explosive for the purpose of chemical experiment, and not for practical use or for sale.

(2) Every person who manufactures any explosive, or carries on any process of such manufacture at any place at which he is not allowed by this section so to do, shall be deemed to manufacture an explosive at an unauthorised place.

(3) A person who manufactures an explosive at an unauthorised place is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(4) Where an explosive is manufactured at an unauthorised place, all or any part of the explosive or the ingredients of any explosive found in or about the place of manufacture or in the possession or under the control of a person convicted under this section may be forfeited to the Crown by a court of summary jurisdiction.

Precautions against fire and explosions

13. (1) The occupier of every factory and every person employed in or about the same shall take all due precaution for the prevention of accidents by fire or explosion in the same, and for preventing unauthorised persons having access to the factory or to the explosives therein, and shall abstain from any act whatever which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work in the factory.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

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Adjoining places occupied together

14. For the purposes of the provisions of this Part and the regulations with respect to the manufacture and keeping of explosives, all buildings and places adjoining each other and occupied together shall be deemed to be the same factory, and shall accordingly be included in one licence.

Reconstruction of buildings destroyed by accident

15. (1) Where an accident by explosion or fire occurs in and wholly or partly destroys a factory, the factory shall not be reconstructed and any further supply of an explosive shall not be put therein except with the permission of the Minister, and any explosive put therein in contravention of this section shall be deemed to be manufactured in an unauthorised place, and the offence may be punished accordingly: Provided that this enactment shall not prevent the reconstruction of a factory magazine in any lawfully existing factory upon such site in the factory and with such precautions as seem reasonable to the Minister, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

(2) Where an accident by explosion or fire in a factory wholly or partly destroys any building of the factory as to which an inspector has previously to the accident sent to the occupier a notice that the building is unduly near to some building or work outside the factory, the building shall be reconstructed only upon such site in the factory and with such precautions as may seem reasonable to the Minister, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

(3) Where an accident by explosion or by fire in a factory wholly or partly destroys two or more buildings in the factory, not more than one of such buildings shall be reconstructed except with the permission of the Minister: Provided that this subsection shall not apply to any building in a lawfully existing factory if either, both, or all such buildings are incorporating mills, or if as regards any other buildings an inspector has not previously to the accident sent to the occupier a notice that the buildings are unduly near to each other.

(4) Where a building is constructed on a different site in pursuance of this section, the necessary alterations shall be made in the licence, and the alterations shall be deemed to be part of the licence.

(5) The reconstruction of any building in contravention of this section shall be deemed to be a breach of the terms of the licence, and shall be punished accordingly.

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**PART 3
CARRIAGE OF EXPLOSIVES**

Restrictions as to carriage of explosives

16. (1) No explosive shall be carried in or on or by means of any vehicle or any railway unless—

- (a) the quantity of the explosive does not exceed the prescribed quantity of any explosive; and
- (b) the explosive is carried in such manner and under such conditions as may be prescribed by any regulation under this Act.

(2) A person who carries an explosive or causes an explosive to be carried in contravention of this section is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Exemption of carrier where consignee, etc., in fault

17. Where a carrier is prevented from complying with this Part by the wilful act, neglect, or default of the consignor or consignee of the explosive or other person, or by the improper refusal of the consignee or other person to accept delivery of the explosive, the conviction of the consignor, consignee, or other person shall exempt the carrier from any penalty under this Part.

Liability of consignor or consignee

18. A consignor, consignee or other person who by wilful act, neglect or default, or by improper refusal to accept delivery of an explosive from a carrier, causes a carrier to commit an offence against this Part, is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Licences for carriage of explosives

19. (1) A person, other than a carrier licensed by the Director, who carries in a vehicle any explosive in excess of the prescribed quantity of any explosive is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(2) A licence may be granted by the Director to any person for the carriage of explosives by land.

**PART 4
STORAGE OF EXPLOSIVES**

Government magazines

20. (1) The Governor may by proclamation declare any place to be a Government magazine.

(2) Every Government magazine shall be under the control of the Director.

(3) The Governor may by proclamation revoke any such proclamation or any proclamation made by the Treasurer pursuant to section 352 of the *Marine Board and Navigation Act 1881*.

Licensing of private magazines

21. (1) The Director may license as a magazine any suitable building, structure, excavation or place that he approves as suitable for the safe storage of explosives.

