



New South Wales

Explosives Regulation 2021

under the

Explosives Act 2003

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Explosives Act 2003*.

Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Explosives Regulation 2013*, which will be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation makes provision for the following—

- (a) security clearances, including the grant and cancellation of security clearances,
- (b) licences to handle explosives, including the types of licences, requirements for obtaining licences and certain exemptions from the requirement to hold a licence,
- (c) the classification of explosives,
- (d) safety and security measures relating to the handling, manufacturing, supply, storage, transport and disposal of explosives,
- (e) powers of inspectors and police in relation to explosives, including the service of penalty notices for offences,
- (f) other miscellaneous matters.

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	6
2 Commencement	6
3 Interpretation	6
4 Prescription of explosives	6
5 Prescription of explosive precursors	6
6 Regulatory authority for mining workplaces	6
7 Persons to co-operate to discharge duties	7
8 Classification of detonators	7
Part 2 Security clearances	
9 Security clearance required to handle explosives or explosive precursor	8
10 Exceptions from requirement to hold security clearance	8
11 Regulatory authority may grant security clearances	8
12 Grounds for refusing security clearance	8
13 Suspension of security clearance	9
14 Cancellation of security clearance	9
15 Notice of suspension or cancellation to other relevant persons	9
Part 3 Licences	
Division 1 Activities requiring licences	
16 Activities requiring licences	11
17 Natural person must hold security clearance	11
18 Responsible person for corporation must hold security clearance	11
19 Nomination of responsible person	11
20 Authority conferred by licence extends to other relevant persons	12
Division 2 Types of licences	
21 Types of licences	12
22 Licence to manufacture	12
23 Licence to import	13
24 Licence to supply	13
25 Licence to transport by vehicle	13
26 Licence to transport by vessel	14
27 Licence to store	14
28 Blasting explosives user's licence	14
29 Pyrotechnician's licence	15
30 Fireworks (single use) licence	15
31 Licence to use security sensitive dangerous substances	15
32 Matters that may be specified in licence	15
Division 3 Applications for licences	
33 Applications for licences	15
34 Security clearance not a prerequisite to obtaining a fireworks (single use) licence	16
35 Security plan	16

public consultation draft

Explosives Regulation 2021 [NSW] Contents

	Page
36 Safety management plan	16
37 Grounds for refusing a licence	16
38 Additional eligibility requirements—blasting explosives user's licence	17
39 Additional eligibility requirements—pyrotechnician's licence and fireworks (single use) licence	17
40 Additional eligibility requirements—licences relating to security sensitive dangerous substances	17
41 Licence fee	18
42 Licence holder must remain eligible for licence	18
43 Notice of cancellation or suspension to other relevant persons	18
Division 4 Exceptions from licence requirements—inspectors, police and others	
44 Handling of explosives by inspectors and other authorised officers	18
45 Handling of explosives by police explosives technicians	18
46 Transport of explosives by police officers	19
47 Storage of explosives at police station	19
48 Possession and storage of certain explosives by emergency services	19
Division 5 Exceptions from licence requirements—miscellaneous	
49 Power device cartridges, distress signals, life-saving appliances and toy fireworks	19
50 Ammunition	20
51 Import of certain explosives	21
52 Transport of explosives by private road	21
53 Voyages outside the State	21
54 Activities in port operational areas	21
55 Use of small quantities of security sensitive ammonium nitrate	21
Part 4 Prohibited and authorised explosives	
Division 1 Offences	
56 Prohibited and authorised explosives—meaning	22
57 Prohibited explosives not to be handled	22
58 Use and modification of authorised explosives for unauthorised purposes	22
59 Falsely representing explosives as authorised	22
60 Exception for research and development	22
Division 2 Registration of explosives	
61 Registration of authorised explosives	23
62 Application to have explosives registered as authorised	23
63 Registration details	23
64 Alteration of register	24
65 Revocation of registration	24
66 Publication of register	24
Part 5 Safety and security measures	
Division 1 Compliance with codes and standards	
67 Duty to comply with certain standards or codes	25

public consultation draft

Explosives Regulation 2021 [NSW] Contents

	Page
68 Application of codes and standards	25
69 Duty to ensure others comply with Australian Explosives Code	25
70 Prohibition on entering contracts, etc that are not in accordance with the Australian Explosives Code	25
Division 2 Compliance with plans submitted to regulatory authority	
71 Approved plans	26
72 Compliance with security plan	26
73 Explosives to be accessed only as authorised by security plan	26
74 Compliance with safety management plan	26
Division 3 Manufacture, supply and import of explosives	
75 Definition—authorised supplier	26
76 Design of building where explosives manufactured	27
77 Explosives to be supplied only to persons authorised to receive explosives	27
78 Supplier to keep supply records	27
79 Retention of supply records	27
80 Supply records to be made available for inspection	28
81 Packaging and marking of explosives and explosive precursors	28
82 Consignment of explosives and explosive precursors	29
83 Export of explosives and explosive precursors	29
84 Import of explosives and explosive precursors	30
85 Transport of imported explosives or explosive precursors	30
86 Sale of distress signals, power device cartridges or ammunition	30
Division 4 Storage and transport of explosives	
87 Storage	31
88 Storage of explosives that have been prepared for use	32
89 Storage of explosives in rail yards or sidings	32
90 Storage of explosives in stationary vehicles	33
91 Storage or transport of explosives of more than one hazard division together	33
92 Transport of explosives by vehicles in certain areas	33
93 Emergency plan required if large quantities of explosives or explosive precursors are stored	34
94 Carriage of explosives on public passenger vehicles	35
95 Person transporting explosives to avoid hazards	35
96 Smoking prohibited on or near vehicles used to transport explosives	36
97 Additional requirements—licence to transport by vehicle	36
Division 5 Use of explosives	
98 Setting of explosives	36
99 Use of distress signals for other purposes	37
Division 6 Disposal of explosives	
100 Disposal under blasting explosives user's licence	37
101 Explosives must be disposed of safely	37
102 Explosives not to be discarded	37
103 Restrictions on vacating explosives site	37

public consultation draft

Explosives Regulation 2021 [NSW]
Contents

	Page
Division 7 Other miscellaneous safety and security measures	
104 Access to explosives or explosive precursors by unauthorised persons	38
105 Notification of loss or theft of explosives or explosive precursors	38
106 Notification of serious incidents involving explosives or explosive precursors	38
107 Entry to place where explosives or explosive precursors manufactured or stored	39
108 Fire hazards	40
109 Interference with signs and labels	40
Part 6 Enforcement powers	
110 Certain powers of inspectors and police officers to give directions	41
111 Powers of inspectors in relation to explosives that have been set	41
112 Evidence of licence or security clearance to be produced	41
Part 7 Miscellaneous	
113 Onus of proof concerning reasonable excuse	43
114 Exemptions for particular persons on application	43
115 Exemptions for classes of persons or things	43
116 Register of exemptions	43
117 Regulatory authority's power to waive, reduce, postpone or refund fees	44
118 Savings	44
Schedule 1 Security sensitive dangerous substances	45
Schedule 2 Penalty notice offences	46
Dictionary	49

Explosives Regulation 2021

under the

Explosives Act 2003

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Explosives Regulation 2021*.

2 Commencement

This Regulation commences on 1 September 2021 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Explosives Regulation 2013*, which is repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Interpretation

The Dictionary defines words used in this Regulation.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Prescription of explosives

For the purposes of the Act, section 3(1), definition of *explosive*, the following are prescribed—

- (a) dangerous goods of Class 1 within the meaning of the ADG Code or the Australian Explosives Code,
- (b) goods too dangerous to be transported, within the meaning of the ADG Code or the Australian Explosives Code, that can produce an explosive or pyrotechnic effect,
- (c) articles or substances that, when manufactured, mixed or assembled, can produce an explosive or pyrotechnic effect.

5 Prescription of explosive precursors

For the purposes of the Act, section 3(1), definition of *explosive precursor*, the following are prescribed—

- (a) desensitised explosives,
- (b) security sensitive dangerous substances.

6 Regulatory authority for mining workplaces

For the purposes of the Act, section 4(2), the Secretary of Regional NSW is declared to be the regulatory authority for mining workplaces, but only in relation to the following—

- (a) the examination and inspection of explosives or explosive precursors,

- (b) notification of loss of explosives or explosive precursors,
- (c) notification of serious incidents,
- (d) the investigation of breaches of the Act, this Regulation and licences under the Act,
- (e) the appointment of inspectors under the Act in relation to mining workplaces.

7 Persons to co-operate to discharge duties

If more than 1 person has a duty or responsibility for a particular matter under this Regulation—

- (a) each person keeps the duty and responsibility for the matter, and
- (b) the duty or responsibility must be discharged in a coordinated way.

8 Classification of detonators

For the purposes of this Regulation, a detonator is taken to be of Classification Code 1.1B, unless the detonator is packaged in accordance with the requirements of Classification Code 1.4B or 1.4S.

Part 2 Security clearances

9 Security clearance required to handle explosives or explosive precursor

Except as provided by section 10, a natural person is required to hold a security clearance that is in force to handle an explosive or explosive precursor.

10 Exceptions from requirement to hold security clearance

(1) Fireworks

A natural person is not required to hold a security clearance to handle display fireworks if the handling is authorised by a fireworks (single use) licence.

(2) Supervised handlers

A natural person is not required to hold a security clearance to handle an explosive or explosive precursor if—

- (a) the person is handling the explosive or explosive precursor under the immediate supervision of a person who holds a security clearance that is in force, and
- (b) the person is employed or engaged by, or being instructed in the handling of explosives by, the holder of a licence that authorises the holder to handle the explosive or explosive precursor, and
- (c) the person is handling the explosive or explosive precursor in the way authorised by the licence.

(3) Police officers

A police officer is not required to hold a security clearance to handle an explosive or explosive precursor if the handling is carried out during of the officer's duties.

(4) Inspectors, authorised officers and emergency workers

A person who is an inspector, authorised officer or officer of an emergency service is not required to hold a security clearance to handle an explosive or explosive precursor in a way for which the person is not required to be authorised by licence under Part 3, Division 4.

(5) Other exceptions from security clearance requirements

A natural person is not required to hold a security clearance to handle an explosive or explosive precursor in a way for which the person is not required to be authorised by a licence under section 48, 49 or 54.

11 Regulatory authority may grant security clearances

- (1) The regulatory authority may, on application, grant a security clearance to a natural person.
- (2) An application for a security clearance must—
 - (a) be made in the approved form, and
 - (b) be accompanied by documents, including photographs, specified in the approved form, and
 - (c) be accompanied by the approved fee.

12 Grounds for refusing security clearance

- (1) The regulatory authority may grant a security clearance to a person only if it is satisfied that the person—
 - (a) is at least 18 years of age, and

- (b) is a fit and proper person to be granted a security clearance.
- (2) The regulatory authority must refuse to grant security clearance to a person if a report given by the Commissioner of Police under the Act, section 13 contains a recommendation from the Commissioner that the person should not be granted a security clearance or licence on the basis of criminal or security intelligence or other information available to the Commissioner.

