



Government
of South Australia

SafeWork SA

Explosives Bill 2021

Discussion paper

Table of contents

Foreword	3
Purpose	4
Background	4
<i>Explosives Bill 2021</i>	6
Public Comment	7
How to get involved	7
Summary and Questions	8
Explosives Regulations	13
Extra Resources	16

Foreword

The draft *Explosives Bill 2021* is a modern and improved piece of legislation to replace the *Explosives Act 1936* and associated regulations. Its purpose is to regulate the handling and access to explosives to maintain the safety and security of all South Australians.

This Bill is the first phase and we will continue to work with stakeholders through the development of regulations.

We are pleased to present you with an outline of the key elements of the Bill. We are seeking stakeholder and community input before the Bill is introduced to Parliament later this year.

In line with community and stakeholder expectations, the draft Bill addresses concerns that current legislation does not reflect best practices and advances in technology. It's our priority that as significant safety improvements evolve so should our legislation.

The Bill reflects nationally agreed policy proposals to ensure we address the inconsistencies the explosives industry is experiencing when operating across jurisdictions. This includes a consistent and streamlined authorisation process and licensing framework, a nationally agreed definition of explosives and a reduction in the complexity and volume of regulations.

It's imperative to us that the Bill provides an effective and secure balance between business interests and continuing to maintain the safety and security of the community, property and our environment.

This is an ideal opportunity for South Australia to implement changes to outdated legislation and ensure that the new proposed legislation delivers the right balance between protecting community safety and reducing the red tape and regulatory burden for business.

Appropriate and current laws are necessary to ensure the safe regulation of the explosives. We encourage your participation in this consultation process as we move towards modern, safe and nationally consistent explosive legislation in South Australia.

Hon Rob Lucas MLC
Treasurer



Martyn Campbell
Executive Director, SafeWork SA



Purpose

The Explosives Bill 2021 (the Bill) has been drafted to replace the current [Explosives Act 1936](#) (the Act) and the associated regulations. The Act's purpose is to regulate the handling of, and access to, explosives to protect public health and safety, property and the environment.

Since the Act's commencement in 1936, small, limited amendments have been made to the Act. A number of concerns have often been raised by stakeholders that the legislation does not reflect current best practice and advances in technology that have significantly improved safety in the industry.

We are seeking stakeholder and community input on the Bill before it is introduced to Parliament later this year.

Background

How are explosives used?

Explosives are primarily used for mining related activities. They are also used for quarrying, construction, demolition and defence purposes as well as agriculture blasting, rock breaking, industrial tools, life saving devices, fireworks and special effects in the entertainment industry.

The regulation of explosives seeks to ensure appropriate levels of safety and security through all associated activities including manufacture, transport, storage and use.

What is the current legislation that regulates explosives?

The Act has the following sets of regulations associated with it:

- [Explosives Regulations 2011](#)

These support various parts of how the current Act operates including a transport classification code and storage categories for explosives.

- [Explosives \(Fireworks\) Regulations 2016](#)

These set out the requirements for people to manufacture, keep, convey, sell or use certain fireworks. They also prohibit the importing of certain fireworks.

- [Explosives \(Security Sensitive Substances\) Regulations 2006](#)

These relate to any substance that is declared to be security sensitive substance. A security sensitive substance means ammonium nitrate, ammonium nitrate blasting intermediate or an ammonium nitrate mixture that contains 45% of ammonium nitrate.

No further substances have been declared to be a security sensitive substance since the inception of this regulation in 2006.

National consideration of explosives reform – Policy Proposals

Each jurisdiction in Australia has its own legislation and systems for the regulation of the lawful use of explosives.

The Bill has been prepared in line with four nationally consistent policy proposals.

The policy proposals that underpin the proposed legislation are:

- the definition of explosives
- the licencing framework
- notification processes and
- the explosives authorisation process.