(2) The Director shall issue to, and in the name of, the owner or person in charge of any building, structure, excavation or place licensed as a magazine under subsection (1) of this section a licence in respect of that building, structure, excavation or place.

(3) The licence shall be valid only for the person named therein, and shall be subject to such conditions in relation to—

(a) the quantity and nature of the explosives to be stored in the magazine at any one time; and

(b) the measures and precautions to be taken for, or in relation to, the safety and security of any person or property, and to ensure that the magazine is kept properly maintained and repaired,

as may be prescribed, and as the Director may think fit to add, and specifies in the licence.

(4) If a person in whose name a licence is issued under this section contravenes or fails to comply with this Act or a condition of the licence, the licensee is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(5) If a licensee is guilty of an offence against subsection (4)—

(a) the whole or any part of the explosives in the magazine may be forfeited to the Crown by a court of summary jurisdiction; and

(b) the licence may be revoked by the Director.

Licensing of premises

22. (1) The Director may license any person to store explosives upon any premises subject to this Act.

(2) The licence shall be valid only for the person named therein and for the quantities of explosives named therein.

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(3) If a person in whose name a licence is issued under this section contravenes or fails to comply with this Act or a condition of the licence, the licensee is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(4) If a licensee is guilty of an offence against subsection (3)—

(a) the whole or any part of the explosives on the premises may be forfeited to the Crown by a court of summary jurisdiction; and

(b) the licence may be revoked by the Director.

Keeping of explosives

23. (1) Subject to subsection (2), explosives shall be kept only—

(a) in a Government magazine; or

(b) in a magazine duly licensed by the Director; or

(c) on any premises duly licensed by the Director as premises whereon explosives may be stored; or

(d) in the underground workings of a mine in accordance with the provisions of the *Mines and Works Inspection Act 1920* and the regulations made under that Act.

(2) This section shall not apply to explosives kept by any person for his own use, the weight of which in the case of gunpowder does not exceed 15 kilograms, or in the case of any other explosive, 3 kilograms, but that in no case shall the exemption provided for by this subsection extend to the keeping of more than one hundred detonators.

(3) If explosives are kept contrary to this section, the occupier of the place in which the explosives are kept and the owner of the explosives are each guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Expiation fee: Division 6 fee.

(4) If explosives are kept contrary to this section, they may be seized by an inspector or a member of the police force and may be forfeited to the Crown by a court of summary jurisdiction.

Storage charges in Government magazines

24. The storage rent and other charges for any explosives deposited in a Government magazine shall—

(a) be fixed from time to time by the Minister;

(b) be payable by the person depositing the explosives;

(c) be recoverable from the said person by the Director as a debt due to the Director by action in any competent court.

Power to sell explosives

25. (1) If the storage rent and other charges and expenses incurred in respect of any explosives deposited in a Government magazine are not paid within twelve months after the explosives are so deposited, or within one month after demand is made for payment thereof by the Director, the Director may from time to time cause the explosives, or so much thereof as may appear to be necessary to satisfy all such rent, charges, and expenses, to be sold by public tender.

(2) A call for public tender under subsection (1) of this section shall be advertised three times in a newspaper circulating generally throughout the State.

(3) The proceeds of any such sale shall be applied first to the payment of the said storage rent, charges, and expenses, and the surplus (if any) shall be paid to the person who deposited the explosives.

Explosives to be in secure packages

26. No explosives shall be received at or removed from any Government magazine, licensed magazine, or licensed premises, except in the quantities and kinds of packages prescribed by the regulations, and the packages shall be so secured that no part of the explosive contained therein can be scattered in the removal thereof. In case of failure thereof an inspector may direct that the contents of the said packages be removed into fresh packages by such person and in such manner and place as he prescribes, and the magazine-keeper or person licensed in respect of the magazine or premises, as the case may be, shall charge the expenses attending the same to the owner thereof, and may refuse to deliver the explosive so removed into fresh packages until the said expenses are first paid.

Testing of explosives in Government magazine

27. (1) No person shall remove any explosive from any Government magazine unless the prescribed fees for inspecting or testing the explosives have been first paid to the Director.

Penalty: Division 9 fine.

(2) Explosives shall not be delivered from a Government magazine until the Director has certified in writing that all fees due to the Director with respect to the explosives which it is desired to remove have been paid, and that the explosives are in a satisfactory condition.

