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Explosives Regulation in Australia

Discussion Paper and Consultation Regulation Impact Statement

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014, the value of Western Australia's mineral and petroleum production was \$114.1 billion. Iron ore accounted for approximately \$65.1 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$25.1 billion, with gold third at \$8.7 billion.¹

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalty receipts the state received from the resources sector still composed almost 20 per cent of estimated total state revenue in 2014-15, or around \$5.34 billion.²

As at March 2015, there was approximately \$179 billion in resources sector projects committed or under construction in Western Australia and a further \$118 billion in proposed or possible projects.³

Recommendations

- CME recommends aspects of explosives legislation with the greatest potential benefits and least identified barriers associated with achieving national consistency should be progressed as a priority. Clear objectives for longer term national reforms should also be identified to drive progressive reforms across jurisdictions in line with national objectives.
- Through SWA, CME recommends a formal mechanism be established with representation across relevant stakeholders including the explosives and resource industries and regulatory bodies. This body should be charged with identifying reform priorities, developing and encouraging the adoption of nationally consistent explosives regulation, providing centralised information sources where required and overseeing the implementation process.
- CME supports the development of nationally consistent definition of explosives to support a move to nationally consistent legislation. Industry considers this consistency could be achieved by adopting definitions aligned with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) where appropriate and following further consultation with industry.
- Mutual recognition of authorisations supported through consistent definitions and a consistent transparent authorisation process would significantly reduce the current level of impost and should be progressed as a priority supported by clear and consistent definitions.

¹ Department of Mines and Petroleum (DMP), *Mineral and Petroleum Industry 2014 Review*, 2015, www.dmp.wa.gov.au/1525.aspx, p. 1

² Government of Western Australia, *2015-16 Budget, Budget Paper No. 2 Volume 2*, www.ourstatebudget.wa.gov.au/Budget-Papers, pp. 541 & 593

³ DMP, 2015, *loc. cit.*

- Industry strongly supports a move away from multiple activity licences for each site to company based licences covering the range of activities which may be undertaken. CME recommends SWA prioritise national consistency in this area to drive state-based reform and streamlining of activity licensing schemes.
- As a priority, CME recommends existing mutual recognition agreements covering individual licence categories should be reviewed and enhanced to ensure consistency and transferability at a national licensing level. Mutual recognition will need to be supported by nationally consistent definitions and licensing criteria.
- Regardless of the approach taken to the reform of licensing schemes, CME recommends SWA undertake a review of requirements and obligations on license holders operating under explosives regulations across Australian jurisdictions to ensure these obligations remain practical and achievable in modern operating environments.
- CME recommends SWA identify reform of occupational licences as a priority for national consistency supported by national competency requirements and the development of national guidance material in consultation with industry. Alternatives to current occupational licensing schemes should also be considered.
- CME recommends SWA develop, in consultation with industry, nationally consistent requirements for security clearances. As a priority, CME recommends the establishment a centralised security screening and clearance tracking system to increase transferability of the workforce and provide additional safety and security to organisations and the community.
- CME recommends SWA prioritise the development of nationally consistent notification requirements and establish a centralised system for the notification and tracking of safety and security incidents to enhance the sharing of information and reduce the reoccurrence of unwanted events. A standardised mechanism to provide 'proof of clearance' similar to Maritime Security Identification Cards should also be considered.

Context

CME appreciates the opportunity to comment on the Safe Work Australia Discussion Paper and Consultation Regulation Impact Statement – Explosives Regulation in Australia and supports reform of explosives legislation where this will streamline regulation, improve consistency and achieve better safety outcomes.

The objective as outlined by SWA to generate greater consistency of explosives safety standards across jurisdictions, reduce confusion, complexity and duplication, thereby reducing unnecessary regulatory burden and costs is welcomed by industry.

CME notes each Australian State and Territory currently has its own regulatory system governing explosives. In Western Australia the regulation of explosives is covered under the *Dangerous Goods Safety Act 2004* (DGSA) and falls under the jurisdiction of the Department of Mines and Petroleum (DMP).

