



Government
of South Australia

SafeWork SA

Explosives Bill 2022

Consultation Report

Table of contents

Summary	3
Reform of explosives legislation	3
Public consultation	4
Summary of feedback	5
Matters under consideration	6
Feedback received during public consultation	7
Next steps	14
Appendix – Consultation results	15

Summary

The Explosives Bill 2022 (the Bill) has been drafted to replace South Australia's current *Explosives Act 1936* (the Act). The Act is primarily designed to minimise the risk of injury to persons, and damage to property and the environment, arising from the use of explosives, and to prevent their misuse.

The Act came into effect in 1936 and has been amended in an ad hoc manner since then. It has long been considered by industry to be out of touch with contemporary standards and practices, and inconsistent with the requirements of other states and territories.

The Bill incorporates four nationally agreed policy proposals, known as the National Policy Proposals (NPPs). These were developed to harmonise explosives legislation nationally and address inconsistencies currently experienced by the explosives industry when operating across jurisdictions.

SafeWork SA released a draft of the Explosives Bill (then the Explosives Bill 2021) for public consultation over a six-week period from 1 April to 14 May 2021. The objective of this process was to ensure the Bill adequately addressed stakeholder and community needs prior to it being introduced to Parliament.

The consultation process utilised a mix of in-person and online engagement methods to reach out to stakeholders and provide an opportunity for them to contribute to the formulation of the Bill. Feedback was received in a variety of forms including formal submissions, stakeholder meetings, individual queries and emails.

This report summarises key themes of stakeholder feedback received during the public consultation process. It also outlines changes to the Bill that have been implemented or are being considered in response to the feedback received.

Reform of explosives legislation

The Bill is the first step in the reform of explosives legislation in South Australia. Once passed, the Bill will revoke the current Act and its associated regulations.

New explosives regulations (the Regulations) will be introduced once the Bill has successfully passed through Parliament. Preliminary work on the drafting of supporting Regulations to complement the Bill has commenced. This work is being undertaken in consultation with industry stakeholders. Additional consultation on the draft Regulations will be undertaken once they are developed.

The Bill (and the Regulations) incorporates the four NPPs, namely:

- the definition of explosives
- a licensing framework
- notification processes, and
- the authorisation process for explosives.

In addition to the NPPs, three fundamental principles have been considered in the drafting of the Bill:

- consistency with other states and territories (national harmonisation)
- reduced red-tape and regulatory burden for business, and
- ensuring safety and security are not compromised.

The Bill aims to appropriately balance the promotion of business interests while continuing to maintain the safety and security of South Australian workers and the public.

Public consultation

Stakeholders and the South Australian public were invited to provide feedback and input on a draft of the Bill to ensure it adequately addressed stakeholder and community needs. Public consultation on the draft Bill sought to:

- inform the community of South Australia's intention to reform explosives legislation
- seek feedback from key stakeholders on the draft Bill to identify any issues or concerns with the proposed reforms, with a view to addressing these through further refinement of the Bill prior to its introduction to Parliament
- promote opportunities for stakeholders to engage with SafeWork SA on the Bill, and
- inform the community, in the form of a consultation summary report, how their feedback and input was considered.

Targeted stakeholders were provided with direct opportunities and means to provide feedback on the draft Bill. These stakeholders included individual businesses, peak bodies, industry associations, employer associations, unions and government agencies.

The South Australian public was informed of the consultation process and methods available to provide feedback via the YourSAy online platform (the Government of South Australia's central public engagement website), the SafeWork SA website, and SafeWork SA and YourSAy social media channels.

The YourSAy platform functioned as the 'hub' of all consultation documents and acted as a single point of reference for stakeholders.

To facilitate stakeholder involvement in the consultation, SafeWork SA:

- provided information that could be viewed and downloaded at any time from the YourSAy platform, and
- developed a standard feedback template to ensure feedback was consistent and relevant to each component of the draft Bill, and to simplify the feedback process for stakeholders.

A detailed review of the feedback received during the public consultation process has been undertaken. Careful consideration has been given as to how the feedback aligns with the intent of the reform of explosives legislation and how it might add value to this process.

SafeWork SA has engaged stakeholders to clarify their feedback, where required, and to provide further information as necessary to support a participative process.

This consultation report has been prepared and made publicly available following analysis of all stakeholder feedback received.

Summary of feedback

A total of 14 formal submissions on the Bill were received. Of these, five came from businesses operating in, or closely associated with, the explosives industry, four from peak bodies, two from government departments, two from tertiary institutions and one from an explosives sector consultant.