These policy proposals were the result of significant national consideration driven by a 2012 decision of the Council of Australian Governments (COAG) for national consistency in explosives regulation where clear benefits could be derived.

In March 2015, work health and safety (WHS) Ministers requested Safe Work Australia to undertake the work to harmonise explosives laws in Australia. This request was made, following the WHS harmonisation process, which commenced in South Australia on 1 January 2013.

As part of this process Safe Work Australia sought public comment between July and September 2015. This identified that the explosives industry was significantly impacted by the inconsistencies in the definition of explosives, licensing arrangements, notification processes and the explosives authorisation process. The variances have formed the basis of the national policy proposals.

Businesses operating across multiple jurisdictions reported that variations in regulations have increased the demand on administrative business practices and on the ability for explosives products and workers to work across jurisdictions. This has had a detrimental impact on resourcing, staff time, productivity, cost and the ability to compete for jobs across Australia.

At a national level it is estimated that the current explosives regulatory environment costs businesses approximately \$22.76 million per annum in administrative processes. National consistency in explosives legislation could result in an estimated saving of \$13.83 million per annum for businesses across Australia.¹

¹ *Explosives Regulation in Australia: Decision Regulation Impact Statement July 2016*

Greater consistency in explosives legislation would result in reduced uncertainty and administrative burden for businesses, improved competition and outputs across jurisdictions and increased certainty for businesses in their compliance activities.

In October 2016, WHS Ministers agreed to a preferred option from the [Explosives Regulation in Australia: Decision Regulation Impact Statement](#). Safe Work Australia undertook the work to develop four nationally agreed policy proposals and WHS Ministers gave in-principle support for these proposals in late 2018.

South Australia has an ideal opportunity to implement changes to the outdated legislation that is currently in place and ensure that the new proposed legislation delivers the right balance between protecting community safety and making the red tape and regulatory burden for business less challenging.

Explosives Bill 2021

What are the key things I need to know about the Bill?

The Explosives Bill 2021 will revoke the current *Explosives Act 1936* and associated regulations. The Bill incorporates the [nationally agreed four key policy proposals](#).

Appropriate and modern laws are necessary to ensure the safe regulation of the industry, as well as to protect the public and the environment.

The national policy proposals are not model laws designed for identical implementation across jurisdictions, like those which were developed during WHS harmonisation. They are agreed policies for respective jurisdictions to give effect to within their legislation.

To date, Queensland is the only jurisdiction to amend their explosives legislation in accordance with the national policy proposals. Other jurisdictions have indicated that they will progress amendments before Safe Work Australia is due to undertake a review of the implementation of the national policy proposals in 2022.

Along with the national policy proposals, three fundamental principles have been considered in the drafting of the Bill:

- consistency with other states and territories
- reduced red tape and regulatory burden and that
- safety and security is not compromised.

The Bill is designed to enable:

- a greater focus on safety and security
- a consistent and streamlined authorisation process
- a consistent and streamlined licencing framework
- clearer mutual recognition
- a nationally agreed definition of explosives
- consistency with other states and territories, and
- a reduction in the complexity and volume of regulations associated with the explosives legislation in South Australia.

The Bill aims to appropriately balance the promotion of business interests while continuing to maintain the safety and security of the South Australian public.

Public comment

The purpose of this consultation is to:

- seek feedback from stakeholders and the community on the Bill and
- provide information about further planned consultation as it is available.

The Bill will be followed by a further consultation process on the supporting regulations. These regulations will be drafted once the Bill has successfully passed through Parliament.

How to get involved

We are seeking input from stakeholders and the community to further inform development of the Bill before it is introduced to Parliament later this year. You may wish to use the attached feedback template. It is recommended that you consider the '[Summary and Questions](#)' section of this discussion paper when providing your feedback.

