

Queensland



EXPLOSIVES BILL 1998

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1998

A BILL

FOR

An Act about explosives, and for other purposes

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

1. This Act may be cited as the *Explosives Act 1998*.

4

Commencement

5

2. This Act commences on a day to be fixed by proclamation.

6

Definitions—the dictionary

7

3. The dictionary in schedule 2 defines particular words used in this Act.

8

Act binds all persons

9

4. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

10

11

12

Act does not apply to some explosives

13

5. This Act does not apply to explosives to which the *Explosives Act 1961* (Cwlth) applies.

14

15

Act's effect on other Acts

16

- 6.(1) If there is an inconsistency between this Act and an Act about mining, the Act about mining prevails to the extent of the inconsistency.

17

18

- (2) In subsection (1)—

19

“**Act about mining**” means—

20

-
- (a) the *Coal Mining Act 1925*; or 1
 - (b) the *Mines Regulation Act 1964*; or 2
 - (c) the *Petroleum Act 1923*. 3

Exemptions 4

7.(1) A regulation may exempt an explosive or a government entity from this Act or any of its provisions. 5
6

(2) An exemption may be given on stated conditions. 7

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with. 8
9

PART 2—AUTHORISED AND PROHIBITED EXPLOSIVES 10 11

Authorised explosives 12

8.(1) The chief inspector may declare an explosive to be an authorised explosive for this Act. 13
14

(2) Before making a declaration under subsection (1), the chief inspector must— 15
16

(a) define the composition, quality and character of the explosive; and 17

(b) classify the explosive in a way prescribed under a regulation. 18

(3) If the composition, quality or character of an authorised explosive changes, the explosive stops being an authorised explosive. 19
20

Register of authorised explosives 21

9.(1) The chief inspector must keep a register of authorised explosives. 22

(2) The register— 23

Explosives

(a) must include the defined composition, quality, character and classification of each authorised explosive; and	1 2
(b) is not open to inspection by anyone other than the chief inspector or an inspector.	3 4
(3) However, the chief inspector must give a list of authorised explosives to anyone who asks for it.	5 6
(4) The list must not include the defined composition, quality or character of the explosives named in it.	7 8
Prohibited explosives	9
10. A regulation may declare an explosive to be a prohibited explosive.	10
Offence in relation to unauthorised and prohibited explosives	11
11.(1) A person must not manufacture, possess, sell, store, transport or use an unauthorised or prohibited explosive.	12 13
Maximum penalty—400 penalty units or 6 months imprisonment.	14
(2) Subsection (1) does not apply to an act done under an explosives trial approval.	15 16
Approvals for trial etc. of unauthorised or prohibited explosives	17
12. A regulation may authorise the chief inspector to issue to a person an approval to manufacture, possess, sell, store, transport or use an unauthorised or prohibited explosive for trial, experiment or examination (an “ explosives trial approval ”).	18 19 20 21

PART 3—AUTHORITIES

1

Division 1—Authorities

2

Authorities that may be issued under Act

3

13. A regulation may prescribe the authorities that may be issued under this Act and what each authority authorises.

4

5

Application for authority

6

14.(1) A person may apply to the chief inspector for an authority.

7

(2) The application must—

8

(a) be made in the approved form; and

9

(b) be accompanied by the fee prescribed under a regulation for the authority.

10

11

Inquiries about person's appropriateness

12

15.(1) This section applies to the following persons—

13

(a) an applicant for an authority;

14

(b) an authority holder;

15

(c) an employee of an applicant for an authority;

16

(d) an employee of an authority holder.

17

(2) The chief inspector may make reasonable inquiries about the identity, character, mental and physical health and relevant experience or expertise of the person to help in deciding whether the person—

18

19

20

(a) for subsection (1)(a)—is an appropriate person for the grant of an authority; or

21

22

(b) for subsection (1)(b)—continues to be an appropriate person to hold an authority; or

23

24

(c) for subsection (1)(c)—is an appropriate person to have access to explosives; or

25

26

Explosives

-
- (d) for subsection (1)(d)—continues to be an appropriate person to have access to explosives. 1
2
- (3)** In deciding whether the person is an appropriate person, the chief inspector must consider, among other things— 3
4
- (a) the person’s mental and physical health; and 5
- (b) whether the person has been convicted, in Queensland or elsewhere, of an offence— 6
7
- (i) relating to the misuse of drugs; or 8
- (ii) involving violence or threatened violence; or 9
- (iii) involving the use, carriage, discharge or possession of a firearm; or 10
11
- (iv) relating to the use and handling of explosives; and 12
- (c) whether a domestic violence order has been made against the person at any time. 13
14
- (4)** Also, in deciding whether an applicant for an authority or an authority holder is an appropriate person, the chief inspector must consider whether the person has adequate facilities for the use and handling of explosives. 15
16
17
- (5)** If asked by the chief inspector, the commissioner must give the chief inspector a written report about— 18
19
- (a) the person’s criminal history; and 20
- (b) any domestic violence order made against the person at any time. 21
- (6)** Subsection (5) applies to information about the criminal history or domestic violence order— 22
23
- (a) that the commissioner has; or 24
- (b) to which the commissioner ordinarily has access through arrangements with the police service of the Commonwealth or another State. 25
26
27
- (7)** Information required to be supplied under this section may be used only to decide whether the person is an appropriate person for this section or to investigate or prosecute an offence and must not be disclosed for any 28
29
30

purpose other than as provided by section 132. ¹	1
(8) For this section, the chief inspector may—	2
(a) inspect the facilities mentioned in subsection (4); or	3
(b) supply information or a document relevant to the person’s identity to an officer or member of a State or Commonwealth police service; or	4 5 6
(c) require the person to display an adequate knowledge of safety practices for the use and handling of explosives.	7 8
(9) An applicant for an authority is taken to have withdrawn the application if the applicant fails to allow the inspection under subsection (8)(a) within a stated reasonable time (not less than 28 days after notice of the requirement is given to the applicant).	9 10 11 12
Additional information	13
16.(1) The chief inspector may, by written notice, require a person mentioned in section 15(1) to give the chief inspector further information the chief inspector reasonably needs to be satisfied about the person’s identity or physical or mental health, including—	14 15 16 17
(a) in relation to the person’s physical health—a report from a doctor about the person’s physical health; and	18 19
(b) in relation to the person’s mental health—a report from a doctor or psychologist about the person’s mental health.	20 21
(2) The notice must—	22
(a) state that the information must be given within a stated reasonable time (not less than 28 days after the notice is given); and	23 24
(b) be given to—	25
(i) for a person mentioned in section 15(1)(a) or (c)—the applicant for the authority; or	26 27
(ii) for a person mentioned in section 15(1)(b) or (d)—the authority holder.	28 29

¹ Section 132 (Disclosure of information)

- (3) If the information about the person's mental health given under subsection (1) is provided in a doctor's or psychologist's report, the chief inspector may—
- (a) make information about the person having access to explosives available to the doctor or psychologist; and
 - (b) ask the doctor or psychologist to provide a further report.
- (4) The chief inspector may make the information available only if the chief inspector considers, on reasonable grounds—
- (a) the doctor or psychologist was not aware of the information; and
 - (b) the information may influence the doctor's or psychologist's opinion about the person's mental health.
- (5) The chief inspector must also advise the person of the information being supplied to the doctor or psychologist.
- (6) The chief inspector may make the information available under subsection (3) despite the provisions of any other Act.
- (7) Information required to be supplied under this section may be used only to decide whether the person is an appropriate person for section 15 or to investigate or prosecute an offence and must not be disclosed for any purpose other than as provided under section 132.²
- (8) An applicant for an authority is taken to have withdrawn the application if the applicant or the applicant's employee fails to provide the information required under subsection (1) within the time stated in the notice.

How chief inspector may deal with application

- 17.(1)** The chief inspector must consider an application for an authority and either—
- (a) issue the authority with or without conditions; or
 - (b) refuse to issue the authority.

² Section 132 (Disclosure of information)

-
- (2) If the chief inspector decides to issue the authority, the chief inspector must promptly give the applicant—
- (a) the authority; and
 - (b) if the authority is subject to conditions, a written notice stating—
 - (i) the reasons for the conditions; and
 - (ii) that the applicant may appeal to a Magistrates Court against the imposition of the conditions within 28 days after the notice is given to the applicant.
- (3) If the chief inspector decides not to issue the authority, the chief inspector must promptly—
- (a) give the applicant a written notice stating—
 - (i) the decision; and
 - (ii) the reasons for the decision; and
 - (iii) that the applicant may appeal to a Magistrates Court against the decision within 28 days after the notice is given to the applicant; and
 - (b) refund fees paid by the applicant, other than fees for assessing the application.

Compliance with conditions

18. If the chief inspector imposes a condition on an authority, the authority holder must comply with the condition.

Maximum penalty—200 penalty units.

Term of authority

19.(1) An authority is for the term stated in the authority, but can not be for more than the term prescribed under a regulation.

(2) At the end of the term, the authority expires.

