

NSW Explosives Act 2003 Comments

Question 2

Is the scope of the Act appropriate? Are there substances or activities which should be within the scope of the Act which are currently outside it?

To avoid legislative duplication, we suggest an alternative view of this question:

“What is in the scope that should be outside it?”

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 of the NSW Explosives Act 2003 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 harmonisation of the following elements:

- Explosives definition;
- Explosives product authorisation processes;
- Mutual recognition of interstate licences and security clearances (relevant to Question 4); 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 harmonisation of these four elements. The Hon Minister Matthew Kean MP (NSW Minister for Innovation and Better Regulation) supported this proposal in correspondence to AEISG dated 18/12/2018.

One key aspect of adoption of the internationally recognised definition of explosives would be the exclusion of Division 5.1 'Explosives Precursors' from the scope of the Act.

There has long been a disparity in the way that Division 5.1 – 'Explosives Precursors' are legislated across the various Australian states and territories. This results in confusion and overlap between the legislative requirements and the subsequent increase in administration relating to the different requirements of the various legislative authorities, as noted below and in the following table:

- Explosives (SafeWork NSW and delegated authority to NSW Planning and Environment for mine sites);
- Dangerous goods transport (NSW EPA); and
- Work, Health and Safety, including Major Hazard Facility (MHF) obligations (SafeWork NSW).

Aspect	NSW WHS regulations	NSW Explosives regulations	NSW Dangerous Goods Transport regulations
Storage of Division 5.1			
Placarding / signage	Division 5.1 placarding required	NA	NA
Manifest	Manifest as Division 5.1 applies	NA	NA
Storage separation distances	NA	Australian Standard AS4326 applies to Explosives Precursors	NA
Security during storage	NA	Security requirements apply to Explosives Precursors	NA
MHF determination and notifications	Division 5.1 UN 1942 and Division 5.1 PG I / II threshold quantities are applied - for MHF determinations. NB: these regulations do not apply to mine sites where Explosives Precursors are routinely handled.	NA	NA
Manufacture or Import of Division 5.1			
Safety Data Sheets (SDS)	SDS requirements as a Division 5.1 and as a Hazardous Chemical (GHS)	NA	NA
Product Authorisation (as an explosive)	NA	NA for Explosives Precursors	NA
Package Labelling	GHS label requirements apply as a Division 5.1.	ADG Code requirements apply as an Explosives Precursor	ADG Code label requirements apply as a Division 5.1.
Packaging specifications	NA	ADG Code requirements apply as an Explosives Precursor	ADG Code requirements apply as Division 5.1
Import	NA	Import and transport of imported product requirements apply as an Explosives Precursor	ADG Code applies for bulk Division 5.1 transport
Transport of Division 5.1			
Transport	NA	Licence to Manufacture Explosives encompasses Mobile Processing Units (MPUs) operating in NSW.	ADG Code applies for bulk Division 5.1 transport (excluding MPUs). NB: recent ADG Code exemption for MPUs.
Security during transport	NA	Security requirements apply as an Explosives Precursor	NA

Question 4

Does the licensing framework enabled by the Act meet its objectives?

As mentioned above, the agreed SIG-Explosives outcomes include mutual recognition of interstate licences and security clearances. The Act should be amended to facilitate this outcome thereby significantly reducing the administrative burden for both industry and government; allowing an increased focus on operational aspects that improve safety.

In addition, the number of different explosives licences listed in Table 4 demonstrates the breadth of cumulative administration involved with applying for and maintaining each licence. For example, Orica currently holds 8 different licence types under the Explosives Act 2003. An alternative approach to licensing each aspect of the explosives' lifecycle is to adopt the concept of a 'Blasting Contractor' or 'Explosives Provider' endorsed for the different services a company may provide, as tabled during the SIG-Explosives project.

Question 13

Taking into account the costs of compliance, are the maximum penalty levels for offences under the Act sufficient to ensure compliance with its provisions?

Research available in the public arena has shown little evidence that penalties, or increasing penalties, significantly improves compliance levels.

The comparison of WHS legislative penalties to Explosives legislation penalties is concerning due to the difference between the scope of both sets of legislation. The scope of WHS is very large, encompassing numerous businesses (100,000 plus), with significant variations in the:

- a) size of operations;
- b) type of work conducted;
- c) hazards of the work;
- d) type of equipment used; and
- e) training and competency requirements.

In contrast, the scope of Explosives legislation is considerably narrower with detailed obligations and training requirements, specific hazards and industry specific, custom-built and operated equipment. The Explosives legislation is a small subset of WHS and incorporates extensive controls. Penalties related to WHS obligations should not be simply translated into appropriate penalties applicable to the explosives industry.

Questions 19 and 20

Where a regulator is considering or intending to bring a prosecution in relation to forfeited explosives, should the regulator be able to destroy some of the explosives...

If so, what safeguards should be in place? Do you have any concerns about such an approach?

It is a government responsibility to seize explosives where safety and security are compromised. In the same manner as industry's obligation for safe handling and disposing of waste and out of date product, etc; the government also has an obligation to store, handle and dispose of explosives safely. These costs should be borne by the government as part of their public responsibilities.