

SECURITY-SENSITIVE DANGEROUS SUBSTANCES AMENDMENT BILL 2008
CLAUSE NOTES

CLAUSE 1 – SHORT TITLE

This provides the short title to be used when citing the Act for any legal purpose.

CLAUSE 2 – COMMENCEMENT

This Act commences on a day to be proclaimed.

CLAUSE 3 – PRINCIPAL ACT

The Principal Act referred to in this Bill is the Security-sensitive Dangerous Substances Act 2005.

CLAUSE 4 – SECTION 3 AMENDED

Clause 4 amends, omits and adds to the existing interpretations contained in the Principal Act.

Clause 4(a) Clarifies that for the purposes of the Act, “functions” includes duties.

Clause 4(b) Omits the existing definition of “restricted activity” and adds a new definition of “restricted activity” that includes manufacturing, importing, exporting, buying, selling, supplying, storing, using or disposing of –

- if the SSDS is specified in Part 2 of Schedule 1 by reference to a quantity, that quantity of the SSDS; or
- in the case of any other SSDS, any quantity of the SSDS; or
- an activity specified in Part 3 of Schedule 1.

The new definition of “restricted activity” allows for different thresholds to apply to different security-sensitive dangerous substances.

Clause 4(c) Adds a new definition relating to restrictive personal orders.

Clause 4(d) Clarifies that a reference to “State” includes Territory.

CLAUSE 5 – SECTION 4 AMENDED

Clause 5 amends the section relating to “what is a security sensitive dangerous substance?” to provide that a security sensitive dangerous substance may be specified as an absolute or be reference to a quantity.

CLAUSE 6 - SECTION 6 SUBSTITUTED

Clause 6 repeals section 6 of the Principal Act and substitutes a new section 6 that binds the Crown in so far as the legislative power of Parliament permits.

A new section 6A (1) is added to the Act to exempt the following class of people from the operation of the Act:

- an authorised officer acting in the course of duty;
- a police officer acting in the course of duty; or
- a person acting in the course of duty that he or she is performing on behalf of an emergency service.

A new section 6A(2) is added to the Act to exempt from the operation of the Act any person acting in the course of Commonwealth duty or at the request or with the approval of the Commissioner of Police, an SES authority or any Minister. This class of person includes:

- A police officer of the Commonwealth or another State;
- A member of the Defence Forces of the Commonwealth; or
- A civilian employee of the Commonwealth.

A new section 6A(3) defines:

“emergency service” as the State Emergency Service established under the Emergency Management Act 2006, the Tasmanian Ambulance Service established under the Ambulance Service Act 1982, the Tasmanian Fire Service established under the Fire Service Act 1979 or the Department; and

“SES authority” as the Director of the State Emergency Service, the State Emergency Management Controller or the Deputy State Emergency Management Controller.

CLAUSE 7 – SECTION 13 AMENDED

Amends section 13 of the Principal Act to provide the Director of Industry Safety with the authority to take into account when assessing a permit application whether an applicant for an SSDS Permit has ever been subject to a restrictive personal order.

CLAUSE 8 – SECTION 14 AMENDED

Amends section 14 of the Principal Act to provide the Director of Industry Safety with the power to take into account whether a responsible worker nominated under an SSDS Permit has ever been subject to a restrictive personal order or any other prescribed matter.

CLAUSE 9 – SECTION 31 AMENDED

Amends section 31 of the Principal Act to provide the Director of Industry Safety with the power to cancel or suspend an SSDS Permit if, he or she believes on reasonable grounds that the permit holder is subject to a restrictive personal order or the suspension is prudent or necessary having regard to a security threat.

CLAUSE 10 – SECTION 41 AMENDED

Amends section 31 of the Principal Act to provide the Director of Industry Safety with the power to revoke a persons responsible worker status under an SSDS Permit if he or she believes on reasonable grounds that the responsible worker is subject to a restrictive personal order or the suspension is prudent or necessary having regard to a security threat.

CLAUSE 11 – SECTION 78 AMENDED

Amends section 78 of the Principal Act by omitting the existing section 78(8) and replacing with a new section 78(8) that provides that “low scale restricted activity” means an activity specified in Part 4 of Schedule 1 (see new Part 4 to Schedule 1). This allows different thresholds to apply to different substances.

CLAUSE 12 – SECTION 83 AMENDED

Amends section 83 of the Principal Act by adding that where a provision of the Act refers a prescribed quantity, the quantity that may be prescribed includes zero.

CLAUSE 13 – SECTION 84 AMENDED

Amends section 84 (a) to (i) of the Principal Act

Clause 13(a) to (i) Amends section 84 of the Principal Act so that an item can be added, omitted or substituted to any part of Schedule 1 or 2 of the Act.

Clause 13 (j) Amends section 84 of the Principal Act so that an Order under subsections (1) and (2) may be combined and may be of a general or limited application. This allows Orders relating to substances to be combined rather than separate Orders being made and clarifies that an under the section 84 is not an instrument of legislative character for the purposes of the Subordinate Legislation Act 1992.

CLAUSE 14 – SECTION 86 REPEALED

Repeals section 86 of the Principal Act. This section is no longer required as the administration of the Act is now assigned to the Minister for Infrastructure, Resources, Planning and Workplace Relations.

CLAUSE 15 – SCHEDULE 1 AMENDED

Amends Schedule 1 of the Principal Act by:

Clause 15(a) Renaming Schedule 1 to “Security Sensitive Dangerous Substances and Restricted Activities”;

Clause 15(b) Adding a definition of the Australian Explosives Code “AE Code”;

Clause 15(c) Adding definitions of “SSAN”, ‘SSE’ and “Standards Australia”;

Clause 15(d) Adding the heading “Division 1 – SSAN” after the heading to the existing Part 2

Clause 15(e) Omitting items 2 and 3 from Part 2 and substitutes a new item 2 and 3 that defines security-sensitive ammonium nitrate.

Clause 15(f) Adding a new Division 2 in Part 2 that defines those explosives that will be classified as security sensitive dangerous substances under the Act. These are:

- blasting explosives within the meaning of the AE Code,
- a blasting explosive within the meaning of AS 2187.0,
- a type 3 firework; and
- a propellant in powder form within the meaning of the Dangerous Goods (General) Regulations 1998 in a quantity greater than 5 kilograms.

Clause 15(g) Adding a new Part 3 and 4 to Schedule 1. Part 3 adds a new definition of “restricted activity” that:

1. Defines the transportation of more than 20 kilograms of SSAN as being a restricted activity.

2(a) Defines the transportation of an SSE specified in item 7 of Division 2 (propellant powders) in a quantity greater than 5 kilograms as being a restricted activity.

2(b) Defines the transportation of any other SSE in any quantity as a restricted activity.

Part 4 adds a new definition of “low scale restricted activity” that provides for the acquisition, storage, handling and use of less than 3 kilograms of SSAN by and for the purposes of a educational, research or analytical laboratory to be a low scale restricted activity.

CLAUSE 16 – SCHEDULE 2 AMENDED

Clauses 16 (a) Clarifies that SSAN means an SSDS referred to item 1, 2 or 3 of Part 2 of Schedule 1 and clarifies that SSE means an SSDS referred to in item 4, 5, 6 or 7 of Part 2 of Schedule 1.

Clause 16(b) to (d) removes the generic reference to SSDS and replaces it with reference to SSAN. This is required to reflect that the section refers to determining legitimate need for SSAN only.

Clause 16(e) adds a new Part 3 to Schedule 2 that provides that the use of an SSE for or in conjunction with the carrying on of a business or employment will constitute a legitimate need to have an SSDS Permit