Australasian Explosives Industry Safety Group Inc.

Responsible Explosives Management

Applied Explosives Technology Pty Ltd
BME Australia-Asia Pty Ltd
CSBP Limited
Enaex Australia Pty Ltd
Dyno Nobel Asia Pacific Pty Ltd
Glencore Coal Assets Australia Pty Ltd
Hanwha Mining Services Australia Pty Ltd

JOHNEX explosives Pty Ltd
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

Policy & Strategy, Better Regulation Division
NSW Department of Customer Service
Level 5, McKell Building
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SYDNEY NSW 2000

27 August 2021

By email: explosives@customerservice.nsw.gov.au

RE: REGULATORY IMPACT STATEMENT AND ASSOCIATED PROPOSED EXPLOSIVES REGULATION 2021 – FEEDBACK FROM AEISG

The Australasian Explosives Industry Safety Group Inc. (AEISG) would like to thank the Policy & Strategy, Better Regulation Division of the NSW Department of Customer Service for the opportunity to provide a written submission on the topics covered within the Regulatory Impact Statement (RIS) and the associated Proposed Explosives Regulation 2021.

The need for explosives legislation to control safety and security of explosives in Australia is endorsed and fully supported by AEISG in line with community expectations. However, AEISG has for a long time now been pursuing consistency in the legislation covering the explosives industry in Australia, which is implemented and administered by each of the state and territory jurisdictions. The existing inconsistent and disjointed jurisdictional explosives legislations are an unnecessary and costly administrative burden on both the industry and the regulators, and more importantly, are an impediment to improving safety and security from explosives.

In response to recommendations from the Australian Productivity Commission, in its 2008 Report, to harmonise explosives legislation in Australia, AEISG has worked with other industry organisations, all state/territory jurisdictions and Safe Work Australia over a period of years, from 2012 to 2018, to develop a suite (4) of proposals to assist in reducing the level of inconsistencies. The proposals have been agreed by Workplace Health and Safety Ministers, and other relevant Ministers, for implementation.

While it is the responsibility of all jurisdictions to pursue these agreed outcomes via their respective legislations, it is disappointing that there appears no attention to the outcomes in proposing any relevant changes within the current review. AEISG believes it is an opportune time to at least move towards incorporating some aspects of the agreed proposals into the regulatory framework of the current legislation, such that harmonisation can proceed albeit at a less than desirable pace. Indeed, this belief appears to be reflected and supported in the associated RIS Rationale, page 9 - **'It is also an opportunity to improve the efficacy and operation of the regulatory framework for explosives.'**

The following comments are provided by AEISG on the above referenced documents made available by the NSW Government. They are provided in three parts with the intention of assisting the process of explosives legislation review in New South Wales:

- General;
- Specific responses to questions raised in the RIS; and
- Specific comments on the Proposed Explosive Regulation 2021.

General

It is appreciated that under the sunsetting provisions contained in the Subordinate Legislation Act 1989, the current Explosives Regulation 2013 is due for automatic repeal on 1 September 2022 and hence new regulations will be required to be in place before that date to effectively support the administration of the enabling legislation, the Explosives Act 2003.

However, it is disappointing that the current review in its perceived rush to avoid regulatory repeal has not undertaken more than a cursory look at the existing regulations; a thorough review would enable more meaningful improvements in safety and security while at the same time removing existing unnecessary, inconsistent, impractical and incorrect legislative provisions. The limited changes proposed for the new regulations will mean that current deficiencies will continue. AEISG will provide more details in this respect in its specific comments, as part of this response, on the Proposed Explosives Regulation 2021.

In late 2019, AEISG provided the NSW Government with a response on the Statutory Review of the Explosives Act 2003 and some comments in that response remain valid and relevant to the current review of the subordinate regulations, and hence will be repeated where appropriate.

