

Member Companies:

Applied Explosives Technology Pty Ltd
BME Australia-Asia Pty Ltd
Davey Bickford Enaex Australia Pty Ltd
Downer EDI Mining-Blasting Services Pty Ltd
Dyno Nobel Asia Pacific Pty Ltd
Glencore Coal Assets Australia Pty Ltd
Hanwha Mining Services Australia Pty Ltd

JOHNEX explosives
Maxam Australia Pty Ltd
Nitro Sibir Australia Pty Ltd
Orica Australia Pty Ltd
Platinum Blasting Services Pty Ltd
Redbull Powder Company Ltd
Solar Mining Services Pty Ltd
Thales Australia Limited

AEISG SUBMISSION TO THE SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION

Review into the Institutional Arrangements to Manage Regulatory Burden - Extractives Supply Chain

INTRODUCTION

The Australasian Explosives Industry Safety Group Inc. (AEISG) is an association of all significant explosives manufacturers and suppliers in Australasia.

The explosives industry in Australia, which AEISG represents, is a highly technical and professional industry which manufactures and supplies over 3 million tonnes of explosives annually to the resource and construction sectors, including the relevant extractive industries, so vital to the Australian economy and the Australian people. It consists of world leaders in explosives development, manufacture and production techniques, looking to safely, securely and efficiently service its clients in line with variable demands across the nation.

The explosives industry readily accepts:

- explosives are dangerous;
- control of explosives by legislation is essential for safety/security of the Australian community;
- its obligations and responsibilities as a significant party to that legislation.

In return however, the explosives industry expects a competent, consultative, cooperative and consistent legislative environment in which legitimate explosives activities such as manufacture, transport, storage, sale and use can be conducted efficiently, free of unnecessary impediments.

One of the primary goals of AEISG is to continue to improve the safety and security of explosives handling in Australia while ensuring an efficient supply of these essential products to its clients such as the extractive industries in South Australia.

AEISG has studied the contents of the Issues Paper '**Review into the Institutional Arrangements to Manage Regulatory Burden - Extractives Supply Chain**' released by the South Australian Productivity Commission (SAPC) in March 2020 and considers it necessary to provide a submission as an essential supplier of services to this sector.

The information provided in this submission is aimed at providing response to the Information Requests posed in Section 5 of the Issues Paper, in particular Information Requests 3.2, 3.4 and 4.3.

BACKGROUND

AEISG has for some time now maintained that the greatest impediment to improving the safety and security of explosives in Australia is the disjointed and inconsistent explosives legislation across the various Commonwealth, State and Territory jurisdictions, with little to no national recognition or acknowledgement of licences, authorisations, security checks or other legislative approvals. As a consequence, significant industry resources are applied to a multitude of administrative compliance activities associated with differing legislative requirements rather than being focussed on safety and security improvements.

Following acknowledgement of the inconsistent legislative environment for explosives in Australia by the Australian Government Productivity Commission in 2008, the Council of Australian Governments (COAG) agreed to the establishment of a Strategic Issues Group (SIG) under the oversight of Safe Work Australia to pursue harmonisation of state and territory explosives legislation. The SIG, consisting of all state and territory jurisdictions, industry organisations and employee organisations, commenced in 2012 and by 2018 had developed four (4) proposals for reform. These four proposals were agreed by all jurisdictional WHS Ministers in 2019. The move to facilitate national consistency of explosives legislation in Australia was warmly and enthusiastically welcomed by AEISG and the explosives industry generally. Specifically, AEISG also welcomed the commitment from South Australia to move to nationally harmonised explosives legislation. Indeed, the Executive Officer of SafeWork SA chaired the SIG process for a considerable period.

While the four(4) agreed proposals for harmonization of explosives legislation would not solve all the significant deficiencies that the absence of national legislation in this area poses, such as important security concerns, the explosives industry welcomed the opportunities for a more consistent and efficient environment in which to operate.

However, despite the above, the explosives industry has been confronted, time and time again, with examples of arbitrary legislative decisions, rulings, requirements, processes and determinations in South Australia which differ markedly from national and/or international positions on explosives related issues. Further, such contrary positions have been taken without due consultation with regulatory peers or the industry, without any evidence or justification, and with little in-house relevant technical knowledge or experience which might give some level of support or credence to the adoption of such contrary positions.