Transfer of authority	1
20.(1) A licence, other than a licence to use an explosive, is transferable, but only with the previous written approval of the chief inspector.	2 3
(2) Another type of authority can not be transferred.	4
Renewal of authority	5
21.(1) A licence is renewable.	6
(2) An authority other than a licence can not be renewed.	7
Division applies to application for renewal of licence	8
22.(1) This division applies to an application for the renewal of a licence.	9
(2) However, the chief inspector may renew a licence only if the application is made to the chief inspector before the licence expires.	10 11
<i>Division 2—Suspension and cancellation of authorities</i>	12
Grounds for suspension or cancellation	13
23. Each of the following is a ground for the suspension or cancellation of an authority—	14 15
(a) the authority was obtained because of incorrect or misleading information;	16 17
(b) the holder has contravened an authority condition;	18
(c) the holder has committed—	19
(i) an offence against this Act or an Act of another State about explosives; or	20 21
(ii) another offence involving the use of explosives;	22
(d) the holder, or someone else required under a regulation to be an appropriate person for the issue of the authority, is not, or is no longer, an appropriate person;	23 24 25

-
- (e) someone other than the holder controls the holder's operations under the authority; 1
2
 - (f) having regard to the effect an incident involving explosives may have on workers and persons living in the vicinity of a place where an activity is performed under an authority, the level of safety under which the activity is performed is no longer acceptable. 3
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5
6
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Procedure for suspension or cancellation 8

24.(1) This section applies if the chief inspector considers there is a ground to suspend or cancel an authority (the "**proposed action**"). 9
10

(2) Before taking the proposed action, the chief inspector must give the authority holder a written notice stating— 11
12

- (a) the proposed action; and 13
- (b) the grounds for the proposed action; and 14
- (c) an outline of the facts and circumstances that are the basis of the grounds; and 15
16
- (d) if the proposed action is suspension of the authority—the proposed suspension period; and 17
18
- (e) that the holder may show, within a stated reasonable time (not less than 28 days after the notice is given to the holder) why the proposed action should not be taken. 19
20
21

(3) If, after considering all representations made within the stated time, the chief inspector still considers there is a ground to take the proposed action, the chief inspector may— 22
23
24

- (a) if the proposed action was to suspend the authority for a stated period—suspend the authority for not longer than the proposed suspension period; or 25
26
27
- (b) if the proposed action was to cancel the authority—either cancel the authority or suspend it for a period. 28
29

(4) The chief inspector must inform the authority holder of the decision by written notice. 30
31

-
- (5) If the chief inspector decides to suspend or cancel the authority, the notice must state— 1
2
- (a) the reasons for the decision; and 3
 - (b) that the authority holder may appeal against the decision to a Magistrates Court within 28 days after the notice is given to the holder. 4
5
6
- (6) The decision takes effect on the day the notice is given to the authority holder, or if a later day of effect is stated in the notice, the later day. 7
8
- (7) However, if the authority is suspended or cancelled because of the conviction of a person for an offence, the suspension or cancellation— 9
10
- (a) does not take effect until— 11
 - (i) the end of the time to appeal against the conviction; and 12
 - (ii) if an appeal is made against the conviction—the appeal is finally decided or otherwise ends; and 13
14
 - (b) has no effect if the conviction is quashed. 15
- Procedure for urgent suspension or cancellation of authority** 16
- 25.(1)** This section applies if the chief inspector is reasonably satisfied— 17
- (a) urgent action is necessary in the particular circumstances; and 18
 - (b) undue delay in suspending or cancelling an authority may cause harm to the public. 19
20
- (2) The chief inspector may suspend or cancel an authority for the reason mentioned in subsection (1) without previous notice to the authority holder. 21
22
- (3) However, the chief inspector must immediately inform the authority holder of the decision by written notice. 23
24
- (4) The notice must state— 25
- (a) the reasons for the decision; and 26
 - (b) that the authority holder may appeal against the decision to a Magistrates Court within 28 days after the notice is given to the holder. 27
28
29

(5) The decision takes effect on the day the notice is given to the authority holder or, if a later day of effect is stated in the notice, the later day. 1
2

Return of authority 3

26.(1) The holder of a suspended authority, or the former holder of a cancelled authority, must return the authority to the chief inspector within 14 days after the suspension or cancellation takes effect, unless the person has a reasonable excuse for not returning it, or not returning it within that time. 4
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7
8

Maximum penalty—200 penalty units. 9

(2) If a suspended authority is returned to the chief inspector, the chief inspector must return it to the authority holder at the end of the suspension period. 10
11
12

Division 3—Other provisions about authorities 13

Replacement of authority 14

27.(1) An authority holder may apply to the chief inspector for the replacement of a lost, stolen or destroyed authority. 15
16

(2) The chief inspector must consider the application and either— 17

(a) replace the authority; or 18

(b) refuse to replace the authority. 19

(3) If the chief inspector is reasonably satisfied the authority has been lost, stolen or destroyed, the chief inspector must replace the authority. 20
21

(4) If the chief inspector decides to refuse to replace the authority, the chief inspector must give the authority holder a written notice stating— 22
23

(a) the decision; and 24

(b) the reasons for the decision; and 25

(c) that the holder may appeal against the decision to a Magistrates Court within 28 days after the notice is given to the holder. 26
27

Amendment of authority on application

28.(1) An authority holder may apply to the chief inspector for an amendment of the authority.

(2) The application must—

- (a) be made at least 28 days before the holder wants the amendment to take effect; and
- (b) be accompanied by the fee prescribed under a regulation.

(3) However, failure to comply with subsection (2) does not prevent the chief inspector dealing with the application.

(4) The chief inspector must decide the application by—

- (a) amending the authority in the way sought; or
- (b) refusing to amend the authority.

(5) The chief inspector may amend the authority only if the chief inspector is reasonably satisfied the amendment is desirable in the interests of the effective administration of this Act.

(6) If the chief inspector decides to amend the authority, the chief inspector must promptly give the authority holder a written notice stating the decision and the amendment.

(7) If the chief inspector decides not to amend the authority, the chief inspector must promptly give the authority holder a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the holder may appeal against the decision to a Magistrates Court within 28 days after the notice is given to the holder.

Amendment of authority without application

29.(1) This section applies if the chief inspector considers it is desirable to amend an authority in the interests of the effective administration of this Act.

(2) Before amending the authority, the chief inspector must give the authority holder a written notice stating—

Explosives

-
- (a) the proposed amendment; and 1
- (b) the reasons for the amendment; and 2
- (c) that the holder may show, within a stated reasonable time of at least 28 days after the notice is given to the holder, why the amendment should not be made. 3
4
5
- (3)** If, after considering all representations made within the stated time, the chief inspector still believes the authority should be amended, the chief inspector may amend the authority— 6
7
8
- (a) in the way proposed; or 9
- (b) in another way, having regard to the representations. 10
- (4)** The chief inspector must inform the authority holder of the decision by written notice. 11
12
- (5)** If the chief inspector decides to amend the authority, the notice must also state— 13
14
- (a) the amendment; and 15
- (b) the reasons for the amendment; and 16
- (c) that the authority holder may appeal against the decision to a Magistrates Court within 28 days after the notice is given to the holder. 17
18
19
- (6)** Subsections (1) to (5) do not apply if the chief inspector proposes to amend the authority— 20
21
- (a) by omitting a condition; or 22
- (b) for a formal or clerical reason that does not adversely affect the authority holder's interests. 23
24
- (7)** The chief inspector may amend a condition of an authority in a way mentioned in subsection (6) by written notice given to the authority holder. 25
26
- Notice to return authority for alteration** 27
- 30.(1)** The chief inspector may, by written notice, require the authority holder to return the authority to the chief inspector within a stated reasonable time of at least 14 days after the notice is given to the holder, to enable the chief inspector to amend the authority. 28
29
30
31

(2) After amending the authority, the chief inspector must return the authority to the holder. 1
2

(3) An authority holder must comply with a notice under subsection (1), unless the holder has a reasonable excuse. 3
4

Maximum penalty—20 penalty units. 5

(4) The amendment of the authority under this division does not depend on the authority being amended under this section. 6
7

Surrender of authority 8

31.(1) An authority holder may surrender the authority by written notice given to the chief inspector. 9
10

(2) The authority must accompany the notice. 11

(3) The surrender of an authority takes effect on the day the notice of surrender is given to the chief inspector or, if a later day of effect is stated in the notice, the later day. 12
13
14

PART 4—HANDLING EXPLOSIVES 15

Division 1—Preliminary 16

General duty of care 17

32. A person who is doing an act involving explosives must take reasonable precautions and use reasonable care to avoid endangering any person's safety, health or property. 18
19
20

Maximum penalty—400 penalty units or 6 months imprisonment. 21

Employer's obligation about employees 22

33.(1) Before an employer employs someone to do something allowing the employee to have access to explosives, the employer must ensure, as far as practicable, the person is an appropriate person. 23
24
25

Explosives

(2) A regulation may prescribe the minimum steps an employer must take to satisfy subsection (1). 1
2

(3) Failure to comply with this section may be a ground for suspending or cancelling an authority holder’s authority.³ 3
4

Division 2—Possession of explosives 5

Authority required to possess explosives 6

34.(1) A person must not possess an explosive unless the person holds an authority that authorises the person to possess the explosive. 7
8

Maximum penalty—400 penalty units or 6 months imprisonment. 9

(2) Subsection (1) does not apply to the possession of an explosive prescribed under a regulation for this section. 10
11

Division 3—Moving explosives into and out of the State 12

Application of div 3 13

35. This division applies to— 14

(a) an explosive that may lawfully be exported from Australia (an “**export explosive**”); and 15
16

(b) an explosive that may lawfully be imported into Australia (an “**import explosive**”). 17
18

Bringing or sending certain explosives into and out of the State 19

36. A person must not send an export explosive from the State to another country or bring an import explosive into the State from another country unless the person holds an authority to send the export explosive to the other country or bring the import explosive into the State. 20
21
22
23

Maximum penalty—400 penalty units or 6 months imprisonment. 24

³ See section 23 (Grounds for suspension or cancellation)

Notice to chief inspector

37.(1) An authority holder who intends to bring an import explosive into the State must give to the chief inspector written notice in the approved form of—

- (a) the intention; and
- (b) the arrival in the State of the import explosive.

Maximum penalty—20 penalty units.