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Sale or transfer to be reported to the officer in charge

28. If the owner of any explosive, while it is deposited in any Government magazine, sells or transfers the whole or any part of the same to any other person, the sale or transfer shall be immediately reported in writing to the Director or magazine-keeper, and a certificate of the sale or transfer, together with any other documents necessary for claiming transfer and delivery of the explosive from the owner, shall also be produced to the Director or magazine-keeper, in order that the same may be duly registered, otherwise the magazine-keeper may refuse to deliver up the said explosive to any other than the recipient of the original certificate. The owner shall pay to the Director such fee (if any) for every registration of the sale or transfer as the Director may direct.

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PART 4A
ACQUISITION OF LAND

Definitions

28A. In this Part—

"**land**" means an estate or interest (legal or equitable) in land and includes an easement right power or privilege over affecting or in connection with land;

"**mining lease**" means a lease granted under the *Mining Act 1930-1962*.

Power to acquire land

28B. (1) The Minister may, subject to section 28C of this Act, acquire either by agreement or compulsorily any land that may be required for the purposes of this Act.

(2) For the purposes of this Part, the *Compulsory Acquisition of Land Act 1925-1959* is incorporated with this Act, and for the purposes of that Act as so incorporated—

- (a) an acquisition of land under this Part shall be deemed to be an undertaking; and
- (b) the Minister shall be deemed to be the promoter of such an undertaking.

Surrender of mining leases

28C. Where any land required for the purposes of this Act is comprised in a mining lease, the Governor may on the recommendation of the Minister of Mines accept a surrender of the lease or any part thereof or resume for the purposes of this Act the land or any part thereof comprised in the lease.

Power to dispose of surplus land

28D. (1) The Minister may demise any land that is held or used by him for the purposes of this Act and is not immediately required for any such purpose, for such period, at such rent, and upon such conditions as he thinks fit, and may sell or otherwise dispose of any such land or other property that he does not further require for any such purpose, and may transfer or convey the land or other property to the purchaser or as the purchaser directs.

(2) Moneys accruing from the sale or other disposition of any property sold or disposed of pursuant to this section shall be paid by the Minister to the Treasurer.

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**PART 5
CONTROL OF EXPLOSIVES IN SHIPS**

Vessels arriving with explosives to hoist flag

29. (1) The master of any ship on board of which there are any explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive shall on approaching a port exhibit from the mast head or some other conspicuous position on the ship, by day, flag B of the international code, and, by night, a red light.

(2) The master of any ship shall during the time the ship is within any port and—

(a) any explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive are on board the ship; or

(b) any boat is alongside the ship and there are on board such boat explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms weight of any other explosive,

exhibit from the mast head or some other conspicuous position on the ship, by day, flag B of the international code, and, by night, a red light.

(3) The master of a ship who fails to comply with this section is guilty of an offence.

Penalty: Division 6 fine.

Prohibited areas

30. (1) The Minister of Marine may from time to time by notice published in the *Government Gazette* declare that the whole or any part of any port shall be a prohibited area.

(2) The Minister of Marine may from time to time revoke or vary any such notice by notice published in the *Government Gazette*.

Ships carrying explosives

31. (1) Subject to subsection (3), no ship or boat on board of which there are any explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive shall be brought within or be within any prohibited area except as authorised by this section.

(2) Subject to subsection (3), the master of every such ship or boat shall, before the ship or boat is brought within any prohibited area, discharge all explosives in excess of the weight specified in subsection (1) and forthwith convey them, or cause them to be conveyed into such magazine or magazines, or licensed premises, as are appointed by the Director.

(3) The Minister of Marine may grant an authority to the master of any ship or boat to bring or cause the ship to be within any prohibited area. Any such authority may be granted subject to any conditions thought fit by the Minister of Marine.

(4) The master of a ship which is brought into or is within a prohibited area contrary to this section, or who contravenes any condition of an authority granted under this section, is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

(5) Subject to section 38, the provisions of this section shall not apply to any boat under the control of the Director.

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Procedure at magazine

32. (1) Upon the receipt of any such explosives at any Government magazine, licensed magazine, or licensed premises appointed by the Director under section 31 of this Act, the magazine-keeper, or person in charge of the licensed magazine or licensed premises shall give to the master or agent of the master, a receipt describing the packages containing the same, which receipt shall be deemed in law to maintain any lien which the master or owner of the ship or boat may have upon the said explosives therein described for freight or other lawful charges upon the same respectively. The master, owner, or agent of the master or owner shall forthwith give to the Director notice in writing of any such lien.