Some examples of these different South Australian positions include:

- The current South Australian Explosives Act (1936) is antiquated (still refers to ‘His Majesty’ despite the long reign of the current monarchy), does not reflect contemporary performance based legislation and unnecessarily limits the administering agency (SafeWork SA) in moving to more uniform and consistent regulatory requirements;
- The Australian Code for the Transport of Explosives by Road and Rail (AEC) Despite being developed and published now for almost 30 years, and now well into its third edition, this national code, developed under government oversight, is still not adopted or wholly accepted in South Australia, even though the SA explosives regulator has always taken an active part in the review and drafting process;
- Australian Standard AS 2187 Part 1 – Storage of Explosives Similarly, in use nationally for over 20 years and again developed with government oversight and active input from the SA regulator, this standard has not been adopted or wholly accepted in South Australia. Indeed, the requirements for storage of explosives in SA are quite different from all other state/territory jurisdictions;

- State import licences
South Australia continues to apply/police state import licensing for movement of explosives products into, out of and between Australian states/territories, despite consistent legal advice that such restrictions are unconstitutional. It is acknowledged that the local South Australian explosives legislation has not been effectively reviewed or amended for some time now and that this provision is unlikely to survive any such review, however this does not justify the ongoing use of such unconstitutional restrictions to continue to frustrate the national movement of explosives and related products;
- Explosives Industry Codes of Practice
The explosives industry, through AEISG, has developed several industry codes of practice to capture what it believes to be best practice guidelines for ensuring safety and security in certain explosives related areas. Invariably, these codes are developed where there is no clear guidance, or explicit requirements, within explosives legislation on certain subjects and hence it is a means of assisting all players within the explosives industry to maintain high safety standards/practices.

Such industry codes include:

- Blast Guarding in an Open Cut Mining Environment Edition 2, November 2018
- Storage and Handling of Ammonium Nitrate Emulsions, Suspensions or Gels (ANEs) (UN3375) Edition 5, July 2018
- Mobile Processing Units Edition 4, September 2018
- Elevated Temperature and Reactive Ground Edition 4, March 2017
- Segregation Barriers for Transporting Mixed Loads of Detonators and High Explosives Edition 3, May 2019
- Prevention and Management of Blast Generated NOx Gases in Surface Blasting Edition 2, August 2011
- On-Bench Practices for Open Cut Mines and Quarries Edition 3, June 2019.

All AEISG codes when drafted are circulated to explosives/mines regulators for comment/input prior to publication and are constantly subject to review should any interested party offer recommendations for improvements. All AEISG Codes enjoy legislative reference, acceptance or 'approval' status in most jurisdictions – none in South Australia. As a consequence, the explosives industry is restricted in the free movement of products, equipment and processes nationally. Further, safety is compromised by the necessary increase in explosives related vehicle movements which the non-acceptance of industry codes encourages.

In contrast, when the local regulator has published 'Technical Notes' on issues, e.g. Segregation Barriers (TN71), these are issued without recourse to national review or industry comment, and are written in a 'directive' format, despite an end note indicating they are guidance only;

- United Nations Model Regulations and Manual of Tests and Criteria
The packaging, testing and classification of explosives in Australia is based on the above international standards/Guidelines. The explosives industry utilises the recommended tests to ensure its products are appropriately classified and labelled. When seeking relatively minor changes to these tests, to reflect availability of relevant materials, the explosives industry has been directed to seek the changes at the relevant international UN forums – and has done so. However the explosives regulator in South Australia does not accept/adopt the UN standards and has on occasions changed the UN testing and classification requirements, ignoring the opinions of the UN Explosives Working Group,

without any national peer review or acceptance, and without any recourse to the relevant international UN forums as imposed on the explosives industry;

