Orica Feedback

NSW Explosives Regulations 2021

Orica thanks the Policy & Strategy, Better Regulation Division of the NSW Department of Customer Service for the opportunity to provide written feedback regarding the proposed changes associated with the NSW Explosives Regulation 2021.

Orica has responded to the questions raised in the Regulatory Impact Statement (RIS) followed by comments regarding the proposed regulation in general.

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

Orica already has developed and implemented detailed systems related to the handling of security sensitive products such as Class 1 explosives and explosive precursors such as ammonium nitrate and ammonium nitrate emulsion. As such, the addition of desensitised explosives is not anticipated to have a significant affect.

For industries that may not already operate in the space of handling security sensitive products, this proposed classification is likely to have a very significant affect. No information is provided in the RIS on security incidents that have occurred with desensitised explosives, that has highlighted the need for widening the explosive precursor definition.

All aspects of the new classification, capturing additional products which are already dangerous goods and need to comply with the associated standards and regulations, need to be clearly identified, particularly the lifecycle licensing and associated security clearance requirements. Subsequent to this investigation, the Department should hold detailed discussions with the affected industries.

For example, AS4326 is not an appropriate standard to apply to the storage of either Class 3 or Division 4.1 dangerous goods; nor is packaging and labelling to the Australian Explosives Code (AEC) appropriate.

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

Although Orica agrees in principle with the requirement of individuals to notify employers of the cancellation or suspension of a security clearance or licence as per Clauses 15(3) and 43, the regulatory authority is missing an opportunity to engage with Industry directly regarding these situations.

While the introduction of an offence is intended to establish greater responsibility of the individual and assist businesses to ensure they do not allow persons with suspended or cancelled licenses to undertake work, the reality is that under the regulations as written, the onus rests completely on the individual to inform his/her employer or supervising licence holder.

Orica recommends that to further protect businesses from the position of breaching the law or the condition of their licence, the regulatory authority either maintain a published register of licence numbers for which a cancellation or suspension has been issued; or establish a process for communicating these to industry.

To provide a recent example, no communication has been received on the status of the Blasting Explosives User Licences involved in two incidents that have been under investigation by NSW Resources Regulator. As a supplier of blasting explosives, how does Orica check if these licences are still valid?

The proposed penalty is commensurate with the offence.

Question 3 *– Do you support removing the requirement for NSW Police Officers to hold security clearances?*

Orica acknowledges that the clearance process for all NSW police officers has been reviewed by the Department and determined to exceed that for which a security clearance is required and therefore supports removing the requirement for NSW police officers to hold security clearances.

The Department should consider whether this change may cause confusion in a situation when a licence still applies and meeting the subsequent licensing obligations.

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

Orica agrees that exemptions from requirements to hold a licence should be extended to include the proposed exemptions from requirement to hold a security clearance. However, clarity is needed regarding the quantities outlined in **Table 1.1** of **Part 3 Licences, Division 5 Exceptions from licence requirements, *Clause 49 Power device cartridges, distress signals, life-saving appliances, and toy fireworks*.**

The prescribed quantities listed in Table 1.1 give no period over which the quantities are to be used or sold. Nor is there any indication of how these quantities might be exceeded, thereby triggering the requirement of a licence and security clearance. Clarity is requested about whether the quantities are meant to represent storage quantities at any given time or finite quantities over a specific timeframe.

In addition, the specification of these four types of explosives in the regulation exclude any other devices that may also fall within the definition of low risk where quantities are low, such as hybrid explosives which are very low risk 1.4S products.

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

Orica proposes that a Clause be incorporated into the regulation specifying a process to seek an exemption for situations not currently defined, in instances where an exemption from requirements to hold a security clearance may exist.

This enables industry to seek exemptions for situations not identified at present and for the regulatory authority to review on a case-by-case basis.

Orica continues to strongly advocate for the harmonisation of the security clearance process across all Australian jurisdictions. The current process of obtaining security clearances across multiple jurisdictions, simply because each state believes they have the best process is bureaucratic and adds significantly onerous, and often hidden, administrative burden on both industry and government, with minimal security benefit.

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

Orica supports the recognition of the requirements related to the research and development process.

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

Yes, Orica believes there are reasons why police officers should not be exempt from a licence to store explosives in police stations.

