South Australia

Explosives Act 2024

An Act to provide for matters relating to explosives, to make related amendments to the *Tattooing Industry Control Act 2015* and the *Work Health and Safety Act 2012*, to repeal the *Explosives Act 1936* and for other purposes.

Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Objects of Act
4 Interpretation
5 Explosives
6 Interaction with other Acts
7 Civil remedies not affected

Part 2—Duties for safety and security

Division 1—Duties

8 Safety duty
9 Security duty

Division 2—Offences

10 Failure to comply with duty with knowledge or indifference—Category 1
11 Failure to comply with duty with indifference—Category 2
12 Failure to comply with duty—Category 3
13 Failure to comply with duty—Category 4
14 Alternative with lesser penalty

Part 3—Regulator

15 Regulator
16 Functions

Part 4—Authorisations

Division 1—Register of authorisations

17 Register of authorisations

Division 2—Authorisations—General

18 Authorisations
19 Determination of application

20 Classification
21 Period of authorisation
22 Renewal of authorisation
23 Variation of authorisation
24 Cancellation of authorisation
25 Corresponding law authorisations

Division 3—Applications

26 Form of application

Division 4—Unauthorised explosives

27 Unauthorised explosives

Part 5—Prohibited explosives

28 Prohibited explosives

Part 6—Licensing

Division 1—Requirement to hold licence

29 Requirement to hold licence
30 Requirement to produce licence

Division 2—Activity licences

31 Activity licence

Division 3—Occupational licences

32 Occupational licences

Division 4—General provisions

33 Grant or renewal of licence
34 Term of licence
35 Licence non-transferable
36 Surrender of licence
37 Corresponding law licences
38 Application
39 Safety, security and emergency plans
40 Criteria—general
41 Security clearance
42 Fit and proper person

Division 5—Suspension, cancellation, extension or variation

43 Variation of licence
44 Suspension, cancellation or variation of licence or approval by Regulator
45 Extension or reinstatement of licence

Division 6—Licence conditions

46 Licence conditions
47 Offence to contravene licence conditions
48 Responsible person
49 Reporting of loss, theft or unauthorised interference

Division 7—Reconsideration of decisions

50 Reconsideration of decisions

Part 7—Enforcement measures

Division 1—General

Subdivision 1—Authorised persons

51 Interpretation
52 Appointment of authorised persons
53 Identification of authorised persons
54 Warrant procedures

Subdivision 2—Powers of entry

55 Power to enter
56 Entry into residential premises
57 General powers of authorised persons

Subdivision 3—Miscellaneous

58 Provisions relating to seizure
59 Offence to hinder etc authorised persons

Division 2—Improvement and prohibition notices

Subdivision 1—Improvement notices

60 Issue of improvement notices
61 Contents of improvement notices
62 Compliance with improvement notice
63 Extension of time for compliance with improvement notices

Subdivision 2—Prohibition notices

64 Power to issue prohibition notice
65 Contents of prohibition notice
66 Compliance with prohibition notice
67 Remedial action
68 Costs of remedial or other action

Subdivision 3—General requirements applying to improvement and prohibition notices

69 Directions in notices
70 Changes to notice by authorised person
71 Regulator may vary or cancel notice
72 Formal irregularities or defects in notice

Division 3—Other matters

73 Self-incrimination
74 Notification of certain situations
75 Power to recall
76 Action in emergencies
77 Review of notices by Regulator

Part 8—Reviews

78 Reviews

Part 9—Miscellaneous

79 Exemptions
80 Delegation by Minister or Regulator
81 Forfeiture of explosive on conviction
82 Prohibiting offender from involvement with explosives
83 Adverse publicity orders
84 False or misleading statements
85 Statutory declaration
86 Confidentiality of information
87 Giving of notice
88 General defence
89 Notice of defences
90 Proof of intention etc for offences
91 Imputation in proceedings of conduct or state of mind of officer, employee etc
92 Statement of officer evidence against body corporate
93 Liability of officers of body corporate
94 Continuing offences
95 Commencement of proceedings for summary offences
96 Evidence
97 Recovery of administrative and technical costs associated with contraventions
98 Cost recovery for dealing with dangerous situations
99 Government magazine
100 Harbors and vessels
101 Prohibition of explosives being transported on prescribed roads
102 Compulsory acquisition of land
103 Requirement to return licence on request
104 Regulations and fee notices

Schedule 1—Amendments, repeals and transitional provisions

Part 1—Amendment of *Tattooing Industry Control Act 2015*

1 Amendment of section 21—Offence to possess certain items in premises where tattooing services provided
2 Amendment of section 22—Further powers of police officers—random weapon and explosive searches

Part 2—Amendment of *Work Health and Safety Act 2012*

3 Amendment of section 4—Definitions

Part 3—Repeals

4 Repeal of *Explosives Act 1936*
5 Repeal of regulations under *Explosives Act 1936*

Part 4—Transitional provisions

6 Preliminary
7 Licences and conditions
8 Permits to purchase explosives
9 Register

10 Appointment of authorised persons
11 Functions and powers of authorised persons
12 Exemptions

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Explosives Act 2024*.

2—Commencement

(1) This Act comes into operation on a day to be fixed by proclamation.

(2) Section 27(6) of the *Legislation Interpretation Act 2021* does not apply to this Act.

3—Objects of Act

(1) The objects of this Act are to—

(a) regulate the handling of, and access to, explosives to protect public health and safety, property and the environment; and

(b) facilitate the safe and secure operations of essential and legitimate explosives industries.

(2) The objects are achieved primarily by—

(a) maintaining a scheme for the authorisation of explosives; and

(b) ensuring that only persons authorised to carry on specified activities or occupations are licensed to handle and use explosives; and

(c) imposing a safety duty, security duty and other obligations on persons who handle explosives; and

(d) enabling investigations and inquiries to be carried out for explosives incidents.

4—Interpretation

(1) In this Act, unless the contrary intention appears—

authorised explosive means an explosive authorised under Part 4;

authorised person—see Part 7 Division 1 Subdivision 1;

blasting explosive means an explosive that is used to provide the majority of the force when blasting rock or similar solid material, and includes components for the initiation of the explosive such as a booster, detonator, fuse, shocktube or ignitor;

blasting operation means an operation or part of an operation consisting of the use or disposal of blasting explosives;

building includes a structure and part of a building or structure;

close associate—see subsection (2);

condition includes a limitation;

contravene includes fail to comply with;

corresponding law means a law of the Commonwealth or of another State that is prescribed by regulation to be a corresponding law for the purposes of this definition;

corresponding regulator means the holder of a public office, or a public authority, of the Commonwealth, or of a State, who or which is responsible for administering a corresponding law;

dangerous situation means a situation that is creating or likely to create—

(a) imminent risk to the health or safety of a person, or the safety of a person's property; or

(b) imminent risk of environmental harm;

deal with, in connection with an explosive, includes any of the following:

(a) produce, manufacture or supply explosives;

(b) import explosives;

(c) buy, sell or dispose of explosives;

(d) acquire or possess explosives;

(e) transport explosives;

(f) experiment with, use or test explosives;

(g) anything prescribed by the regulations as a dealing with, or engaging in a dealing with, explosives;

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

director of a body corporate includes—

(a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

direct supervision—see subsection (4);

disposal of an explosive includes the destruction of an explosive;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

explosive—see section 5;

firework means a pyrotechnic device or item containing explosive composition which on activation will burn or explode, or both, to produce a visual or aural effect, or both, but does not include a device or item of a class excluded from the ambit of this definition by the Regulator in accordance with subsection (3);

harbor has the same meaning as in the *Harbors and Navigation Act 1993*;

import means bring into the State from another country;

improvement notice—see section 60;

licence means a licence under Part 6;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practice in the medical profession (other than as a student);

officer, in relation to a body corporate, means—

(a) a director of the body corporate; or

(b) the chief executive officer of the body corporate; or

(c) a receiver or manager of any property of the body corporate or a liquidator of the body corporate,

and includes, in relation to a contravention or alleged contravention of this Act by the body corporate, an employee of the body corporate with management responsibilities in respect of the matters to which the contravention or alleged contravention related;

premises includes land and a building on land;

prohibited explosive means an explosive that is declared to be a prohibited explosive under section 28(1);

prohibition notice—see section 64(4);

Regulator—means the person appointed to be the Regulator under section 15;

responsible person means an individual who is, in accordance with section 48, a person responsible for managing the operations authorised under the licence;

safety duty—see section 8;

safety risk means risk of harm to a person, property or the environment;

security duty—see section 9;

spouse—a person is the spouse of another if they are legally married;

State includes a Territory;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

unauthorised explosive means an explosive that is not an authorised explosive;

unsuitable person—see subsection (5);

use includes prepare for use (consequently, in relation to explosives the term includes prepare explosives for the purposes of a blasting operation, a fireworks display or special effects and an activity involving the use of explosives includes the conduct of a blasting operation, the conduct of a fireworks display and the creation of special effects for theatrical, cinematic or other entertainment purposes);

vehicle means a vehicle or vessel that is used or is capable of being used to transport a substance or article and includes a vehicle used on rails and a caravan, trailer and anything attached to a vehicle;

vessel means any seagoing vessel or inland waterway craft used for carrying cargo.

(2) For the purposes of this Act, 2 persons are ***close associates*** if—

(a) 1 is a spouse, domestic partner, parent, child, brother or sister of the other; or

(b) they are in partnership; or

(c) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or

(d) 1 is a body corporate and the other is a director, manager, secretary or public officer of the body corporate; or

(e) 1 is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or

(f) 1 is a trustee of a trust and the other is a beneficiary of the trust or, in the case of a discretionary trust, an object of the trust; or

(g) 1 has a right to participate, or participates, (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or

(h) 1 is in a position to exercise, or exercises, control or significant influence over the conduct of the other.

