



New South Wales

## Explosives Bill 2003

### Explanatory note

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

This Bill is cognate with the *Occupational Health and Safety Amendment (Dangerous Goods) Bill 2003*.

### Overview of Bill

The handling of dangerous goods (including explosives) is currently regulated under the *Dangerous Goods Act 1975* and the regulations under that Act. This legislation requires the keeping, conveyance and use of dangerous goods to be licensed by the WorkCover Authority. The legislation contains special provisions that deal specifically with the licensing of explosives. Those provisions include a role for the Commissioner of Police in determining whether to grant a licence.

The *Dangerous Goods Act 1975* and the regulations under that Act are to be repealed under the proposed *Occupational Health and Safety Amendment (Dangerous Goods) Act 2003*. Under that proposed Act, the regulation of larger

---

quantities of certain dangerous goods is to take place under the *Occupational Health and Safety Act 2000* (whether or not those dangerous goods are at places of work).

The objects of this Bill are:

- (a) to provide for the regulation and control of the handling of explosives and explosive precursors by requiring a licence to handle explosives and explosive precursors and also by enabling regulations to be made under the proposed Act containing provisions governing the handling of explosives and explosive precursors, and
- (b) to provide for the regulation and control of other dangerous goods in circumstances that will not be covered by the *Occupational Health and Safety Act 2000* by enabling regulations to be made under the proposed Act with respect to those matters.

## Outline of provisions

### **Part 1 Preliminary**

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** provides a meaning for the term *regulatory authority*. The WorkCover Authority is generally the regulatory authority for the purposes of the proposed Act. However, another public authority may be declared by the regulations to be the regulatory authority for a specified matter (subject to such conditions or limitations as are specified in the regulations).

**Clause 5** provides that the proposed Act does not apply to the transport of dangerous goods by road or rail, or any associated activity or matter, that is regulated by the *Road and Rail Transport (Dangerous Goods) Act 1997*.

### **Part 2 Offences relating to explosives**

**Clause 6** provides that a person must be licensed to handle an explosive or explosive precursor if the regulations require it. The proposed offence is punishable by a maximum penalty of 500 penalty units (currently \$55,000) in the case of a corporation or 250 penalty units (currently \$27,500) or imprisonment for 12 months, or both, in the case of an individual.

**Clause 7** requires a person conveying explosives at all times to take all precautions as are necessary to prevent access to the explosives by persons not lawfully entitled to have access to the explosives. The proposed offence is punishable by a maximum penalty of 500 penalty units (currently \$55,000) in the case of a corporation or 250 penalty units (currently \$27,500) in the case of an individual.

**Clause 8** prohibits the negligent handling of explosives in such a manner or in such circumstances as to endanger or be likely to endanger the life of any person, or to cause or be likely to cause injury to any person, or to damage or be likely to cause damage to any property belonging to any other person. The proposed offence is punishable by a maximum penalty of 500 penalty units (currently \$55,000) in the case of a corporation or 250 penalty units (currently \$27,500) or imprisonment for 12 months, or both, in the case of an individual.

**Clause 9** prohibits the selling or other supply of explosives to persons under the age of 18 years. The proposed offence is punishable by a maximum penalty of 50 penalty units (currently \$5,500). A person is not guilty of the offence under the proposed section if the person satisfies the court that the person believed on reasonable grounds that the minor concerned had attained the age of 18 years or the minor concerned had purchased or otherwise received the explosive in the course of the minor's employment.

### **Part 3 Explosives licences**

**Clause 10** provides that licences authorising the carrying out of an activity that constitutes handling an explosive or explosive precursor may be granted and otherwise dealt with in accordance with proposed Part 3. The licences may be granted or varied so as to cover one or more activities involving explosives or explosive precursors.

**Clause 11** provides that licences are to be granted by the regulatory authority.

**Clause 12** provides that Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* applies to and in respect of a licence under the proposed Act with certain modifications.

**Clause 13** provides that the regulatory authority may request the Commissioner of Police to furnish it with a report in respect of certain matters relating to applicants for the grant or renewal of licences and holders of licences. For example, whether such a person has been found guilty or convicted of certain offences, whether the person is the subject of a firearms prohibition order within the meaning of the *Firearms Act 1996*, whether the person has a history of violence or threats of violence or whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant or

licence holder. The Commissioner of Police is to investigate the person to which the request relates and furnish to the regulatory authority a report on the results of that investigation.

