



Regulatory Impact Statement

Proposed Explosives Regulation 2021

July 2021

Disclaimer

This publication avoids the use of legal language, with information about the law summarised or expressed in general statements. The information in this document should not be relied upon as a substitute for professional legal advice.

For access to legislation in force in NSW go to the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au.

Copyright Information

© State of New South Wales through Department of Customer Service, 2021

You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose provided that you attribute the Department of Customer Service as the owner. This publication is licensed under the Creative Commons Attribution 4.0 licence. For more information, visit www.customerservice.nsw.gov.au/copyright

Contents

CONTENTS	2
EXECUTIVE SUMMARY	4
CONSULTATION PROCESS	5
Making a submission	5
NEED FOR GOVERNMENT ACTION	7
OBJECTIVE AND RATIONALE OF THE REGULATION	8
Objective	8
Rationale	9
OPTIONS FOR ACHIEVING OBJECTIVES	10
IMPACT ASSESSMENT OF OPTIONS	11
Assessment of Option 1	11
Assessment of Option 2	14
Assessment of Option 3	18
Summary of Options	20
DISCUSSION OF THE PROPOSED REGULATION	21
Preliminary matters	21
Notifying employers and principal contractors	22
Exceptions from security clearances for NSW police officers	23
Exceptions from security clearances	23
Storage of explosives	26
Licensing the access and use of Hazard Division (HD) 1.4 explosives	27
Authorising a registered explosive subject to conditions	28
Publishing Requirements	28
Emergency plans	29
Transporting explosives	30
APPENDIX 1	32
Background information	32
APPENDIX 2	33

Summary of the proposed changes to the Regulation **33**

APPENDIX 3 **38**

List of stakeholders **38**

Executive summary

The Explosives Regulation 2013 (the 2013 Regulation) is scheduled for automatic repeal on 1 September 2022 under the Subordinate Legislation Act 1989.

The 2013 Regulation supports the *Explosives Act 2003* (the Act). The Act provides for the regulation and control of the handling of explosives and explosive precursors. It establishes the licensing and security clearance regime that underpins the sector, and provides compliance and enforcement functions for the regulatory authorities, SafeWork NSW and the NSW Resources Regulator

It is proposed that an *Explosives Regulation 2021* (the proposed Regulation) be made, retaining many of the existing provisions and making amendments to improve the efficacy and operation of the regulatory framework, while ensuring that no safety outcomes are compromised. The main changes in the proposed Regulation are as follows:

- Classifying desensitised explosives as explosive precursors
- New obligations to inform employers or principal contractors of the cancellation or suspension of a security clearance or licence
- Exempting NSW police officers from requirements to hold security clearances
- Exempting NSW Police from licence requirements when storing limited quantities of explosives seized as evidence
- Exempting persons who are already exempt from holding a licence in certain situations from requiring a security clearance
- Allowing for the storage and commercial testing of research and development explosives
- Licensing the use of hazard division (HD) 1.4 explosives, regardless of quantity
- Clarifying storage requirements for licence holders under the *Firearms Act 1996*
- Simplifying publication requirements for the register of explosives
- Prohibiting the transport of loads of HD 1.1, 1.2, 1.5 explosives in all NSW road tunnels
- Provides the regulatory authority with the ability to register an authorised explosive subject to conditions that are recorded in the register of explosives
- Removes expired provisions related to the temporary amnesty on licence requirements
- Requires a copy of exemption notices to be published in the NSW Gazette
- Requires licence holders to provide a copy of their emergency plan to the regulator
- Requires licence holders to implement written advice provided by the regulator or FRNSW for their emergency plan.

This Regulatory Impact Statement (RIS) sets out the rationale and objectives of the proposed Regulation. It includes alternative options and an assessment of the costs and benefits of each of these. The proposed Regulation is the option which is considered to provide the greatest net public benefit.

Consultation process

Making a submission

Interested individuals and organisations are invited to make a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS. Matters covered by the principal Act – Explosives Act 2003 – are not the subject of the consultation process.

We would prefer to receive your submission using the online options on the Have Your Say website, or by email in an ‘accessible’ format. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word/>.

Submissions can be made by:

- Completing the online survey and/or uploading your written submission at the [NSW Government Have Your Say website](#).
- Emailing your written submission to: explosives@customerservice.nsw.gov.au
- Posting your written submission to:

Explosives Regulation 2021
Policy & Strategy, Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

The closing date for submissions is Sunday 22 August 2021.

Important note: release of submissions

We will make all submissions publicly available on the Have Your Say website. If you do not want your personal details or part of your submission published, please say this clearly in your submission and tell us why. Automatically generated confidentiality statements are not enough.

Even if you state that you do not want us to publish certain information, we may need to release that information by law. For example, to comply with the Government Information (Public Access) Act 2009. The Department will also provide all submissions to the Legislation Review Committee of NSW Parliament. This is a statutory requirement.

Identified stakeholders

The RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 3.

Evaluation of submissions

The Department will carefully consider each submission. If necessary, we will amend the proposed Regulation to address issues raised in the consultation process. If we need more information, we may consult with key stakeholders before finalising the new Regulation.

Commencement of new Regulation

After the Minister for Better Regulation and Innovation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

Need for government action

Government action is necessary as the 2013 Regulation is due for automatic repeal on 1 September 2022. Without a Regulation in place the Act could not be effectively administered or enforced. It is therefore necessary that new regulations are made.

The 2013 Regulation has been incrementally amended over the years. The proposed Regulation seeks to further improve upon the 2013 Regulation to ensure that this important legislative regime functions more effectively.

Objective and rationale of the Regulation

Objective

The primary objective of the proposed Regulation is to provide legislative support and administrative detail for the operation of the Act. The *Explosives Act 2003* (the Act) regulates the control and handling of explosives and explosive precursors in NSW. Explosive precursors are chemicals and other materials that can be processed to make an explosive. The Act:

- authorises the regulations to prescribe an article or substance as an explosive or explosive precursor,
- creates offences relating to explosives,
- enables a licensing regime, including providing for security clearances for applicants for licences,
- provides for the Commissioner of Police to report on the suitability of applicants for a security clearance and licence,
- allows the regulatory authority to suspend or cancel a licence or security clearance and provides a right of review to aggrieved persons,
- provides for the administration and enforcement of the Act, and
- provides for procedural matters, including proceedings for offences, disclosure of information, penalty notices, and a regulation-making power.

The specific objectives of the proposed Regulation remain the same as the 2013 Regulation. That is, to make provisions with respect to:

- prescribing substances as explosives or explosive precursors,
- requirements to hold security clearances,
- the activities requiring licences, outline licence types, and establish the application requirements for licences,
- exceptions to licensing requirements,
- the responsibilities of the regulatory authority to register authorised explosives,
- duties to comply with all relevant codes, standards, and plans,
- requirements for the storage, transport, use, and disposal of explosives, and
- the enforcement powers of inspectors and the police.

The proposed Regulation will support the Act and is integral to its effective operation and the achievement of its aims.

Rationale

The proposed Regulation is necessary as it provides the legislative support and administrative detail necessary for the effective operation of the Act. Without the Regulation, the Act could not be effectively administered or enforced.