(2) An authority holder who intends to send an export explosive to another country must give to the chief inspector written notice of the intention in the approved form.

Maximum penalty—20 penalty units.

Division 4—Manufacturing explosives**Explosive to be manufactured under authority**

38.(1) A person must not manufacture an explosive unless the person holds an authority that authorises the person to manufacture the explosive.

Maximum penalty—400 penalty units or 6 months imprisonment.

(2) Subsection (1) does not prevent a person—

- (a) manufacturing, not more than 500 g of an explosive, or a smaller amount prescribed under a regulation, under direct adult supervision, for use by the person manufacturing it in a chemical experiment; or
- (b) reconditioning an explosive at a government magazine or under an inspector's supervision; or
- (c) if the person is licensed or otherwise authorised to use a weapon under the *Weapons Act 1990*—filling ammunition for the weapon for use by the person.

(3) Also, subsection (1) does not prevent the holder of an authority to use an explosive manufacturing an explosive prescribed under a regulation for this section (a “**prescribed explosive**”), by a manual operation performed

under conditions prescribed under a regulation, for the holder's immediate use.	1 2
(4) In addition, subsection (1) does not prevent an inspector manufacturing a prescribed explosive by a manual operation performed under conditions prescribed under a regulation.	3 4 5
Offences relating to entry of factories	6
39.(1) A person must not unlawfully enter an explosives factory.	7
Maximum penalty—100 penalty units.	8
(2) A person in physical possession of a firearm must not enter an explosives factory.	9 10
Maximum penalty—200 penalty units.	11
(3) Subsection (2) does not apply to a police officer or a security provider under the <i>Security Providers Act 1993</i> who enters an explosives factory for performing official duties.	12 13 14
(4) An inspector, a security provider or the holder of an authority in relation to an explosives factory may take reasonable steps to remove a person who has entered an explosives factory in contravention of subsection (1) or (2) from the factory or the land it is on.	15 16 17 18
Safety at factories	19
40.(1) Each person in control of, or working at, an explosives factory must take reasonable precautions and use reasonable care to prevent an explosives incident at the factory.	20 21 22
Maximum penalty—200 penalty units.	23
(2) The holder of an authority in relation to an explosives factory must ensure a notice warning persons at the factory of their liability to penalty for an offence against subsection (1) is always conspicuously displayed so anyone entering the factory can easily see and read it.	24 25 26 27
Maximum penalty—20 penalty units.	28

<i>Division 5—Selling explosives</i>	1
Authority needed to sell explosives	2
41. A person must not sell an explosive unless the person holds an authority that authorises the person to sell the explosive.	3 4
Maximum penalty—200 penalty units or 3 months imprisonment.	5
Unauthorised sales of explosives	6
42. A person must not sell an explosive to someone other than a person authorised under a regulation.	7 8
Maximum penalty—200 penalty units or 3 months imprisonment.	9
Selling explosives in public places prohibited	10
43. A person must not sell an explosive in a public place.	11
Maximum penalty—100 penalty units.	12
<i>Division 6—Storing explosives</i>	13
Authority needed to store explosives	14
44. A person must not store an explosive unless the person holds an authority to store the explosive.	15 16
Maximum penalty—200 penalty units or 3 months imprisonment.	17
Where explosives may be stored	18
45.(1) A person must not store an explosive at a place other than—	19
(a) where it is lawfully manufactured; or	20
(b) a magazine where the person may lawfully store it under this Act;	21
or	22

(c) a place approved by the chief inspector, by signed instrument, as suitable for storing the explosive under stated conditions.	1 2
Maximum penalty—400 penalty units or 6 months imprisonment.	3
(2) Subsection (1) does not apply to an explosive stored for a purpose prescribed under a regulation or by an inspector for testing.	4 5
Government magazines	6
46.(1) The Minister may, by gazette notice, declare a place to be a government magazine.	7 8
(2) The chief inspector is the person in charge of a government magazine.	9 10
Offences relating to entry of magazines	11
47.(1) A person must not unlawfully enter a magazine.	12
Maximum penalty—100 penalty units.	13
(2) A person in physical possession of a firearm must not enter a magazine.	14 15
Maximum penalty—200 penalty units.	16
(3) Subsection (2) does not apply to a police officer or a security provider under the <i>Security Providers Act 1993</i> who enters a magazine for performing official duties.	17 18 19
(4) An inspector, a security provider or the holder of an authority in relation to a magazine may take reasonable steps to remove a person who has entered a magazine in contravention of subsection (1) or (2) from the magazine or the land it is on.	20 21 22 23
Safety at magazines	24
48.(1) Each person in control of, or working at, a magazine must take reasonable precautions and use reasonable care to prevent an explosives incident at the magazine.	25 26 27
Maximum penalty—200 penalty units.	28

(2) The holder of an authority for a magazine must ensure a notice warning persons at the magazine of their liability to penalty for an offence against subsection (1) is always conspicuously displayed so anyone entering the magazine can easily see and read it. 1
2
3
4

Maximum penalty—20 penalty units. 5

Person storing explosives must take precautions 6

49. A person storing an explosive must take reasonable precautions— 7

(a) to prevent an explosives incident; and 8

(b) to minimise the likely effects of an explosives incident. 9

Maximum penalty—200 penalty units. 10

Division 7—Transporting explosives 11

Transporting explosives 12

50.(1) A person must not transport an explosive in a vehicle or boat unless the person holds an authority under this Act or a corresponding law to transport the explosive in the vehicle or boat. 13
14
15

Maximum penalty—200 penalty units. 16

(2) A person who is authorised to transport an explosive must ensure— 17

(a) it is transported in the way required under this Act; and 18

(b) it is delivered— 19

(i) to a place where it may lawfully be stored or used; and 20

(ii) to someone who may lawfully possess it. 21

Maximum penalty—200 penalty units. 22

(3) This section does not prevent a person transporting an explosive for a purpose prescribed under a regulation if— 23
24

(a) the amount of the explosive being transported is not more than the amount prescribed under a regulation for this section; and 25
26

Explosives

(b) the person complies with the conditions prescribed under a regulation for transporting the explosive.	1 2
(4) A person who may transport explosives under an authority does not commit an offence against this section if the person can not comply with the section because of—	3 4 5
(a) the wilful act, neglect, or default of the consignor or consignee of the explosive or someone else (other than an agent or employee of the carrier); or	6 7 8
(b) the improper refusal of the consignee or someone else to accept delivery of the explosive.	9 10
(5) The person mentioned in subsection 4(a) or (b) who prevented compliance with this section is instead taken to have committed the offence.	11 12
(6) In subsection (1)—	13
“ corresponding law ” means a law of another State dealing with the transport of explosives.	14 15
Explosives too dangerous to transport	16
51. A person must not transport an explosive declared under a regulation to be too dangerous to transport.	17 18
Maximum penalty—400 penalty units or 6 months imprisonment.	19
When div 7 does not apply	20
52. If another Act or law imposes safety obligations for transporting explosives by air, rail or sea, this division does not apply to explosives transported under the other Act or law.	21 22 23
Division 8—Using explosives	24
Authority needed to use explosives	25
53.(1) A person must not use an explosive unless the person holds an authority to use the explosive.	26 27

Maximum penalty—200 penalty units.	1
(2) Subsection (1) does not apply to an explosive prescribed under a regulation for this section.	2 3
Using explosives under conditions endangering life etc.	4
54.(1) A person must not prepare an explosive for use, or use an explosive, other than in the way prescribed under a regulation.	5 6
Maximum penalty—200 penalty units.	7
(2) A person must not use an explosive if exploding it may reasonably be expected to endanger any person's safety, health or property.	8 9
Maximum penalty—200 penalty units.	10

PART 5—INVESTIGATIONS AND INQUIRIES INTO EXPLOSIVES INCIDENTS

Division 1—Investigations into explosives incidents

Notice of explosives incident	14
55. The authority holder whose explosives are involved in an explosives incident must immediately give the chief inspector written notice of the incident and any loss of life, personal injury or property damage caused by the incident.	15 16 17 18
Maximum penalty—170 penalty units.	19
Power to give direction to isolate site of explosives incident	20
56.(1) This section applies if an inspector reasonably believes it is necessary to preserve evidence after an explosives incident has happened.	21 22
(2) The inspector may, orally or by written notice, require the authority holder whose explosives were involved in the explosives incident to isolate	23 24

the site of the incident to prevent interference with the site. 1

(3) If the requirement is given orally, it must be confirmed by written notice given to the authority holder. 2
3

(4) The authority holder must comply with the requirement. 4

Maximum penalty for subsection (4)—200 penalty units. 5

Site not to be interfered with without inspector's permission 6

57.(1) A person must not interfere with the site of an explosives incident without the permission of an inspector. 7
8

Maximum penalty—200 penalty units. 9

(2) Permission under subsection (1) must not be unreasonably withheld. 10

(3) For this division, action taken to save life or prevent further injury at a place is not interference with the site. 11
12

Investigation by chief inspector or authority holder 13

58.(1) The chief inspector may— 14

(a) investigate an explosives incident; or 15

(b) give the authority holder whose explosives were involved in the explosives incident a written notice requiring the holder— 16
17

(i) to carry out an investigation to decide the causes of the incident; and 18
19

(ii) to prepare a report about the incident that includes recommendations to prevent the incident happening again. 20
21

(2) The notice must state that the authority holder may appeal to a Magistrates Court against the decision to give the notice within 28 days after the notice is given to the holder. 22
23
24

(3) The authority holder must comply with the notice within the reasonable time stated in the notice. 25
26

Maximum penalty—100 penalty units. 27

(4) The authority holder must ensure that the site of the incident is not interfered with until— 28
29

