



# Explosives Act 1999

**Current as at [Not applicable]**

## **Indicative reprint note**

This is an *unofficial* version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act.***

Proposed amendments to this Act are also included in the Resources Safety and Health Queensland Bill 2019. This indicative reprint incorporates these amendments to allow subsequent proposed amendments in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 to be incorporated.

The point-in-time date for this indicative reprint is the introduction date for the Mineral and Energy Resources and Other Legislation Amendment Bill 2020—4 February 2020.

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Queensland

# Explosives Act 1999

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# Explosives Act 1999

**An Act to regulate the handling of and access to explosives, and for other purposes**

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Explosives Act 1999*.

*Editor's notes—*

Proposed amendments included in the Resources Safety and Health Queensland Bill 2019 to the following provisions have been incorporated into this indicative reprint—

- sections 76, 78, 79, 82, 106A, 118, 118A–118C, 126C, 129, 133, 135
- part 10, division 7
- schedule 2.

### 2 Commencement

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

### 2A Purpose of Act

- (1) The purpose of this Act is to regulate the handling of, and access to, explosives to protect public health and safety, property and the environment.
- (2) The purpose is achieved primarily by—
  - (a) enabling explosives to be declared as authorised explosives or prohibited explosives; and

- (b) requiring an authority for the handling of explosives; and
- (c) ensuring that persons who hold an authority in relation to a security sensitive explosive also hold a security clearance; and
- (d) ensuring explosives are accessed only by persons—
  - (i) who hold a security clearance; or
  - (ii) who are under the direct supervision of a person who holds a security clearance; and
- (e) imposing a duty of care and other obligations on persons who handle explosives; and
- (f) enabling investigations and inquiries to be carried out for explosives incidents.

### **3 Definitions—the dictionary**

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

### **4 Act binds all persons**

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.

### **4A Application of Act to coastal waters of the State**

This Act applies to the coastal waters of the State as if the coastal waters of the State were part of the State.

### **5 Act does not apply to some explosives**

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

## 6 Act's effect on other Acts

- (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.
- (2) In subsection (1)—  
*Act about mining* means—
  - (a) the *Coal Mining Safety and Health Act 1999*; or
  - (b) the *Mining and Quarrying Safety and Health Act 1999*.

## 7 Exemptions

- (1) A regulation may exempt an explosive or a government entity from this Act or any of its provisions.
- (2) An exemption may be given on stated conditions.
- (3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

# Part 2 Authorised and prohibited explosives

## 8 Authorised explosives

- (1) The chief inspector may declare an explosive to be an authorised explosive for this Act.
- (2) Before making a declaration under subsection (1), the chief inspector must—
  - (a) define the composition, quality and character of the explosive; and
  - (b) classify the explosive in a way prescribed under a regulation.
- (3) If the composition, quality or character of an authorised explosive changes, the explosive stops being an authorised explosive.

## **9 Register of authorised explosives**

- (1) The chief inspector must keep a register of authorised explosives.
- (2) The register—
  - (a) must include the defined composition, quality, character and classification of each authorised explosive; and
  - (b) is not open to inspection by anyone other than the chief inspector or an inspector.
- (3) However, the chief inspector must give a list of authorised explosives to anyone who asks for it.
- (4) The list must not include the defined composition, quality or character of the explosives named in it.

## **10 Prohibited explosives**

A regulation may declare an explosive to be a prohibited explosive.

## **11 Offence in relation to unauthorised and prohibited explosives**

- (1) A person must not manufacture, possess, sell, store, transport or use an unauthorised or prohibited explosive.  
Maximum penalty—400 penalty units or 6 months imprisonment.
- (2) Subsection (1) does not apply to an act done under an explosives trial approval.

## **12 Approvals for trial etc. of unauthorised or prohibited explosives**

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*).

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## **Part 3**                      **Authorities and security clearances**

### **Division 1AA**            **Security clearances**

#### **Subdivision 1**         **Applications for security clearances**

##### **12A**    **Making applications for security clearances**

- (1) An individual may apply to the chief inspector for a security clearance.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation; and
  - (c) include or be accompanied by the information prescribed by regulation.

##### **12B**    **Criteria for deciding applications**

- (1) The chief inspector may decide to give a security clearance to the applicant only if satisfied the applicant is a suitable person to hold the security clearance.
- (2) In deciding whether the applicant is a suitable person to hold the security clearance, the chief inspector—
  - (a) must consider—
    - (i) the applicant's criminal history; and
    - (ii) whether the applicant has, at any time, been named as the respondent in a domestic violence order or police protection notice; and
    - (iii) whether release conditions have, at any time, been imposed on the applicant under the *Domestic and Family Violence Protection Act 2012*, section 125; and

- (b) may consider—
  - (i) the applicant’s mental health; and
  - (ii) information about the applicant that indicates the applicant is a risk to public safety or it would be contrary to the public interest for the applicant to hold the security clearance; and
  - (iii) anything else relevant to the applicant’s suitability to hold the security clearance.
- (3) The applicant is not a suitable person to hold the security clearance if—
  - (a) the applicant is named as the respondent in a domestic violence order, or police protection notice, that is in force; or
  - (b) release conditions have been imposed on the applicant under the *Domestic and Family Violence Protection Act 2012*, section 125 and the release conditions are in force.

## 12C Deciding applications

- (1) The chief inspector must, after considering the application and any other information obtained in relation to the application, decide to—
  - (a) give the security clearance; or
  - (b) refuse to give the security clearance.

*Note—*

See also section 123AC(2).

- (2) If the chief inspector decides to give the security clearance, the chief inspector must promptly give the applicant the security clearance.
- (3) If the chief inspector decides to refuse to give the security clearance, the chief inspector must promptly give the applicant an information notice for the decision.

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**12D Form of security clearances**

A security clearance must—

- (a) be in the approved form; and
- (b) include a digital photo, and digitised signature, of the holder of the security clearance.

**12E Term of security clearances**

- (1) A security clearance is given for the term, of not more than 5 years, stated in the security clearance.
- (2) The security clearance expires at the end of the stated term.

**12F Renewal of security clearances**

- (1) The holder of a security clearance may apply for the renewal of the security clearance.
- (2) The application must be made to the chief inspector before the security clearance expires.
- (3) Sections 12A(2) to 12E apply to the application as if—
  - (a) a reference in the sections to an application for a security clearance were a reference to an application to renew a security clearance; and
  - (b) a reference in the sections to the giving of a security clearance were a reference to the renewal of a security clearance; and
  - (c) a reference in sections 12D and 12E to a security clearance were a reference to a renewed security clearance.

## **Subdivision 2 Information about applicants and security clearance holders**

### **12G Reports about criminal history and other matters**

- (1) This section applies in relation to the following persons—
  - (a) an applicant for a security clearance;
  - (b) the holder of a security clearance.
- (2) The chief inspector may ask the commissioner for a written report about—
  - (a) the person's criminal history, including a brief description of the nature of any offence giving rise to a conviction or charge mentioned in the person's criminal history; and
  - (b) whether the person has, at any time, been named as the respondent in a domestic violence order or police protection notice; and
  - (c) whether release conditions have, at any time, been imposed on the person under the *Domestic and Family Violence Protection Act 2012*, section 125.
- (3) The commissioner must give the report to the chief inspector.
- (4) However, the report is required to contain only information about the matters mentioned in subsection (2)—
  - (a) in the commissioner's possession; or
  - (b) to which the commissioner has access.

### **12H Commissioner must give notice of particular matters**

- (1) This section applies if—
  - (a) the commissioner reasonably suspects a person is—
    - (i) an applicant for a security clearance; or
    - (ii) the holder of a security clearance; and

- 
- (b) any of the following events happens after the application is made or during the term of the security clearance—
    - (i) the person’s criminal history changes;
    - (ii) the person is named as the respondent in a domestic violence order or police protection notice;
    - (iii) release conditions are imposed on the person under the *Domestic and Family Violence Protection Act 2012*, section 125.
  - (2) The commissioner must give the chief inspector a written notice about the event.
  - (3) The notice must—
    - (a) state—
      - (i) the person’s name and any other name the commissioner believes the person may use or may have used; and
      - (ii) the person’s date and place of birth; and
    - (b) if subsection (1)(b)(i) applies—include a brief description of the nature of the offence or alleged offence giving rise to the conviction or charge to which the change relates; and
    - (c) if subsection (1)(b)(ii) or (iii) applies—be accompanied by a copy of the domestic violence order, police protection notice or release conditions.
  - (4) The chief inspector may confirm the suspicions of the commissioner mentioned in subsection (1)(a).
  - (5) For a person who does not have a criminal history, there is taken to be a change in the person’s criminal history if the person acquires a criminal history.

## 12I Requests for information about mental health

- (1) This section applies in relation to the following persons—
  - (a) an applicant for a security clearance;

- (b) the holder of a security clearance.
- (2) The chief inspector may, by written notice given to the person, ask the person to give the chief inspector further information the chief inspector reasonably needs about the person's mental health to decide whether the person is a suitable person to hold, or to continue to hold, a security clearance.
- (3) Without limiting subsection (2), the chief inspector may ask the person to give the chief inspector a report from a doctor or psychologist about the person's mental health.
- (4) The notice must state that the information must be given within the period, of at least 28 days after the notice is given, stated in the notice.
- (5) If the chief inspector is given a report mentioned in subsection (3), the chief inspector may—
  - (a) make information about the person having access to explosives available to the doctor or psychologist who prepared the report; and
  - (b) ask the doctor or psychologist to give the chief inspector a further report about the person's mental health.
- (6) The chief inspector may make the information available to the doctor or psychologist only if the chief inspector reasonably considers—
  - (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.
- (7) If the chief inspector makes the information available to the doctor or psychologist, the chief inspector must advise the person of that fact.
- (8) The chief inspector may make the information available to the doctor or psychologist despite any other Act.

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**12J Failure to give information about mental health**

- (1) This section applies if an applicant for a security clearance, or the renewal of a security clearance, does not comply with a notice given to the applicant under section 12I(2).
- (2) The applicant is taken to have withdrawn the application for the security clearance or the renewal of the security clearance.

**12K Use of information obtained under s 12G, 12H or 12I**

- (1) Information about a person given to the chief inspector under section 12G or 12H may be used only for making a decision—
  - (a) under section 12B about whether the person is a suitable person to hold a security clearance; or
  - (b) under section 24 or 25 about—
    - (i) whether to suspend or cancel the person’s security clearance on a ground mentioned in section 23A(1)(b) or (c); or
    - (ii) whether to suspend or cancel an authority held by the person on the ground mentioned in section 23(1)(c).
- (2) Information about a person given to the chief inspector under section 12I may be used only—
  - (a) for making a decision under section 12B about whether the person is a suitable person to hold a security clearance; or
  - (b) for making a decision under section 24 or 25 about whether to suspend or cancel the person’s security clearance on a ground mentioned in section 23A(1)(c); or
  - (c) to investigate or prosecute an offence against this Act.
- (3) Subsection (4) applies if, in making a decision mentioned in subsection (1), the chief inspector is considering information about—
  - (a) the commission of an offence by the person; or

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- (b) the alleged or possible commission of an offence by the person.
- (4) The chief inspector must also consider—
  - (a) when the offence was committed, is alleged to have been committed or may possibly have been committed; and
  - (b) the nature of the offence, or alleged or possible offence, and its relevance to the person holding, or continuing to hold, a security clearance or authority; and
  - (c) any other matter the chief inspector considers relevant to the decision.
- (5) This section is subject to section 132.

## **Division 1                      Authorities**

### **13                      Authorities that may be issued under Act**

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

### **14                      Application for authority**

- (1) A person may apply to the chief inspector for an authority.
- (2) The application must—
  - (a) be made in the approved form; and
  - (b) be accompanied by the fee prescribed under a regulation for the authority.

### **15                      Inquiries about person's appropriateness**

- (1) This section applies to the following persons—
  - (a) an applicant for an authority;
  - (b) an authority holder;

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- (c) an employee of an applicant for an authority;
  - (d) an employee of an authority holder.
- (2) The chief inspector may make reasonable inquiries about the person to help in deciding whether the person—
- (a) for subsection (1)(a)—is an appropriate person for the grant of an authority; or
  - (b) for subsection (1)(b)—continues to be an appropriate person to hold an authority; or
  - (c) for subsection (1)(c)—is an appropriate person to have access to explosives; or
  - (d) for subsection (1)(d)—continues to be an appropriate person to have access to explosives.
- (3) If the person is an individual, the chief inspector may, for subsection (2), make inquiries about the person's identity, character, physical health and relevant experience and expertise.
- (4) In deciding whether the person is an appropriate person, the chief inspector may consider, among other things—
- (a) if the person is an individual—
    - (i) the person's physical health; and
    - (ii) whether the person has stated anything in, or in relation to, an application for an authority or the renewal of an authority the person knows is false or misleading in a material particular; or
  - (b) if the person is a corporation—
    - (i) whether the corporation is an insolvent under administration under the Corporations Act; and
    - (ii) whether the corporation has been convicted, in Queensland or elsewhere, of an offence involving a prescribed activity; and
    - (iii) whether an executive officer of the corporation would be considered to be an appropriate person under this section; and

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- (iv) information that indicates it would be contrary to the public interest for the corporation to hold an authority.
- (5) 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.
- (6) 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 purpose other than as provided by section 132.
- (7) For this section, the chief inspector may—
  - (a) inspect the facilities mentioned in subsection (5); or
  - (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
  - (c) require the person to display an adequate knowledge of safety and security practices for the use and handling of explosives.
- (8) An applicant for an authority is taken to have withdrawn the application if the applicant fails to allow the inspection under subsection (7)(a) within a stated reasonable time (not less than 28 days after notice of the requirement is given to the applicant).