This consultation will run for six weeks commencing on **Thursday 1 April 2021** and concluding on **Friday 14 May 2021**. You can provide your input in the following ways:

- Join the online discussion at the YourSAy website:
<https://yoursay.sa.gov.au/explosivesbill2021>
- E-mail your feedback to explosivesbillconsultation@sa.gov.au

Any feedback received during the consultation and how this has contributed to changes to the Bill will be made publicly available after the consultation has concluded. If you wish to keep all, or certain aspects, of your feedback confidential please advise SafeWork SA when providing your feedback.

Summary and Questions

Part 1

Object and definitions

Part 1 of the Bill establishes the object and definitions. It should be noted that the definition of explosives will be prescribed by the Regulations and will be consistent with the national policy proposal.

Question 1

Do you have any comments or concerns about Part 1 of the Bill? (see clauses 1 to 6)

Part 2

Duties for safety and security

The Bill introduces new safety and security duties. The duties will impose obligations on duty holders to take reasonable precautions and care to eliminate and minimise risks associated with activities involving explosives, and to keep them secure.

This ensures that every person involved in activities within the scope of the legislation comply with these primary duties.

In drafting the duties, consideration has been given to achieving consistency with other jurisdictions as well as work health and safety laws with the aim to provide efficiency and certainty for business in regards to their compliance activities whilst improving public safety and security.

Question 2

Do you have any comments or concerns about the new duties? (see clauses 7 and 8)

Offences

The offence provisions have been updated to ensure that all relevant categories of harm including death, harm to a person, property or the environment, or a dangerous situation can be pursued in the event of a contravention. The provisions are structured in tiers providing for four categories of offences. Each category of offence is for a failure to comply with a duty. The offence a person will be prosecuted for will be determined by the degree of harm that resulted from the breach and the degree of reckless indifference. Included in the offence provisions is clause 13 that will enable the Court to find a defendant guilty of an alternative offence.

Question 3

Do you have any comments or concerns about the offence provisions? (see clauses 9 to 13)

Part 4

Authorisations

An explosive is not to be handled unless it is authorised by a Regulator. The authorisation process occurs to ensure the classification of the explosive and that it is fit for purpose and safe to use for its intended purpose.

The authorisation process is undertaken by the Regulator. An applicant will have the ability to seek an authorisation of an explosive or a class of explosive as well as the authorisation of a trial of an unauthorised explosive.

Once an explosive is authorised, a person with the appropriate licence can then manufacture, store, transport, supply, use, import or export the explosive.

The provisions in the Bill provide for the variation, renewal and cancellation of an authorisation.

These provisions will also establish a register of authorisations of explosives, and a requirement for the Regulator to publish a list of authorised explosives on its website. The current *Explosives Act 1936* provides for the classification of explosives and the gazettal of a list of classified explosives.

The provisions in the Bill have been drafted in accordance with the national policy proposal for the authorisation of explosives which seeks to achieve a nationally consistent authorisation process and automatic recognition of explosives authorisations in each jurisdiction. Whilst it is acknowledged that automatic recognition will not be achieved until all jurisdictions make the appropriate amendments to implement the national policy proposals, the Bill provides for the recognition of an authorisation granted under a corresponding law.

Question 4

Do you have any comments or concerns about the authorisations provisions? (see clauses 16 to 27)

Part 5

Licensing

The licensing of activities undertaken with explosives provides for the key regulatory control of explosives. The Bill establishes that there will be a licensing scheme and that a person must not carry on any activity involving an explosive unless authorised by licence.

There will be licences to authorise activities, and licences authorising a person to engage in an occupation involving explosives (an occupational licence). The licence classes will be prescribed by the Regulations and will be consistent with the national policy proposals.

Activity Licences will include:

- A licence to manufacture (including fixed site and mobile)
- A licence to import
- A licence to export
- A licence to supply
- A licence to store
- A licence to transport
- A licence to use

Occupational licences will include:

- An explosives driver licence
- A blasting licence
- A fireworks contractor licence
- A fireworks operator licence

This part of the Bill outlines the powers of the Regulator in granting, renewing, refusing, suspending or cancelling a licence, as well as licence conditions.