A recent review of the DGSA in Western Australia resulted in a number of recommendations industry supports, some of which are relevant to explosives. As part of this the DMP is advocating for reform of explosives regulations including streamlining licensing requirements in line with a best practice risk based approach. Industry welcomes this approach by DMP and notes that adoption of a similar approach by other regulators across Australia would provide significant benefits nationwide.

The Western Australian Government is also progressing reform of resources safety legislation to modernise the current regulatory regime in favour of a less prescriptive risk based framework designed to promote proactive compliance by allowing operators to assess site specific risks and select and apply the best solution to their particular circumstances to achieve the required outcomes.

This demonstrates there is already considerable momentum in Western Australia to streamline requirements related to work health and safety legislation as well as an opportunity to progress reform of explosives regulations as part of this broader safety legislation reform program.

CME supports the Western Australian Government reform program and would like to see this continue. The proposed review of the impacts of national explosives legislation is an important opportunity to address cross jurisdiction variation, duplication and administrative complexity as well as build a case for state-based reforms in a move to national consistency.

Approach to Reform

The resources industry in Western Australia would like to see a national framework supporting consistent explosives regulations and safety standards across jurisdictions. National consistency has the potential to deliver significant benefits including driving a reduction in administrative and regulatory burden and developing of clear and consistent obligations for organisations operating within and across multiple jurisdictions.

National consistency will not only reduce costs imposed for organisations involved with explosives it will also lead to better safety outcomes by ensuring organisations understand legal obligations and are supported by a robust national regulatory framework and centralised sources for safety critical information and guidance.

To achieve better safety outcomes and remove unnecessary administrative and regulatory burden, CME supports:

- risk based, outcomes-focused approach to legislation which encourages proactive compliance and innovation in the way in which risks are managed;
- regulation which is streamlined, easy to understand and minimises regulatory and administrative burden; and

- consistency (where appropriate) between legislation and across jurisdictions to increase efficiencies and remove complexity for operators.

CME also acknowledges the potential challenges of driving national consistency across such a complex area and considers the achievability of key areas of these reforms should be reviewed in consultation with industry and the regulators of each jurisdiction. The areas of greatest potential benefit and least potential barriers should be identified at the outset to inform the approach.

Longer term consistency for aspects of the legislation where significant barriers are found to exist should not be discounted but considered as part of a longer term phased approach where consistency is incentivised or encouraged through national guidance material or other mechanisms such as the enhancement of mutual recognition arrangements.

CME recommends aspects of explosives legislation with the greatest potential benefit and least identified barriers associated with achieving national consistency should be progressed as a priority. Clear objectives for longer term national reforms should also be identified to drive progressive reforms across jurisdictions in line with national objectives.

A number of these priority areas are canvassed below.

Further, any national regulatory approach must be progressed in close consultation with industry and regulators across each of the jurisdictions to ensure there is broad based support and to identify and avoid areas of duplication and unnecessary impost.

Under a national legislative approach it will be important to establish a compliance and enforcement mechanism to ensure consistent uptake within each jurisdiction and ongoing consistency and regulatory certainty for cross-jurisdiction operators. A centralised decision making process, including representation from key stakeholder groups including the resources industry, will also be required to progressively adapt to change and provide timely responses to issues which may arise.

CME recommends a formal mechanism through SWA be established with representation from key stakeholder groups including the explosives and resource industries and regulatory bodies. This body should be charged with identifying reform priorities, developing and encouraging the adoption of nationally consistent explosives regulation, providing centralised information sources where required and overseeing the implementation and review process.

Regardless of the regulatory mechanism for moving toward national consistency, CME considers a number of features of explosives regulations should be standardised as far as possible, and as a priority, including; the definitions, licensing requirements, notifications and security.

The following submission addresses the three key areas identified in the CRIS, focusing on aspects of the legislation where the Western Australia resources industry perceives the greatest benefits could be achieved through national consistency.