AEISG supports Option 2, as outlined in the RIS, for regulatory reform of the Explosives Regulation in line with the Subordinate Legislation Act 1989, i.e., a remake of the Explosives Regulation with amendments. However, in doing so AEISG is not indicating support for the impact assessment of the three options considered in the RIS, as it appeared to lack detail and a proper appreciation or understanding of the potential impacts of the proposed changes sufficient to enable any realistic evaluation of costs and/or benefits.

For the current review:

- Have the positive aspects of other jurisdictions' explosives legislation been considered for possible adoption or inclusion?
- Are there provisions in the existing NSW explosives regulations which are not reflected in other jurisdictions legislation and could be removed without impacting safety or security?

These considerations would generally lead to tangible improvements in safety and security, and assist progress towards legislative harmonisation. In the documents provided by the NSW Government in relation to this legislative review, there is no evidence of any significant 'review' of current requirements or any material moves towards the in principle support for nationally consistent explosives legislation, as

previously declared by the NSW Minister for Innovation and Better Regulation in his correspondence of December 2018.

Specific Questions from the RIS

1. **How will the proposed classification of desensitized explosives as explosive precursors affect you or your business?**

   The assessment of costs associated with the inclusion of 'desensitised explosives' as an explosive precursor under the amended Section 5 of the regulations, considers these to be minimal as it will impact an existing 'explosives industry' with relevant systems in place. However, there is potential for desensitised explosives to be used in numerous manufacturing industries including paint, cosmetic and pharmaceutical industries, which may not have as yet been subjected to the security clearances and licensing provisions of the explosives regulations, which such a change might invoke.

   AEISG is not, at this stage, debating the inclusion of desensitised explosives under the proposed explosive regulation 2021, but considers that such an inclusion, in the fashion proposed, i.e., as an explosive precursor, needs to be properly considered, with effective consultation with potential industries impacted, and then properly reflected throughout the remainder of the proposed regulations to ensure potential impacts have been corrected, e.g.,

   - Section 67(b) imposes AS4326 (an Australian Standard on Oxidising substances) on all explosives precursors,
   - Section 81(1) requires all explosives precursors to be packaged and marked in accordance with the AEC (scope is only for Class 1 explosives),
   - Section 97(1) also requires compliance with the AEC for persons driving a vehicle containing an explosive precursor.

   Further, in the proposed regulations, the term 'explosive precursor' will include 'desensitised explosives' and 'security sensitive dangerous substances' (refer Section 5). The latter are defined in Schedule 1 of the proposed regulations. For clarity, the relevant desensitised explosives, i.e., Class 3 and 4.1 dangerous goods should be defined in the same, or other, schedule to alert potential users and handlers of their coverage by the proposed explosives regulations.

   It would seem preferable and more prudent to firstly promote such a proposed change nationally with other jurisdictions, seeking some level of support or endorsement and a nationally consistent approach, prior to imposing additional and differing requirements on potentially unsuspecting industries. As currently proposed, such an inclusion is likely to add to the existing inconsistencies across jurisdictional explosives legislations and hence impose additional costs on affected industries.

   One of the four (4) proposals agreed by all jurisdictions following the Strategic Issues Group (SIG)-Explosives work was the consistent definition of the term 'explosives'. It was agreed that the definition would be that used in the United

Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS). Incorporation of this consistent definition into the proposed explosives regulations would lessen inconsistencies and provide clarity for those impacted.

The issue of inclusion of desensitised explosives into explosives legislation is a subject for consideration by the Australian Forum of Explosives Regulators (AFER), rather than a unilateral decision by an individual jurisdiction, given the potentially significant impost on impacted industries.

2. **Should employees be required to tell their employer/principal contractor about changes to the status of their licence or security clearance? Is the proposed penalty commensurate with the offence?**

   AEISG is comfortable with this provision. However, it would also be helpful to the relevant industries and provide added safety for the community if the explosives regulator maintained a register of security cleared persons, accessible by employers. Such a register need not contain any confidential information, simply a confirmation of security clearance.

