Australian Explosives Industry and Safety Group.Inc.

ABN 95 177 668 265

Member Companies

Orica Australia Pty Ltd
Dyno Nobel Asia Pacific Ltd
Maxam Australia Pty Ltd
Downer EDI Mining -Blasting Services Pty Ltd
Applied Explosives Technology Pty ltd
Quin Investments Pty Ltd
Thales Limited

26 October 2007

Submission to Productivity Commission Enquiry on Chemicals and Plastics Regulation
Industry Impact - SSAN Regulations –

Introduction:

The overwhelming justification for SSAN in Australia is to support the resources industry, and in particular, mining. It is critical to recognise that the resources industry is owned by the whole country, and benefits flow through to the total community. One of the facets of the resources industry is its ability to flexibly deploy resources from one place to another, from time to time and as the market demands. This applies across the length and breadth of Australia, and makes the industry, by definition, truly national.

The AEISG contends that exactly the same characteristics apply to the explosives industry and the use and deployment of SSAN. To a great extent, efficiencies are maximised by the constant movement of people, capital and raw materials across the country in support of the mining industry. The existence of multiple regulatory regimes with different treatment of SSAN across the country creates barriers in achieving the maximum efficiencies, and in many cases, creates specific, expensive inefficiencies.

The removal of these regulatory barriers, which can be achieved by streamlined and consistent legislation and regulation without usurping States rights, will enable real and significant benefits to flow through to the community as a whole by assisting in maximising the productivity potential of the mining sector.

This submission is made as a collective submission of the companies listed above. Some members may submit individual submissions. For convenience of interpretation this document addresses issues raised in the *Productivity Commission Issues Paper.* Extracts from the Paper are in blue font; AEISG responses to those issues are directly underneath in black.

AEISG Inc

Submission to Productivity Commission

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3. Examine the efficiency of existing arrangements for security-sensitive ammonium nitrate, recognising that the requirement to achieve the Government's national security outcomes cannot be diminished, and having regard to the work being progressed by COAG's Review of Hazardous Materials.

AEISG Inc and its member companies have given and will continue to give their unequivocal support to achieving the outcomes required by the COAG Principles for the Regulation of Security Sensitive Ammonium Nitrate. However members have major concerns about the quantity of compliance work which has to be done up to 8 separate times to comply with different laws and Regulations in the various jurisdictions and strongly recommends that the SSAN model **NOT** be used to regulate other materials identified by the COAG Review of Hazardous Materials. Furthermore we consider that the differences in regulatory requirements are counter-productive inasmuch as they consume skilled compliance resources performing the same tasks in different ways to meet jurisdiction specific requirements. In our view these resources would be more effectively utilised if the one set of regulations applied Australia wide.

Page 4:

5. Make recommendations for reforms to regulations and regulatory arrangements and the establishment of a best practice governance framework including options to enhance national uniformity and consistency, to streamline data requirements and assessments processes to reduce unnecessary compliance burdens, and for alternatives to regulation.

Throughout this submission we will be providing a non-exhaustive series of examples of inter-jurisdictional differences which add nothing to the process of achieving security outcomes and reflect the ability of individual regulators and the parliamentary draftspersons to exercise personal discretion in deciding how the COAG SSAN Principles will be legislated/regulated within the jurisdiction for which they are responsible.

It should be noted that these inter-jurisdictional differences are at odds with COAG SSAN Policy Aim No 1 which states

"**A nationally consistent**, effective and **integrated approach** to control……..

Some examples of inconsistencies:

COAG Principle No 2:

South Australia and Western Australia have added (incorrectly in our view) UN 2426 to the list of materials covered.

COAG Principle No 8(a):

Some jurisdictions have interpreted this clause as requiring Class 5.1 ammonium nitrates to be stored as if they are Class 1 explosives.. This does not reflect current knowledge of the

behaviour of ammonium nitrate and is the antithesis of storage based on Risk Assessment. The possible financial impacts of this requirement are detailed later.

Page 7:
What concerns do you have about Australia's regulatory regime for chemicals and plastics, and how substantial are they?
What policy changes do you recommend to address your concerns, and what would be their costs and benefits?