A significant change from the current explosives laws will mean that an applicant can apply for one class of licence and also be authorised to undertake activities in connection with that licence, as opposed to needing to apply for multiple classes of licences. For example, a licence to supply explosives would also authorise the licence holder to supply; purchase and possess for the purpose of supply; advertise for sale, and agree/offer to sell, the explosives specified in the licence.

Part 5 of the Bill sets out the required criteria for an applicant to obtain a licence including the requirements to be a fit and proper person, which may require proof of medical fitness and/or competency, as well as to be a security cleared person.

In accordance with the national policy proposals there will also be a requirement for a business to have at least one responsible person to be granted a licence. The responsible person will have to meet the same application criteria i.e. meets the minimum age requirement, is a fit and proper person and is a security cleared person.

A licence may be subject to conditions including a requirement for an applicant to submit a safety and security plan to the Regulator. This will be a new requirement in South Australia. It is an existing requirement in most other jurisdictions including New South Wales, Victoria and Western Australia. It will require a licence holder or potential licence holder to consider and assess the risks associated with explosives and to prepare and implement a plan for safety and security.

The Regulator will have the ability to suspend, cancel, extend or vary a licence.

All of the above criteria requirements will establish a licensing framework that provides a greater level of safety and security by ensuring that only appropriate persons are granted a licence.

Question 5

Do you have any comments or concerns about the licensing provisions? (see clauses 28 to 50)

Security

The Bill sets out the requirement that, for an applicant to be granted a licence they must be a security cleared person. The scheme to obtain a security clearance will be determined by the Regulator. This is not a new requirement in South Australia but the national policy proposal provides for a nationally consistent process for obtaining a security clearance. The scheme will outline what types of checks are to be conducted, including an ASIO Security Assessment and a criminal history check through the application for a National Police Clearance.

Question 6

Do you have any comments or concerns about the security clearance provisions? (see clauses 39 to 42)

Part 6

Enforcement measures

The Bill establishes offences for the breach of certain provisions including the duties and for undertaking activities involving explosives without a licence. To ensure the safety and security of the community it is imperative that the Regulator has powers and functions to enforce compliance where necessary and be able to investigate incidents for breaches of the law.

The Bill provides for the appointment of authorised persons and sets out their powers and functions including the ability to issue improvement notices and prohibition notices for non-compliance. Authorised persons will also have the power to enter, in some circumstances, without a warrant, as well as to inspect, require a person to answer questions, produce documents, take samples and seize items.

Included as part of the enforcement measures available to the Regulator is a notification requirement. Notification requirements were a consideration of the national process as there are variations in the matters that are required to be notified to a Regulator as well as the timeframes for notifications.

The Bill and the Regulations will adopt the recommendations of the national policy proposals in regards to notification requirements. In this part of the Bill is the notification of a notifiable situation. The definition of notifiable situation in the Bill reflects the recommendation of the national policy proposal. This is a new requirement in explosives legislation but is an existing requirement under work health and safety laws.

Improvement and prohibition notices are a compliance tool that both workplaces and the Regulator are familiar with. They are utilised to improve safety and cease activities to avoid a dangerous situation. There is also a mechanism for internal review of a notice issued by an authorised person and external review to the South Australian Civil and Administrative Tribunal.

Question 7

Do you have any comments or concerns about enforcement measures? (see clauses 51 to 66)

Question 8

Do you have any comments or concerns about the review provision? (see clause 73)

Part 8 - Miscellaneous

The miscellaneous part of the Bill covers a range of matters that are primarily for the administration of the legislation. As well as standard clauses for the matters such as delegations, exemptions, regulation making powers and transitional provisions, it includes a number of provisions relating to the prosecution process including evidence, the recovery of costs and adverse publicity orders.

Question 9

Do you have any comments or concerns about the miscellaneous provisions? (see clauses 74 to 98)

Explosives Regulations

The regulation making powers are set out in Part 8 of the Bill. The Explosives Regulations (the Regulations) will be based on the national policy proposals and be developed once the Bill has successfully passed through Parliament.