3. **Do you support removing the requirement for NSW Police officers to hold security clearances?**

   AEISG considers this a sensible proposal.

4. **Are there any reasons why existing exemptions from requirements to hold a licence should not be extended to include the proposed exemptions from requirements to hold a security clearance?**

   AEISG considers this a sensible proposal.

   However, the RIS states: **'If a person exceeds the prescribed quantities, then they will continue to require both a licence and security clearance in accordance with the existing provision.'.**

   The prescribed quantities are listed in a Table in Section 47 of the current regulations (Section 49 of the Proposed Regulation) but give no period over which the quantities are to be used or sold.

   If a tradesman uses 1,000 power device cartridges a week, is he over the limit after 10 weeks and hence subject to security clearance and licensing? If a seller of same sells 5,000 power device cartridges per week, is the seller over the limit after two weeks and subject to security clearance and licensing? Or are the limits in the Table meant to reflect storage limits?

5. **Are there any other instances where an exemption from requirements to hold a security clearance is appropriate?**

   It has been proposed that an exemption should apply to police officers because '**Every NSW police officer is required to hold a higher-level security clearance than those that are required under the 2013 Regulation (Clause 9)**.' – refer RIS.

However, AEISG sees no justification provided for Inspectors and/or Authorised Officers to be exempted from the requirement to be security cleared as permitted by Sections 10 and 44 of the proposed regulations. The community would expect public servants accessing explosives to be subject to the same checks as industry employees and members of the public.

6. **Are there any other amendments to the research and development process that need to be implemented? If so, what are they?**

   AEISG questions why the provisions of Section 60 of the proposed regulations are limited by subsection (3), which states '**This section does not apply to explosives that are goods too dangerous to be transported, within the meaning of the ADG Code or the Australian Explosives Code, that can produce an explosive or pyrotechnic effect.'**

   If covered by a licence to manufacture (refer subsection (1)) why shouldn't the exemptions also apply to self-reactives or organic peroxides (Type A) or primary explosives which are all explosives under the regulations (refer Section 4(b)) as goods too dangerous to be transported? It is understandable that such goods should not be transported, however other aspects of research and development should be permitted.

   Does the storage exemption apply to sites approved as classification testing facilities? Such sites may receive explosives for temporary storage prior to testing.

7. **Are there any reasons why police officers should not be exempt from a licence to store explosives for general duties in evidence handling in police stations? If so, what are they?**

   Such an exemption, without adequate and appropriate conditions, would place undue pressure on the NSW Police Commissioner to provide a safe place of work for employees.

   Police Officers have a difficult job to do and should be respected for their efforts and responsibilities. However, in general, police officers do not have knowledge of explosives nor safe handling of explosives. Past experiences involving police stations have demonstrated examples of explosives kept in desk drawers, explosives in evidence rooms for extended periods, inappropriate packaging and handling, detonators and high explosives kept together, etc.

   While a limit of 10kg is proposed, this is sufficient to cause multiple deaths in a close working environment. Additional safety conditions could be considered to ensure a safer workplace at those police stations.

   This provision is not supported as currently drafted but the intent is acknowledged.

8. **Are the proposed restrictions of 12kg of propellant powder at a single residential address for firearms licence holders appropriate?**

   AEISG supports this provision to limit multiple lots of 12kg of propellants at a single residence.

9. **Are any other explosives or items suitable for inclusion or exclusion from Table 1.1 within Clause 47 of the proposed Regulation? If so, what?**

   AEISG believes this reference should be to Section 49 of the proposed regulation, not Section 47.

   The explosives listed in Table 1.1 of Section 49 are not necessarily all of Hazard Division 1.4. Distress signals have not been limited by Hazard Division, hence this quantity limit can currently include signals of Hazard Divisions 1.1, 1.2 and 1.3.

   AEISG supports the inclusion of distress signals used by the public for safety purposes.