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.

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.

In addition, the "limit" of 10kg proposed (**equivalent to 10,000 detonators**), is a quantity sufficient to cause multiple deaths in a close working environment and should not be encouraged without the necessary protocols that the licensing process initiates and demands.

To meet the intent of this change, as an alternative, Orica suggests applying ***Table 2.1 Risk Categories for Explosives*** from the AEC. Specifically allowing police stations to store quantities of explosives in correlation to a maximum of Category 1 (Low Risk – up to 5kg of blasting explosives and 125 detonators) of the Code reduces the quantities allowed without a licence, thereby reducing the risks related to this potential storage.

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

Orica is not involved with the propellant powder industry and, hence, cannot provide any comments on this question.

Question 9a *– 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?*

Orica is concerned that this is a significant change from the previous recognition that Hazard Division (HD) 1.4 products, particularly 1.4S products, represent a low risk and therefore the safety and security benefits achieved through licensing are not proportionate to the risks.

No information is provided in the RIS on safety or security incidents that have occurred with HD 1.4 products, that has highlighted and justified the need for widening the licensing process.

This change is likely to result in reduced harmonisation with other jurisdiction licensing, particularly in explosives transportation. It is vital for industry to have consistency when moving product across Australia, a process currently underpinned by the alignment with the AEC. It is unclear how this change will align, or otherwise, with AEC requirements. Lack of alignment will cause confusion and increase administrative costs for both government and industry.

There are several products with classification of 1.4S that are recognised as low risk, which should be included in Table 1.1, for example hybrids used in detonator assembly and signal tube in certain situations.

Orica highlights the list of explosives in **Part 3 Licences Division 5 Exceptions from licence requirements, *Clause 49 Power device cartridges, distress signals, life-saving appliances and toy fireworks*** are not necessarily all of Hazard Division (HD) 1.4. For example, distress signals are not limited by HD and therefore the quantity can also include signals of HD 1.1, 1.2 and 1.3.

Likewise, some life saving devices (i.e.: air bags) are not HD 1.4 but theoretically should be included in the proposed table.

It is unclear what the process would be to include additional products in Table 1.1, post the regulations being published. Therefore, given that this is major change, and it is highly likely that other low risk products should also be listed, Orica recommends including a subpoint in the regulation, to allow for low-risk products to be gazetted, as determined by the Department, in addition to those listed in Table 1.1.

Question 9b *– Do you support transferring publishing requirements from the NSW Government Gazette to the SafeWork NSW Website?*

Orica supports the transfer of publishing requirements from the NSW Government Gazette to the SafeWork NSW Website.

Question 10 *– Are there any concerns with the expansion of restricting the transport of loads of HD1.1, 1.2 and 1.5 explosives to all NSW road tunnels in alignment with 300-2 of the NSW Road Rules 2014?*

Yes, Orica has concerns with, and does not support 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.

Firstly, the Explosives Regulations 2021, **Part 5 Safety and Security Measures Division 4 Storage and Transport, *Clause 92 Transport of explosives by vehicles in certain areas*** does not mention tunnels. Without a clearer understanding and actual publication in the regulation regarding the use of tunnels, the proposed expansion to include all tunnels cannot be reviewed properly.

Secondly, ***Clause 92*** refers to **prohibited areas** having the same meaning as in the *Road Rules 2014, rule 300-2.* The **prohibited areas** in the Road Rules are quite specific and define the tunnels for which the rule applies. It does not include **all** tunnels and is therefore inconsistent with the proposal for the regulations to include all tunnels.

Finally, Orica supports the proposal of a *"standardised risk assessment methodology for the passage of dangerous goods through tunnels in Australasia"* as per **Austroads Research Report AP-R589-19** *Dangerous Goods in Tunnels* of which the Roads and Maritime Services NSW is a member organization. The transport of Dangerous Goods (DGs) inherently carries risk. Banning DG transport in all tunnels can transfer the risk to other areas where the risk is higher, such as densely populated areas, where an incident could have major personal and economic repercussions.

As per this research, the risk assessment needs to consider the whole transport route, rather than focussing solely on the section through a tunnel. The whole transport route assessment may demonstrate significantly reduced risks by using a tunnel, particularly where the alternative routes go through heavily populated areas, or through areas identified and proven to have increased chances of traffic accidents. Any restriction on the use of particular tunnels needs to be risk based, using a whole transport route risk assessment approach.