(3) The Regulator may, by notice published in the Gazette and on the Department's website—

(a) exclude an item of a specific class from the definition of firework; and

(b) vary or revoke a notice under this subsection.

(4) For the purposes of this Act, a person is under direct supervision if the supervisor is present within sight and sound of the person while the person is performing the work and is available—

(a) to advise or assist the person in the performance of the work; or

(b) to intervene in the performance of the work.

(5) For the purposes of this Act, a person is an ***unsuitable person*** if—

(a) the person has been found guilty or convicted of an offence, or an offence of a class, prescribed by the regulations; or

(b) in the case of an individual, the individual—

(i) is a member of, or a participant in, a prescribed organisation; or

(ii) is a close associate of an individual who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or

(iii) is the subject of an adverse security assessment within the meaning of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth; or

(iv) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(v) has, during the period of 5 years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—

(A) when the body was being so wound up; or

(B) within the period of 6 months preceding the commencement of the winding up; or

(c) in the case of a body corporate—

(i) the body corporate is a body corporate, or is a body corporate of a class, prescribed by the regulations; or

(ii) the body corporate is a prescribed organisation.

5—Explosives

(1) An ***explosive*** is a substance, mixture or article that—

(a) is an explosive within the meaning of Chapter 2.1 of the *United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS)*, as in force from time to time; or

(b) is declared by the Regulator under subsection (2) to be an explosive; or

(c) is prescribed by regulation to be an explosive,

but does not include a substance, mixture or article that is declared by the Regulator under subsection (2) to not be an explosive.

(2) The Regulator may, by notice in the Gazette and on the Department's website—

(a) declare a substance, mixture or article to be an explosive for the purposes of this Act; or

(b) declare a substance, mixture or article to not be an explosive for the purposes of this Act; or

(c) vary or revoke a notice under this subsection.

(3) The Regulator may make a declaration under subsection (2) to declare a substance, mixture or article to be an explosive if, in the opinion of the Regulator, safety or security concerns exist justifying the declaration in relation to the substance, mixture or article.

(4) For the purposes of subsection (1)(c), the regulations may—

(a) establish a scheme for the automatic adoption of a substance, mixture or article that is an explosive under a corresponding law; and

(b) refer to or incorporate, wholly or partially and with or without modification, a specified code, standard or classification scheme as in force at a specified time or as in force from time to time; and

(c) declare that only specified provisions or parts of this Act will apply in relation to the substance, mixture or article adopted by the regulations.

(5) If a code, standard or classification scheme is referred to or incorporated in the regulations—

(a) a copy of the code, standard or classification scheme must be kept available for inspection by members of the public, without charge and during normal office hours, at a prescribed office; and

(b) evidence of the contents of the code, standard or classification scheme may be given in legal proceedings by production of a document apparently certified by the Minister or the Regulator to be a true copy of the code, standard or classification scheme.

6—Interaction with other Acts

This Act is in addition to and does not limit or derogate from the provisions of the *Work Health and Safety Act 2012* or any other Act.

7—Civil remedies not affected

The provisions of this Act do not limit or affect any civil right or remedy and compliance with the Act does not necessarily indicate that a common law duty of care has been satisfied.

Part 2—Duties for safety and security

Division 1—Duties

8—Safety duty

(1) A person must, in carrying on an activity involving an explosive, take reasonable precautions and care to eliminate or minimise the safety risks associated with the activity.

(2) In determining what measures are required to be taken for the purposes of subsection (1), regard is to be had to, amongst other things—

(a) the nature of the explosive, the activity and any plant involved in the activity; and

(b) the locality at which the activity is being carried on; and

(c) the likelihood and severity of any safety risks that may be caused by the activity if the safety risks are not eliminated; and

(d) the extent to which the measures are reasonably practicable in the circumstances taking into account measures taken by persons carrying on similar activities; and

(e) the current state of technical knowledge and likelihood of successful application of the various measures that might be taken; and

(f) other prescribed factors.

9—Security duty

(1) A person must, in carrying on an activity involving an explosive, take reasonable precautions and care in order to keep the explosive secure.

(2) In determining what measures are required to be taken for the purposes of subsection (1), regard is to be had to, amongst other things—

(a) the nature of the explosive and the activity; and

(b) the locality at which the activity is being carried on; and

(c) whether the explosive is kept secure from any person who is not authorised to access the explosive; and

(d) the extent to which the measures are reasonably practicable in the circumstances taking into account measures taken by persons carrying on similar activities; and

(e) other prescribed factors.

Division 2—Offences

10—Failure to comply with duty with knowledge or indifference—Category 1

If—

(a) a person contravenes the safety duty, security duty or the regulations; and

(b) the contravention results in—

(i) the death of, or harm to, a person; or

(ii) harm to another person's property or the environment; and

(c) the person knew of, or was recklessly indifferent as to, the risk of death, or harm to a person, property or the environment associated with the contravention,

the person is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$300 000 or imprisonment for 5 years, or both;

(b) in the case of a body corporate—$3 000 000.

11—Failure to comply with duty with indifference—Category 2

If—

(a) a person contravenes the safety duty, security duty or the regulations; and

(b) the contravention results in harm to another person, another person's property or the environment, or in a dangerous situation; and

(c) the person was recklessly indifferent as to the risk of harm to a person, property or the environment, or the dangerous situation, associated with the contravention,

the person is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$100 000 or imprisonment for 2 years, or both;

(b) in the case of a body corporate—$500 000.

12—Failure to comply with duty—Category 3

If—

(a) a person contravenes the safety duty, security duty or the regulations; and

(b) the contravention gave rise to the risk of harm to another person, another person's property or the environment, or of a dangerous situation,

the person is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

13—Failure to comply with duty—Category 4

If a person contravenes the safety duty, security duty or the regulations, the person is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$20 000.

14—Alternative with lesser penalty

If, in proceedings for an offence against this Division, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of some other offence against this Division for which a lesser maximum penalty may be imposed, the court may find the defendant guilty of the latter offence.

Part 3—Regulator

15—Regulator

(1) The Minister may appoint a public sector employee to be the Regulator for the purposes of this Act.

(2) An appointment under subsection (1) will be subject to such conditions as are determined by the Minister.

(3) The Minister may, at any time, revoke an appointment under this section or vary or revoke a condition of appointment or impose a further condition of appointment.

16—Functions

The Regulator has the following functions:

(a) to perform functions—

(i) under Part 4 in relation to the authorisation of explosives and the maintenance of an explosives register; and

(ii) under Part 6 in relation to explosives licences; and

(iii) that provide for compliance with this Act;

(b) to engage in, promote and coordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;

(c) to perform such other functions as are conferred on the Regulator by this Act, the regulations or any other Act or law.

Part 4—Authorisations

Division 1—Register of authorisations

17—Register of authorisations

(1) The Regulator must keep a register of authorisations for the purposes of this Act.

(2) The information entered on the register, in respect of an authorisation granted under this Part, must include the following:

(a) the classification assigned to an authorised explosive by the Regulator;

(b) the conditions, if any, that the Regulator has imposed on an authorisation;

(c) the name and address of the person who is registered on the register in relation to the authorisation;

(d) information prescribed by regulation;

(e) any other information that the Regulator thinks fit.

(3) The Regulator may, at any time, alter information entered in the register in respect of an authorisation granted under this Part to ensure that the register is accurate.

(4) An extract from the register identifying authorised explosives must be published on the Department's website.

Division 2—Authorisations—General

18—Authorisations

(1) The Regulator may, on application by a person or on the Regulator's own initiative, grant, renew or vary any of the following authorisations:

(a) the authorisation of an explosive or a class of explosives;

(b) the authorisation of a trial of an unauthorised explosive;

(c) the authorisation to test an unauthorised explosive for research purposes by a tertiary education provider recognised by the Regulator for the purposes of this paragraph;

(d) the authorisation of the disposal of an unauthorised explosive.

(2) An authorisation is subject to conditions imposed by the Regulator.

(3) Without limiting subsection (2), an authorisation granted by the Regulator under subsection (1)(c) to a tertiary education provider may authorise the tertiary education provider to deal with an unauthorised explosive (such as manufacture, transport, storage and disposal of the explosive) in connection with the testing of the unauthorised explosive.

19—Determination of application

(1) The Regulator may refuse an application for the grant, renewal or variation of an authorisation on any ground that, in the opinion of the Regulator, is relevant.

(2) Without limiting subsection (1), the Regulator may refuse an application for or in relation to an authorisation if—

(a) the Regulator considers that it would be more appropriate for the application to be made in another State; or

(b) the Regulator considers that the authorisation the subject of the application has been refused in this State or under a corresponding law; or

(c) information requested by the Regulator under section 26 in relation to the application is not provided within the period specified by the Regulator in the request; or

(d) the application falls within circumstances prescribed by the regulations.

(3) Before determining an application for the grant, renewal or variation of an authorisation, the Regulator may—

(a) test any substance, mixture or article; and

(b) require the payment of the costs of tests conducted, or to be conducted, by, or on behalf of, the Regulator.

(4) Nothing in subsection (2) prevents the authorisation of an explosive merely because the explosive has been authorised under a corresponding law.

(5) Notice of the Regulator's refusal to grant, renew or vary an authorisation under this section must be given to the applicant.

(6) The Regulator must, before refusing to grant, renew or vary an authorisation under this section—

(a) give notice of the proposed refusal; and

(b) set out the grounds on which the proposed refusal is to be made; and

(c) invite the applicant to respond to the notice in the manner determined by the Regulator.

20—Classification

The Regulator must classify an explosive authorised under this Part in accordance with the regulations.