   Further, some life saving devices such as air-bags are not of Hazard Division 1.4, but rather exist in Class 9 of the UN Model Regulations and the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code). These need to be covered/included unless they are exempted completely from the Explosives Regulation 2021.

10. **Do you support transferring publishing requirements from the NSW Government Gazette to the SafeWork NSW Website?**
    (This is the second Question 9 in the RIS. AEISG has listed it as 10.)

    AEISG supports the transfer of publishing requirements from the NSW Government Gazette to the SafeWork NSW website.

    AEISG believes that this move should also extend to Sections 115 and 116 of the proposed regulations.

11. **Are there any concerns with the expansion of restricting the transport of loads of HD 1.1, 1.2 and 1.5 explosives to all NSW road tunnels in alignment with 300-2 of the NSW Road Rules 2014?**
    (This is Question 10 in the RIS. AEISG has listed it as 11.)

    On reading the proposed Regulation 92(3), AEISG believes there is a resulting inconsistency between the NSW Road Rules 2014 and the proposed regulations.

    The existing explosives regulation specifically refers to tunnels (refer Section 89) while the proposed regulation does not mention tunnels but refers to prohibited areas. For the benefit of users, any restriction on the use of tunnels needs to be clearly defined, i.e., what is the definition of ‘tunnel’ under the road rules?

    From the RIS, it appears that road tunnels are included in the definition of ‘prohibited areas’ and that the road rules restrict **placarded loads of explosives** which extends beyond Hazard Divisions 1.1, 1.2 and 1.5 as quoted in the proposed regulation. Further, the proposed regulation refers to **all explosives of Hazard Divisions 1.1, 1.2 and 1.5** – not only placarded loads. This inconsistency needs to be clarified.

    AEISG does not support the expansion of restricting loads of explosives through all NSW road tunnels as it believes this leads to significant increases in risk to the community. Some ‘tunnels’ are quite short and hence to restrict the efficient and

safe transport of explosives through these by diverting them through more populated areas is not conducive to improving safety.

It is noted that Section 92(3)(b)(i) limits the transport of explosives in the CBD of some cities, presumably because they might present a risk to the relevant communities. By limiting the use of tunnels for transporting explosives, movement through other CBDs is being encouraged or forced. Real examples of this are evident and being experienced. Rather than a blanket ban on all tunnels, AEISG believes that any restriction on the use of particular tunnels throughout NSW should be risk based.

Specific comments on the Proposed Explosive Regulation 2021.

The following comments include issues arising from the existing explosives regulation and those arising from the proposed changes, as AEISG believes these issues continue to remain valid.

Section 2

It is assumed the commencement date will be adjusted to 1 September **2022.**

Section 4

At present, the Explosives Act 2003 refers to these regulations for the definition of 'explosive'. AEISG is of the view that the definition of 'explosive' is an issue for the enabling legislation, i.e., the Act, and should not be left to the changeable regulations.

AEISG is of the view that the definition of 'explosive' should be that agreed by relevant Ministers as one of the 4 proposals resulting from the work of SIG-Explosives. The agreed definition for 'explosive' would overcome several deficiencies in the current definition in Section 4 of the regulations. It has been previously agreed that all jurisdictions would move to using the definition for 'explosive' as outlined in the GHS, to assist harmonisation of explosives legislation in Australia and hence improve safety and security for the community. Has this been considered in the current review?

AEISG is comfortable with the scope of the legislation covering things other than 'explosives' as is already the case.

The definition provided in this section of the regulation would appear to include a broader range of substances than intended. Section 4(b) would include both self-reactive substances and organic peroxides of Type A and potentially others as referenced in the ADG Code. If this is intended, appropriate provisions for their handling as 'explosives' have not been included in the regulation, e.g., licences, security clearances, storage requirements, etc. If unintended, some exceptions need to be specified in this section.

Further, the wording of 4(c) is problematic in that substances that can be mixed to produce an explosive effect, e.g., oxidisers and fuels, fuels and air, etc., are generally not considered to be 'explosives'.