It is necessary to remake the 2013 Regulation at this time because:

- under the sunset provisions contained in the *Subordinate Legislation Act 1989*, the 2008 Regulation will be automatically repealed on 1 September 2022 if it is not re-made, and
- without a supporting Regulation, the Act cannot operate effectively or be enforced and administered.

It is also an opportunity to improve the efficacy and operation of the regulatory framework for explosives.

Options for achieving objectives

The primary objective of the proposed Regulation is to provide legislative and administrative detail to support the operation of the Act. There are 3 options for achieving this objective and they are:

Option 1: Maintain the status quo

Do not make the proposed Regulation in the form set out in this RIS, and instead remake the Regulation with the same provisions as the 2013 Regulation.

Option 2: Make the proposed Regulation with changes

Make the proposed Regulation, with a number of changes from the 2013 Regulation in order to improve legislative support and administrative detail for the Act.

Option 3: Take no action

Allow the 2013 Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Impact assessment of options

Assessment of Option 1

Maintain the status quo – Do not make the proposed Regulation and instead remake the 2013 Regulation without any changes.

Option 1 – Costs

The costs on explosives licensees, industry, regulatory authorities and the NSW Government would remain substantially the same as they are at present.

Costs to industry

Due to the varying licence types and diversity of industries which use explosives, which include mining, agriculture, transport and pyrotechnics, it is difficult to determine the costs of compliance for every licence holder or industry business under the current Regulation. A number of those costs would be incurred under the Act in any event. Costs may vary depending on the licence holder, their business structure and the practices of the individual or company. The current licence fees are set out below. The licence fees are adjusted each year to reflect CPI.

Licence	Duration (years)	Cost (new licence)
Authorised Explosives	Perpetual	\$116
Blasting User	5	\$291
Import/Export Explosives/Security Sensitive Dangerous Substances (SSDS)	5	\$2,735
Manufacture Explosives	5	\$2,909
Pyrotechnician	5	\$291
Security clearance	5	\$175
Fireworks single use/event	Single occasion	\$58
Use Security Sensitive Dangerous Substances (SSDS)	5	\$116
Store explosives/Security Sensitive Dangerous Substances (SSDS)	5	\$290

Beyond the cost of individual licences and security clearances, there are inherent time costs associated with applications that are lodged with the regulatory authority. While applications are progressed and reviewed, applicants are unable to engage in the activities that those authorisations are required for. With the continuation of the current Regulation, the same administrative, regulatory and time costs will continue to be borne by licence holders.

Costs to Government

If Option 1 were pursued, Government would continue to bear the costs and administrative burden of licensing NSW police officers where it may not be necessary to ensure the safe handling of explosives.

The proposed Regulation (Option 2) removes requirements for NSW police officers to hold a security clearance when handling explosives in the course of their duties. Currently, security clearances cost \$175 for a 5-year authorisation. With over 17,000 NSW police officers the proposed amendments within Option 2 have the potential to greatly limit administrative costs for the Government in applying for and processing these licences.

Costs to industry and Government

If Option 1 was pursued there would be an opportunity cost in terms of failure to clarify the intent of some clauses in the Regulation and failure to adopt the changes made within the proposed Regulation that are designed to improve the functionality of the regulatory framework. This may have costs to industry and regulators, though the costs of this lack of clarity cannot be quantified.

Without the proposed changes to clarify intent, remove confusion and reduce regulatory burden, , explosives users, industry and regulatory authorities would incur unnecessary additional costs when seeking to discharge compliance or enforcement obligations or functions. For instance, the current Regulation prohibits the transport of certain explosives through Sydney metro road tunnels. However, the NSW Road Rules prohibit the transport of explosives within all road tunnels in NSW. These inconsistent requirements have the potential to confuse industry participants seeking to understand their requirements regarding the transport of explosives. The unrealised benefits of implementing such reforms is an identified cost for this option.

Community Costs

Under Option 1, the costs for the community would remain the same as at present. However, Option 2 has the potential to improve and further strengthen the explosive safeguards within the Regulation. This means there is a safety cost to the community in maintaining the status quo.

The overall cost impact of Option 1 has been assessed as **low**.

Option 1 – Benefits

Remaking the 2013 Regulation in its current form would achieve the objectives of the Act. As its provisions are already relatively familiar to explosives users, industry, regulatory authorities and Government, no changes would be required to existing practices and procedures. Businesses, licensees and regulators would not need to spend time familiarising themselves with the new requirements.

The primary benefits of Option 1 relate to the time and effort saved by industry, licence holders and Government in not adapting to any new legislation or requirements.

Industry Benefits

Industry and licence holders will benefit from saving costs associated with transitioning to requirements in the proposed Regulation. However, with any increased costs of compliance anticipated to be low with the adoption of the proposed Regulation, any savings are expected to be minor, if at all.

Government Benefits

Other benefits would include the administrative savings stemming from the ability to reuse existing guidance, advice and communication materials. However, any benefits from not having to update existing regulatory practices and procedures may be outweighed by the costs of having to dispel confusion arising from the lack of detail in the existing Regulation on some points.

For example, those engaging in research and development projects may continue to face uncertainty as to how they are able to undertake such a project for a period of 6 months without being able to legally store their explosive as it undergoes testing and development. Similarly, firearms licence holders may be unsure as to the exact storage limits for propellant powder if they do not hold an explosives licence.

However, if the proposed Regulation was adopted, new guidance materials may require creation and implementation, thus incurring administrative costs as these items are developed. These administrative costs include internal consultation on the new guidance material, the preparation of the guidance material, printing or making available the material online, and the costs of the communications strategy to ensure that licensees are aware of the new requirements. This communications strategy could include social media, liaising with representative industry groups, or directly contacting licensees.

The overall benefits of Option 1 have been assessed as **low**.

Option 1 – Conclusion

Option 1 would still allow for the Act's intentions to be achieved, but it would not do so in the most effective and beneficial way given the potential for improvements. Remaking the 2013 Regulation in its current form would not impose any new costs on explosives users, industry or regulatory authorities but it would also not result in any significant benefits or improvements to the function and operation of the sector. The community, as a whole, benefits from improved safety outcomes in the explosives industry. There is also an opportunity cost associated with this option because the proposed changes in Option 2 would not be incorporated. For these reasons, **Option 1 is not the preferred option**.

Assessment of Option 2

Make the proposed Regulation – the provisions of the proposed Regulation would provide updated legislative support and administrative detail for the Act.

Option 2 – Costs

Under the proposed Regulation, the costs incurred by licensees, industry, emergency services, regulatory authorities and the NSW Government would largely remain the same – as the proposed Regulation maintains many of the provisions and requirements within the 2013 Regulation. However, it is expected that there will be minor costs to industry and regulators as a result of implementing this option. The following proposed amendments have been identified as potential costs to industry and regulators under Option 2.