- Equipment licensed in other jurisdictions
Explosives manufacturing equipment (e.g. Mobile Explosives Processing Units) which have been assessed, accepted and licensed by other state/territory explosives regulators, and which has been in safe operation for over 10 years, have not been accepted for licensing in South Australia because the local regulator 'thinks' the design could be better;
- Licence Conditions
When an industry member applies for a licence for a relevant activity, it is unsure what conditions will be applied to that licence. Imposed conditions sometimes reference documents which are complex and more comprehensive than the legislation under which the initial licence was issued. These SA documents (Technical Notes) have been drawn up by the local explosives regulator with no peer/industry review or input, no scrutiny by parliament and are tantamount to the imposition of 'legislative' requirements with no checks and balances.
Further, different licences for the same activity have different conditions. Changed conditions are being made without consultation and without any justification;
- Additional transport licensing
Licensed explosives transporters are required to hold additional explosives transport licences even when only transiting South Australia. This is required, it is stated, for security purposes however it is not required by other jurisdictions. Further, the arbitrary and unilateral concern for security is not shared by the legislative provisions which still have not implemented the national Security Sensitive Ammonium Nitrate (SSAN) Principles required to be implemented by 2004 e.g. licensing and security checks for persons selling, and acquiring, security sensitive explosives such as propellant powders of any quantity;
- TNT Equivalencies for Ammonium Nitrate Emulsions (ANEs) and Ammonium Nitrate (AN)
The TNT equivalencies used by South Australia for ANEs and AN (100% and 50% respectively) are not those accepted or adopted by other regulatory authorities, creating further confusion, restrictions and limitations on industry activities such as transport and storages;
- Security Clearances
The explosives regulator in SA does not recognise security clearances from other jurisdictions. Hence, explosives activity personnel need to apply for another in SA – a time-consuming process limiting the industry's ability to move personnel into SA to address changing demands;
- Licensing
The explosives regulator does not recognize other jurisdictions' explosives occupational or activity licenses and applies licensing requirements on various explosives personnel which are not supported by the legislation.
Further, the licensing process is inefficient, resulting in significant lengthy delays for industry to properly service their clients in SA, including in this instance, the relevant extractive industries.

The above examples are not exhaustive but outline the frustrations being experienced by the explosives industry in its dealings with South Australia. It is worrying that a regulatory jurisdiction can adopt so many opposing views to the majority positions of national explosives regulators, without any attempt to justify or seek their endorsement in national forums and, as indicated

earlier, without the significant technical knowledge or experience within the regulatory group to support such divergent views.

It would be reasonable for any national explosives regulator, when confronted with the realisation that it has a very minority held position on any issue and limited technical knowledge or experience with explosives in its ranks, to agree to a national position until it can justify the need for, or seek endorsement of, an alternative position. To continue to impose opposing requirements on the industry without proper consideration of the adverse impacts which this produces (safety, security, productivity, efficiency, cost) is an unreasonable and unacceptable application of legislative powers.

Despite the above, the explosives industry continues to be restricted, time and time again, with examples of previous arbitrary legislative decisions, rulings, requirements, processes and determinations in South Australia which differ markedly from national and/or international positions on explosives related issues. Such contrary positions were generally taken without due consultation with regulatory peers or the industry and in many cases without any clear safety or security benefit being identified.

It is extremely disappointing to note that this situation continues to the present day and is predicated on what are considered to be the following systemic deficiencies:

- an apparent unwillingness, or lethargy, to adopt national best practice measures developed by the industry and sanctioned by most state governments (with the notable exception of SA);
- failure to facilitate Commonwealth/State mutual recognition agreements;
- failure to adopt critical elements of national codes/standards and incorporate them into state legislation;
- critical deficiencies in the SA Explosives Act and Regulations;
- critical deficiencies in the technical knowledge, education/training and industry experience of officers of SafeWork SA limiting their ability to effectively administer their legislative responsibilities; and
- an apparent deficiency in resources to effectively undertake the range of legislative authorising, licensing, security checking and other requirements in an efficient manner.

The impact on the explosives industry, and, as a direct result, the extractive industries, should not be understated.

The explosives industry is effectively a national supply chain, relying upon efficient and effective national transfer of explosives related goods and services through and within every state and territory in Australia. Due to explosives demand fluctuations, raw materials, equipment, services and personnel are regularly deployed across state boundaries often at very short notice.

The systemic deficiencies noted above have resulted in the following impacts:

- Raw materials, products, equipment and personnel are required to operate under different and additional licensing and approval requirements to both operate in and transit through SA adding significantly to the cost, complexity and efficiency of business operations;
- These different and additional requirements in SA often incur a significant time penalty, adding to cost and hindering the competitiveness of industry participants, and in extreme cases leading to loss of business;
- An unwillingness on the part of some industry participants to challenge the SA rulings leads to an unwillingness to participate in SA mining and extractive industries related

- ventures; and
- As a most disappointing example, raw materials, products and equipment are commonly transported via the Northern Territory specifically to avoid transiting through SA with its legislative impediments.

As a consequence, there has been no recognition in SA over several years of:

- technological changes in the explosives industry;
- development of national explosives standards (even though SA has participated);
- international and intermodal standards for the global trade in explosives and their precursors (such as the UN Model Regulations, the UN Manual of Tests and Criteria);
- decisions of the Australian Forum of Explosives Regulators;
- other reviewed jurisdictional explosives legislation;
- government mutual recognition obligations;
- industry codes of practice;
- the change in security status in Australia and all the national SSAN principles; and
- the explosives industry's submissions for change over several years.