**Clause 14** deals with conditions of licences.

**Clause 15** prohibits the holder of a licence from contravening any condition to which the licence is subject. The offence carries a maximum penalty of 50 penalty units (currently \$5,500).

**Clause 16** deals with the duration of licences.

**Clause 17** deals with fees relating to licences.

**Clause 18** creates a number of offences relating to licences, including prohibitions against a person pretending to be the holder of a licence, providing any information or producing any document for the purpose of obtaining a licence that the person knows is false or misleading in a material particular or, with intent to deceive, forging or altering a licence. The offences carry a maximum penalty of 50 penalty units (currently \$5,500).

**Clause 19** provides that the regulations may make provision for or with respect to licences, including the classes or types of licence, applications for licences, the eligibility of applicants (including age, qualifications, knowledge, experience, training and health), the testing or examination of applicants or the holders of licences to determine whether they are, or continue to be, eligible to hold a licence and other relevant matters.

**Clause 20** deals with the circumstances and manner in which a licence may be suspended.

**Clause 21** deals with the circumstances and manner in which a licence may be cancelled.

**Clause 22** is a special provision that deals with the circumstances in which a licence may be suspended or cancelled where the regulatory authority believes that the holder of a licence cannot be trusted to have access to explosives or explosive precursors because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) or the regulatory authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence.

**Clause 23** prohibits the holder of a licence that has been suspended or cancelled from using the licence and requires the holder to deliver the licence to the regulatory authority as soon as practicable after the licence is suspended or cancelled. The offence carries a maximum penalty of 10 penalty units (currently \$1,100).

**Clause 24** deals with situations where a person who is aggrieved with a decision under the proposed Act or the regulations relating to a licence may apply to the Administrative Decisions Tribunal for a review of the decision.

## **Part 4 Administration**

**Clause 25** provides for the appointment of inspectors.

**Clause 26** provides that every inspector is to be issued with an identification card.

**Clause 27** provides that certain provisions of the *Occupational Health and Safety Act 2000* that set out the powers of inspectors under that Act extend to the exercise of powers in connection with the proposed Act and any regulations under it.

**Clause 28** prohibits persons from obstructing, hindering or impeding an inspector in the exercise of the inspector's functions under the proposed Act, or intimidating or threatening or attempting to intimidate an inspector in the exercise of the inspector's functions under the proposed Act. The offence is punishable by a maximum penalty of 750 penalty units (currently \$82,500) in the case of a corporation or 225 penalty units (currently \$24,750) in the case of an individual.

## **Part 5 Miscellaneous**

**Clause 29** provides that the proposed Act binds the Crown.

**Clause 30** provides that any fees paid to the WorkCover Authority as the regulatory authority under the proposed Act or any regulations under it are to be paid into the WorkCover Authority Fund under the *Workplace Injury Management and Workers Compensation Act 1998*.

**Clause 31** provides that regulations may be made that make provision for or with respect to the control and regulation of dangerous goods not regulated under the *Occupational Health and Safety Act 2000*.

**Clause 32** provides that proceedings for offences under the proposed Act or any regulations under it may be dealt with summarily before a Local Court or the Industrial Relations Commission in Court Session and may be instituted within 2 years after the act or omission alleged to constitute the offence.

**Clause 33** deals with the situations where a director or manager of a corporation is taken to have contravened a provision of the proposed Act or any regulations under it if the corporation has committed such a contravention.

**Clause 34** enables penalty notices to be issued for prescribed offences against the proposed Act or any regulations under it.

**Clause 35** restricts the disclosure of information obtained in connection with the administration or execution of the proposed Act.

**Clause 36** provides that regulations may be made by the Governor for carrying out or giving effect to the proposed Act. Specifically, regulations may be made for or with respect to the control and regulation of explosives and explosive precursors.

**Clause 37** is a formal provision giving effect to Schedule 1 (Savings, transitional and other provisions).

**Clause 38** provides for the review 5 years after its assent of the proposed Act to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings and transitional provisions, including provisions allowing regulations of a savings and transitional nature to be made, provisions saving the effect of existing licences and permits relating to explosives, provisions dealing with pending proceedings before the Administrative Decisions Tribunal and provisions deferring the provisions of the *Licensing and Registration (Uniform Procedures) Act 2002* relating to electronic applications for licences until a day to be appointed by proclamation.