**15A Persons who are not appropriate persons**

- (1) This section applies to a person who is an applicant for, or the holder of, a security sensitive authority.
- (2) The person is not an appropriate person to hold, or to continue to hold, the security sensitive authority if an employee of the person—
  - (a) has or will have unsupervised access to an explosive in the course of the employee's employment; and

- (b) does not hold a security clearance.
- (3) For this section, an employee of the person has or will have unsupervised access to an explosive if the employee is or will be able to access the explosive other than in the presence, and under the direct supervision, of a person who holds a security clearance.

## 16 Additional information

- (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 health.
- (2) Without limiting subsection (1), the chief inspector may ask the person to give the chief inspector a report from a doctor about the person's physical health.
- (3) The notice must—
  - (a) state that the information must be given within a stated reasonable time (not less than 28 days after the notice is given); and
  - (b) be given to—
    - (i) for a person mentioned in section 15(1)(a) or (c)—the applicant for the authority; or
    - (ii) for a person mentioned in section 15(1)(b) or (d)—the authority holder.
- (4) 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.
- (5) 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.

## **16A Other information for application**

The chief inspector may, by written notice given to an applicant for an authority, require the applicant to give any other information the chief inspector reasonably needs to decide the application.

## **17 How chief inspector may deal with application**

- (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.

*Note—*

See also section 123AC(2).

- (2) If the application is for a security sensitive authority, the chief inspector must refuse to issue the authority unless—
  - (a) if the applicant is an individual—the applicant holds a security clearance; or
  - (b) if the applicant is a listed corporation—
    - (i) the corporation has a responsible person; and
    - (ii) the responsible person holds a security clearance; or
  - (c) if the applicant is a corporation other than a listed corporation—each executive officer of the corporation holds a security clearance; or
  - (d) if the applicant is a partnership—each partner holds a security clearance.
- (3) 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, an information notice for the decision to impose conditions.

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- (4) If the chief inspector decides not to issue the authority, the chief inspector must promptly—
- (a) give the applicant an information notice for the decision; and
  - (b) refund fees paid by the applicant, other than fees for assessing the application.

## **18 Compliance with conditions**

- (1) An authority holder must comply with the conditions prescribed under a regulation for each authority issued to the authority holder.

Maximum penalty—200 penalty units.

- (2) If the chief inspector imposes a condition on an authority, the authority holder must comply with the condition.

Maximum penalty—200 penalty units.

## **18A Form of authority**

An authority must—

- (a) be in the approved form; and
- (b) if the authority is an occupational authority—include a digital photo, and digitised signature, of the holder of the authority.

## **19 Term of authority**

- (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.

## **20 Transfer of authority**

- (1) A licence, other than an occupational authority, may be transferred with the written approval of the chief inspector.

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- (2) Another type of authority can not be transferred.

**21 Renewal of authority**

- (1) A licence is renewable.
- (2) An authority other than a licence can not be renewed.

**22 Division applies to application for renewal of licence**

- (1) This division applies to an application for the renewal of a licence.
- (2) However, the chief inspector may renew a licence only if the application is made to the chief inspector before the licence expires.

**Division 2 Suspension and cancellation of authorities and security clearances**

**Subdivision 1 Suspensions and cancellations generally**

**23 Grounds for suspending or cancelling authorities**

- (1) Each of the following is a ground for the suspension or cancellation of an authority—
  - (a) the authority was obtained because of incorrect or misleading information;
  - (b) the holder has contravened an authority condition;
  - (c) the holder is convicted of or charged with—
    - (i) an offence against this Act or an Act of another State about explosives; or
    - (ii) another offence involving the use of explosives;

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- (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;
  - (e) someone other than the holder controls the holder's operations under the authority;
  - (f) the level of safety under which an activity is carried out under the authority is inadequate for ensuring the safety of a person;
  - (g) the measures used at a place at which an activity is carried out under the authority are inadequate for keeping an explosive at the place secure from access by a person who should not have access to the explosive;
  - (h) the holder of the authority has not complied with section 33(2);
  - (i) if the holder of the authority is an individual—the holder's security clearance has expired, or been cancelled, suspended or surrendered;
  - (j) if the holder of the authority is a listed corporation—
    - (i) there is not a responsible person for the corporation; or
    - (ii) the security clearance held by the responsible person for the corporation has expired, or been cancelled, suspended or surrendered;
  - (k) if the holder of the authority is a corporation other than a listed corporation—the security clearance held by an executive officer of the corporation has expired, or been cancelled, suspended or surrendered;
  - (l) if the holder of the authority is a partnership—the security clearance held by a partner has expired, or been cancelled, suspended or surrendered.
- (2) However, subsection (1)(i) to (l) applies only if the authority is a security sensitive authority.

**23A Grounds for suspending or cancelling security clearances**

- (1) Each of the following is a ground for the suspension or cancellation of a security clearance—
  - (a) the security clearance was obtained because of incorrect or misleading information;
  - (b) the holder of the security clearance is, in Queensland or elsewhere, convicted of or charged with a relevant offence;
  - (c) the holder of the security clearance is no longer a suitable person to continue to hold the security clearance.
- (2) In deciding whether the holder of a security clearance is no longer a suitable person to continue to hold the security clearance, the chief inspector may have regard to the matters mentioned in section 12B(2).
- (3) In this section—

*relevant offence* means an offence—

  - (a) involving a prescribed activity; or
  - (b) involving violence or threatened violence; or
  - (c) involving the use, carriage, discharge or possession of a firearm; or
  - (d) relating to the misuse of drugs; or
  - (e) involving breaking and entering into premises, burglary, robbery, stealing or receiving stolen property; or
  - (f) involving fraud, the fabrication of evidence, perjury or the making of a false declaration or statement.

**24 Procedure for suspension or cancellation**

- (1) This section applies if the chief inspector considers there is a ground to suspend or cancel an authority or security clearance (the *proposed action*).

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- (2) Before taking the proposed action, the chief inspector must give the holder of the authority or security clearance a written notice stating—
    - (a) the proposed action; and
    - (b) the grounds for the proposed action; and
    - (c) an outline of the facts and circumstances that are the basis of the grounds; and
    - (d) if the proposed action is suspension of the authority or security clearance—the proposed suspension period; and
    - (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.
  - (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—
    - (a) if the proposed action was to suspend the authority or security clearance for a stated period—suspend the authority or security clearance for not longer than the proposed suspension period; or
    - (b) if the proposed action was to cancel the authority or security clearance—either cancel the authority or security clearance or suspend it for a period.
  - (4) The chief inspector must inform the holder of the authority or security clearance of the decision by written notice.
  - (5) If the chief inspector decides to suspend or cancel the authority or security clearance, the chief inspector must give the holder of the authority or security clearance an information notice for the decision.
  - (6) The decision takes effect on the day the notice is given to the holder of the authority or security clearance, or if a later day of effect is stated in the notice, the later day.

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- (7) However, if the authority or security clearance is suspended or cancelled because of the conviction of a person for an offence, the suspension or cancellation—
  - (a) does not take effect until—
    - (i) the end of the time to appeal against the conviction; and
    - (ii) if an appeal is made against the conviction—the appeal is finally decided or otherwise ends; and
  - (b) has no effect if the conviction is quashed.

**25 Procedure for urgent suspension or cancellation of authorities and security clearances**

- (1) This section applies if the chief inspector is reasonably satisfied—
  - (a) urgent action is necessary in the particular circumstances; and
  - (b) undue delay in suspending or cancelling an authority or security clearance may cause harm to the public.
- (2) The chief inspector may suspend or cancel an authority or security clearance for the reason mentioned in subsection (1) without previous notice to the holder of the authority or security clearance.
- (3) However, the chief inspector must immediately inform the holder of the authority or security clearance of the decision by giving an information notice for the decision.
- (4) The decision takes effect on the day the information notice is given to the holder of the authority or security clearance or, if a later day of effect is stated in the information notice, the later day.

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## Subdivision 2      **Immediate suspensions and cancellations**

### 25A      **Immediate suspension in particular circumstances**

- (1) This section applies to the holder of an authority or security clearance if—
  - (a) the holder is named as the respondent in—
    - (i) a temporary protection order; or
    - (ii) a police protection notice; or
  - (b) release conditions are imposed on the holder under the *Domestic and Family Violence Protection Act 2012*, section 125.
- (2) The authority or security clearance is suspended—
  - (a) if the holder is named as the respondent in a temporary protection order and is present in court when the order is made—while the order is in force; or
  - (b) if release conditions are imposed on the holder—while the release conditions are in force; or
  - (c) otherwise—from when the holder is served with the temporary protection order or police protection notice until the order or notice is no longer in force.
- (3) In this section—

***temporary protection order*** means—

  - (a) a temporary protection order under the *Domestic and Family Violence Protection Act 2012*; or
  - (b) an interstate domestic violence order corresponding to a temporary protection order mentioned in paragraph (a).

**25B Immediate cancellation if protection order made**

- (1) This section applies to the holder of an authority or security clearance if the holder is named as the respondent in a protection order.
- (2) The authority or security clearance is cancelled—
  - (a) if the holder is present in court when the protection order is made—when the order is made; or
  - (b) otherwise—when the holder is served with the protection order.
- (3) In this section—

*protection order* means—

  - (a) a protection order under the *Domestic and Family Violence Protection Act 2012*; or
  - (b) an interstate domestic violence order corresponding to a protection order mentioned in paragraph (a).

**Subdivision 3 Provisions about suspended and cancelled authorities and security clearances**

**26 Return of authorities and security clearances**

- (1) The holder of a suspended authority or security clearance, or the former holder of a cancelled authority or security clearance, must return the authority or security clearance 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.  
Maximum penalty—200 penalty units.
- (2) If a suspended authority or security clearance is returned to the chief inspector, the chief inspector must return it to the holder of the authority or security clearance at the end of the suspension period.

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## **26A Surrender of explosives**

- (1) This section applies to a person whose authority is suspended or cancelled under this division.
- (2) The person must immediately arrange with an inspector to give to an inspector any explosives the person has, as soon as practicable, but no later than 1 day, after the suspension or cancellation takes effect, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (3) The person must comply with the arrangement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 3 Other provisions about authorities and security clearances**

### **27 Replacement of authorities and security clearances**

- (1) The holder of an authority or security clearance may apply to the chief inspector for the replacement of a lost, stolen or destroyed authority or security clearance.
- (2) The chief inspector must consider the application and either—
  - (a) replace the authority or security clearance; or
  - (b) refuse to replace the authority or security clearance.
- (3) If the chief inspector is reasonably satisfied the authority or security clearance has been lost, stolen or destroyed, the chief inspector must replace the authority or security clearance.
- (4) If the chief inspector decides to refuse to replace the authority or security clearance, the chief inspector must give the holder of the authority or security clearance an information notice for the decision.

**28 Amendment of authority on application**

- (1) An authority holder may apply to the chief inspector for an amendment of the authority.
- (2) The application must—
  - (a) be made in the approved form; and
  - (b) be made at least 28 days before the holder wants the amendment to take effect; and
  - (c) 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 give the authority holder an information notice for the decision.

**29 Amendment of authority without application**

- (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—
  - (a) the proposed amendment; and
  - (b) the reasons for the amendment; and

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- (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) 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—
    - (a) in the way proposed; or
    - (b) in another way, having regard to the representations.
  - (4) The chief inspector must inform the authority holder of the decision by written notice.
  - (5) If the chief inspector decides to amend the authority, the chief inspector must give the authority holder an information notice.
  - (6) Subsections (1) to (5) do not apply if the chief inspector proposes to amend the authority—
    - (a) by omitting a condition; or
    - (b) for a formal or clerical reason that does not adversely affect the authority holder's interests.
  - (7) The chief inspector may amend a condition of an authority in a way mentioned in subsection (6) by giving the authority holder an information notice for the decision to amend the authority.

### **30 Notice to return authority for alteration**

- (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.
- (2) After amending the authority, the chief inspector must return the authority to the holder.
- (3) An authority holder must comply with a notice under subsection (1), unless the holder has a reasonable excuse.

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Maximum penalty—20 penalty units.

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

### **30A Reporting loss, destruction or theft of authorities and security clearances**

- (1) This section applies if an authority or security clearance is lost, destroyed or stolen.
- (2) The holder of the authority or security clearance must immediately notify the chief inspector or an authorised officer, as required by subsection (3), about the loss, destruction or theft.

Maximum penalty—50 penalty units.

- (3) The notification may be given—
  - (a) by notice in the approved form; or
  - (b) orally.
- (4) If the notification is given orally, the holder of the authority or security clearance must also give the chief inspector or an authorised officer notice in the approved form within 7 days after the loss, destruction or theft.

Maximum penalty—50 penalty units.

### **31 Surrender of authorities and security clearances**

- (1) The holder of an authority or security clearance may surrender the authority or security clearance by written notice given to the chief inspector.
- (2) The authority or security clearance must accompany the notice.
- (3) The surrender of an authority or security clearance 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.