Definition of Explosives

CME acknowledges the definition of explosives in legislation currently varies from state to state. In Western Australia the legislation refers to substances listed in the Australian Explosives Code and also allows for other substances to be 'prescribed as explosives'. This differs from jurisdictions where explosives are defined according to substance or equating explosives with all Class 1 Dangerous Goods categorised in the UN Model Regulations.

The way in which explosives and explosives related materials and processes are defined has a direct impact on their classification and therefore on the relevant regulatory requirements for transport, storage and handling and licensing.

The current classification system is fragmented and therefore challenging for operators to interpret. In many cases the resources required simply to manage the variation in requirements and assess ongoing compliance are significant and far exceed what is required to ensure safety and security risks are addressed.

A nationally consistent definition of explosives would assist in minimising the current complexities navigating classification requirements and product authorisation processes across jurisdictions. Clarity and consistency is also important to assist industry's efforts to continuously improve safety and security outcomes and promote compliance across the industry.

Industry considers this consistency could be achieved by adopting definitions aligned with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) which currently cover hazardous chemicals including explosives. Aligning with the GHS classifications of Class 1 materials (i.e. 'explosives') would also facilitate Australia's compliance with international treaties and obligations as well as alleviate administrative complexities for organisations involved in the import and export of explosives materials.

CME also notes the move to national consistency of explosives legislation will need to be underpinned by clear, consistent and commonly understood definitions. Consistent definitions and a common understanding of the classification of explosives materials and the associated risks are a critical starting point for these discussions.

In moving to align with GHS however, CME notes it will be critical to SWA to undertake further consultation and to provide a suitable transition period to minimise impacts on businesses as a result of changes to definitions of key terms.

CME supports the development of nationally consistent definition of explosives to support a move to nationally consistent legislation. Industry considers this consistency could be achieved by adopting definitions aligned with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) where appropriate and following further consultation with industry.

Variations in definitions also impacts on an organisation's ability to navigate the approvals process for explosives and related materials authorisations. The varying definitions means in some instances product authorisations are required where in other jurisdictions the materials may not meet the same threshold as to require this additional approval. This creates a significant layer of complexity for multi-jurisdiction organisations to the extent where they may choose to seek authorisation for materials even where these are not required under a jurisdiction's definition.

In the case of manufactured substances or packaged explosives the detail required by each jurisdiction to obtain relevant approvals is significant. Some jurisdictions require comprehensive experimental test data to support the authorisation process. This creates substantial impost as each jurisdictional authorisation can take up to three months to complete the authorisation.

Further, the transferability of product authorisation across jurisdictions is impacted by the diverging definitions and subsequent approval requirements.

Mutual recognition of authorisations supported through consistent definitions and a consistent transparent authorisation process would significantly reduce the current level of impost and should be progressed as a priority supported by clear and consistent definitions.

Licensing Arrangements

As noted in the SWA CRIS, there is a significant amount of variation across jurisdictions as to which activities and occupations require licensing under explosives or dangerous goods legislation as well as significant variation in the processes for applying for and maintaining these. Additionally, differing definitions of key concepts relating to explosives material and activities also creates complexity around the way licences are applied including conditions and coverage.

Activity Licences

Organisations operating in Western Australia are currently required to hold multiple activity based licences for storage, handling, use and transport and import/export (where relevant). Additionally, activity licences such as storage licences must be held for each site where explosives and other dangerous goods are held even if under the operational control of the same company.

In Western Australia this is further complicated by the need to obtain two storage licences for each site with security sensitive ammonium nitrate (SSAN) – a Dangerous Goods Site Licence and a Security Risk Substance (SRS) storage licence.

For example one company operating within Western Australia reported requiring 17 explosives, SRS and dangerous goods licences. The administrative process around tracking, maintaining and renewing these licences requires significant resources and creates an unnecessary cost impost with no clear link to safety outcomes. Added to this is the challenge of tracking and ensuring compliance across the wide ranging licence conditions.