(2) Every person to whom any such explosives are consigned shall, within forty-eight hours after the arrival of the ship or boat at the port, deliver to the magazine-keeper or the person in charge of the licensed magazine or licensed premises a full description of the explosives, showing the quantity with the marks and numbers of the packages containing the same, which description the magazine-keeper or the person in charge of the licensed magazine or licensed premises shall enter, together with the name of such person, in a book to be kept for that purpose, and shall thereupon give a certificate of the entry to the said person.

(3) No person shall be entitled to receive any explosives from any Government magazine unless he produces to the Director or magazine-keeper such certificate, nor unless the storage and any other charges authorised by this Act have been paid to the magazine-keeper, or other person authorised by the Director to receive the same.

Explosives on arrival to be reported

33. (1) The master of every ship arriving in any port with explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive on board the ship, shall give the prescribed notice of intention to land the same to the Director and the Minister of Marine.

(2) So soon as the same are reported to the Director, he may, subject to section 31, grant a permit or permits to the master of the ship to land the explosives in order that the same may be deposited in a Government magazine, licensed magazine, or licensed premises.

(3) The master of a ship who fails to comply with this section is guilty of an offence.

Penalty: Division 6 fine.

Explosives removed from ship

34. (1) Explosives shall be discharged from and loaded into any ship or boat in any port only between such hours as may be appointed by the Minister of Marine.

(2) When any quantity or quantities of explosives are so removed, the same shall be brought direct from the ship or boat to such place as is appointed by the Minister of Marine for the landing of the explosives.

(3) A person who discharges, loads or conveys explosives contrary to this section is guilty of an offence.

Penalty: Division 6 fine.

Penalty on going alongside wharves

35. (1) No ship or boat shall, except with the authority of the Minister of Marine, come alongside any wharf in any port until all explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive which may be on board are first landed as provided by this Part.

(2) The Minister of Marine may grant authority to the master of any ship or boat to come alongside any such wharf without requiring the explosive to be landed as aforesaid. Any such authority may be granted subject to any conditions thought fit by the Minister of Marine.

(3) The master of a ship or boat in respect of which any contravention of this section is committed is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

(4) Subject to section 38, the provisions of this section shall not apply to any boat under the control of the Director.

Explosives to be landed at the place appointed for the purpose

36. (1) No explosives shall be landed or shipped in any port in South Australia, other than at such landing places or shipping places as are appointed for that purpose by the Minister of Marine.

(2) A person who lands or attempts to land, or ships or attempts to ship, explosives contrary to this section is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Explosives not to be shipped within certain limits

37. (1) No ship or boat shall, except with the authority of the Minister of Marine, take on board any explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive whilst within any prohibited area.

(2) The Minister of Marine may grant authority to the master of any ship or boat to take on board explosives within a prohibited area. Any such authority may be granted subject to any conditions thought fit by the Minister of Marine.

(3) The master of a ship or boat in respect of which a contravention of this section is committed is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

(4) Subject to section 38, the provisions of this section shall not apply to any boat under the control of the Director.

Control over ships and boats in ports

38. (1) The Minister of Marine may from time to time direct at what times and in what manner ships and boats carrying explosives exceeding 15 kilograms in weight of gunpowder or 3 kilograms in weight of any other explosive, shall enter or leave or be navigated within any port.

(2) The master of a ship or boat who fails to comply with a direction under this section is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

(3) This section shall apply to any boat under the control of the Director.

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Boats carrying explosives to be licensed and provided with tarpaulins

39. (1) No boat shall be used for the conveyance of explosives unless—

- (a) it is approved by the Director or it is the property of the Minister of Marine; and
- (b) it is provided with such tarpaulins or other coverings as the Director may direct.

(2) A person who conveys explosives, or causes explosives to be conveyed, in a boat that does not comply with subsection (1) is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Power to delegate authority

40. (1) The Minister of Marine may from time to time in writing authorise any officer or officers of the Department of Marine and Harbors to exercise all or any of the powers of the Minister of Marine under this Part. Any such authority may be revoked by the Minister of Marine.