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## Part 4 Handling explosives

### Division 1 Preliminary

#### 32 General duty of care

- (1) 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.

Maximum penalty—

- (a) if the contravention causes multiple deaths and serious harm to property or the environment—3,000 penalty units or 3 years imprisonment; or
- (b) if the contravention causes multiple deaths—2,000 penalty units or 3 years imprisonment; or
- (c) if the contravention causes death or grievous bodily harm—1,000 penalty units or 2 years imprisonment; or
- (d) if the contravention involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or
- (e) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
- (f) if the contravention causes serious harm to property or the environment—750 penalty units or 1 year's imprisonment; or
- (g) otherwise—500 penalty units or 6 months imprisonment.

*Note—*

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 117, to have also committed the offence.

- (2) Without limiting subsection (1), the duty includes taking reasonable precautions and using reasonable care to ensure

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the explosives are kept secure from access by a person who should not have access to the explosives.

(3) In this section—

*bodily harm* see the Criminal Code, section 1.

*grievous bodily harm* see the Criminal Code, section 1.

### **33 Employers' obligations about employees**

(1) An employer must not allow an employee to have access to an explosive unless—

(a) the employee is the age prescribed by regulation; and

(b) for an employer who holds a security sensitive authority—

(i) the employee holds a security clearance; or

(ii) the access is within the course of the employee's employment and in the presence, and under the direct supervision, of a person who holds a security clearance.

Maximum penalty—50 penalty units.

(2) Before an employer asks or allows an employee to carry out an activity involving the handling of explosives, the employer must be reasonably satisfied the employee has the qualifications, experience and expertise prescribed by regulation for the carrying out of the activity.

*Note—*

See also section 23(1)(h).

## **Division 2 Possession of explosives**

### **34 Authority required to possess explosives**

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

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Maximum penalty—400 penalty units or 6 months imprisonment.

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

### **Division 3                      Moving explosives into and out of the State**

#### **35            Application of div 3**

This division applies to—

- (a) an explosive that may lawfully be exported from Australia (an *export explosive*); and
- (b) an explosive that may lawfully be imported into Australia (an *import explosive*).

#### **36            Bringing or sending certain explosives into and out of the State**

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.

Maximum penalty—400 penalty units or 6 months imprisonment.

#### **37            Notice to chief inspector**

- (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.

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- (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

### 38            Explosive to be manufactured under authority

- (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 an explosive if—
    - (i) the explosive is not more than the amount prescribed by regulation or, if an amount is not prescribed, 50g; and
    - (ii) the person is manufacturing and using the explosive in a laboratory that is part of an educational or research facility under the direct supervision of a competent adult; and
    - (iii) the explosive is for use in a chemical experiment by the person; 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.

- (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, for the inspector's immediate use.

- (5) In this section—

*competent adult* means an adult with sufficient knowledge and experience to identify hazards and risks associated with manufacturing and using explosives.

### **39 Offences relating to entry of factories**

- (1) A person must not unlawfully enter an explosives factory.  
Maximum penalty—100 penalty units.
- (2) A person in physical possession of a firearm must not enter an explosives factory.  
Maximum penalty—200 penalty units.
- (3) Subsection (2) does not apply to a police officer or a security provider under the *Security Providers Act 1993* who enters an explosives factory for performing official duties.
- (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.

### **40 Safety and security at factories**

- (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.  
Maximum penalty—200 penalty units.
- (2) The holder of an authority in relation to an explosives factory must ensure a notice warning persons at the factory of their

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liability to penalty for an offence against subsection (1) is always conspicuously displayed so anyone entering the factory can easily see and read it.

Maximum penalty—20 penalty units.

## **Division 5                      Selling explosives**

### **41                      Authority needed to sell explosives**

A person must not sell an explosive unless the person holds an authority that authorises the person to sell the explosive.

Maximum penalty—200 penalty units or 3 months imprisonment.

### **42                      Unauthorised sales of explosives**

A person must not sell an explosive to someone other than a person—

- (a) authorised to sell the explosive; or
- (b) authorised to store the explosive; or
- (c) authorised to use the explosive; or
- (d) otherwise authorised under a regulation.

Maximum penalty—200 penalty units or 3 months imprisonment.

### **43                      Selling explosives in public places prohibited**

A person in possession of an explosive in a public place must not sell the explosive in the public place.

Maximum penalty—100 penalty units.

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## **Division 6                      Storing explosives**

### **44            Authority needed to store explosives**

A person must not store an explosive unless the person holds an authority to store the explosive.

Maximum penalty—200 penalty units or 3 months imprisonment.

### **45            Where explosives may be stored**

- (1) A person must not store an explosive at a place other than—
- (a) where it is lawfully manufactured; or
  - (b) a magazine where the person may lawfully store it under this Act; or
  - (c) a place approved by the chief inspector, by signed instrument, as suitable for storing the explosive under stated conditions.

Maximum penalty—400 penalty units or 6 months imprisonment.

- (2) Subsection (1) does not apply to an explosive stored for a purpose prescribed under a regulation or by an inspector for testing.

### **46            Government magazines**

- (1) The Minister may, by gazette notice, declare a place to be a government magazine.
- (2) The chief inspector is the person in charge of a government magazine.

### **47            Offences relating to entry of magazines**

- (1) A person must not unlawfully enter a magazine.

Maximum penalty—100 penalty units.

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- (2) A person in physical possession of a firearm must not enter a magazine.  
Maximum penalty—200 penalty units.
- (3) Subsection (2) does not apply to a police officer or a security provider under the *Security Providers Act 1993* who enters a magazine for performing official duties.
- (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.

#### **48 Safety and security at magazines**

- (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.  
Maximum penalty—200 penalty units.
- (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.  
Maximum penalty—20 penalty units.

#### **49 Person storing explosives must take precautions**

A person storing an explosive must take reasonable precautions—

- (a) to prevent an explosives incident; and
- (b) to minimise the likely effects of an explosives incident.

Maximum penalty—200 penalty units.

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## Division 7                      Transporting explosives

### 50            Transporting explosives

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

Maximum penalty—200 penalty units.

- (2) However, subsection (1) does not apply to a person transporting an explosive—

(a) if—

- (i) the amount of the explosive is not more than the amount prescribed by regulation; and
- (ii) the person complies with the conditions prescribed by regulation for transporting the explosive; or

(b) in the circumstances prescribed by regulation.

- (3) A person who is authorised to transport an explosive must ensure—

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

(b) it is delivered—

- (i) to a place where it may lawfully be stored or used; and
- (ii) to someone who may lawfully possess it.

Maximum penalty—200 penalty units.

- (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—

(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

(b) the improper refusal of the consignee or someone else to accept delivery of the explosive.

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(5) The person mentioned in subsection (4)(a) or (b) who prevented compliance with this section is instead taken to have committed the offence.

(6) In this section—

*corresponding law* means a law of another State dealing with the transport of explosives.

## 51 Explosives too dangerous to transport

A person must not transport an explosive declared under a regulation to be too dangerous to transport.

Maximum penalty—400 penalty units or 6 months imprisonment.

## 51A Regulation may be made about particular matters

(1) A regulation may—

- (a) make provision about the recognition of laws of other jurisdictions about transporting explosives, things done under those laws and giving effect to those things; or
- (b) provide that the chief inspector may make a decision (a *determination*) under the regulation about the safe and secure transport of an explosive.

(2) Without limiting subsection (1)(b), the regulation may prescribe—

- (a) the process for making a determination, including the process for making and deciding an application for an administrative determination; or
- (b) the effect a determination has on a provision of the regulation about the transport of explosives; or
- (c) the process for amending, suspending or cancelling an administrative determination; or
- (d) the information about a determination that must be kept publicly available.

(3) In this section—

*administrative determination* means a determination made on the application of a person that applies to—

- (a) the person; or
- (b) the person and other persons named in the application.

## **52 When div 7 does not apply**

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.

## **Division 8 Using explosives**

### **53 Authority needed to use explosives**

(1) A person must not use an explosive unless the person holds an authority to use the explosive.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to an explosive prescribed under a regulation for this section.

### **54 Using explosives under conditions endangering life etc.**

(1) A person must not prepare an explosive for use, or use an explosive, other than in the way prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) A person must not use an explosive if exploding it may reasonably be expected to endanger any person's safety, health or property.

Maximum penalty—200 penalty units.

## Part 4A Industrial manslaughter

### 54A Definitions for part

(1) In this part—

*conduct* means an act or omission to perform an act.

*employee* means an individual who does an act involving explosives.

*employer* means a person who employs or otherwise engages an employee.

*senior officer*, of an employer, means—

- (a) if the employer is a corporation—an executive officer of the corporation; or
- (b) otherwise—the holder of an executive position (however described) in relation to the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions.

(2) For this part, a person's conduct *causes* death if it substantially contributes to the death.

### 54B Exception for the Criminal Code, s 23

The Criminal Code, section 23 does not apply in relation to an offence against this part.

### 54C Industrial manslaughter—employer

(1) An employer commits an offence if—

- (a) an employee of the employer—
  - (i) dies in the course of doing an act involving explosives; or
  - (ii) is injured in the course of doing an act involving explosives and later dies; and

- (b) the employer's conduct causes the death of the employee; and
- (c) the employer is negligent about causing the death of the employee by the conduct.

Maximum penalty—

- (a) for an individual—20 years imprisonment; or
- (b) for a body corporate—100,000 penalty units.

*Note—*

See section 119 in relation to imputing to a body corporate particular conduct of executive officers, employees or agents of the body corporate.

- (2) An offence against subsection (1) is a crime.

#### **54D Industrial manslaughter—senior officer**

- (1) A senior officer of an employer commits an offence if—
  - (a) an employee of the employer—
    - (i) dies in the course of doing an act involving explosives; or
    - (ii) is injured in the course of doing an act involving explosives and later dies; and
  - (b) the senior officer's conduct causes the death of the employee; and
  - (c) the senior officer is negligent about causing the death of the employee by the conduct.

Maximum penalty—20 years imprisonment.

- (2) An offence against subsection (1) is a crime.

## **Part 5                      Investigations and inquiries    into explosives incidents**

### **Division 1                      Investigations into explosives    incidents**

#### **55            Meaning of *relevant person***

A *relevant person*, for explosives involved in an explosives incident, means—

- (a) if a person other than the holder of the authority for the explosives was in custody or control of the explosives at the time of the incident—that person; or
- (b) otherwise—the holder of the authority for the explosives.

#### **56            Notification of explosives incidents**

- (1) The relevant person for explosives involved in an explosives incident must immediately after the incident notify the chief inspector of the incident—
  - (a) by giving the chief inspector notice in the approved form; or
  - (b) orally.

Maximum penalty—170 penalty units.

- (2) If the notification is given orally, the relevant person must also give the chief inspector notice in the approved form within 48 hours after the incident.

Maximum penalty—50 penalty units.

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**56A Isolation of site of explosives incidents**

- (1) This section applies if an inspector reasonably believes it is necessary to preserve evidence after an explosives incident happens.
- (2) The inspector may isolate the site of the explosives incident to prevent interference with the site.
- (3) Also, the inspector may, by written notice given to the relevant person for the explosives or orally, require the relevant person to do the following—
  - (a) mark the boundaries of the site by signs or other means in a way that—
    - (i) identifies the site as the site of an explosives incident; and
    - (ii) prohibits entry to the site;
  - (b) remain at the site for a reasonable stated time.
- (4) If the requirement is given orally under subsection (3), the chief inspector must also, as soon as practicable, give the relevant person a written notice confirming the requirement.
- (5) The relevant person must comply with the requirement.  
Maximum penalty for subsection (5)—200 penalty units.

**57 Site not to be interfered with without inspector's permission**

- (1) A person must not interfere with the site of an explosives incident without the permission of an inspector.  
Maximum penalty—200 penalty units.
- (2) Permission under subsection (1) must not be unreasonably withheld.
- (3) For this division, action taken to save life or prevent further injury at a place is not interference with the site.

**58 Investigation by chief inspector or authority holder**

- (1) The chief inspector may—
  - (a) investigate an explosives incident; or
  - (b) give the authority holder whose explosives were involved in the explosives incident a written notice requiring the holder—
    - (i) to carry out an investigation to decide the causes of the incident; and
    - (ii) to prepare a report about the incident that includes recommendations to prevent the incident happening again; and
    - (iii) to give the report to the chief inspector.
- (2) After receiving a report under subsection (1)(b)(iii), the chief inspector may, by written notice given to the authority holder, require the authority holder to—
  - (a) carry out further investigations; or
  - (b) give the chief inspector further information about the explosives incident.
- (3) A notice given under subsection (1)(b) or (2) must include or be accompanied by an information notice for the decision to give the notice.
- (4) The authority holder must comply with a notice given under subsection (1)(b) or (2) within the reasonable time stated in the notice.

Maximum penalty—100 penalty units.
- (5) The authority holder must ensure that the site of the incident is not interfered with until—
  - (a) all relevant details about the incident have been recorded and, if possible, photographed; and
  - (b) sufficient measurements have been taken to allow the development of an accurate plan of the site; and
  - (c) a list of witnesses to the incident has been compiled.

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Maximum penalty for subsection (5)—100 penalty units.