All submissions received provided general support for the progress of the Bill. Stakeholder comments relating to specific areas of the Bill provided useful points for consideration.

Common views identified during public consultation on the draft Bill included:

- Support for the intent to replace outdated legislation, reflect the NPPs, provide consistency with other Australian jurisdictions, and to reduce business uncertainty and administrative complexity in the operation and regulation of explosives.
- Perceptions that the 'objects of act' should acknowledge the operations of essential and legitimate explosives industries.
- The view that the definition of explosives should be included in the Bill (Act), rather than the Regulations, with due consideration given to the definition's (and explosives legislation more broadly) interaction with Work Health and Safety (WHS) legislation and Dangerous Substances legislation.
- Concerns as to the suitability of a number of definitions in the 'interpretation' section of the draft Bill as they relate to explosives regulation.
- Concerns relating to information that may be included on a public 'register of authorisations'.
- The view that the importation of explosives, and the regulatory requirements relating to importation, should only apply to explosives imported from outside Australia, not across jurisdictions.
- Perceptions relating to the requirement to hold a licence and the situations where a licence is not required.
- Views on the requirement for Director(s) to hold security clearances and other considerations relating to this requirement.
- Industry views on the practical application of the 'responsible person' provision and its interaction with other requirements, including the 'security clearance' provision.
- Industry perceptions on the requirement to submit safety and security plans as part of a licence application, and the respective roles of licence holders and the Regulator in this regard.

- Industry perceptions on the appointment of authorised persons and their powers.
- Industry views on reviews of authorisations and decisions made by the Regulator.
- Perceptions regarding inclusion of the provision relating to ports and vessels in the Bill (Act) rather than the Regulations.

Matters under consideration

As a result of the feedback received during the public consultation process, the following amendments to the Bill have been, or are being, considered for implementation:

- The definition of ‘explosives’ to be included in the Bill, with the definition to include reference to the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS).
- Redrafting the definition of ‘firework’ to ensure it accords with Australian Standard 2187, insofar as legislative requirements allow.
- Further consideration of other definitions highlighted by stakeholders to ensure their suitability for explosives regulation and the inclusion of additional definitions as required.
- Providing the Regulator with the ability to exclude an item from the definition of firework and the definition of explosive.
- Allowing authorisation for the testing of an unauthorised explosive for research purposes by a tertiary education provider.
- Providing that a person will not need to hold a licence in prescribed circumstances. These circumstances are to be detailed in the Regulations, are to include circumstances in which direct supervision is in place and may be broader than situations only involving fireworks.
- Removing the categories of security clearances and the requirement for each Director of a body corporate to hold a security clearance.
- Making it a condition of a licence that a ‘responsible person’ be appointed under the licence, as opposed to making this a separate criteria for approval by the Regulator for issuance of a licence.
- Removing the requirement for the Regulator to approve safety, security and emergency plans and consideration of the removal of the offence relating to this provision.
- Enabling internal review (in addition to external review) of licensing decisions made by the Regulator and including notice of a decision to an applicant for all internal reviews of decisions.
- Making the Regulator standards relating to ports and vessels a disallowable instrument to enable them to be amended over time as required.
- Consideration of the adequacy of transitional provisions and their implementation once the Bill is passed into law.

Additional engagement with stakeholders will provide:

- Clarification regarding the structure of certain provisions and wording in the Bill that have been drafted in line with uniform legislative drafting techniques, and that this does not subvert the intent of the NPPs where the wording of the NPPs is not replicated exactly.
- Clarification that publication of determinations in the Government Gazette is a procedural requirement. Other forms of publication of information, such as on relevant websites, will occur as part of information sharing best practice.
- Clarification that information relating to authorisations that is published publicly will not include commercially sensitive information, such as trials and disposals, nor breach privacy provisions. An extract only of relevant information will be published, not the full details required by the Regulator as part of the authorisation process.
- Clarification that qualification requirements included as part of the provision relating to 'fit and proper person' are a standard drafting technique and are intended to ensure licence holders have the appropriate training/certification for the licence they are applying for. This will not impose additional requirements on licensees.
- Clarification that the offence provisions contained in the Bill, and associated penalties, are consistent with other legislation and have been drafted in accordance with uniform legislative drafting techniques and the legislative structure necessary for such offences.

Feedback received during public consultation

Feedback content

A feedback template was provided as part of the public consultation process to capture stakeholder feedback against each section of the Bill's structure. The feedback received from stakeholders against the components of the Bill detailed in the feedback template are presented here.