This means even for companies operating within a single jurisdiction there is a significant administrative impost involved in applying for and managing multiple licences.

For organisations operating in more than one jurisdiction this is complicated by significant differences in the technical requirements, renewal processes and validity periods for licences covering the same activities depending on the unique regulatory requirements and definitions in those jurisdictions.

This situation is not efficient or effective from a safety perspective as it creates a significant inconsistency and unnecessary administrative burden which can distract from on the ground safety management.

Under Western Australian safety legislation, as in other jurisdictions, the onus is on the company to ensure activities undertaken on site are risk assessed and managed to avoid and minimise risks to safety as far as possible. As part of this companies are required to ensure employees are trained and competent to safely undertake their work.

Under risk based legislative framework, where ultimate accountability for safety sits with the company in operational control, it is logical activity based licences be held at this level. It is also important these processes and requirements are consistent and streamlined to ensure companies can easily manage these and clearly understand the requirements and responsibilities to ensure a focus on safety can be maintained.

The Western Australian resource industry is currently advocating for streamlining of dangerous goods and explosives licensing and is working with the DMP to implement relevant recommendations from the recent DGSA Act review. Specifically, industry supports the proposal to remove requirements for multiple activity licences in favour of the introduction of a company based licence to cover the operator responsible for the relevant activity.

This simplified scheme would be supported by requirements for organisations to notify the regulator when conducting any of the deemed explosives activities and to ensure the correct safety and security are in place.

Industry strongly supports a move away from multiple activity licences for each site to company based licences covering the range of activities which may be undertaken by that company. CME recommends SWA prioritise national consistency in this area in consultation with industry to drive state-based reform and streamlining of activity licensing schemes.

Occupational Licences

In the case of individual occupational licences, CME notes requirements for competency, licence categories and the time taken to process applications varies widely across jurisdictions.

Just within Western Australian there are currently approximately 3,500 individuals covered by explosives related occupational licences. Due to variation across jurisdictions a number of these individuals would also hold separate licences for the same activities in other states.

Shotfirer licenses for example are currently required across all Australian jurisdictions. However, there are significant differences between jurisdictions associated with the category of licence (and scope), how competency is assessed and the process for reviewing and issuing the license (including costs and timeframes).

Further, while mutual recognition arrangements are in place allowing some occupational licences to be transferred across jurisdictions, industry considers these arrangements require significant improvement and further national consistency to meet the intended objectives.

For example under the current mutual recognition scheme there is confusion regarding what is an 'equivalent' licence for Shotfirer or Blaster Licences, as each state has different licence categories and definitions relating to these activities.

This situation is complicated by limited mutual recognition for security clearances and medical assessments undertaken in other states. As a result individuals working in multiple states are often subject to multiple medical assessments and security clearances which creates significant duplication.

The Dangerous Goods Driver's Licence is another example. While some jurisdictions allow for mutual recognition to assist operators working interstate, not all jurisdictions require this licence to be obtained. Operators moving across jurisdictions where this is not required must obtain this licence before driving Mobile Processing Units (MPUs) in Western Australia and the Northern Territory where this requirement is in place.

This can create a significant barrier for the movement of personnel across jurisdictions as a result of inconsistent licensing requirements processes, duplication and delays.

As a priority, CME recommends existing mutual recognition agreements covering individual licence categories should be reviewed and enhanced to ensure consistency and transferability at a national licensing level. Mutual recognition will need to be supported by nationally consistent definitions and licensing criteria.

In addition to the administrative complexity outlined above, there is a view current occupational licensing schemes themselves do not ensure individual competency or meet the needs to industry from a safety management perspective.

Across jurisdictions the general pre-requisite for explosives occupational licenses tends to be attainment of a satisfactory medical assessment, security clearance, driving history and completion of approved training course(s) or in some cases simply a letter from the employer attesting to experience. However, as noted above the specific requirements and processes differs significantly across jurisdictions.

