



**PYROTECHNICS INDUSTRY ASSOCIATION OF AUSTRALIA**

**Response to Discussion Paper  
STATUTORY REVIEW OF THE EXPLOSIVES ACT 2003**

**Prepared by PIAA**

**Friday, 16 August 2019  
Final**



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

This document is a response to the **Statutory Review of the Explosives Act 2003 Discussion Paper July 2019**, as prepared for SafeWork NSW.



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

1. Is the object of the *Explosives Act 2003*, outlined above, still valid? Why or why not?

1. The objective of the Explosives Act 2003 is still valid, in that the regulation of the use of explosives is essential for reasons of safety and security.

PIAA believes the objective to harmonise the legislative framework for the control of explosives nationally is more urgent than ever. We are extremely disappointed the 8 jurisdictions cannot progress the matter beyond meetings and rhetoric.



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

2. Is the scope of the Act appropriate? Are there substances or activities which should be within the scope of the Act which are currently outside it?
3. Should the definition of 'supply' be moved from the Regulation to the Act?

2. Scope of the Act –
  - a. The scope of the Act is largely appropriate, however in a changing world it needs to be sufficiently flexible to allow for regulatory change to respond to changes in the explosives industry in a timely manner.
  - b. The scope should recognise emerging technologies and the impact of such technologies, particularly those involving the use of mixed dangerous goods, including Class 1.
  - c. Any items, such as *Definitions*, that have been agreed to as part of the national harmonisation process to date should be incorporated into the Act.
  - d. In *Section 3 Definitions*, the 'sell' definition should be of sufficiently broad a scope as to include references to new forms of trade such as internet trading via social media or direct imports via overseas websites.

There have been a number of instances of fireworks sales offered through social media which industry members have brought to the attention of SafeWork and Police. In some instances there has been an appearance of a lack of resources for a more thorough enforcement of current regulations.
  - e. Nothing in *Section 6, 6A and 7* should impede the ability of the Regulations to provide for "Supervised" access to explosives (e.g. supervised access for employees of fireworks enterprises or transport drivers moving Category 1 loads).
  - f. *Section 9* appears to impact on the sale of Toy Fireworks to minors through retail outlets.
  - g. *Section 14 3)* may restrict legitimate variances to the Regulations (e.g. Transport of Category 1 Loads)
3. The definition of Supply should be the consistent in both the Act and Regulations.



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

4. Does the licensing framework enabled by the Act meet its objectives?
5. Are there other matters which the report provided by the Commissioner of Police should include?

4. Yes, however PIAA believes there is an alternative approach which can be accommodated within the Act and PIAA will advocate for an alternative licensing structure as part of the review of the Regulations.
5. None we are aware of.

6. Do you support mandatory disqualifying offences for holding a licence or security clearance? Why?
7. If you support mandatory disqualifying offences, what should those offences be? Should they be limited to offences involving violence or include work health safety offences?
8. Should mandatory disqualification only apply where the convictions have occurred within a certain period before application of the licence? What should that period be?

6. No. PIAA does not support mandatory disqualification. PIAA believes matters should be assessed on their merits and responded to appropriately. Mandatory provisions reduce the ability to resolve issues.
7. PIAA does not support mandatory disqualification. Inspectors have the power to refuse a licence, or suspend or cancel a licence based on an informed decision. Equally applicants have access to appeals mechanisms. When mandatory disqualification applies, a licence holder's access to appeal becomes limited.
8. Any convictions over 5 years should be discounted and all spent convictions should not be considered.



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

9. Are the internal and administrative review provisions of the Act working to ensure oversight of licensing decisions?
10. Do the 2013 amendments strike the right balance between protecting the confidentiality of police information and providing an effective right of review?

9. Yes
10. Yes

11. Do these offences appropriately support the Act's objective of ensuring that explosives and explosive precursors are handled safely?
12. Should executive liability apply to offences other than handling explosives or explosive precursors without a licence?

11. Apart from *Section 9 Supply of Explosives to Minors* there is no specific offence for sales generally to adults.
12. No. Executive Liability should not be extended beyond items covered by the Act such as handling explosives or precursors without a licence. Executives may be liable for offences committed concurrently under different Acts (e.g. Explosives and WHS Acts) with sufficient cumulative penalties to act as a deterrent.



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

13. Taking into account the costs of compliance, are the maximum penalty levels for offences under the Act sufficient to ensure compliance with its provisions?
14. Should the penalty levels be adjusted to take account of increases in CPI since they were last changed in 2003?
15. Should maximum penalty levels in the Act be increased to reflect the higher penalties available for similar offences in other NSW and interstate Acts? Why or why not?
16. Should the maximum penalties for the offences relating to inspectors which can be prosecuted under both the Act and the WHS Act be the same?

13. Yes, the maximum penalties are sufficient  
Penalties are expressed throughout the Act in Penalty Units, the value of each Unit being set across whole of Government. This is appropriate.  
The number of Penalty Units for each offence was set in 2003 for what-ever reason. In light of the low incidence of prosecutions the deterrent posed by the Penalty Units has worked. However, the most effective deterrent is fear of detection.  
Presumably penalties under the Explosives Act could be imposed concurrent with penalties under other Acts for the one instance (e.g. regulations covering Motor Vehicles or WHS), having the desired deterrent effect.
14. No, the number of Penalty Units for each offence was set appropriately in 2003 and nothing has changed to warrant a change. The value of Penalties can alter at any time merely by the Government altering the dollar value of Penalty Units across all NSW legislation.
15. No, the number of Penalty Units for each offence was set appropriately in 2003 and nothing has changed to warrant a change. The level in NSW is on par with that of the other jurisdictions – over in some areas and under in others.
16. No, the number of Penalty Units for each offence was set appropriately in 2003 and nothing has changed to warrant a change.



## REVIEW OF THE NSW EXPLOSIVES ACT 2003

---

17. Do inspectors under the Explosives Act have sufficient powers to ensure compliance with the Act?
18. Should inspectors under the Act have the same extra-territorial information gathering powers as inspectors under the WHS Act (section 155A)?

17. Yes, however they do not have resources to pursue compliance in all areas, particularly illegal sales
18. Yes. The Explosives and Pyrotechnic industries are national and it is conceivable offences could range across all 8 jurisdictions requiring NSW inspectors to gather information not only intrastate but also interstate.

19. Where a regulator is considering or intending to bring a prosecution in relation to forfeited explosives, should the regulator be able to destroy some of the explosives as they can under the *Drug Misuse and Trafficking Act 1985*?
20. If so, what safeguards should be in place? Do you have any concerns about such an approach?

19. Notwithstanding issues of storage, safety and security, generally destruction of evidence is not to be encouraged.
20. PIAA believes the regulator should work with industry to develop a process for storage, disposal or destruction of seized fireworks. Such a process may require industry involvement in storage and destruction. It is possible some product can be safely sold for use as an alternative to destruction.

21. Do you have any comments on these provisions of the Act?

21. Generally the Act continues to be appropriate. However PIAA believes there is scope for change in the Regulations. Principal issues of concern are harmonisation, a new licensing framework, an agreed storage protocol and the authorisation of explosives.
22. With the introduction of electronic notifications, SafeWork did not adjust the fees in accord with Section 13 of the Licensing and Registration (Uniform Procedures) Act 2002 No 2