Section 5

The inclusion of desensitised explosives within the definition of 'explosives precursor' has already been commented upon earlier in this document.

The definition of 'desensitised explosive' includes all those contained within the ADG Code. If this is intended, it would extend the scope of the proposed explosives regulation to a range of industries potentially using these Class 3 and Class 4.1 dangerous goods. Have such industries been canvassed and are they aware of the impacts?

If not intended to include all those relevant dangerous goods of Class 3 and Class 4.1, then specific entries should be mentioned for inclusion.

Having extended the term 'explosives precursor' to include desensitised explosives in the proposed regulations, there appears to have been an insufficient review of all of the subsequent explosives regulations applicable to explosives precursors to address this inclusion.

For example:

- Section 67(b) imposes AS4326 on all explosives precursors (this standard is for oxidising substances),
- Section 81(1) requires all explosives precursors to be packaged and marked in accordance with the AEC (the AEC covers Class 1 explosives, not security sensitive dangerous substances or desensitised explosives),
- Section 97(1) requires compliance with the AEC for persons driving a vehicle containing an explosive precursor (AEC doesn't cover any of the substances included in the term 'explosive precursor').

If the proposed change is to proceed, a detailed review of requirements in the regulations applying to explosives precursors should be undertaken to ensure their appropriateness.

Has the transport of desensitised explosives been moved out of the Dangerous Goods (Road and Rail Transport) Act 2008 as required by Clause 5 of the Explosives Act 2003, to enable this inclusion in the regulations?

Section 9

As proposed, the requirements to hold security clearances will now extend to those handling all Class 3 and Class 4.1 desensitised explosives.

Section 10(3)

There is an apparent typo involving some missing words in this subsection.

Perhaps should be '…..is carried out during **the course** of the officer's duties.'.

Sections 12, 13, 14 and 15

Security Clearances

- The ability of an individual to appeal any adverse results of any application for such document has been omitted. This is considered to be a fundamental legislative principle for an individual whose employment prospects will, understandably, be significantly and adversely impacted by a negative outcome.
- The grounds for refusing a security clearance (refer Clause 12 (2) of the proposed explosives regulation) include a 'recommendation' from the Commissioner of Police '.....on the basis of..... information available to the Commissioner'. This information may be subjective, or of dubious validity, but the regulatory authority is left with no option but to refuse the security clearance. The regulatory authority has, in reality, handed administration of this part of the regulation to the Commissioner of Police, based on 'information available' with no apparent appeal mechanism available to the applicant.

The rights of the individual need to be respected, even when security intentions are recognised.

Section 16

The requirement for licences now extends to those handling all Class 3 and Class 4.1 desensitised explosives, including manufacture, import, supply, transport and store.

Section 17(3) and 34

The exemption for those holders of a fireworks (single use) licence from requiring a security clearance appears to be at odds with the Security Sensitive Ammonium Nitrate (SSAN) principles.

Such natural persons have authorised access to a significant quantity of display fireworks (security sensitive explosives) up to 4 times per year. This security loophole would require serious justification.

Section 21

AEISG is of the view that this remake is an opportune time to consider renaming the Blasting Explosives User's Licence to a Shotfirer's Licence in line with:

- Other jurisdictions occupational explosives licences;
- The agreed SIG-Explosives proposals for occupational licences; and
- The nationally established and recognised competencies for this occupation.

Such a move would assist the move towards legislative harmonisation and demonstrate NSW's commitment to that goal.

Section 22(1)(a)

This subsection applying to mobile processing units should be extended as indicated below, in bold, to reflect the activities conducted:

(a) if the licence relates to a mobile processing unit—transporting the explosive precursors specified in the licence in the mobile processing unit to **and from** the premises or location at which explosives are to be manufactured and manufacturing explosives at the premises using the mobile processing unit.