Part 1 – Object and definitions

Considerations raised by stakeholders relating to the objects and definitions of the draft Bill included:

- The reference to 'protect public health' in the 'objects of act' was queried. It was suggested that the objects could be expanded to include acknowledgement of legitimate explosives industries, research and national security interests.
- The absence of a definition of 'officer', which was considered important given the use of this term throughout the Bill.
- The definition of 'explosives' contained in the draft Bill was considered inadequate and the decision to include a definition of explosives in the Regulations was considered problematic. Industry considered it more appropriate to include a definition

of 'explosives' in the Bill, with reference to the GHS in line with the NPP. Other considerations relating to rockets, ammonium nitrate, ammonium nitrate emulsion and security sensitive ammonium nitrate (SSAN) were also raised.

- The absence of a definition of 'harm' was queried.
- The definition of 'firework' in the draft Bill was considered technically incorrect and inconsistent with AS 2187 and other international standards. Amendment of this definition was suggested to maintain national and international consistency.
- The definitions of 'port', 'public road', 'vehicle' and 'vessel' in the draft Bill were considered unsuitable for their intended purpose and it was suggested they should be reviewed.
- It was considered that the power of the Regulator to exclude items should encompass both fireworks and explosives, noting numerous innocuous devices powered by explosives do not fall within the 'firework' definition.
- Publication of determinations in the Government Gazette was considered antiquated by some stakeholders, with publication on the Departmental website considered to be more accessible.
- The interaction of the 'responsible person' and 'direct supervision' definitions was queried, particularly relating to intent at the operational/site level versus senior management level, and with regard to potential impacts on the mobility of workers. The framework for 'responsible person' as it is applied in other states was provided by way of example of how this provision might be applied in the South Australian legislation.
- The impacts of the 'close associates' and 'unsuitable person' definitions on the career prospects of individuals was flagged, as was the inclusion of 'insolvency' as a consideration for suitability to hold a licence.

Part 2 – Duties for safety and security

Considerations raised by stakeholders relating to safety and security duties included queries as to how compliance with these duties would be assessed and/or investigated in practice, use of the word 'eliminate' in relation to safety risks, and use of the phrase 'measures taken by persons carrying on similar activities', noting some measures would be subject to intellectual property protections.

Offences

Considerations raised by stakeholders relating to the offence provisions included:

- A perceived overlap between some elements of the offences and a perceived inconsistency to the penalty provisions attached to the various categories of offences.
- A perception that penalties should reflect the harm/damage caused by an offence, with a request that consideration be given to no penalty being issued if no harm/damage was caused, and consideration of a 'reasonable person' test.

Part 4 – Authorisations

Considerations raised by stakeholders relating to authorisations provisions included:

- The absence of a definition of ‘authorised explosive’ in the draft Bill and a perception of incongruence with the intent of the NPP regarding authorisations and their recognition across jurisdictions.
- Concern to protect commercially sensitive, confidential and protected security information and to ensure such information will not be published on the public register relating to authorisations.
- Differing views as to who should have primary responsibility for obligations associated with authorisations. Some considered these to be the responsibility of the importer or manufacturer and questioned the value of authorisations as a regulatory mechanism, while others considered authorisations to sit with the Regulator.
- It was suggested that there is no need for the public register to include authorisations for the disposal of an unauthorised explosive. It was queried whether the disposal of ammonium nitrate products, which in some methods creates an unauthorised product, would require authorisation and licences for parties undertaking disposal.
- There was support for the provision relating to corresponding law authorisations.
- Concern surrounding the wording that an application form must be ‘in a manner and form approved by the Regulator’ and that this may constitute a separate approval required from the Regulator. It was suggested the word ‘determined’ could be used instead of ‘approved’.
- The lack of an offence relating to the use of a ‘prohibited explosive’ was noted as incongruous with the existence of an offence relating to the use of an ‘unauthorised explosive’. The penalty provision attached to offences involving unauthorised explosives was considered excessive.
- It was proposed that provisions relating to unauthorised explosives were unnecessarily restrictive and should allow for a variety of scenarios that industry may encounter, such as testing, laboratory and manufacturing processes, and research and development activities.
- Clarity on the definition of ‘import’ as relating to importation from outside of Australia to reduce the regulatory burden on industry and minimise impediments to trade.

Part 5 – Licensing

Considerations raised by stakeholders relating to licensing provisions included:

- It was suggested that the licensing provisions in the draft Bill did not adequately reflect the intent of the NPPs, particularly with regard to the process for recognition of interstate licences and the intent to harmonise same across jurisdictions.
- Clarity was sought that the reference to ‘import’ in these provisions does not refer to movement between state and territory jurisdictions as per the NPP for licensing.

