



PYROTECHNICS INDUSTRY ASSOCIATION OF AUSTRALIA

**PUBLIC CONSULTATION ON THE
PROPOSED NSW EXPLOSIVES REGULATION 2021**

PREPARED BY PIAA

**Sunday, 29 August 2021
Final**



PIAA views the proposed Explosives Regulation 2021 with profound disappointment.

PIAA is:

- Disappointed at the squandered opportunity to reform the Regulation;
- Disappointed that the review of the Regulation was moribund for 18 months and the Draft was not released until the last possible moment;
- Disappointed that the consultation period has been scheduled during a State-wide Covid 19 lockdown when the Pyrotechnics Industry is reeling from cancellations and are more focussed on how to survive;
- Disappointed that nothing in the draft Regulation advances harmonisation of Explosive Regulations across all Australian jurisdictions despite assurances to the contrary;
- Disappointed that *Clause 10 Exemptions for Requirement to hold a Security Clearance* and *Clause 25 Licence to Transport* have not been amended to cover the Transport of Category 1 loads of fireworks by couriers, despite assurance the issue, which has been on-going since 2005, would be addressed;
- Disappointed that the proposed Regulation once again fails to recognise how the Pyrotechnics Industry is structured in NSW. The proposed Regulation continues to impose duties and conditions of the individual holders of a Pyrotechnicians Licence which are more correctly responsibilities of the employers of Pyrotechnicians.

For example, in the proposed Regulation *Clause 67 Duty to comply with certain standards or codes* cites AS2187. Then AS2187.4 states at: *1.5 INSURANCE An operator who conducts an outdoor display for gain or reward shall have an appropriate and adequate liability insurance policy.*

Liability Insurance policies for the Pyrotechnics Industry are held by Pyrotechnics enterprises and not individual Pyrotechnicians. It is the same with notifications, storage, transport and purchasing – all activities invariably done at an enterprise level and not by individual Pyrotechnicians;

- Disappointed that the Explosive Register continues without any reform. The Register is inefficient, time consuming and requires high resource input from not only industry but also SafeWork.
In light of industry experience of long delays in registering an explosive, PIAA does not support Clause 62 (6) in so far as *an application for registration is taken to been refused if not registered within 3 months of application*. This is harsh and punitive particularly as SafeWork does not have the resources necessary to review applications in a timely manner.
In the past WorkCover has not always published the Register annually as required. PIAA believes that the Register should continue to be published in the NSW Government Gazette in addition to publishing on SafeWork website.
- Disappointed that the update of the Regulation was not done in a timely manner. The proposed draft Regulation is due to be enacted on 1st September 2021, only two days after the public consultation closes on 29th August, thereby denying adequate opportunity to respond to industry and the general public to ensure the development of a better Regulation;
- Disappointed that when input was sought from PIAA we provided that input in **October 2019** and nothing further was heard until 26th July 2021 when the proposed Regulation was distributed. For the RIS to cite PIAA as having been consulted is disingenuous in the extreme.

We have attached our previous submission from October 2019.

Peter M^cGill, President
Pyrotechnics Industry Association of Australia



PYROTECHNICS INDUSTRY ASSOCIATION OF AUSTRALIA

REVIEW OF THE NSW EXPLOSIVES REGULATION 2013

Prepared by PIAA

**Thursday, 10 October 2019
Final**



REVIEW OF THE NSW EXPLOSIVES REGULATION 2013

This document has been prepared in response to a request from NSW Department of Customer Service to contribute to the **Review of the NSW Explosives Regulation 2013**.

Dear Pyrotechnics Industry Association of Australia,

Thank you for your recent participation in the Statutory Review of the Explosives Act 2003. We are now writing to seek your views on the Explosives Regulation 2013 (the Regulation). As advised during the stakeholder forum, the Regulation is due to be remade by 1 September 2020. Your feedback is important to help resolve any functionality issues that may exist within the Regulation. Please send through any comments (include examples where possible) PIAA may have on the Regulation to the Explosives Mailbox

It is appreciated if you could please provide any feedback by 20 September 2019.