21—Period of authorisation

An authorisation takes effect from the day on which it is granted and remains in force—

(a) if the Regulator specifies in the authorisation the period for which the authorisation has effect—that period; or

(b) in any other case—until the authorisation is cancelled under this Part.

22—Renewal of authorisation

The Regulator may refuse an application for the renewal of an authorisation if the application is not received by the Regulator at least 28 days before the period of the authorisation expires under section 21.

23—Variation of authorisation

(1) The Regulator may vary an authorisation under this Part on application by the person registered on the register in relation to the authorisation.

(2) Without limiting subsection (1), a variation may be granted in relation to—

(a) a condition of an authorisation; or

(b) the classification of an authorisation of an explosive; or

(c) any other matter prescribed by the regulations.

24—Cancellation of authorisation

(1) Subject to subsection (2), the Regulator may—

(a) cancel the authorisation of an explosive; and

(b) remove the authorisation from the register,

on any ground determined to be relevant by the Regulator.

(2) Before taking action under subsection (1), the Regulator must—

(a) give notice to the person registered on the register in relation to the authorisation of the proposed action; and

(b) set out the grounds on which the proposed action is to be taken; and

(c) unless satisfied that urgent action is required, allow that person 28 days within which to make submissions to the Regulator in relation to the proposed action.

25—Corresponding law authorisations

(1) If an authorisation granted under a corresponding law complies with any requirements prescribed by the regulations, the Regulator must, on application, register the authorisation.

(2) The Regulator may impose such conditions as the Regulator thinks fit in relation to the registration of an authorisation.

Division 3—Applications

26—Form of application

(1) An application under this Part must—

(a) be made in a manner and form determined by the Regulator; and

(b) be accompanied by any information required by the Regulator; and

(c) be accompanied by the prescribed fee.

(2) The applicant may, with the approval of the Regulator or at the request of the Regulator, vary the application at any time before the application is determined.

(3) An applicant must, at the request of the Regulator and within the period specified by the Regulator, provide any additional information or documents, or samples of any substance, mixture or article, that the Regulator considers relevant to the application.

(4) The Regulator may refuse the application if a person does not comply with a request under subsection (3).

Division 4—Unauthorised explosives

27—Unauthorised explosives

(1) Subject to this Act, a person must not—

(a) deal with an explosive that has not been authorised under this Part; or

(b) contravene a condition of an authorisation.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$250 000.

(2) Subsection (1)(a) does not apply to a person authorised by a licence under Part 6 to deal with an explosive that has not been authorised under this Part (if the person deals with the explosive in accordance with that licence).

Part 5—Prohibited explosives

28—Prohibited explosives

(1) The Regulator may declare an explosive to be a prohibited explosive.

(2) Notice of a declaration under subsection (1) must be published on the Department's website as soon as practicable after the making of the declaration.

(3) The Regulator may vary or revoke a declaration under subsection (1).

(4) Notice of the variation or revocation of a declaration under subsection (1) must be published on the Department's website as soon as practicable after the variation or revocation of the declaration.

(5) The Regulator must maintain a register of prohibited explosives that is published on the Department's website.

(6) A person must not deal with a prohibited explosive.

Maximum penalty:

(a) in the case of an individual—$100 000;

(b) in the case of a body corporate—$500 000.

Part 6—Licensing

Division 1—Requirement to hold licence

29—Requirement to hold licence

(1) A person must not, except as authorised by licence, carry on a business or other activity involving—

(a) the manufacture, import, export to a place outside Australia, sale, acquisition, supply, transport, storage, use, disposal or possession of an explosive or a substance, mixture or article for use (whether in its manufactured form or in a modified form) as an explosive; or

(b) an explosive if the regulations require the carrying on of the business, or activity to be authorised by licence.

Maximum penalty:

(a) in the case of an individual—$100 000;

(b) in the case of a body corporate—$500 000.

(2) A person must not, except as authorised by licence, engage in any of the following activities:

(a) a blasting operation;

(b) an activity involving the use of fireworks;

(c) driving a vehicle transporting explosives on a road or a road-related area (both within the meaning of the *Road Traffic Act 1961*);

(d) any other activity involving an explosive if the regulations require the activity to be authorised by licence.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$250 000.

(3) A person must not supply an explosive to a person whose acquisition of the explosive must be authorised by licence unless the person acquiring the explosive holds such a licence.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$250 000.

(4) A person must not employ, engage or permit another person to engage in an activity that must be authorised by licence unless the person holds such a licence.

Maximum penalty:

(a) in the case of an individual—$50 000 or imprisonment for 2 years, or both;

(b) in the case of a body corporate—$250 000.

(5) A person need not hold a licence in prescribed circumstances or in circumstances determined by the Regulator.

30—Requirement to produce licence

(1) The holder of an occupational licence must immediately produce or display a copy of the licence (whether electronically or in printed form) when requested to do so by an authorised person.

Maximum penalty: $10 000.

Expiation fee: $1 500.

(2) The holder of an activity licence must, when requested to do so by an authorised person, produce a copy of the licence (whether electronically or in printed form) within the period after the request prescribed by the regulations.

Maximum penalty: $10 000.

Expiation fee: $1 500.

Division 2—Activity licences

31—Activity licence

There will be licences authorising the carrying on of a business or operation involving explosives (***activity licences***) of the classes prescribed by the regulations.

Division 3—Occupational licences

32—Occupational licences

There will be licences authorising the licensee to engage in an occupation involving explosives (***occupational licences***) of the classes prescribed by the regulations.

Division 4—General provisions

33—Grant or renewal of licence

(1) The Regulator may, on application by a person, grant or renew a licence.

(2) If an applicant applies to the Regulator for the grant or renewal of a licence authorising several classes of activities or occupations (including a combination of classes of licence set out in Division 2 and Division 3), the Regulator may, in the Regulator's discretion, grant the applicant either a single licence or multiple licences authorising those activities or occupations.

34—Term of licence

(1) Subject to this Act, a licence remains in force for the period specified in the licence on its grant or renewal.

(2) The Regulator may, on the Regulator's own initiative and without application by the licensee, renew the licence if the Regulator is satisfied that it is necessary for the purposes of protecting persons, property or the environment from harm, or keeping explosives secure, that the licensee continue to be bound by the licence conditions.

(3) A licence has effect, on grant or renewal, from the date specified in the licence for that purpose, which may be earlier than the date of application for the grant or renewal of the licence.

35—Licence non-transferable

A licence is not transferable.

36—Surrender of licence

(1) The Regulator may, on application by a licensee, approve the surrender of a licence.

(2) Without limiting subsection (1), the Regulator may refuse to approve the surrender of a licence if the Regulator is satisfied that it is necessary for the purposes of protecting persons, property or the environment from harm, or keeping explosives secure, that the licensee continue to be bound by the licence conditions.

37—Corresponding law licences

(1) If a licence granted under a corresponding law complies with any requirements prescribed by the regulations, the Regulator must, on application, grant or renew the licence.

(2) The Regulator may impose such conditions as the Regulator thinks fit in relation to the grant or renewal of a licence under this section.

38—Application

(1) An application under this Part must—

(a) be made in a manner and form determined by the Regulator; and

(b) be accompanied by any information required by the Regulator; and

(c) be accompanied by the prescribed fee.

(2) The applicant may, with the approval of the Regulator or at the request of the Regulator, vary the application at any time before the application is determined.

(3) The Regulator may, by written notice—

(a) ask the applicant to give the Regulator further information, documents or records relevant to the application (including reports about the person's physical or mental health) within the period specified by the Regulator; or

(b) ask the applicant to allow persons authorised by the Regulator to inspect premises, vehicles, plant or explosives proposed to be used by the applicant in connection with activities proposed to be authorised by the licence.

(4) The Regulator may refuse the application if a person does not comply with a request under subsection (3).

(5) The Regulator may refuse an application if—

(a) the Regulator considers that it would be more appropriate for the application to be made in another State; or

(b) an application for a licence has been refused in this State or under a corresponding law.

(6) The Regulator must, as soon as practicable after making a decision on an application, give the person to whom the decision relates—

(a) notice of the decision; and

(b) if the application is refused, the reasons for the refusal.

39—Safety, security and emergency plans

(1) The Regulator may require an applicant for the grant or renewal of a licence to submit 1 or more of the following plans:

(a) a safety plan;

(b) a security plan;

(c) an emergency plan.

(2) A plan referred to in subsection (1) must—

(a) be in a form approved by the Regulator; and

(b) include any information determined by the Regulator; and

(c) conform to any other requirements determined by the Regulator.

(3) The Regulator may issue guidelines about a plan referred to in subsection (1) for particular activities.

(4) It is a condition of every licence that the licensee must not contravene a plan referred to in subsection (1).

(5) If, at any time, the Regulator is not satisfied as to the adequacy of a safety plan, a security plan or an emergency plan, the Regulator may require the licensee or applicant (as the case may be) to do either or both of the following:

(a) to make specified amendments to the plan within a specified time;

(b) to submit the amended plan to the Regulator within a specified time for approval.

(6) If a licensee or applicant for a licence (as the case requires) fails to comply with a requirement under subsection (5), the licensee or applicant is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

(7) Before action is taken under subsection (5), the Regulator must give the licensee or applicant (as the case requires) written notice of the proposed action, and invite the licensee or applicant to make written submissions in relation to the proposed action within a period specified in the notice (being not less than 14 days from the day on which the notice is given to the licensee).

40—Criteria—general

(1) In determining an application under this Part and what should be the term and conditions of a licence, the Regulator must have regard to the safety duty and the security duty.

(2) The Regulator may—

(a) specify minimum requirements that must be satisfied before a person may hold a licence or a licence of a specified class; or

(b) prohibit a body corporate from holding a licence of a specified class.