(2) Any such officer while authorised as aforesaid—

- (a) may exercise the powers conferred as aforesaid in the same manner and to the extent to which the powers could be exercised by the Minister of Marine; and
- (b) shall in the exercise of the powers be deemed to be entitled to the same immunities and privileges as Minister of Marine.

Savings as to ships rockets, etc.

41. This Part shall not apply to any gunpowder, rockets, or other explosives in respect of any ship which are required to be carried as part of the ship's equipments for the purpose of making signals.

**PART 6
MISCELLANEOUS**

Powers of inspectors

42. (1) Any inspector may—

- (a) at any time enter, inspect, and examine any magazine or premises licensed by the Director or any place where he believes any explosives may be found or any other place which it is necessary or convenient to enter, inspect or examine for the purpose of securing the due administration and enforcement of this Act; and
- (b) make any general or particular inquiries as to the observance of, or which are necessary for the purposes of this Act; and
- (c) take without payment such samples of any substance which he believes to be an explosive as are necessary for the examination and testing thereof; and
- (d) seize, detain, and remove any explosive and any package or vehicle in which the same is contained if he has reasonable cause to believe that there has been a contravention of this Act in respect of the explosive; and
- (e) where he believes it necessary in the public interest, with the consent of the Minister destroy or otherwise dispose of any explosive: Provided that in cases of imminent danger he may so act without such consent.

(2) The expenses incurred in the examination, destruction or disposal of any explosive under paragraph (e) of subsection (1) shall be borne by the owner of the explosive.

(3) Any inspector may, if any situation or activity involving explosives is in his opinion a danger or potential danger to any person, by an order or direction in writing require the person apparently in charge of the situation or activity to remove the danger or potential danger by taking the steps specified in the order or direction within the period of time so specified or by ceasing the activity forthwith.

Inspector may be assisted

43. Every person on or about the place inspected who—

- (a) does not, upon being requested so to do by an inspector facilitate the entry, inspection, and examination authorised by this Act by the inspector; or
- (b) does not, upon being so requested, facilitate the taking of samples, or the seizure, detention, or removal of any explosive, packages, or vehicle, or the destruction or disposal of any explosive authorised by this Act,

is guilty of an offence.

Penalty: Division 6 fine.

Obstructing inspectors

44. (1) A person who—

- (a) obstructs or hinders an inspector; or
- (b) interferes with, or prevents the exercise of, a power conferred by this Act upon an inspector; or

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- (c) disobeys a lawful order or direction of an inspector; or
- (d) refuses or fails to answer truthfully questions put by an inspector pursuant to this Act,

is guilty of an offence.

Penalty: Division 6 fine.

(2) A person is not required to answer a question put by an inspector if the answer to the question would tend to incriminate him or her of an offence.

(3) If a person is guilty of an offence under subsection (1) and that person, or the employer of that person, is licensed under this Act, that licence may be revoked by the Director.

Protection to inspector

45. No inspector shall be liable, except in respect of any wilful neglect or default, to any legal proceedings for anything done in pursuance of this Act.

Powers of the Director

46. (1) If in the opinion of the Director any explosive under the control of the Director—

- (a) has been damaged, or from its condition is, or is likely to become, dangerous to life or property during storage, transport, or use; or
- (b) has not been defined and classified as provided in section 6, or does not conform in composition, quality, and character to the definition made in accordance with that section,

the Director may destroy the explosive, or may order the same to be destroyed or otherwise disposed of.

(2) The expense of the destruction or disposal shall be borne by the owner of the explosive.

Deeming provision

47. For the purposes of section 46, an explosive shall be deemed to be under the control of the Director—

- (a) if it is in a Government magazine; or
- (b) if it is in a magazine afloat; or
- (c) if it is on board any ship or boat in any port; or
- (d) if it is in course of being landed from any such ship or boat; or
- (e) if it is in course of being shipped in any port; or
- (f) if it is on board any boat approved by the Director under section 39, or owned by the board; or
- (g) if it is in course of removal from or to any magazine to or from any ship or boat in any port.

Power to prohibit manufacture, storage, and carriage of specially dangerous explosives

48. Notwithstanding anything in this Act, the Governor may from time to time by proclamation prohibit, either absolutely, or subject to conditions or restrictions, the manufacture, keeping, conveyance, and sale, or any of them, of any explosive when in the judgment of the Governor it is expedient for the public safety to make such proclamation.