**59 Person must answer question about explosives incident**

- (1) This section applies if an inspector asks a person a question about an explosives incident.
- (2) The person must answer the question unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—40 penalty units.

*Note—*

See also sections 59A and 59B in relation to self-incrimination.

**59A Abrogation of privilege against self-incrimination**

- (1) This section applies if a person is required to answer a question under section 59.
- (2) The person is not excused from answering the question on the ground the answer to the question may tend to incriminate the person or expose the person to a penalty.
- (3) However, the answer to a question given by an individual, and other evidence directly or indirectly derived from the answer, is not admissible as evidence against the individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer.

**59B Warning to be given by inspector**

- (1) Before requiring a person to answer a question under section 59, an inspector must—
  - (a) warn the person that failure to answer the question without reasonable excuse would constitute an offence; and
  - (b) warn the person about the effect of section 59A.
- (2) It is not an offence for an individual to refuse to answer a question put by the inspector on the ground the question might

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tend to incriminate the individual, unless the individual was first given the warning mentioned in subsection (1)(b).

- (3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by a person.

## **Division 2                    Inquiries into serious explosives incidents by board of inquiry**

### **60            Minister may establish board of inquiry**

- (1) The Minister may, by gazette notice, establish a board of inquiry for a serious explosives incident.
- (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.
- (3) The Minister may exercise powers under this section for a serious explosives incident whether or not a board of inquiry, the chief inspector or the holder of an authority has previously inquired into or investigated the incident.

### **61            Membership of board of inquiry**

- (1) A board of inquiry is constituted by the following members appointed by the Minister—
  - (a) a magistrate or an appropriately qualified lawyer;
  - (b) either—
    - (i) the chief inspector; or
    - (ii) an appropriately qualified person who has knowledge of or experience in explosives;
  - (c) if, having regard to the nature of the serious explosives incident, the Minister considers it appropriate for the board of inquiry to include persons with special

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knowledge relevant to the incident—not more than 3 persons with appropriate special knowledge.

- (2) The member of the board of inquiry appointed under subsection (1)(a) is the chairperson of the board.
- (3) A member of a board of inquiry who is not an inspector is taken, for the inquiry, to have the powers of an inspector.

## **62 Role of board of inquiry**

- (1) The board of inquiry must—
  - (a) inquire into the circumstances and probable causes of the serious explosives incident; and
  - (b) give the Minister a written report of the board’s findings.
- (2) The report may contain the recommendations the board considers appropriate and other relevant matters.
- (3) The Minister must publish the report in the way the Minister considers appropriate.

## **62A Conditions of appointment**

- (1) A member of the board of inquiry is entitled to be paid the remuneration and allowances decided by the Minister.
- (2) A member holds office on the other conditions decided by the Minister.

## **62B Chief executive to arrange for services of staff for board of inquiry**

As soon as practicable after the board of inquiry is established, the chief executive must, in consultation with the chairperson of the board, arrange for the services of public service employees employed in the department, or other persons, to be made available to the board for the conduct of the inquiry.

**63 Procedure**

- (1) When conducting its inquiry, the board of inquiry must—
  - (a) observe natural justice; and
  - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (2) In conducting the inquiry, the board—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform itself in any way it considers appropriate, including by holding hearings; and
  - (c) may decide the procedures to be followed for the inquiry.
- (3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

**64 Inquiry to be held in public other than in special circumstances**

- (1) An inquiry must be held in public.
- (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.
- (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.

**65 Protection of members, legal representatives and witnesses**

- (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.
- (2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a

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barrister appearing for a party in a proceeding in the Supreme Court.

- (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.

**66 Record of proceedings to be kept**

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

**67 Procedural fairness and representation**

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, and any one else likely to be adversely affected by the inquiry's findings, the opportunity of making a defence to all claims made against the person, either in person or by counsel, solicitor or agent.

**68 Board's powers on inquiry**

- (1) In conducting the inquiry, the board may—
- (a) act in the absence of any person who has been given notice of the inquiry or some other reasonable notice; and
  - (b) receive evidence on oath or by statutory declaration; and
  - (c) adjourn the inquiry; and
  - (d) disregard any defect, error, omission or insufficiency in a document.
- (2) A member of the board may administer an oath to a person appearing as a witness before the inquiry.

**69 Notice to witness**

- (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

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stated time and place to give evidence or produce stated documents or things.

- (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.

## **70 Inspection of documents or things**

- (1) If a document or thing is produced to the board at the inquiry, the board may—
  - (a) inspect the document or thing; and
  - (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the inquiry.
- (2) The board may also take possession of the document or thing, and keep it while it is necessary for the inquiry.
- (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 copies of, photograph, or take extracts from, the document or thing, at a reasonable place and time that the board decides.

## **71 Inquiry may continue despite court proceeding unless otherwise ordered**

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.

## **72 Offences by witnesses**

- (1) A person given a notice under section 69 must not—
  - (a) fail, without reasonable excuse, to attend as required by the notice; or

- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—40 penalty units.

- (2) A person appearing as a witness at the inquiry must not—

- (a) fail to take an oath when required by the chairperson of the board; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 69.

Maximum penalty—40 penalty units.

*Note—*

See also sections 74A and 74B in relation to self-incrimination.

### **73 False or misleading statements to inquiry**

A person must not state anything to the board of inquiry that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

### **74 False or misleading documents to inquiry**

- (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.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
  - (a) informs the board, to the best of the person's ability, how it is false or misleading; and

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- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the board.

#### **74A Abrogation of privilege against self-incrimination**

- (1) A person is not excused from answering a question or producing a document or thing under this division on the ground the answer to the question or the document or thing may tend to incriminate the person or expose the person to a penalty.
- (2) However, the answer to a question or a document or thing given by an individual, and other evidence directly or indirectly derived from the answer, document or thing, is not admissible as evidence against the individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, document or thing.

#### **74B Warning to be given by board of inquiry**

- (1) Before requiring a person to answer a question or produce a document or thing under this division, the board of inquiry must—
  - (a) warn the person that failure to comply with the requirement without reasonable excuse constitutes an offence; and
  - (b) warn the person about the effect of section 74A.
- (2) It is not an offence for an individual to refuse to answer a question put by the board or produce a document or thing to the board under this division on the ground the question, document or thing might tend to incriminate the individual, unless the individual was first given the warning mentioned in subsection (1)(b).
- (3) Nothing in this section prevents the board from obtaining and using evidence given to the board voluntarily by a person.

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**75 Contempt of board**

A person must not—

- (a) insult the board of inquiry; or
- (b) deliberately interrupt the inquiry; or
- (c) impede or obstruct the board in the exercise of its powers; or
- (d) create or continue, or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (e) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—200 penalty units.

**76 Report of offences**

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—

- (a) the commissioner;
- (b) the Crime and Corruption Commission;
- (c) the director of public prosecutions;
- (d) the WHS prosecutor;
- (e) the CEO;
- (f) the chief inspector.

**77 Change of membership of board**

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

## **Part 6 Administration and enforcement**

### **Division 1 Inspectors**

#### **78 CEO may appoint inspectors**

- (1) The CEO may appoint a person as an inspector under this Act if—
  - (a) the CEO considers the person has the necessary expertise or experience to be an inspector; or
  - (b) the person has satisfactorily finished training approved by the CEO.
- (2) Without limiting powers the CEO has apart from this Act, the CEO may designate 1 of the inspectors as the chief inspector for this Act.

#### **79 Inspector's identity card**

- (1) The CEO must give each inspector an identity card.
- (2) The identity card must—
  - (a) contain a recent photo of the person; and
  - (b) be signed by the person; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date.
- (3) A person who stops being an inspector must return the person's identity card to the CEO as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (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.

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**80 Production or display of inspector's identity card**

- (1) An inspector may exercise a power in relation to someone only if—
  - (a) the inspector first produces the inspector's identity card for the other person's inspection; or
  - (b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person.
- (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.

**80A Functions of inspectors**

- (1) An inspector has the following functions—
  - (a) to investigate and enforce compliance with this Act;
  - (b) to inspect and monitor the handling of, and access to, explosives by holders of authorities and other persons;
  - (c) to audit systems for safety and security required by regulation;
  - (d) to give advice and help to others, including applicants for authorities, holders of authorities, government entities, the public and other persons, in dangerous situations involving explosives;
  - (e) to recover and dispose of explosives for the health and safety of the public;
  - (f) to give advice and make recommendations to the chief inspector about—
    - (i) applications for authorities and security clearances; and
    - (ii) the investigation and enforcement of compliance with this Act; and
    - (iii) other matters about explosives as required by the chief inspector;

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- (g) to collect information about explosives incidents for reporting to the chief inspector or the department and recording statistics;
  - (h) to liaise with persons from the explosives industry for promoting and improving the safe and secure handling of explosives.
- (2) In this section—
- government entity* see the *Public Service Act 2008*, section 24.

## **81 Powers of inspector**

- (1) An inspector is subject to the directions of—
- (a) the Minister; and
  - (b) for an inspector other than the chief inspector—the chief inspector.
- (2) The powers of an inspector may be limited—
- (a) under a regulation; or
  - (b) under a condition of appointment; or
  - (c) by written notice given by the Minister to the inspector; or
  - (d) for an inspector other than the chief inspector—by written notice given by the chief inspector to the inspector.

## **82 Inspector's appointment conditions**

- (1) An inspector holds office on the conditions stated in the instrument of appointment.
- (2) An inspector—
- (a) if the appointment provides for a term of appointment—stops holding office at the end of the term; and

- (b) if the conditions of appointment provide—stops holding office when the inspector stops holding another office stated in the appointment conditions (the *main office*); and
  - (c) may resign by signed notice of resignation given to the CEO.
- (3) However, an inspector may not resign from the office under this Act (the *secondary office*) if a term of employment to the main office requires the person to hold the secondary office.

## Division 2 Powers of inspectors

### Subdivision 1 Entry of places

#### 83 Power to enter places

- (1) An inspector may enter a place if—
- (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is mentioned in an authority as a place of business and is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry; or
    - (iii) required to be open for inspection under the authority; or
  - (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

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- (f) the entry is necessary to investigate the circumstances of an explosives incident at the place.
- (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—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (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.
- (3) For subsection (1)(d), a place of business does not include a part of the place where a person resides.

## **Subdivision 2 Procedure for entry**

### **84 Entry with consent**

- (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.
- (2) Before asking for the consent, the inspector must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and

- (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs an acknowledgement, the inspector must immediately give a copy to the occupier.
- (6) A court must find the occupier did not consent to an inspector entering the place under this part if—
- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry; and
  - (b) an acknowledgement is not produced in evidence for the entry; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

## 85 Application for warrant

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (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.

*Example—*

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

## 86 Issue of warrant

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and

- (b) the evidence is at the place, or may be at the place, within the next 7 days.
- (2) The warrant must state—
  - (a) that a stated inspector may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the inspector's powers under this part; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 87 Special warrants

- (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—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the inspector—

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- (a) the magistrate must tell the inspector—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant was issued; and
  - (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.

## **88 Warrants—procedure before entry**

- (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;
  - (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;
  - (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (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.

## **Subdivision 3 Powers after entry**

### **89 General powers after entering places**

- (1) This section applies to an inspector who enters a place under this part.
- (2) For monitoring or enforcing compliance with this Act, the inspector may—
  - (a) search any part of the place; or
  - (b) examine, inspect, test, measure, photograph or film anything on the place; or

- (c) take samples of anything on the place; or
  - (d) remove an explosive or an ingredient of an explosive for examination or testing; or
  - (e) copy a document on the place; or
  - (f) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
  - (g) require a person in the place to give the inspector reasonable help to exercise the powers mentioned in paragraphs (a) to (f).
- (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 an individual to not answer the question, or produce the document, if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

## 90 Power to seize evidence

- (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.

[s 90A]

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- (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.

#### **90A Power to secure seized thing**

- (1) Having seized a thing under this subdivision, an inspector may—
  - (a) leave it at the place it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
  - (a) seal the thing, or entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable.

*Example—*

make it inoperable by dismantling it or removing a component without which the equipment can not be used

#### **90B Powers to support seizure**

- (1) To enable a thing to be seized, an inspector may require a person the inspector reasonably believes is in control of the thing or a place of seizure for the thing—
  - (a) to both—

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- (i) take it to a stated reasonable place by a stated reasonable time; and
    - (ii) if necessary, remain in control of it at the stated place for a reasonable time; or
  - (b) to do an act mentioned in section 90A(2)(a) or (b) or anything else an inspector could do under section 90A(1)(a).
- (2) The requirement—
- (a) must be made by written notice; or
  - (b) if for any reason it is not practicable to give written notice, may be made orally and confirmed by written notice as soon as practicable.
- (3) A person must comply with a requirement made of the person under subsection (1) unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

**90C Offence to interfere**

- (1) If access to a seized thing is restricted under section 90A, a person must not tamper with the thing or with anything used to restrict access to the thing without—
- (a) an inspector's approval; or
  - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place is restricted under section 90A, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
- (a) an inspector's approval; or
  - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

**91 Receipt for seized things**

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

**92 Recovery of costs of seizure**

- (1) If, under section 106, the Minister declares a seized thing to be forfeited to the State, the owner of it must pay the reasonable cost of seizing, holding and dealing with it under this Act.
- (2) The Minister may recover an amount payable under this section as a debt payable to the State.