- Clarity was sought as to the structure of the 'requirement to hold licence' clause and the manner in which types of licences were referenced in this clause.
- It was queried why the provision that persons operating under the supervision of an explosives licence holder need not be licensed was limited to fireworks only and did not apply to other explosives activities conducted under licence holder supervision. It was suggested the provision be amended to apply to other activities involving explosives, as appropriate.
- Further queries were raised regarding licence requirements for truck drivers transporting explosives that did not exceed the prescribed amount.
- Some stakeholders considered making a licence non-transferable in all situations overly restrictive and sought reconsideration of this provision in cases, upon application to the Regulator, where the proposed transferee could demonstrate the same level of competence required as the original licence holder.
- There was support for the provision relating to corresponding law licences.
- Concerns were raised as to the requirements for the granting of a security clearance, noting these were not defined in the draft Bill. Industry's desire for recognition of interstate clearances to enable mobility of workers was highlighted. Concerns were raised as to the requirement for all Directors of a body corporate to be security cleared, as was the intention to have different classes and levels of clearances under the security clearance provision.
- Concerns regarding the practical application of the 'responsible person' provision were raised as they related to industry's desire for greater mobility of workers across jurisdictions.
- Practical considerations relating to aspects of the 'fit and proper person' provision were raised relating to medical assessments and core qualification requirements, as were the potential implications of the suspension of a licence holder's general driver's licence.
- It was proposed that licence conditions should be outlined in the Regulations where possible.
- The requirement to submit a safety and security plan was queried, as was the requirement that they be in a form approved by the Regulator. Industry noted the use of existing management plans for safety and security purposes and sought greater clarity on the practical requirements of this provision. Industry queried the need for an offence relating to this provision.
- The requirement to report the loss, theft or unauthorised interference of explosives under the licensing part of the draft Bill was queried given its apparent replication of situations addressed under the 'notifiable situations' provision.

Part 6 – Enforcement measures

Considerations raised by stakeholders relating to enforcement measures included:

- The method by which 'authorised persons' would be appointed was queried, as were the competencies/criteria that would be required of persons being appointed to this role, noting that the draft Bill referred to the appointment of 'suitable' persons without defining 'suitable'.
- The appointment of Police Officer as 'authorised persons' was queried, as was the scope of their powers under the draft Bill given Police Officers' powers under other legislation.
- Practical considerations relating to risk and safety at operational sites in cases where 'authorised persons' were carrying out their work were raised, including the 'power to enter' by unauthorised personnel and persons considered not to be appropriately qualified or experienced with regard to the activity, site or explosives being used.
- Practical queries relating to issuance of, and compliance with, improvement and prohibition notices were raised.

Part 7 - Reviews

Considerations raised by stakeholders relating to review provisions included:

- Timeframes relating to review requests and determinations of same, and notification to applicants of review decisions.
- Industry perceptions that review provisions should include decisions relating to authorisations and enforcement measures under Parts 4 and 6 of the draft Bill.

Part 8 – Miscellaneous

Considerations raised by stakeholders relating to miscellaneous provisions included:

- The power to exempt a person from compliance with the Act or specified provisions in the Act was recognised as a necessary provision to enable flexibility. Queries were raised regarding the Regulator's powers to grant exemptions under the Act, rather than the Regulations, and the process for seeking an exemption.
- Practical considerations were raised regarding application of the 'adverse publicity orders' and 'confidentiality of information' provisions.
- The timeframe for commencement of proceedings for expiable offences was queried. It was suggested that the timeframe for commencement of proceedings for offences other than expiable offences should align with timeframes contained in the *Work Health and Safety Act 2012 (SA)*.
- Stakeholders queried the Regulator's ability to direct explosives be stored in the Government Magazine and proposed that reasons be provided in those situations.
- The provision relating to 'ports and vessels' was considered by some stakeholders to refer to matters more relevant for inclusion in the Regulations. Queries were raised around what were perceived to be discretionary elements of this provision, consultation processes for the making of Regulator standards and public accessibility to the standards.

