



Speech by

Hon. T. McGRADY

MEMBER FOR MOUNT ISA

Hansard 10 November 1998

EXPLOSIVES BILL

Hon. T. McGRADY (Mount Isa—ALP) (Minister for Mines and Energy and Minister Assisting the Deputy Premier on Regional Development) (12.42 p.m.): I move—

"That the Bill be now read a second time."

The Explosives Bill 1998 is a Bill seeking to replace the existing Explosives Act 1952. As such it represents an amendment to the existing legislation. Because of the extent of proposed amendments, primarily as a result of the need to consider easy-to-read legislation, fundamental legislative principles and current legislative drafting guidelines, it was considered easier to rewrite the legislation rather than attempt to amend it. Having said that, the policies, methodology and controlling mechanisms of the existing legislation have been maintained in this Bill. It is important to note that throughout the review process there were no submissions questioning the need for legislation in this area or the approach adopted. As a link in a chain of national, and indeed international, set of explosives legislations, significant changes in policy should be carried out at a national level and discussions have taken place and continue to take place through the conferences of national explosives authorities to obtain and/or maintain national uniformity in this area.

The purpose of this Bill, as with previous explosives legislation, is to ensure safety for the community from all activities associated with explosives, an inherently dangerous class of materials. These materials, because of their nature, pose a risk to the general community and an attraction to an undesirable element within the community. Yet they are essential tools for the community, particularly for a State like Queensland which is heavily reliant upon its mining and construction industries. It is not surprising then that the current use of high explosives in Queensland is in the order of 250,000 tonnes per annum. An efficient mining industry must have access to a competitive, efficient, flexible and innovative explosives industry and safety legislation needs to be mindful of these needs.

The review of the explosives legislation was commenced by me in 1993, continued under the previous Government and has taken considerable time to reach this stage. It involved extensive consultation with stakeholders and included the following considerations—

the legislation is part of a network of national and international controls on explosives;

the legislation should not involve itself with the business activities of explosives industries beyond provisions for safety;

the legislation, for effectiveness, should adopt a cradle-to-grave type approach covering a comprehensive range of activities including manufacture, importation, storage, transport, sale, use, disposal and export;

"explosives" represents a broad class of materials including blasting explosives, fireworks, ammunition, reloading powders, flares, toys such as caps for toy guns and practical devices such as airbag actuators for cars;

the legislation has moved over time to a form of co-regulation where standards and codes of practice are developed by both Government and industry representatives;

the legislation is part of a Government's observance of its community service obligation;

the legislation is complementary to other legislation and does not duplicate requirements established elsewhere; and

the materials in question pose a significant risk to the community and such risk must be properly managed.

The methodology adopted in this Bill remains the same as the existing legislation. The legislation—

requires the identification of all explosives and explosives activities;

sets standards for acceptable explosives and explosives activities and obligations on those involved;

employs a system of authorities to grant approval for, and allow policing of, acceptable activities; and

provides for an inspectorate with the necessary powers to effectively monitor and enforce compliance with requirements.

Perhaps not surprisingly, the review attracted very few comments from industry or the community generally and while all submissions were given due consideration, the bulk of the changes resulted from an internal review of such things as—

fundamental legislative principles;

current drafting guidelines; and

an easy-to-read style.

Hence, while it appears as a new Bill, the significant changes to the existing legislation incorporated in the Bill are indeed quite few and include the following—

(a) The explosives legislation has general application and hence should promote the establishment of uniform requirements throughout Queensland. The only exemption provided for in the legislation is for those explosives under the control of the military services to which the Explosives Act 1961 (Commonwealth) applies.

(b) The existing explosives legislation provides for appeals against decisions to be made firstly to the Chief Inspector and thence to the Minister whose decision is final. Such provisions were seen to not allow an independent review of decisions under the Act. The new Bill in Part 7 provides for appeals to a Magistrates Court and outlines how such appeals may be processed. In this manner, the powers to grant, refuse, amend, suspend or otherwise deal with authorities under the Bill are subject to, and are seen to be subject to, appropriate external review.

(c) Given the nature of the materials covered by this Bill, the consideration of a person's suitability to hold an authority, granting access to and use of explosives, for example, includes the need to consider the mental—and, perhaps, physical—state of the applicant. Such matters have been considered by the Federal Attorney General's Department with respect to the Disability Discrimination Act 1992 and found to be consistent with safe workplace requirements. As such, protection is provided within Part 8 of the Bill—section 125—to doctors and psychologists who provide information to the Chief Inspector about a patient's mental or physical condition, and applies despite any duty of confidentiality owed by the doctor or psychologist to the patient. This provision is similar to that incorporated in the Weapons Act for similar reasons.

(d) Penalties have been increased significantly—from 84 to 400 penalty units—in this Bill to maintain an effective deterrent value and to reflect relativity with other similar pieces of legislation, e.g., Weapons Act, Workplace Health and Safety Act.

(e) Import/export provisions of the existing Explosives Act apply to explosives moving interstate as well as to or from overseas. It is considered that, as other States have similar explosives legislation and controls and such controls are moving towards national uniformity, it is no longer required to authorise and/or monitor interstate movements. Hence this Bill imposes requirements on import/export of explosives from other countries only. Crown law has advised that this is not inconsistent with Commonwealth constitutional jurisdiction over import/export matters.

The existing explosives legislation rightly requires the reporting of explosives incidents to the Chief Inspector to allow the proper investigation of such incidents so that a recurrence might be prevented. However it limits the incidents to explosions and fires, and only those associated with manufacture, transport and storage activities.

To ensure all explosives incidents are subject to investigation, Part 5 of the Bill extends the definition of "explosives incident" to any of the following events involving explosives—

an explosive is, or appears to have been lost or stolen;

an accidental explosion, fire or spillage;
a death, injury or unexpected damage; or
an unexpected event, with the potential to cause any of the above.

In this way, information gained from the investigation of all explosives incidents, including "near misses", may be used to further improve safety with explosives.

Part 9 of the Bill contains the repeal provisions for the existing legislation and also provides for minor consequential amendments to several other pieces of legislation. In particular the Police Powers and Responsibilities Act 1997 is amended to include explosives amongst those things for which police can search persons or vehicles and, as appropriate, take fingerprints. It is logical to include explosives with weapons in this context.

Part 10 of this Bill contains transitional provisions and allows for the existing explosives regulations to remain in force under the new Act. However, new explosives regulations are being drafted and are planned to be completed within 12 months. As such, this Part provides for such a limit on the introduction of new regulations under this Bill. I commend the Bill to the House.