Of necessity AEISG submissions on this issue will be limited to issues affecting the explosives industry ie security sensitive ammonium nitrates and the foreshadowed Security Sensitive Chemicals. Our concerns arise from four structural issues in the way the Regulations and their legal frameworks are being implemented.

Issue #1:
In most jurisdictions (but excluding WA) the SSAN Principles have been legislated as additions to existing legislation and were not drafted starting from " a clean sheet of paper". As a consequence they are legislated under OH&S /Dangerous Goods legislation in some jurisdictions and under Explosives Acts in others.

Issue #2:
The broad general expression of the COAG SSAN Principles permits a large amount of discretion to the individual regulator to the significant detriment of the "nationally consistent" policy aim. A simple example on SSAN names will suffice at this stage..

JURISDICTION REGULATORY ISSUES

TERMINOLOGY

FEDERAL	SSAN
QLD	Class 5.1 "Explosive"
NSW	Explosive Precursor/SSDS
VIC	HCDG
SA	Explosive Precursor
TAS	SSDS

Issue #3:
It is the considered view of the members of AEISG Inc that the mechanism used by COAG to develop the *Principles for the Regulation of Ammonium Nitrate* is fundamentally flawed and that responsibility for the current unnecessary implementation complexity can be sheeted home to that mechanism.

As a matter of Government policy at the time industry bodies were excluded from the process of drafting the COAG SSAN Principles. This deprived industry the opportunities to both contribute its detailed knowledge of the industry to the working group and of

negotiating firmer and less equivocal commitments to National Consistency than has occurred in the implementation of the Principles.

It is AEISG's considered view that the difficulties detailed later in this submission could have been avoided if COAG had opted to draw up either national legislation or template legislation capable of being called up into jurisdiction law .

Issue #4:
The SSAN security regulatory issue was approached in a very different manner from transport regulation matters involving materials internationally recognised as "Dangerous Goods". It is AEISG's contention that many of the issues concerning its members about SSAN Regulations would not have occurred had the legal framework of the COAG SSAN Principles been approached in a similar manner to the manner in which the Australian Dangerous Goods (ADG) Code is implemented and enforced in the various jurisdictions.

Some points to note about the ADG Code:

- *(i) The 7th Edition of the ADG Code is on the cusp of publication; however the 6th Edition was in force at the time the COAG SSAN Principles were negotiated and will be used as the reference document in this submission*
- *(ii) SSAN is an unique Australian concept and is a departure from the United Nations Model Regulation Edition XX on which ADG Codes are based. However the ADG Code has always contained some Australia specific matters*
- *(iii) Implementation of ADG6 Code was through the legal instruments listed in that Code i.e.*
  - *a. **The Road Transport Reform (Dangerous Goods) Act 1995** of the Commonwealth and*
  - *b. **The Road Transport Reform (Dangerous Goods) Regulations 1997** of the Commonwealth as adopted and applied by the law of that State or Territory as the case may be.*

For convenience the term "Template Legislation" will be used to refer to (iii) (a) & (b) above.

With hindsight it is clear that the inter-jurisdictional inconsistencies which are the subject of this submission would not have occurred had a similar mechanism been used to implement the COAG SSAN Principles.

The scope of this study is also broadened by a specific requirement to review the regulations for security sensitive ammonium nitrate (SSAN), as this was specifically requested in the terms of reference.

Figure 1 – Issues Paper.

None of the four columns of this diagram deal with security per se and it is suggested that an additional column be created which would list the regulatory security mechanisms applicable to Security Sensitive Chemicals which would by definition include SSANs. For such a column it is suggested that the Lead Agency would be Department of Prime Minister and Cabinet while the Risk Assessment would be carried out by a Department specifically charged with security. Ideally this

would remove much of the subjectivity in security risk assessment which is occurring at State and Territory levels.