Desensitised explosives

The proposed Regulation expands upon the current prescription of explosive precursors to include desensitised explosives. In doing so, it applies all the regulatory requirements for the handling of explosive precursors – including licence and security clearance requirements – to desensitised explosives. While this is expected to improve safety, some industry stakeholders may face increased regulatory costs in relation to these substances – costs that had not been previously arisen from the use of desensitised explosives. However, these stakeholders are already required to comply with the explosives legislation in relation to the storage and handling of other explosives and explosive precursors. They are therefore likely already to have in place systems for the safe storage and handling of these materials and any increase in the compliance costs under the current Regulation may therefore be marginal. It is not possible to quantify these costs at present. It is not clear that there are persons currently handling desensitised explosives who do not already have explosives licences for other purposes.

Hazard Division 1.4 Explosives

The proposed amendments will also cause the current authorisation for the unlicensed use of Hazard Division (HD) 1.4 explosives to cease (see Clause 47 of the 2013 Regulation), creating an administrative cost for regulatory authorities as well as raising compliance costs for industry stakeholders. However, this amendment is not likely to impact a majority of licence holders who already have authorisations that allow the use of such explosive substances under the Explosives Regulation. However, for those who were engaging in the unlicensed handling of HD 1.4 explosives, the cost of compliance will be commensurate with the licence fees outlined in Option 1, in addition to the time cost of applying for the licence.

Clauses 15(3) and 43 of the proposed Regulation establish new requirements on licence holders to notify their supervising licence holder of a cancellation or suspension of their licence or security clearance. This notification must be given as soon as is practicable, and no later than 14 days after the

cancellation or suspension. Non-compliance with this requirement attracts a maximum penalty of 50 penalty units (\$5,500). However, as this is a financial penalty – for a breach of the legislation – it is not considered to be a direct cost placed on licence holders. At present, supervising licence holders can be in breach of the explosives legislation if they allow for a person who has had their security clearance cancelled or suspended to continue to perform activities authorised by the licence, even if the supervising licence holder is unaware that their security clearance has been cancelled or suspended. This amendment may reduce the likelihood of that occurring and therefore reduce the likelihood of businesses facing financial penalties.

Government Costs

Regulator costs will be mostly related to enforcement and compliance costs of the new regulatory environment. However, these are likely to be minimal as they will be incorporated into the existing compliance framework, using existing processes and procedures. SafeWork NSW will be responsible for processing any additional applications that may arise from the proposed amendments. This would be limited to those who are currently unlicensed and were previously using HD 1.4 explosives. This is not expected to be a large class of people but the exact size cannot be determined at present. The Regulator will also become responsible for regulating compliance with the proposal to make it an offence if a person fails to inform their supervising licence holder of a security clearance or licence cancellation. These costs are expected to be absorbed into current explosives compliance checks.

While there may be initial compliance and enforcement costs, as both regulators and industry acclimatise to new requirements, it is anticipated that these would be offset through the efficiency savings, reduced regulatory burden and overall benefits that the proposed Regulation would bring.

The overall cost impact of Option 2 has been assessed as **low**.

Option 2- Benefits

The proposed Regulation makes changes to the 2013 Regulation aimed at improving safety outcomes, reducing red tape and clarifying the intent and application of existing provisions. The benefits of some of the proposed changes in Option 2 are identified below.

Community Benefits

The major benefit of the proposed Regulation is that it will better protect people and property from the harm that can arise from the unsafe use of explosives. This is to be achieved through the prescription of desensitised explosives as explosive precursors, making them subject to the same security controls as currently recognised explosive precursors. Desensitized explosives are those that have had an agent added to stabilise or desensitise it, but still pose safety risks as they can be easily modified to become explosives – in some cases, they only need to dry out. In addition to safety benefits, this reclassification also brings the Explosives Regulation in line with the Australian Dangerous Goods (ADG) code, like other requirements.

Industry Benefits

Additionally, the proposed Regulation will now, clarify that licence holders under the *Firearms Act 1986*, are not required to be licensed to store up to 12kg of propellant powder at a single residential address. At present, the limit is 12kg per licence holder. The effect of that has been that where there are multiple licence holders at one address, each licence holder has been able to store up to 12kg. The result is an unsafe volume of propellant powder at the address. The new requirement will be that the maximum amount which can be stored at a single residential address is 12kg, regardless of the number of resident licence holders. The proposed Regulation will ensure that there are not large, unsafe amounts of propellant powder being stored in the community. This amendment will improve the efficiency of the regulatory framework by clarifying the storage requirements and informing licence holders of their requirements in a clearer manner.

The proposed regulation will also now prohibit the transport of loads of HD 1.1, 1.2 and 1.5 explosives in road tunnels across NSW. Currently, the transport of these explosives (for all loads) has been limited to road tunnels in the greater Sydney metropolitan area. However, the *Road Rules 2014* restricts the transport of placarded loads across all road tunnels in NSW. The regulatory framework will be updated to account for the expansion of road tunnels in NSW outside of the Sydney metro region and has the added benefit of improving consistency across Regulations. As a result of this amendment, the control of dangerous goods through NSW road tunnels will be more consistent.

Additionally, the proposed Regulation will now include an offence if a person fails to inform their employer of a security clearance or licence cancellation or suspension; this amendment is a safeguard against persons with suspended or cancelled authorisations continuing to work. Licence holders or supervisors who fail to inform their employers face a financial penalty for doing so, but this is not considered to be a cost. It is intended to incentivise compliance and reduce instances of unsafe work practices. Supervising licence holders will benefit from the reduced risk of committing an offence by allowing an unlicensed person to continue to undertake work that requires a licence or security clearance. This additional safety benefit is considered to outweigh the potential imposition placed upon licence holders.

The proposed Regulation will have the effect that in circumstances where a person is currently not required to hold a licence, they will no longer be required to hold a security clearance. These circumstances include existing exceptions for the use of low quantities of low-risk explosives, and the storage of ammunition for firearms dealers who are already licensed under the *Firearms Act 1996*. These changes seek to remove unnecessary regulatory overlap and streamline regulatory efficiency.

Additionally, while the current Regulation permits a person to use explosives throughout the course of a permitted research and development project, it does not explicitly allow for the storage of explosives. Not permitting storage of a developing explosive is impracticable and places an undue burden on the development process. The proposed Regulation will address this regulatory gap, and ensure a fair and

practicable regulatory environment for those testing, researching and developing explosives. There will be improved safety outcomes for industry, regulators and the broader community by permitted the safe and appropriate storage of developmental explosives when it is required. The proposed amendment also reduces instances where such explosives would otherwise require to be disposed of prior to their completed development and testing.

Government Benefit

Every NSW police officer is required to hold a higher-level security clearance than that required by the current Explosives Regulation through the course of their employment with the NSW Police. This is unnecessary duplication. As such, the proposed Regulation will establish a general exception for all NSW police officers from the requirement to hold a security clearance for the purposes of the Regulation, reducing regulatory burden with no safety impact. The proposed Regulation will also exempt police officers from requiring a licence to transport an explosive confiscated or received by the officer, or for storing explosives at a police station for the purposes of evidence. This will reduce administrative burden on both NSW Police – who must apply for the licences – and SafeWork NSW – who process the licences. NSW Police are also consulted by SafeWork NSW in the security clearance process so they will also be relieved of that administrative burden in relation to police officer licences. This will free both SafeWork NSW and NSW Police to focus on their core functions of protecting workers and the community.

