

Review of South Australia's Dangerous Substances and Explosives Laws: Consultation Draft Discussion Paper

SUBMISSION

Australian Industry Group

INSTRUCTIONS

Save this online submission template to your computer before using it to enter your response in the boxes provided for each question.

You can answer all or any of the questions.

You can also attach additional information when you submit your response.

Submissions will be accepted until **5pm, Friday 25 November 2016**.

Extended to 23 December 2016.

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 *Review of South Australia's Dangerous Substances and Explosives laws*.

Ai Group is a member of Safe Work Australia (SWA). We also hold membership on the Strategic Issues Group – Work Health and Safety (SIG-WHS) and the Strategic Issue Group – Explosives (SIG- Explosives).

SIG-WHS oversaw the development of the Model WHS Laws and, amongst other roles, now monitors implementation of the laws and the development of relevant guidance material to support the laws.

Since its establishment in 2013, SIG-Explosives has been considering the current application of Explosives laws, and opportunities for improvement. During these deliberations we have been assisted 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.

In October 2016, Work Health and Safety ministers agreed to progress nationally consistent approaches to explosives in four key areas: the definition of explosives, the licensing framework, notification processes and explosives authorisation process, as outlined in the [Explosives Regulation in Australia: Decision Regulation Impact Statement July 2016](#).

It is in this context that Ai Group makes this submission.

Discussion Paper Questions

1. Do you, or your organisation keep, handle, transport, convey, use or dispose of dangerous substances?
2. Are you satisfied with the existing dangerous substances legislation?
3. If you are not satisfied, please describe any issues or concerns that you have with the existing dangerous substances legislation.
4. Do you, or your organisation, use, handle, generate or store a hazardous chemical that is also considered a dangerous substance?
5. Can you please describe any issues or instances of duplication or inconsistency arising from the current situation in South Australia where the WHS legislation (in particular the hazardous chemicals regulations) operates in parallel with the dangerous substances legislation?
6. Can you please describe any other concerns with the operation of the WHS legislation in parallel with the dangerous substances legislation?
7. Do you, or your organisation, manufacture, import, keep, convey, transport, use, sell or dispose of explosives (including fireworks or security sensitive substances)?
8. Can you advise whether you are satisfied with the existing explosives legislation?
9. Can you please describe any issues or concerns that you have with the existing explosives legislation?
10. What is your view on the inconsistency between the general duties contained in the Dangerous Substances Act and the Explosives Act? Should this inconsistency be addressed and, if so, how?
11. What is your view on the inconsistency between the activities regulated under the Dangerous Substances Act and the activities regulated under the Explosives Act? Should this inconsistency be addressed and, if so, how?
12. What activities should be regulated by the Dangerous Substances Act and what activities should be regulated by the Explosives Act?
13. Can you provide examples of inconsistencies between the existing legislation regulating dangerous substances and explosives, and how have these inconsistencies impeded your ability to conduct your business?
14. Are you a holder of multiple licences? If so, how many licence types do you hold?
15. Are the term/periods of licences sufficient? If not, which licence type and for what period would you like to see a change?
16. Is there a fee structure model you would prefer to see in a new licensing system?
17. Do you or your business, have any concerns with the range of chemicals or activities currently licensed or not licensed in South Australia?
18. Would you like to see more or less chemicals licensed in South Australia? Please provide details.
19. Are there any customer service related issues with dangerous substances licensing processes you would like to see improved?
20. Do you, or your business, have any concerns with the range of activities currently licensed under the explosives legislation in South Australia?
21. Are there any customer service related issues with explosives licensing processes you would like to see improved?
22. What issues or improvements would you like to see in a new system?

Ai Group's Approach to this Submission

It is clear that most of these questions have been constructed to obtain information from those who are directly engaged in the management of dangerous substances and explosives.

Ai Group will be providing some overarching comments, rather than focusing on the specific questions.

In addition, it is our understanding that AEISG are also making a submission, and have been granted an extension of times. As we rely on AEISG to provide the technical input in relation to explosives legislation, we will support the technical recommendation that they make.

The Regulation of Hazardous Substances and Dangerous Goods

One Regulatory System

During the process of developing Model WHS Laws, there was a deliberate decision to remove the separate regulation of hazardous substances and dangerous goods by bringing them under the one umbrella of Hazardous Chemicals. The Model WHS Regulations covering Hazardous Substances and Materials encompasses the requirements that were previously addressed in the NOHSC regulatory instruments for hazardous substances and dangerous goods into a single system, with introduction of the United Nations' Globally Harmonised System of Classification and Labelling of Chemicals (GHS) as the basis for chemical hazard classification and hazard communication on labels and safety data sheets.

This is a change that was generally welcomed by employers as it provides a clearer legislative framework in which to operate.