Section 28(f)

The unnecessary wording used in this subsection, as indicated below, could be deleted as:

- It does not make sense given the extended definition of explosive precursor;
- ANFO is defined in the Dictionary to the regulations; and
- AS2187 outlines the details.

AEISG suggests:
(f) if specified in the licence— manufacturing ANFO in accordance with AS2187 for immediate use or for use within 24 hours.

Section 35(2)(c)

It is questionable why **a list detailing the vehicles that may carry the explosives or explosive precursors concerned,** is required as a 'must' for a security plan. Such information may be impractical to provide – suffice to say the vehicles should be authorised by licence or other approved method.

Section 39(c)

Further to comments under Sections 17(3) and 34, how does the regulatory authority satisfy itself that the applicant is a fit and proper person if there is no security clearance required?

Section 43(1)

There is a superfluous '**or**' at the end of the first line.

Section 44(1)

No justification has been provided for Inspectors and/or Authorised Officers to be exempted from the requirement to be security cleared as permitted by Sections 10 and 44 of the proposed regulations. The community would expect public servants accessing explosives to be subject to the same checks as industry employees and members of the public.

Section 44(2)

The term 'authorised officer' is defined for this section only, however the term is used elsewhere in the regulations (e.g., Section 10). Suggest the definition be placed in the Dictionary.

Section 47

Refer to previous comments on storage of explosives at police stations (RIS 7).

Section 49

The prescribed quantities exempting a licence to possess, transport, store, use, sell or supply are listed in a Table in Section 49 of the proposed regulations, but give no period over which the quantities are to be used, sold or supplied.

If a tradesman uses 1,000 power device cartridges a week, is he over the limit after 10 weeks and hence subject to security clearance and licensing?

If a seller sells 5,000 power device cartridges per week, is the seller over the limit after two weeks and subject to security clearance and licensing? Is a licence required if the seller supplies 200,000 such devices per year, but never in more than 10,000 lots?

Or are the limits in the Table meant to reflect storage limits? The Table could be clearer in this regard.

Section 51(b)

This subsection could be extended to include any explosives that are part of the safety system of a vessel or aircraft, i.e., not limited to distress signals.

Section 52(a)

The term 'explosives site' is defined in the Dictionary as '**land on or in which explosives are stored.'.** In some cases this will limit the exception for a licence to transport on sites where explosives are used, but not stored, e.g., some mines and quarries which have explosives supplied for immediate use.

An amendment of the subsection, or the definition, could be considered to rectify this issue.

Section 56(2)

As agreed by all jurisdictions in the SIG-Explosives process, the definition of an authorised explosive should include those authorised in another jurisdiction or under a corresponding law.

There is no benefit to community safety to have explosives re-authorised in NSW. Evidence of authorisation in another jurisdiction can be provided to the regulator, upon request, to enable any relevant review.

This would be one of the easier SIG proposals for NSW to implement.

Section 60(3)

This exception for handling or modifying an explosive for research and development is supported, however it does not extend to those explosives too dangerous to transport, such as primary explosives, self-reactive substances and organic peroxides of Type A because of the following subsection:

'(3) This section does not apply to explosives that are goods too dangerous to be transported, within the meaning of the ADG Code or the Australian Explosives Code, that can produce an explosive or pyrotechnic effect.'

If the activity is undertaken under a licence to manufacture, it is not understood why the exception is limited in this manner.

By all means, the explosives referred to should not be transported and if this is the reason for the relevant subsection, it could be amended slightly to reflect this, such as:

'(3) Despite subsection 2(a), this section does not authorise the transport of explosives that are goods too dangerous to be transported, within the meaning of the ADG Code or the Australian Explosives Code, that can produce an explosive or pyrotechnic effect.'.

In this way the exception can be more universally applied to all explosives while maintaining safety.

Section 62(6)

The application to have an explosive registered as an authorised explosive should not be disadvantaged by the inability of a regulatory authority to efficiently process such application within 3 months, for whatever reason. No reason needs to be provided to the applicant. Does the applicant have to then reapply?