(2) Any explosive manufactured in contravention of any such proclamation shall be deemed to be manufactured in an unauthorised place.

(3) A person—

(a) who conveys an explosive or causes it to be conveyed; or

(b) who sells an explosive; or

(c) who keeps an explosive; or

(d) to whom an explosive is delivered,

in contravention of a proclamation under subsection (1), is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(3a) If an explosive is conveyed, sold or kept in contravention of a proclamation under subsection (1), all or any part of the explosive may be forfeited to the Crown by a court of summary jurisdiction.

(4) The Governor may by proclamation revoke any proclamation made as aforesaid.

Factory licence unnecessary in certain cases

49. Notwithstanding anything contained in this Act it shall not be necessary for any person licensed to keep a magazine or other premises pursuant to Part 4 to take out a licence for a factory by reason only that in connection with his magazine or licensed premises he fills for sale or otherwise any cartridge for small arms with any explosive if in so doing he invariably complies with the provisions of this Act or any regulation thereunder relating to the filling of cartridges.

Penalty on and removal of trespassers

50. (1) A person who enters without permission or otherwise trespasses upon a magazine or factory (whether licensed or not) or immediately adjoining land which is occupied in connection with the magazine or by the occupier of the factory is guilty of an offence.

Penalty: Division 8 fine or division 8 imprisonment.

(1a) A person who commits an offence against subsection (1) may immediately be removed from the magazine, factory or land by a member of the police force or by the keeper or occupier of the magazine or factory or any agent or servant of, or other person authorised by, the keeper or occupier.

(2) Any person other than the keeper or occupier of, or person employed in or about, a magazine or factory (whether licensed or not) who does any act which tends to cause explosion or fire in or about the magazine or factory is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

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(3) The keeper or occupier of any such magazine or factory shall post up in some conspicuous place or places a notice or notices warning all persons of their liability to penalties under this section, but the absence of any such notice or notices shall not exempt a person from a penalty under this section.

Supplemental provisions as to forfeiture of explosive

51. (1) Where a court before which a person is convicted of an offence against this Act has power to forfeit any explosive owned by or found in the possession or under the control of such person, the court may, if it thinks it just and expedient, in lieu of forfeiting the explosive, impose upon such person in addition to any other penalty or punishment a penalty not exceeding such sum as appears to the court to be the value of the explosive so liable to be forfeited.

(2) Where any explosive or ingredient of an explosive is alleged to be liable under this Act to be forfeited, any complaint may be laid against the owner of the explosive or ingredient for the purpose only of enforcing the forfeiture; and where the owner is unknown or cannot be found the court may cause a notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, the explosive may be forfeited, and at such time and place the court after hearing the owner or any person in his behalf (who may be present) may order all or any part of the explosive or ingredient to be forfeited.

Offences by bodies corporate

51A. Where a body corporate is guilty of an offence against this Act, every member of the governing body and the manager of the body corporate is guilty of an offence and liable to the penalty prescribed for that offence when committed by a natural person, unless the member or manager proves that he or she—

- (a) did not know and could not reasonably be expected to have known of the commission of that offence; or
- (b) exercised all due diligence to prevent the commission of that offence.

Continuing offences

51B. (1) Where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and
- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to a penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction, of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

Delegation by Director

51C. (1) The Director may, by instrument in writing, delegate to any person engaged in the administration of this Act any of his or her powers or functions under this Act.

(2) A delegation under subsection (1)—

(a) is revocable at will; and

(b) does not prevent the Director from acting personally in any matter.

(3) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the Director containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of those particulars.

Regulations

52. The Governor may make regulations for all or any of the following purposes:

I. Licensing factories for the manufacture of explosives:

* * * * *

III. Prescribing the rules to be observed by the owner, occupier, and persons employed in the factory:

IV. Prescribing the mode of construction and the purposes for which the factory or any particular part thereof may be used:

V. Regulating the attaching of lightning conductors to the factory:

VI. Defining the part of the factory in which any particular explosive or ingredient shall be kept, the quantity that may be so kept, and the mode in which it shall be packed:

VII. Regulating the use or retention in the factory of charcoal, oiled cotton, and any articles liable to spontaneous ignition, the cleaning of the building, the quantity of any explosives or ingredient that may be allowed in the factory or any part thereof at any one time, and prescribing the materials of which tools used may be made:

VIII. Regulating in the factory or any part thereof the mixing, sifting, and carriage of any explosives or the ingredients thereof, persons smoking, and the introduction of fire, matches, or any substance or article likely to cause explosion by fire, or any iron, steel, or grit:

IX. Regulating the employment in the factory of persons under the age of sixteen years:

X. Prescribing the period for which licences may be issued and the effect (if any) of change of owners or occupiers of the factory:

XI. Regulating the inspection of explosives and the marking of cases containing the same by an inspector before the removal of the explosives from the factory:

XII. Generally for regulating any matter relating to factories which public safety or convenience may require:

XIII. Licensing carriers of explosives:

XIV. Prescribing the quantity and quality of explosives or of any particular kinds of explosive, and also the variety of explosives which may be carried in the same railway truck or vehicle of any kind:

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- XV. Generally for regulating the carriage by land of explosives:
- XVI. The licensing by the Director of magazines and premises for the storage of explosives:
- XVII. The conveyance to, receipt at, delivering from, or storage in magazines and such premises of any explosives:
- XVIII. The inspection, examination, and testing from time to time of explosives stored in magazines and such premises:
- XIX. Providing for the storage of the several substances included in the definition of explosives in this Act in separate magazines and premises licensed as aforesaid, and prohibiting any of such substances being stored in the same magazine or premises with any other of such substances:
- XX. Prescribing the quantities and kinds of packages in which the several kinds of explosives may be received at and removed from any magazine or premises licensed as aforesaid:
- XXI. The inspection of explosives before being landed, transhipped, or received into a magazine:
- XXII. To regulate the carriage of explosives in any ship or boat:
- XXIII. The definition of safety cartridges and safety fuses, and the exemption of such or any other explosives from all or any of the provisions of this Act, and the conditions (if any) of such exemption:
- XXIIIA. Regulating or restricting the mixing at any place of substances which, when mixed, form a product which can be used for blasting, and regulating or restricting the use of any such product for the purpose of blasting:
- XXIIIB. Prescribing any matters necessary or convenient to be prescribed for securing the due administration and enforcement of this Act:
- XXIIIC. Regulating and controlling the sale of explosives and providing for the licensing of sellers of explosives the conditions upon which and the persons to whom explosives of any particular class or classes or generally may be sold:
- XXIIID. Regulating and controlling the keeping or storing of explosives and the display of explosives in or about any premises or places whatsoever:
- XXIIIE. Regulating and controlling the importation into the State of any explosives:
- XXIIIEA. Regulating and controlling the use of fireworks and other explosives for, or in connection with, entertainment:
- XXIIIF. Prescribing the form of the notice to be given by the master of a ship under section 33 of this Act and the manner in which it is to be given:
- XXIIIG. Prescribing the conditions upon which licences under this Act will be granted and making provision for or in relation to the suspension and revocation by the Director of such licences:

XXIIIH. Prescribing the amount and providing for payment of any fees or charges for the purposes of this Act:

XXIV. Prescribing fines not exceeding a division 6 fine for contravention of any regulation.

Magazines in municipalities

53. No regulation nor any licence issued under this Act shall be construed to authorise the storage of any explosive in any municipality contrary to the provisions of any by-law made by the council of that municipality.

Continuance of regulations

54. All regulations relating to explosives made pursuant to the *Marine Board and Navigation Acts 1881 to 1933* shall, so far as not inconsistent with this Act, continue in force as if made under this Act until expressly or impliedly repealed by regulations made under this Act.

Saving provision

55. The provisions of this Act shall be construed as in addition to and not in substitution for the provisions of the *Harbors Act 1936* and the *Marine Act 1936*.

Summary proceedings

56. All proceedings for offences against this Act shall be disposed of summarily.

Financial provision

57. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Repeal of s. 189 of Harbors Act 1936

58. Section 189 of the *Harbors Act 1936* is hereby repealed.

* * * * *

Explosives Act 1936**APPENDIX 1****LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provision from Statutes Amendment (Chief Inspector) Act 1993, s. 65)

65. This Act does not affect the appointment of any person as an inspector before the commencement of this Act (other than as a Chief Inspector).