Box 2 **Types of regulation**
Common categories of regulation include:
• *Acts of Parliament*, which can also be referred to as *primary legislation*.
• *Subordinate legislation*, which comprises rules or instruments which have the force of law, but which have been made by an authority to which Parliament has delegated part of its legislative power. These include statutory rules, ordinances, by-laws, disallowable instruments and other subordinate legislation not subject to Parliamentary scrutiny.
• *Co-regulation*, which is a hybrid in that industry typically develops and administers particular codes, standards or rules, but the government provides formal legislative backing to enable the arrangements to be enforced.
• *Quasi-regulation*, which encompasses those rules, instruments and standards by which government influences business to comply, but which do not form part of explicit government regulation. Examples include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry, government agreements and national accreditation schemes.
• *Self-regulation,* where industry formulates rules, standards and codes of conduct, with industry solely responsible for enforcement.

It is AEISG's view that the procedure used to develop and implement the COAG SSAN Principles has been counterproductive to the desired outcome of achieving a rapid quantum leap in improving the security of SSANs and similar chemicals. Earlier in this paper we have proposed that either national legislation or national template legislation at both the *primary* and *subordinate* level is the most appropriate model to achieve the desired objectives. In this scenario the Principles for the Regulation of Ammonium Nitrate would be abridged and used as a statement of objectives for the suggested legislation. The legislative differences occurring through the current implementation are not unique; to a large extent they mirror inter-jurisdictional differences in the enactment into law of the decade old document entitled *The National Standard for the Management of Major Hazard Facilities (MHF).* However those effects have not been as disruptive as the SSAN Regulations as any one Major Hazard Facility physically exists in one jurisdiction only and does not have to simultaneously meet the differing requirements of differing jurisdictions.

In addition to the proposed national/template legislation AEISG considers that Co-regulation is the preferred model for detailing the requirements. It should be noted that AEISG has produced a number of industry Codes of Practice intended to pool and document the expertise of its members in specific safety matters. After appropriate regulatory scrutiny offer these are offered to interested parties to raise the standard of safety in the industry. The amount of formal legislative backing for these Codes varies among jurisdictions but they already have considerable regulatory support and are expected to become more prominent in the industry.

We see no reason why this model could not extend into the security area of the industry. However owing to the requirements for criminal and security clearances for staff we anticipate there would always be a hands-on regulatory component in security matters.

It should be noted that the industry did draft a security Code of Practice for ammonium nitrate before the SSAN Principles were announced. As AEISG did not exist at the time this was produced as a Plastics and Chemicals Industry Association (PACIA) draft. Although no longer quoted by

name this draft document was the source of many of the security operating mechanisms in current SSAN Regulations.

The case for change

- the volume and complexity of existing regulations
- duplication and inconsistency between Commonwealth, state and territory regulatory regimes
- timeliness and cost of regulatory processes
- inadequate recognition of international standards and approval processes

The following table provided by an AEISG member company provides a snapshot of the current regulatory complexity of the current licencing system.. This table omits Western Australia as that State opted for complete rewrites of its laws and regulations – rewrites which have still not been legally enacted.

TABLE 1 – SCOPE AND COSTS OF SSAN LICENCES IN VARIOUS JURISDICTIONS

Type of Licence	***NSW***	***SA***	***TAS***	***VIC***	***QLD***
Application for a licence to Access High Consequence Dangerous Goods (Store, Use, Sell, Transport, Import, Export, Manufacture)				$80	
Identification Form - Natural Person				$0	
Application to conduct National Police Check and ASIO Security Assessment				***$59***	
Notification of Dangerous Goods Storage and Handling				$0	
Identification Form - Non Individual				$0	
Explosives Licence (Licence to Make Explosives with MMU) individual for 5 years				$250	
Bulk Vehicle Licence (individual) 3 years				$30	
Licence to Manufacture (covers all trucks) 1 year	$2,500				
Transport Explosives (covers all trucks) 1 year	$2,000				
Import Explosives	$2,000				
Supply Explosives	$750				
ASIO Check	***$150***				
Licence to Store - Company (5 years)	$250				
Notification of Dangerous Goods on Premises (1 yr)	$100				
Manufacture Explosives (5 years)	$2,350				
Licence to Store Explosives (5 years)					$1,438
Licence to Manufacture (5 years)					$1,478
Licence to Import (5 years)					$1,167
Licence to Sell (5 years)					$289
Licence to Export (5 years)					$1,167
Licence to Manufacture (MMU) 1 year					$136
Licence to Use (5 years)					$205
ASIO Check - Authorised Person					***$78***
Security Clearance		***$63***			
Bulk Vehicle Dangerous Goods (1 year)		$98			
Mix and Use Ammonium Nitrate (1 year)		$105			
Permit to Purchase, Sell, Supply, Manufacture, Use, Dispose, Import, Export, Store, Carry (3 years)		$45			
Security Sensitive Dangerous Substances Permit			$157		
Licence to Keep Dangerous Goods			varies		
Bulk Vehicle Licence for the Transporting of Dangerous Goods (3 years)			$88		
Security Check			***$66***		
Manufacturers Licence			$181		