(3) The Regulator may refuse to grant, renew or vary a licence if the Regulator determines that it would not be in the public interest to do so.

41—Security clearance

(1) The Regulator must refuse an application for the grant, renewal or variation of a licence unless—

(a) in the case of an applicant for a licence that is a body corporate—

(i) at least 1 director of the body corporate; and

(ii) the responsible person in respect of the licence; and

(iii) any person with access to an explosive in respect of the licence (other than in the presence of and under the direct supervision of another security cleared person in respect of the licence); or

(b) in any other case—

(i) the applicant; and

(ii) the responsible person in respect of the licence; and

(iii) any person with access to an explosive in respect of the licence (other than in the presence of and under the direct supervision of another security cleared person in respect of the licence),

are approved by the Regulator as security cleared persons for the purposes of this section.

(2) The Regulator may establish a scheme for the approval of persons as security cleared persons for the purposes of this Act.

(3) The scheme under subsection (2) may—

(a) provide for the Regulator to require the applicant, a close associate of the applicant, a person proposed to be approved as a security cleared person or a close associate of such a person to obtain from the Commissioner of Police or a prescribed person such reports or assessments on the person as the Regulator considers necessary, or to provide consents appropriate for the obtaining of such reports; and

(b) provide for the suspension or cancellation of an approval on specified grounds; and

(c) specify conditions of approval.

(4) An approval granted under this section remains in force for a period specified in the approval.

42—Fit and proper person

(1) The Regulator may refuse an application for the grant, renewal or variation of a licence if the Regulator is not satisfied that the licensee or proposed licensee is a fit and proper person to hold the licence (or the licence as proposed to be varied).

(2) In determining whether a person is a fit and proper person for the purposes of subsection (1) the Regulator may—

(a) require an applicant to provide medical evidence or undergo a medical assessment by a medical practitioner or other health professional specified by the Regulator; and

(b) have regard to—

(i) in all cases—the character and reputation of the person and the person's close associates and may, without limitation, take into account relevant offences (whether committed in or outside the State); and

(ii) in the case of a body corporate—whether any director of the body corporate is an unsuitable person; and

(c) require an applicant to complete a course or qualification determined by the Regulator, or otherwise establish to the satisfaction of the Regulator that the licensee or proposed licensee has the relevant skills and qualifications having regard to the business, operations or activity authorised under the licence.

(3) An unsuitable person is not a fit and proper person to hold a licence.

(4) The cost of performing a medical assessment and any associated medical report performed under this section is to be borne by the applicant for the licence.

Division 5—Suspension, cancellation, extension or variation

43—Variation of licence

(1) The Regulator may, on application or on the Regulator's own initiative, vary a licence by written notice to the holder of the licence.

(2) For the purposes of subsection (1), the variation of a licence includes the alteration, substitution, removal or addition of a condition of the licence.

44—Suspension, cancellation or variation of licence or approval by Regulator

(1) The Regulator may suspend or cancel a licence if satisfied that—

(a) the licence was obtained improperly; or

(b) the licensee—

(i) has ceased to carry on or engage in the activity authorised by the licence; or

(ii) has not paid fees or charges payable to the Regulator within the required time; or

(iii) has contravened this or any other Act or a law of the Commonwealth or another State that regulates activities involving explosives or, in the opinion of the Regulator, justifies action to be taken under this section; or

(iv) has failed to comply with a condition of the licence; or

(v) does not have a responsible person in respect of the management of the operations under the licence; or

(vi) is not a security cleared person; or

(vii) has ceased to be a fit and proper person to hold the licence; or

(c) the activities authorised by the licence should not be continued (or should not be continued under the licence conditions) because the safety risks or security risks associated with the activity are unacceptably high.

(2) The Regulator may cancel an approval of a person as a security cleared person for a licence if satisfied that—

(a) the approval was obtained improperly; or

(b) the person has contravened this Act or a law of the Commonwealth or another State that regulates activities involving explosives; or

(c) the person has ceased to be a suitable person to be approved.

(3) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Regulator.

(4) A suspension may be expressed to have effect at a specified future time, or to have effect at a specified future time unless a specified condition is fulfilled.

(5) If the Regulator cancels a licence, the Regulator may also disqualify the holder of the cancelled licence, or if the holder of the cancelled licence is a body corporate, any director of the body corporate, from obtaining any licence or a specified class of licence permanently or for a specified period, or until the fulfilment of specified conditions or until further order of the Regulator.

(6) Before the Regulator acts under this section, the Regulator must—

(a) give notice to the licensee of the proposed action; and

(b) set out the grounds on which the proposed action is to be taken; and

(c) unless satisfied that urgent action is required, allow the licensee at least 28 days within which to make submissions to the Regulator in relation to the proposed action.

(7) If the Regulator suspends or cancels a licence, the licensee must return the licence to the Regulator within 14 days.

Maximum penalty: $1 250.

Expiation fee: $160.

45—Extension or reinstatement of licence

(1) The Regulator may extend a licence or reinstate a licence that has expired if—

(a) in the Regulator's own opinion, the extension or reinstatement of the licence is necessary to protect persons, property or the environment in relation to the storage or disposal of any explosives; and

(b) the Regulator takes reasonable steps to consult with the licensee before extending or reinstating the licence.

(2) An extension or reinstatement of a licence under subsection (1) will be for such period as the Regulator considers appropriate, or until the Regulator determines that it is appropriate that the licence be cancelled.

Division 6—Licence conditions

46—Licence conditions

A licence is subject to conditions determined by the Regulator.

47—Offence to contravene licence conditions

If a licence condition is contravened, the licensee is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$250 000.

48—Responsible person

(1) It is a condition of a licence that the licensee must ensure that the business conducted under the licence is managed by an individual (a ***responsible person***) who—

(a) is a fit and proper person; and

(b) is concerned in the management of the business being conducted under the licence; and

(c) is at least 21 years of age; and

(d) is approved by the Regulator as a security cleared person; and

(e) is not an unsuitable person; and

(f) meets any other requirements determined by the Regulator.

(2) It is a condition of a licence that if there is a change to the responsible person who manages the business under the licence, the licensee must, within 14 days, give the Regulator notice of the change in the form and containing the information required by the Regulator.

(3) If at any time the operations conducted under a licence are not managed by a responsible person, the licensee is guilty of an offence.

Maximum penalty: $50 000.

49—Reporting of loss, theft or unauthorised interference

(1) It is a condition of a licence that the licensee must ensure that the theft, loss or apparent unauthorised interference with an explosive to which the licence relates is reported immediately to a police officer and the Regulator.

(2) A person is required to make a report despite the fact that to do so might incriminate the person or make the person liable to a penalty.

Division 7—Reconsideration of decisions

50—Reconsideration of decisions

(1) A person affected by a decision of the Regulator under this Part may apply to the Regulator for reconsideration of the decision.

(2) An application for reconsideration must be made within—

(a) 28 days after the day the person was informed of the decision by the Regulator; or

(b) a longer period allowed by the Regulator, either before or after the end of the 28 days.

(3) The application must be in writing and set out the grounds on which reconsideration of the decision is sought.

(4) Within 28 days after receiving the application, the Regulator must reconsider the decision, and confirm, revoke or vary the decision.

(5) If the Regulator has not reconsidered the decision within that period, the Regulator is to be taken to have confirmed the decision.

(6) The Regulator must inform the applicant in writing of the result of the reconsideration and of the reasons for the result.

Part 7—Enforcement measures

Division 1—General

Subdivision 1—Authorised persons

51—Interpretation

In this Division—

commercial motor vehicle has the same meaning as in the *Motor Vehicles Act 1959*;

place or vehicle to which this Division applies means—

(a) a place or vehicle subject to a licence; or

(b) a place or vehicle that an authorised person reasonably suspects is being, or has been, used for or in connection with an activity involving an explosive; or

(c) a place or vehicle in which an authorised person reasonably suspects there may be records relating to an activity involving an explosive or anything that has been used in, or may constitute evidence of, a contravention of this Act; or

(d) a commercial motor vehicle or a vehicle that an authorised person reasonably suspects is a commercial motor vehicle.

52—Appointment of authorised persons

(1) For the purposes of this Act, the Minister may, by instrument in writing, appoint—

(a) a specified individual to be an authorised person; or

(b) persons of a specified class to be authorised persons.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Minister may, at any time, by instrument in writing applicable to a specified authorised person or each authorised person of a specified class—

(a) revoke or suspend their appointment; or

(b) vary or revoke a condition of their appointment; or

(c) impose a further condition on their appointment.

(4) All police officers are authorised persons for the purposes of this Act.

53—Identification of authorised persons

(1) Subject to this section, an authorised person appointed under this Act must be issued with an identity card—

(a) containing the individual's name and their photograph; and

(b) stating that the individual is an authorised person under this Act.

(2) A police officer is not required to be issued with an identity card.

(3) If the powers of an authorised person have been limited by conditions, the identity card issued to the authorised person must indicate those limitations.

(4) An authorised person must, at the request of a person in relation to whom the authorised person intends to exercise powers under this Act, produce for the inspection of the person—

(a) in the case of an authorised person who is a police officer and is not in uniform—the police officer's certificate of authority; or

(b) in the case of an authorised person appointed under this Act—the authorised person's identity card.

(5) If an individual to whom an identity card has been issued ceases to be an authorised person, the individual must return the identity card to the Regulator as soon as practicable.

54—Warrant procedures

(1) A magistrate must not issue a warrant for the purposes of this Division unless satisfied that the warrant is reasonably required in the circumstances.

(2) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and appear before a magistrate, by telephone or electronically.

(3) The grounds of an application for a warrant must be verified by affidavit.