Explosives

-
- (a) all relevant details about the incident have been recorded and, if possible, photographed; and 1
2
 - (b) sufficient measurements have been taken to allow the development of an accurate plan of the site; and 3
4
 - (c) a list of witnesses to the incident has been compiled. 5

Maximum penalty for subsection (4)—100 penalty units. 6

Person must answer question about explosives incident 7

59.(1) This section applies if an inspector asks a person a question about an explosives incident. 8
9

(2) The person must answer the question unless the person has a reasonable excuse. 10
11

Maximum penalty—40 penalty units. 12

(3) It is a reasonable excuse to fail to answer the question that answering might tend to incriminate the person. 13
14

Division 2—Inquiries into serious explosives incidents by board of inquiry 15
16

Minister may establish board of inquiry 17

60.(1) The Minister may, by gazette notice, establish a board of inquiry for a serious explosives incident. 18
19

(2) The notice, or a subsequent gazette notice, may specify matters relevant to the inquiry including, for example, the chairperson and the terms of reference. 20
21
22

(3) The Minister may exercise powers under this section for a serious explosives incident whether or not a board of inquiry had previously inquired into the incident. 23
24
25

Membership of board of inquiry 26

61.(1) A board of inquiry is to be constituted by— 27

-
- (a) a magistrate; and 1
 - (b) the chief inspector; and 2
 - (c) if, having regard to the nature of the incident, the Minister 3
considers it appropriate for the board of inquiry to include 4
persons with special knowledge relevant to the incident—not 5
more than 3 persons with appropriate special knowledge. 6
- (2) The Minister is to appoint the members of the board of inquiry 7
mentioned in subsection (1)(a) and (c). 8
- (3) A member of a board of inquiry who is not an inspector is taken, for 9
the inquiry, to have the powers of an inspector. 10

Role of board of inquiry 11

62.(1) The board of inquiry must— 12

- (a) inquire into the circumstances and probable causes of the serious 13
explosives incident; and 14
- (b) give the Minister a written report of the board’s findings. 15

(2) The report may contain the recommendations the board considers 16
appropriate and other relevant matters. 17

(3) The Minister must publish the report in the way the Minister 18
considers appropriate. 19

Procedure 20

63.(1) When conducting its inquiry, the board of inquiry must— 21

- (a) observe natural justice; and 22
- (b) act as quickly, and with as little formality and technicality, as is 23
consistent with a fair and proper consideration of the issues. 24

(2) In conducting the inquiry, the board— 25

- (a) is not bound by the rules of evidence; and 26
- (b) may inform itself in any way it considers appropriate, including 27
by holding hearings; and 28
- (c) may decide the procedures to be followed for the inquiry. 29

(3) However, the board must comply with this division and any procedural rules prescribed under a regulation. 1
2

(4) The magistrate is chairperson at the inquiry. 3

Inquiry to be held in public other than in special circumstances 4

64.(1) An inquiry must be held in public. 5

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present. 6
7
8
9

(3) The board may give the direction only if it is satisfied that it is proper to do so in the special circumstances of the inquiry. 10
11

Protection of members, legal representatives and witnesses 12

65.(1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court. 13
14
15

(2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court. 16
17
18

(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court. 19
20
21

Record of proceedings to be kept 22

66. The board of inquiry must keep a record of its proceedings. 23

Procedural fairness and representation 24

67. In the conduct of the inquiry, the board must give the authority holder whose explosives were involved in the serious explosives incident the subject of the inquiry the opportunity of making a defence to all claims made against the person, either in person or by counsel, solicitor or agent. 25
26
27
28

Board's powers on inquiry	1
68.(1) In conducting the inquiry, the board may—	2
(a) act in the absence of any person who has been given notice of the inquiry or some other reasonable notice; and	3 4
(b) receive evidence on oath or by statutory declaration; and	5
(c) adjourn the inquiry; and	6
(d) disregard any defect, error, omission or insufficiency in a document; and	7 8
(e) permit or refuse to permit a person (including a lawyer) to represent someone else at the inquiry.	9 10
(2) A member of the board may administer an oath to a person appearing as a witness before the inquiry.	11 12
 Notice to witness	 13
69.(1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.	14 15 16
(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.	17 18 19
 Inspection of documents or things	 20
70.(1) If a document or thing is produced to the board at the inquiry, the board may—	21 22
(a) inspect the document or thing; and	23
(b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the inquiry.	24 25
(2) The board may also take possession of the document or thing, and keep it while it is necessary for the inquiry.	26 27
(3) While it keeps a document or thing, the board must permit a person otherwise entitled to possession of the document or thing to inspect, make	28 29

copies of, photograph, or take extracts from, the document or thing, at a reasonable place and time that the board decides.	1 2
Inquiry may continue despite court proceeding unless otherwise ordered	3 4
71. The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.	5 6 7 8
Offences by witnesses	9
72.(1) A person given a notice under section 69 ⁴ must not—	10
(a) fail, without reasonable excuse, to attend as required by the notice; or	11 12
(b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.	13 14 15
Maximum penalty—40 penalty units.	16
(2) A person appearing as a witness at the inquiry must not—	17
(a) fail to take an oath when required by the chairperson of the board; or	18 19
(b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or	20 21
(c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 69.	22 23
Maximum penalty—40 penalty units.	24
(3) It is a reasonable excuse for subsection (2)(b) or (c) that answering the question or producing the document or thing might tend to incriminate the person.	25 26 27

⁴ Section 69 (Notice to witness)

False or misleading statements to inquiry	1
73. A person must not state anything to the board of inquiry that the person knows is false or misleading in a material particular.	2 3
Maximum penalty—200 penalty units.	4
False or misleading documents to inquiry	5
74.(1) A person must not give to the board of inquiry a document containing information the person knows is false or misleading in a material particular.	6 7 8
Maximum penalty—200 penalty units.	9
(2) Subsection (1) does not apply to a person who, when giving the document—	10 11
(a) informs the board, to the best of the person’s ability, how it is false or misleading; and	12 13
(b) if the person has, or can reasonably get, the correct information—gives the correct information to the board.	14 15
Contempt of board	16
75. A person must not—	17
(a) insult the board of inquiry; or	18
(b) deliberately interrupt the inquiry; or	19
(c) create or continue, or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or	20 21
(d) do anything that would be contempt of court if the board were a judge acting judicially.	22 23
Maximum penalty—40 penalty units.	24
Report of offences	25
76. If the board of inquiry considers material before it discloses an offence, it may report the offence to 1 or more of the following and may make available to them all relevant material in the board’s possession—	26 27 28

-
- | | |
|--|---|
| (a) the commissioner; | 1 |
| (b) the Criminal Justice Commission; | 2 |
| (c) the director of public prosecutions; | 3 |
| (d) the chief executive; | 4 |
| (e) the chief inspector. | 5 |

Change of membership of board 6

77. The inquiry of the board of inquiry is not affected by a change in its membership. 7
8

PART 6—ADMINISTRATION AND ENFORCEMENT 9

Division 1—Inspectors 10

Chief executive may appoint inspectors 11

78.(1) The chief executive may appoint a person as an inspector under this Act if— 12
13

- | | |
|---|----------|
| (a) the chief executive considers the person has the necessary expertise or experience to be an inspector; or | 14
15 |
| (b) the person has satisfactorily finished training approved by the chief executive. | 16
17 |

(2) Without limiting powers the chief executive has apart from this Act, the chief executive may designate 1 of the inspectors as the chief inspector for this Act. 18
19
20

Inspector's identity card 21

79.(1) The chief executive must give each inspector an identity card. 22

(2) The identity card must— 23

-
- (a) contain a recent photo of the person; and 1
 - (b) be signed by the person; and 2
 - (c) identify the person as an inspector under this Act; and 3
 - (d) state an expiry date. 4

(3) A person who stops being an inspector must return the person's identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse. 5
6
7
8

Maximum penalty—20 penalty units. 9

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes. 10
11

Production or display of inspector's identity card 12

80.(1) An inspector may exercise a power in relation to someone only if— 13
14

- (a) the inspector first produces the inspector's identity card for the other person's inspection; or 15
16
- (b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person. 17
18

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity. 19
20
21

Powers of inspector 22

81.(1) An inspector is subject to the directions of— 23

- (a) the Minister; and 24
- (b) for an inspector other than the chief inspector—the chief inspector. 25
26

(2) The powers of an inspector may be limited— 27

- (a) under a regulation; or 28
- (b) under a condition of appointment; or 29

-
- (c) by written notice given by the Minister to the inspector; or 1
 - (d) for an inspector other than the chief inspector—by written notice 2
given by the chief inspector to the inspector. 3

Inspector’s appointment conditions 4

82.(1) An inspector holds office on the conditions stated in the 5
instrument of appointment. 6

(2) An inspector— 7

- (a) if the appointment provides for a term of appointment—stops 8
holding office at the end of the term; and 9
- (b) if the conditions of appointment provide—stops holding office 10
when the inspector stops holding another office stated in the 11
appointment conditions (the “**main office**”); and 12
- (c) may resign by signed notice of resignation given to the chief 13
executive. 14

(3) However, an inspector may not resign from the office under this Act 15
(the “**secondary office**”) if a term of employment to the main office 16
requires the person to hold the secondary office. 17

Division 2—Powers of inspectors 18

Subdivision 1—Entry of places 19

Power to enter places 20

83.(1) An inspector may enter a place if— 21

- (a) its occupier consents to the entry; or 22
- (b) it is a public place and the entry is made when it is open to the 23
public; or 24
- (c) the entry is authorised by a warrant; or 25
- (d) it is mentioned in an authority as a place of business and is— 26