**93 Access to seized things**

- (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.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) For this section, if an inspector has, under section 90B(1)(a), required a person to move a thing from the place of seizure, the inspector may require the person to return the thing to the place of seizure.
- (4) The person must return the thing at the person's expense.

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**94 Forfeiture of seized things**

- (1) The chief inspector may decide a seized thing is forfeited to the State if an inspector or an authorised officer—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the inspector or authorised officer to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the inspector or authorised officer to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

**95 Return of seized things**

- (1) This section applies to a thing that—
  - (a) has been seized under this part, other than in the course of dealing with a dangerous situation; and
  - (b) has some intrinsic value; and
  - (c) is not forfeited to the State.
- (2) If the thing is not returned to its owner within 1 year after it was seized, the owner may apply to the chief inspector for its return.

- (3) Within 30 days after receiving the application, the chief inspector must—
  - (a) if the chief inspector is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner an information notice for the decision; or
  - (b) otherwise—return the thing to the owner.
- (4) If, at any time after the thing was seized, the chief inspector stops being satisfied there are reasonable grounds for retaining it, the chief inspector must return it to its owner.
- (5) Without limiting subsections (3) and (4), there are reasonable grounds for retaining the thing if—
  - (a) the thing is being, or is likely to be, examined; or
  - (b) the thing is needed, or may be needed, for the purposes of—
    - (i) an investigation, board of inquiry, coroner's inquest or proceeding for an offence against this Act that is likely to be started; or
    - (ii) an investigation, board of inquiry, coroner's inquest or proceeding for an offence against this Act that has been started but not completed; or
    - (iii) an appeal from a decision in a proceeding for an offence against this Act; or
  - (c) it is not lawful for the owner to possess the thing.
- (6) In this section—

*examine* includes analyse, test, measure, weigh, grade, gauge and identify.

*owner*, of a seized thing, includes a person who would be entitled to possession of the thing had it not been seized.

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## **Subdivision 4 Power to require information**

### **96 Power to require name and address**

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

Maximum penalty—20 penalty units.
- (6) A person does not commit an offence against subsection (5) if—
  - (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
  - (b) the person is not proved to have committed the offence.

### **97 Power to require attendance of persons before an inspector to answer questions**

- (1) The chief inspector may require a person to attend before an inspector and to answer questions—

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- (a) relevant to the discharge of the person's obligations under this Act; or
  - (b) on health, safety or security matters relevant to explosives; or
  - (c) to ascertain whether this Act is being complied with; or
  - (d) relevant to any action carried out by the inspector under this Act.
- (2) A requirement made of a person under this section to attend before an inspector must—
- (a) be made by written notice given to the person; and
  - (b) state a reasonable time and place for the person's attendance.
- (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.

## **98 Failure to comply with requirement about attendance**

- (1) A person of whom a requirement is made under section 97 must not, unless the person has a reasonable excuse—
- (a) fail to attend before an inspector at the time and place stated in the relevant notice; or
  - (b) when attending before an inspector, fail to comply with a requirement to answer a question.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a requirement to answer a question if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

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**99 False or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an inspector or authorised officer 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 if the person, when giving information in a document—
- (a) tells the inspector or authorised officer, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

**99A Person not to encourage or influence refusal to answer questions**

- (1) A person must not encourage or influence, or attempt to encourage or influence, another person to refuse to answer questions asked of the person by an inspector or authorised officer.

Maximum penalty—40 penalty units.

- (2) To remove any doubt, it is declared that subsection (1) does not apply to the provision of legal advice to a person by a lawyer.

**100 Power to require production of documents**

- (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.

- (2) The person must produce the document, unless the person has a reasonable excuse for not producing it.

Maximum penalty—20 penalty units.

[s 102]

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- (3) It is not a reasonable excuse to fail to produce the document that producing the document might tend to incriminate the person or make the person liable to a penalty.
- (4) The inspector may keep a document that is produced—
  - (a) to take an extract from the document; or
  - (b) to make a copy of it.
- (5) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

## **Subdivision 5      Power to give direction or to take direct action**

### **102      Power to give direction about contravention**

- (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 reasons for the belief;
  - (c) that the person must remedy the contravention within a stated reasonable time.
- (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.

- (5) If the notice relates to a vehicle or thing, it may be given by securely attaching it to the vehicle or thing in a conspicuous position.
- (6) The person must comply with the notice.  
Maximum penalty—the maximum penalty for the contravention of the provision stated in the notice by an individual.
- (7) A person must not remove a remedial action notice from a vehicle or thing before the steps stated in the notice are taken.  
Maximum penalty for subsection (7)—100 penalty units.

### 103 Power to give direction in dangerous situation

- (1) This section applies if an inspector reasonably believes—
  - (a) a dangerous situation exists; and
  - (b) a person is in a position to take steps to prevent, remove or minimise the danger.
- (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.
- (3) The notice must state the following—
  - (a) the situation the inspector believes is causing the danger;
  - (b) the reasons for the belief;
  - (c) that the person must remedy the situation within a stated reasonable time.
- (4) The notice may also state the steps the inspector reasonably believes are necessary to prevent, remove or minimise the danger.
- (5) If the notice relates to a vehicle or thing, it may be given by securely attaching it to the vehicle or thing in a conspicuous position.

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- (6) The person must comply with the notice.  
Maximum penalty—200 penalty units.
- (7) A person must not remove a dangerous situation notice from a vehicle or thing before the steps stated in the notice are taken.  
Maximum penalty for subsection (7)—100 penalty units.

#### **104 Preventing injury and damage—taking direct action**

- (1) This section applies if an inspector reasonably believes a dangerous situation exists and either—
  - (a) a person given a remedial action or dangerous situation notice has not complied with the notice; or
  - (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.
- (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.
- (3) The inspector must immediately—
  - (a) prepare a statement of reasons for taking the action; and
  - (b) if asked by a person affected by the action—give the person the statement of reasons.
- (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.

*Example—*

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.

- (5) A person asked under subsection (4) to help an inspector is taken to have the powers of an inspector to the extent

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reasonably necessary for the person to help prevent, remove or minimise the danger.

## **Subdivision 6      General offences**

### **105      Obstruction of inspectors**

- (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.

### **105AA Impersonating inspectors or authorised officers**

A person must not impersonate an inspector or an authorised officer.

Maximum penalty—100 penalty units.

## **Subdivision 7      Additional power of chief inspector**

### **105A      Definition for subdivision**

In this subdivision—

*Public Safety Preservation Act declaration* means an emergency under the *Public Safety Preservation Act 1986*.

### **105B Power to direct action in emergency**

- (1) This section applies if—
  - (a) the chief inspector reasonably believes there is a dangerous situation; and
  - (b) the dangerous situation is happening within, or partly within—
    - (i) an area for which a disaster situation is in force under the *Disaster Management Act 2003*; or
    - (ii) an area for which a Public Safety Preservation Act declaration is in force.
- (2) The chief inspector may direct an inspector to take any of the following actions the chief inspector reasonably believes necessary to prevent, remove or minimise the danger—
  - (a) give an explosive to another person;
  - (b) purchase an explosive;
  - (c) give equipment used in connection with explosives to another person;
  - (d) give advice about explosives to another person;
  - (e) use an explosive.
- (3) An inspector directed by the chief inspector under subsection (2) to take an action is authorised to take that action.

### **105C Relationship to Public Safety Preservation Act 1986**

- (1) A commander, for a Public Safety Preservation Act declaration, may give directions about the circumstances in which the power under section 105B may be exercised by the chief inspector during the period the declaration is in force.

*Note—*

See the *Disaster Management Act 2003*, section 9, for the relationship between section 105B and that Act.

- (2) However, the commander must not give directions about the way in which the power may be exercised.
- (3) A direction under subsection (1) may be given only if it is necessary for effective management of the situation for which the Public Safety Preservation Act declaration is in force.
- (4) In this section—

**CBR emergency** see the *Public Safety Preservation Act 1986*, section 12(1).

**commander**, for a Public Safety Preservation Act declaration, means—

- (a) for an emergency situation declared under the *Public Safety Preservation Act 1986*, section 5—the emergency commander who declared the existence of the emergency situation; or
- (b) for a terrorist emergency—a terrorist emergency commander, terrorist emergency forward commander or TERC commander for the terrorist emergency under the *Public Safety Preservation Act 1986*; or
- (c) for a CBR emergency—a CBRE commander for the CBR emergency under the *Public Safety Preservation Act 1986*.

**terrorist emergency** see the *Public Safety Preservation Act 1986*, schedule.

## Division 2A            **Authorised officers**

### 105D   **Appointments**

The chief inspector may, by instrument in writing, appoint a public service employee as an authorised officer.

### **105E Appointment conditions and limit on powers**

- (1) An authorised officer holds office on the conditions stated in—
  - (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the officer's powers.
- (3) An authorised officer is subject to the directions of the Minister and the chief inspector.
- (4) In this section—

*signed notice* means a notice signed by the chief inspector.

### **105F Functions of authorised officers**

An authorised officer has the following functions—

- (a) to investigate and enforce compliance with this Act;
- (b) to inspect and monitor the handling of, and access to, explosives by holders of authorities and other persons;
- (c) to give advice about the handling of, and access to, explosives to protect public safety, property and the environment;
- (d) to recover and dispose of explosives to protect public health and safety;
- (e) to make recommendations to the chief inspector about—
  - (i) applications for security clearances and authorities; or
  - (ii) the investigation and enforcement of compliance with this Act; or
  - (iii) other matters about explosives as required by the chief inspector.

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### **105G Authorised officer's identity card**

- (1) The chief inspector must give each authorised officer an identity card.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised officer; and
  - (b) be signed by the authorised officer; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) A person who stops being an authorised officer must return the person's identity card to the chief inspector as soon as possible (but within 21 days) after the person stops being an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

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

## **Division 3 Additional power of Minister**

### **106 Power to declare seized things forfeited**

- (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 if the Minister considers that the return of it to its owner—
  - (a) would contravene a provision of this Act; or
  - (b) would not be in the interests of public safety.

## **Division 4                      Injunctions**

### **106A    Applying for injunction**

- (1) The CEO or the chief inspector may apply to the District Court for an injunction under this division.
- (2) An injunction under this division may be granted by the District Court against a person at any time.

### **106B    Grounds for injunction**

The District Court may grant an injunction if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention of this Act by a person; or
- (f) conspiring with others to contravene this Act.

### **106C    Court's powers for injunction**

- (1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

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- (b) whether or not the person has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
    - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
    - (b) whether or not the person has previously failed to do the act or thing.
  - (3) An interim injunction may be granted under this part until the application is finally decided.
  - (4) The court may rescind or vary an injunction at any time.

#### **106D Terms of injunction**

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from carrying on particular activities—
  - (a) for a stated period; or
  - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose or publish information, to remedy any adverse consequences of the person's contravention of this Act.

## **Part 7                      Review of decisions**

### **Division 1                      Internal review of decisions**

#### **107      Application for internal review of decision under s 56A, 102 or 103**

- (1) A person given a notice under section 56A, 102 or 103 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.

#### **108      Application for internal review of action under s 104**

- (1) A person aggrieved by action being taken under section 104 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.

#### **109      Applying for internal review**

- (1) An application for an internal review under section 107 or 108—
  - (a) must be made in writing; and
  - (b) must state the grounds on which the person seeks internal review of the decision; and
  - (c) may be accompanied by any relevant information the person wants considered in the internal review; and
  - (d) must state an address for service of the decision on the internal review (the *internal review decision*).

- (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 internal 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 internal review.
- (5) Within 7 days after making the internal review decision, the chief inspector must give the applicant an information notice.
- (6) 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.

### **110 Stay of operation of decision**

- (1) If an application is made for internal review of an original decision, the applicant may immediately apply, as provided under the QCAT Act, to QCAT for a stay of the decision.
- (2) QCAT may stay the decision to secure the effectiveness of the internal review or a later application for external review to QCAT.
- (3) A stay—
  - (a) may be given on conditions QCAT considers appropriate; and
  - (b) operates for the period fixed by QCAT; and
  - (c) may be revoked or amended by QCAT.
- (4) The period of a stay must not extend past the time when the chief inspector reviews the original decision and any later period QCAT allows the applicant to enable the applicant to apply for an external review of the internal review decision.

[s 111]

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

## **Division 2 External reviews by QCAT**

### **111 Application for external review**

- (1) An applicant for an authority may apply, as provided under the QCAT Act, for an external review of the chief inspector's decision to refuse to grant the authority.
- (2) An applicant for a security clearance may apply, as provided under the QCAT Act, for an external review of the chief inspector's decision to refuse to give the security clearance.
- (3) A person aggrieved by a review decision of the chief inspector under section 109 may apply, as provided under the QCAT Act, for an external review of the decision.
- (4) An authority holder may apply, as provided under the QCAT Act, for an external review of a decision of the chief inspector to require the holder to investigate an explosives incident.
- (5) An authority holder may apply, as provided under the QCAT Act, for an external review of any of the following decisions of the chief inspector—
  - (a) a decision to impose a condition on the holder's authority;
  - (b) a decision to amend or refuse to amend a condition of the holder's authority;
  - (c) a decision to suspend or cancel the holder's authority;
  - (d) a decision to refuse to renew the holder's authority;
  - (e) a decision to refuse to replace the holder's authority.
- (6) The holder of a security clearance may apply, as provided under the QCAT Act, for an external review of any of the following decisions of the chief inspector—

- (a) a decision to suspend or cancel the security clearance;
  - (b) a decision to refuse to renew the security clearance;
  - (c) a decision to refuse to replace the security clearance.
- (7) An owner of a seized thing who is given an information notice under section 95(3)(a) for a decision to retain the thing may apply, as provided under the QCAT Act, for an external review of the decision.