(4) If an application for a warrant is made by telephone or electronically, the following provisions apply:

(a) the applicant must inform the magistrate of the applicant's name and identify themself as an authorised person and the magistrate, on receiving that information, is entitled to assume its accuracy without further inquiry;

(b) the applicant must inform the magistrate of the purpose for which the warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application;

(c) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of the warrant, inform the applicant of the facts on which the magistrate relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;

(d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant;

(e) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;

(f) the magistrate must inform the applicant of the terms of the warrant;

(g) the applicant must fill out and sign a warrant form (the ***duplicate warrant***) that—

(i) sets out the name of the magistrate who issued the original, the date and time of the issue of the original and the terms of the warrant; and

(ii) complies with any other prescribed requirements;

(h) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant.

(5) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

Subdivision 2—Powers of entry

55—Power to enter

(1) An authorised person may enter any place or vehicle to which this Division applies.

(2) Subject to section 56, entry to any place or vehicle to which this Division applies may be effected with or without the authority of a warrant.

56—Entry into residential premises

This Part does not authorise an authorised person to enter any residential premises without the permission of the occupier or the authority of a warrant.

57—General powers of authorised persons

(1) An authorised person may, as reasonably required for the administration and enforcement of this Act—

(a) enter and inspect and, if necessary, use reasonable force to break into or open—

(i) a place or vehicle to which this Division applies; or

(ii) part of, or anything in or on, a place or vehicle to which this Division applies; and

(b) give directions with respect to the stopping or movement of a vehicle to which this Division applies; and

(c) require a vehicle to which this Division applies to be presented for inspection at a specified place and time; and

(d) require a person to provide or take samples of or from an explosive or thing for analysis; and

(e) examine or test any plant, vehicle, substance or other thing, or cause or require it to be examined or tested, or seize it or require its production for examination or testing; and

(f) require a person to produce a document, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and

(g) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information; and

(h) take photographs, films or audio, video or other recordings; and

(i) seize and retain, or issue a seizure order in respect of an explosive—

(i) that the authorised person reasonably suspects is not authorised; or

(ii) in order to prevent the explosive being used before it can be determined whether it is authorised or is an explosive that is not required to be authorised; and

(j) seize and retain, or issue a seizure order in respect of anything that the authorised person reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and

(k) require a person who the authorised person reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity and, if relevant to the contravention, the person's age; and

(l) require a person who the authorised person reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters; and

(m) require a person holding or required to hold a licence to produce it for inspection; and

(n) give a direction required in connection with the exercise of a power conferred by a paragraph above or otherwise in connection with the administration or enforcement of this Act.

(2) An authorised person may only use force under subsection (1)(a) to break into a place or vehicle to which this Division applies on the authority of a warrant or in circumstances where the authorised person is acting in the case of an emergency.

(3) In the exercise of powers under this Act, an authorised person may be assisted by such individuals as the authorised person considers necessary in the circumstances.

(4) An authorised person may require an occupier of a place or a person apparently in charge of any plant, vehicle or other thing to give to the authorised person, or an individual assisting the authorised person, such assistance as is reasonably required by the authorised person for the effective exercise of powers conferred by this Act.

Subdivision 3—Miscellaneous

58—Provisions relating to seizure

(1) A seizure order—

(a) must be in the form of a written notice given to the owner or person in control of the thing to which the order relates; and

(b) may be varied or discharged by further such written notice.

(2) If a seizure order is issued, a person who, knowing of the order, removes or interferes with the thing to which the order relates without the approval of an authorised person before the thing is dealt with under this section or the seizure order discharged is guilty of an offence.

Maximum penalty: $5 000.

(3) If an explosive has been seized or made the subject of a seizure order under section 57(1)(i), the following provisions apply:

(a) if an authorised person is satisfied that the explosive is an authorised explosive or is an explosive that is not required to be authorised—it must be released immediately;

(b) if an authorised person is satisfied that the explosive is unauthorised—the authorised person may dispose of it as the authorised person thinks fit or direct its disposal in a specified manner.

(4) Before exercising a power under subsection (3)(b), the authorised person must—

(a) give the owner of the explosive written notice of the proposed action and the reasons for the proposed action; and

(b) allow the owner of the explosive a reasonable opportunity to comment on the proposed action.

(5) Subject to this section, if any thing has been seized or made the subject of a seizure order under section 57(1)(j), the following provisions apply:

(a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or to a person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) if proceedings for an offence against this Act relating to the thing are instituted within the designated period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—

(i) order that it be forfeited to the Minister; or

(ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to the Minister or that the person to whom it was released or the defendant pay to the Minister an amount equal to its market value at the time of its seizure as the court thinks fit;

(c) if—

(i) proceedings are not instituted for an offence against this Act relating to the thing within the designated period after its seizure or the issuing of the seizure order; or

(ii) proceedings have been so instituted and—

(A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

(iii) in the case of a thing seized—the person from whom the thing was seized, or a person with legal title to it is entitled to recover from the Minister (if necessary, by action in a court of competent jurisdiction)—

(A) the thing itself, unless the Minister considers that to return the thing would be likely to result in undue danger to life or property or would not be in the public interest; or

(B) compensation of an amount equal to the market value of the thing at the time of its seizure; or

(iv) in the case of a thing subject to a seizure order—the order is discharged.

(6) If, in the opinion of the Regulator or the Commissioner of Police, storing an explosive seized under this Act pending proceedings for an offence against this Act relating to the explosive would result in an unacceptable level of danger, or there are no adequate facilities available for such storage, the following provisions apply:

(a) the Regulator or Commissioner of Police may direct that the explosive be destroyed, whether or not a person has been or is to be charged with an offence in relation to it;

(b) the explosive may be destroyed at the place at which it was seized or at any other suitable place;

(c) if a charge is laid, or is to be laid, for an offence in relation to the explosive, the Regulator or Commissioner of Police may direct that a person appointed or approved by the Regulator as an analyst for the purposes of this Act undertake an analysis of the explosive by means of testing, physical examination or visual inspection of the explosive, or of photographs or films of the explosive, or in any other manner the Regulator or Commissioner thinks fit (as the case may be).

(7) In this section—

designated period means 6 months or such longer period as a magistrate may, on application by the Minister, allow.

59—Offence to hinder etc authorised persons

A person who—

(a) hinders or obstructs an authorised person, or an individual assisting an authorised person, in the exercise of powers conferred by this Act; or

(b) refuses or fails to comply with a requirement or direction of an authorised person under this Act; or

(c) when required by an authorised person under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(d) falsely represents, by words or conduct, that the person is an authorised person,

is guilty of an offence.

Maximum penalty: $10 000.

Division 2—Improvement and prohibition notices

Subdivision 1—Improvement notices

60—Issue of improvement notices

(1) This section applies if an authorised person reasonably believes that a person—

(a) is contravening a requirement imposed by or under this Act (including a condition of a licence under this Act); or

(b) has contravened a requirement imposed by or under this Act (including a condition of a licence under this Act) in circumstances that make it likely that the contravention will continue or be repeated.

(2) The authorised person may issue a written notice (an ***improvement notice***) requiring the person to—

(a) remedy the contravention of a requirement imposed by or under this Act (including a condition of a licence under this Act); or

(b) prevent a likely contravention of a requirement imposed by or under this Act (including a condition of a licence under this Act) from occurring; or

(c) remedy the things or operations causing the contravention or likely contravention.

61—Contents of improvement notices

(1) An improvement notice must state—

(a) that the authorised person believes the person—

(i) is contravening a requirement imposed by or under this Act (including a condition of a licence under this Act); or

(ii) has contravened a requirement imposed by or under this Act (including a condition of a licence under this Act) in circumstances that make it likely that the contravention will continue or be repeated; and

(b) the provision or requirement imposed by or under this Act (including a condition of a licence under this Act) the authorised person believes is being, or has been, contravened; and

(c) briefly, how the provision or requirement imposed by or under this Act (including a condition of a licence under this Act) is being, or has been, contravened; and

(d) the day by which the person is required to remedy the contravention or likely contravention.

(2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.

(3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

(4) An improvement notice may include recommendations.

(5) It is not an offence to fail to comply with recommendations in a notice.

62—Compliance with improvement notice

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$250 000.

63—Extension of time for compliance with improvement notices

(1) This section applies if a person has been issued with an improvement notice.

(2) An authorised person may, by written notice given to the person, extend the compliance period for the improvement notice.

(3) However, the authorised person may extend the compliance period only if the period has not ended.

(4) In this section—

compliance period means the period stated in the improvement notice under section 62 and includes that period as extended under this section.

Subdivision 2—Prohibition notices

64—Power to issue prohibition notice

(1) This section applies if an authorised person reasonably believes that a safety risk arising out of a dangerous situation involving explosives exists or may exist.

(2) The authorised person may give a person a direction for the purposes of averting, eliminating or minimising the safety risk until an authorised person is satisfied that the matters that give or will give rise to the risk have been remedied.

(3) A direction may, for example, prohibit—

(a) the carrying on of an activity, or the carrying on of the activity in a specified way; or

(b) the continuation of the carrying on of an activity, or the carrying on of the activity in a specified way.

(4) The direction may be given orally, but must be confirmed by written notice (a ***prohibition notice***) issued to the person as soon as practicable.

65—Contents of prohibition notice

(1) A prohibition notice must state—

(a) that the authorised person believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and

(b) briefly, the activity or set of circumstances that the authorised person believes involves or will involve the risk and the matters that give or will give rise to the risk; and

(c) if relevant, the provision of this Act that the authorised person believes is being, or is likely to be, contravened.

(2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates.

(3) Without limiting section 64, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following:

(a) premises or a vehicle at which the activity is not to be carried out;

(b) anything that is not to be used in connection with the activity;

(c) any procedure that is not to be followed in connection with the activity.