Issues Arising from the complexity of this licence structure:

1. The differences in licence costs, coverage and duration in the various jurisdictions; differences which considerably complicate the redeployment of people and machines between States in an industry which demands frequent and rapid movements of this type.
2. The significant differences in what should be at least one common factor – the cost of an ASIO check.
3. A Queensland authorisation (licence) is not accepted in other jurisdictions owing to the regulatory reluctance to issue a portable formal credential (eg a photo ID card) and a regulatory regime which requires employers[1] to decide if an employee is a fit and proper person to hold an SSAN credential.
4. Regulators consider State based security clearances are essential to ensure the criminal checks are conducted in conformity with existing laws in that jurisdiction relating to spent convictions and like matters.
5. If a person moves permanently interstate a complete security assessment in the new state is required *including* a repeat ASIO check.
6. The licence status of a person temporarily located interstate (eg for holiday relief) is unclear and is greatly complicated by the different licensing structures detailed in Table 1. Note that for a person moving in or out of Queensland even a short term relocation requires a new application for the reasons given in point (3) above.
7. Interstate relocations requiring re-licensing attract the full fee for the new licence but receive no refund for the unexpired portion of the previous licence. Costs are significant but almost impossible to quantify.
8. Industry staff are very mobile – it is estimated that 10-15% of operational employees spend some time every year living interstate to meet business demands of some type eg projects, holiday/sickness relief, business support etc.

a)Why has it been so difficult to achieve fundamental reform of chemicals and plastics regulation despite advice from numerous reviews and government efforts to address the concerns?
b)What specific barriers to reform should the Commission focus on in order to raise the likely effectiveness of its recommendations?
c)Given the criticisms of the existing system, are there grounds for preserving structural elements of the status quo (for example, are there good reasons for variations in State and Territory regulations)?

(a) above;
The COAG SSAN Principles Working Group was composed largely if not exclusively of explosives regulators. It is AEISG's perception that the explosives regulators have not developed a culture of promoting Australia wide regulatory models and that even where such models do exist e.g. the Australian Explosives Code (currently AEC2) they are not adopted *in toto* in any jurisdiction. As an example we quote from the Foreword of the second edition of the Australian Explosives Code known as AEC2 :

"**However, it is strongly recommended that readers of this publication contact the Competent Authority in their jurisdiction (listed in Section 1) to ascertain the status of this Code in relation to local legislative requirements".**

[1] In other jurisdictions the regulator makes these decisions.

AEISG considers that the above and similar references in AEC2 establish that even the regulators who technically "own" the Code are not committed to implementing its requirements in their entirety.

b) Specific Barriers to be Addressed

The most important barrier to be addressed is the lack of National Consistency in the drafting and implementation of laws to implement the COAG Principles for the Regulation of Ammonium Nitrate despite the unambiguous directive in Policy Aim No 1 requiring that outcome. In these circumstances AEISG perceives that the Productivity Commission needs to investigate how it is possible for State and Territory based legislators to enact the current melange of laws and regulations which are at such major variance to a clear COAG endorsed Policy Aim.