Under the proposed Regulation, publishing requirements related to explosives will be transferred from the NSW Government Gazette to the SafeWork NSW Website. At present the register is published periodically in the Gazette. The amendments will be updated more often, as a 'live' register, and be more accessible to explosives users. It is anticipated that industry stakeholders are far more likely to refer to the SafeWork NSW website for guidance materials than the NSW Gazette. The register of explosives will sit appropriately alongside other guidance and safety materials on the SafeWork NSW website.

The overall benefits of Option 2 have been assessed as **high**.

Conclusion

Option 2 is considered to be most effective and beneficial option in providing and implementing enhanced regulatory support for the Act. Making the proposed Regulation will provide a net benefit to the industry and government agencies by reducing unnecessary red tape, enhancing safety protocols. The proposed Regulation will apply modern and consistent regulatory principles to the explosives sector.

Further, updating the 2013 Regulation can be achieved without imposing significant additional costs to stakeholders. Given the potential impacts of Option 2, as outlined above, and taking into account the option of letting the 2013 Regulation sunset (Option 3), which would likely result in more costs than

benefits, the **preferred regulatory option is to remake the 2013 Regulation with the proposed amendments (Option 2).**

Assessment of Option 3

No action – Allow the 2013 Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Option 3 – Costs

The 2013 Regulation provides considerable legislative support to the Act. Without any Regulation in place the Act would not be able to fully operate or achieve its intended aims. The Regulation contains important processes, procedures, guidance and requirements that assist explosives users and businesses. For example, the prescription, registration and authorisation of explosives. Without prescribing an explosive for the purposes of the Act, the majority of explosive substances would not be able to be legally handled.

Community Costs

The protections and safeguards contained in the regulation would no longer be in force. For example, requirements for the design of buildings where explosives are manufactured to be specifically designed and constructed in order to minimise the consequences of an explosion would not be applicable. Similarly, requirements for the safe and secure storage of explosives would also no longer be in effect. The removal of these protections is likely to pose a significant cost to the safety of not only explosive licence holders and industry, but also the broader community.

Industry Costs

Compliance costs for explosives users would not be completely eliminated despite the absence of any Regulation. Instead explosives users would face confusion about the way in which they should discharge the obligations imposed by the Act. In fact, in seeking to meet the obligations of the Act, users may face increased transaction costs as they seek advice and information from different sources.

Government Costs

Further, it is likely that SafeWork NSW would receive an increase in enquiries requesting clarification and assistance – which may require additional staff resources to effectively deal with. Under section 24 of the Act, persons aggrieved with a decision under the Act or Regulation are able to apply to the NSW Civil and Administrative Tribunal (NCAT) to review that decision. Without the guidance of the Regulation and a lack of clarity in how to discharge obligations, there would also be an increase in the number of disputes, which would increase administration costs for the Government.

Similarly, regulatory authorities would still have compliance and enforcement obligations under the Act but would be hampered in discharging these obligations without the legislative detail provided by a

Regulation. Allowing the Regulation to lapse would remove the ability for penalty notices to be issued by SafeWork, and require all breaches of the Act to be pursued through the courts, resulting in substantial compliance costs.

Allowing the 2013 Regulation to lapse with no replacement Regulation would result in a regulatory regime that is unable to effectively operate. Without effective regulatory oversight of explosives there would be an increased risk of explosive hazards and the improper use of explosives in NSW, and increased costs to the NSW community from explosive incidents.

Reinstalling a regulatory scheme in the future would be far more difficult, costly and time consuming after a protracted absence. Due to this, the costs of Option 3 have been assessed as **high**.

Option 3 – Benefits

There are likely to be no significant benefits to this option given the Act could not function as intended without a supporting Regulation.

Industry Benefits

There are not anticipated to be benefits to industry. They benefit from the guidance and clarity that the Regulations provide both in ensuring that they comply with their obligations and avoid the penalties under the Act for non-compliance, and in ensuring that their businesses operate safely and do not harm workers, the public, or property.

Government Benefits

There would be minor savings achieved in time and savings to the NSW Government in not having to remake the 2013 Regulation. The numerous negative flow-on effects mentioned above would however, outweigh any such benefits. As such, the benefits of Option 3 have been assessed as **low**.

Option 3 – Conclusion

Permitting the 2013 Regulation to expire, without any replacement Regulation, is not considered appropriate as this would not achieve the Act's objectives, undermining the rigorous protections against explosives that have been established and maintained. The risks and costs associated with eliminating licensing standards and effectively relying on explosive users to self-regulate significantly outweigh any potential benefits to licence holders, industry and Government.

For these reasons, **Option 3 is not the preferred option.**

Summary of Options

Option	Costs	Benefits	Preferred Option
<p>Option 1 – maintain the status quo</p>	<p><u>Low</u></p> <ul style="list-style-type: none"> The costs of this option on industry, the community and the NSW Government would remain substantially the same as under the present Regulation. However, significant opportunity cost from not implementing proposed amendments aimed at improving the regulatory function of the legislation 	<p><u>Low</u></p> <ul style="list-style-type: none"> No operational changes as the sector is already familiar with current regulations and requirements Regulator retains ongoing familiarity with how the sector operates No need to adapt compliance and enforcement strategy to a new regulatory regime 	<p>Not preferred</p>
<p>Option 2 – make the proposed Regulation</p>	<p><u>Low</u></p> <ul style="list-style-type: none"> New licencing requirements for the use of HD 1.4 explosives Desensitised explosives now subject to the same control mechanisms as explosive precursors New offence for failure to notify principal contractors of cancellation or suspension of licence or security clearance 	<p><u>High</u></p> <ul style="list-style-type: none"> Reduced regulatory burden on NSW Police by allowing for practical storage of explosives as evidence and removing requirements for duplicative security clearances Removal of requirements to hold a security clearance for low risk activities Greater clarity for industry on requirements for the transport and storage of explosives Establishes appropriate and more accessible publication of key information by the regulator Allows for a greater range of explosives to be registered, subject to conditions Removes expired provisions Allows for the storage of explosives in the course of a research and development project 	<p><u>Preferred</u></p>
<p>Option 3 – No action</p>	<p><u>High</u></p> <ul style="list-style-type: none"> Significantly reduced regulation of the control and handling of explosives and explosive precursors in NSW 	<p><u>Low</u></p> <ul style="list-style-type: none"> No identifiable benefits 	<p>Not preferred</p>

Discussion of the proposed Regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this Regulatory Impact Statement. However, the following discussion points provide context for some provisions in the proposed Regulation. A comparison of the current Regulation and the provisions of the proposed Regulation is provided in **Appendix 2**.

Preliminary matters

Date of Commencement (Clause 2)

The proposed Regulation provides for commencement before 1 September 2022, as the 2013 Regulation is due to be automatically repealed on that date in accordance with the *Subordinate Legislation Act 1989*. A commencement date prior to 1 September 2022 for the proposed Regulation will avoid any gap in the regulatory framework for explosives.