(4) A prohibition notice may include recommendations.

(5) It is not an offence to fail to comply with recommendations in a notice.

66—Compliance with prohibition notice

The person to whom a direction is given under section 64(2) or a prohibition notice is issued must comply with the direction or notice.

Maximum penalty:

(a) in the case of an individual—$100 000;

(b) in the case of a body corporate—$500 000.

67—Remedial action

(1) This section applies if—

(a) a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice; or

(b) an authorised person is unable to issue a prohibition notice.

(2) The Regulator may take any remedial action the Regulator believes reasonable to make the situation safe.

(3) Before taking action under subsection (2) the Regulator must, if a prohibition notice has been issued, give written notice to the person to whom the prohibition notice was issued of—

(a) the Regulator's intention to take that action; and

(b) the person's liability for the costs of that action.

68—Costs of remedial or other action

The Regulator may recover the reasonable costs of any remedial action taken under section 67 from the person to whom the notice is issued.

Subdivision 3—General requirements applying to improvement and prohibition notices

69—Directions in notices

A direction included in a notice issued under this Division may—

(a) refer to a code of practice; and

(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

70—Changes to notice by authorised person

(1) An authorised person may make minor changes to a notice issued under this Division—

(a) for clarification; or

(b) to correct errors or references; or

(c) to reflect changes of address or other circumstances

(2) An authorised person may also, in accordance with section 63, extend the compliance period for an improvement notice.

71—Regulator may vary or cancel notice

Except as provided in section 70, a notice issued under this Division by an authorised person may only be varied or cancelled by the Regulator.

72—Formal irregularities or defects in notice

A notice issued under this Division is not invalid only because of—

(a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 87.

Division 3—Other matters

73—Self-incrimination

(1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—

(a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or

(b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

74—Notification of certain situations

(1) If a notifiable situation occurs, the person who caused or permitted the situation to occur must, as soon as reasonably practicable after becoming aware of the situation, notify the Regulator of the situation, its nature, the circumstances in which it occurred and the action taken to deal with it.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(2) A person is required to notify the Regulator of a notifiable situation despite the fact that to do so might tend to incriminate the person or make the person liable to a penalty.

(3) A person will be taken to have complied with a notification requirement under subsection (1), if the person gives the Regulator notice in the form determined by the Regulator.

(4) If a notifiable situation occurs, in relation to premises subject to, or connected with, a licence, the licence holder must ensure that records of the notifiable situation are—

(a) made and kept in accordance with the requirements determined by the Regulator; and

(b) made available to the Regulator at the Regulator's request.

(5) In this section—

notifiable situation means any of the following situations involving explosives:

(a) the death, serious injury or illness of an individual or a situation that had the potential to cause death, serious injury or illness to an individual;

(b) damage to property or the environment or a situation that had the potential to cause damage to property or the environment;

(c) the theft, attempted theft or loss of explosives, or any other situation that results in explosives being unaccounted for;

(d) the unauthorised use of, or interference with, explosives;

(e) any other situation that the person considers suspicious and that threatens the security of explosives.

75—Power to recall

(1) If, in the opinion of the Regulator, the supply or use of an explosive is unreasonably dangerous, the Regulator may direct that a particular explosive, or class of explosives, be recalled and specify the manner in which, and the period within which, the recall is to be conducted.

(2) A person who is required by a recall order to conduct a recall under this section must give written notice to the Regulator of the completion of the recall as soon as practicable after that completion.

Maximum penalty:

(a) in the case of an individual—$25 000 or imprisonment for 1 year;

(b) in the case of a body corporate—$125 000.

(3) A person to whom a direction is issued under this section must comply with the direction.

Maximum penalty:

(a) in the case of an individual—$25 000 or imprisonment for 1 year;

(b) in the case of a body corporate—$125 000.

76—Action in emergencies

(1) If an authorised person considers on reasonable grounds that a dangerous situation exists and that immediate action is required, the authorised person may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, eliminate or minimise safety risks.

(2) In the exercise of powers under this section, an authorised person has, in addition to the other powers of an authorised person under this Act, power to—

(a) enter and take possession of any place or vehicle (taking such action as is reasonably necessary for the purpose); and

(b) seize, retain, move or destroy or otherwise dispose of an explosive.

(3) Action may be taken or caused to be taken under this section whether or not a notice has been given to a person in relation to the dangerous situation under this Division.

77—Review of notices by Regulator

(1) Subject to this section, a person to whom a notice is issued under this Part may, within 14 days after the issue of the notice, apply to the Regulator for a review of the decision to issue the notice.

(2) The Regulator may determine an application for review as the Regulator thinks fit.

(3) A review must be determined within 28 days of the application being lodged with the Regulator.

(4) If a review is not determined within that period, the Regulator is to be taken to have confirmed the decision.

(5) As soon as practicable after reviewing the decision to issue a notice, the Regulator must give the applicant in writing—

(a) the decision on the review; and

(b) the reasons for the decision.

Part 8—Reviews

78—Reviews

(1) The following decisions are reviewable by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*:

(a) a decision of the Regulator on a reconsideration under section 50;

(b) a decision of the Regulator on a review under section 77.

(2) An application for review of a decision of the Regulator referred to in subsection (1) must be made within 1 month of the making of the decision, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).

Part 9—Miscellaneous

79—Exemptions

(1) The Regulator may, on application or on the Regulator's own initiative, exempt a person or class of persons from compliance with this Act or specified provisions of this Act.

(2) An exemption is subject to conditions stated in the notice of exemption.

(3) An exemption may be varied or revoked by further written notice to the holder of the exemption.

(4) A person who has been exempted from compliance with this Act or specified provisions of this Act must not contravene a condition of the exemption.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

80—Delegation by Minister or Regulator

(1) The Minister or Regulator may delegate to a person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this Act (except a function or power prescribed by the regulations).

(2) A delegation—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the delegator to act in a matter; and

(d) is revocable at will.

(3) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

81—Forfeiture of explosive on conviction

(1) A court may, on finding a person guilty of an offence against this Act or on declaring a person charged with an offence against this Act liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*, order that an explosive in relation to which the offence was committed (and its container) and that is the property of that person be forfeited to the Crown.

(2) An explosive or container forfeited to the Crown may be disposed of in such manner as the Minister may direct and, if an explosive or container is disposed of by way of sale, the proceeds of the sale will be paid into the Consolidated Account.

82—Prohibiting offender from involvement with explosives

(1) A court may, on finding a person guilty of an offence against this Act or on declaring a person charged with an offence against this Act liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*, order that the person is prohibited, to a specified extent for a specified period or until further order, from involvement in a specified activity involving explosives or specified explosives.

(2) A person who contravenes an order under this section is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$50 000 or imprisonment for 2 years, or both;

(b) in the case of a body corporate—$250 000.

83—Adverse publicity orders

(1) If a person is found guilty of an offence against this Act, the court may make an order (an ***adverse publicity order***) in relation to the person (the ***offender***) requiring the offender—

(a) to take either or both of the following actions within the period specified in the order:

(i) to publicise, in the way specified by the order, the offence, its consequences, the penalty imposed and any other related matter;

(ii) to notify a specified person or specified class of person, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and

(b) to give to the Regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

(2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

(3) The court must, in determining whether to make an adverse publicity order, take into account any material before the court relating to the effect that the taking of action or actions that the court proposes to specify in the order is likely to have on a person other than the offender.

(4) If the offender fails to give evidence to the Regulator in accordance with subsection (1)(b), the Regulator, or a person authorised in writing by the Regulator, may take the action or actions specified in the order.

(5) However, if—

(a) the offender gives evidence to the Regulator in accordance with subsection (1)(b); and

(b) despite the evidence, the Regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order,

the Regulator may apply to the court for an order authorising the Regulator, or a person authorised in writing by the Regulator, to take the action or actions.

(6) If the Regulator, or a person authorised in writing by the Regulator, takes an action or actions in accordance with subsection (4) or an order under subsection (5), the Regulator is entitled to recover from the offender an amount in relation to the reasonable expenses of taking the action or actions, as a debt, due to the Regulator.

84—False or misleading statements

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or records kept, under this Act.

Maximum penalty:

(a) if the person made the statement knowing that it was false or misleading—

(i) in the case of an individual—$10 000;

(ii) in the case of a body corporate—$50 000;

(b) in any other case—$5 000.

85—Statutory declaration

If information is required by or under this Act to be provided to the Minister or the Regulator, the Minister or Regulator may require that the information be verified by statutory declaration and, in that event, the information will not be taken to have been provided as required unless it has been verified in accordance with the requirements of the Minister or Regulator.

86—Confidentiality of information

(1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act.

(2) The person must not do any of the following:

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else;

(c) use the information or document for any purpose.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—

(a) about a person, with the person's consent; or

(b) that is necessary for the exercise of a power or function under this Act; or

(c) that is made or given by the Regulator or a person authorised by the Regulator if the Regulator reasonably believes the disclosure, access or use—

(i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or

(ii) is necessary for the administration or enforcement of another Act prescribed by the regulations; or

(iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or

(d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or

(e) that is required for the purpose of ensuring that emergency services and local government authorities are fully informed in relation to activities involving explosives; or

(f) that is made or given to an agency or instrumentality of this State, the Commonwealth or another State for the purposes of the performance of its functions; or

(g) that is made or given to a prescribed authority of a jurisdiction outside Australia for the purposes of the performance of its functions; or

(h) that is required or authorised under a law; or

(i) to a Minister.

