

REVIEW OF PRODUCTIVITY COMMISSION DRAFT REPORT

CHEMICALS AND PLASTICS REGULATION

KEY POINTS Page XXIV

AEISG Inc fully supports all issues in this summary which are relevant to the explosives industry..

BOX 1 – Participants, views Page XXVII

AEISG Inc identifies particularly strongly with the view expressed by PACIA in the last few lines of this Box ie “ to eliminate variation in State and Territory Regulations then we need to change our national development processes, so we prepare national legislation that can either be adopted by template by the states or simply have the states administer the national legislation.”

Among other benefits national template legislation will make better use of available expert technical resources.

DRAFT RECOMMENDATION 6.4 – Pages XLII and XLIV

This recommendation, if adopted will be a major step forward in two specific areas eg:

- Streamlining the process for assessing and adopting Codes of Practice covering highly specialised industries such as explosives
- Removing jurisdictional subjectivity from technical and safety standards.

DRAFT RECOMMENDATIONS 7.1 and 7.2 – Transport Safety Page XXLIV

AEISG Inc expresses its concerns that proposed changes in governance arrangements between ADG6 and ADG7 ie the proposed change from template to model legislation holds major risks of the development of significant jurisdictional inconsistencies. Such inconsistencies currently exist in the transport of explosives (Australian Explosives Code ie AEC) and are a costly irritant to the nationwide transport of explosives. AEISG Inc is attempting to influence government to remove these inconsistencies from explosives transport and sees the proposed governance change as risking similar inconsistencies evolving in dangerous goods transport.

Consequently AEISG expresses its strong support for Recommendations 7.1.and 7.2.

DRAFT RECOMMENDATION 7.3 Page XXLIV

1st para:

AEISG Inc has made formal submissions supporting this aim which unfortunately is not included in the Scope and Terms of Reference of the revision currently in progress.

Despite this omission the implementation of AEC3 should not be delayed while enabling legislation for national consistency progresses through the various Parliaments. AEC3

contains a number of critical security measures which should be implemented at the earliest opportunity. AEC3 has been informally described as an “interim measure”; AEISG recommends this description be formalized and that the Commission’s final report foreshadows the need for a further AEC revision to occur once enabling National Consistency legislation is in place. **Priority should be given to development and enacting such legislation.**

Pending such national consistency legislation the role of the Australian Forum of Explosives Regulators (AFER) should be strengthened to :

- *Give it a legal status similar to the Competent Authorities Panel (CAP) for issues relating to explosives. The need to refer the decisions of the expert body (AFER) to the body with legal status (CAP) for sanction is counterproductive and unhelpful.*
- *Remove the currently existing discretion for individual (State) Competent Authorities to accept or reject AFER decisions. This issue is illustrated by Clause 1.55 “AFER Decisions” in the Public Comment Draft of AEC3 which reads: “Individual Competent Authorities which have adopted or recognize this Code, have generally agreed ((AEISG italics) to accept and apply the decisions of AFER in their jurisdictions. The applicability of decisions by AFER should be checked with the relevant Competent Authority.”.*

Para 2 of Recommendation 7.3 recognises the need for specifically skilled people to be engaged in writing revisions to Explosives Codes and Regulations irrespective of the form in which they are published. The concept of including the AEC in future editions of ADG is supported in principle as the great majority of civil explosives are not transported as such but are site manufactured from materials regulated by the ADG Code. However owing to the large size (300+ pages) and the specialized content it is suggested that the explosives section of a future ADG be published in a separate volume available for separate purchase.

DRAFT RECOMMENDATIONS 9.1 &9.2 Page XLV & XLVI

AEISG Inc and its members have long considered that the present system for security clearances is cumbersome, counter-productive and has ample opportunity for people to “slip through the cracks”. Although some progress with licensing recognition has been achieved via the Mutual Recognition Act and various “work around” solutions the system remains far from satisfactory. Some examples of unnecessary difficulties with the current system are quoted below.