It is suggested that this subsection be deleted, or otherwise modified, to provide more clarity to the applicant and/or to lessen the pressure on the regulatory authority.

Further, there does not appear to be an appeal mechanism for industry to access should an application be formally refused, or simply ignored.

Section 63(1)(a)(iii)

An explosive may have numerous UN Numbers, Proper Shipping Names and Classification Codes depending on packaging. Suggest plurals be used for these details.

Section 63(2)

These definitions for Proper Shipping Names and UN Numbers would prevent use of relatively new entries not contained in the AEC, such as those for electronic detonators.

The AEC has not been updated for more than 12 years and is unlikely to be revised.

It is suggested that these definitions reference the ADG Code or the UN Model Regulations directly. These are more frequently revised.

Section 65(2)

Prior to revoking any registration of an explosive as an authorised explosive, the regulatory authority must give notice of its intention to do so. Such notice should include the reasons for such intended revocation, i.e., 'at least 30 days' notice of its intention to revoke registration **and its reasons for doing so**, and '

This will enable the original applicant to properly respond to the regulator under 65(2)(b).

Section 67

Given the definitions for explosives and explosive precursors in the proposed regulations, it would appear that reference to codes and standards in this section are not appropriate.

(a) Applies to 'explosives', however AS2187 and the AEC apply only to Class 1 explosives. To what storage standard should the storage of other explosives apply?
(b) Applies to explosives precursors, but these now include desensitised explosives. Should the storage of all explosives precursors be in accordance with AS4326?

Further, this clause requires the person carrying out the relevant activity involving an explosive precursor to comply with, inter alia, AS4326-2008 for storage.

AEISG is of the view that AS4326-2008 is insufficient for storage and handling of Ammonium Nitrate Emulsions (ANEs) and would recommend its own (AEISG), more stringent, but different, Code of Practice, **STORAGE AND HANDLING OF UN3375**, **Edition 5 July 2018** for ANEs.

Is adherence to the AEISG Code of Practice for ANEs satisfactory, or acceptable to the regulatory authority?

Sections 72 and 74

Obligations are placed on the licence holder to ensure compliance with the relevant security plan and safety management plan.

To support the licence holders, obligations should also be placed on those working for the licence holder, e.g., employees, contractors, etc., to comply with the licence holder's security and safety management plans.

Section 77(2)

In the existing explosives regulations (Section 75(1)), examples of proof of identify were provided but not mandated **'……(such as a passport or a motor vehicle driver licence issued in Australia that displays a photograph of the person),'.**

However, in the proposed regulations this has been significantly restricted such that suppliers may only accept the three nominated methods of identification.

It is unsure at this stage whether a Shotfirer's licence (with photo) issued by another jurisdiction would satisfy these criteria.

Section 78(2)(e)

Some explosives are supplied for immediate use, i.e., will not be stored.

This subsection should apply 'where relevant' or 'if not for immediate use'.

Section 81(1) and 81(5)

These subsections require explosives precursors, none of which are Class 1 explosives, to be packaged and marked in accordance with the AEC, which is only relevant for Class 1 explosives. Both subsections should be extended to include the ADG Code, as in subsection 81(2).

Section 81(6)

This subjection provides an exemption from compliance with subsection (2) to a police officer. However, other emergency services are authorised to transport explosives in an emergency situation (refer Section 48) as are Inspectors. Should not this exemption be extended to these others?

Section 87(7)

There appears to be an inconsistency between Section 50(5) and 87(7) concerning a person who holds **an ammunition collection permit under the *Firearms Act 1996***.

It appears that 50(5) permits such a person to be exempted from a licence to possess or store ammunition only. Hence, that person would also require a licence under the explosives regulations to access, possess or store any propellant powder.

