

Australian Industry Group

Explosives Regulation in Australia  
Discussion Paper and Consultation  
Regulation Impact Statement

**Submission to**  
Safe Work Australia

**10 SEPTEMBER 2015**

**Ai**  
GROUP

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## **INTRODUCTION**

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Ai Group welcomes the opportunity to make a submission in response to the *Explosives Regulation in Australia – Discussion Paper and Consultation Regulation Impact Statement (Explosives RIS)*.

Ai Group is a member of Safe Work Australia (SWA). Established under the auspices of SWA, since July 2013 the Strategic Issue Group – Explosives (SIG- Explosives) has been considering the current application of Explosives laws, and opportunities for improvement.

Through our membership of SWA, Ai Group has representation on SIG-Explosives. Ai Group has been assisted throughout this process through the technical input of the Australian Explosives Industry and Safety Group (AEISG); a representative of AEISG has participated in SIG-Explosives meetings as an Ai Group nominated observer.

It is our understanding that AEISG will be making a detailed technical submission in relation to the Explosives RIS, as will individual organisations within the Explosives industry – many of whom are members of AEISG and Ai Group.

With this in mind, Ai Group will not be making specific comments on the technical aspects of the paper, nor attempting to quantify the cost to individual businesses of the various jurisdictional approaches to the regulation of Explosives.

Ai Group's submission will focus on the overarching policy issues associated with the regulation of Explosives as state/territory issues, within the Australian context.

## **KEY ISSUES IN THE REGULATION OF EXPLOSIVES**

### **Breadth of coverage**

The regulation of Explosives is complex as it involves not just work health and safety issues, but also the equally important security implications associated with these products. Accordingly, in each jurisdiction there are multiple authorities interested in the management of Explosives, particularly in relation to licensing of individuals and organisations that have contact with Explosives.

In addition, Explosives regulation needs to cover a broad range of products from commercial Explosives for blasting purposes through to pyrotechnic products.

### **Multi-jurisdictional considerations**

Many activities involving Explosives require the movement of product and/or individuals across state/territory borders. Varying approaches to regulation, licensing and security requirements create issues for individuals, and the organisations for which they work.

### **A National Approach (Question 5.2)**

Discussions at the SIG-Explosives level have focused largely on the key components of a national approach to Explosives, rather than on the legislative approach that is most likely to achieve the best outcome.

In line with the developments in the work health and safety arena, it is Ai Group's perception that most participants are approaching the Explosives discussion as a process to develop a **National Model law** to be adopted by individual jurisdictions, with local variations as required.

The progress and adoption of the Model WHS Laws provide an illustration of the success that can be achieved by such an approach; it also highlights the risks and frailties associated with such an approach.

The adoption of the Model WHS laws was attached to financial incentives to be paid to jurisdictions by the Federal government. In spite of this, nearly four years after the agreed implementation date of 1 January 2012, two jurisdictions have not adopted the laws. Western Australia is progressing towards adoption, whilst Victoria is steadfast in its rejection of the Model WHS laws package.

In jurisdictions where the Model WHS laws have been adopted there have been some variations. These changes have largely been “around the edges” and do not impact on the key obligations and duties placed on *persons conducting a business or undertaking*, to ensure health and safety, so far as reasonably practicable.

The successful implementation of Model laws is reliant on the commitment of all political parties, and governments; this commitment needs to remain in the face of what can often be significant stakeholder pressure to change.

In spite of the difficulties associated with harmonised laws, this should be the minimum outcome of the current focus on Explosives regulation. If this option is pursued, safeguards and/or incentives should be put in place by the Commonwealth to increase the likelihood of the laws being adopted in jurisdictions without amendment.

It is Ai Group’s view that the most efficient and effective way to manage the regulation of Explosives, and the various security issues associated with the products, would be the adoption of **Commonwealth legislation** or **National Applied laws**. Such an approach would enable a national system for security clearances and licensing, and a seamless approach to the movement of Explosives throughout Australia, and in and out of our ports.

It is Ai Group’s strong view that the referral of powers to allow the adoption of Commonwealth legislation, or a commitment to adopt national applied laws, is an objective that should be pursued.

### **Inconsistent Definitions (Questions 3.1 and 3.2)**

It is inconceivable to us that Australia could have a system of regulating Explosives which results in some products being classified as Explosives in some jurisdictions, and not in others.

Explosives regulation is a matter of national security; as such the definitions, and subsequent controls, must be consistent across the country to be at all effective.

### **Licensing (Questions 3.3, 3.4 and 3.5)**

The multitude of licenses required in relation to Explosives are both intra-jurisdictional (separate licenses for manufacturing, storing, transporting etc.) and inter-jurisdictional (transporting, importing/exporting, individual licenses).

This creates difficulties for individuals in the Explosives industry and for organisations that operate across jurisdictional borders.

It is Ai Group's view that:

- Transient activities (that cross jurisdictional borders) should be covered by a single national licensing scheme.
- Static activities (that manufacture, store etc. in one location) should at least be covered by one licence for all their activities within the jurisdiction, but preferably one national licence

Discussions at SIG-Explosives have assisted Ai Group to identify that the best approach to licensing would be to issue "organisational" licenses to cover all Explosives activities. Individuals would require relevant security clearances and competencies; the organisation that engages them (or the sole trader as a business entity) would be responsible to ensure that competencies are applied and extra training provided as necessary.

### **Notifications (Question 3.6)**

It is Ai Group's view that notifications should only be required where they are an essential part of ensuring security or health and safety. The requirements must be consistent across all jurisdictions. Notification processes should be as streamlined as possible, creating efficiencies for industry and the regulator.

### **Security Clearances**

It is our understanding that the processes for security clearances are fragmented, and vary greatly between jurisdictions. If a Model law approach is adopted, rather than a national law approach, it is crucial that the implementation of the laws is supported by a centrally controlled process for security clearances. This process would need to be robust and acceptable to all Explosives regulators and other bodies (such as local police) that are currently involved in state/territory security clearances and licensing arrangements.

### **Imports/Exports**

It is crucial that any regulation of Explosives creates a consistent approach to import/export of Explosives in and out of Australia.

There also needs to be agreement that movement of Explosives between jurisdictions within Australia is not import/export, and that there are no barriers or additional requirements when an Explosive crosses a state/territory border.