Overall, it can be said that dealing with SafeWork SA's administration of the Explosives Act and Regulation over many years has been time consuming, expensive, and has often resulted in a refusal of approval for operations and activities that are readily sanctioned in every other State in Australia.

The issues or concerns with the existing explosives legislation are extensive and significant and are such that simple amendments cannot address. The legislation needs to be replaced totally by a more contemporary Act and associated regulations which employ nationally recognised standards rather than the antiquated requirements captured (and apparently nurtured) within the SA legislative framework for decades.

The SA explosives legislation has unnecessarily impeded the explosives industry from acting in a national sense and has resulted in increased costs, confusion, delays and reduced productivity for itself and its clients, including the extractive industries. Indeed, the legislation has prevented improvements in explosives safety and security within the industry and is probably in breach of the constitution by restricting trade between states/territories and applying import requirements between states. The legislation is so out of date and out of alignment with other states that the regulator has had to resort to making up 'conditions' via 'Technical Notes' applied to explosives licences which constitutes making laws on the run without industry input or government oversight.

In order that explosives companies and their employees are not adversely impacted or unnecessarily impeded in ongoing operations, the renewal process for licences and/or security clearances needs to consider the relevant timeframes and issue renewals in a timelier fashion. For example, security clearances can take considerable time, and SafeWork SA needs to rely on the input from other organisations in this regard, hence renewal applications should be issued some months in advance so that expiry dates are not exceeded. Further, an existing licence or security clearance should remain valid provided application for renewal has been made prior to the expiry date. Security clearances should not need unnecessary repeating for individuals already holding a current and valid clearance seeking a changed or new licence. This would alleviate the concerns expressed by industry over lengthy renewal processes and would not place the relevant industries in difficult situations when attempting to address their customers' requirements.

SUMMARY

It would be unfair to apportion any blame for the above issues on the current personnel within SafeWork SA who are administering the explosives legislation to the best of their abilities – given the significant loss of technical expertise over recent years and the current level of resourcing to undertake the broad range of legislative activities required.

However, AEISG has previously alerted SafeWork SA to the deficiencies and offered to work with them in a cooperative manner to review the relevant legislation and to address policy issues leading to an environment more reflective of, and consistent with, those in other jurisdictions.

AEISG understands that the current review being undertaken by the SA Productivity Commission is focused on the extractives industries and the numerous issues impacting the efficient supply of products to important infrastructure projects. The Issues Paper properly acknowledges the SA Explosives Act 1936 as one of the legislative frameworks applicable to the extractives supply chain.

Without the timely and efficient supply of explosives to the extractive industries in SA there will remain a significant impediment in effectively and efficiently meeting the demands of both new and ongoing infrastructure projects. Put simply, an efficient extractives supply chain in SA requires an efficient explosives supply chain in SA.

AEISG believes the current SAPC review should consider the impediments experienced by the suppliers to the extractive industries, in particular the explosives industry's ability to function effectively in SA under antiquated, ineffective and inconsistent explosives legislative provisions as outlined earlier in this submission.

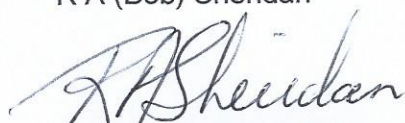
AEISG firmly believes that the review of the SA Explosives Legislation, spoken about for decades, should be given urgent priority and follow the example provided by more contemporary explosives legislations introduced in the larger mining and quarrying jurisdictions such as Western Australia and Queensland in relatively recent times. Further, the review should take the opportunity to adopt the harmonization proposals agreed to nationally by all state/territory WHS Ministers in 2019 which would, as they were developed and designed to do, remove many of the unnecessary and ineffective impediments experienced by both the industry and the regulator, and greatly reduce the bureaucratic red-tape hindering the efficient and safe supply of explosives to the extractive, and other, industries in SA.

Further, AEISG believes that, in the interim, the agency responsible for administering the explosives legislation in SA (SafeWork SA) should immediately undertake a critical review of its policies, procedures, practices and interesting interpretations of existing explosives legislation in an effort to facilitate and bring forward significant efficiencies in the legitimate explosives activities in SA. Essentially, such critical review would need to include significant industry participation.

As an explosives industry association, AEISG is ready to assist in this regard.

AEISG welcomes the opportunity to input to the current SA Productivity Commission Review and would be happy to provide further information on any of the aspects raised herein should such be needed.

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Australasian Explosives Industry Safety Group Inc.