- A State based security check is not considered ISPS compliant and is not valid within an ISPS Port area.
- Conversely an ISPS conforming check is not valid in the State outside the ISPS compliant area

- Some security credentials are in paper or plastic form and can be presented interstate. Others are entries in specific security plans which are exceedingly difficult to confirm from a new jurisdiction
- Criteria for criminal checks are not uniform between jurisdictions
- The lack of a national register means a person refused a clearance in one jurisdiction may be able to obtain one in a different jurisdiction
- Some jurisdictions provide employer specific clearances; others provide clearances which are valid within the jurisdiction.

DRAFT RECOMMENDATIONS 9.3 & 9.4 Page XLVI

It is pleasing to note that a separate regulatory framework for Chemicals of Security Concern other than SSANs has been drafted and put out for public comment. It appears that this separate framework has largely avoided the difficulties experienced with SSAN.

TABLE 3.2: Selected Institutional Arrangements for Chemical Regulation – Page 35

A close reading of columns 1 and 7 of this table indicates that unlike other categories of regulated chemicals SSANs have lacked a standard setting body. The upgraded AFER role suggested earlier in this paper would potentially fill this gap.

BOX 6.2 Examples of Inconsistency in dangerous goods regulations

AEISG members identify strongly with the examples of inconsistency documented in this table.. The situation in South Australia is particularly vexing; so much so that AEISG has made a detailed request to South Australia to agree to the convening of an industry/government expert working group to find solutions to a disconcertingly long list of problems presented by unique South Australian requirements. The problem is exacerbated, we believe by the regulatory concepts in the current very old (1936) Explosives Act in South Australia.

An example of inappropriate and unique unique South Australia requirements which has been imposed since submissions made by AEISG to the Draft Report is the requirement to affix “EXPLOSIVES” signage to vehicles entering that state with loads of Class 5.1 SSANs. Such signage is not required by UN or other Australian jurisdictions and runs counter to the international requirement that EXPLOSIVES signage is required for Class 1 materials only. To comply with regulations an SSAN carrying vehicle through South Australia needs to affix such signage on entry to the State and remove it immediately it leaves that State.

CHAPTER 7 – TRANSPORT SAFETY Page 169

The bullet points on this page encapsulate much of what is good and what is bad in the Australian regulatory system for the safe transport of dangerous goods *including* explosives.

If the bullet points are numbered sequentially down the page AEISG comments are:

- i) Bullet points (1), (3) and (6) correctly describe regulatory structures where national consistency has delivered and is expected to continue delivering high quality safety and environmental outcomes at costs which industry regards as a reasonable cost of doing business.
- ii) Bullet points (2) and (5) identify the existence of unnecessary compliance costs caused by interjurisdictional regulatory variances which are *currently unique to the explosives industry*. It is AEISG's considered view that these costs are avoidable and do not contribute to public safety and that aligning the explosives regulatory model with the ADG6 model for other classes of dangerous goods would deliver significant productivity gains to both the explosives industry and its mining industry customers.
- iii) Bullet point (4). AEISG has a major concern that the proposed regulatory model for ADG7 (ie model legislation replacing template legislation) runs a significant risk of repeating the adverse experiences its members have had to date with jurisdiction-specific SSAN and Major Hazard (MHF) Regulations. AEISG members therefore unequivocally support the retention of template legislation whether administered by the NTC or the workplace safety authorities. Bullet point (7) is also supported.

EXPLOSIVES _ (land transport) Page 176

This correctly notes that AEC2 was aligned to UN11. The current AEC3 aligns with UN15.

Despite commitments to align with UN Model Regulations (UN15) the current Code proposal still contains a number of "Australianisms" which were not problematical when virtually all explosives consumed in Australia were made packaged and labelled in Australia. In recent years explosives are widely traded around the globe with cases of specific explosives imported from a production line supplying other internationally located customers and shipped in containers lined and marked *according to international requirements*.