Explosives

-
- (i) open for carrying on the business; or 1
 - (ii) otherwise open for entry; or 2
 - (iii) required to be open for inspection under the authority; or 3
 - (e) the inspector reasonably believes a dangerous situation exists at the place and it is necessary for the inspector to enter it to take action to prevent, remove or minimise the danger; or 4
5
6
 - (f) the entry is necessary to investigate the circumstances of an explosives incident at the place. 7
8
 - (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant— 9
10
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or 11
12
 - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier. 13
14
15
 - (3) For subsection (1)(d), a place of business does not include a part of the place where a person resides. 16
17

Subdivision 2—Procedure for entry 18**Entry with consent** 19

- 84.(1)** This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place. 20
21
- (2) Before asking for the consent, the inspector must tell the occupier— 22
- (a) the purpose of the entry; and 23
- (b) that the occupier is not required to consent. 24
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent. 25
26
- (4) The acknowledgment must state— 27
- (a) the occupier has been told— 28
- (i) the purpose of the entry; and 29

-
- (ii) that the occupier is not required to consent; and 1
 - (b) the purpose of the entry; and 2
 - (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and 3
4
 - (d) the time and date the consent was given. 5
- (5) If the occupier signs an acknowledgment, the inspector must immediately give a copy to the occupier. 6
7
- (6) A court must find the occupier did not consent to an inspector entering the place under this part if— 8
9
- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry; and 10
11
 - (b) an acknowledgment is not produced in evidence for the entry; and 12
 - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry. 13
14

Application for warrant 15

85.(1) An inspector may apply to a magistrate for a warrant for a place. 16

(2) The application must be sworn and state the grounds on which the warrant is sought. 17
18

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires. 19
20
21

Example— 22

The magistrate may require additional information supporting the application to be given by statutory declaration. 23
24

Issue of warrant 25

86.(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting— 26
27

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and 28
29

(b)	the evidence is at the place, or may be at the place, within the next 7 days.	1 2
(2)	The warrant must state—	3
(a)	that a stated inspector may, with necessary and reasonable help and force—	4 5
(i)	enter the place and any other place necessary for entry; and	6
(ii)	exercise the inspector’s powers under this part; and	7
(b)	the offence for which the warrant is sought; and	8
(c)	the evidence that may be seized under the warrant; and	9
(d)	the hours of the day or night when the place may be entered; and	10
(e)	the date, within 14 days after the warrant’s issue, the warrant ends.	11 12
Special warrants		13
87.(1)	An inspector may apply for a warrant (a “ special warrant ”) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—	14 15 16
(a)	urgent circumstances; or	17
(b)	other special circumstances, including, for example, the inspector’s remote location.	18 19
(2)	Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.	20 21
(3)	The inspector may apply for the warrant before the application is sworn.	22 23
(4)	After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.	24 25
(5)	If it is not reasonably practicable to fax a copy to the inspector—	26
(a)	the magistrate must tell the inspector—	27
(i)	what the terms of the warrant are; and	28
(ii)	the date and time the warrant was issued; and	29

-
- (b) the inspector must complete a form of warrant (a “**warrant form**”) and write on it—
- (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find the exercise of the power by an inspector was not authorised by a special warrant if—
- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved by the person relying on the lawfulness of the entry that the inspector obtained the warrant.

Warrants—procedure before entry

- 88.(1)** This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector’s notice of appointment or other document evidencing the appointment;

Explosives

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- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 87(6), a copy of the facsimile warrant or warrant form; 1
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 - (c) tell the person the inspector is permitted by the warrant to enter the place; 4
5
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force. 6
7
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated. 8
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*Subdivision 3—Powers after entry***General powers after entering places**

- 89.(1) This section applies to an inspector who enters a place under this part. 12
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14
- (2) For monitoring or enforcing compliance with this Act, the inspector may— 15
16
- (a) search any part of the place; or 17
 - (b) examine, inspect, test, measure, photograph or film anything on the place; or 18
19
 - (c) take samples of anything on the place; or 20
 - (d) remove an explosive or an ingredient of an explosive for examination or testing; or 21
22
 - (e) copy a document on the place; or 23
 - (f) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or 24
25
26
 - (g) require a person in the place to give the inspector reasonable help to exercise the powers mentioned in paragraphs (a) to (f). 27
28

(3) A person required to give reasonable help under subsection (2)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(4) If the help is required to be given to an inspector by—

(a) answering a question; or

(b) producing a document (other than an authority or a document required to be kept under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

Power to seize evidence

90.(1) An inspector who enters a place under this part other than under a warrant may seize a thing in the place if—

(a) the inspector reasonably believes the thing is evidence of an offence against this Act; and

(b) for an entry made with the occupier's consent—seizure of the thing is consistent with the purpose of entry as told to the occupier.

(2) An inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else in a place mentioned in subsection (1) or (2) if the inspector reasonably believes—

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

Receipt for seized things

91.(1) As soon as possible after an inspector seizes a thing (“**seized thing**”), the inspector must give a receipt for the seized thing to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position. 1
2
3

(3) The receipt must describe generally each thing seized and its condition. 4
5

(4) This section does not apply to a thing if it is impractical or would be unreasonable to give the receipt, given the thing's nature, condition and value. 6
7
8

Recovery of costs of seizure 9

92.(1) The owner of a seized thing must pay the reasonable cost of seizing, holding and dealing with it under this Act. 10
11

(2) The Minister may recover an amount payable under this section as a debt payable to the State. 12
13

Access to seized things 14

93.(1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it. 15
16

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying. 17
18

Forfeiture of seized things 19

94.(1) A seized thing is forfeited to the State if the inspector who seized the thing— 20
21

(a) can not find its owner, after making reasonable inquiries; or 22

(b) can not return it to its owner, after making reasonable efforts. 23

(2) In applying subsection (1)— 24

(a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the owner; and 25
26
27

- (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to its owner.

Return of seized things

95.(1) An inspector must return a seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.

(3) This section does not apply to a seized thing that is forfeited to the State under this Act or dealt with in a dangerous situation.

Subdivision 4—Power to require information

Power to require name and address

96.(1) This section applies if—

- (a) an inspector finds a person committing an offence against this Act; or
- (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false. 1
2
3

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse. 4
5

Maximum penalty—20 penalty units. 6

(6) A person does not commit an offence against subsection (5) if— 7

(a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act; and 8
9
10

(b) the person is not proved to have committed the offence. 11

Power to require attendance of persons before an inspector to answer questions 12 13

97.(1) The chief inspector may require a person to attend before an inspector and to answer questions— 14
15

(a) relevant to the discharge of the person's obligations under this Act; or 16
17

(b) on safety and health matters relevant to explosives; or 18

(c) to ascertain whether this Act is being complied with; or 19

(d) relevant to any action carried out by the inspector under this Act. 20

(2) A requirement made of a person under this section to attend before an inspector must— 21
22

(a) be made by written notice given to the person; and 23

(b) state a reasonable time and place for the person's attendance. 24

(3) When making a requirement under this section, the chief inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse. 25
26
27

Failure to comply with requirement about attendance 28

98.(1) A person of whom a requirement is made under section 97 must 29

not, unless the person has a reasonable excuse—	1
(a) fail to attend before an inspector at the time and place stated in the relevant notice; or	2 3
(b) when attending before an inspector, fail to comply with a requirement to answer a question.	4 5
Maximum penalty—40 penalty units.	6
(2) It is a reasonable excuse for a person to fail to comply with a requirement to answer a question if complying with the requirement might tend to incriminate the person.	7 8 9
False or misleading statements to inspector	10
99. A person must not state anything to an inspector that the person knows is false or misleading in a material particular.	11 12
Maximum penalty—20 penalty units.	13
Power to require production of documents	14
100.(1) An inspector may require a person to produce to the inspector, for inspection, a document this Act requires the person to hold or keep.	15 16
(2) The person must produce the document, unless the person has a reasonable excuse for not producing it.	17 18
Maximum penalty—20 penalty units.	19
(3) It is not a reasonable excuse to fail to produce the document that producing the document might tend to incriminate the person.	20 21
(4) The inspector may keep a document that is produced—	22
(a) to take an extract from the document; or	23
(b) to make a copy of it.	24
(5) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.	25 26

False or misleading documents to inspector

101.(1) A person must not give to an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) tells the inspector, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the inspector.

Subdivision 5—Power to give direction or to take direct action**Power to give direction about contravention**

102.(1) This section applies if an inspector reasonably suspects a person—

- (a) is contravening a provision of this Act; or
- (b) has contravened a provision of this Act in circumstances that make it likely the contravention will be repeated.

(2) The inspector may give the person a written notice (a “**remedial action notice**”) requiring the person to remedy the cause of the contravention.

(3) The notice must state the following—

- (a) the provision the inspector reasonably believes the person has contravened or is contravening;
- (b) the reasons⁵ for the belief;

⁵ The *Acts Interpretation Act 1954*, section 27B provides that ‘... the instrument giving the reasons must also—

- (a) set out the findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.’.

-
- (c) that the person must remedy the contravention within a stated reasonable time. 1
2
- (4) The notice may also state the steps the inspector reasonably believes are necessary to remedy the contravention, or avoid further contravention, of the provision. 3
4
5
- (5) If the notice relates to a vehicle, boat or thing, it may be given by securely attaching it to the vehicle, boat or thing in a conspicuous position. 6
7
- (6) The person must comply with the notice. 8
- Maximum penalty—the maximum penalty for the contravention of the provision stated in the notice by an individual. 9
10
- (7) A person must not remove a remedial action notice from a vehicle, boat or thing before the steps stated in the notice are taken. 11
12
- Maximum penalty for subsection (7)—100 penalty units. 13
- Power to give direction in dangerous situation** 14
- 103.(1)** This section applies if an inspector reasonably believes— 15
- (a) a dangerous situation exists; and 16
- (b) a person is in a position to take steps to prevent, remove or minimise the danger. 17
18
- (2) The inspector may give the person a written notice (a “**dangerous situation notice**”) requiring the person take the steps reasonably necessary to prevent, remove or minimise the danger. 19
20
21
- (3) The notice must state the following— 22
- (a) the situation the inspector believes is causing the danger; 23
- (b) the reasons⁶ for the belief; 24
- (c) that the person must remedy the situation within a stated reasonable time. 25
26

⁶ The *Acts Interpretation Act 1954*, section 27B provides that ‘... the instrument giving the reasons must also—

(a) set out the findings on material questions of fact; and

(b) refer to the evidence or other material on which those findings were based.’.