13 Suspension of security clearance

- (1) The regulatory authority may, by written notice to the holder of a security clearance, suspend the security clearance for a specified period for the purpose of carrying out an investigation to determine whether the security clearance should be cancelled.
- (2) The suspension takes effect on the later of the following—
 - (a) the date on which the notice of the suspension is given to the holder of the security clearance,
 - (b) the date specified in the notice.
- (3) The regulatory authority may direct the holder of a suspended security clearance to return the security clearance to the regulatory authority within a specified period.
- (4) The holder of a suspended security clearance must not fail to return a security clearance to the regulatory authority in accordance with a direction given by the regulatory authority, unless the holder has a reasonable excuse.
Maximum penalty—50 penalty units.

14 Cancellation of security clearance

- (1) The regulatory authority may, by written notice to the holder of a security clearance, cancel the security clearance if satisfied that the holder is not a fit and proper person to be granted a security clearance.
- (2) The cancellation takes effect on the later of the following—
 - (a) the date on which the notice of the cancellation is given to the holder of the security clearance,
 - (b) the date specified in the notice.
- (3) The regulatory authority may direct the holder of a cancelled security clearance to return the security clearance to the regulatory authority within a specified period.
- (4) The holder of a cancelled security clearance must not fail to return a security clearance to the regulatory authority in accordance with a direction given by the regulatory authority, unless the holder has a reasonable excuse.
Maximum penalty—50 penalty units.
- (5) A security clearance is taken to be cancelled when a new security clearance is granted to the same person.

15 Notice of suspension or cancellation to other relevant persons

- (1) The regulatory authority may, on the suspension or cancellation of a security clearance, notify a supervising licence holder of the suspension or cancellation.
- (2) The regulatory authority must notify a supervising licence holder of a suspension or cancellation if the regulatory authority is aware that the holder of a security clearance that has been suspended or cancelled is listed as a nominated person on the supervising licence holder's security plan.
- (3) A person must notify a supervising licence holder of a suspension or cancellation of the person's security clearance as soon as practicable, but not more than 14 days,

after the person becomes aware of the suspension or cancellation of the person's security clearance.

Maximum penalty—50 penalty units.

(4) In this section—

supervising licence holder means a licence holder who employs or engages, or has previously employed or engaged, the person whose security clearance has been suspended or cancelled.

Part 3 Licences

Division 1 Activities requiring licences

16 Activities requiring licences

A person handling an explosive or explosive precursor must be authorised to do so by a licence granted by the regulatory authority under the Act.

17 Natural person must hold security clearance

- (1) A licence granted to a natural person authorises the person to handle explosives or explosive precursors in the way authorised by the licence only while the person holds a security clearance that is in force.
- (2) It is a condition of a licence granted to a natural person that the licence holder holds a security clearance that is in force.
- (3) This section does not apply to a fireworks (single use) licence.

18 Responsible person for corporation must hold security clearance

- (1) A licence granted to a corporation authorises the corporation to handle explosives or explosive precursors in the way authorised by the licence only while there is at least one responsible person for the corporation.
- (2) It is a condition of a licence granted to a corporation that there is at least one responsible person for the corporation.

19 Nomination of responsible person

- (1) A corporation must nominate a responsible person to be responsible for the activities authorised by the licence held by the corporation.
Note. See section 33 for the requirement for a corporation to nominate a responsible person in its application for a licence.
- (2) A responsible person must—
 - (a) be a natural person who is least 18 years of age, and
 - (b) hold a security clearance that is in force, and
 - (c) be involved in the management of the corporation, and
 - (d) have satisfied the corporation that the person has the relevant knowledge, experience and qualifications to supervise the activities authorised by the licence, and
 - (e) consent to the nomination.
- (3) The regulatory authority may require the corporation to provide evidence that a proposed responsible person has the relevant knowledge, experience and qualifications to carry out the activities authorised by the licence before granting the corporation a licence.
- (4) The regulatory authority may decline to accept a nomination if it is not satisfied that the person nominated has the relevant knowledge, experience and qualifications to carry out the activities authorised by the licence.
- (5) A corporation that holds a licence may, at any time and by written notice to the regulatory authority, nominate another person to be a responsible person instead of, or in addition to, a person previously nominated.
- (6) A nomination of a person as a responsible person ceases to have effect if—
 - (a) it is declined by the regulatory authority, or

- (b) the corporation ceases to employ or otherwise engage the person.
- (7) A corporation that holds a licence must, within 30 days of a responsible person ceasing to be employed or otherwise engaged by the corporation, notify the regulatory authority that the responsible person has ceased to be employed or otherwise engaged by the corporation.
Maximum penalty—250 penalty units.

20 Authority conferred by licence extends to other relevant persons

- (1) A licence is taken to authorise a person to handle an explosive or explosive precursor in the same way as the licence holder is authorised to handle them by the licence, but only if the person—
 - (a) is a natural person, and
 - (b) holds a security clearance that is in force, or is acting under the immediate supervision of a person who holds a security clearance that is in force, and
 - (c) handles the explosive or explosive precursor during the person's employment by the licence holder, or under the immediate supervision of a person employed or engaged by the licence holder to supervise the person.
- (2) This section is subject to restrictions or further requirements specified in the licence or in this Regulation.
- (3) In this section—
employment includes an engagement or other arrangement, whether or not constituting a contract of employment.

Division 2 Types of licences

21 Types of licences

The regulatory authority may grant the following types of licences—

- (a) licence to manufacture,
- (b) licence to import,
- (c) licence to supply,
- (d) licence to transport by vehicle,
- (e) licence to transport by vessel,
- (f) licence to store,
- (g) blasting explosives user's licence,
- (h) pyrotechnician's licence,
- (i) fireworks (single use) licence,
- (j) licence to use security sensitive dangerous substances.

22 Licence to manufacture

- (1) A licence to manufacture authorises the licence holder to carry out the following activities—
 - (a) if the licence relates to a mobile processing unit—transporting the explosive precursors specified in the licence in the mobile processing unit to the premises or location at which explosives are to be manufactured and manufacturing explosives at the premises using the mobile processing unit,

- (b) if the licence does not relate to a mobile processing unit—manufacturing, at the premises specified in the licence, the explosives or explosive precursors specified in the licence,
 - (c) supplying or receiving, at the premises specified in the licence, if any, the explosives or explosive precursors specified in the licence,
 - (d) purchasing or possessing explosives or explosive precursors to manufacture other explosives or explosive precursors under the licence,
 - (e) possessing explosives or explosive precursors manufactured under the licence,
 - (f) possessing explosives or explosive precursors to dispose of the explosives or explosive precursors under the licence,
 - (g) if premises are specified in the licence—storing the explosives or explosive precursors at the premises.
- (2) In this section—
supplying or receiving includes importing and exporting.

23 Licence to import

- (1) A licence to import authorises the licence holder to import the explosives or explosive precursors specified in the licence into the State from another country.
- (2) A licence to import also authorises the licence holder to carry out the following activities for the purpose of importing explosives—
 - (a) supplying, at the premises specified in the licence, if any, the explosives or explosive precursors specified in the licence,
 - (b) purchasing or possessing the explosives or explosive precursors for the purpose of bringing them into the State from another country,
 - (c) if premises are specified in the licence—storing the explosives or explosive precursors at the premises.
- (3) In this section—
supplying includes exporting.

24 Licence to supply

- (1) A licence to supply authorises the licence holder to carry out the following activities—
 - (a) supplying, at the premises specified in the licence, if any, the explosives or explosive precursors specified in the licence,
 - (b) purchasing or possessing explosives or explosive precursors for the purpose of supplying them under the licence,
 - (c) if premises are specified in the licence—storing the explosives or explosive precursors at the premises.
- (2) In this section—
supplying includes exporting.

25 Licence to transport by vehicle

- (1) A licence to transport by vehicle authorises the licence holder to transport, using a vehicle, the explosives or explosive precursors specified in the licence.
- (2) A licence to transport by vehicle also authorises the licence holder to carry out the following activities for the purpose of transporting explosives by vehicle—

- (a) storing, at the premises and for the period specified in the licence, if any, the explosives or explosive precursors specified in the licence,
- (b) possessing explosives or explosive precursors for the purpose of transporting them under the licence.

26 Licence to transport by vessel

- (1) A licence to transport by vessel authorises the licence holder to transport, using a vessel, the explosives or explosive precursors specified in the licence.
- (2) A licence to transport by vessel also authorises the licence holder to carry out the following activities for the purpose of transporting explosives by vessel—
 - (a) storing, at the premises and for the period specified in the licence, if any, the explosives or explosive precursors specified in the licence,
 - (b) possessing explosives or explosive precursors for the purpose of transporting them under the licence.

27 Licence to store

A licence to store explosives authorises the licence holder to carry out the following activities—

- (a) storing, at the premises and for the period specified in the licence, the explosives or explosive precursors specified in the licence,
- (b) purchasing or possessing explosives or explosive precursors for the purpose of storing them under the licence.

28 Blasting explosives user's licence

- (1) A blasting explosives user's licence authorises the licence holder to carry out the following activities—
 - (a) using, at the premises or location specified in the licence, if any, the explosives or explosive precursors in the quantities specified in the licence,
 - (b) purchasing or possessing explosives or explosive precursors for the purpose of using them under the licence,
 - (c) transporting explosives or explosive precursors for the purpose of using them under the licence,
 - (d) storing explosives or explosive precursors as authorised by the licence,
 - (e) disposing of explosives or explosive precursors specified in the licence in accordance with AS 2187,
 - (f) if specified in the licence—mixing explosive precursors for the purpose of manufacturing ANFO in accordance with AS 2187 for immediate use or for use within 24 hours.
- (2) It is a condition of a blasting explosives user's licence that the holder of the licence—
 - (a) store only the type and quantity of explosives or explosive precursors that the licence holder is authorised to store by the licence, and
 - (b) store the explosives or explosive precursors in an appropriate storage facility—
 - (i) at the premises specified in the licence, or
 - (ii) at a location notified to the regulatory authority.
- (3) The regulatory authority may require a licence holder to submit a security plan when the licence holder notifies it of the location of a storage facility in which explosives or explosive precursors are proposed to be stored under subsection (2)(b)(ii).

- (4) In this section—

appropriate storage facility means—

- (a) for an explosive—a secure magazine, and
- (b) for an explosive precursor—a secure store.

Note. Section 87 provides that a licence holder must ensure that, when not being prepared for use, used or transported—

- (a) explosives are kept in a secure magazine, and
- (b) explosive precursors are kept in a secure store.

29 Pyrotechnician's licence

A pyrotechnician's licence authorises the licence holder to carry out the following activities—

- (a) purchasing, possessing, using, storing and transporting display fireworks,
- (b) purchasing, possessing, using, storing and transporting a distress signal, otherwise than for the intended purposes of a distress signal,
- (c) purchasing, possessing, using, storing and transporting a model rocket propellant device containing an ignitable substance or ignitable substances exceeding 62.5 grams in mass.

30 Fireworks (single use) licence

- (1) A fireworks (single use) licence authorises the licence holder, on only one occasion, to purchase, possess, use, store and transport display fireworks.
- (2) The regulatory authority must not grant a fireworks (single use) licence to a person on more than 4 occasions in a 12-month period.