In order to satisfy site specific safety management systems and the obligations of companies under safety and health legislation, companies employing explosives license holders require

them to undergo extensive internal training and competency assessment before they are engaged in addition to processing and verifying the relevant license.

It is also noted, explosives regulations across jurisdictions place specific obligations on certain classes of license holders. In some cases these requirements may not be practical and have fallen out of step with work health and safety management systems within modern operating environments.

For example, modern blast design within resource sector operations involves complex technology and is overseen by blast engineers and technical specialists. In this context, a shotfirer is effectively a highly trained, experienced and competent team leader in charge of a blast crew and responsible for ensuring loading operations are conducted in accordance with blast plans and site safety management systems.

In large scale blasting operations, loading can take place over many shifts involving changes to the blast crew including the shotfirer. This situation places individual licence holders in a position where they may effectively have responsibility for activities (as a license holder under explosives regulations) for which they have only partial or temporary control (under site specific processes and safety management systems).

Regardless of the approach take to the reform of licensing schemes, CME recommends SWA undertake a review of requirements and obligations on license holders operating under explosives regulations across Australian jurisdictions to ensure these obligations remain practical and achievable in modern operating environments.

Industry consider there is also an opportunity to review occupational licensing schemes with a view to whether alternative arrangements might better achieve the intended objectives. For example, consideration could be given to the removal of the requirement for individuals to hold occupational licenses in favour of company based activity licensing.

The establishment of nationally consistent licensing schemes where individuals undertake explosives related work under the authority of an activity licence held by a business (or small operator) could significantly reduce the administrative complexity and costs associated with the individual license holder schemes across jurisdictions. However the benefits need to be weighed against the achievability of such a reform and assessed against required outcomes and expectations for licensing schemes.

It is envisioned under company based activity licensing existing requirements for individual competency, medical fitness, security clearances would remain. However the primary obligation for regulatory compliance, management of site safety management systems and ensuring competency of staff would be held by the relevant business through activity licensing at that level.

Under such a scheme, a mechanism for companies to assess an individual's completion of required training, medical assessment etc would still seem to be beneficial. However, whether this is in the form of a license or separate certificates of completion/ attainment requires further consideration.

Regardless of the approach to reform, a national framework building on existing national units of competence should underpin these reforms to ensure consistency and facilitate industry's access to highly skilled explosives operators. Additionally, national guidance material should be developed to support a consistent best practice risk management approach to the safe use, storage and transport of explosives.

National consistency and true mutual recognition of licenses would reduce the administrative and cost impact on businesses and improve safety outcomes through creating clarity around obligations and enabling flexibility for a risk based approach.

CME recommends SWA identify reform of occupational licences as a priority for national consistency supported by national competency requirements and the development of national guidance material in consultation with industry. Alternatives to current occupational licensing schemes should also be considered.

Incident Notifications and Security

The Western Australian resource industry notes the process of issuing security clearances to individuals varies significantly across jurisdictions. Additionally there is only limited transferability of these clearances which leads to duplication and delays in acquiring these clearances.

CME understands most states require individuals to obtain the local security clearance once they permanently reside in that state even if they have a current valid clearance from another jurisdiction. Recognition of interstate security clearances, even on a temporary basis, is also problematic due to inconsistency in the 'proof of clearance' mechanism with some issuing individual cards and others issuing police or employer certifications.

For example, one company noted the delay in obtaining a security clearance and the associated explosives occupational licence was so lengthy it was more efficient for the personnel in question to work in another state while obtaining the required training, clearance and licence for the state in which they would be residing.

CME acknowledges individual security clearances are a fundamental requirement in obtaining explosives related occupational licences and where individuals will be transporting, storing or otherwise working with explosives. While it is critical this process is robust, any unnecessary delays and duplication at this stage of approval also delays the issuing of further licences and ability for an individual to undertake work.

The development of nationally consistent criteria to be applied to security clearances across the industry would significantly reduce delays associated with navigating each jurisdiction's security screening process and increase transferability of the workforce. A standardised process for issuing security clearances would also assist in providing a common 'proof of clearance' tool. As a model, the Maritime Security Identification Card scheme should be considered.