To date Australian explosives companies are still required to comply to these "Australianisms" in areas such as packaging and labeling. The resulting non-conformities involve considerable compliance costs and inconvenience. To date Australian regulators have not been prepared to negotiate on this issue.

BOX 7.1 Self-Regulation of Chemicals and Plastics Transport – Page 179

Explosives

AEISG Codes of Practice - AEISG would warmly welcome the application of Recommendation 6.4 of this Draft Report to its various industry Codes of Practice.

Interjurisdictional Consistency – Page 181

AEISG members and their contractors have a pressing need for interjurisdictional consistency similar to that achieved by the dangerous goods land transport industry in 1998 with the introduction of ADG6. Existing consultation forums seem to be unable to deliver such consistency and we therefore request the Productivity Commission to give priority to this issue in its final report.

.Explosives are after all a class of Dangerous Goods and the proven success of the 1998 reforms with other classes of Dangerous Goods the benefits of interjurisdictional consistency can be reasonably expected to be similar to those for other classes of Dangerous Goods. The current explosives transport regulatory system allows excessive scope for subjectivity in decision making. It also has to be said that there is wide variability in the responses of State and Territory regulators to industry requests for incremental moves towards national uniformity - some are generally supportive, others are implacably opposed.

AEISG members considers that the concept of interjurisdictional consistency needs to be extended to fixed, as well as transport aspects of the explosives industry.

The quantity of explosives used in Australia is of the order of 1.5 million metric tons per annum. In order to deliver this quantity the industry owns and operates a large number of decentralized manufacturing plants each with its own management structure, manufacturing plant, raw material (mostly SSAN) storages and limited Class 1 explosives storages (magazines). Most explosives are made in bulk at the point of use. Apart from the ergonomic and productivity benefits of such on-site manufacturing the exposure of the public to explosives transport is massively reduced by this technology.

Less than one percent of the above tonnage is transported as Class 1 explosives. This sea change in delivery technology demands a similar change in the laws and regulations governing the industry. Some jurisdictions have evolved and updated their laws and regulations to deal with the new realities whereas one jurisdiction (South Australia) retains 70 year old legislation to manage the industry.

In summary, AEISG members consider that the safety productivity and efficiency of the explosives industry would be greatly enhanced if all jurisdictions accepted the template legislation model for *all* aspects of explosives regulation.

CHAPTER 9 –

National Security – Regulation of Ammonium Nitrate

AEISG Inc commends the Productivity Commission on the depth and perceptiveness of the analysis of SSAN issues in this chapter. We have no difficulties with the Policy Aims of the COAG Principles, the Principles themselves or the new regulatory parameters introduced across the nation. The requirements for product security, personnel probity, quantity accountability and other relevant measures are all logical and achievable means to the required security objective ie making it very much harder for maliciously inclined people to obtain supplies of the major raw material used in explosives manufacture in Australia. Our major concern which was detailed in our submission to the Draft Report is the unnecessary variability in the manner in which the security measures are implemented in each jurisdiction.

AEISG supports all the draft recommendations in this Chapter and comments on each one as follows:

Draft Recommendation 9.1 – National Security Database via AusChek.

Apart from the reduction of complexity achieved this Recommendation closes off a potential loophole in the current arrangements.

Draft Recommendation 9.2

An excellent agenda for removing unnecessary complexity in the current system

Draft Recommendation 9.3

AEISG notes that this recommendation has been accepted in the Draft Report on Chemicals of Security Concern

Draft Recommendation 9.4

AEISG members support the recommended re-examination of the existing regulatory framework for SSAN regulation as the benefits of nationally consistent regulation become apparent and as greater experience is gained in chemical security issues.

This submission contains no material which AEISG Inc regards as Commercial-in-Confidence. As stated in the coversheet AEISG agrees to the public exposure of its submission on the Productivity Commission Website.