(4) The notice may also state the steps the inspector reasonably believes are necessary to prevent, remove or minimise the danger. 1
2

(5) If the notice relates to a vehicle, boat or thing, it may be given by securely attaching it to the vehicle, boat or thing in a conspicuous position. 3
4

(6) The person must comply with the notice. 5

Maximum penalty—200 penalty units. 6

(7) A person must not remove a dangerous situation notice from a vehicle, boat or thing before the steps stated in the notice are taken. 7
8

Maximum penalty for subsection (7)—100 penalty units. 9

Preventing injury and damage—taking direct action 10

104.(1) This section applies if an inspector reasonably believes a dangerous situation exists and either— 11
12

(a) a person given a remedial action or dangerous situation notice has not complied with the notice; or 13
14

(b) having regard to the nature of the situation, action under a remedial action or dangerous situation notice is inappropriate to prevent, remove or minimise the danger. 15
16
17

(2) The inspector may take, or cause to be taken, the action the inspector reasonably believes is necessary to prevent, remove or minimise the danger. 18
19

(3) The inspector must immediately— 20

(a) prepare a statement of reasons for taking the action; and 21

(b) if asked by a person affected by the action—give the person the statement of reasons. 22
23

(4) The action an inspector may take includes asking someone the inspector reasonably believes has appropriate knowledge and experience to help the inspector prevent, remove or minimise the danger. 24
25
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Example— 27

There is a traffic accident involving a vehicle transporting explosives at a location remote from an inspector. An inspector may, by telephone, ask the driver of the vehicle transporting explosives or a police officer with appropriate knowledge and experience to transfer the explosives to another vehicle for removal to another location. 28
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(5) A person asked under subsection (4) to help an inspector is taken to have the powers of an inspector to the extent reasonably necessary for the person to help prevent, remove or minimise the danger.

Subdivision 6—General enforcement offence

Obstruction of inspectors

105.(1) A person must not obstruct an inspector, or a person helping an inspector, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) If a person obstructs an inspector in the exercise of a power under this Act and the inspector decides to exercise the power, the inspector must warn the person.

(3) In warning the person, the inspector must tell the person—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct is an obstruction.

(4) In this section—

“obstruct” includes hinder, resist and attempt to obstruct.

Division 3—Additional power of Minister

Power to declare seized things forfeited

106.(1) This section applies if a seized thing is an explosive, an ingredient of an explosive or a package containing an explosive.

(2) The Minister may declare the seized thing to be forfeited to the State even though no-one has been prosecuted for, or convicted of, an offence in relation to it.

PART 7—REVIEW OF DECISIONS AND APPEALS

Division 1—Review of decisions

Application for review of decision under s 56, 102 or 103

107.(1) A person given a notice under section 56, 102 or 103⁷ by an inspector (other than the chief inspector) may apply to the chief inspector for the decision to give the notice (the “**original decision**”) to be reviewed.

(2) The application must be made within 14 days after the notice is given.

Application for review of action under s 104

108.(1) A person aggrieved by action being taken under section 104⁸ by an inspector (other than the chief inspector) may apply to the chief inspector for the decision to take the action to be reviewed.

(2) The application must be made within 14 days after the person is given the statement of reasons for the action.

Applying for review

109.(1) An application for a review under section 107 or 108—

- (a) must be made in writing; and
- (b) must state the grounds on which the person seeks review of the decision; and
- (c) may be accompanied by any relevant information the person wants considered in the review; and
- (d) must state an address for service of the decision on the review (the “**review decision**”).

⁷ Section 56 (Power to give direction to isolate site of explosives incident), 102 (Power to give direction about contravention) or 103 (Power to give direction in dangerous situation)

⁸ Section 104 (Preventing injury and damage—taking direct action)

-
- (2) The chief inspector must, within 14 days after receiving the application, review the decision and—
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute another decision.
- (3) The application does not stay the original decision.
- (4) The chief inspector can not delegate the review to—
- (a) the inspector who made the original decision; or
 - (b) a person in a less senior position than the inspector who made the decision under review.
- (5) Within 7 days after making the review decision, the chief inspector must give the applicant written notice of the decision.
- (6) The notice must state—
- (a) the reasons for the review decision; and
 - (b) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the applicant receives notice of the review decision.
- (7) If the chief inspector does not comply with subsection (2) or (5), the chief inspector is taken to have made a decision confirming the original decision.

Stay of operation of decision

- 110.(1)** If an application is made for review of an original decision, the applicant may immediately apply to the Magistrates Court for a stay of the decision.
- (2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.
- (3) A stay—
- (a) may be given on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and

(c) may be revoked or amended by the court. 1

(4) The period of a stay must not extend past the time when the chief 2
inspector reviews the original decision and any later period the court allows 3
the applicant to enable the applicant to appeal against the review decision. 4

(5) An application for review of a decision affects the decision, or 5
carrying out of the decision, only if the decision is stayed. 6

Division 2—Appeals 7

Appeals to Magistrates Court 8

111.(1) An applicant for an authority may appeal to a Magistrates Court 9
against the chief inspector’s decision to refuse to grant the authority. 10

(2) A person aggrieved by a review decision of the chief inspector under 11
section 109 may appeal to a Magistrates Court against the decision. 12

(3) An authority holder may appeal to a Magistrates Court against a 13
decision of the chief inspector to require the holder to investigate an 14
explosives incident. 15

(4) An authority holder may appeal to a Magistrates Court against any of 16
the following decisions of the chief inspector— 17

(a) a decision to impose a condition on the holder’s authority; 18

(b) a decision to amend or refuse to amend a condition of the 19
holder’s authority; 20

(c) a decision to suspend or cancel the holder’s authority; 21

(d) a decision to refuse to grant an explosives trial authority; 22

(e) a decision to refuse to renew the holder’s authority; 23

(f) a decision to refuse to replace the holder’s authority. 24

How to start an appeal 25

112.(1) An appeal is started by filing a written notice of appeal with the 26
registrar of a Magistrates Court. 27

(2) The appellant must give a copy of the notice to the chief inspector. 28

(3) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against. 1
2

(4) However, if— 3

(a) the decision did not state the reasons for the decision; and 4

(b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (3); 5
6

the person may make the application within 28 days after the person is given the statement of reasons. 7
8

(5) In addition, a Magistrates Court may extend the period for filing the notice of appeal. 9
10

(6) The notice of appeal must state the grounds of appeal. 11

Stay of operation of decision 12

113.(1) A Magistrates Court may stay a decision appealed against to secure the effectiveness of the appeal. 13
14

(2) A stay— 15

(a) may be given on conditions the court considers appropriate; and 16

(b) operates for the period fixed by the court; and 17

(c) may be revoked or amended by the court. 18

(3) The period of a stay must not extend past the time when the court decides the appeal. 19
20

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed. 21
22

Hearing procedures 23

114.(1) The procedure for an appeal is to be under the rules of court or, if the rules make no provision or insufficient provision, the directions of the Magistrates Court. 24
25
26

(2) An appeal is by way of rehearing, unaffected by the chief inspector's decision. 27
28

Powers of court on appeal

115.(1) In deciding an appeal, the Magistrates Court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and make a decision in substitution for the decision set aside; or
- (d) set aside the decision appealed against and return the issue to the chief inspector with directions the court considers appropriate.

(2) In varying a decision or substituting another decision, the court has the same powers as the chief inspector.

Example—

The court may decide an unsuccessful applicant for an authority be granted the authority and impose conditions on it.

(3) If, on appeal, the court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the chief inspector.

Appeal to District Court on questions of law only

116. A party dissatisfied by the decision of a Magistrates Court on an appeal under this Act may appeal to the District Court, but only on a question of law.

PART 8—GENERAL*Division 1—General provisions about offences***Executive officers must ensure corporation complies with Act**

117.(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the maximum penalty for the contravention of the provision by an individual.

(3) Evidence that a corporation has been convicted of an offence against a provision of this Act is evidence each of the corporation's executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—that the officer took reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Proceeding for offence

118.(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* on the complaint of—

- (a) the chief inspector; or
- (b) a person authorised for the purpose by the Minister; or
- (c) the Attorney-General.

(2) A proceeding may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Responsibility for acts or omissions of representatives

119.(1) This section applies in a proceeding for an offence against this Act.

-
- (2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves—
- (a) if the person was in a position to influence the conduct of the representative in relation to the act or omission—the person took reasonable steps to prevent the act or omission; or
 - (b) the person was not in a position to influence the conduct of the representative in relation to the act or omission.
- (4) In this section—
- “representative”** means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or
 - (b) for an individual—an employee or agent of the individual.

Proof of offence involving part or sample of explosive 21

120. If an offence against this Act is proved in relation to a sample or part of an explosive or an ingredient, the offence is taken to have been proved in relation to all the explosive or ingredient from which the sample or part was taken. 22
23
24
25

Offences about false or misleading information or documents

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121. For an offence against section 73, 74, 99 or 101,⁹ it is enough to allege and prove that the relevant statement or document was ‘false or misleading’ without specifying which.