Kind regards,



REVIEW OF THE NSW EXPLOSIVES REGULATION 2013

OVERVIEW

The NSW Explosives Regulation provides a regulatory framework for the use of explosives in NSW.

The industries operating under the Regulation include:

- Mining,
- Agriculture,
- Manufacturing,
- Blasting,
- Firearms and
- Pyrotechnics

In covering so many industries and applications of explosives use, the Regulation does not provide a framework that completely reflects the operation of the various industry sectors. This is particularly the case for the Pyrotechnics Industry as the Regulation does not reflect the way in which the Pyrotechnics industry is structured within NSW, nor throughout Australia.

The Regulation tends to treat explosives users as individuals operating in a vacuum, whereas the Pyrotechnics Industry is highly corporatized. The majority of those holding a Pyrotechnician's Licence are employed by a fireworks company. On this basis PIAA advocates a different approach to licensing that reflects the corporate nature of the Pyrotechnics industry.



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Included in the Regulation are clauses that are general in nature and other clauses that are specific to a particular industry or user sector. The layout of the Regulation chops and changes from the general to specific industry sectors somewhat randomly. PIAA suggests an edit of the Regulation could deliver a more coherent document.

As national harmonisation of explosives regulation throughout Australia proceeds at a glacial pace, PIAA believes there is an opportunity for NSW to provide the leadership which appears to be currently lacking in progressing harmonisation. We understand there are already areas of agreement between the States and Territories which could now be incorporated into the NSW Regulation.

A critical area of the Regulation that is not working for the Pyrotechnics Industry is Authorised Explosives (Clause 54). The notion of a register of authorised explosives is in theory easy. However, fireworks manufacturers are constantly coming up with variations to their products. Product inventory has expanded exponentially over the past decades. This has caused a massive backlog in explosives being authorised. There needs to be streamlined approach to authorisation. The requirement to publish the list of Authorised Explosives in the Government Gazette should be reviewed – it has not been complied with and it is somewhat anachronistic. The people who need to know which explosives are authorised are those who hold explosives licenses and the Gazette is not the best way to inform them.

As a general note, the Regulation cites the Australian Explosives Code (AEC) and Australian Standard AS2187. The AEC is currently being reviewed and AS2187 was published in 1998. Any review of the Regulation must contemplate changes to these key documents.



REVIEW OF THE NSW EXPLOSIVES REGULATION 2013

COMMENTARY ON THE REGULATION

TITLES	PIAA RESPONSE
Part 1 Preliminary	
1 Name of Regulation	✓
2 Commencement	✓
3 Definitions	Need to be reviewed Need to be consistent with Act Opportunity to include agreed definitions from Harmonisation
4 Prescription of explosives	<i>Cites AEC which is currently under review</i>
5 Prescription of explosive precursors	Explosives Industry issue, not Pyrotechnic Industry
6 Regulatory authority for mining workplaces	Mining Industry issue, not Pyrotechnic Industry
7 Persons to co-operate to discharge duties	✓
8 Classification of detonators	Explosives Industry issue, not Pyrotechnic Industry
Part 2 Security clearances	
9 Security clearance required to handle explosives or explosive precursors	"in force" Police etc check has no end date. 5 years is a SafeWork creation. There is an effect on synchronising renewal of Licence & Security clearance.
10 Exceptions from requirement to hold security clearance	
(1) Fireworks	Single Use – we still need a mechanism to allow Single Use or Temporary Theatrical Use over a season of a play
(2) Supervised handlers	✓ Couriers are unsupervised
(3) Inspectors, authorised officers, police and emergency workers	✓
11 Regulatory authority may grant security clearances	✓ 5 years? Why not for life?
12 Grounds for refusing security clearance	✓
14 Cancellation of security clearance	✓
15 Suspension of security clearance	✓
16 Notice of cancellation or suspension to other relevant persons	✓