31 Licence to use security sensitive dangerous substances

A licence to use security sensitive dangerous substances authorises the licence holder to purchase, possess, use, store, transport and dispose of security sensitive dangerous substances for the purpose specified in the licence.

32 Matters that may be specified in licence

A licence may specify the following matters—

- (a) the explosive or explosive precursor, or the type or class of explosive or explosive precursor, that is authorised to be handled under the licence,
- (b) the maximum quantity of explosive or explosive precursor that is authorised to be handled under the licence,
- (c) premises or a location at which the explosives or explosive precursors that are authorised to be handled under the licence must be handled.

Division 3 Applications for licences

33 Applications for licences

- (1) An application for a licence must—
 - (a) be made in the approved form, and
 - (b) be accompanied by other documents, including photographs, specified in the approved form, and
 - (c) be accompanied by the approved fee.
- (2) If the applicant is a natural person, the applicant must be at least 18 years of age.

- (3) If the applicant is a corporation, the applicant must nominate at least 1 natural person who is the person responsible for the activities to be authorised by the licence as a responsible person.

Note. See section 19 for the requirements for the nomination of a responsible person.

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

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

35 Security plan

- (1) An applicant for a licence must, if required to do so by the regulatory authority, submit a security plan in relation to the explosives or explosive precursors that are to be handled under the licence.
- (2) A security plan must contain the following—
- (a) details of the facilities, systems and procedures in place for the safe and secure handling of the explosives or explosive precursors concerned,
 - (b) a list of responsible persons who are to have unsupervised access to the explosives or explosive precursors concerned,
 - (c) a list detailing the vehicles that may carry the explosives or explosive precursors concerned,
 - (d) details of the measures implemented by the applicant to ensure that the explosives cannot be removed without permission from the place in which they are being handled or stored in accordance with the licence,
 - (e) other information as required by the regulatory authority.

36 Safety management plan

- (1) An applicant for a licence must, if required to do so by the regulatory authority, submit a safety management plan that describes the risk management procedures that are proposed to be implemented by the applicant to manage the hazards and risks to safety associated with the activities authorised by the licence.
- (2) A safety management plan must contain the following—
- (a) a description of the process by which the applicant proposes to handle explosives or explosive precursors in accordance with the licence,
 - (b) an assessment of the risks that may arise from the handling of the explosives or explosive precursors,
 - (c) a description of the measures that are being implemented to manage the risks associated with the handling of explosives,
 - (d) other information as required by the regulatory authority.

37 Grounds for refusing a licence

- (1) The regulatory authority must not grant a licence unless it is satisfied that—
- (a) the applicant is eligible for a licence, and
 - (b) if the applicant has been required to submit a security plan—the plan is appropriate for the safe and secure handling of the explosives or explosive precursors concerned, and
 - (c) if the applicant has been required to submit a safety management plan—the plan is appropriate for managing the hazards and risks to safety associated with the activities that are authorised by the licence, and

- (d) the applicant has the appropriate facilities, systems and procedures in place for the safe and secure handling of the explosives or explosive precursors concerned, and
 - (e) additional eligibility requirements applicable to the licence concerned have been satisfied, and
 - (f) the approved fee for the licence has been paid.
- (2) If the regulatory authority is not satisfied that a security plan or a safety management plan submitted by the applicant is appropriate, the regulatory authority may require the applicant to amend and resubmit the plan.

38 Additional eligibility requirements—blasting explosives user’s licence

It is an additional eligibility requirement for a blasting explosives user’s licence that the applicant satisfy the regulatory authority that the applicant—

- (a) is a natural person, and
- (b) has the qualifications, or has passed the examinations or practical tests, or both, as the regulatory authority determines to be necessary to enable the applicant to do the work for which the licence is required, and
- (c) has been examined by a medical practitioner and has been found not to have a medical or physical condition that would impair the applicant’s ability to perform the duties of a blasting explosives user.

39 Additional eligibility requirements—pyrotechnician’s licence and fireworks (single use) licence

It is an additional requirement for a pyrotechnician’s licence or a fireworks (single use) licence that the applicant satisfy the regulatory authority that the applicant—

- (a) is a natural person, and
- (b) has completed a training course or attained a level of competence in the safe use of display fireworks that is recognised by the regulatory authority for the purposes of obtaining the licence, and
- (c) if the application is for a fireworks (single use) licence—is a fit and proper person to be granted a licence.

40 Additional eligibility requirements—licences relating to security sensitive dangerous substances

- (1) It is an additional requirement for a licence relating to the handling of security sensitive dangerous substances that the applicant must satisfy the regulatory authority that the applicant has a legitimate reason for obtaining the licence.

Note. This provision applies to all licences that authorise a person to handle security sensitive dangerous substances, not merely the type of licence referred to in section 31 as a licence to use security sensitive dangerous substances.

- (2) A **legitimate reason** for obtaining a licence that authorises a person to handle security sensitive dangerous substances includes obtaining the licence for the purpose of—
- (a) use in commercial production processes, mining, quarrying, agricultural blasting, construction, civil engineering, seismic work or tunnelling, or
 - (b) the commercial manufacture of fertiliser or explosives, or
 - (c) education, research or analysis, or
 - (d) commercial agricultural use by primary producers, or
 - (e) transporting or supplying security sensitive dangerous substances for a purpose referred to in paragraphs (a)–(d).

- (3) The following are not legitimate reasons for obtaining a licence that authorises a person to handle security sensitive dangerous substances—
- (a) household domestic use,
 - (b) use as a fertiliser on outdoor recreation facilities, including parks, golf courses or sports fields.

41 Licence fee

The fee payable for a licence is the fee fixed for the time being by the regulatory authority to cover expenses in connection with the regulation of licences.

42 Licence holder must remain eligible for licence

It is a condition of a licence that the holder of the licence does not carry out an activity authorised by the licence unless the holder is still a person who, were the person to apply for the licence for the first time, would be eligible to be granted the licence by the regulatory authority.

Note. As a result of this section, a licence holder is in breach of a licence condition if they continue to carry out activities authorised by the licence after circumstances relating to the holder change to the extent that they would not be granted the licence if applying for the first time. Breach of a condition may lead to suspension or cancellation of the licence under the Act, sections 20 and 21.

43 Notice of cancellation or suspension to other relevant persons

- (1) A person must notify a supervising licence holder of a cancellation or suspension or of the person's licence as soon as practicable, but not more than 14 days, after the person becomes aware of the cancellation or suspension of the person's security clearance.
- Maximum penalty—50 penalty units.
- (2) In this section—
- supervising licence holder*** means the licence holder with whom the person is engaged or employed for the handling of explosives.

Division 4 Exceptions from licence requirements—inspectors, police and others

44 Handling of explosives by inspectors and other authorised officers

- (1) An inspector or authorised officer is not required to hold a security clearance or licence to handle an explosive or explosive precursor during the person's duties as an inspector or authorised officer.
- (2) In this section—
- authorised officer*** means an officer of the regulatory authority authorised by the regulatory authority to handle an explosive or explosive precursor during their duties as an officer of the regulatory authority.

45 Handling of explosives by police explosives technicians

- (1) A police explosives technician is not required to hold a security clearance or licence to—
- (a) possess, use or transport an explosive or explosive precursor during the technician's duties, or
 - (b) possess an explosive or explosive precursor for the purpose of disposing of or destroying the explosive precursor, or
 - (c) dispose of or destroy an explosive or explosive precursor.

- (2) In this section—

police explosives technician means a member of the NSW Police Force whose duties as a member extend to the handling of explosives.

46 Transport of explosives by police officers

A police officer is not required to be authorised by a licence to transport, by vehicle or vessel, an explosive or explosive precursor that—

- (a) has been confiscated or received by the police officer, and
- (b) is under the immediate supervision of the police officer.

47 Storage of explosives at police station

- (1) The following persons or services are not required to be authorised by a licence to store an explosive or explosive precursor at a police station for purposes in connection with the prosecution of an offence against this or another Act—

- (a) the NSW Police Force,
- (b) a police officer who is acting during the police officer's duties as a police officer when storing the explosives or explosive precursors.

- (2) Subsection (1) does not apply if the quantity of the explosive or explosive precursor stored exceeds 10 kilograms NEQ.

48 Possession and storage of certain explosives by emergency services

- (1) An emergency service is not required to be authorised by a licence to transport, possess or store an explosive or explosive precursor that has come into the possession of the emergency service in an emergency situation.
- (2) An officer of an emergency service is not required to be authorised by a licence to transport, possess or store, during the officer's duties, an explosive or explosive precursor that has come into the possession of the emergency service or officer in an emergency situation.

- (3) In this section—

emergency service includes the following—

- (a) the Ambulance Service of New South Wales,
- (b) Fire and Rescue NSW,
- (c) the NSW Rural Fire Service,
- (d) the NSW Police Force,
- (e) the State Emergency Service of New South Wales,
- (f) the New South Wales Volunteer Rescue Association Incorporated,
- (g) the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*,
- (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

Division 5 Exceptions from licence requirements—miscellaneous

49 Power device cartridges, distress signals, life-saving appliances and toy fireworks

- (1) A person is not required to be authorised by a licence to possess, transport, store, use, sell or supply the following explosives—
- (a) power device cartridges,

- (b) distress signals,
 - (c) life-saving appliances, including air bag inflators and seatbelt pretensioners,
 - (d) toy fireworks.
- (2) Subsection (1) does not apply if the quantity of the explosive exceeds the quantity specified for the explosive in the Table to this section.
- (3) This section does not extend to the handling of an explosive in connection with a use that is not a use for which the explosive was designed.

Table

Column 1	Column 2
Type of explosive	Quantity
Power device cartridges	10,000 in number
Distress signals	10 kg NEQ
Life-saving appliances, including air bag inflators, air bag modules and seatbelt pretensioners of hazard division 1.4, that are—	10 kg NEQ
(a) not installed in vehicles, or	
(b) not in complete vehicle components.	
Toy fireworks	1 tonne, including packaging

50 Ammunition

- (1) A person who is a licensed firearms dealer under the *Firearms Act 1996* is not required to be authorised by a licence to possess, store, transport, sell or supply the following—
- (a) ammunition,
 - (b) percussion caps,
 - (c) not more than 12 kilograms of propellant powder.
- (2) A person who holds a licence or a permit under the *Firearms Act 1996* that authorises the person to possess or use a firearm is not required to be authorised by a licence to possess, use, store or transport the following—
- (a) ammunition,
 - (b) percussion caps,
 - (c) not more than 12 kilograms of propellant powder.
- (3) Subsections (1)(c) and (2)(c) do not apply if—
- (a) the person stores the propellant powder within a place of residence, and
 - (b) the total amount of propellant powder stored at the place of residence exceeds 12 kilograms.
- (4) Subsection (2) does not apply to a person who holds only a firearms collector licence under the *Firearms Act 1996*.
- (5) A person who holds an ammunition collection permit under the *Firearms Act 1996* is not required to be authorised by a licence to possess or store ammunition that is authorised to be possessed under the permit.
- (6) In this section—
place of residence means residential premises that are occupied by persons living together as a single household.