General feedback

Stakeholder feedback of a general nature and not related to specific clauses of the draft Bill is presented in this section. Considerations raised included:

- Support for the intent to:
 - replace outdated legislation that is generally not in line with best practice
 - reflect the NPPs
 - provide consistency with other Australian jurisdictions, noting that harmonisation of legislative frameworks will reduce time and cost pressures for the resources sector, and
 - reduce uncertainty and administrative complexity for business.
- A perception that there could be better alignment with the NPPs across the draft Bill's content.
- The need for clarity as to how the Bill as enabling legislation will sit alongside the *Dangerous Substances Act 1979 (SA)* and its subordinate regulations, particularly with regard to ammonium nitrate controls.
- Perceived inconsistencies that arise from the definition of explosives and the level of interaction between the Bill, WHS legislation and Dangerous Substances legislation in relation to ammonium nitrate, ammonium nitrate emulsion and Major Hazard Facility obligations.
- The need for the Bill to accommodate mutual recognition obligations under the *Mutual Recognition Act 1992 (Cth)*.
- A perception that the Regulator will need to 'approve' criteria relating to licences that should be the obligation of the licensee, and that the Regulator is seeking direct involvement in relation to safety and security plans rather than concentrating on compliance.
- A perceived overlap with WHS legislation in relation to activities related to using explosives and offences, and a view that overlap should be minimised.
- The administration of security clearances as an opportunity for alignment with other Australian jurisdictions and the operation of security clearances at a site or asset level.
- The opportunity to modernise and streamline current licensing processes to reduce administrative burdens.
- The need for clarity on transitional arrangements and future requirements relating to existing licences, approved explosives and existing management plans as the basis for safety and security plans.
- The need for industry consultation in the development of the associated Regulations, including cost recovery mechanisms.
- Comments relating to the interaction of the Bill with other acts of law.

Feedback on explosives regulations

Stakeholder feedback received during this consultation process relating to the Regulations has been recorded and will assist to inform the drafting of new Regulations. The draft Regulations will be subject to a separate consultation process.

Considerations raised by stakeholders pertaining to the Regulations included:

- Procedures relating to the removal of explosives from a store for opening, as required under the current Regulations, are considered onerous and to have associated safety and security risks. Future regulations could enable procedures that reduce manual handling risks and ensure more effective accountability of explosives within magazines.
- Current regulatory requirements relating to water access at ammonium nitrate mixing sites are considered to be highly prescriptive and may be an impediment to employing additional/alternative fire mitigation measures. Future regulations could be streamlined to stipulate a generic requirement for appropriate fire risk mitigation plans and infrastructure, without prescriptive requirements relating to specific quantities of water.
- The current Regulations set out a requirement regarding a driver's licence and the *Dangerous Substances (Dangerous Goods Transport) Regulations 2008* set out requirements relating to driver licences for applications for a dangerous goods driver licence. Future regulations could provide that supporting evidence for certain licence applications includes evidence of a current driver's licence of an appropriate class.
- Consideration of the method for disposal of marine flares as required under the current Regulations. Future regulations could consider alternative options for this activity.

Next steps

The feedback received as part of the public consultation process has directly contributed to the development of the Bill and will contribute to the development of the supporting Regulations.

Some amendments to the Bill have already been made, with consideration of other amendments and further refinement of the Bill continuing, in response to feedback provided by stakeholders.

Work is progressing with a focus on the promotion of industry interests and the ability for businesses to operate more efficiently, while ensuring the highest standards of safety for South Australian workers and the public are maintained.

Once finalised, the Bill will be tabled in Parliament for consideration, debate and further amendment as required before it is passed into law.

SafeWork SA continues to work with industry and stakeholders during finalisation of the Bill and in the planning and development of draft Regulations that will support the Bill, after its successful passage through Parliament.

Stakeholder comments received as part of the public consultation process have been captured and will be incorporated into the work being conducted on the supporting Regulations. An additional public consultation process will be conducted on the draft Regulations once they have been developed.

Appendix – Consultation results

Information on the draft Bill, consultation period and methods for providing feedback were made widely available through a variety of means.

Emails and letters were sent by SafeWork SA to 343 targeted stakeholders during the public consultation period.

The YourSAy engagement campaign achieved a combined reach of 32,819 engagements and generated 1,887 visits to the website to access further information.

The Explosives Bill consultation process was promoted through an article in SafeWork SA's E-News, achieving 3,557 opens and 215 link clicks.

The YourSAy newsletter was distributed to 41,750 registered users resulting in 17,046 email opens and 106 link clicks. The Explosives Bill consultation documents were downloaded 88 times.

There were 237 visits to the SafeWork SA website page relating to the Explosives Bill consultation process.

The YourSAy engagement campaign featured a discussion, survey, feedback form and email submissions. The 'get involved' tab featuring these tools was visited 73 times.

On SafeWork SA's social media channels, posts on Facebook achieved a combined reach of 809, posts on Twitter resulted in 830 combined impressions and posts on LinkedIn resulted in 1,107 combined impressions.

The YourSAy social media engagement was conducted through 10 posts and a paid campaign achieving a combined reach of 13,886 accounts on Facebook and Twitter during the open consultation period. This resulted in 290 clicks on Facebook.