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3

4

Recovery of costs from convicted person

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122.(1) A court convicting a person of an offence against this Act may order the person to pay to a government entity or the State costs reasonably incurred by the entity or the State because of the offence, including the cost of testing, transporting, storing and disposing of explosives and other evidence.

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(2) An amount ordered to be paid under subsection (1) is a debt owing to the entity or the State.

11

12

(3) Subsection (1) is in addition to any other order the court may make.

13

Forfeiture of things on conviction

14

123.(1) A court convicting a person of an offence against this Act may order the following things (whether or not seized under this Act) to be forfeited to the State—

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16

17

(a) any explosive to which the offence relates;

18

(b) if the offence relates to a place where a person manufactures, sells, stores, transports or uses an explosive, all or part of the explosives found on the place at the time of the commission of the offence;

19

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21

22

(c) any ingredient used or capable of being used to manufacture explosives;

23

24

(d) any package containing an explosive or ingredient.

25

(2) Also, if the conviction relates to a part or sample of an explosive or ingredient, the order may be for—

26

27

⁹ Section 73 (False or misleading statements to inquiry), 74 (False or misleading documents to inquiry), 99 (False or misleading statements to inspector) or 101 (False or misleading documents to inspector)

Explosives

-
- (a) all the explosive or ingredient from which the part or sample was taken and the package containing it; or 1
2
 - (b) all of any similar explosive or ingredient belonging to the defendant or found on the defendant's premises or in the defendant's possession at the time of the commission of the offence; or 3
4
5
6
 - (c) any packages containing the explosive or ingredient. 7

Division 2—Other general provisions 8**Disposal of forfeited things** 9

124.(1) Anything forfeited to the State under this Act may be dealt with or disposed of in the way the Minister directs, including by destroying it. 10
11

(2) Compensation is not payable for anything forfeited to the State under this Act. 12
13

Recovery of costs of government action 14

125.(1) This section applies to a dangerous situation or an explosives incident (an “**incident**”) completely or partly involving or arising from, or involving the danger of— 15
16
17

- (a) the escape of an explosive; or 18
- (b) an explosion or fire involving explosives. 19

(2) If a government entity incurs costs because of an incident, the entity may recover the costs reasonably incurred in dealing with the incident as a debt owing to the entity or the State. 20
21
22

(3) The costs are recoverable jointly and severally from the following persons— 23
24

- (a) the person who owned the explosives when the incident happened; 25
26
- (b) the person who possessed the explosives when the incident happened; 27
28
- (c) the person who caused the incident; 29

- (d) the person responsible (other than as an employee, agent or subcontractor of someone else) for the explosives. 1
2
- (4) However, costs are not recoverable from a person who establishes that— 3
4
- (a) the incident was due to the act or default of another person; or 5
- (b) the person could not, exercising reasonable care, have prevented the incident; or 6
7
- (c) the incident was not attributable to an employee, agent or subcontractor of the person. 8
9
- (5) This section does not limit the powers a government entity has apart from this Act. 10
11

Disclosure by doctors and psychologists of certain information 12

126.(1) This section applies if a doctor or psychologist is of the opinion that a patient is not an appropriate person for section 15¹⁰— 13
14

- (a) because of the patient's mental or physical condition; or 15
- (b) because the patient may be a danger to the patient or another person. 16
17

(2) The doctor or psychologist may inform the chief inspector of his or her opinion and give the chief inspector any relevant information about the patient's condition and identity. 18
19
20

(3) This section applies despite any duty of confidentiality owed by the doctor or psychologist to the patient. 21
22

(4) The giving of an opinion or information by a doctor or psychologist under this section does not give rise to any criminal or civil action or remedy against the doctor or psychologist. 23
24
25

Protection from liability 26

127.(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. 27
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¹⁰ Section 15 (Inquiries about person's appropriateness)

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.	1 2
(3) In this section—	3
“official” means—	4
(a) the Minister; or	5
(b) the chief executive; or	6
(c) an inspector; or	7
(d) a person acting under the direction of an inspector; or	8
(e) a person helping an inspector in a dangerous situation.	9
Delegation by Minister	10
128.(1) The Minister may delegate the Minister’s powers under this Act to an appropriately qualified public service officer or employee.	11 12
(2) However, the Minister may not delegate the Minister’s powers—	13
(a) to declare a place to be a government magazine; or	14
(b) to establish a board of inquiry.	15
Delegation by chief executive	16
129. The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service officer or employee.	17 18
Delegation by chief inspector	19
130. The chief inspector may delegate the chief inspector’s powers under this Act to an inspector.	20 21
Chief inspector may ask for information	22
131.(1) The chief inspector may, by written notice, require a person dealing with explosives to give to the chief inspector within a stated reasonable time (not less than 14 days) stated reasonable information about	23 24 25

the import, export, manufacture, transport, storage, sale, use or disposal of explosives by or for the person.

(2) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(3) It is a reasonable excuse for subsection (2) that—

- (a) the information sought by the chief inspector is not available to the person; or
- (b) the person is not under a duty under this Act to keep the information; or
- (c) giving the information might tend to incriminate the person.

Disclosure of information

132.(1) A person must not disclose information obtained by the person in the administration of this Act, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in the administration of this Act; or
- (c) in a proceeding under this Act or a report of the proceeding; or
- (d) in a proceeding before a court in which the information is relevant to the issue before the court; or
- (e) in the interests of public safety.

Maximum penalty—20 penalty units.

(2) However, the chief inspector may communicate anything that comes to the chief inspector's knowledge under this Act to an officer or authority responsible for administering a law of Queensland, the Commonwealth or another State about explosives.

(3) This section does not limit the *Freedom of Information Act 1992*.

Evidentiary provision

133.(1) This section applies to a proceeding under this Act or the former Act.

(2) The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of—

(a) the appointment; or

(b) the inspector's power to do anything under this Act.

(3) A signature purporting to be the signature of the chief executive, the chief inspector or an inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—

(a) a stated document is—

(i) an authority or a copy of an authority; or

(ii) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or

(iii) a notice, or a copy of a notice, given under this Act; or

(iv) a record, or a copy of a record, kept under this Act; or

(v) a document, or a copy of a document, kept under this Act;

(b) on a stated day, or during a stated period, a stated person was or was not the holder of an authority or a stated authority;

(c) a stated authority was or was not in force on a stated day or during a stated period;

(d) on a stated day, an authority was—

(i) suspended for a stated period; or

(ii) cancelled;

(e) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act;

-
- (f) a stated fee or other amount is payable by a stated person to the chief inspector and has not been paid; 1
2
 - (g) anything else prescribed under a regulation. 3

Approval of forms 4

134. The chief inspector may approve forms for use under this Act. 5

Regulation-making power 6

135.(1) The Governor in Council may make regulations under this Act. 7

(2) Without limiting subsection (1), a regulation may be made about any of the following matters— 8
9

- (a) fees and charges; 10
- (b) records to be kept by an authority holder; 11
- (c) standards for the construction and maintenance of, and fittings, appliances, and equipment used in, factories and magazines; 12
13
- (d) the use or storage in a factory or magazine of explosives or anything else that may ignite spontaneously; 14
15
- (e) rules for the employment and conduct of workers in, and other persons entering, explosives factories or magazines; 16
17
- (f) the way explosives that are dangerous to the public or property must be dealt with; 18
19
- (g) the way explosives must be packed and labelled; 20
- (h) condemning explosives and their destruction or disposal; 21
- (i) otherwise regulating activities in relation to explosives. 22

(3) A regulation may also create offences and impose penalties of not more than 200 penalty units for an offence. 23
24

PART 9—REPEAL AND CONSEQUENTIAL AMENDMENTS

Repeal

136. The *Explosives Act 1952* is repealed.

Amendment of other Acts in sch 1

137. Schedule 1 amends the Acts it mentions.

PART 10—TRANSITIONAL PROVISIONS

Existing licences etc.

138. A licence, permit, certificate or another permission in force under the former Act immediately before the commencement of this section continues in force, subject to this Act, as if it were an authority issued under this Act.

Existing register

139. The register kept under the former Act continues as a register under this Act.

Existing regulations

140.(1) A regulation in force under the former Act immediately before the commencement of this section remains in force for this Act and is taken to have been made under this Act.

(2) The regulation—

- (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
- (b) may be amended or repealed by a regulation under this Act.

(3) The regulation expires when this section expires, unless the regulation is earlier repealed. 1
2

(4) This section has effect despite the *Statutory Instruments Act 1992*, section 54. 3
4

(5) This section expires 1 year after it commences or, if an earlier day is prescribed under a regulation for this section, the earlier day. 5
6

Existing exemptions 7

141. An exemption in force under a regulation in force under the former Act immediately before the commencement of this section continues in force for this Act. 8
9
10

Inspectors 11

142.(1) A person who, immediately before the commencement of this section, was the chief inspector of explosives, is taken to be the chief inspector for this Act. 12
13
14

(2) A person who, immediately before the commencement of this section, was an inspector under the former Act is taken to be an inspector under this Act. 15
16
17

References to Explosives Act 1952 18

143. In an Act or document, a reference to the *Explosives Act 1952* may, if the context permits, be taken to be a reference to this Act. 19
20

21

SCHEDULE 1	1
AMENDMENT OF OTHER ACTS	2
section 137	3
CORONERS ACT 1958	4
1. Section 4(1)(c), ‘<i>Explosives Act 1952</i>’—	5
<i>omit, insert—</i>	6
‘ <i>Explosives Act 1998</i> ’.	7
ENVIRONMENTAL PROTECTION ACT 1994	8
1. Schedule 3, item 15, ‘a factory under the <i>Explosives Act 1952</i>’—	9
<i>omit, insert—</i>	10
‘an explosives factory under the <i>Explosives Act 1998</i> ’.	11
FOSSICKING ACT 1994	12
1. Section 3, definition “explosive”, ‘<i>Explosives Act 1952</i>’—	13
<i>omit, insert—</i>	14
‘ <i>Explosives Act 1998</i> ’.	15

SCHEDULE 1 (continued)

NATURE CONSERVATION ACT 1992

1. Section 7, definition “appliance”, paragraph (b), ‘*Explosives Act 1952*’—

omit, insert—

‘*Explosives Act 1998*’.