51 Import of certain explosives

A person is not required to be authorised by a licence to import the following explosives—

- (a) life-saving appliances, including air bag inflators, air bag modules and seatbelt pretensioners,
- (b) distress signals that are part of the safety system of a vessel or aircraft.

52 Transport of explosives by private road

A person is not required to be authorised, by a licence to transport by vehicle, to transport an explosive or explosive precursor by motor vehicle if—

- (a) the motor vehicle is travelling on a private road within an explosives site, and
- (b) the possession of the explosive or explosive precursor by the person is authorised under this Regulation.

53 Voyages outside the State

A person is not required to be authorised, by a licence to transport by vessel, to transport an explosive or explosive precursor by vessel if the vessel is proceeding on an overseas voyage or an interstate voyage.

54 Activities in port operational areas

- (1) A person is not required to be authorised by a licence to handle an explosive or explosive precursor in a port operational area under the control of a port authority.
- (2) In this section—

port authority means a body established under the *Ports and Maritime Administration Act 1995*, Part 2, or by Transport for NSW.

port operational area means the land and sea located in an area defined in the *Ports and Maritime Administration Regulation 2012*, Schedule 1, and includes—

- (a) the fixed facilities and vessels located in the area, and
- (b) berths adjacent to the area.

55 Use of small quantities of security sensitive ammonium nitrate

A person is not required to be authorised by a licence to use security sensitive dangerous substances—

- (a) to transport up to 20 kilograms of security sensitive ammonium nitrate, or
- (b) to handle and use security sensitive ammonium nitrate if—
 - (i) the handling or use is for educational, research or analytical purposes, and
 - (ii) the handling or use is carried out at a commercial laboratory, school, university or other research institution, and
 - (iii) the amount of security sensitive ammonium nitrate handled or used does not exceed 3 kilograms.

Part 4 Prohibited and authorised explosives

Division 1 Offences

56 Prohibited and authorised explosives—meaning

- (1) A *prohibited explosive* is an explosive that is not an authorised explosive.
- (2) An *authorised explosive* is an explosive registered as an authorised explosive in the register of explosives.

57 Prohibited explosives not to be handled

A person must not handle a prohibited explosive.
Maximum penalty—250 penalty units.

58 Use and modification of authorised explosives for unauthorised purposes

A person must not use, modify, or attempt to use or modify, an authorised explosive to produce an explosive effect other than that for which the particular explosive was designed.
Maximum penalty—250 penalty units.

59 Falsely representing explosives as authorised

A person must not falsely represent an explosive as being an authorised explosive.
Maximum penalty—250 penalty units.

60 Exception for research and development

- (1) A person who handles or modifies an explosive does not commit an offence under this Division if the person—
 - (a) is authorised to handle that explosive by a licence to manufacture, and
 - (b) handles or modifies the explosive during a research and development project during the permitted period of the project, and
 - (c) handles or modifies the explosive in accordance with the applicable safety standards.
- (2) A person referred to in subsection (1)—
 - (a) is authorised to possess, manufacture, process, treat, transport, use, store and dispose of the explosive, and
 - (b) may test a sample of the explosive for the purposes of offer to, or negotiations for, supply, and
 - (c) is not otherwise authorised to supply the explosive.
- (3) This section does not apply to explosives that are goods too dangerous to be transported, within the meaning of the ADG Code or the Australian Explosives Code, that can produce an explosive or pyrotechnic effect.
- (4) In this section—

applicable safety standards means—

 - (a) the requirements of hazard division 1.1, or
 - (b) other requirements approved by the regulatory authority for the research and development project.

permitted period, for a research and development project, means—

 - (a) a period not exceeding 6 months, or

- (b) a longer period approved by the regulatory authority for the research and development project.

research and development project means a project carried out for the sole purpose of testing and developing an explosive that is—

- (a) a new explosive, or a modified version of an existing explosive, and
- (b) is intended to be registered as an authorised explosive on completion of the project.

Division 2 Registration of explosives

61 Registration of authorised explosives

- (1) The regulatory authority may register an explosive as an authorised explosive.
- (2) The regulatory authority must keep a register of explosives in which it records the particulars of explosives that it registers as authorised explosives.
- (3) Registration remains in force until it is revoked by the regulatory authority.

62 Application to have explosives registered as authorised

- (1) A person may apply to the regulatory authority to have an explosive registered as an authorised explosive.
- (2) The application must be accompanied by the approved fee.
- (3) An applicant must give the regulatory authority—
 - (a) the additional information about the explosive as the regulatory authority may request, and
 - (b) without charge, the sample or samples of the explosive as the regulatory authority may require for the purpose of testing.
- (4) The regulatory authority may—
 - (a) register the explosive as an authorised explosive, or
 - (b) refuse to register the explosive.
- (5) The registration may be unconditional or subject to conditions.
- (6) An application is taken to have been refused if the regulatory authority has not registered the explosive as an authorised explosive within 3 months of receipt of the application.
- (7) After registering an explosive, the regulatory authority may, by written notice to the applicant—
 - (a) impose conditions or further conditions on the registration, or
 - (b) vary or revoke a condition to which the registration is subject.

63 Registration details

- (1) The regulatory authority must record in the register of explosives, in relation to each explosive that it decides to register as an authorised explosive—
 - (a) details that describe the explosive, including—
 - (i) the name of the person who has applied to the regulatory authority to have an explosive registered as an authorised explosive, and
 - (ii) the commercial name of the explosive, and
 - (iii) the explosive's UN Number, Proper Shipping Name and Classification Code, and

- (b) the conditions that the registration of the explosive is subject to, if any.
- (2) In this section—
Proper Shipping Name has the same meaning as in the Australian Explosives Code.
UN Number, or *United Nations Number*, means the identification number shown in the Australian Explosives Code in relation to the explosive.

64 Alteration of register

The regulatory authority may alter the register of explosives by correcting an error in, or omission from, the register.

65 Revocation of registration

- (1) The regulatory authority may revoke the registration of an authorised explosive.
- (2) The regulatory authority must not revoke the registration of an authorised explosive unless, before doing so, it gives the person who applied to the regulatory authority for registration—
 - (a) at least 30 days' notice of its intention to revoke registration, and
 - (b) an opportunity to make submissions to the regulatory authority about the proposed revocation.
- (3) The regulatory authority revokes registration by—
 - (a) publishing notification of the revocation on—
 - (i) a publicly accessible website maintained by SafeWork NSW, or
 - (ii) if the website referred to in subparagraph (i) is not available—a publicly accessible government website, and
 - (b) removing the particulars of the explosive from the register of explosives.

66 Publication of register

- (1) The regulatory authority must publish a copy of the register of explosives—
 - (a) from time to time, and
 - (b) at intervals not exceeding 12 months.
- (2) The register must be published on—
 - (a) a publicly accessible website maintained by SafeWork NSW, or
 - (b) if the website referred to in paragraph (a) is not available—a publicly accessible government website.

Part 5 Safety and security measures

Division 1 Compliance with codes and standards

67 Duty to comply with certain standards or codes

A person who carries out an activity to which the following standards or codes applies must ensure the activity is carried out in compliance with the standard or code—

- (a) for an activity in relation to an explosive—
 - (i) AS 2187, and
 - (ii) the Australian Explosives Code,
- (b) for an activity in relation to an explosive precursor—
 - (i) the ADG Code, and
 - (ii) AS 4326, *The storage and handling of oxidizing agents*, as in force from time to time.

Maximum penalty—250 penalty units.

68 Application of codes and standards

- (1) If a code or standard referred to in this Division imposes a duty but does not indicate clearly the person, or class of persons, responsible for the duty, the duty must be observed or discharged by the person undertaking the relevant activity.
- (2) If, under a code or standard referred to in this Division, a duty is placed on more than 1 person or class of persons, the duty must be observed or discharged by each person or each person in the class—
 - (a) only in relation to the matters for which the person has management or control, and
 - (b) whether or not another person is also responsible for undertaking the duty.
- (3) A provision of this Regulation prevails over an inconsistent provision of a standard or code.

69 Duty to ensure others comply with Australian Explosives Code

- (1) This section applies to—
 - (a) a licence holder, or
 - (b) a person who manages or supervises the transport of explosives (*transport supervisor*).
- (2) A licence holder or transport supervisor must ensure that a person who is employed by, engaged by, or otherwise involved in the transport of an explosive for, the licence holder or transport supervisor—
 - (a) is trained in the relevant requirements of the Australian Explosives Code, and
 - (b) as far as is practicable, complies with the applicable requirements of the Australian Explosives Code.

Maximum penalty—250 penalty units.

70 Prohibition on entering contracts, etc that are not in accordance with the Australian Explosives Code

A person must not enter into a contract, agreement or arrangement with another person to transport an explosive otherwise than in accordance with the Australian Explosives Code.

Maximum penalty—250 penalty units.

Division 2 Compliance with plans submitted to regulatory authority

71 Approved plans

In this Division—

safety management plan means a safety management plan submitted to the regulatory authority in or in connection with an application for a licence.

security plan means a security plan submitted to the regulatory authority in or in connection with an application for a licence.

72 Compliance with security plan

A licence holder must ensure that—

- (a) the requirements of, and procedures specified in, the licence holder's security plan are observed, and
- (b) the activities under the licence are undertaken in accordance with the security plan.

Maximum penalty—250 penalty units.

73 Explosives to be accessed only as authorised by security plan

- (1) A person must not handle, or gain unsupervised access to, an explosive or explosive precursor at premises regulated by a security plan unless the person—

- (a) is the holder of a security clearance that is in force and is listed on the security plan as a person authorised to have unsupervised access to the explosive or explosive precursor, or
 - (b) is the holder of a licence that authorises the person to handle the explosive or explosive precursor.

Maximum penalty—250 penalty units.

- (2) In this section—

premises regulated by a security plan means premises—

- (a) at which an explosive or explosive precursor is handled under the authority of a licence, and
 - (b) for which a licence holder has submitted a security plan to the regulatory authority for the activities at the premises.

74 Compliance with safety management plan

A licence holder must ensure that—

- (a) the requirements of, and procedures specified in, the licence holder's safety management plan are observed, and
- (b) the activities under the licence are undertaken in accordance with the safety management plan.

Maximum penalty—250 penalty units.

Division 3 Manufacture, supply and import of explosives

75 Definition—authorised supplier

In this Division—

authorised supplier means the holder of a licence that authorises the holder to supply an explosive or explosive precursor.

76 Design of building where explosives manufactured

A person who holds a licence to manufacture must not manufacture an explosive, or prepare for the manufacture of an explosive, in a building or area that has not been designed and constructed to minimise the consequences of an accidental explosion.
Maximum penalty—250 penalty units.

77 Explosives to be supplied only to persons authorised to receive explosives

- (1) An authorised supplier must not supply an explosive or explosive precursor to another person (***the receiver***) unless the receiver provides the authorised supplier with the following—

- (a) proof of identity of the receiver,
- (b) evidence that—
 - (i) the receiver is authorised by a licence, or otherwise authorised under a corresponding law, to possess the explosive or explosive precursor of the quantity and type supplied, or
 - (ii) the receiver is not required to be authorised by a licence to possess the explosive or explosive precursor, or
 - (iii) the explosive or explosive precursor is to be supplied to the receiver outside Australia.

