

Our Reference 1127 SO

Statutory Review of Explosives Act 2003
Regulatory Policy
Better Regulation Division,
Department of Customer Service
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

To whom it may concern,

**SUBMISSION FOR THE STATUTORY REVIEW OF THE EXPLOSIVES ACT 2003,
DISCUSSION PAPER JULY 2019**

Thank you for the opportunity to comment in relation to the statutory review of the Explosives Act 2003.

Generally Wollondilly Council would only become involved in the use of explosives when application is sought for the use of pyrotechnics (fireworks).

Council is aware that compliance and administration of the Act falls to Safework NSW and the NSW Resources Regulator.

Council does have some comments in relation to the review, and these are outlined below:

1. Is the object of the Explosives Act 2003, as outlined in the discussion paper, still valid? Why or why not?

Valid. However Council believes that fireworks are too accessible to be gained by unlicensed users.

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?

No. The scope of the Act should also include other security sensitive dangerous substances – this may include but not be limited to items containing gun powder, explosive ammonium compounds, blasting caps, fireworks, various nitrates and nitrate mixtures, etc.

3. Should the definition of 'supply' be moved from the Regulation to the Act?

No. However all of the definitions should be in the one piece of legislation to avoid confusion. The Explosives Regulation 2013 defines supply as 'includes sell'. It does not really define supply. Supply could include (for example): provide, give, contribute, impart, proffer, make available, as well as sell.

4. Does the licensing framework enabled by the Act meet its objectives?

Yes. It appears to.

5. Are there other matters which the report provided by the Commissioner of Police should include?

Unable to comment.

6. Do you support mandatory disqualifying offences for holding a licence or security clearance? Why?

Yes, mandatory disqualifying offences should require immediate disqualification. Reissuing of licenses would require complex assessment of the individual and should a person be reliant on the license for their employment, then there should be restrictions imposed on that license to only allow for the use of explosives pertaining to that employment.

7. If you support mandatory disqualifying offences, what should those offences be? Should they be limited to offences involving violence or include work health and safety offences.

Offences may include, but not be limited to: misuse of firearms, criminal convictions, violence, WHS issues pertaining to misuse of explosives, and drug convictions.

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?

Depends on the severity of the breach.

9. Are the internal and administrative review provisions of the Act working to ensure oversight of licensing decisions?

Unable to comment.

10. Do the 2013 amendments strike the right balance between protecting the confidentiality of police information and providing an effective right of review?

The 2013 amendments pertain to the Regulation, which is not being reviewed at this time.

11. Do these offences appropriately support the Act's objective of ensuring that explosives and explosive precursors are handled safely?

No. Offences should include selling or supplying to unlicensed users.

12. Should executive liability apply to offences other than handling explosives or explosive precursors without a license?

Unable to comment.

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?

Unable to comment.

14. Should the penalty levels be adjusted to take account of increases in CPI since they were last changed in 2003?

Yes, as a minimum, given that there has been no increase since 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?

Yes, both for consistency and deterrent.

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?

Yes. As per 15 above.

17. Do inspectors under the Explosives Act have sufficient powers to ensure compliance with the Act?

Unable to comment.

18. Should inspectors under the Act have the same extra-territorial information gathering powers as inspectors under the WHS Act (Section 155A)?

Yes.

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*?

Yes.

20. If so, what safeguards should be in place? Do you have any concerns about such an approach?

Unable to comment.

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

No comment.

Should you need any further information please contact (02) 4677 1100 or council@wollondilly.nsw.gov.au

Yours faithfully



Robyn Cooper
Manager
COMPLIANCE