## Part 8                      General

### Division 1                      General provisions about offences

#### 117      **Liability of executive officer—offence committed by corporation against s 32(1)**

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence against section 32(1); and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of section 32(1) by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
- (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against section 32(1); and
  - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against section 32(1); and
  - (c) any other relevant matter.

- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against section 32(1).
- (4) This section does not affect—
  - (a) the liability of the corporation for the offence against section 32(1); or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against section 32(1).

#### **118 Proceeding for offence**

- (1) A proceeding for an offence against this Act, other than an offence against part 4A, must be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding for an offence against this Act may only be taken on the complaint of—
  - (a) if the offence is a serious offence—the WHS prosecutor; or
  - (b) otherwise—the CEO or the WHS prosecutor.
- (3) However, the CEO may authorise in writing another appropriately qualified person to take a proceeding for an offence mentioned in subsection (2)(b).
- (4) An authorisation under subsection (3) may be general or limited to a particular proceeding or class of proceedings.
- (5) In deciding whether to bring a prosecution for an offence under this Act, the WHS prosecutor must have regard to any guidelines issued under the *Director of Public Prosecutions Act 1984*, section 11.
- (6) A proceeding may be started within the latest of the following periods to end—
  - (a) 1 year after the offence is committed;

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- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed;
  - (c) if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*—2 years after the coroner makes a finding in relation to the death.
- (6A) Subsection (6) does not apply to a proceeding for an offence against part 4A.
- (6B) Nothing in this section affects the ability of the director of public prosecutions to bring proceedings for an offence against this Act.
- (7) In this section—
- serious offence* means—
- (a) an offence against section 32 if the contravention—
    - (i) caused multiple deaths; or
    - (ii) caused death or grievous bodily harm; or
    - (iii) caused bodily harm; or
    - (iv) involved exposure to a substance that is likely to cause death or grievous bodily harm; or
  - (b) an offence against part 4A; or
  - (c) an offence prescribed by regulation for this paragraph.

### **118A WHS prosecutor may ask CEO for information**

- (1) The WHS prosecutor may ask the CEO for information relevant to the performance of a function of the WHS prosecutor under this Act.
- (2) The CEO must take reasonable steps to provide the information.
- (3) In this section—

*information* includes a document.

### **118B CEO's duty to disclose information to WHS prosecutor**

- (1) This section applies in relation to a proceeding for an offence against this Act brought by the WHS prosecutor.
- (2) The CEO has a duty to disclose to the WHS prosecutor all information relevant to the proceeding, including knowledge of a matter relevant to the proceeding, in the possession or control of the CEO.
- (3) The duty continues until the proceeding is finally decided or otherwise ends.
- (4) In this section—  
*information* includes a document.

### **118C Procedure if prosecution not brought**

- (1) This section applies if—
  - (a) a person reasonably considers that an act or omission constitutes a serious offence under section 118(7); and
  - (b) no prosecution has been brought in relation to the act or omission; and
  - (c) the following period has elapsed from when the act or omission happened—
    - (i) if the act or omission constitutes an offence against part 4A—at least 6 months;
    - (ii) otherwise—at least 6 months but no more than 12 months.
- (2) The person may make a written request to the WHS prosecutor that a prosecution be brought in relation to the act or omission.
- (3) Within 3 months after the WHS prosecutor receives the request, the WHS prosecutor must give the person, and any other person whom the person believes committed the serious offence, a notice in writing stating—
  - (a) whether the investigation of the act or omission is complete; and

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- (b) if the investigation of the act or omission is complete, whether a prosecution has been or will be brought in relation to the act or omission; and
  - (c) if the advice under paragraph (b) is that a prosecution has not been or will not be brought—the reasons for not bringing the prosecution.
- (4) Also, if the WHS prosecutor gives a notice under subsection (3)(b) that a prosecution has not been or will not be brought, the WHS prosecutor must—
- (a) advise in the notice that the person may ask the WHS prosecutor to refer the matter to the director of public prosecutions for consideration; and
  - (b) if the person asks the WHS prosecutor in writing to refer the matter to the director of public prosecutions—refer the matter to the director of public prosecutions for consideration within 1 month after the person makes the request.
- (5) The director of public prosecutions must consider the matter and within 1 month after the matter is referred give the WHS prosecutor advice in writing stating whether the director considers a prosecution should be brought.
- (6) The WHS prosecutor must give a copy of the advice under subsection (5) to—
- (a) the person who made the request under subsection (2); and
  - (b) any other person whom the person mentioned in paragraph (a) believes committed the serious offence.
- (7) If the WHS prosecutor declines to follow advice given under subsection (5) to bring proceedings, the WHS prosecutor must give written reasons for the decision to each person mentioned in subsection (6).

### **119 Responsibility for acts or omissions of representatives**

- (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.

### **120 Proof of offence involving part or sample of explosive**

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 unless the contrary is established.

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**121 Offences about false or misleading information or documents**

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

**122 Recovery of costs from convicted person**

- (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 following costs—
  - (a) the cost of testing, transporting, storing and disposing of explosives and other evidence;
  - (b) the department’s reasonable costs of investigating the offence;
  - (c) the reasonable costs of preparing for the prosecution of the offence.
- (2) An amount ordered to be paid under subsection (1) is a debt owing to the entity or the State.
- (3) Subsection (1) is in addition to any other order the court may make.

**123 Forfeiture of things on conviction**

- (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—
  - (a) any explosive to which the offence relates;
  - (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;
  - (c) any ingredient used or capable of being used to manufacture explosives;

- (d) any package containing an explosive or ingredient.
- (2) Also, if the conviction relates to a part or sample of an explosive or ingredient, the order may be for—
  - (a) all the explosive or ingredient from which the part or sample was taken and the package containing it; or
  - (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
  - (c) any packages containing the explosive or ingredient.

## **Division 1A                      Biometric information**

### **123AA Application of division**

- (1) This division applies if a person makes any of the following applications (each a *relevant application*)—
  - (a) an application under section 12A for a security clearance;
  - (b) an application under section 12F to renew a security clearance;
  - (c) an application under section 14 for an occupational authority;
  - (d) an application under section 22 to renew an occupational authority;
  - (e) an application under section 27 to replace an occupational authority or security clearance;
  - (f) an application under section 28 to amend an occupational authority.
- (2) Also, this division applies if an occupational authority held by a person is amended under section 29.

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### 123AB Definitions for division

In this division—

**biometric information**, for a person, means—

- (a) a digital photo of the person; and
- (b) the person's digitised signature.

**destroy**, in relation to biometric information, includes—

- (a) delete an electronic copy of the information; and
- (b) end the way in which the information may be accessed electronically.

**relevant application** see section 123AA(1).

**take**, in relation to biometric information, includes obtain biometric information.

### 123AC Taking biometric information for use under this Act

- (1) The person must allow the chief inspector to take and keep for use under this Act the person's biometric information.
- (2) If the person does not comply with subsection (1), the chief inspector must, if the person is an applicant for a relevant application, refuse the application.

### 123AD Using biometric information

- (1) The chief inspector may use the person's biometric information—
  - (a) if the biometric information is taken in relation to a relevant application—to help identify the person for assessing and deciding the application; or
  - (b) to reproduce the biometric information on an occupational authority or security clearance given to the person; or
  - (c) in an investigation by the chief inspector of an explosives incident under part 5, division 1, if the chief

inspector reasonably suspects the person was involved in the incident; or

- (d) in an investigation of, or proceeding for, an offence against this Act alleged to have been committed by the person.
- (2) Also, a board of inquiry established under part 5, division 2 for a serious explosives incident may use the person's biometric information for its inquiry into the incident, if the board reasonably suspects the person was involved in the incident.

### **123AE Biometric information must be destroyed if relevant application refused or withdrawn**

- (1) This section applies if—
  - (a) the person's relevant application is withdrawn; or
  - (b) the chief inspector decides to refuse the person's relevant application.
- (2) The chief inspector must, as soon as practicable after the relevant application is withdrawn or refused, destroy the person's biometric information kept by the chief inspector.

### **123AF When biometric information must be destroyed if authority or security clearance given**

- (1) This section applies if the chief inspector—
  - (a) gives the person an occupational authority or security clearance; or
  - (b) amends the person's occupational authority under section 29.
- (2) The chief inspector must destroy the person's biometric information kept by the chief inspector as soon as practicable after the later of the following days—
  - (a) the day the occupational authority or security clearance expires;

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- (b) if the biometric information is relevant to an investigation, inquiry or proceeding mentioned in section 123AD—the day the investigation, inquiry or proceeding ends.

## **Division 2                    Other general provisions**

### **123A Treatment of partnerships**

- (1) Subject to this section, this Act applies to a partnership as if the partnership were a person.
- (2) For an application by, or renewal of a licence of, a partnership—
  - (a) sections 15 to 16A apply as if each partner were an applicant or authority holder; and
  - (b) if a partner is not an appropriate person to hold an authority, the partnership is not an appropriate person.
- (3) If, because of the operation of subsection (1), a contravention of, or an offence against a provision of, this Act is taken to have been committed by a partnership, the contravention or offence is taken to have been committed by each of the partners.
- (4) However, it is a defence for a partner to prove—
  - (a) if the partner was in a position to influence the conduct of the partnership in relation to the contravention or offence—the partner took reasonable steps to ensure the partnership complied with the provision; or
  - (b) the partner was not in a position to influence the conduct of the partnership in relation to the contravention or offence.

## **124 Disposal of forfeited things**

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

## **125 Recovery of costs of government action**

- (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—
  - (a) the escape of an explosive; or
  - (b) an explosion or fire involving explosives.
- (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.
- (3) The costs are recoverable jointly and severally from the following persons—
  - (a) the person who owned the explosives when the incident happened;
  - (b) the person who possessed the explosives when the incident happened;
  - (c) the person who caused the incident;
  - (d) the person responsible (other than as an employee, agent or subcontractor of someone else) for the explosives.
- (4) However, costs are not recoverable from a person who establishes that—
  - (a) the incident was due to the act or default of another person; or
  - (b) the person could not, exercising reasonable care, have prevented the incident; or

- (c) the incident was not attributable to an employee, agent or subcontractor of the person.
- (5) This section does not limit the powers a government entity has apart from this Act.

**126 Disclosure by doctors and psychologists of certain information**

- (1) This section applies if—
  - (a) a doctor or psychologist is of the opinion a patient is not a suitable person to hold, or to continue to hold, a security clearance—
    - (i) because of the patient’s mental condition; or
    - (ii) because the patient may be a danger to the patient or another person; or
  - (b) a doctor is of the opinion a patient is not an appropriate person to hold, or to continue to hold, an authority or to have access to explosives—
    - (i) because of the patient’s physical condition; or
    - (ii) because the patient may be a danger to the patient or another person.
- (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.
- (3) This section applies despite any duty of confidentiality owed by the doctor or psychologist to the patient.
- (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.

**126AA Effect of appeals against domestic violence orders**

- (1) This section applies if—

- (a) a person is named as the respondent in a domestic violence order; and
  - (b) the person appeals against the decision to make the domestic violence order under—
    - (i) the *Domestic and Family Violence Protection Act 2012*, section 164; or
    - (ii) a law of another State or New Zealand that provides for the same matter as that section; and
  - (c) the decision to make the domestic violence order is set aside under—
    - (i) the *Domestic and Family Violence Protection Act 2012*, section 169; or
    - (ii) a law of another State or New Zealand that provides for the same matter as that section.
- (2) For this Act, the domestic violence order is taken not to have been made.
- (3) Subsection (4) applies if, before the decision to make the domestic violence order is set aside, the chief inspector decides to refuse to give the person a security clearance, or to refuse to renew the person's security clearance, on the ground the person is not a suitable person to hold the security clearance because the person is named as the respondent in the domestic violence order.
- (4) Subsection (2) does not affect the validity of the chief inspector's decision.

### **126A Protection from reprisal**

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person—
  - (a) has made a complaint, or in any other way has raised, an explosives issue; or

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- (b) has contacted or given help to an official in relation to an explosives issue.

Maximum penalty—40 penalty units.

- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.
- (6) This section does not limit or otherwise affect the operation of the *Public Interest Disclosure Act 2010*, chapter 4, part 1 in relation to reprisals.
- (7) In this section—
- explosives issue* means an issue about—
- (a) the safety or health of a person while handling an explosive; or
- (b) the security of an explosive from access by a person who should not have access to the explosive.

### **126B Damages entitlement for reprisal**

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

### **126C Public statements**

- (1) The section applies to the following persons—
  - (a) the Minister;
  - (b) the CEO;
  - (c) the chief inspector.
- (2) The person may make or issue a public statement identifying, and giving information about, the following—
  - (a) the commission of offences against this Act and persons who commit the offences;
  - (b) investigations and inquiries into explosives incidents conducted under this Act;
  - (c) the action taken by inspectors or authorised officers to enforce this Act;
  - (d) the suspension or cancellation of an authority or security clearance under this Act.
- (3) The statement may identify particular information and persons.
- (4) The person must not issue a public statement under this section unless satisfied that it is in the public interest to do so.