In simple terms COAG need to require their regulators to deliver an outcome based on the text of the Principles they are charged to enact. As stated below AEISG sees the model used for the development and implementation of the 6th Edition[2] of the Australian Dangerous Goods Code (ADG6) is a preferred model.

c) Are Some State Based Variations Justified?
AEISG members have had many informal debates with regulators on this issue. Regulators will claim that State variations are both necessary and desirable for reasons such as :

- Differing State legislation on spent convictions and like matters
- As they are regulated under explosives regulations SSANs are required to be **authorised** as if they are explosives in SA and Qld but not in States regulating under OHS Legislation
- State Police crime and criminal intelligence data required for individual security assessments is not available for sharing between jurisdictions. (*AEISG Note: We are unable to confirm or challenge the veracity of this claim).*

Even if the above are accepted as valid they do not justify the huge differences in licencing fees (see table) and other matters forced on AEISG members as their people and materials cross a State border.

a)Is there a need to make more extensive use of a risk-based approach to regulation in parts of the system? How can such an approach be integrated with the future adoption of the hazard-based Globally Harmonised System (see later)?
b)Is the regulatory system sufficiently flexible to incorporate and respond to changing knowledge and understanding of issues over time?

a) Risk Based Approach:

Prior to the declaration of the COAG SSAN Principles the range of SSAN materials being made and transported were all **safety** regulated on a risk management basis. AEISG contends that this risk based regulation has served the community, the SSAN industry and its customers well and is capable of being expanded to include security issues provided that the security risks to be assessed are quantified as far as possible by organisations competent to do so. AEISG members are confident of their safety expertise but require external input to assess risks where national security is involved.

Until the SSAN laws and Regulations were enacted risk management principles were accepted throughout Australia for the storage and handling of *all* Dangerous Goods excluding Class 1 explosives. Despite the specific mention in COAG Principle 8(a) some Regulators have imposed

[2] The subsequent Edition ADG7 has just appeared and for that reason will not be further referenced in this submission

requirements to apply within their jurisdictional .limits that SSANs be stored and handled according to a Consequence model as used for Class 1 explosives. It is AEISG's contention that such a consequence model would impose large unnecessary cost imposts on the explosives industry and its mining industry customers.

The major risk vs consequence difficulty would occur if the consequence model was retrospectively applied to existing SSAN stores, some of which have operated safely for over 40 years. If industry was required to close down an relocate a store of say 5000 tonnes of SSAN such a move would incur major capital and operating cost penalties. A capital cost figure of 20 million dollars with an operating cost of 15-20 dollars per tonne is not unrealistic. for a new store .It is likely that the industry would seek to recover these costs from their customers in the mining industry.

Re the proposed Global Harmonisation System (GHS). This is seen as being neither a positive or negative influence on the risk/consequence issue.

b) Regulatory Evolution/Flexibility.

Where the regulatory system is congruent with international norms as detailed in the UN Model Regulations and is set up to accept changes to those Model Regulations as a new edition is published AEISG considers the system has the necessary flexibility. However this does not apply where the system contains a major Australia specific component such as the SSAN Principles. The ability of SSAN Regulations to evolve over time remains to be seen.

Can you identify specific gaps, overlaps or variations in the regulatory structure that make regulations less effective (for example, do variations in the regulation of SSAN undermine the effectiveness of regulations in this area)?

Yes. A sample of these gaps and estimated associated costs is provided later in this submission.

A number of initiatives have been developed and implemented where a greater responsibility for the management of chemical risk is delegated to industry — either through formalised industry initiatives or bilateral agreements between industry and government (see attachment B).

Manufacturers and users of SSANs are currently regulated under a range of prescriptive laws and regulations as follow:

- Australian Dangerous Goods Code - not jurisdiction specific
- Import, Export, Shipping and Customs – Commonwealth regulated
- Australian Explosives Code – theoretically uniform but has capacity for jurisdictions to selectively adopt its provisions
- Major Hazard Facilities – Standard declared federally but considerable variations between jurisdictions in their interpretation and legislation of the requirements
- SSAN Principles – current position similar to MHFs as above.

AEISG members consider there would be major benefits in applying a co-regulation model for SSAN *provided* such arrangements are negotiated with the Commonwealth only.

It is appropriate that the Commission become aware that AEISG members have developed and implemented a number of Codes of Good Practice specific to the explosives industry. These are aimed at spreading specialised knowledge and setting minimum standards for specific operations in the explosives industry. These Codes have earnt a high level of support among regulators.

Are there specific areas of overlap in the regulations that are burdensome and inefficient?
Are you able to provide any estimates of the costs caused by gaps, overlaps or inconsistencies in the regulatory framework?