Maximum penalty—100 penalty units.

- (2) The only proof of identity that may be used for the purposes of this section is—
- (a) an Australian driver licence held by the receiver that displays a photograph of the receiver, or
 - (b) an Australian passport, or
 - (c) a Photo Card held by the receiver and issued under the *Photo Card Act 2005*.

78 Supplier to keep supply records

- (1) An authorised supplier must keep a record of each supply of an explosive or explosive precursor in accordance with this section.
Maximum penalty—100 penalty units.

- (2) The record must include the following information—
- (a) the date of supply,
 - (b) the kind and quantity of the explosive or explosive precursor supplied,
 - (c) the name, address and telephone number of the person to whom the explosive or explosive precursor was supplied,
 - (d) if section 77(1)(b)(i) applies to the supply—details of the receiver's licence or authority under a corresponding law to possess the explosive or explosive precursor,
 - (e) the name, address and telephone number of the licence holder in whose premises the explosive or explosive precursor is to be stored.

79 Retention of supply records

- (1) An authorised supplier must keep, for at least 5 years after each supply of an explosive or explosive precursor, the record made in relation to the supply.
Maximum penalty—100 penalty units.

- (2) In this section—
authorised supplier includes a person who was formerly an authorised supplier.

80 Supply records to be made available for inspection

- (1) An authorised supplier must make records about its supply of explosives or explosive precursors available for examination at the direction of an inspector or police officer as soon as practicable, but not more than 7 days, after the direction is given.
Maximum penalty—100 penalty units.
- (2) In this section—
authorised supplier includes a person who was formerly an authorised supplier.

81 Packaging and marking of explosives and explosive precursors

- (1) A person who holds a licence to manufacture must ensure that, before an explosive or explosive precursor is supplied or used, it is packaged and marked in accordance with the applicable requirements of the Australian Explosives Code.
Maximum penalty—250 penalty units.
- (2) A person must not import, supply, store or transport an explosive or explosive precursor unless it is packaged and marked in accordance with the applicable requirements of the Australian Explosives Code or the ADG Code.
Maximum penalty—250 penalty units.
- (3) The markings referred to in this section must be in the English language.
- (4) This section does not apply to an explosive or explosive precursor that—
- (a) is in the process of being manufactured, or are semi-finished goods, at the premises or place where it is being manufactured, or
 - (b) is a blasting explosive that is manufactured at the place at which it is about to be used, or
 - (c) is for use at, and are not to be transported beyond the boundaries of, the premises or place where it was manufactured, but only if the containers are clearly and conspicuously marked with the name of the contents, or
 - (d) are bulk explosives being transported in compliance with the provisions of the Australian Explosives Code, or
 - (e) are distress signals, power device cartridges or ammunition—
 - (i) that do not exceed 5 kilograms, and
 - (ii) are being, or are to be, stored or transported by a person for the person's own use.
- (5) This section does not prevent an explosive or explosive precursor that has been imported from being transported from an airport or a wharf to a place specified in a licence for the purposes of packaging and marking in accordance with the applicable requirements of the Australian Explosives Code.
- (6) Subsection (2) does not apply to a police officer acting during the officer's duties.
- (7) In this section—
bulk explosives means explosives in a receptacle, but does not include packaged explosives.
marking includes labelling.
packaged explosives has the same meaning as in the Australian Explosives Code.

82 Consignment of explosives and explosive precursors

- (1) A licence holder must not send, or cause to be sent, a consignment of an explosive or explosive precursor to another person otherwise than in accordance with the consignment requirements.
Maximum penalty—250 penalty units.
- (2) The *consignment requirements* are as follows—
 - (a) the licence holder must ensure that the person to whom the explosive or explosive precursor is sent (*the consignee*) is authorised under the Act to possess the explosive or explosive precursor,
 - (b) the licence holder must, before sending the explosive or explosive precursor, give the consignee a notice which sets out a description of, and quantity of, the explosive or explosive precursor to be sent,
 - (c) the consignee has informed the licence holder that the consignee will be prepared to receive the explosive or explosive precursor on a specified day or within a specified period,
 - (d) the explosive or explosive precursor is sent at a time and a way that, in the ordinary course of transport, the consignee will receive them on the specified day or within the specified period.

83 Export of explosives and explosive precursors

- (1) An authorised supplier must not export an explosive or explosive precursor unless the person has given the regulatory authority notice of the export in accordance with this section.
Maximum penalty—250 penalty units.
- (2) A notice must be given—
 - (a) on each occasion that an explosive or explosive precursor is exported, and
 - (b) no later than 5 business days before the day on which the explosive or explosive precursor is intended to be exported.
- (3) The notice must include the following information—
 - (a) the name and licence number of the licence holder,
 - (b) the intended date of export of the explosive or explosive precursor,
 - (c) the port, facility or airport from where the explosive or explosive precursor is to be exported,
 - (d) the name of, and classification assigned to, the explosive or explosive precursor,
 - (e) details of the kind and quantity of explosive or explosive precursor to be exported,
 - (f) the name of the following—
 - (i) the consignee,
 - (ii) if the consignor is not the licence holder—the consignor.
- (4) If the licence holder becomes aware that information given in a notice is no longer accurate, the licence holder must give the regulatory authority notice of the relevant change of information.
Maximum penalty—250 penalty units.
- (5) A notice under this section may be given in electronic or hard copy form.

84 Import of explosives and explosive precursors

- (1) A person who holds a licence to import must not import an explosive or explosive precursor unless the person has given the regulatory authority notice of the import in accordance with this section.
Maximum penalty—250 penalty units.
- (2) A notice must—
 - (a) be given on each occasion that an explosive or explosive precursor is exported, and
 - (b) be given no later than 5 business days before the day on which the explosive or explosive precursor is intended to arrive in the State, and
 - (c) be accompanied by the fee fixed by the regulatory authority.
- (3) The notice must include the following information—
 - (a) the name and licence number of the licence holder,
 - (b) the intended date of import of the explosive or explosive precursor,
 - (c) the identity of the vessel or aircraft in which the explosives or explosive precursor is to be imported,
 - (d) the port, facility or airport where the explosive or explosive precursor is to be received,
 - (e) the name of, and the classification assigned to, the explosive or explosive precursors
 - (f) details of the kind and quantity of explosive or explosive precursor to be imported,
 - (g) the address of the place where the explosive or explosive precursor is to be stored in the State.
 - (h) the name of the following—
 - (i) the consignee,
 - (ii) if the consignor is not the licence holder—the consignor.
- (4) If the licence holder becomes aware that information given in a notice is no longer accurate, the licence holder must give the regulatory authority notice of the relevant change of information.
Maximum penalty—250 penalty units.
- (5) A notice under this section may be given in electronic or hard copy form.

85 Transport of imported explosives or explosive precursors

- (1) A person who is an importer, importer's agent or consignee of explosives must not transport an explosive or explosive precursor, or cause or permit an explosive or explosive precursor to be transported, from a port, facility or airport where it is received to premises specified in a licence for the storage or handling of explosives unless the regulatory authority has approved the transport of the explosive or explosive precursor to the premises.
Maximum penalty—250 penalty units.
- (2) An approval given by the regulatory authority may be given in electronic or hard copy form.

86 Sale of distress signals, power device cartridges or ammunition

- (1) A person must not sell a distress signal, railway track signal, power device cartridge or ammunition unless the person is satisfied that the purchaser—

- (a) is a bona fide user of the explosive to be sold, and
- (b) if a natural person—is at least 18 years of age.

Maximum penalty—250 penalty units.

(2) **Bona fide user—meaning**

For the purposes of this section—

- (a) a person is a bona fide user of a distress signal if the person—
 - (i) intends to use the distress signal as a safety device on a vessel, or
 - (ii) holds a pyrotechnician's licence and is authorised to use a distress signal under the licence, and
- (b) a person is a bona fide user of a power device cartridge if the person intends to use the power device cartridge for use with an explosive-powered tool, and
- (c) a person is a bona fide user of a railway track signal if the person intends to use the railway track signal as a warning signal in connection with railway work, and
- (d) a person is a bona fide user of ammunition if the person holds a firearms licence under the *Firearms Act 1996*, and
- (e) a person is a bona fide user of a distress signal, railway track signal, power device cartridge or ammunition if the person is the holder of a licence to supply the explosive to be sold.

Division 4 Storage and transport of explosives

87 Storage

- (1) A licence holder must ensure that an explosive or explosive precursor, when not being prepared for use, used or transported, are kept—
 - (a) for an explosive—in a secure magazine, or
 - (b) for an explosive precursor—in a secure store.Maximum penalty—250 penalty units.
- (2) A **secure magazine** is a magazine that complies with the following requirements—
 - (a) the magazine must be designed, constructed, located and used in accordance with the provisions of AS 2187,
 - (b) the method of storage in the magazine, including the design, construction and location of the magazine, must be safe, secure and fit for its purpose,
 - (c) the magazine must be marked, maintained and used in a manner that provides for the safety of the licence holder's employees and contractors and members of the public and of property.
- (3) A **secure store** is a physically secure place for the keeping of explosive precursors that complies with the following requirements—
 - (a) the secure store must be kept secure by lock or constant surveillance,
 - (b) the secure store must be inaccessible to persons not authorised under a licence to possess the explosive precursors being stored,
 - (c) procedures for the following must be in place—
 - (i) control of access,
 - (ii) control of keys, if any,
 - (iii) documenting the movement into and out of the secure store.

- (4) A person who removes an explosive or explosive precursor from a secure magazine or secure store or who, after removal, prepares an explosive or explosive precursor for use or uses them, must ensure that—
- (a) the explosive or explosive precursor is kept under direct supervision until they are used or placed in a secure magazine or secure store, and
 - (b) an explosive or explosive precursor that is not used is placed in a secure magazine or secure store.

Maximum penalty—250 penalty units.

- (5) A person ensures that explosives or explosive precursors are ***kept under direct supervision*** if—
- (a) the person keeps them under their immediate supervision, or
 - (b) the person causes them to be kept by, and under the immediate supervision of, a natural person who holds a security clearance that is in force.
- (6) If the conditions of a licence impose additional or alternative requirements on a licence holder for the storage of an explosive or explosive precursor, the conditions apply in addition to, or instead of, the requirements of this section, as the case requires.
- (7) A person who holds a licence or permit under the *Firearms Act 1996* that authorises the person to sell or possess a firearm, or who holds an ammunition collection permit under that Act, is not required to comply with this section in relation to the storage of the following—
- (a) ammunition,
 - (b) percussion caps,
 - (c) not more than 12 kilograms of propellant powder.
- (8) Subsection (7) does not apply to a person who holds only a firearms collector licence under the *Firearms Act 1996*.