PETROLEUM ACT 1923

1. Section 7(1), ‘*Explosives Act 1952*’—

omit, insert—

‘*Explosives Act 1998*’.

**POLICE POWERS AND RESPONSIBILITIES ACT
1997**

1. Section 26(2)(a)(i), ‘or knife’—

omit, insert—

‘, knife or explosive’.

2. Section 27(2)(a), after ‘weapon’—

insert—

‘or explosive’.

SCHEDULE 1 (continued)

3. Section 31(9), definition “offence”—	1
<i>insert—</i>	2
• <i>Explosives Act 1998</i> ’.	3
4. Section 57(9), definition “relevant offence”, paragraph (b)(i), (ii) and (iii)—	4
<i>omit, insert—</i>	5
• <i>Explosives Act 1998</i>	6
• <i>Regulatory Offences Act 1985</i>	7
• <i>Vagrants, Gaming and Other Offences Act 1931</i>	8
• <i>Weapons Act 1990</i> ’.	9
• <i>Weapons Act 1990</i> ’.	10
5. Schedule 3—	11
<i>insert—</i>	12
‘ “explosive” see the <i>Explosives Act 1998</i> ’. ¹¹	13

¹¹ The *Explosives Act 1998*, schedule 2 provides—

‘**“explosive”** includes—

(a) a substance or thing manufactured or used for producing—

(i) a practical effect by explosion; or

(ii) a pyrotechnic effect; and

(b) a substance or thing declared under a regulation to be an explosive.’.

SCHEDULE 1 (continued)

STATE BUILDINGS PROTECTIVE SECURITY ACT 1983	1 2
1. Section 3, definition “explosive substance”, ‘Explosives Act 1952’— omit, insert— ‘Explosives Act 1998’.	3 4 5
TRANSPORT LEGISLATION AMENDMENT ACT 1997	6 7
1. Section 129 (inserted section 79A(2)(b)), ‘Explosives Act 1952’— omit, insert— ‘Explosives Act 1998’.	8 9 10
TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994	11 12
1. Section 213(4), ‘Explosives Act 1952’— omit, insert— ‘Explosives Act 1998’.	13 14 15

SCHEDULE 1 (continued)

WEAPONS ACT 1990

1. Section 5, definitions “ammunition” and “explosive”—

omit, insert—

‘**“ammunition”** see the *Explosives Act 1998*, schedule 2.¹²

“explosive” see the *Explosives Act 1998*, schedule 2.¹³’.

2. Section 154(5), ‘Explosives Act 1952’—

omit, insert—

‘*Explosives Act 1998*’.

WORKPLACE HEALTH AND SAFETY ACT 1995

1. Section 3(2), ‘Explosives Act 1952’—

omit, insert—

‘*Explosives Act 1998*’.

¹² The *Explosives Act 1998*, schedule 2 provides—

‘**“ammunition”** includes bombs, grenades, rockets, mines, projectiles and other similar devices and all types of cartridges (including blanks) used in firearms.’.

¹³ The *Explosives Act 1998*, schedule 2 provides—

‘**“explosive”** includes—

(a) a substance or thing manufactured or used for producing—

(i) a practical effect by explosion; or

(ii) a pyrotechnic effect; and

(b) a substance or thing declared under a regulation to be an explosive.’.

SCHEDULE 2	1
DICTIONARY	2
section 3	3
“ammunition” includes bombs, grenades, rockets, mines, projectiles and other similar devices and all types of cartridges (including blanks) used in firearms.	4 5 6
“appropriately qualified” , in relation to the exercise of a power, includes having the qualifications, experience or standing to exercise the power.	7 8
<i>Example of ‘standing’—</i>	9
The level at which a person is employed in the department.	10
“approved form” see section 134.	11
“authorised explosive” means an explosive declared under section 8 to be an authorised explosive.	12 13
“authority” means a licence, permit or another authority issued under this Act.	14 15
“boat” includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a hovercraft and a submersible vessel.	16 17 18
“chief inspector” means the inspector designated by the chief executive as the chief inspector for this Act.	19 20
“commissioner” means the Commissioner of the Police Service.	21
“conviction” includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.	22 23
“dangerous situation” means a situation in which an imminent risk of the death of or injury to a person, damage to property or harm to the environment is likely to exist if action is not taken to avert, eliminate or minimise the danger.	24 25 26 27
“dangerous situation notice” see section 103.	28

 SCHEDULE 2 (continued)

“domestic violence order” has the meaning given by the <i>Domestic Violence (Family Protection) Act 1989</i> , and includes an interstate order under that Act.	1 2 3
“executive officer” , of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.	4 5 6 7
“explosive” includes—	8
(a) a substance or thing manufactured or used for producing—	9
(i) a practical effect by explosion; or	10
(ii) a pyrotechnic effect; and	11
(b) a substance or thing declared under a regulation to be an explosive.	12 13
“explosives factory” means a place described in an explosives manufacturer licence where explosives are manufactured under the license.	14 15 16
“explosives incident” means any of the following events involving an explosive—	17 18
(a) an explosive is, or appears to have been, lost or stolen;	19
(b) an accidental explosion, fire or spillage;	20
(c) the death of or an injury to a person;	21
(d) unexpected damage to property;	22
(e) an event, including a misfire, with the potential to cause any of the events mentioned in paragraphs (a) to (d), other than an event that normally happens when handling or using an explosive.	23 24 25
“explosives trial approval” see section 12.	26
“export explosive” see section 35.	27
“firearm” means a gun or other thing ordinarily described as a firearm.	28
“former Act” means the <i>Explosives Act 1952</i> .	29

 SCHEDULE 2 (continued)

“government entity” means a State government department or an agency, authority, commission, corporation, instrumentality, office or other entity, established under an Act or other authorisation for a public or State purpose, and includes part of a government entity.	1 2 3 4
“government magazine” see section 46.	5
“holder” , of an authority, means the person to whom it is issued or transferred.	6 7
“import explosive” see section 35.	8
“inspector” means a person who is appointed as an inspector under this Act.	9 10
“issue” an authority includes renew an authority.	11
“licence” means an authority prescribed under a regulation to be a licence.	12
“magazine” means a place used to keep or store explosives, and includes anything else used to keep the explosives safe and secure.	13 14
“manufacture” an explosive includes—	15
(a) take a step or process for producing an explosive; and	16
(b) remake or recondition an explosive; and	17
(c) alter the chemical or physical nature of an explosive; and	18
(d) break up or sort out explosives.	19
“package” means a barrel, box, canister, case, tin, or another container, and includes anything by which goods may be cased, covered, enclosed, contained, or packed.	20 21 22
“permit” means a permit under this Act that is in force.	23
“place” includes premises and a place on or in waters or on land.	24
“possess” an explosive includes—	25
(a) have custody or control of the explosive; and	26
(b) have an ability or right to obtain custody or control of the explosive.	27 28
“prepare” an explosive for use includes—	29

 SCHEDULE 2 (continued)

(a) prepare a charge for the explosive; and	1
(b) do anything to an explosive (including charge it) so it can be exploded; and	2 3
(c) attempt to do an act mentioned in paragraph (a) or (b).	4
“prescribed explosive” see section 38(3).	5
“prohibited explosive” means an explosive declared under a regulation to be a prohibited explosive.	6 7
“psychologist” see the <i>Psychologists Act 1977</i> , section 4.14	8
“public place” means any place that is—	9
(a) a public road; or	10
(b) a place the public is entitled to use; or	11
(c) a place open to, or used by, the public (whether or not on payment of money).	12 13
“reasonably believe” means believe on grounds that are reasonable in the circumstances.	14 15
“reasonably satisfied” means satisfied on grounds that are reasonable in the circumstances.	16 17
“remedial action notice” see section 102.	18
“seized thing” see section 91.	19
“sell” includes—	20
(a) sell by wholesale or retail; and	21
(b) supply in trade or commerce or under an arrangement; and	22
(c) agree, attempt or offer to sell; and	23
(d) keep or expose for sale; and	24
(e) cause or permit to be sold.	25

¹⁴ Section 4 provides—

“psychologist” means a person registered as a psychologist under this Act and whose name, at the material time, remains on the register.’

SCHEDULE 2 (continued)

“serious explosives incident” means an explosives incident that causes, or could reasonably be expected to cause—	1 2
(a) the death of a person; or	3
(b) a person to be admitted to a hospital as an in-patient for treatment for the injury.	4 5
“store” an explosive includes—	6
(a) keep an explosive; and	7
(b) allow an explosive to be stored or kept.	8
“substance” includes a gas, gas mixture, liquid, liquid mixture, and a solid in solution and in equilibrium with the solution.	9 10
“trade or commerce” includes—	11
(a) a business activity; and	12
(b) anything else done for gain or reward.	13
“unauthorised explosive” means an explosive that is not included in the register of authorised explosives.	14 15
“unlawfully enter” an explosives factory or magazine, means enter the factory or magazine—	16 17
(a) without the permission of the authority holder or person in charge of the factory or magazine; or	18 19
(b) without authority given under this Act or another Act.	20
“vehicle” includes a caravan, trailer and aircraft, but does not include a boat.	21