The most burdensome aspect of the SSAN Regulatory framework is the lack of Mutual Recognition between jurisdictions for such essential operating items as licenses (people and vehicles) security plans, security clearances and similar matters. The major supplies of SSAN come from factories located in 3 States (NSW, Qld and WA) topped up by small quantities of imports. Intrastate movements are not problematic but large quantities of *interstate* movements are necessary to supply customers in jurisdictions lacking manufacturing facilities inside their borders and to redress supply/demand imbalances which occur regularly between the east and west of Australia. Each such trip has to be carried out with separate security plans for each jurisdiction. Costs are not separately calculated but are absorbed into both freight rates and the number of additional people employed solely for compliance work. See below for estimated compliance costs.

A difficult to estimate cost is the cost of restrictions on *intrastate* use of an appropriately accredited interstate SSAN transport vehicle which is available following completion of an *interstate* delivery.

A further problem is regulatory overlaps inside a jurisdiction. such as:
- differing interpretations of which regulator "owns" COAG Principle No 7 (SSAN Manufacture) ; the MHF Regulator or the SSAN Regulator. SSAN Regulator more powerful in Qld; MHF Regulator more powerful in WA.
- split responsibilities for transport safety and licence issue causing the situation in NSW where licenses are issued by any one of combination of DPI, WorkCover and DECC

a)Do you have any evidence of excessive costs imposed by chemicals and plastics regulations? Can you estimate, however approximately, the costs imposed by these regulations on your firm or industry?
b)Can you identify cases where the regulatory environment has altered the way a business would otherwise operate (for example, making a decision about where to locate a major hazard facility)?
c)Are you able to articulate alternative regulations that would meet the same objectives, but that would reduce or eliminate the costs you have identified?

a)The SSAN Regulations have required a paradigm shift in the manner in which member companies employ their operating staff and secure their activities to the requirements of the relevant regulator. The following table is an estimate of the additional costs imposed on the industry by the SSAN Regulations. These are aggregated over all AEISG members dealing

with SSAN and cover all identifiable security costs in all jurisdictions but do not cover the impact of Major Hazards Facilities Regulations which are dealt with later in this submission.

Item	Capital	Operating
Licensing and operating cost		**$3million**
Global Positioning System (GPS)	$2.5 million	$1 million
Unsupervised Handling Licences (UHLs)		$0,5 million
Security and Validation staff		$0.53 million
Dual licences where necessary		$75000
TOTALS	$2.5 million	$5.625million

It is estimated that a system national regulation would reduce the above compliance costs by 50%.

c) Impact of Major Hazard Facility (MHF) Regulations on compliance costs.

In some ways the MHF Regulations implementing a single National Standard have similar strengths and weaknesses to the SSAN Regulations. In both cases the translation from a centrally agreed Standard/Set of Principles is done at jurisdictional level ie State level and is subject to State preferences . Again there are significant differences between States on their interpretation of the Standard with the main items of difference being:

- to what degree does the jurisdiction in question exercise its discretion to declare facilities with inventories as low as 10% of MHF threshold level as Major Hazard Facilities
- To what degree is the MHF Regulator required to accept direction from another Government Department on the dangerous properties of the products being handled at the potential MHF
- Does the MHF Regulator use the Risk or Consequence method in siting inventories of materials such as SSANs.

It should be noted that COAG SSAN Principle No 7 (manufacture) effectively duplicates the MHF requirement for the same information.

A further MHF issue is the individual jurisdiction's regulatory decisions on
- the choice of risk vs consequence models on approval of locations for new SSAN storages as directed by COAG Guideline No 4 and
- whether or not the requirements of the SSAN Principles for locations of **new** SSAN storages are retrospectively applied to **existing** SSAN storages **.** Retrospective application of consequential considerations to two existing locations which have been operating for over 40 years would have major consequences on the delivered cost of SSAN . It would not be feasible to relocate an existing manufacturing facility; nor would it be feasible to reduce operating inventories to very low levels. (There is a fundamental mismatch between the steady output of an SSAN manufacturing plant and the "peaking" nature of customer purchases. This mismatch can only be resolved by manufacturer inventories which in the worst case scenario would have to be relocated in a new storage in a remote area and be double handled en route to the customer.)
At best this relocation would cost upwards of $20 million for the new facility plus a double handling cost of say $20 per tonne over say 500,000 tonnes per annum.