Specific Comments regarding the Explosives Regulation 2021

- Although it is assumed the commencement date will be adjusted to 2022, Orica seeks clarification regarding the date of repeal of the NSW Explosives Regulation 2013.

  The **Explanatory note** in the Explosives Regulation 2021 specifies 1 September 2021, whereas the Executive Summary of the RIS specifies 1 September 2022.

- **Part 1 Preliminary *Clause 8 Classification of Detonators*** is misleading regarding the classification of detonators; specifically, those of HD 1.4B and 1.4S. The Clause implies that all detonators are considered HD 1.1B unless packaged in accordance with the requirements of HD 1.4B and 1.4S. Another line should be added so the reader understands that as soon as the packaging of HD1.4B and 1.4S is opened or compromised, the detonators inside are considered HD 1.1B as it's the packaging that denotes the HD, not the contents themselves.

- **Part 3 Licences Division 4 Exceptions from licence requirements – *Clause 44 Handling of explosive by inspectors and other authorised officers*** deems that an inspector or authorised officer is not required to hold a security clearance.

  Orica maintains that an inspector and/or authorised officer should be subjected to the same requirements as the persons and industry members for whom they work as public servants.

- **Part 3 Licences Division 5 Exceptions from licence requirements - *Clause 55 Use of small quantities of security sensitive ammonium nitrate*** deems that a person is not required to be authorised by a licence.

  Orica questions how a customer seeking to purchase can be validated by a security sensitive ammonium nitrate supplier under this circumstance.

- **Part 3 Licences Division 2 Types of Licences, *Clause 28 Blasting explosives user's licence.***

  The name "Blasting explosives user's licence" creates confusion and Orica recommends changing the licence name to "Shotfirer's Licence" to align with other jurisdictions and recognized national competencies.

  Changing to "Shotfirer's Licence" exemplifies NSW commitment to and assistance in moving toward harmonization of explosives legislation.

- **Part 4 Prohibited and authorised explosives Division 2 Registration of Explosives, *Clause 65 Revocation of Registration*** outlines the ability and process of the regulatory authority to revoke the registration of an authorised explosive. Orica recommends consideration be given to including a process in which an Applicant (Individual or Industry) may also seek revocation of an authorised explosive for which the Applicant has sought.

  Authorised products introduced years ago have gone through iterations and changes including naming and formulation conventions, resulting in some authorised explosives no longer being used and sold in NSW. The ability to seek removal of these products from the list of authorised explosives ensures accuracy and currency of the published register.

- **Part 4 Prohibited and authorised explosives Division 2 Registration of Explosives, *Clause 62 Application to have explosives registered as authorised***

  Orica recommends explosives authorised in other jurisdiction should be accepted as being authorised under the NSW regulations as a demonstration of commitment to nationally recognised harmonisation of explosives regulations.

Additional Comments

Over the past five (5) years considerable efforts have been made towards the harmonisation of explosives legislation across the various Australian states and territories, through the Strategic Issues Group - Explosives project ('SIG-Explosives'). This review and possible subsequent amendment of the NSW Explosives Regulation 2021 provides a pivotal opportunity for the NSW explosives regulator to demonstrate commitment towards adopting the agreed outcomes from SIG-Explosives, namely legislation that moves towards hamonisation of the following elements:

- Explosives definition,
- Explosives product authorisation processes,
- Mutual recognition of interstate licences and security clearances, and
- Notification processes.

On completion of the SIG-Explosives project the body that represents the explosives industry - Australasian Explosives Industry Safety Group (AEISG) wrote to all state Work, Health and Safety (WHS) Ministers seeking their endorsement towards hamonisation of these four elements and this was acknowledged by the Hon Minister Matthew Kean MP in correspondence to AEISG dated 18/02/2018.

While Orica acknowledges 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. It is an opportune time to move towards incorporating some aspects of the agreed proposals into the regulatory framework of the current legislation, so that harmonisation can proceed.

The existing inconsistent and disjointed jurisdictional explosives legislations are an unnecessary and costly administrative burden on both the industry and the regulators, diverting resources from achieving the fundamental objective of improving safety and security when handing explosives and explosive precursors.