Structure and formatting (Various clauses)

A number of minor amendments have been made to the structure, numbering and grammar of the proposed Regulation. These changes are largely cosmetic, and are not intended to alter the effect of any clauses.

This includes the amending of Clauses 89(2), 89(3), 89(4) and 89(5) of the 2013 Regulation to replace the word 'Class' with 'hazard division' following industry feedback. This addresses issues of consistency with the usage of the terms 'class' and 'hazard division' within the Regulation.

Similarly, usage of 'licence holder' has been implemented consistently within Division 2 of the proposed Regulation. The amendments are intended to establish consistency across provisions and ensure that authorities and responsibilities placed on licence holders are clearly provided.

Clause 115 of the 2013 Regulation has been removed to reflect the end of the temporary amnesty from licence and other requirements. This clause effectively ceased operation after 14 September 2017.

Prescription of explosive precursors (Clause 5)

Desensitised or 'phlegmatized' explosives are explosives that have had an agent added to stabilize or desensitize them. The proposed change seeks to include desensitised explosives, both liquid and solid, as prescribed explosive precursors. The proposed amendment will use the meaning of 'desensitised explosives' within the Australian Dangerous Goods Code (ADG Code). This will form a consistent definition with the applicable national standards.

It is considered that both solid and liquid desensitised explosives should be included within the single definition of desensitised explosives as they carry the same security risks, and should be regulated as such.

Defining desensitised explosives as explosive precursors will make them subject to the same access and security controls as currently recognised explosive precursors.

An alternative would be to classify desensitized explosives as *explosives*, however in their desensitized form, they are not as hazardous as explosives. To do so would make them subject to an inappropriate degree of regulatory control.

1. How will the proposed classification of desensitized explosives as explosive precursors affect you or your business?

Notifying employers and principal contractors

New requirement to notify employers of the cancellation or suspension of a security clearance or licence (Clauses 15(3) and 43)

The Regulation currently does not contain an offence of failing to inform your employer of a change in the status of your security clearance or licence. Under the proposed changes a person will be required to notify a supervising licence holder of a suspension or cancellation of a licence or security clearance as soon as is practical, and not more than 14 days after the suspension or cancellation. The penalty for failure to comply is proposed to be 50 penalty units (\$5,500).

The 14-day period is similar to those already applied under existing licensing conditions (Condition 65) for notification of changes to address, employer and other details provided in the application for security clearance and licences.

The introduction of an offence is intended to establish greater responsibility and ensure that businesses do not allow persons with suspended or cancelled licences to continue to undertake work. Businesses can be placed in the position of breaching the law or the conditions of their licence if they are unaware that their employee's licence or security clearance has been cancelled. The difficult position this puts businesses in was raised as part of the 2019 Statutory Review of the Explosives Act.

2. Should employees be required to tell their employer/principal contractor about changes to the status of their licence or security clearance? Is the proposed penalty commensurate with the offence?

Exceptions from security clearances for NSW police officers

Establishing a general exception for NSW police officers to hold a security clearance (Clause 10)

The 2013 Regulation exempts police officers from requirements to hold a security clearance in certain circumstances.

This primarily exempts police officers from licence and security clearance requirements when transporting explosives that have been confiscated, received or are under the immediate supervision of the officer (existing Clause 46).

While more expansive exemptions are given to specialist police explosives technicians, there are very limited situations in which police officers are not required to hold a security clearance when dealing with explosives.

The proposed Regulation seeks to establish a general exception for all NSW police officers from the requirement to hold a security clearance for the purposes of the Regulation.

Every NSW police officer is required to hold a higher-level security clearance than those that are required under the 2013 Regulation (Clause 9). Due to police officers exceeding the security threshold as employees of NSW Police, the proposed amendments are not expected to have any safety impact.

It is important to note that the proposed amendment does not exempt police officers from requirements to hold a licence.

3. Do you support removing the requirement for NSW Police officers to hold security clearances?

Exceptions from security clearances for other activities

A security clearance is required to have unsupervised access to explosives, explosive precursors or concentrated ammonium nitrate. Those wishing to apply for explosives licences – which enable a person to use, store, possess and sell explosives – cannot do so successfully without a security clearance.

The proposed amendments outlined within this section are intended to exempt certain persons from the requirement to hold a security clearance in circumstances where they are not currently required to hold a licence. The circumstances and nature of the exemptions are outlined below.

Exemptions for the use of low quantities of low-risk explosives (Clause 10)

Under Clause 47, the 2013 Regulation allows a person who is not authorised by a licence to use explosives in circumstances where quantities are low, and the explosives are considered to be low-risk.

This includes supply power device cartridges, distress signals, life-saving appliances including air bag inflators and seatbelt pretensioners, and toy fireworks.

The proposed amendment seeks to remove an unnecessary layer of regulation by exempting unlicensed persons from the requirement to hold a security clearance to possess, transport, store, use, sell or supply these explosives.

Certain explosives, such as distress signals – which are part of the safety system of any vessel or aircraft – are considered to be of low risk to the public because they are designed for use by members of the public, are common, and have minimal safety impact. These low-risk explosives and many of the other captured items are almost exclusively used as safety mechanisms to support the safe use and operation of vehicles and other items.

The original intent of the exemption from licence requirements was to reduce unnecessary regulatory burden and to allow for the safe and appropriate use of certain explosives where possible. It is considered that the proposed amendment will assist the Regulation to meet that goal.

If a person exceeds the prescribed quantities, then they will continue to require both a licence and security clearance in accordance with the existing provision.

Exemptions for the storage of ammunition for licensed firearms dealers (Clause 10)

Under the 2013 Regulation (Clause 48) a person does not require a licence in order to use ammunition, percussion caps, or propellant powder, if they are licensed under the *Firearms Act 1996*.

However, Clause 9 of the current Regulation does require them to hold a security clearance, which means there is still a regulatory burden. Clause 10(5) of the proposed Regulation therefore now exempts a person from the requirement to hold a security clearance when they are participating in the activities set out in existing Clause 48.

The intent of this is to avoid unnecessary regulatory overlap, as firearms licence holders are subject to strict requirements for the supply, storage and use of ammunition under the *Firearms Act 1996*. Similarly, to gain a licence under the Firearms legislation, stringent reviews are conducted that are considered to be comparable to those conducted under the Explosives legislation.

Exemptions for the use of security sensitive ammonium nitrate within an educational context (Clause 10)

The 2013 Regulation (Clause 53) allows for the unlicensed handling of security sensitive ammonium nitrate (SSAN) for educational, research or analytical purposes at a school or at a commercial laboratory, university or other research institution if the amount used does not exceed 3 kilograms.

For the same reasons given above, it is appropriate to exempt a person who is participating in the activities set out in existing Clause 53 from the requirement to hold a security clearance as well as the

requirement to hold a licence. This is due to the low quantity of the SSAN and the purpose for which it is used.