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Part 3 Licences	
Division 1 Activities requiring licences	
17 Activities requiring licences	✓
18 Natural person must hold security clearance	✓ Except Single Occasion
19 Corporation must nominate natural person to hold security clearance	<ul style="list-style-type: none"> • Define corporation (Corporation Act) • Must include Sole Traders • Provides framework for Explosives Corporate Licence or Pyrotechnic Display Licence
20 Authority conferred by licence extends to other relevant persons	✓



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Division 2 Types of licences	
21 Types of licences	(a) licence to manufacture, (b) licence to import, (c) licence to supply, (d) licence to transport by vehicle, (e) licence to transport by vessel, (f) licence to store, (g) blasting explosives user's licence, (h) pyrotechnician's licence, (i) fireworks (single use) licence, licence to use security sensitive dangerous substances PIAA proposes a new licensing framework for the Pyrotechnics Industry (see separate document)
22 Licence to manufacture	"Mobile processing unit:" not applicable to Pyro
23 Licence to import	Import of fireworks precursors limited to manufacturers?
24 Licence to supply	Export?
25 Licence to transport by vehicle	How long will exemption for couriers exist?
26 Licence to transport by vessel	?? At what NEQ?
27 Licence to store	✓ Storage could be graded using AEC Cat1-3 as a guide. <ul style="list-style-type: none"> • Storage Cat 1 - <50kg NEQ 1.3G • Storage Cat 2 – 50><1,000kg NEQ 1.3G • Storage Cat 3 - >1,000kg NEQ 1.3G etc



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28 Blasting explosives user's licence	Explosives Industry issue, not Pyrotechnic Industry <u>except</u> for Film industry Special Effects (i.e. a limited number of individuals)
29 Pyrotechnician's licence	
30 Fireworks (single use) licence	There is still a need for mechanism to allow Single Use Ground Display and Theatrical Use over a season of a play etc
32 Matters that may be specified in licence	<p>A licence may specify any of the following matters:</p> <ul style="list-style-type: none"> (a) the explosive or explosive precursor or the type or types or the class or classes of explosive or explosive precursor that is or are authorised to be handled under the licence, (b) the maximum quantity of explosive or explosive precursor that is authorised to be handled under the licence, premises or a location at which the explosives or explosive precursors that are authorised to be handled under the licence must be handled. <p>This facilitates a licence with embedded layers</p>



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Division 3 Applications for licences	
33 Applications for licences	
34 Security clearance not a prerequisite to obtaining a fireworks (single use) licence	
35 <i>Security plan</i>	Should be a requirement for all Corporate Licence holders
36 <i>Safety management plan</i>	Should be a requirement for all Corporate Licence holders
37 Grounds for refusing a licence	✓
38 Additional eligibility requirements—blasting explosives user's licence	Explosives Industry issue, not Pyrotechnic Industry <u>except</u> for Film industry Special Effects (i.e. a limited number of individuals)
39 Additional eligibility requirements—pyrotechnician's licence and fireworks (single use) licence	<p>(c) <i>has completed a training course or attained a level of competence in the safe use of display fireworks that is recognised by the regulatory authority for the purposes of obtaining the licence</i></p> <p>Is a training course sufficient? How effective is training of Single Occasion users? There needs to be a period of experiential learning on-the-job</p>
40 Additional eligibility requirements—licences relating to security sensitive dangerous substances	Not a Pyro Industry issue
41 Licence fees	There has been a large cost to industry since the introduction of the Regulations in 2005. Many interactions with SafeWork are now electronic, and yet the fee structure has not been reviewed to reflect this.
42 Licence holder must remain eligible for licence	✓