Legislative History

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of The Public General Acts of South Australia 1837-1975 at page 13.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 4:	definition of "chief inspector" repealed and definition of "the Director" inserted in its place by 1, 1993, s. 16(a) definition of "inspector" amended by 1, 1993, s. 16(b)
Section 6(1):	amended by 1, 1993, s. 17
Section 9:	substituted by 1, 1993, s. 18
Section 11(2):	amended by 16, 1990, s. 2
Section 12(3):	substituted by 16, 1990, s. 3
Section 12(4):	inserted by 16, 1990, s. 3
Section 13(1):	amended by 16, 1990, s. 4(a)
Section 13(2):	repealed by 16, 1990, s. 4(b)
Section 16(2):	substituted by 16, 1990, s. 5
Section 18:	substituted by 16, 1990, s. 6
Section 19(1):	substituted by 16, 1990, s. 7; amended by 1, 1993, s. 19(a)
Section 19(2):	amended by 1, 1993, s. 19(b)
Section 20(2):	amended by 1, 1993, s. 20
Section 21(1):	amended by 1, 1993, s. 21(a)
Section 21(2):	amended by 1, 1993, s. 21(b)
Section 21(3):	amended by 1, 1993, s. 21(c)
Section 21(4):	substituted by 16, 1990, s. 8
Section 21(5):	inserted by 16, 1990, s. 8; amended by 1, 1993, s. 21(d)
Section 22(1):	amended by 1, 1993, s. 22(a)
Section 22(3):	substituted by 16, 1990, s. 9
Section 22(4):	inserted by 16, 1990, s. 9; amended by 1, 1993, s. 22(b)
Section 23(1):	amended by 1, 1993, s. 23
Section 23(3):	substituted by 16, 1990, s. 10; amended by 71, 1992, s. 3(1) (Sched.)
Section 23(4):	inserted by 16, 1990, s. 10
Section 24:	amended by 1, 1993, s. 24
Section 25(1):	amended by 1, 1993, s. 25
Section 27(1):	amended by 16, 1990, s. 11(a); 1, 1993, s. 26(a)
Section 27(2):	amended by 1, 1993, s. 26(b)
Section 27(3):	repealed by 16, 1990, s. 11(b)
Section 28:	amended by 1, 1993, s. 27
Section 28A:	definition of "the creek" repealed by 30, 1999, s. 3
Section 28E:	amended by 16, 1990, s. 12; repealed by 30, 1999, s. 4
Section 28F:	repealed by 30, 1999, s. 4
Section 29(3):	amended by 16, 1990, s. 13
Section 31(2):	amended by 1, 1993, s. 28(a)
Section 31(4):	substituted by 16, 1990, s. 14
Section 31(5):	amended by 1, 1993, s. 28(b)

Section 32(1):	amended by 1, 1993, s. 29(a)
Section 32(3):	amended by 1, 1993, s. 29(b)
Section 33(1):	amended by 1, 1993, s. 30(a)
Section 33(2):	amended by 1, 1993, s. 30(b)
Section 33(3):	inserted by 16, 1990, s. 15
Section 34(3):	inserted by 16, 1990, s. 16
Section 35(3):	substituted by 16, 1990, s. 17
Section 35(4):	amended by 1, 1993, s. 31
Section 36(2):	substituted by 16, 1990, s. 18
Section 37(3):	substituted by 16, 1990, s. 19
Section 37(4):	amended by 1, 1993, s. 32
Section 38(2):	substituted by 16, 1990, s. 20
Section 38(3):	amended by 1, 1993, s. 33
Section 39(1):	amended by 1, 1993, s. 34
Section 39(2):	substituted by 16, 1990, s. 21
Section 42(1):	amended by 1, 1993, s. 35
Section 43:	amended by 16, 1990, s. 22
Section 44:	substituted by 16, 1990, s. 23
Section 44(3):	amended by 1, 1993, s. 36
Section 46(1):	amended by 1, 1993, s. 37
Section 47:	amended by 1, 1993, s. 38
Section 48(3):	substituted by 16, 1990, s. 24
Section 48(3a):	inserted by 16, 1990, s. 24
Section 50(1):	substituted by 16, 1990, s. 25
Section 50(1a):	inserted by 16, 1990, s. 25
Section 50(2):	substituted by 16, 1990, s. 25
Sections 51A and 51B:	inserted by 16, 1990, s. 26
Section 51C:	inserted by 1, 1993, s. 39
Section 52:	amended by 5, 1982, s. 2; 16, 1990, s. 27; 1, 1993, s. 40
Schedule:	repealed by 30, 1999, s. 5

Explosives Act 1936**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.