(4) A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless—

(a) the disclosure is made with the consent of the complainant; or

(b) the disclosure is required under a law.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

87—Giving of notice

(1) A notice required or authorised by this Act to be given to a person by the Minister, the Regulator or an authorised person may be given—

(a) by delivering it personally to the person or an agent of the person; or

(b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

(c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting subsection (1), a notice required or authorised to be given to an applicant under this Act or to a licensee under this Act may be given—

(a) by posting it to the person at the address last provided to the Minister or Regulator by the person for that purpose; or

(b) by transmitting it to the person by email to the email address last provided to the Minister or Regulator by the person for that purpose; or

(c) in the case of a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth—in accordance with that Act.

88—General defence

(1) It will be a defence in criminal proceedings in respect of an alleged contravention of this Act, including—

(a) proceedings against a body corporate or an individual where conduct or a state of mind is imputed to the body or person under this Part; and

(b) proceedings against an officer of a body corporate under this Part,

if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.

(2) Without limiting subsection (1), the defence provided by that subsection includes the defence that the act or omission alleged to constitute the contravention was justified by the need to protect life, property or the environment in a situation of emergency and that the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.

(3) If a body corporate or other employer seeks to establish the defence provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof—

(a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and

(b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.

(4) A person who would, but for the defence provided by this section, have contravened a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of the issuing or enforcement of a notice under Part 7 Division 2.

89—Notice of defences

(1) A person who, in criminal proceedings, intends to rely on a defence under this Act may only do so if the person gives written notice of that intention to the Regulator.

(2) The notice must be given—

(a) if the proceedings are for a summary offence—within 28 days after the summons to answer the charge is served on the person; or

(b) if the proceedings are for a minor indictable offence where the charge is to be dealt with in the same way as a charge of a summary offence—not less than 28 days before the date for hearing of the charge; or

(c) in any other case—within 7 days after the person is committed for trial.

90—Proof of intention etc for offences

Subject to any express provision in this Act to the contrary, it will not be necessary to prove any intention or other state of mind in order to establish a contravention of this Act.

91—Imputation in proceedings of conduct or state of mind of officer, employee etc

(1) For the purposes of proceedings for an offence against this Act—

(a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of their actual, usual or ostensible authority will be imputed to the body corporate; and

(b) the conduct and state of mind of an employee or agent of an individual acting within the scope of their actual, usual or ostensible authority will be imputed to that individual.

(2) If—

(a) an individual is convicted of an offence against this Act; and

(b) the person would not have been convicted of the offence but for the operation of subsection (1),

the person is not liable to be punished by imprisonment for the offence.

(3) For the purposes of this section, a reference to ***conduct*** or ***acting*** includes a reference to failure to act.

92—Statement of officer evidence against body corporate

In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

93—Liability of officers of body corporate

(1) If a body corporate contravenes a provision of this Act, a person who is an officer of the body corporate is—

(a) subject to the general defence under this Part, guilty of a contravention of this Act; and

(b) subject to subsection (2), liable to the same penalty as may be imposed for the principal contravention when committed by an individual.

(2) If an officer of a body corporate is convicted of an offence under subsection (1), the officer is not liable to be punished by imprisonment for the offence.

(3) If a body corporate contravenes a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of contravening that provision.

(4) An officer of a body corporate may be prosecuted and convicted of an offence pursuant to subsection (1) or (3) whether or not there has been a finding by a court that the body corporate committed the contravention.

94—Continuing offences

(1) If an offence against 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 fixed 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 the 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 fixed 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 despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

95—Commencement of proceedings for summary offences

(1) Proceedings for a summary offence against this Act may only be commenced by the Regulator.

(2) Proceedings for a summary offence against this Act may be commenced—

(a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Criminal Procedure Act 1921*; or

(b) in any other case—at any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Director of Public Prosecutions, at any later time within 6 years after the date of the alleged commission of the offence.

(3) An apparently genuine document purporting to be signed by the Director of Public Prosecutions authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

96—Evidence

(1) In proceedings, a certificate apparently executed by the Minister or the Regulator certifying as to a matter relating to—

(a) an authorisation; or

(b) a licence; or

(c) an approval; or

(d) the appointment of an authorised person or analyst; or

(e) an exemption; or

(f) a delegation; or

(g) a notice; or

(h) an application; or

(i) the receipt or non-receipt of information,

under this Act constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) An allegation on an information that a specified substance or article was an explosive of a specified kind will be accepted as proved in the absence of proof to the contrary.

(3) In proceedings, a certificate apparently executed by a person appointed or approved by the Regulator as an analyst for the purposes of this Act and setting out details as to an analysis carried out by or under the direction of the person and the results of the analysis constitutes proof, in the absence of proof to the contrary, of the matters so certified.

97—Recovery of administrative and technical costs associated with contraventions

(1) If a person has contravened this Act and an authorised person—

(a) has taken action to—

(i) investigate the contravention; or

(ii) issue a notice under this Part in respect of the contravention; or

(iii) ensure that the person has complied with requirements imposed in relation to the contravention by a notice under Part 7 (including taking action or causing action to be taken under Part 7); or

(b) has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations or analyses or in storing or disposing of explosives,

the Regulator may, by written notice served on the person, require the person to pay to the Regulator—

(c) in respect of action to investigate the contravention or to issue a notice under Part 7 in respect of the contravention—a fee fixed by, or calculated in accordance with, the regulations; or

(d) in respect of action to ensure that the person has complied with requirements imposed in relation to the contravention by a notice under Part 7—the reasonable costs and expenses incurred in taking that action; or

(e) in respect of costs and expenses incurred in taking samples or in conducting tests, examinations or analyses or in storing or disposing of explosives—the reasonable costs and expenses so incurred.

(2) Subject to subsection (3), an amount payable to the Regulator in accordance with a notice under this section must be paid within the period specified in the notice.

(3) On application by a person who has been served a notice under this section, the Regulator may, by notice in writing—

(a) extend the time for payment of an amount payable in accordance with the notice; or

(b) waive payment of such an amount or reduce the amount payable.

(4) A person who fails to pay an amount payable to the Regulator in accordance with this section is guilty of an offence.

Maximum penalty: $1 250.

Expiation fee: $500.

(5) If a notice is issued under this section in respect of a contravention and—

(a) the contravention is the subject of an appeal; or

(b) the notice requires payment of an amount in respect of the issue of a notice under Part 7 and the notice is the subject of a review or appeal,

the notice is suspended until the review or appeal has been determined (but if it is found that the contravention was committed or that the notice was properly issued, as the case may be, the notice will have effect as if the period for payment specified in the notice commenced on the day on which the review or appeal was determined).

(6) If an amount payable to the Regulator is not paid in accordance with this section, the amount may be recovered as a debt by the Regulator.

98—Cost recovery for dealing with dangerous situations

(1) In this section—

agency or instrumentality of the Crown means a body corporate (other than a council) established for a public purpose by, or in accordance with, an Act;

council means a council constituted under the *Local Government Act 1999*;

government authority means—

(a) an administrative unit of the Public Service; or

(b) an agency or instrumentality of the Crown; or

(c) a council;

principal officer, in relation to a government authority, means—

(a) in the case of an administrative unit of the Public Service—the chief executive of that unit; or

(b) in the case of an agency or instrumentality of the Crown—the chief executive of that agency or instrumentality or a person designated by the regulations as principal officer of that agency or instrumentality; or

(c) in the case of a council—the chief executive officer of that council.

(2) This section applies to action taken to avert, eliminate or minimise safety risks arising from a dangerous situation.

(3) If a government authority reasonably incurs costs or expenses as a result of taking action to which this section applies or causing such action to be taken, the costs or expenses are recoverable as a debt in a court of competent jurisdiction.

(4) The costs or expenses may be recovered by—

(a) in the case of costs or expenses incurred by a council—the council; or

(b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown; or

(c) in any other case—the Crown.

(5) If more than 1 government authority takes action to which this section applies or causes such action to be taken in relation to the same incident, the recovery of costs or expenses incurred by 1 government authority (including an award or judgment in relation to those costs or expenses) does not preclude the recovery of costs and expenses incurred by the other government authorities.

(6) The costs or expenses may be recovered (jointly or severally) from—

(a) the person who caused the dangerous situation (otherwise than as an employee or agent of another person); or

(b) the person who was, at the time the action was taken, the owner of the explosives involved; or

(c) the person who was, at the time the action was taken, in control or possession of the explosives involved.

(7) For the purposes of subsection (6)—

(a) an explosive in the control or possession of an employee or agent while acting in the course of employment will be taken to be in the control or possession of the employer or principal; and

(b) an act or omission of an employee or agent while acting in the course of employment will be taken to be the act or omission of the employer or principal,

unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent.

(8) However, costs and expenses are not recoverable against a person who establishes—

(a) that the dangerous situation was due to the act or default of another person, or to some cause beyond the person's control; and

(b) that the person could not by the exercise of reasonable diligence have prevented the occurrence of the dangerous situation; and

(c) that the dangerous situation was not attributable to an act or omission of an employee or agent of the person at the time.

(9) This section does not exclude or derogate from any right to recover an amount in respect of costs or expenses that exists apart from this section but the Crown or a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on rights that exist apart from this section.

(10) For the purposes of this section, a body that forms part, or is established for the purposes, of an agency or instrumentality of the Crown is not to be regarded as itself constituting a separate agency or instrumentality.

(11) In proceedings under this section, a document apparently signed by the principal officer of the relevant government authority certifying as to the incurring of costs or expenses as a result of action to which this section applies, and as to the amount of those costs or expenses, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

99—Government magazine

(1) The Minister may by notice in the Gazette declare any place to be a Government magazine.

(2) The Regulator is responsible for the control and supervision of a Government magazine.