88 Storage of explosives that have been prepared for use

A licence holder must ensure that an explosive that cannot be used, or loaded into blast holes, on the day it is prepared for use is—

- (a) kept in a closed, clean, secure container or packaging, conspicuously labelled “EXPLOSIVES”, and
- (b) stored in a secure magazine until the explosive can be used, and
- (c) used as soon as is practicable.

Maximum penalty—250 penalty units.

89 Storage of explosives in rail yards or sidings

A person controlling a rail yard or siding at which units of rail rolling stock are held must ensure that—

- (a) the maximum amount of explosive of a hazard division, excluding hazard division 1.4, kept at in the rail yard or siding does not exceed 40,000 kilograms NEQ, and
- (b) the explosives are not kept in the rail yard or siding—
 - (i) for longer than 2 consecutive working days, or
 - (ii) if a weekend or public holiday occurs between 2 consecutive working days—for longer than 4 days.

Maximum penalty—250 penalty units.

90 Storage of explosives in stationary vehicles

- (1) A person who has control of a vehicle and is transporting an explosive under the authority of a licence to transport by vehicle must ensure that the explosive is unloaded from the vehicle and stored in a secure magazine if the vehicle remains stationary at premises for more than the maximum stationary period.
Maximum penalty—250 penalty units.
- (2) The *maximum stationary period* is—
 - (a) 2 consecutive working days, or
 - (b) if a weekend or a public holiday occurs between 2 consecutive working days—4 days.
- (3) For the purposes of this Regulation, a vehicle that holds, contains or is otherwise loaded with an explosive—
 - (a) is taken to be transporting an explosive even when it is stationary, and
 - (b) is subject to the applicable requirements of the Australian Explosives Code unless otherwise provided by the Code.

91 Storage or transport of explosives of more than one hazard division together

- (1) A person who stores or transports an explosive of 1 hazard division with an explosive of another hazard division must store or transport the explosive in accordance with the requirements of the hazard division that has precedence in the circumstances.
Maximum penalty—250 penalty units.
- (2) Precedence of hazard division is to be determined in accordance with the Australian Explosives Code.

92 Transport of explosives by vehicles in certain areas

- (1) A person must not transport an explosive in or on a vehicle in a quantity greater than the maximum load limit for the explosive as set out in the Australian Explosives Code in or on the following areas, roads or districts—
 - (a) the area of the State west of the eastern boundary of the Newell Highway,
 - (b) the roads on a more or less direct route from the Newell Highway to the following—
 - (i) the Port of Yamba via Jackadgery,
 - (ii) the Port of Newcastle,
 - (iii) the Hunter Valley via Merriwa,
 - (iv) the Woodlawn Mining District via Hay,
 - (c) the roads on a more or less direct route from the Newell Highway to the following Commonwealth of Australia defence facilities—
 - (i) the Singleton Military Area,
 - (ii) Myambat, being the Defence Establishment facility, via Muswellbrook,
 - (iii) Wallangarra, being the Australian Defence Force Explosive Ordinance Depot Jennings, via Glen Innes and Tenterfield,
 - (iv) Orchard Hills, being the Defence Establishment facility,
 - (v) Williamstown, being the RAAF base,
 - (vi) Nowra, being HMAS Albatross,
 - (vii) Eden, being the Australian Defence Force Explosive Ordinance Depot Twofold Bay.

- (2) A person must not transport more than 10 tonnes of explosives of hazard division 1.1, 1.2 or 1.5 in or on a vehicle in the area of the State east of the eastern boundary of the Newell Highway, except—
 - (a) on the roads referred to in subsection (1)(b) and (c), or
 - (b) with the approval of the regulatory authority.
- (3) A person must not, except with the approval of the regulatory authority, transport explosives of hazard division 1.1, 1.2 or 1.5 in or on a vehicle—
 - (a) in a prohibited area—
 - (i) during the period specified in the *Road Rules 2014*, rule 300-2 for the prohibited area, or
 - (ii) if no period is specified for the prohibited area—at any time, or
 - (b) in the following districts or on the following bridges—
 - (i) the central business district of Sydney, North Sydney, Penrith, Newcastle or Wollongong,
 - (ii) the Sydney Harbour Bridge, the Anzac Bridge or the Gladesville Bridge.

Note. The *Road Rules 2014*, rule 300–2, prohibit the transport by vehicle of placard loads of explosives in a **prohibited area** during the time specified for the prohibited area or if no time is specified, at any time. Prohibited area is defined by reference to areas set out in the table to the rule. **Placard load** is defined to mean goods in or on a motor vehicle, trailer or tanker that are required by certain regulations to be identified with a placard or sign.

- (4) The regulatory authority may not grant approval under subsection (3) to transport more than 6 tonnes of explosives of hazard division 1.1, 1.2, 1.3, 1.4 or 1.5.
- (5) A person carrying explosives of hazard division 1.1, 1.2 or 1.5 in or on a vehicle must bypass the central business districts and the main shopping areas of a city or town not mentioned in subsections (2) or (3) whenever it is practicable and no less safe to do so.

- (6) In this section—

central business district, in relation to Sydney, North Sydney, Penrith, Newcastle and Wollongong, means the areas defined by the boundaries of postcodes 2000, 2060, 2750, 2300 and 2500, respectively.

prohibited area has the same meaning as in the *Road Rules 2014*, rule 300-2.

Maximum penalty—250 penalty units.

93 Emergency plan required if large quantities of explosives or explosive precursors are stored

- (1) A licence holder must ensure that there are adequate arrangements for dealing with an emergency if the licence holder stores at premises—
 - (a) more than 50 kilograms NEQ of explosives, or
 - (b) more than 50 tonnes of security sensitive dangerous substances.
- (2) Arrangements for dealing with an emergency are not adequate unless—
 - (a) the licence holder has a written plan in place for dealing with an emergency associated with the storage and handling of the explosives or security sensitive dangerous substances, or both, on the premises (an **emergency plan**), and
 - (b) the emergency plan is implemented and kept up to date, and
 - (c) the emergency plan is reviewed by the licence holder—
 - (i) if there is a change in circumstances at the premises that raise the possibility of an emergency of a kind not dealt with by the plan, and

- (ii) at intervals of not more than 5 years from the date on which the plan was developed or last reviewed, and
- (d) arrangements under the emergency plan, and changes to the plan, are communicated to—
 - (i) persons who are engaged to work at the premises and who may be exposed to risk as a result of an emergency, and
 - (ii) persons in adjacent premises, if persons or property on the adjacent premises may be exposed to risk as a result of an emergency, and
- (e) the emergency plan, and changes to the plan, are provided to—
 - (i) the regulatory authority, and
 - (ii) the Commissioner of Fire and Rescue NSW, and
 - (iii) if the premises are in a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and
- (f) if the regulatory authority or the Commissioner of Fire and Rescue NSW gives the licence holder a written recommendation about the content or effectiveness of the emergency plan—the licence holder revises the plan in accordance with the recommendation.

Maximum penalty—250 penalty units.

94 Carriage of explosives on public passenger vehicles

- (1) A person must not—
 - (a) possess an explosive while in or on a public passenger vehicle, or
 - (b) place an explosive in or on a public passenger vehicle.Maximum penalty—250 penalty units.
- (2) This section does not apply to the following—
 - (a) toy fireworks,
 - (b) a police officer acting during the officer's duties,
 - (c) a member of staff of a rail authority, in relation to a railway track signal, if the person carries the railway track signal in an area that is not accessible to a passenger,
 - (d) a person who holds a licence or a permit under the *Firearms Act 1996* that authorises the person to possess or use a firearm, in relation to ammunition for the firearm.
- (3) Subsection (2)(d) does not apply to a person who holds only a firearms collector licence under the *Firearms Act 1996*.
- (4) In this section—
 - rail authority** has the same meaning as it has in the *Transport Administration Act 1988*, Part 9.
 - public passenger vehicle** means a vehicle or vessel that—
 - (a) transports, or is capable of transporting, persons, and
 - (b) is available for use by the public.

95 Person transporting explosives to avoid hazards

A person transporting an explosive by vehicle must ensure that, while the explosive is being carried in or on the vehicle, it is kept away from anything, whether in or on the vehicle or elsewhere, that might cause the explosive to ignite or explode.

Maximum penalty—250 penalty units.

96 Smoking prohibited on or near vehicles used to transport explosives

- (1) A person must not smoke in or on, or within 6 metres of, a vehicle—
 - (a) in or on which an explosive is being carried, and
 - (b) on which signs that are required by the Australian Explosives Code to be exhibited are displayed.

Maximum penalty—250 penalty units.

- (2) The person in charge of a vehicle in or on which an explosive is being carried must take all practicable steps to ensure that no person smokes in or on, or within 6 metres of, the vehicle.

Maximum penalty—250 penalty units.

97 Additional requirements—licence to transport by vehicle

- (1) The holder of a licence to transport by vehicle must ensure that each individual who is authorised by the licence holder to drive a vehicle containing an explosive or explosive precursor—
 - (a) complies with the requirements of the Australian Explosives Code relating to the transport of explosives by road and rail, and
 - (b) is at least 21 years of age, and
 - (c) has sufficient training and experience to drive the vehicle concerned, and
 - (d) has been examined by a medical practitioner, as required by subsection (2), and found not to have a medical or physical condition that would impair the individual's ability to perform the duties of a driver of a vehicle that transports an explosive or explosive precursor.

Maximum penalty—250 penalty units.

- (2) A medical examination referred to in subsection (1)(d) must occur—
 - (a) no more than 6 months before the first occasion on which the driver is authorised by the licence holder to drive a vehicle containing an explosive or explosive precursor, and
 - (b) at least every 5 years after that.

Division 5 Use of explosives

98 Setting of explosives

- (1) A person who has set, or caused to be set, an explosive to explode must not leave the explosive unsupervised until—
 - (a) it has exploded, or
 - (b) it has been destroyed or rendered harmless.

Maximum penalty—250 penalty units.

- (2) Subsection (1) extends to an explosive that has failed to fire or has misfired.
- (3) This section does not apply to an explosive that is set to explode at a place in connection with mining operations while the explosive remains at the place.
- (4) In subsection (3)—
mining operations has the same meaning as in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

99 Use of distress signals for other purposes

- (1) A person must not use a distress signal for a purpose other than its intended purpose as a distress signal.
Maximum penalty—250 penalty units.
- (2) Subsection (1) does not apply to the holder of a pyrotechnician's licence if the licence authorises the holder to use a distress signal for a purpose other than its intended purpose.

Division 6 Disposal of explosives

100 Disposal under blasting explosives user's licence

- (1) A person must not dispose of an explosive unless—
 - (a) the person is the holder of a blasting explosives user's licence, or acting under the immediate supervision of the holder of a blasting explosives user's licence, and
 - (b) the blasting explosives user's licence authorises the use of the explosive being disposed of, and
 - (c) the explosive is surplus stock that has not been used on the day that it was prepared for use, and
 - (d) the explosive is not disposed of for fee or reward, and
 - (e) the person disposes of the explosive in accordance with AS 2187.Maximum penalty—250 penalty units.
- (2) This section does not prevent a person from disposing of an unused explosive by returning the explosive to the supplier, if the supplier has consented to the return of the explosive.
- (3) This section does not prevent the disposal of an explosive or explosive precursor as authorised by a licence to manufacture.