Section 87(7) exempts such a person from the requirements to store propellant powder (up to 12 kg) in accordance with Section 87, i.e., in a magazine. Does an ammunition collection permit authorise access to propellant powder? If so, why – and does Section 50(5) need to be amended? If not, why does Section 87(7) infer the person has propellant powder?

If not in a magazine or secure store, how should up to 12 kg of propellant powder (a security sensitive explosive) be stored?

The requirements do not appear clear in this regard and could be better worded.

Section 92(1)(c)(iii) and (vii)

The terms used in the above subsections should be '**ordnance**' rather than '**ordinance**'. These are words of totally different meaning.

Section 92(3)

On reading the proposed Regulation 92(3), AEISG is of the view that there is a resulting inconsistency between the NSW Road Rules 2014 and the proposed regulations.

The existing explosives regulation specifically refers to tunnels (refer Section 89) while the proposed regulation does not mention tunnels but refers to prohibited

areas. For the benefit of users, any restriction on the use of tunnels needs to be clearly defined, i.e., what is the definition of 'tunnel' under the road rules?

From the RIS, it appears that road tunnels are included in the definition of 'prohibited areas' and that the road rules restrict **placarded loads of explosives** which extends beyond Hazard Divisions 1.1, 1.2 and 1.5, as quoted in the proposed regulation. Further, the proposed regulation refers to **all explosives of Hazard Divisions 1.1, 1.2 and 1.5** – not only placarded loads. This inconsistency needs to be clarified.

AEISG does not support the expansion of restricting loads of explosives through all NSW road tunnels as it believes this leads to significant increases in risk to the community. Some 'tunnels' are quite short and hence to restrict the efficient and safe transport of explosives through these by diverting them through more populated areas is not conducive to improving safety.

It is noted that Section 92(3)(b)(i) limits the transport of explosives in the CBD of some cities, presumably because they might present a risk to the relevant communities. By limiting the use of tunnels for transporting explosives, movement through other CBDs is being encouraged or forced, thus countering the safety intentions of subsection 92(5). Real examples of this are evident and are being experienced.

Rather than a blanket ban on all tunnels, AEISG is of the view that any restriction on the use of particular tunnels throughout NSW should be risk based, identified and not create unnecessary risks to populated areas.

Section 93(1)(a)

Does this provision need to apply to all explosives, even those listed in the Table to Section 49? It would appear prudent to include some exceptions from this fairly onerous provision where community safety impacts are minimal, to minimise the administrative burdens on the licence holder, the regulatory authority and the fire services.

Section 94(3)

This subsection contains a typo – with a superfluous '**under the'.**

Section 97(1)(a)

For a vehicle containing an explosive precursor, the driver should comply with the ADG Code, not the AEC.

Section 100(1)(d)

Why shouldn't the holder of a BEUL be able to charge for the disposal of explosives in a professional manner consistent with AS2187?

Section 105

This section relates to the notification of loss or theft of explosives or explosive precursors, but applies only to licence holders. Throughout the regulations, there are exceptions to the requirements for licences, e.g., to possess or store up to 12 kg of propellant powder. Shouldn't this apply to any person?

Sections 115 and 116

AEISG supports the transfer of publishing requirements from the NSW Government Gazette to the SafeWork NSW website.

AEISG is of the view that this approach should also extend to Sections 115(1) and 116(1)(b) of the proposed regulations.

Dictionary

In the definitions for both '**amorce'** and **'starting pistol cap',** (a)(i) should be potassium **chlorate**, not **chloride.**

AEISG thanks the NSW Government for the opportunity to comment on the proposals for explosives regulation amendments and hope the above comments will assist this process. AEISG would appreciate feedback on its submission from the Policy & Strategy, Better Regulation Division of the NSW Department of Customer Service, and is available to meet with the Division to clarify any aspects of this submission.

Should you wish to discuss any of the matters raised in this submission please do not hesitate to contact me.

Yours sincerely

Richard Bilman
Chief Executive Officer
AEISG