### **126D Chief inspector may issue safety and security alerts**

- (1) If the chief inspector believes there is a specific issue in relation to the safety or security of explosives, the chief inspector may issue an explosives alert to particular persons or to the general public about the issue.
- (2) The explosives alert is advisory only and may recommend that the persons or the general public do or not do something.
- (3) An explosives alert is issued by—
  - (a) if the alert is to particular persons—giving the persons a written notice; or
  - (b) if the alert is to the general public—publishing a notice on the department’s website; or

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- (c) if a person gives the chief inspector a unique electronic address for the person—by using electronic communication to send the alert to the address.
- (4) In this section—
- communication network** means a network—
- (a) capable of electronic communication; and
  - (b) designed to enable a user of the network to communicate with a specific person or a group of people.

*Examples—*

a telephone network or computer network

**unique electronic address**, for a person, means a fixed designation on a communication network assigned to the person for the person to receive information.

*Examples—*

an email address, mobile phone number or user account

## **127 Protection from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

*Example of an act done—*

giving information or advice

- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

## **128 Delegation by Minister**

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified public service officer or employee.
- (2) However, the Minister may not delegate the Minister's powers—
- (a) to declare a place to be a government magazine; or

- (b) to establish a board of inquiry.

### **129 Delegation by CEO**

- (1) The CEO may delegate the CEO's functions under this Act to an appropriately qualified person.
- (2) In this section—  
*functions* includes powers.

### **130 Delegation by chief inspector**

- (1) The chief inspector may delegate the chief inspector's powers under this Act to an inspector or authorised officer.
- (2) However, the chief inspector may not delegate the chief inspector's power under section 105B.

### **131 Chief inspector may ask for information**

- (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 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 an individual for subsection (2) that—
  - (a) the information sought by the chief inspector is not available to the individual; or
  - (b) the individual is not under a duty under this Act to keep the information; or
  - (c) giving the information might tend to incriminate the individual or make the individual liable to a penalty.

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**132 Disclosure of information**

- (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 an investigation or a proceeding under this Act or a report about the investigation or proceeding; or
  - (d) in a proceeding before a court in which the information is relevant to the issue before the court; or
  - (e) in a public statement made or issued under section 126C; or
  - (f) 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—
- (a) a chief executive of a department or the head of a public service office under the *Public Service Act 2008*; or
  - (b) an officer of a department or agency of the Commonwealth or another State responsible for administering a law about explosives.
- (3) This section does not limit the *Right to Information Act 2009* or *Information Privacy Act 2009*, chapter 3.

**132A Additional requirements for disclosure to particular persons**

A person given information under section 132(2)—

- (a) must not give it to another person unless authorised, in writing, by the chief inspector to do so; and
- (b) must ensure the information is used only for the purpose for which it was given under that section.

### **133 Evidentiary provision**

- (1) This section applies to a proceeding under this Act.
- (2) The appointment or power of an inspector or an authorised officer must be presumed unless a party, by reasonable notice, requires proof of—
  - (a) the appointment; or
  - (b) the inspector's power or the authorised officer's power to do anything under this Act.
- (3) A signature purporting to be the signature of the CEO, the WHS prosecutor, the chief inspector, an inspector or an authorised officer 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) a security clearance or a copy of a security clearance; or
    - (iii) an order, determination, direction, requirement or decision, or a copy of an order, determination, direction, requirement or decision, given or made under this Act; or
    - (iv) a notice, or a copy of a notice, given under this Act; or
    - (v) a record, or a copy of a record, kept under this Act; or
    - (vi) 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—
    - (i) an authority or a stated authority; or

- (ii) a security clearance or a stated security clearance;
- (c) a stated authority, security clearance or determination was or was not in force on a stated day or during a stated period;
- (d) on a stated day, an authority, security clearance or determination 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 and has not been paid;
- (g) anything else prescribed under a regulation.

### 133A Expert reports

- (1) This section applies to a proceeding under this Act, other than a proceeding under part 7.
- (2) An expert report is admissible in evidence.
- (3) However, if the person making the report (the *expert*) does not attend to give oral evidence in the proceeding, the report is admissible only with the court's leave.
- (4) In deciding whether to grant leave, the court must have regard to—
  - (a) the content of the report; and
  - (b) the reason the expert is not attending to give oral evidence; and
  - (c) the risk the admission in evidence or exclusion from evidence of the expert report will result in unfairness to a party, in particular having regard to the party's ability to dispute the content of the report if the expert does not give oral evidence; and
  - (d) any other relevant circumstance.

(5) An expert report admitted in evidence is evidence of any fact or opinion stated in the report of which the expert could have given oral evidence.

(6) In this section—

*expert report* means a report made by a person that deals entirely or mainly with issues on which the person is qualified to give expert evidence, but does not include an analyst's report.

### **133B Analysts' reports**

(1) This section applies to a proceeding under this Act, other than a proceeding under part 7.

(2) The production by a party to the proceeding of a signed analyst's report stating any of the following matters is evidence of the matters—

- (a) the analyst's qualifications;
- (b) the analyst took, or received from a stated person, the sample mentioned in the report;
- (c) the analyst analysed the sample on a stated day, or during a stated period, at a stated place;
- (d) the results of the analysis.

### **134 Approval of forms**

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

### **135 Regulation-making power**

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

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

- (a) fees and charges;

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- (b) records to be kept by an authority holder;
  - (c) standards for the construction and maintenance of, and fittings, appliances, and equipment used in, factories and magazines;
  - (d) the use or storage in a factory or magazine of explosives or anything else that may ignite spontaneously;
  - (e) the appointment of a person to be the manager of a government magazine and the functions and powers of the manager;
  - (f) rules for the employment and conduct of workers in, and other persons entering, explosives factories or magazines;
  - (g) the way explosives that are dangerous to the public or property must be dealt with;
  - (h) the way explosives must be packed and labelled;
  - (i) condemning explosives and their destruction or disposal;
  - (j) conditions, and other requirements, that apply to an authority or security clearance;
  - (k) otherwise regulating activities in relation to explosives;
  - (l) the keeping of a register of authorities and security clearances, including the disclosure and publication of information in the register.
- (3) Without limiting subsection (1) or (2)(a), a regulation may be made about assessing, charging and recovering fees payable to cover the cost of activities, carried out under this Act or another Act, relating to safety and health for explosives.
- (4) Without limiting subsection (3), a regulation may provide for any of the following—
- (a) the types of activities for which fees may be charged and recovered;
  - (b) the fees to be charged;

- (c) the way the fees are calculated including, for the first time the fees are charged, prescribing the way based on criteria in place before the commencement of the regulation;
  - (d) who must pay the fees;
  - (e) how, when, where, and to whom, the fees must be paid;
  - (f) the calculation of interest payable on unpaid fees;
  - (g) the information that must be provided by the persons who must pay the fees;
  - (h) how, when, where, and to whom, the information is to be provided;
  - (i) investigations by inspectors to obtain and check the information.
- (5) A regulation may also create offences and impose penalties of not more than 200 penalty units for an offence.

## **Part 9                      Repeal**

### **136      Repeal**

The Explosives Act 1952 is repealed.

## **Part 10                      Transitional and validation provisions**

### **Division 1                      Transitional provisions for Act No. 15 of 1999**

#### **138      Existing licences etc.**

A licence, permit, certificate or another permission in force under the former Act immediately before the commencement

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of this section continues in force, subject to this Act, as if it were an authority issued under this Act.

**139 Existing register**

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

**141 Existing exemptions**

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.

**142 Inspectors**

- (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.
- (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.

**143 References to Explosives Act 1952**

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.

**Division 2**                      **Transitional provision for Mining  
and Other Legislation Amendment  
Act 2007**

**144**      **Existing applications for an authority or renewal of  
licence**

If, before the commencement of this section, an application was made under this Act for an authority, or renewal of a licence, and the application was not decided before the commencement of this section, the application must be decided by the chief inspector as if the application had been made after the commencement.

**Division 3**                      **Transitional provision for Mines and  
Energy Legislation Amendment Act  
2011**

**145**      **Application of investigation costs provision to undecided  
appeals and reviews**

- (1) The investigation costs provision applies to a person being convicted of an offence against this Act regardless of when the offence against this Act was committed.
- (2) Subsection (1) applies despite the following provisions—
  - (a) the Criminal Code, section 11(2);
  - (b) the *Acts Interpretation Act 1954*, section 20C.
- (3) In this section—

*investigation costs provision* means section 122(1) as amended under the *Mines and Energy Legislation Amendment Act 2011*.

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**Division 4**                      **Transitional and validation  
provision for Water Reform and  
Other Legislation Amendment Act  
2014**

**146**      **Return of seized things**

- (1) New section 95 applies in relation to a thing seized under part 6 before the commencement that, on the commencement, is still seized.
- (2) If, at any time before the commencement, a thing seized under part 6 was not returned to its owner within the time required under old section 95—
  - (a) the retention of the thing is taken to have been as lawful as it would have been apart from the non-compliance with old section 95; and
  - (b) the State is not liable to pay compensation, and does not incur any other liability, for the retention of the thing in contravention of old section 95.
- (3) Subsection (2) applies for all purposes including a legal proceeding started before the commencement.
- (4) In this section—

*new section 95* means section 95 as in force from the commencement.

*old section 95* means section 95 as in force from time to time before the commencement.

**Division 5**                      **Validation provision for Land and  
Other Legislation Amendment Act  
2017**

**147**      **Validation of particular appointments**

- (1) This section applies if, before the commencement, a person was purportedly appointed or designated to any of the following offices (each a *relevant office*)—
  - (a) an inspector under section 78(1);
  - (b) for an inspector—the chief inspector under section 78(2).
- (2) The person is declared to always have been validly appointed to the relevant office.
- (3) Anything done or omitted to be done by the person that would have been valid and lawful under this Act had the person been validly appointed to the relevant office is taken to be, and always to have been, valid and lawful.
- (4) Without limiting subsection (3), it is declared that evidence obtained by the person in the purported exercise of a power under this Act is taken to be, and always to have been, lawfully obtained.

**Division 6**                      **Transitional provisions for Land,  
Explosives and Other Legislation  
Amendment Act 2019**

**148**      **Definitions for division**

In this division—

*amendment Act* means the *Land, Explosives and Other Legislation Amendment Act 2019*.

*existing application* see section 149(1).

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*former*, in relation to a provision, means as in force immediately before the provision was amended or repealed by the amendment Act.

#### **149 Existing applications for or to renew authorities**

- (1) This section applies in relation to the following applications (each an *existing application*)—
  - (a) an application for an authority made, but not decided, before the commencement;
  - (b) an application to renew an authority made, but not decided, before the commencement.
- (2) Former part 3, division 1 continues to apply in relation to the application as if the amendment Act had not commenced.
- (3) To remove any doubt, it is declared that—
  - (a) for deciding the application, section 15A does not apply to the applicant; and
  - (b) former sections 15 and 16 continue to apply in relation to the applicant and an employee of the applicant until the application is decided.

#### **150 Particular authority holders taken to hold security clearances**

- (1) This section applies in relation to a security sensitive authority that—
  - (a) was in effect immediately before the commencement; or
  - (b) is given after the commencement for an existing application.
- (2) If the holder of the security sensitive authority is an individual, the holder is, on the relevant day, taken to be the holder of a security clearance.
- (3) If the holder of the security sensitive authority is a corporation other than a listed corporation, each executive officer of the

corporation is taken, on the relevant day, to be the holder of a security clearance.

- (4) If the holder of the security sensitive authority is a partnership, each partner is taken, on the relevant day, to be the holder of a security clearance.
- (5) Subsections (6) and (7) apply if the holder of the security sensitive authority is a listed corporation.
- (6) Within 2 months after the relevant day, the listed corporation must, by written notice given to the chief inspector, nominate an executive officer or employee of the corporation as the responsible person for the corporation for matters relating to explosives.

Maximum penalty—50 penalty units.

- (7) On the day the nomination is received by the chief inspector, the responsible person for the listed corporation is taken to be the holder of a security clearance.
- (8) Despite section 12E, a security clearance mentioned in subsection (2), (3), (4) or (7) expires on the earlier of the following—
  - (a) the day the security sensitive authority expires or is cancelled or surrendered or, if the authority is renewed, the day the renewed authority expires or is cancelled or surrendered;
  - (b) the day that is 5 years after the security clearance takes effect.
- (9) In this section—

*relevant day* means—

  - (a) in relation to an authority that was in effect immediately before the commencement—the day this section commences; or
  - (b) in relation to an authority given after the commencement for an existing application—the day the authority takes effect.

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**151 Application of s 15A to particular persons**

- (1) This section applies in relation to the holder of a security sensitive authority—
- (a) that was in effect immediately before the commencement; or
  - (b) that is given after the commencement for an existing application; or
  - (c) mentioned in paragraph (a) or (b) that is renewed after the commencement.
- (2) Section 15A does not apply in relation to a person employed by the holder of the authority immediately before the commencement during the period—
- (a) starting on the commencement; and
  - (b) ending on the day that is 2 years after the commencement.