Ai Group believes that this approach should be adopted in South Australia.

Changing from licensing to notification

In considering the issues being addressed in this South Australian Discussion Paper, it is helpful to refer to the *Consultation Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice, 10 January 2011*.

On page 59 it is stated that:

Removal of dangerous goods licensing in some jurisdictions

The draft regulations do not include any licensing requirements for dangerous goods, consistent with the previously agreed national policy approach in the NOHSC *National Standard for the Storage and Handling of Workplace Dangerous Goods* that was declared in 2001. The regulations instead require notification to the authority where threshold quantities of dangerous goods are exceeded.

Despite this, some jurisdictions utilise a licensing or registration system for storage and handling of dangerous goods (licensing in WA, NT, SA and Queensland; registration in ACT). The licensing and registration systems are not applied consistently across these jurisdictions, for example some licensing systems capture all dangerous goods, whereas others capture only a limited number of dangerous goods classes.

In those jurisdictions that have licensing or registration, this will mean a considerable regulatory change. The experience in NSW and Victoria of moving from a licensing to a notification regime suggests that such a change would not have an adverse effect on work health and safety. It is also expected that the transition to notification will free up resources for the Regulator and reduce the compliance burden on business.

Ai Group has not received any negative feedback about this change to notification in the states that have adopted harmonisation, nor in Victoria which has had this approach for many years.

However, whilst notification is *a more efficient* regulatory approach than licensing, it is important that regulators are able to demonstrate that the notification process is delivering safety outcomes in workplaces and/or the broader community. When the Model WHS Laws are reviewed in 2018, we will be seeking that assurance from the regulators. South Australia may find it valuable to seek that information from other jurisdictions before implementing a notification process.

Finally, our support of a notification process to replace licensing would be dependent on the premise that persons conducting a business or undertaking (PCBUs) would not incur any fees for this process.

Explosives Legislation

As outlined on page 11 of the Discussion Paper, a significant amount of work has been undertaken at the national level to identify key areas for improvement in the consistent regulation of explosives across Australia. Since the discussion paper was released the majority of Work Health and Safety Ministers have agreed to progress work on achieving consistency in four key areas: definition of explosives; licence framework; notification processes; and authorisation processes.

A meeting of SIG-Explosives was convened on 8 December 2016 to commence planning for this work to progress in 2017.

It is Ai Group's view that it would generally not be appropriate to implement any changes to legislation in relation to these issues prior to that work being finalised, unless it was to address specific areas of concern outside the scope of the work being undertaken by SIG-Explosives. However, if there were opportunities to address key areas of concern raised by industry and AEISG, we would support these occurring as long as they were not inconsistent with the approach being discussed at the national level.

Any feedback received during this consultation process which relates to the four reform areas should be fed into the national debate.

Proposed new Dangerous Substances and Explosives Framework

The proposed framework, outlined on page 27 to 28 of the Discussion Paper does not appear to be progressing the ongoing move towards harmonisation. It appears that it would create definitions that are completely inconsistent with the harmonised approach, causing confusion for those working across more than one jurisdiction, or sourcing products from other jurisdictions.

The approach to hazardous chemicals within the Model WHS Laws is that a hazardous chemical is defined according to the GHS; dangerous goods are a subset, defined by schedule 11 (without specifically being referred to as dangerous goods).

As currently written, it appears that the proposed model would define dangerous substances as including: explosives; [all] hazardous chemicals; combustible liquids; dangerous goods; goods that are too dangerous to transport; and other substances and articles declared by or under the regulations to be dangerous substances.

The inclusion of [all] hazardous substances within the definition of dangerous substances would be inappropriate.

It is also unclear if this approach would involve removing the hazardous chemicals (and carcinogens, lead and asbestos) from the WHS Regulations and relocating them within the Dangerous Substances framework.

The Way Forward

It is Ai Group's strong view that South Australia should:

- Adopt the harmonised approach to managing hazardous substances and dangerous goods as established by the Model WHS Laws;
- Implement improvement opportunities highlighted by those directly engaged in the explosives industry, to streamline the management of explosives within SA, and for organisations taking explosives into or through SA. If the proposed changes related to the four reform areas it would be important to ensure that any changes were not inconsistent with the direction being considered nationally.
- Actively participate in the national debate on the four reform areas, with a view to implement the agreed approaches in a timely manner.

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Please make sure your submission includes a completed:

1. cover sheet with your contact details
2. submission form.

You can submit this –

- online at safework.sa.gov.au, simply upload your cover sheet and submission.
- by email to webmaster.safework@sa.gov.au
- by post to:

Dangerous Substances and Explosives Review
SafeWork SA
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If you have any questions please call us on 1300 365 255.