Attachment 1

Regulation of Security Sensitive Ammonium Nitrate in South Australia

Response to Questions Raised by the Productivity Commission in its Issues Paper; "Chemicals and Plastics Regulation

Introduction

In December 2002 as part of national counter terrorism measures, COAG (Council of Australian Governments) agreed to a national review of the regulation, reporting and security around the storage, sale and handling of hazardous materials.

This process was lead by an adviser of the National Security Division of Prime Minister and Cabinet and involved State officers associated with explosives and / or dangerous goods safety policy.

A draft report on ammonium nitrate was completed first, because of its history of terrorist use and public concern about its ready availability.

In June 2004 the COAG determined that, in the interests of national security, access to ammonium nitrate should be regulated. The Council approved the principles for the regulatory control as detailed in attachment B of the COAG principles document.

The agreed policy aims defined in the document were;

"1. A nationally consistent, effective and integrated approach to control access to security sensitive ammonium nitrate (SSAN) to those with a legitimate need.
2. To ensure accountability at all stages of the ammonium nitrate supply chain, in order to address security and safety concerns.
3. To establish a framework for control which may be applicable for other materials of security concern."

On 17 August 2004 a meeting of officials from all jurisdictions agreed to the establishment of a technical working group to develop details of the security requirements which would be placed on licence holders and to ensure national consistency *with the COAG principles*.

This resulted in the development of a set of agreed national guidelines consistent with the COAG Principles covering security in storage, transport, and agricultural use of SSAN.

Because of the need for urgent action these national guidelines have been embraced by the jurisdictions through administrative processes that were the most immediate available. As such, they have been implemented across most of Australia (still pending in Western Australia) through different legislative and administrative protocols.

It is important to note that the COAG Principles for the Regulation of Ammonium Nitrate make direct reference to the explosives regulations of states and territories (para.15), indicating that security and penalties for breaches should be adjusted to match those that will apply to SSAN.

Through its determinations and actions COAG has fundamentally established a nexus between security sensitive substances and explosives and their relationship to public safety and security.

Questions raised by the Commission in relation to SSAN

Do you consider that the current regulatory regime is effective in addressing (policy) issues in relation to SSAN? (p.14)

SSAN is controlled under the *Explosives Act 1936* by a regulatory regime (the *Explosives (Security Sensitive Substances) Regulations 1996*) drafted to address all of the issues identified in attachment B of the COAG Principles document.

Can you identify gaps, overlaps, or variations in the regulatory structure that make regulations less effective? (p.15)

To ensure consistency of regulation SSAN was declared an explosive by Governor's proclamation, the *Dangerous Substances Regulations 2002* were varied to ensure it could no longer be a dangerous good, and the *Explosives Regulations 1996* were varied to exclude SSAN from those Parts which could result in unnecessary consequences.

Could the development of the agreed principles for SSAN regulation have been improved? (p.27)

No. The development of the principles document was seen by PM&C as the most rapid mechanism to introduce regulatory change. It models the gun-buy-back arrangements. It is not national legislation or model legislation. It is a set of principles designed for rapid implementation under existing State controls. The committee that conducted the review of regulation, reporting and security around the storage, sale and handling of ammonium nitrate consisted of explosives regulators from those jurisdictions where nearly all of the ammonium nitrate in Australia is produced and / or used. This was consistent with the view that the major security risk from ammonium nitrate was its misuse as an explosive.

The committee also represented the jurisdictions with the greatest industry interests, and the executive officer of the committee providing administrative guidance was from the Department of Prime Minister and Cabinet. The committee was therefore representative of the jurisdictions where a risk from SSAN was most likely to arise, and comprised members who already regulated a subject of security concern (explosives) in those jurisdictions.

Are the security measures required by the agreed principles commensurate with the security risk posed by ammonium nitrate products?(p.27)

The security measures ensure that product in the SSAN supply chain is not diverted at any point for terrorist use. This can only be achieved through persons in the chain having suitable security plans and access to SSAN being restricted to authorised persons. Licensing activities involving SSAN is the only way this can be ensured.

What grounds are there for variations across the jurisdictions in the regulation of SSAN? (p.27)

In some jurisdictions very little SSAN is used. The risk of misuse is minimised by the unavailability of SSAN. South Australia suffers the geographic problem of being the state through which huge quantities travel from manufacturers in Western Australia to users in the east, and vice a versa. South Australia also obtains the majority of the SSAN consumed in the state from other jurisdictions via land transport. The transport function of the supply chain across borders has therefore to be necessarily regulated.

How extensive are these variations, and what impact have these variations had on the overall security objective.

All states have attempted to fulfil the security objective of the COAG Principles. Administrative processes do differ between states in attempting to achieve this objective. South Australia does not issue 'security clearance cards' because of ASIO concerns about counterfeiting, and the regulator in South Australia carries out all steps in the clearance and licensing process, from ensuring identity checks are done, to assessing criminal history information. Only the Politically Motivated Violence check is assessed by another body (ASIO).

South Australia believes it has ensured *the overall security objective* has been reached by confining all the listed activities within the one regulatory body.

Could less stringent regulation or other policy measures be introduced to control access to SSAN without compromising the security objectives?

The regulatory framework in South Australia complies with the determinations of COAG and is congruent with many other countries where terrorism and the availability of SSAN have been linked. The introduced regulations ensure a security management plan is viable and in place for each step in the SSAN supply chain, and only authorised persons have unsupervised access to SSAN. This level of regulation is considered necessary for a substance that is so readily available in Australia.

Statements made in the Issues Paper in relation to SSAN

A further reason for (regulatory) *intervention is to address the risks to national security associated with the deliberate misuse of chemicals through terrorism activities (p.13).*

This was the view of COAG in relation to SSAN and resulted in regulatory amendment and administrative implementation to enforce the COAG principles in South Australia.

The regulation of SSAN was developed on the basis of a set of principles agreed by COAG – but implementation has been inconsistent (p.20).

Western Australia has not yet enacted legislation to implement the COAG Principles in relation to SSAN. Other jurisdictions have used differing administrative processes to implement controls, but all jurisdictions have been consistent in regulating those matters highlighted in the Principles document.

South Australia has maintained the nexus between SSAN and explosives, and the regulator, SafeWork SA, controls all aspects of the state level process. Regulators in some other jurisdictions (the agencies that issue an authority to access SSAN) have divested themselves of the responsibility for determining whether the applicant is a fit and proper person.

Final comments

South Australia has built into its administrative system for SSAN a process for recognising security clearances granted in other jurisdictions to allow the granting of a reciprocal licence for specified activities involving SSAN. To this time however, no other jurisdiction has established a reciprocating functionality to ensure any change of security status of the individual licensed in the primary jurisdiction would be immediately transferred to the secondary licensing jurisdiction (i.e. South Australia).

Some jurisdictions have chosen to not require a body operating within their jurisdiction to be licensed, where a licence has been issued in another jurisdiction. The problem with this regulatory model is that the issuing jurisdiction cannot administer their law outside their border. And the regulator where the body is operating has no knowledge of who is operating within their jurisdiction on a licence issued outside the jurisdiction. South Australia has chosen not to follow this model as it does not meet the basic principles for good regulatory control.

The issuing of reciprocating licences or clearances between jurisdictions would therefore currently fail to meet the security objective of the COAG Principles document.

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