Further, the current lack of coordinated oversight of active, expired and cancelled individual clearances, and the movement of people and clearances across jurisdictions is deficient from a safety and security perspective. For example it is currently very difficult to track clearances obtained in other jurisdictions and there is no mechanism for notifications to be sent to relevant organisations in the event an individual licensed in multiple jurisdictions commits an offence and or had their clearance status revoked in another jurisdiction.

There is a clear need for a link between offences and security risks regarding explosives and a centralised database and clearance system has the potential to significantly improve safety and security by providing centralised access to information regarding clearances and notifications regarding the security breaches and cancellation or expiry of clearances.

CME considers a centralised tracking and notification system should be considered as a shorter term priority regardless of the approach adopted for progressing nationally consistent explosives regulations and security clearance criteria.

CME recommends SWA develop, in consultation with industry, nationally consistent requirements for security clearances. As a priority, CME recommends the establishment a centralised security screening and clearance tracking system to increase transferability of the workforce and provide additional safety and security to organisations and the community. A standardised mechanism to provide ‘proof of clearance’ similar to Maritime Security Identification Cards should also be considered.

The Western Australian resources industry considers greater national consistency in the notification of explosives related incidents and centralised access to this safety and security information in necessary.

Differences in notification requirements means it can be difficult to compare and learn from the experiences in other states or territories.

For example in some jurisdictions incidents involving blasts which generate noxious gases are not notifiable unless they cause injury or harm to people, property or the environment. This differs from other jurisdictions where it may be legislated to report all fuming, or fuming above a certain level to the regulator.

CME notes a move to national consistency in the notification of explosives related incidents will need to be underpinned by clear, consistent and commonly understood definitions and processes in order to achieve a common understanding of which incidents require notification.

There is significant opportunity to improve safety through learning from incidents that have occurred elsewhere and through ongoing analysis of incident and near miss trends. When criteria for notifications are not in aligned in presents a greater challenge to do this and is potentially a missed opportunity to improve safety and reduce risk.

Additionally, in a relatively niche area such as explosives it is important information regarding occurrences, near misses and incidents can be captured and consolidated at a national level (and ideally incorporating international data) so there is sufficient data to analyse trends and identify potential emerging issues to enable industry to take early preventive action.

CME recommends SWA prioritise the development of nationally consistent notification requirements and establish a centralised system for the notification and tracking of safety and security incidents to enhance the sharing of information and reduce the reoccurrence of unwanted events. A standardised mechanism to provide ‘proof of clearance’ similar to Maritime Security Identification Cards should also be considered.

Conclusion

In conclusion, CME supports the objectives of national reform to explosives regulation in Australia. As discussed above, industry agrees there are a number of areas in particular where national consistency in the regulation of explosives would significantly reduce costs and administrative burden whilst maintaining the already stringent safety and security standards for the use, storage and transport of these materials.

Industry considers national consistency and reform in the following areas should be progressed as a priority:

- Nationally consistent definitions of explosives and related material and activities;
- Enhancement of mutual recognition arrangements including for product authorisations and related licences;
- National regulation to support a shift from multiple activity and individual occupational licences in favour of the introduction of operator or contractor licences at the company level;

- A national security clearance screening and tracking register.
- A centralised system for the notification of security incidents.

Any reform should be based on best practice and should have the aim of improving safety outcomes, reducing costs and improved compliance through increased understanding of the explosives regulatory framework. It is critical these reforms are progressed through a formal mechanism which ensures close consultation and coordination with the regulators and industry in each jurisdiction to ensure maximum benefits can be achieved.

CME looks forward to continuing to work closely with SWA and other stakeholders to progress these important reforms.

If you have any further queries regarding the above matters, please contact Adrienne LaBombard Manager – Workplace Health and Safety on (08) 9220 8520 or a.labombard@cmewa.com.

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