101 Explosives must be disposed of safely

A person disposing of an explosive must, in addition to complying with the requirements imposed under this Division—

- (a) ensure that the method of disposal used—
 - (i) provides the greatest degree of safety possible, and
 - (ii) is appropriate to the type of explosive and the condition of the explosive, and
- (b) take adequate precautions against causing injury to a person or damage to property, and
- (c) if an appropriate and safe method of disposal is not known—seek and act according to the advice of the manufacturer or the regulatory authority.

Maximum penalty—250 penalty units.

102 Explosives not to be discarded

A person must not throw away, bury, abandon or discard an explosive.

Maximum penalty—250 penalty units.

103 Restrictions on vacating explosives site

- (1) A person must not vacate an explosives site unless all explosives stored at the site are removed by—

- (a) lawfully disposing of the explosives, or
 - (b) lawfully transferring and storing the explosives at another place.
- Maximum penalty—250 penalty units.
- (2) A person who fails to remove an explosive from a site does not commit an offence against subsection (1) if the new occupier of the site—
 - (a) knowingly takes possession of the explosive, and
 - (b) is authorised by a licence to store the explosive.
- (3) In this section—
vacate includes sell, lease, transfer or abandon.

Division 7 Other miscellaneous safety and security measures

104 Access to explosives or explosive precursors by unauthorised persons

A person must not allow another person (the *second person*) to have unsupervised access to an explosive or explosive precursor unless the second person holds a security clearance that is in force.

Maximum penalty—250 penalty units.

105 Notification of loss or theft of explosives or explosive precursors

- (1) A licence holder must immediately notify each relevant authority if an explosive or explosive precursor in the possession, custody or control of a licence holder—
 - (a) is lost, or
 - (b) is stolen, or
 - (c) is the subject of an attempted theft, or
 - (d) is the subject of a suspicious incident that threatens the security of the explosive or explosive precursor.

Maximum penalty—250 penalty units.

- (2) In this section—
relevant authority means—
 - (a) the regulatory authority, and
 - (b) a police officer, and
 - (c) if the explosive or explosive precursor is located at a mining workplace—SafeWork NSW.

Note. The Secretary of Regional NSW is the regulatory authority for mining workplaces.

106 Notification of serious incidents involving explosives or explosive precursors

- (1) A licence holder must give the regulatory authority notice of a serious incident relating to the handling of an explosive or explosive precursor to which the licence relates.

Maximum penalty—250 penalty units.

Note. The Secretary of Regional NSW is regulatory authority for mining workplaces.

- (2) In this section—
serious incident means an incident resulting in—
 - (a) an uncontrolled explosion or fire, or
 - (b) the death of, or serious injury to, a person, or
 - (c) substantial damage to property, or

- (d) risk of an event referred to in paragraphs (a)–(c).
- (3) Notice of a serious incident must—
 - (a) be given as soon as practicable after the licence holder becomes aware of the incident, and
 - (b) be given in the following ways—
 - (i) by electronic communication in a mode approved by the regulatory authority,
 - (ii) by telephone to the regulatory authority, giving the information as may be requested of the caller, and
 - (c) contain full particulars of the incident, including, if it has resulted in the death of or serious injury to a person or substantial damage to property, the particulars of the death, injury or damage.
- (4) A licence holder must take measures to ensure that the following areas are not used, interfered with or disturbed for a period of 36 hours after notice of a serious incident is given—
 - (a) the area within a radius of 4 metres of the place where the serious incident occurred,
 - (b) the area within a radius of 4 metres of a place affected by the serious incident.Maximum penalty—250 penalty units.
- (5) A licence holder who has notified an incident as a notifiable incident under the *Work Health and Safety Act 2011* is not required to notify the regulatory authority of the incident under this section.
- (6) However, subsection (4) applies as if a reference to a serious incident were a reference to the notifiable incident notified under the *Work Health and Safety Act 2011*.
- (7) This section does not prevent an action—
 - (a) to help or remove a trapped or injured person, or to remove a body, or
 - (b) to avoid injury to a person or damage to property, or
 - (c) for the purposes of a police investigation, or
 - (d) in accordance with a direction or permission of an inspector.

107 Entry to place where explosives or explosive precursors manufactured or stored

- (1) A person must not enter or remain in a place or building authorised under a licence to manufacture or store an explosive or explosive precursor unless the person is authorised to enter or remain in the place or building—
 - (a) by the licence holder, or
 - (b) under an Act or other law.Maximum penalty—250 penalty units.
- (2) An authorised person may—
 - (a) request a person who enters or remains in a place or building in contravention of this section to leave the place or building, and
 - (b) if the person fails to do so immediately after being requested to leave—use reasonable force to effect the person’s removal.
- (3) In this section—
authorised person means the following persons—
 - (a) a licence holder,

- (b) an employee of the licence holder,
- (c) a person acting with the authority of the licence holder,
- (d) an inspector,
- (e) a police officer.

108 Fire hazards

A person must not—

- (a) take a substance, article or thing that might spontaneously ignite or cause fire or explosion into, or within 10 metres of, a place where explosives are handled, or
- (b) smoke or conduct an activity that may generate an ignition source in, or within 10 metres of, a place where explosives are handled.

Maximum penalty—250 penalty units.

109 Interference with signs and labels

A person must not intentionally or recklessly pull down, erase, mutilate or otherwise interfere with a sign, label or marking erected, fixed or made in relation to the control or regulation of an explosive or explosive precursor.

Maximum penalty—250 penalty units.

Part 6 Enforcement powers

110 Certain powers of inspectors and police officers to give directions

- (1) An inspector or police officer may direct a person to do the following—
 - (a) to remove a hazard to an explosive or explosive precursor, including an ignition source,
 - (b) to dispose of an unsafe explosive in a safe way,
 - (c) to remove a person from premises where the person's presence is contrary to a security plan,
 - (d) to institute immediate interim security arrangements to ensure the security of premises,
 - (e) to do any other activity or thing that, in the opinion of the inspector or police officer, is necessary to ensure the safety or security of persons or property arising from the handling of explosives or explosive precursors.
- (2) A direction that requires a person to handle explosives may only be given to the following persons—
 - (a) a licence holder,
 - (b) an employee, contractor or other person engaged, or apparently engaged, by a licence holder,
 - (c) a person whom the inspector or officer reasonably suspects to be engaged in activities that require a licence.
- (3) A person must not, without reasonable excuse, fail to comply with a direction given under this section.
Maximum penalty—250 penalty units.

111 Powers of inspectors in relation to explosives that have been set

- (1) An inspector may direct a person who has set an explosive to explode, or caused an explosive to be set to explode—
 - (a) to explode it, or
 - (b) to render it harmless, destroy it or otherwise dispose of it in accordance with this Regulation.
- (2) This section extends to an explosive that has failed to fire or has misfired.
- (3) A person must not, without reasonable cause, fail to comply with a direction given by an inspector under this section.
Maximum penalty—250 penalty units.

112 Evidence of licence or security clearance to be produced

- (1) A person who holds a licence or a security clearance must, on demand made by a police officer or an inspector at any time—
 - (a) if the person has the licence or security clearance in their immediate possession—produce the licence or security clearance for inspection by the police officer or inspector, or
 - (b) if the person does not have the licence or security clearance in their immediate possession—produce it as soon as practicable, but not more than 48 hours, after the demand is made to—
 - (i) the police officer or inspector who made the demand, or

- (ii) another police officer or inspector nominated by the police officer or inspector who made the demand.

Maximum penalty—5 penalty units.

- (2) A person who is in immediate possession of an explosive or explosive precursor must, unless the person has a reasonable excuse—
 - (a) carry the licence, or a copy of the licence, that authorises the possession, and
 - (b) produce the licence, or a copy of the licence, on demand being made by a police officer or an inspector.

Maximum penalty—5 penalty units.

- (3) A person who holds a security clearance and is in immediate possession of an explosive or explosive precursor must, unless the person has a reasonable excuse—
 - (a) carry the security clearance, or a copy of the security clearance, and
 - (b) produce the security clearance, or a copy of the security clearance, on demand being made by a police officer or an inspector.

Maximum penalty—5 penalty units.

Part 7 Miscellaneous

113 Onus of proof concerning reasonable excuse

In proceedings for an offence against a provision of this Regulation, the onus of proving that a person had a reasonable excuse is on the person asserting it.

114 Exemptions for particular persons on application

- (1) A person may apply in writing to the regulatory authority for an exemption from a provision of this Regulation.
- (2) On receipt of the application, the regulatory authority may—
 - (a) by written order, exempt the person from a specified provision of this Regulation, or
 - (b) dismiss the application.
- (3) The regulatory authority must not grant an exemption to a person unless it is satisfied that—
 - (a) the person is capable of achieving at least an equivalent level of safety and security as would be achieved if the provision had been complied with, or
 - (b) the application of the provision to the person is inappropriate or unnecessary in the circumstances.
- (4) An exemption may—
 - (a) be unconditional, or
 - (b) be subject to conditions specified by the regulatory authority in the order.
- (5) An exemption has effect for the shorter of the following periods—
 - (a) the period specified in the order,
 - (b) 5 years from the date of grant of the exemption.
- (6) The regulatory authority may revoke an exemption if it is satisfied that the withdrawal is justified on safety or security grounds.

115 Exemptions for classes of persons or things

- (1) The regulatory authority may, by order published in the Gazette, exempt a class of persons or things from a specified provision of this Regulation.
- (2) An exemption may—
 - (a) be unconditional, or
 - (b) be subject to conditions specified by the regulatory authority in the order.
- (3) An exemption has effect for the shorter of the following periods—
 - (a) the period specified in the order,
 - (b) 5 years from the date of grant of the exemption.
- (4) Before granting an exemption, the regulatory authority may give notice of the proposed exemption to a person or body as it considers appropriate.
- (5) The regulatory authority may revoke an exemption if it is satisfied that the withdrawal is justified on safety or security grounds.

116 Register of exemptions

- (1) For all exemptions granted under this Division that are in force, the regulatory authority is required—

- (a) to keep a register of the exemptions, and
 - (b) to publish a copy of the exemption in the Gazette at the time it is granted.
- (2) The register does not need to include—
 - (a) confidential information about an individual, or
 - (b) information about manufacturing, commercial secrets or working processes.

117 Regulatory authority's power to waive, reduce, postpone or refund fees

The regulatory authority may waive, reduce, postpone or refund, in whole or part, a fee payable or paid under the Act or this Regulation if the regulatory authority is satisfied it is appropriate because—

- (a) the person who is to pay, or has paid, the fee is suffering financial hardship, or
- (b) special circumstances exist.

Example of 'special circumstances'— circumstances involving a natural disaster or recovery from a natural disaster

118 Savings

Any act, matter or thing that, immediately before the repeal of the *Explosives Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Security sensitive dangerous substances

Dictionary

1 Security sensitive ammonium nitrate

- (1) Security sensitive ammonium nitrate is a security sensitive dangerous substance.
- (2) In this Regulation, and subject to subsection (3), ***security sensitive ammonium nitrate*** means the following—
 - (a) ammonium nitrate that is not a dangerous good of Class 1,
 - (b) ammonium nitrate emulsions, suspensions or gels containing greater than 45% ammonium nitrate,
 - (c) ammonium nitrate mixtures containing greater than 45% ammonium nitrate.
- (3) For the purposes of this Regulation, an ammonium nitrate solution is not security sensitive ammonium nitrate.