- 4. Are there any reasons why existing exemptions from requirements to hold a licence should not be extended to include the proposed exemptions from requirements to hold a security clearance?**
- 5. Are there any other instances where an exemption from requirements to hold a security clearance is appropriate?**

Research and Development projects

Allowing the storage of explosives during a permitted research and development (R&D) project (Clause 60)

Proposed amendments to Clause 60 will authorise to the storage of an explosive in the course of a permitted research and development project.

The 2013 Regulation does not explicitly permit storage of an explosive throughout the course of a permitted research and development project, despite allowing for projects to be carried out for a maximum of 6 months.

During the course of an R&D process it is likely that the person engaged in the research may be required to store the explosive at various points. Not permitting storage of a developing explosive is impracticable and places undue burden on the development process.

The proposed amendment would fix this gap in the Regulation and provide a more appropriate regulatory environment for those testing, researching and developing explosives. Further, allowing for the safe and secure storage of developing explosives will ensure that any potential safety hazards are minimised.

Permitting the testing of research and development explosives by manufacturers at a customer site (Clause 60).

The 2013 Regulation authorises a person to possess, manufacture, process, treat, transport, use and dispose of an explosive in the course of a permitted research and development project but does not authorise the sale or supply of an explosive.

Large manufacturers often test their R&D explosives at a customer site to measure the effectiveness of the explosives and may do so for payment or under a commercial contract. Currently, Clause 57 (5) of the 2013 Regulation does not permit this. Proposed Clause 60(2)(b) will permit it, and allow for thorough and appropriate testing conditions of R&D explosives.

6. Are there any other amendments to the research and development process that need to be implemented? If so, what are they?

Storage of explosives

Removal of licence requirements for the low-quantity storage of explosives in all NSW Police stations (Clause 47)

The 2013 Regulation (Clause 27) requires that a licence to store explosives and explosive precursors. This requirement extends to all NSW Police stations, which must be licensed to store explosives in any non-emergency situation.

This means NSW Police stations are not authorised to store even low quantities that may have been taken as evidence and that, once seized, explosives must be immediately transported to a specialist licenced facility – which could be in a separate part of a local jurisdiction, in a different city, or in another part of the state entirely.

This places an unfair and undue burden on rural police stations which, under the current Regulation, have no option but to transport seized explosives to a centralised storage facility, which are primarily located in metropolitan areas. This excessive requirement could impact upon emergency service resourcing during an active emergency situation.

Due to the low quantity of explosives seized and held as evidence within NSW Police stations, licensing each Police Station is considered to be burdensome and unnecessary. There are significant safety and security mechanisms already in effect in police stations.

The proposed amendment intends to exempt NSW Police from the requirements of existing Clause 27, by allowing for the storage of explosives, totalling under 10kg of Net Explosive Quantity (NEQ), within police stations. This will allow for general duties evidence handling in police stations. However, the full licensing framework will continue to be used for specialised handling and storage of explosives through the Weapons Disposal and Bomb Squad.

The storage limit is intended to provide an additional safety measure and to ensure that an unsafe quantity of explosives is not accumulated. The storage amounts are in line with similar restrictions within the existing regulatory framework (i.e. Clause 47).

7. Are there any reasons why police officers should not be exempt from a licence to store explosives for general duties in evidence handling in police stations? If so, what are they?

Clarify that licence holders are able to store 12kg of propellant powder at a single residential address (Clause 50)

The 2013 Regulation provides that licenced holders under the *Firearms Act 1996* are not required to be licenced to store up to 12kg of propellant powder. Issues with compliance have been identified wherein multiple licence holders, at a single residential address, are each able to store up to 12kg of propellant powder – resulting in the unsafe accumulation of propellant powder.

The 12kg limit was established in order to minimise the safety hazards associated with the storage of propellant powder. Allowing multiples of 12kg to be stored at the same location (e.g. a residence wherein there are multiple firearms licence holders), renders the limits ineffective.

The proposed amendments seek to address this legislative gap by clarifying that the 12kg limit on propellant powder is applied per place of residence. Under this proposal, a place of residence refers to a residential premise occupied by persons living together as a single household. This will ensure that there are not large quantities of propellant powder being stored by multiple licence holders within a single residential address.

8. Are the proposed restrictions of 12kg of propellant powder at a single residential address for firearms licence holders appropriate?

Licensing the access and use of Hazard Division (HD) 1.4 explosives

Removing exemptions for the unlicensed use of HD 1.4 explosives (Clause 49)

Clause 49 of the proposed Regulation removes the authorisation for the unlicensed possession, transport, storage, use, sale or supply of all HD 1.4 explosives for quantities under 10kg of Net Explosive Quantity (NEQ) .

HD 1.4 explosives are primarily substances and articles that do not present significant hazards. However, this does not mean that they do not present any hazard. They include substances with effects that in the event of ignition or initiation during transport are largely confined to the package and no projection of fragments of appreciable size or range is to be expected.

The original intent of this clause was to authorise the handling and use of low-risk explosives types at relatively low quantities. It is considered that the current regulatory environment is no longer practicable for such an authorisation. The unlicensed access and use of other HD 1.4 explosives is considered to be too broad and inappropriate given the potential for serious risk and harm.

9. Are any other explosives or items suitable for inclusion or exclusion from Table 1.1 within Clause 47 of the proposed Regulation? If so, what?

Authorising a registered explosive subject to conditions

Placing conditions on the authorisation of a registered explosive (Clause 62)

SafeWork NSW – as the regulator – is responsible for the authorisation of every explosive that is handled in NSW. This process is outlined in Division 2 of the 2013 Regulation. Currently, under existing Clause 61(4), the Regulation only allows for a binary registration system to be in place. That is, an explosive is either authorised or refused registration.

The proposed amendment intends to expand upon this to allow for the regulator to apply conditions when they are considering an application to have an explosive registered authorised. It is considered that this process will be similar to the existing regulatory powers for explosives licences and security clearances, which are able to be subject to conditions (under section 14 of the Act). This provides the regulator with greater flexibility to support the registration of a wider range of explosives, with appropriate safeguards or conditions in place.

Conditions could relate to the time period of use for the explosive, who may use it (i.e. limited to Defence Force personnel), or business limitations (i.e. for export purposes only). The addition of this power will allow for a more robust regulatory environment and for conditions to be placed, where relevant, on explosives that would otherwise not be registered.

It is also proposed that the details of any conditions that are attached to an authorisation are recorded in the register of explosives (Clause 63(1) of the proposed Regulation). This will ensure that there is accessible publication of the any conditions and that licence holders and industry members are aware of any restrictions placed upon these items.

Publishing Requirements

Allow for notices of the revocation of authorised explosives to be published on the SafeWork NSW Website (Clause 65)

Clause 65 of the proposed Regulation removes the requirement to publish notice of the revocation of an authorised explosive in the NSW Government Gazette and instead requires publication on the SafeWork NSW website.

This amendment aims to create consistency with the proposed changes to Clause 66. Further, it aims to provide more accessible information about the revocation of registration of authorised explosives.

Allow for the publishing of register of explosives on the SafeWork NSW Website (Clause 66)

Clause 66 of the proposed Regulation removes the requirement to publish the register of explosives in the NSW Government Gazette. In place of this, it is proposed that the register is able to be published on the SafeWork NSW website instead.