The need for coordination within and across jurisdictions

The regulation of SSAN was developed on the basis of a set of principles agreed by COAG — but implementation has been inconsistent.

a)Where are the greatest inconsistencies in regulation: between the Australian Government and the states and territories, between the states and territories, or within jurisdictions, that warrant reform?
b)What advantages have there been in taking different regulatory approaches to chemicals and plastics in different jurisdictions? Can you provide examples of these advantages?
c)More generally, given the different roles, responsibilities and powers of the different levels of government in Australia, what would be the most efficient and effective regulatory framework, how would this be achieved, and how quickly should it be implemented?

a)
A non-exhaustive list of inconsistencies and duplications follows.

1. The current requirement for a person to be licenced in the jurisdiction in which that person is currently working (even if that person is fully licenced elsewhere) creates inconvenience and expense with no benefit other than demonstrating State sovereignty.
2. The current requirement for a regulator to approve a security plan for only that part of an interstate journey which falls within the regulator's own jurisdiction means a separate security plan has to be prepared and approved for the journey through the next jurisdiction and the next if there is one.
3. Major differences exist between jurisdictions on how an individual licenced/authorised person can document his/her licence status on request particularly when that person has been stopped for inspection in a jurisdiction other than their own.
4. The coverages of licenses in different jurisdictions differ markedly. As a result it is difficult to impossible to purchase a single licence in the new jurisdiction which will duplicate all the functions of the licence you already hold ; in all probability the new jurisdiction will have a different coverage from the previous one.
5. The duplication of location and security obligations between regulatory obligations from the SSAN Principles and similar obligations under the MHF National Standard.

b) From an industry point of view there are no advantages in the use of different regulatory approaches being taken in the various jurisdictions. As stated elsewhere in this submission the reverse is the case.
We understand however that there are some benefits for the **regulator** in the use of jurisdiction specific regulation. We understand that regulators find it simpler to implement jurisdiction specific SSAN legislation/regulation as much of the legal

machinery legislation required for enforcement etc already exists. This understanding arises from hearsay and legal opinion on the issue has not been sought.

c)
The problem with jurisdiction specific legislation is not the identities of the legislators. The fundamental problem is the tendency to create regulations which apply only within the borders of that jurisdiction and may be at considerable variance to the regulations in an adjoining jurisdiction. As stated in (b) above industry does not see these variances as adding integrity to the security process but is does see them as adding . unnecessary complexity and cost to the movement of security sensitive materials around the Commonwealth of Australia.

Although customised jurisdiction based legislation is not preferred industry believes that decentralised administration of SSAN Regulations is preferable to Commonwealth administration. The reality for SSANs is that only the States and Territories have the skills and qualified "hands-on" staff to implement the Regulations in a timely and effective manner. Conversely a Commonwealth centred group drawing up policy and framing Drafting Instructions seems the most effective means of achieving those aims.

Earlier in this submission AEISG expressed its preference for a form of template legislation similar to the legislative process for developing legislation for **safety** management of dangerous goods. We reiterate that we see template security legislation developed by jurisdiction based experts and co-ordinated at the Commonwealth level is the only feasible way to develop legislation free of jurisdictional bias. The resulting template legislation is subsequently taken up by the jurisdictions using mechanisms identical to those used for Dangerous Goods safety legislation.

We can offer no opinion on the likely time line for such a change to be effective. It is our understanding that effective legislation is the final outcome of a process which involves the following sequential steps:

- Setting objectives (the COAG Principles)
- Developing a template law by merging existing jurisdiction specific laws into a single Commonwealth law
- Enacting the jurisdictional legislation necessary to put the template law into effect in each jurisdiction.

Is fragmentation of regulations across and within jurisdictions hampering the effectiveness and efficiency of regulation in Australia — including securing staff to enforce regulations?