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Division 4 Exceptions from licence requirements	
Subdivision 1 Exceptions for inspectors, police and others	
43 Handling of explosives by inspectors and other authorised officers	Are they appropriately insured? Risk assessment? We require zero liability to Pyro industry
44 Handling of explosives by police explosives technicians	Are they appropriately insured? Risk assessment? We require zero liability to Pyro industry
45 Transport of explosives by police officers	Are they appropriately insured? Risk assessment? We require zero liability to Pyro industry
46 Possession and storage of certain explosives by emergency services	Are they appropriately insured? Risk assessment? We require zero liability to Pyro industry
Subdivision 2 Other exceptions from licence requirements	
47 Power device cartridges, distress signals, life-saving appliances and toy fireworks	Toy fireworks – check definition (e.g. sparklers, party poppers) as some companies are importing items not included in the definition. Items that should not be sold have been sold in the past (i.e. ice fountains). SafeWork needs the resources to police.
48 Ammunition	Not a Pyro Industry issue <u>except</u> cross over with Special Effects in film, stage, TV
49 Import of certain explosives	✓
50 Transport of explosives by private road	✓ More applicable to mining/explosives
51 Voyages outside the State	✓
52 Activities in port operational areas	✓
53 Use of small quantities of security sensitive ammonium nitrate	Not a Pyro Industry issue



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Part 4 Prohibited explosives	
Division 1 Prohibited explosives	
54 Prohibited and authorised explosives—meaning	<p>(1) A prohibited explosive is any explosive that is not an authorised explosive.</p> <p>(2) An authorised explosive is any explosive registered as an authorised explosive in the register of explosives.</p> <p>Authorisation is not working. The process is failing to authorise fireworks in a timely manner.</p>
55 Prohibited explosives not to be handled	<p>Observance of this clause is adversely impacted by delays in the processing of explosive authorisations. Imports can arrive with authorisations pending.</p>
56 Use and modification of authorised explosives for unauthorised purposes	<p><i>A person must not use, modify, or attempt to use or modify, an authorised explosive <u>to produce an explosive effect other than that for which the particular explosive was designed</u></i></p> <p>It is possible for a qualified Pyrotechnician to undertake minor repair to fireworks provided they remain within the original design parameters.</p> <p>In some instances Special Effects in film production may use explosives in a manner not necessarily contemplated by the manufacturer.</p>
57 Exception for research and development	



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Division 2 Registration of explosives	
58 Registration of authorised explosives	<p>(1) <i>The regulatory authority may register an explosive as an authorised explosive</i></p> <p>“may” – if the system is not working then streamline or abandon.</p>
59 Application to have explosives registered as authorised	Streamline? Self assess? Online application? Cost \$?
60 Registration details	Cites AEC
61 Alteration of register	✓
62 Revocation of registration	✓
63 Publication of register	<p><i>The regulatory authority must from time to time, but at intervals of not more than <u>one year</u>, publish a copy of the register of explosives in the Gazette.</i></p> <p>Yearly publication has not happened.</p>
64 Falsely representing explosives as authorised	✓



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Part 5 Safety and security measures	
Division 1 Compliance with codes and standards	
65 Duty to comply with certain standards or codes	✓ Cites AS2187 & AEC
66 Application of codes and standards	✓
67 Duty to ensure others comply with Australian Explosives Code	Impact on couriers training & security clearance
68 Prohibition on entering contracts, etc that are not in accordance with the Australian Explosives Code	✓ AEC under review
Division 2 Compliance with plans submitted to regulatory authority	
69 Approved plans	✓
70 Compliance with security plan	✓
71 Explosives to be accessed only as authorised by security plan	✓
72 Compliance with safety management plan	✓
Division 3 Manufacture, supply and import of explosives	
73 Meaning of "authorised supplier"	✓
74 Design of building where explosives manufactured	✓
75 Explosives to be supplied only to persons authorised to receive explosives	✓
76 Retention of supply records	✓
77 Supply records to be made available for inspection	✓ Inspection only, not copied, e-mailed etc
78 Packaging and marking of explosives and explosive precursors	✓
79 Consignment of explosives and explosive precursors	✓
80 Export of explosives and explosive precursors	✓
81 Import of explosives and explosive precursors	✓
82 Transport of imported explosives or explosive precursors	✓ Only when approved??? Sometimes hard to achieve off the docks.
83 Sale of distress signals, power device cartridges or ammunition	✓



