

26 August 2021

Explosives Regulation 2021  
Policy & Strategy,  
Better Regulation Division  
NSW Department of Customer Service  
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Dear Sir/Madame,

### **Background**

welcomes the opportunity to provide comments on the proposed amendments to the NSW Explosive Regulations 2013 and the issues outlined in the Regulatory Impact Statement – Proposed Explosives Regulations 2021.

members include chemicals manufacturers, importers and distributors, logistics and supply chain partners, raw material suppliers, plastics fabricators and compounders, recyclers, and service providers to the sector and the chemistry and chemical engineering schools of a number of Australian universities.

Australia's entire society – businesses, consumers and governments – along with its natural environment receive enormous benefits associated with the safe, responsible and sustainable use of industrial chemicals. By supplying 108 of 114 Australian industry sectors, chemistry assists Australia to respond and address global challenges of protecting the environment, ensuring a safe and sustainable food supply and improving standards of living in Australia and elsewhere.

has for many years advocated the need to ensure consistent, harmonised and balanced regulation for the use and transportation of explosives and security sensitive ammonium nitrate. This issue has been discussed and agreed by the Productivity Commission, the Attorney Generals Department, and Safe Work Australia.

The principles agreed by all these forums have failed to be adopted by the State and Territory Authorities. It would appear from the analysis in the Regulatory Impact Statement that no consideration has been given to these previously agreed principles nor to the inconsistency in proposed regulatory changes. This inconsistency creates unnecessary costs and burdens on industry and undermines compliance.

urges the Better Regulation Division of the NSW Department of Customer Service to consider the cost and increased regulatory burden to industry created by these inconsistencies, and to reinvigorate the discussions on the previously made agreements on the regulatory controls for explosives.

## **Regulatory Impact Statement**

provides the following comments as the questions raised in the Regulatory Impact Statement (RIS).

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

believes that this issue requires greater consultation and consideration before adoption. does believe that industries that may be affected would be aware of the consultation nor the possible inclusion of substances they use being proposed to be classified as explosive precursors. A targeted consultation with this possibly broad sector is required, with a clear explanation of how this classification could affect their operations.

It is understanding that there is potential for substances classified as desensitized explosives to be used in a wide range of manufacturing sites and industries, including paint, pharmaceutical and cosmetics.

believes that those businesses currently handling explosives and explosive precursors, will have minimal impact by the proposal, but this may not be the case for those unfamiliar with this regime. This must be determined before progressing any further.

This is an issue where a nationally consistent approach to classifications and controls is essential. Setting up costly regimes, procedures and reporting will place undue burden on some of the industry players while those in other states have different systems to follow. Businesses who operate across state boundaries will have the added expense of establishing multiple systems, without any established benefits nor rationale.

### **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?**

agrees that employees should be required to tell their employer/principal contactor about changes to the status of their licence or security clearance.

also believes that a regulatory authority should also maintain a publicly available register of current licences as It is believed is done with some other occupational licences.

The proposed penalty is commensurate with the offence.

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

supports this proposal.

### **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?**

supports this proposal.

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

believes the regulatory regime should allow for other exemptions that would be reviewed and determined on an individual basis.

believes that this is an area where national consistency is essential to ensure the smooth operation of the industry. The security clearance process currently differs in each jurisdiction adding to the complexity and costs to national businesses. The difference also allows for unintentional noncompliance. The security benefits of these differences are minimal if not nonexistence.

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

supports the recommendations as outlined.

**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.**

While believes this proposal appears to be sensible, it may in fact put additional burdens on the police officers. They would need to be able to adequately assess the risk to the health and safety of all within or in close proximity to the police station and propose appropriate controls. This would vary in each situation depending on the quantity and the type of explosive being handled.

believes there may be an easy legislative amendment as proposed by Orica.

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

believes this appears to be a sensible proposal.

**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?**

believes that this issue may not have been adequately addressed in the RIS to justify such a need for this proposed change. It further increases the inconsistencies between the jurisdictions and does not appear to be inline with the AEC requirements.

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

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?**

is concerned with the proposal to expand the restrictions on 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.

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. The proposal cannot be fully examined and considered unless the regulation regarding the use of tunnels actually provided. Also, 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.

The industry has suggested that 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 risk assessment would consider the whole route, which may conclude that using the tunnel may result in overall lesser risk, if situations like heavily populated areas and high-risk areas can be avoided.

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.

## **Other Specific comments**

### **Commencement date**

questions that the commencement date of the NSW Explosive Regulations is in fact 1 September 2021. The Explanatory note in the Explosives Regulation 2021 specifies, whereas the Executive Summary of the RIS specifies 1 September 2022.

### **Part 1 Preliminary Clause 8 Classification of Detonators**

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. This should be clarified.

### **Part 3 Licences Division 4 Exceptions from licence requirements – Clause 44**

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. It is not clear 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” is inconsistent with other jurisdictions and should be changed to “Shotfirer’s Licence” to ensure alignment with other jurisdictions and recognized national competencies.

#### **Part 4 Prohibited and authorised explosives Division 2 Registration of Explosives, Clause 65**

Consideration should be given to the inclusion of a process in which an Applicant (Individual or Industry) may also seek revocation of an authorised explosive for which the Applicant has sought. This would allow the removal of products that are no longer in use.

#### **Part 4 Prohibited and authorised explosives Division 2 Registration of Explosives, Clause 62**

Explosives authorised in other jurisdiction should be accepted as being authorised under the NSW regulations as a commitment to national harmonisation and mutual agreement. This would be a step towards national harmonisation of explosives regulations.

#### **Conclusion**

The proposed amendments to the NSW Explosive Regulations 2013 and the Regulatory Impact Statement appear to have been available for comment for a limited time. The proposals in part could affect business and industry groups that would be unaware of these proposals and who would not on normal circumstances consider themselves to be part of the 'explosive industry'. For that reason,

recommends that the Better Regulation Division of the NSW Department of Customer Service consult further and target those that may be affected.

also encourages the Better Regulation Division to consider further the adoption of previously agreed regulatory principles for explosives to ensure national harmonisation.

Regards,