AEISG considers that irrespective of the adequacy of staffing levels the fragmentation of regulations referred to is not an efficient way of utilising regulatory or industry resources. .Much of the effort of both the above parties is expended in repeating the same work in a

different format for the new jurisdiction(s) and AEISG members are unable to see how this adds value to the security of SSANs between supplier and receiver.
It should be possible to transport a load of SSAN by land from, say, Gladstone Qld to Perth on a single licence, a single transportation docket and a single security plan; any other option is wasteful of resources.

)Is there scope to build economies of scale by merging parts of the regulatory structure so that better use is made of the limited resource pool?

AEISG considers the most efficient use of resources is to develop a system of empowering the originating jurisdiction to approve and document all components of the through transport of the SSAN to the jurisdiction of delivery. It seems particularly wasteful of resources to demand, for example, South Australian security plans and licences and 7 days notice of entry for SSANs which originate (say) in NSW and are delivered (say) to Western Australia. Again we see this requirement as consuming resources without any identifiable benefit in safety or security.

Are some parts of the regulatory system more acutely impacted than others by lack of institutional experience and institutional memory?

Jurisdictions which have incurred both retirements of senior expert staff and major departmental restructuring tend to have more difficulties in this area.

How predominant has a 'regulate first and ask questions later' culture been in the development of the chemicals and plastics regulatory framework?

The "regulate first and ask questions later" culture has been a major causative factor in the SSAN Regulatory difficulties. The Department of Prime Minister and Cabinet (PM&C) made a conscious decision to exclude industry representation at the drafting stage of the "COAG Principles for the Regulation of Security Sensitive Ammonium Nitrate". Had industry been represented at this stage it would have pressed for:

- national licensing
- template legislation
- seamless documentation and security planning

It is pleasing to note that the current Review of Hazardous Chemicals is adopting a much higher level of consultation than the SSAN Principles, an approach which AEISG believes will deliver handsome dividends when the Hazardous Chemicals legislation and regulations are enacted.

Would greater economies of scale, through merged functions or regulators (within or between jurisdictions), make compliance any more effective?
To the extent that there is non compliance, is there evidence of how much of this is deliberate, and how much is due to lack of knowledge or understanding (possibly because of complexity of the system)?

There is no doubt that compliance would be simpler if functions are merged between jurisdictions and the industry can be focussed on complying with one and only one set of regulations irrespective of the jurisdiction involved.

Industries consuming SSAN are very aware of their compliance obligations and work hard to avoid non-compliance. Any non-compliances which may occur are either inadvertent or negligent but are never deliberate. There is however no doubt that the more complex the regulatory structure the higher the probability of inadvertent non-compliance.
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Regulation of security sensitive ammonium nitrate

In Australia, ammonium nitrate is regularly used as an explosive in the mining industry and, to a far lesser extent, as a fertiliser in the agricultural sector. Unfortunately, it also has the potential to be used by terrorists as an explosive ingredient.

A 2002 review of Australia's ammonium nitrate regulations found that security requirements associated with the sale, storage, importation and transportation of ammonium nitrate, particularly in the farming sector, were inadequate (COAG 2004b). To address this problem, the Australian, State and Territory Governments agreed to a set of principles for the regulation of ammonium nitrate in 2004 (COAG 2004c). The objective of the principles was to ensure that only legitimate users can obtain 'security-sensitive' ammonium nitrate and that the relevant regulations — which are the responsibility of the states and territories — are nationally consistent.

In 2006, the Regulation Taskforce found that the new regulatory arrangements for SSAN had high compliance costs and had been inconsistently implemented across jurisdictions. It therefore recommended that the Australian Government urgently review the SSAN regulatory arrangements. The Australian Government (2006) agreed to this recommendation and, as a result, the terms of reference for this study specifically ask the Commission to examine the efficiency of existing arrangements for SSAN.

AEISG notes the above invitation to make a formal submission on SSAN and has done so within the broader framework offered by the Productivity Commission Issues Paper on Chemicals and Plastics Regulation. We thank the Commission for providing the opportunity to make this submission and advise our preparedness to respond to any queries the Commission may have arising from this submission.

This submission contains no material which AEISG Inc regards as Commercial-in Confidence. AEISG Inc is therefore agreeable to this submission being posted on the Productivity Commission's website.