Schedule 2 Penalty notice offences

1 Penalty notice offences and penalties

- (1) For the purposes of the Act, section 34—
- (a) each offence created by a provision specified in Column 1 of Schedule 2 is an offence for which a penalty notice may be served, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) the limited kind of offence, or
 - (b) an offence committed in the limited circumstances.

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 6(1)—for an offence committed by a corporation	\$2,000
Section 6(1)—for an offence committed by an individual	\$1,000
Section 6A	\$2,000
Section 7—for an offence committed by a corporation	\$2,000
Section 7—for an offence committed by an individual	\$1,000
Section 8(1)—for an offence committed by a corporation	\$2,000
Section 8(1)—for an offence committed by an individual	\$1,000
Section 9(1)	\$1,000
Section 15	\$1,000
Section 18	\$1,000
Section 23	\$200
Section 28—for an offence committed by a corporation	\$2,500
Section 28—for an offence committed by an individual	\$800
Section 35(1)	\$200
Offences under this Regulation	
Section 14(4)	\$100
Section 15(3)	\$100
Section 19(7)	\$1,000
Section 57	\$1,000
Section 58	\$1,000
Section 59	\$2,000
Section 67	\$1,000
Section 69	\$1,000
Section 70	\$1,000

public consultation draft

Explosives Regulation 2021 [NSW]
Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty
Section 72	\$1,000
Section 73(1)	\$1,000
Section 74	\$1,000
Section 76	\$1,000
Section 77(1)	\$1,000
Section 78(1)	\$1,000
Section 79(1)	\$1,000
Section 80(1)	\$1,000
Section 81(1)	\$1,000
Section 82(2)	\$1,000
Section 82(1)	\$1,000
Section 83(1)	\$1,000
Section 83(4)	\$1,000
Section 84(1)	\$1,000
Section 84(4)	\$1,000
Section 85(1)	\$1,000
Section 86(1)	\$1,000
Section 87(1)	\$1,000
Section 87(4)	\$1,000
Section 88	\$1,000
Section 89	\$1,000
Section 90(1)	\$1,000
Section 91(1)	\$1,000
Section 92	\$1,000
Section 93	\$1,000
Section 94(1)	\$1,000
Section 95	\$1,000
Section 96(1)	\$500
Section 96(2)	\$500
Section 97(1)	\$1,000
Section 98(1)	\$1,000
Section 99(1)	\$1,000
Section 100(1)	\$1,000
Section 101	\$1,000
Section 102	\$1,000
Section 103(1)	\$1,000

public consultation draft

Explosives Regulation 2021 [NSW]
Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty
Section 104	\$1,000
Section 105(1)	\$1,000
Section 106(1)	\$1,000
Section 106(4)	\$1,000
Section 107(1)	\$1,000
Section 108	\$500
Section 109	\$1,000
Section 110(3)	\$1,000
Section 111(3)	\$1,000
Section 112(1)	\$200
Section 112(2)	\$100
Section 112(3)	\$100

Dictionary

ADG Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, as published by the Australian Government, and as in force from time to time.

ammunition means a safety cartridge of Classification Code 1.4S for small arms, but does not include a cartridge for an explosive-powered tool.

amorce (or **toy pistol cap**) means dots of an explosive substance that—

- (a) mainly consists of 1 or more of the following substances—
 - (i) potassium chloride,
 - (ii) amorphous phosphorus,
 - (iii) antimony sulfide,
 - (iv) sulfur, and
- (b) is enclosed between 2 pieces of paper or other suitable material, and
- (c) is present in a proportion not exceeding 7.5 grams to every thousand dots.

ANFO means an explosive which consists of ammonium nitrate and fuel oil as manufactured in accordance with AS 2187.

approved means approved by the regulatory authority.

AS 2187 means AS 2187, *Explosives—Storage, transport and use*, as in force from time to time.

Australian Explosives Code means the *Australian Code for the Transport of Explosives by Road and Rail*, as published by the Australian Government, and as in force from time to time.

authorised explosive—see section 56.

blaster ball means a solid substrate ball coated with a pyrotechnic composition that, if struck with another blaster ball, results in an ignition at the point of contact and a low level noise.

bon-bon cracker means an article containing a bon-bon cracker snap which is designed to emit a low level noise when it is pulled apart.

bon-bon cracker snap means the component of a bon-bon cracker which is designed to produce a sound resulting from an explosion that occurs when the ends of strips, to which an initiatory explosive is applied in a quantity not exceeding 2 grams per 1000 articles, are pulled away from each other.

Class has the same meaning as in the Australian Explosives Code.

Classification Code, of an explosive, means the code assigned to the explosive under the Australian Explosives Code, which—

- (a) is comprised of a combination of the number of the hazard division of the explosive and the letter of the compatibility group of the explosive, and
- (b) identifies the kinds of explosive substances and articles that are compatible for transport or storage purposes.

confetti bomb means a pyrotechnic device that—

- (a) contains an explosive substance with a mass not exceeding 30 milligrams, and
- (b) mainly consists of 1 or more of the following substances—
 - (i) potassium chlorate,
 - (ii) amorphous phosphorus,
 - (iii) antimony sulfide,
 - (iv) sulfur, and
- (c) is designed to project confetti, and
- (d) is designed to emit a report when an igniting string is pulled.

corresponding law means the following laws—

- (a) *Dangerous Goods Act 1985* of Victoria,

- (b) *Dangerous Goods Act 1998* of the Northern Territory,
- (c) *Dangerous Goods (Road and Rail Transport) Act 2010* of Tasmania,
- (d) *Dangerous Goods Safety Act 2004* of Western Australia,
- (e) *Dangerous Substances Act 2004* of the Australian Capital Territory,
- (f) *Explosives Act 1936* of South Australia,
- (g) *Explosives Act 1999* of Queensland.

desensitised explosive means the following—

- (a) a liquid desensitised explosive within the meaning of the ADG Code,
- (b) a solid desensitised explosive within the meaning of the ADG Code.

detonator has the same meaning as in the Australian Explosives Code.

display firework means a firework, other than a distress signal or a toy firework, consisting of a case or device forming a squib, gerb, cracker, serpent, mortar shell, lance, wheel, coloured fire, Roman candle or other article specially adapted for the production of a pyrotechnic effect or a sound effect.

dispose, in relation to explosives, includes render harmless or destroy.

distress signal means a pyrotechnic device intended for signalling, warning, rescue or similar purposes, and includes a signal cartridge, marine flare, landing flare, highway flare, highway fusee, line-carrying rocket, anti-hail rocket, cloud seeding rocket, avalanche rocket, smoke generator, railway track signal or bird scarer.

explosive—see section 4.

explosive-powered tool means a tool or device whereby a stud, pin, dowel, screw, rivet, spike or other object is driven against, into or through a substance by an explosive.

explosive precursor—see section 5.

explosives site means land on or in which explosives are stored.

export means export from the State to another country.

firework means an article designed to produce a sound or a pyrotechnic signal or a pyrotechnic effect by the explosion or ignition of an explosive substance, including a display firework or toy firework.

hazard division, of an explosive, means—

- (a) the hazard division of the explosive under the Australian Explosives Code, or
- (b) if the explosive is stored or transported with another explosive of a different hazard division—the precedence of hazard division determined in accordance with the Australian Explosives Code.

import means import into the State from another country.

indoor table bomb means a pyrotechnic device that—

- (a) contains an explosive substance with a mass not exceeding 60 milligrams, and
- (b) mainly consists of 1 or more of the following substances—
 - (i) potassium chlorate,
 - (ii) amorphous phosphorus,
 - (iii) antimony sulfide,
 - (iv) sulfur, and
- (c) is designed to project streamers or confetti, or both, and
- (d) is designed to emit a report when an igniting string is pulled.

mining workplace means a workplace—

- (a) to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies, or
- (b) at which activities under the *Petroleum (Offshore) Act 1982* are carried out.

mobile processing unit means a vehicle or mobile unit used for the manufacture of explosives.

model rocket propellant device means an article that—

- (a) consists of a case in which there is a substance or substances that burn rapidly when ignited, and
- (b) with or without other articles, is intended to be part of the propulsion system of a model rocket.

NEQ means the net explosive quantity of an explosive, expressed as a mass, exclusive of non-explosive components.

package means the complete product of the packing of goods for transport, and consists of the goods and their packaging.

packaging means the container into which goods are received or held for transport, and includes anything that enables the container to receive or hold the goods or to be closed.

possess includes have a right to possess.

power device cartridge means a power device cartridge for use with an explosive-powered tool, but does not include cartridges used for rock breaking or demolition.

prohibited explosive—see section 56.

propellant means an explosive used as a propelling charge, including gunpowder and nitrocellulose-based deflagrating explosives.

register of explosives means the register of explosives kept by the regulatory authority under Part 4, Division 2.

secure magazine—see section 87.

secure store—see section 87.

security clearance means a security clearance granted under Part 2.

security sensitive ammonium nitrate has the meaning given by Schedule 1.

security sensitive dangerous substance means a substance listed in Schedule 1.

sparkler means a firework consisting of a wire or stick coated with a metallic powder in admixture with an oxidising composition.

starting pistol cap means dots of an explosive substance that—

- (a) mainly consists of 1 or more of the following substances—
 - (i) potassium chloride,
 - (ii) amorphous phosphorus,
 - (iii) antimony sulfide,
 - (iv) sulfur, and
- (b) is applied to a sheet of paper or other suitable material, and
- (c) is present in a proportion not exceeding 0.5 grams per dot.

streamer cone means a pyrotechnic device that—

- (a) contains an explosive substance with a mass not exceeding 30 milligrams, and
- (b) mainly consists of 1 or more of the following substances—
 - (i) potassium chlorate,
 - (ii) amorphous phosphorus,
 - (iii) antimony sulfide,
 - (iv) sulfur, and
- (c) is designed to project streamers, and
- (d) is designed to emit a report when an igniting string is pulled.

supply includes sell.

the Act means the *Explosives Act 2003*.

toy firework means amorce, blaster ball, confetti bomb, bon-bon cracker, sparkler, streamer cone, toy pistol cap, starting pistol cap and indoor table bomb.

unsupervised access, in relation to an explosive or explosive precursor, means access to an explosive or explosive precursor in circumstances where no other person who is authorised under a licence to store or handle the explosive or explosive precursor is present, and includes—

- (a) access to a secure magazine or secure store of the explosive or explosive precursor, and
- (b) access to the keys to a secure magazine or secure store of the explosive or explosive precursor, and
- (c) access to the explosive or explosive precursor while the explosive or explosive precursor is being transported.

vehicle means—

- (a) a motor vehicle within the meaning of the *Road Transport Act 2013*, and
- (b) a unit of rolling stock.