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Division 4 Storage and transport of explosives	
84 Storage	✓
85 Storage of explosives that have been prepared for use	As written not a Pyro Industry issue
86 Storage of explosives in rail yards or sidings	✓
87 Storage of explosives in stationary vehicles	✓ 2 days for “in transit & stationary”
88 Storage or transport of explosives of more than one hazard division together	✓ AEC
89 Transport of explosives by vehicles in certain areas	Class 1.1, 1.2 or 1.5 No Effect on Pyro (i.e. 1.3G) List of Councils needs update
90 Emergency plan required if large quantities of explosives or explosive precursors are stored	<i>...more than 50 kg NEQ of explosives...</i> Applicable to all Pyros
91 Carriage of explosives on public passenger vehicles	(3) <i>In this clause, public passenger vehicle means a vehicle or vessel that <u>transports or may transport persons</u> and is available for use by the public</i> Should only apply when vessel is transporting public passengers
92 Person transporting explosives to avoid hazards	<i>A person transporting explosives by vehicle must ensure that, while the explosives are being carried in or on the vehicle, they are kept away from anything, whether in or on the vehicle or elsewhere, that might cause them to ignite or explode.</i> This a more generalised statement and should be highlighted at the beginning of the Reg
93 Smoking prohibited on or near vehicles used to transport explosives	Once again, this a more generalised statement and should be highlighted at the beginning of the Reg AEC
94 Additional requirements—licence to transport by vehicle	AEC 21 Medical



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Division 5 Use of explosives	
95 Setting of explosives	Very mining oriented; rewrite for Pyro?
96 Use of distress signals for other purposes	✓ Pyro use permitted
Division 6 Disposal of explosives	
97 Disposal under blasting explosives user's licence	Very mining oriented Need re-think re-write for Pyro disposal
98 Explosives must be disposed of safely	✓ In accord with AS 2187
99 Explosives not to be discarded	Once again, this a more generalised statement and should be highlighted at the beginning of the Reg
100 Restrictions on vacating explosives site	Very mining oriented Need re-think re-write for Pyro site
Division 7 Other miscellaneous safety and security measures	
101 Access to explosives or explosive precursors by unauthorised persons	✓
102 Notification of loss or theft of explosives or explosive precursors	✓
103 Notification of serious incidents involving explosives or explosive precursors	✓
104 Entry to place where explosives or explosive precursors manufactured or stored	✓ Impact on fireworks site
105 Fire hazards	✓ Once again, this a more generalised statement and should be highlighted at the beginning of the Reg
106 Interference with signs and labels	✓ Once again, this a more generalised statement and should be highlighted at the beginning of the Reg



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Part 6 Enforcement powers	
107 Certain powers of inspectors and police officers to give directions	✓
108 Powers of inspectors in relation to explosives that have been set	✓ Impact on fireworks display site?
109 Evidence of licence or security clearance to be produced	✓ Put this clause up with the Licence clauses
110 Penalty notice offences and penalties	✓
Part 7 Miscellaneous	
111 Onus of proof concerning reasonable excuse	✓
112 Exemptions for particular persons on application	✓
113 Exemptions for classes of persons or things	✓ It is under this clause the PIAA Cat 1 Transport Code is approved
114 Register of exemptions	✓ Published in the Gazette. Any other than PIAA Cat 1?
115 Temporary amnesty from licence and other requirements relating to handling of explosives	✓

Schedule 1 Security sensitive dangerous substances	
1 Security sensitive ammonium nitrate	Not a Pyro issue
Schedule 2 Penalty notice offences	
	Offences are offensive
Schedule 3 Savings and transitional	
	Procedural