



Submission

Safe Work Australia consultation on the model Work Health and Safety Regulations relating to Major Hazard Facilities

Introduction

The Department of Employment and Workplace Relations (the Department) welcomes the opportunity to provide feedback to Safe Work Australia's consultation on the model Work Health and Safety (WHS) Regulations (model WHS Regulations) relating to major hazard facilities.

The model WHS laws are given effect in the Commonwealth through the *Work Health and Safety Act 2011* (Cth) (WHS Act), and the *Work Health and Safety Regulations 2011* (Cth) (WHS Regulations). These laws, including the relevant provisions relating to major hazard facilities, apply to the Commonwealth, Commonwealth Authorities, and a number of non-Commonwealth licensees.

The Department is responsible for administering the WHS Act and WHS Regulations, and providing the Australian Government with policy advice on their application. Comcare is the work health and safety regulator of the Commonwealth jurisdiction, with functions to monitor and enforce compliance with the WHS Act and WHS Regulations. These functions include regulating and licensing major hazard facilities.

Major hazard facilities are sites that process, handle and store large quantities of hazardous chemicals and dangerous goods that by definition pose a significant risk to both public and environmental health and safety if not managed appropriately. The major hazard facility regulations play a key role in Australia's regulatory framework to prevent major incidents from occurring and maintaining public trust that these high-risk activities can be conducted safely.

Major hazard facilities in the Commonwealth

The Commonwealth is a comparatively small WHS jurisdiction, with three licensed operators of major hazard facilities in the defence, transport and warehousing sectors. While offshore oil and gas facilities also fall within the Commonwealth jurisdiction, these are subject to oversight by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), an independent statutory authority established under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The Department notes the concerns raised during the *2018 Review of the model Work Health and Safety Laws* in relation to major hazard facilities, including regulatory complexity, inconsistent application of the model WHS Regulations in relation to major hazard facilities across jurisdictions, and possible duplication with other legislation. This latter point is not an issue for Commonwealth duty holders as they are subject to the WHS Act to the exclusion of state and territory corresponding WHS laws.

Issues identified in Commonwealth explosives thematic review

Duplication and inconsistency are identified as issues in the Thematic Review of Commonwealth Explosives laws currently being undertaken by the Department of Defence. While largely focussed on explosives laws, the review's [Comprehensive Review Paper](#) (CRP) identifies a number of areas where inconsistency in state and territory major hazard facility thresholds and approach to regulation has the potential to undermine a nationally consistent approach to regulation of the storage and manufacture of explosives in quantities that warrant a degree of regulation. To address inconsistency, the CRP proposes the development of a new Commonwealth explosives regime, and suggests amendments to the WHS Act so that major hazard facility operators that work with Commonwealth explosives (e.g. defence munitions manufacturers) are subject to the Commonwealth WHS Act to the exclusion of state and territory work health and safety laws.

The Department of Defence's Thematic Review of Commonwealth Explosives laws is still underway and no decisions have been made on the proposals set out in the CRP. The Department continues to work with the Department of Defence on this review.

Feedback provided by other stakeholders to this Review, and any foreshadowed or recommended changes to administrative practices to enhance consistency, will be considered by the Department and Government. In particular, substantial efforts to enhance consistency in regulation may be an alternative to amending the WHS Act.

Consistency

The Commonwealth supports consistency and encourages harmonisation of the WHS laws to the extent possible. In line with this, the Commonwealth's implementation of the model WHS Regulations as these relate to major hazard facilities remains relatively consistent with the model.

The Department notes the views of Defence in its CRP that the regulation of major hazard facilities across the Commonwealth, states and territories is not uniform – particularly in relation to minimum threshold quantities¹. A broader comparison by Defence of jurisdictional explosives arrangements, which also examines WHS laws, is provided in the CRP appendices². Safe Work Australia may wish to consider this analysis as part of this review.

Further information

The Department is available to provide further information on the issues outlined in this submission, including the Department's engagement with the Department of Defence on its Thematic Review of Commonwealth Explosives Laws and the operation of the Commonwealth WHS Regulations as these apply to major hazard facilities.

¹ Comprehensive Review Paper, Department of Defence, September 2020, pp 63-64

² Ibid, pp 105-222