This responds to feedback that industry members are far more likely to refer to the SafeWork NSW website for guidance and information than the NSW Gazette. Removing Gazettal requirements is intended to ensure that the register can be updated on the SafeWork NSW website more efficiently by the Regulator and to allow for any changes to be more accessible to industry.

9. Do you support transferring publishing requirements from the NSW Government Gazette to the SafeWork NSW Website?

Emergency plans

The provision of emergency plans to the regulatory authority (Clause 93)

Under Clause 90 of the 2013 Regulation, a licence holder who stores more than 50 kg NEQ of explosives, or more than 50 tonnes of security sensitive dangerous substances, or both, must ensure that they have adequate arrangements for dealing with an emergency.

To meet the standards of adequate arrangements, amongst other requirements, licence holders must have a written plan in place for dealing with any emergency associated with the storage and handling of these explosives.

Currently, a copy of the emergency plan must be provided to the Commissioner of Fire and Rescue NSW (FRNSW) or, if the premises is located in a rural fire district, to the NSW Rural Fire Service (NSW RFS). However, a draft copy of the emergency plan is also required to be provided to FRNSW.

The proposed Regulations seeks to streamline the obligations of licence holders, and reduce the double handling and review that is conducted by FRNSW. This is to be achieved by requiring that the completed emergency plan (i.e. not a draft version) must be shared with the regulatory authority and FRNSW, and when in a rural fire district, also with the RFS. With SafeWork NSW already routinely requesting emergency plans as a part of its licencing procedures, it is a pragmatic change that will assist in the expedition of the licencing process.

By providing SafeWork NSW and FRNSW with the emergency plan in all instances, it will allow for each plan to be thoroughly and holistically reviewed to ensure efficacy and appropriateness. Identified issues will be identified with the additional proposed amendments to existing Clause 90 (see below) ensuring the swift rectification of any advice that is provided to the licence holder.

Written advice for emergency plans (Clause 93)

Under clause 90(2)(d)(ii) of the 2013 Regulation, in the course of developing or reviewing an emergency plan, licence holders must have regard to any written advice received from the regulatory authority or FRNSW.

The proposed Regulation seeks to strengthen this requirement by ensuring that any written advice provided to the licence holder, that is in regard to the content or effectiveness of the emergency plan, must be implemented within a revised version of the plan. The amendment follows similar requirements in the WHS Regulation (Clause 361(3)) outlining how written advice about is to be interpreted.

The wording and language within the 2013 provisions is open to interpretation and does not require licence holders to explicitly implement the advice that is received from SafeWork and FRNSW. By making these changes, both SafeWork and DRNSW's recommendations will be able to play a more impactful role in the effective development of emergency plans.

With the proposed amendments to the provision of emergency plans to authorities, wherein they are only required to provide them with a completed plan, it is intended that more considered and informed advice will be provided to licence holders. This, when combined with a firm requirement to implement advice that is received, will lead to a strengthening of safety protocols and procedures being in place for premises with large quantities of explosives being stored.

Transporting explosives

Prohibition on the transport of all loads of HD 1.1, 1.2 and 1.5 explosives in prohibited areas (road tunnels) (Clause 92)

Currently, the NSW Road Rules (RR) prohibits the transport of placarded loads of explosives from all road tunnels – through RR 300-2. This includes several tunnels outside of the greater Sydney metropolitan areas.

Placards advise emergency services, other vehicles on the road and the general public that dangerous goods are being transported, and are one of the controls, including safety equipment, stowage and segregation requirements, that apply when placard loads are being transported. Where the load in a transport contains a quantity of dangerous goods that requires placards to be displayed on the transport unit, the load is a placard load.

The 2013 Regulation currently prohibits the transport of all loads of HD 1.1, 1.2 and 1.5 explosives, in certain districts and on certain bridges, and in some Sydney metro tunnels. Proposed Clause 92(3) expands on the transport restrictions in RR 300-2 by extending that prohibition to the transport of all loads of HD 1.1, 1.2 and 1.5 in NSW road tunnels (i.e. not just placarded loads).

In 2005, when the *Explosives Regulation 2005* (the predecessor to the 2013 Regulation) was enacted, there were no road tunnels outside the Sydney metropolitan area. In 2021, the number of tunnels is greater, with several in regional areas. It is expected that this will continue to increase in the future and that the potential for future developments necessitate expanding the tunnel prohibition throughout the state.

As the safety benefits of the restriction of the transport of these explosives remains in place, it is considered to be suitable to ensure that this enhanced safety is extended across all road tunnels in NSW.

10. Are there any concerns with the expansion of restricting the transport of loads of HD 1.1, 1.2 and 1.5 explosives to all NSW road tunnels in alignment with 300-2 of the *NSW Road Rules 2014*?

Appendix 1

Background information

The Explosives Act 2003 (the Act) regulates the control and handling of explosives and explosive precursors in NSW. Explosive precursors are chemicals and other materials that can be processed to make an explosive.

The Act is supported by the Regulation and by General Explosives Conditions which are attached to explosives licences. The General Explosives Conditions 2013 ('the Conditions') appear on SafeWork NSW's website. There are also Operational Conditions specific to pyrotechnician licences and fireworks single-use licences.

Explosives and explosive precursors are in use in many NSW industries including demolition, mining, agriculture, policing, pyrotechnics, and transport. Regulation of explosives in NSW seeks to balance the legitimate need of these industries to handle explosives against the need to protect workers in these industries, the public, and property from unsafe uses of explosives.

The regulatory authority chiefly responsible for administering and enforcing the Act is SafeWork NSW. Only SafeWork NSW may grant licences and security clearances. Compliance and enforcement of the Act is shared between SafeWork NSW and the NSW Resources Regulator. The Resources Regulator undertakes compliance and enforcement in mining workplaces.

In all other places those functions are performed by SafeWork NSW and its inspectors.

The Commissioner of Police also plays an important role in administering the Act by providing reports on the suitability of applicants for security clearances or licences to SafeWork NSW.

Appendix 2

Summary of the proposed changes to the Regulation

- Defines desensitised explosive as explosive precursors
- Implements a new offence for a person failing to inform their employer or principal contractor of the cancellation or suspension of their security clearance or licence
- Establishes a general exception for NSW Police officers to hold a security clearance under the Act
- Establishes exceptions from security clearances for a person already exempt from a licence under Clauses 48, 49 and 54
- Allows the storage of an explosive over the course of a research and development project during the permitted period of the project
- Allows the testing of explosives for research and development at a customer site to examine the effectiveness of the explosive under unique conditions
- Provides an exemption from licencing requirements for NSW Police storing explosives in police stations for up to 10kg of Net Explosive Quantity
- Mandates licencing to access and use explosives of HD 1.4
- Restricts the maximum amount which can be stored at a single residential address is 12kg, regardless of the number of licence holders under the Firearms Act that are residents at that address
- Transfers the publication of the register of explosives from the NSW Government Gazette to the SafeWork NSW website
- Transfers the publication of revocations of authorised explosives from the NSW Government Gazette to the SafeWork NSW website
- Prohibits the transport of loads of HD 1.1, 1.2, 1.5 explosives in NSW road tunnels
- Provides the regulatory authority with the ability to register an authorised explosive subject to conditions
- Requires the conditions that an explosives registration is subject to be recorded in the register of authorised explosives
- Removes expired provisions related to the temporary amnesty on licence requirements
- Provides greater detail on identification requirements for the supply of explosives to another person
- Requires a copy of exemption notices to be published in the NSW Gazette
- Requires licence holders to provide a copy of their emergency plan to the regulator and FRNSW
- Requires licence holders implement written advice provided by the regulator or FRNSW for their emergency plan.