**152 Application of s 33 to particular persons**

Section 33(1)(b) does not apply in relation to a person employed by the holder of a security sensitive authority immediately before the commencement during the period—

- (a) starting on the commencement; and
- (b) ending on the day that is 2 years after the commencement.

**153 Application of explosives incident provisions**

For an explosives incident that happened before the commencement, former sections 55, 56 and 58 apply to the incident.

**Division 7**                      **Transitional provisions for  
Resources Safety and Health  
Queensland Act 2019**

**154**      **Definitions for division**

In this division—

*corresponding provision*, for a provision of the pre-amended Act, means a provision of this Act that provides for the same, or substantially the same, matter as the provision of the pre-amended Act.

*pre-amended Act* means this Act as in force before the commencement.

**155**      **Functions performed and powers exercised by chief executive**

A function performed, or power exercised, by the chief executive under a provision of the pre-amended Act, if the context permits, is taken to have been performed, or exercised, by the CEO under the corresponding provision.

**156**      **References to chief executive**

- (1) This section applies if—
  - (a) a provision of the pre-amended Act mentioned the chief executive; and
  - (b) a corresponding provision mentions the CEO.
- (2) In a document made under or relating to the provision of the pre-amended Act, if the context permits, a reference to the chief executive is taken to be a reference to the CEO.

**157**      **Existing proceedings**

- (1) This section applies to the following proceedings started before the commencement—

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- (a) a proceeding for an offence against this Act started by—
    - (i) the Commissioner for Mine Safety and Health; or
    - (ii) the chief executive or another appropriately qualified person with the written authorisation of the chief executive;
  - (b) a proceeding for an injunction, interim injunction, or to rescind or vary an injunction, under the pre-amended Act, started by the Commissioner for Mine Safety and Health;
  - (c) an appeal against a decision made on a proceeding mentioned in paragraph (a) or (b).
- (2) If, immediately before the commencement, the proceeding had not been finally dealt with, on the commencement—
- (a) if the proceeding was brought by the Commissioner for Mine Safety and Health and is in relation to a serious offence within the meaning of section 118(7)—the WHS prosecutor becomes a party to the proceeding in place of the commissioner; and
  - (b) if the proceeding is a proceeding other than a proceeding mentioned in paragraph (a)—the CEO becomes a party to the proceeding in place of the person who started the proceeding.
- (3) For a proceeding mentioned in subsection (2)(b), on the commencement or at any time after the commencement, the CEO may authorise in writing another appropriately qualified person, including, for example, the WHS prosecutor, to become a party to the proceeding in place of the CEO.

## **158 Costs of investigation**

- (1) This section applies if a court convicts a person of an offence against this Act after the commencement.
- (2) The court may order the person to pay the reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence, whether the costs

were incurred by the department or RSHQ, and whether the offence was committed before or after the commencement.

**159 References to department**

- (1) This section applies if—
  - (a) a provision of the pre-amended Act mentioned the department; and
  - (b) a corresponding provision mentions RSHQ.
- (2) In a document made under or relating to the provision of the pre-amended Act, if the context permits, a reference to the department is taken to be a reference to RSHQ.

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## Schedule 2 Dictionary

### section 3

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

**appropriately qualified**, in relation to the exercise of a power, includes having the qualifications, experience or standing to exercise the power.

*Example of standing—*

the level at which a person is employed in the department

**approved form** see section 134.

**authorised explosive** means an explosive declared under section 8 to be an authorised explosive.

**authorised officer** means a person who is appointed as an authorised officer under this Act.

**authority** means a licence, permit or another authority issued under this Act.

**biometric information**, for a person, for part 8, division 1A, see section 123AB.

**blasting explosive** means an explosive used for blasting or producing a similar effect.

*Examples of a blasting explosive—*

- a booster within the meaning of AS 2187.0—1998 (Explosives—Storage, transport and use, Part 0: Terminology)
- a cartridge, plug or stick within the meaning of AS 2187.0—1998 (Explosives—Storage, transport and use, Part 0: Terminology)
- a detonator
- a detonating cord
- an explosive that consists of a mixture of ammonium nitrate and fuel oil in a proportion that achieves blasting
- TNT

**causes**, for part 4A, see section 54A(2).

**CEO** means the chief executive officer of RSHQ.

**charge**, for an offence, means a charge in any form, including, for example, the following—

- (a) a charge on an arrest;
- (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 382;
- (c) a complaint under the *Justices Act 1886*;
- (d) a charge by a court under the *Justices Act 1886*, section 42(1A) or another provision of an Act;
- (e) an indictment.

**chief inspector** means the inspector designated by the CEO as the chief inspector for this Act.

**commissioner** means the commissioner of the police service.

**conduct**, for part 4A, see section 54A(1).

**conviction** includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

**criminal history**, of a person—

- (a) means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (b) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and
- (c) despite section 5 of that Act, includes a charge made against the person for an offence, unless the charge has been dealt with by a court, or withdrawn or otherwise discontinued.

**dangerous situation** means a situation that is likely to result in the death of or injury to a person, damage to property or harm to the environment if action is not taken to prevent, remove or minimise the danger.

***dangerous situation notice*** see section 103.

***destroy***, in relation to biometric information, for part 8, division 1A, see section 123AB.

***determination*** see section 51A(1)(b).

***digital photo***, of a person, means the person's facial image encoded in a digital form.

***digitised signature***, of a person, means the person's signature encoded in a digital form.

***domestic violence order*** means—

- (a) a domestic violence order under the *Domestic and Family Violence Protection Act 2012*; or
- (b) an interstate domestic violence order.

***employee***, for part 4A, see section 54A(1).

***employer***, for part 4A, see section 54A(1).

***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.

***explosive*** includes—

- (a) a substance or a thing containing a substance, manufactured or used with a view to produce—
  - (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.

*Examples of explosives—*

ammunition, detonators, gunpowder, nitroglycerine, pyrotechnics (including fireworks)

***explosives factory*** means a place described in an explosives manufacturer licence where explosives are manufactured under the license.

***explosives incident*** means any of the following events involving an explosive—

- (a) an explosive is, or appears to have been, lost or stolen;
- (b) the attempted theft of an explosive or another incident that threatens the security of an explosive from access by a person who should not have access to the explosive;
- (c) an accidental explosion, fire or spillage;
- (d) the death of or an injury to a person;
- (e) unexpected damage to property;
- (f) an event, including a misfire, with the potential to cause any of the events mentioned in paragraphs (a) to (e), other than an event that normally happens when handling or using an explosive.

***explosives trial approval*** see section 12.

***export explosive*** see section 35.

***external review***, for a decision, means a review of the decision by QCAT under the QCAT Act.

***firearm*** means a gun or other thing ordinarily described as a firearm.

***firework*** means an explosive containing a pyrotechnic substance used for producing a visual or aural effect for the purposes of entertainment.

***former Act*** means the *Explosives Act 1952*.

***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.

***government magazine*** means a place declared to be a government magazine under section 46(1).

***handle***, an explosive, includes—

- (a) bring the explosive into the State from another country or send the explosive from the State to another country; and

- (b) manufacture, possess, sell, store, transport or use the explosive.

**holder**, of an authority, means the person to whom it is issued or transferred.

**import explosive** see section 35.

**information notice** means a notice complying with the QCAT Act, section 157(2).

**inspector** means a person who is appointed as an inspector under this Act.

**interstate domestic violence order** means an interstate order or registered foreign order under the *Domestic and Family Violence Protection Act 2012*, part 6, whether or not the order is a recognised interstate order under that Act.

**issue** an authority includes renew an authority.

**licence** means an authority prescribed under a regulation to be a licence.

**listed corporation** see the Corporations Act, section 9.

**magazine** means a place used to keep or store explosives, and includes anything else used to keep the explosives safe and secure.

**manufacture** an explosive includes—

- (a) take a step or process for producing an explosive; and
- (b) remake or recondition an explosive; and
- (c) alter the chemical or physical nature of an explosive; and
- (d) break up or sort out explosives.

**occupational authority** means an authority prescribed by regulation that is held by an individual.

**official** means—

- (a) the Minister; or
- (b) the CEO; or
- (c) the WHS prosecutor; or

- (d) an inspector; or
- (e) a person acting under the direction of an inspector; or
- (f) a person helping an inspector in a dangerous situation; or
- (g) an authorised officer.

**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.

**permit** means a permit under this Act that is in force.

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

**place of seizure** see section 90A(1)(a).

**police protection notice** means—

- (a) a police protection notice under the *Domestic and Family Violence Protection Act 2012*; or
- (b) an interstate domestic violence order given by a police officer.

**possess** an explosive includes—

- (a) have custody or control of the explosive; and
- (b) have an ability or right to obtain custody or control of the explosive.

**premises** includes the following—

- (a) a building or other structure;
- (b) a part of a building or other structure;

- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) premises held under more than 1 title or by more than 1 owner.

**prepare** an explosive for use includes—

- (a) prepare a charge for the explosive; and
- (b) do anything to an explosive (including charge it) so it can be exploded; and
- (c) attempt to do an act mentioned in paragraph (a) or (b).

**prescribed activity** means an activity that is, or is associated with, the handling of explosives.

**prescribed explosive** see section 38(3).

**prohibited explosive** means an explosive declared under a regulation to be a prohibited explosive.

**propellant powder** means an explosive, used to launch or propel a device, that is—

- (a) a dry explosive containing potassium or sodium nitrate, charcoal and sulfur that, under normal conditions, burns rather than explodes; or
- (b) a granular powder containing—
  - (i) nitrocellulose and other ingredients; or
  - (ii) nitrocellulose, nitroglycerine and other ingredients.

**psychologist** means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student.

**public place** means any place that is—

- (a) a public road; or
- (b) a place the public is entitled to use; or
- (c) a place open to, or used by, the public (whether or not on payment of money).

**Public Safety Preservation Act declaration**, for part 6, division 2, subdivision 7, see section 105A.

**pyrotechnic substance** means a substance used to produce an effect by heat, light, sound, gas or smoke as a result of an exothermic chemical reaction that does not rely on oxygen from an external source to sustain the reaction.

**reasonably believe** means believe on grounds that are reasonable in the circumstances.

**reasonably satisfied** means satisfied on grounds that are reasonable in the circumstances.

**release conditions** see the *Domestic and Family Violence Protection Act 2012*, section 125(2).

**relevant application**, for part 8, division 1A, see section 123AA(1).

**relevant person**, for explosives involved in an explosives incident, see section 55.

**remedial action notice** see section 102.

**reprisal** see section 126A.

**responsible person**, for a listed corporation, means an executive officer or employee of the corporation who is nominated, by written notice given to the chief inspector, by the corporation as the responsible person for the corporation for matters relating to explosives.

**RSHQ** means the statutory body called Resources Safety and Health Queensland established under the *Resources Safety and Health Queensland Act 2019*, section 5.

**security clearance** means a security clearance under part 3, division 1AA.

**security sensitive authority** means an authority in relation to a security sensitive explosive.

**security sensitive explosive** means—

- (a) ammunition, other than small arms ammunition, that contains an explosive; or
- (b) a blasting explosive; or

- 
- (c) a firework, other than a firework prescribed by regulation; or
  - (d) a propellant powder; or
  - (e) a pyrotechnic substance used in a firework; or
  - (f) another explosive prescribed by regulation that—
    - (i) if used, could cause the death of a person or serious personal injury; or
    - (ii) could be readily adapted for use in a device that, if used, could cause the death of a person or serious personal injury.

***seized thing*** see section 91.

***sell*** includes—

- (a) sell by wholesale or retail; and
- (b) supply in trade or commerce or under an arrangement; and
- (ba) supply in another way, including by gift or exchange; and
- (c) agree, attempt or offer to sell; and
- (d) keep or expose for sale; and
- (e) cause or permit to be sold.

***senior officer***, of an employer, for part 4A, see section 54A(1).

***serious explosives incident*** means an explosives incident that causes, or could reasonably be expected to cause—

- (a) the death of a person; or
- (b) a person to be admitted to a hospital as an in-patient for treatment for the injury.

***small arms ammunition*** means—

- (a) ammunition for—
  - (i) a shotgun; or

(ii) another firearm with a calibre of no more than 25.4mm; or

(b) primers (cap type) used for reloading the ammunition.

**store** an explosive includes—

(a) keep an explosive; and

(b) allow an explosive to be stored or kept.

**substance** includes a gas, gas mixture, liquid, liquid mixture, and a solid in solution and in equilibrium with the solution.

**take**, in relation to biometric information, for part 8, division 1A, see section 123AB.

**trade or commerce** includes—

(a) a business activity; and

(b) anything else done for gain or reward.

**unauthorised explosive** means an explosive that is not included in the register of authorised explosives.

**unlawfully enter** an explosives factory or magazine, means enter the factory or magazine—

(a) without the permission of—

(i) the holder of an authority in relation to the explosives factory or magazine; or

(ii) the person in charge of the explosives factory or magazine; or

(iii) another person prescribed by regulation; or

(b) without authority given under this Act or another Act.

**vehicle** includes any thing capable of transporting people or things by road, rail, air or water, including a hovercraft, and it does not matter how the thing is moved or propelled.

**WHS prosecutor** see the *Work Health and Safety Act 2011*, schedule 2, section 25.