



Australian Explosives Industry and Safety Group.Inc.

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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

Submission to Productivity Commission Enquiry on Chemicals and Plastics Regulation Industry Impact – Explosives Laws and Regulations –

Introduction:

The overwhelming justification for Class 1 Explosives 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 competitive strengths 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 Class 1 explosives. 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 explosives across the country creates barriers in achieving the maximum efficiencies, and in many cases, creates specific, expensive inefficiencies. It should be noted that the minerals industry's global competitors are not subject to multiple regulatory regimes.

The removal of these multiple 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.

The explosives industry is highly service oriented and is under continuous pressure from its mining industry customers to “make things happen” at short notice. Where the customer requirement is not covered by existing regulations the supplier generally does not have the option of undertaking lengthy negotiations with the appropriate Regulator(s); An outcome negotiated “on the run” in this manner is often financially sub-optimal.

Explosives are considered to be covered by the Productivity Commission's Terms of Enquiry as they are (Class 1) chemical materials which are covered by the same international Model Regulations and conventions as other Dangerous Goods Classes (2 through 9) .

It is thought that the current State based regulatory system for Class 1 explosives pre dates the regulation of the other classes of Dangerous Goods by several decades. It is also thought that the current stand-alone system for explosives regulation has historically arisen from:

- the age of the industry in Australia which can be traced back to the second half of the 19th century
- public apprehension of the community danger presented by explosives
- the poor intra-jurisdiction communications available in pre-Federation times.

It is AEISG's considered view that these considerations (particularly the last one) are no longer relevant in the 21st Century and that the efficiencies of the explosives and mining industries would be considerably enhanced if laws and regulations were truly uniform and nationally applied. It is recognised that working groups have been formed to address some of these issues; however the output of these groups will inevitably be limited by their inherent inability to rationalise inconsistencies in jurisdiction based legislation and regulation. For this reason that AEISG includes the following list of such matters in this submission.

REGULATORY INEFFICIENCIES.

1. The current system of laws and regulations governing explosives lacks a uniform template and creates opportunities for jurisdictions to regulate the details of many items according to an individual preference. It is acknowledged that significant consistency exists but it must also be acknowledged that this is achieved by informal networking rather than legislative consistency.
2. The informal consistency mentioned in (1) above is not compatible with the much preferred BEST PRACTICE model. which by definition means there is only ONE such model.
3. In some specialist situations BEST PRACTICE is detailed in industry developed Codes of Practice (COPs). With the regulators agreement these Codes can be called up in legislation in some jurisdictions but not in others.
4. Some jurisdictions require 7 days' formal notice of transport of explosives into their territory whether or not those explosives are destined for delivery into or through that territory.
5. The process of "Authorisation" of a product or article is jurisdiction specific and in extreme cases needs to be done 8 times.
6. The procedures for licensing explosives personnel and equipment differ substantially among jurisdictions. These differences significantly impede the movement of these resources between jurisdictions, movements which are necessary to match resource availability with market demand.
7. Many day-to-day activities in the explosives industry are not covered by specific regulations. These activities have to be formally approved by the jurisdiction Regulator; a process which often has to be repeated if the activity is required in other jurisdiction(s).

8. At some stage in the life cycle of explosives products property and risk in those products has to be transferred to the customer. The jurisdictional mechanisms for this transfer are often indistinct and vary substantially from jurisdiction-to-jurisdiction with consequent efficiency losses.
9. Similar regulatory discontinuities occur when people with necessary explosives skills e.g. shotfirers move to a jurisdiction in which their skills are not registered. The skills are recognised but the shotfirer is not allowed to practice these skills in the new jurisdiction until he has completed further training in the specific laws of the new jurisdiction.
10. Currently applicable explosives legislation in the various jurisdictions have proclamation dates ranging from 1936 to 2007. The content and requirements of the implementing regulations reflect the large cultural and philosophical changes in law making which have occurred over the intervening 71 years.
11. The philosophical differences between jurisdictions in (9) above leads to some jurisdictions encouraging self regulatory “duty of care” behaviour while other jurisdictions will regulate the same activity in a highly prescriptive manner.
12. While the Australian explosives regulatory system is based on the UN Classification system it retains a number of “Australianisms” which are expensive to comply with and in AEISG’s view have no safety or other value. These issues include but are not limited to:
 - a. Requirement that manufacturer’s name and address be shown on each and every case of explosives (*Note: in the very few instances where traceability data is required this is available in the manufacturer’s barcode or electronic identifier on every case*)
 - b. Shipping containers lined to international standards are not acceptable for land transport in Australia; imported explosives have therefore to be repacked at the magazine of arrival prior to onwards movement
 - c. Local regulators have and utilise a discretion to accept or reject international classifications of imported explosives. An example of this inefficiency is the current requirement to re-label and re-document certain products which have been legally air freighted to Australia as say 1.4S. While these can be legally on-freighted *by air* inside Australia they have to be re-labelled and re-documented for *land transport* inside Australia.
 - d. The same regulatory discretion enables a regulator to reclassify certain industry products and intermediates at different hazard levels to those agreed using international (UNECE) criteria.

PREFERRED LEGISLATIVE MODEL

AEISG Inc’s preferred model for Explosives Regulation is very similar to its preferred model for SSAN Regulation but with additional elements reflecting the specialised skills base of the industry. As with SSAN Regulation AEISG Inc considers that the existing ability of jurisdictional legislators

to draft legislation implementing a set of centrally agreed Principles creates excessive scope for regulatory inconsistency between jurisdictions.

The legislative structure which AEISG considers most suitable for the task of regulating explosives is one modelled on the structure of the **Australian Dangerous Goods(ADG) Code** and its implementation mechanisms :namely:

- 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 by the law of that State or Territory as the case may be
- c. Legislative backing for a **Co-Regulatory model** enabling approved Codes of Practice to be enforced
- d. Formation of an expert regulatory body with similar powers to the **Competent Authorities Panel** for other Classes of Dangerous Goods. This body would be similar to the existing Australian Forum of Explosives Regulators (AFER) and would be charged with:
 - a. Interpretation of technical issues as and when required
 - b. Oversight of the co-regulatory Codes of Practice
 - c. Consideration and decisions on variations and technical matters not specifically considered elsewhere
 - d. Providing expert guidance to other instrumentalities representing Australia in international forums eg UNECE on Class 1 matters.
 - e. Other relevant issues not captured above.

This expert body would be required to decide on submissions within a statutory time frame.

AEISG Inc expresses its thanks for the opportunity to make this submission on Class 1 Explosives under the broader framework offered by the Productivity Commission Issues Paper on Chemicals and Plastics Regulation. We advise our willingness to respond promptly to any queries the Commission may have with the contents of 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.