2013 Regulation	2021 Regulation
Does not include desensitised/phlegmatized explosives.	Clause 5 prescribes desensitised explosives (both liquid and solid, within their meaning in the ADG Code, as prescribed explosive precursors.
Does not carry an offence if a person fails to inform their employer of a security clearance or licence cancellation.	Implements a new offence for a person failing to inform their employer or principal contractor of the cancellation or suspension of a security clearance or licence in Clauses 15(3) and 43, respectively. Non-compliance with this requirement has a maximum penalty of 50 penalty units (\$5,500).
Clause 10 (3) provides an exception for police officers to hold a security clearance to handle explosives or explosive precursors in a manner for which he or she is not required to be authorised under Division 4 of Part 3.	Clause 10 (3) establishes a general exception for NSW Police officers from requirements to hold a security clearance when handling an explosive or explosive precursor in the course of the officer's duties.
Requires security clearances to be held when handling power device cartridges, distress signals, life-saving appliances and toy fireworks, storing ammunition and for the use of small quantities of security sensitive ammonium nitrate.	Clause 10 (5) provides exceptions from security clearances for a natural person for the handling explosives or explosive precursors under Clause 49 (power device cartridges, distress signals, life-saving appliances and toy fireworks), Clause 50 (ammunition) and Clause 55 (use of small quantities of security sensitive ammonium nitrate).
Clauses 23(1),(2); 25(1),(2) and 26(1),(2) use the term person rather than 'licence holder'.	All references in Division 2 consistently use the term 'licence holder'.
Clause 57 (5) permits a person to possess, manufacture, process, treat, transport, use and dispose of an explosive throughout the course of a permitted research and development project. Clause 57 (3) allows for the project to be carried out for a maximum of 66 months.	In Clause 60 (2) (a), the proposed Regulation additionally allows a person to store the explosive in the course of a research and development project during the permitted period of the project.

<p>Clause 57(5) authorises a person to possess, manufacture, process, treat, transport, use and dispose of an explosive in the course of a permitted research and development project but does not authorise the sale or supply of an explosive.</p>	<p>Clause 60 (2)(b) now allows the testing of explosives for research and development at a customer site to examine the effectiveness of the explosive under unique conditions.</p>
<p>Clause 27 currently requires Police to be licenced to store explosives in non-emergency situations.</p>	<p>Clause 47 now provides an exemption from licencing requirements for NSW Police when storing explosives in connection with a prosecution. This is limited to under 10kg NEW of explosives.</p>
<p>Allows the possession, transport, storage, use, sale or supply of HD 1.4 explosives (as long as it does not exceed 10kg NEQ) without a licence.</p>	<p>Does not allow for the unlicenced access and use explosives of HD1.4 explosives.</p>
<p>Clause 48 provides that licence holders under the <i>Firearms Act 1996</i> are not required to be licenced under the <i>Explosives Act 2003</i> (the Act) to possess, store, transport, sell or supply up to 12kg of propellant powder.</p>	<p>Clause 50 restricts the maximum amount which can be stored at a single residential address to 12kg, regardless of the number of licence holders under the <i>Firearms Act</i> that are residents at that address.</p>
<p>Clause 58(4) allows the regulatory authority to register an explosive as an authorised explosive or to refuse to register the explosive.</p> <p>Clause 60(1) requires that recording (within the register of explosives) of the name of the person who applied to have the explosive registered, the commercial name of the explosive and the explosives UN Number, Shipping Number and Classification Code.</p>	<p>The regulatory authority also has the authority to allow for the registration of an authorised explosive to be subject to conditions.</p> <p>Clause 63(1) also requires the conditions that the explosives registration is subject to, to be recorded within the register of explosives.</p>
<p>Clause 62 (3) (a) requires the regulatory authority to publish notice of the revocation of an authorised explosive in the NSW Government Gazette.</p>	<p>Clause 65 (3) (a) requires the regulatory authority to publish notice of the revocation of an authorised explosive on the SafeWork NSW website.</p>

Clause 63 requires publication of the register of explosives in the NSW Government Gazette.	Clause 66 requires publication of the register of explosives on the SafeWork NSW website.
Clause 75(1)(a) requires proof of identity to be provided, and provides examples of photographic identity, of the receiver of supplied explosives or explosive precursors.	Clause 77(2) requires photographic proof of identity to be provided.
Clause 89(2), 89(3), 89(4) and 89(5) use the word 'class'.	Clause 91(2), 89(3), 89(4) and 89(5) use the correct term, 'hazard division'.
The transport of all loads of HD 1.1, 1.2 and 1.5 explosives is prohibited in Sydney metro tunnels.	The transport of loads of HD 1.1, 1.2, 1.5 explosives is prohibited in NSW road tunnels.
Clause 89(6) defines greater Sydney metropolitan areas.	This definition is removed in Clause 92.
<p>Clause 90(2)(d) requires that while developing an emergency plan, a licence holder provides a draft of the plan to the Commissioner of Fire and Rescue NSW, and has regard to written advice from the regulator and FRNSW.</p> <p>Clause 90(2)(f) requires a copy of the emergency plan to be provided to FRNSW or, if the premises is in a rural fire district, to the NSW Rural Fire Service.</p>	<p>Clause 93 does not require a draft emergency plan to be provided to any agency.</p> <p>Clause 92(2)(e) requires the provision of a copy of the emergency plan, and changes to the plan, to the regulatory authority, Commissioner of Fire and Rescue NSW, and if in a rural fire district – to the NSW Rural Fire Service</p> <p>Clause 93(2)(f) outlines that an emergency plan is not adequate unless the licence holder has revised the emergency plan in accordance with any written advice about the content or effectiveness of the emergency plan that is provided by the regulator or FRNSW.</p>
The regulatory authority is required to keep and make available for public inspection a register of all exemptions granted under Division 7 that are in force.	Requires a copy of the exemption notice to be published in the NSW Gazette.

<p>Clause 115 maintains the temporary amnesty from licence and other requirements relating to handling of explosives that ended on 14 September 2017.</p>	<p>Removes this clause.</p>
---	-----------------------------

Appendix 3

List of stakeholders

Key stakeholders

The following key stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- Australasian Explosives Industry Safety Group (AEISG)
- NSW Minerals Council (NSWMC)
- Orica Mining Services
- Pyrotechnics Industry Association of Australia (PIAA)
- Sporting Shooters Association
- Local Government Association
- NSW Mining
- Australian Industry Group
- Australasian Institute of Dangerous Goods Consultants
- Unions NSW.