(3) The Regulator or an authorised person may direct 1 or more of the following:

(a) that explosives be deposited in a Government magazine to be stored—

(i) for a period determined by the Regulator or authorised person (as the case requires); or

(ii) indefinitely if the Regulator so determines;

(b) that explosives stored at the Government magazine be destroyed.

(4) The prescribed fee for the storage, rent, destruction or other costs associated with explosives deposited in a Government magazine may—

(a) be payable by the person depositing (or directed to deposit) the explosives; and

(b) be recoverable from the person that deposited (or was directed to deposit) the explosives as a debt due to the Regulator; and

(c) be set on a differential basis depending on the type or quantity of explosives, the length of time that they are in storage and the cost of their destruction.

100—Harbors and vessels

(1) The Regulator may, by notice in the Gazette, publish standards (***Regulator standards***) relating to—

(a) the arrival, movement or presence of vessels carrying explosives in harbors; and

(b) the unloading and loading of explosives in harbors; and

(c) any other matter relating to the control of explosives on or in relation to vessels or harbors.

(2) Without limiting subsection (1), the Regulator standards may make provision (including limitations and prohibitions) relating to—

(a) vessels carrying explosives, including—

(i) the requirements to be observed by operators of vessels carrying explosives; and

(ii) the imposition of notification requirements relating to operators of vessels carrying explosives; and

(b) vessels nearby or adjacent to vessels carrying explosives; and

(c) harbors; and

(d) the limitation of quantities or the prohibition of explosives in relation to harbors and vessels.

(3) A person who fails to comply with the Regulator standards is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(4) The Regulator standards may—

(a) be of general or limited application; and

(b) provide that a matter or thing in respect of which the standards apply is to be determined according to the discretion of the Regulator, or any other person determined or approved by the Regulator; and

(c) provide for exemptions to be granted (with or without conditions) by the Regulator, or any other person authorised by the Regulator; and

(d) apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the standards as in force from time to time or as in force at a specified time.

(5) The Regulator may, by subsequent notice in the Gazette, vary or revoke the Regulator standards.

(6) A notice published in the Gazette under this section may come into operation on the day on which it is published or on a later day or days specified in the notice.

(7) If a code, standard or other document is applied, adopted or incorporated in the Regulator standards—

(a) a copy of the code, standard or other document must be published on a website determined by the Regulator; and

(b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document apparently certified by or on behalf of the Regulator as a true copy of the code, standard or other document.

(8) Sections 10 (other than subsection (1)) and 10A of the *Legislative Instruments Act 1978* apply to a standard published under subsection (1) or (5) (and a reference in those provisions to a regulation will be taken to be a reference to such a standard).

101—Prohibition of explosives being transported on prescribed roads

(1) A vehicle must not be driven or towed on a portion of a road prescribed by regulation if the vehicle contains or is otherwise transporting an explosive of a prescribed kind that exceeds the prescribed quantity.

(2) If a vehicle is driven or towed in contravention of subsection (1), the driver and the owner and the operator of the vehicle are each guilty of an offence.

Maximum penalty: $10 000.

(3) In this section—

driver, ***operator*** and ***owner*** of a vehicle have the same meaning as in the *Road Traffic Act 1961*.

102—Compulsory acquisition of land

(1) The Minister may acquire land under this section where the Minister considers that the acquisition of the land is reasonably necessary for the construction and maintenance of—

(a) a government magazine; or

(b) any other facility to test or hold explosives.

(2) The Minister may only act under subsection (1) if the Minister is acting on the advice of the Regulator.

(3) The *Land Acquisition Act 1969* applies to the acquisition of land in pursuance of this section.

103—Requirement to return licence on request

A licensee must, at the request of the Regulator and within the period stated by the Regulator, return the licence to the Regulator in order for the licence to be replaced or altered to record action under this Act.

Maximum penalty: $1 250.

Expiation fee: $160.

104—Regulations and fee notices

(1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may—

(a) provide for the payment, recovery or waiver of fees prescribed by fee notice; and

(b) prescribe, or provide for the Regulator to prescribe, forms for the purposes of this Act; and

(c) impose fines, not exceeding $25 000 for offences against the regulations; and

(d) fix expiation fees, not exceeding $5 000 for alleged offences against the regulations and sections of the Act, specified by the regulations.

(3) Regulations under this Act may—

(a) be of general application or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Regulator; and

(d) exempt, or provide for the Regulator to exempt, a specified person, explosive or activity, or class of persons, explosives or activities, from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions; and

(e) provide for the designation of persons who are authorised to give expiation notices; and

(f) include defences to offences against the regulations and include evidentiary provisions to facilitate proof of contraventions of the regulations for the purposes of proceedings for offences; and

(g) include provisions of a savings or transitional nature consequent on the enactment of this Act.

(4) Regulations under this Act may impose the requirement to notify or give notice to the Regulator of certain prescribed activities, events or occurrences relating to explosives in circumstances prescribed by the regulations.

(5) Regulations under this Act may prescribe a scheme for the sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.

(6) Regulations under this Act may prescribe a scheme relating to the granting to persons who hold a licence under a corresponding law (an ***interstate licence***) a licence of a kind or class under this Act that corresponds to the interstate licence.

(7) Regulations under this Act may provide for fees that vary or are determined by the Minister or the Regulator according to factors specified in the regulations.

(8) Regulations under this Act may refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from time to time.

(9) If a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at a prescribed office; and

(b) evidence of the contents of the code or standard may be given in legal proceedings by production of a document apparently certified by the Minister or the Regulator to be a true copy of the code or standard.

(10) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

Schedule 1—Amendments, repeals and transitional provisions

Part 1—Amendment of *Tattooing Industry Control Act 2015*

1—Amendment of section 21—Offence to possess certain items in premises where tattooing services provided

Section 21(3), definition of ***prescribed item***, (b)—delete "*Explosives Act 1936*" and substitute:

Explosives Act 2024

2—Amendment of section 22—Further powers of police officers—random weapon and explosive searches

Section 22(5)—delete "*Explosives Act 1936*" and substitute:

Explosives Act 2024

Part 2—Amendment of *Work Health and Safety Act 2012*

3—Amendment of section 4—Definitions

Section 4, definition of ***corresponding WHS law***, (b)—delete paragraph (b) and substitute:

(b) the *Explosives Act 2024*; or

Part 3—Repeals

4—Repeal of *Explosives Act 1936*

The *Explosives Act 1936* is repealed.

5—Repeal of regulations under *Explosives Act 1936*

All regulations made under the *Explosives Act 1936* are repealed.

Part 4—Transitional provisions

6—Preliminary

In this Part—

relevant day means the day on which this Part comes into operation;

repealed Act means the *Explosives Act 1936*.

7—Licences and conditions

(1) A licence in force under the repealed Act immediately before the commencement of this clause will be taken to be a licence under this Act held by the person to whom the licence under the repealed Act was issued and authorising the activities authorised by the licence under the repealed Act.

(2) The licence under this Act is subject to the same conditions as the licence under the repealed Act and will expire on the date on which the licence under the repealed Act would have expired.

(3) If the same person holds more than 1 licence, the licences may, at the Regulator's discretion on renewal under this Act, be consolidated into 1 licence.

8—Permits to purchase explosives

(1) A permit to purchase explosives in force under the repealed Act immediately before the commencement of this clause (see Part 14 of the *Explosives Regulations 2011*) will be taken to be a licence authorising the acquisition of explosives under this Act.

(2) The licence under this Act is subject to the same conditions as the permit under the repealed Act and will expire on the date on which the permit under the repealed Act would have expired.

9—Register

An explosive that was classified by the Director under the repealed Act immediately before the commencement of this clause will be taken to be authorised under Part 4 of this Act and details relating to the classification are to be entered on the register.

10—Appointment of authorised persons

(1) On the relevant day, an individual holding office as an inspector under the repealed Act will be taken to have been appointed as an authorised person under this Act.

(2) An identity card held by an inspector under or for the purposes of the repealed Act immediately before the relevant day will be taken to be an identity card furnished by the Regulator under section 53 of this Act.

11—Functions and powers of authorised persons

(1) An authorised person may, on or after the relevant day, perform a function or exercise a power under this Act in relation to anything arising under or relevant to the repealed Act before the relevant day (and this Act will apply in relation to the performance or exercise of such a function or power as if a reference to this Act included a reference to the repealed Act).

(2) Without limiting subclause (1)—

(a) a reference in this Act to a contravention of this Act will be taken to include a reference to a contravention of the repealed Act; and

(b) a reference in this Act to an offence against this Act will be taken to include a reference to an offence against the repealed Act.

(3) Any action taken or information acquired under this Act (including on account of the operation of this clause) may be used for the purposes of the repealed Act (insofar as it may be relevant to an act, omission or circumstance occurring before the relevant day).

(4) Nothing in this clause affects or limits any action that may be taken under or with respect to the repealed Act by virtue of the operation of any other Act or law.

12—Exemptions

(1) Subject to this clause, an exemption in force under the repealed Act immediately before the relevant day will continue in force for the purposes of this Act to an extent that corresponds to the extent of the exemption under the repealed Act.

(2) An exemption under subclause (1)—

(a) may be—

(i) modified from time to time as the Regulator thinks fit; and

(ii) revoked at any time by the Regulator; and

(b) unless sooner revoked, will expire on the first anniversary of the relevant day.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2024	38	*Explosives Act 2024*	19.9.2024	uncommenced
2026	**9**	***Statutes Amendment (Industrial Relations Portfolio) Act 2026***	**10.9.2026**	**Pt 2 (s 3)—10.9.2026: s 2**

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Pt 1		
s 2		
s 2(1)	s 2 redesignated as s 2(1) by 9/2026 s 3	10.9.2026
s 2(2)	inserted by 9/2026 s 3	10.9.2026