No decision has been made at this time on whether a single set of regulations encompassing all matters will be drafted or if there will be several subject specific sets.

Additional consultation on the draft Regulations will be undertaken once they are developed. Comments received on the Regulations during this consultation process will be captured but will not be responded to at this time.

Definition of Explosives

The national consultation process highlighted the variations in the definition of explosives across jurisdictions. Such variation is problematic for businesses and regulators.

It can result in an explosive being regulated in one jurisdiction and not another which gives rise to safety and security risks, increased regulatory burden and lessens the efficacy of regulatory controls.

The definition that will be included in the Regulations will be consistent with the national policy proposal. This will ensure any necessary amendments that may be required from time to time to maintain national consistency, safety and security can be made.

The Regulation will define explosive as:

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

- (a) is an explosive within the meaning of Chapter 2.1 of the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS), Seventh revised edition, or*
- (b) is declared by the Regulator under subsection (2) to be an explosive; or*
- (c) is declared by the regulations to be an explosive.*

The definition of 'explosive' within the GHS is:

The class of explosives comprises:

- (a) Explosive substances and mixtures*
- (b) Explosive articles, except devices containing explosive substances or mixtures in such quantity or of such a character that their inadvertent or accidental ignition or initiation shall not cause any effect external to the device either by projection, fire, smoke, heat or loud noise; and*
- (c) Substances, mixtures and articles not mentioned under (a) and (b) above which are manufactured with the view to producing a practical, explosive or pyrotechnic effect.*

An explosive substance (or mixture) is a solid or liquid substance (or mixture of substances) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings. Pyrotechnic substances are included even when they do not evolve gases.

A pyrotechnic substance (or mixture) is a substance or mixture of substances designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as the result of non-detonative self-sustaining exothermic chemical reactions.

An explosive article is an article containing one or more explosive substances or mixtures.

A pyrotechnic article is an article containing one or more pyrotechnic substances or mixtures.

Licences

As outlined in this discussion paper, the Bill sets out the requirement to hold a licence to undertake activities involving explosives. An applicant can apply for one class of licence and be authorised to undertake activities in connection with that licence as detailed below.

Activity Licences

Manufacture – fixed site

- manufacture at the premises
- purchase, receive and possess other explosives for the purposes of manufacture
- possess
- store
- onsite transport
- dispose

Manufacture – MPU/MMU

- transport the explosive precursors
- manufacture using the MPU/MMU
- dispose

Import/Export

- purchase and receive
- send from Australia to another country

Supply

- supply
- purchase
- advertise for sale
- agree/offer to sell

Store

- store
- purchase

Transport

- possess
- transport
- handle
- transfer

Use

- use
- purchase
- possess
- transport
- temporarily store
- manufacture for immediate use
- dispose

Occupational licences

Explosives Drivers licence

- the holder of an explosives drivers' licence will drive an explosives vehicle on behalf of the holder of a licence to transport explosives.

Pyrotechnic

- purchase and possess
- temporarily store
- transport
- dispose

Blasting

- use
- purchase
- possess
- transport
- temporarily store
- manufacture ANFO for immediate use
- dispose

Matters to be determined by the Regulator

The Bill and Regulations will also refer to matters to be determined by the Regulator. These will include:

- the manner and form of applications
- competency for fit and proper person
- licence conditions including safety and security plans
- a scheme for the approval of persons as security cleared, and
- the form of notification of certain situations.

Extra Resources

Safe Work Australia – Explosives Regulation in Australia – Decision Regulation Impact Statement:

https://ris.pmc.gov.au/sites/default/files/posts/2017/03/explosives_regulation_in_australia_decision_ris.pdf

Further information on the *Explosives Bill 2021* consultation is available from the YourSAy website: <https://yoursay.sa.gov.au/explosivesbill2021>