

# PUBLIC COMMENT

## Consultation on the model Work Health and Safety Regulations relating to Major Hazard Facilities

### Instructions

To complete this online submission:

- Download and save this submission document to your computer.
- Use the saved version to enter your responses under each question below. These questions are from the [Consultation Paper on the model Work Health and Safety Regulations relating to Major Hazard Facilities \(MHFs\)](#).
- Once you have completed your submission, save it and upload it using the upload your submission link on the [Engage submission form](#).
- You can also upload any other documents needed to support your submission to the [Engage submission form](#).

Submissions will be accepted until **11:59 pm (AEDT) on Thursday 3 November 2022**.

### Help

If you are experiencing difficulties making your submission online, please contact us at [chemicals@swa.gov.au](mailto:chemicals@swa.gov.au).

Respondents may choose how their submission is published on the Safe Work Australia website by choosing from the following options:

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Please note the following are unlikely to be published:

- submissions containing defamatory material, and

- submissions containing views or information identifying parties involved in hearings or inquests which are currently in progress.

## Your details and background

*(Please leave blank if you wish to remain anonymous)*

### 1. Name or organisation

Australasian Explosives Industry Safety Group Inc. (AEISG)

### 2. Email used to log into Engage

[REDACTED]

## Questionnaire

*(Consultation document questions)*

Your response should identify the specific regulation/s involved and, where possible, provide evidence to support your statement.

### Evidence demonstrating issues raised in the Review (Section 4.1)

#### 4.1a) What evidence do you have of inconsistencies in the application of the model WHS Regulations relating to MHFs across jurisdictions?

AEISG member companies around the country continue to raise concerns about the inconsistencies in the application of the model WHS Regulations relating to MHFs across jurisdictions.

As an example, operators with MHF's across several jurisdictions continue to deal with significant inconsistencies in the application of conditions applied to respective jurisdiction's licensing. In some instances, conditions have been applied for merely administrative reasons with no evidence of non-conformance or a risk being identified.

In addition, Victoria has for no justified reason, reduced its explosives threshold levels below those used in all other jurisdictions (and all around the world) creating a confusing inconsistency with the Model MHF Regulations and creating unintended consequences which could increase risk.

The inconsistent application of the WHS Regulations between the jurisdictions continues to impact those businesses operating either in a single jurisdiction or across multiple jurisdictions.

#### 4.1b) What are the issues around duplication for businesses with MHFs, particularly those that fall under multiple jurisdictions?

AEISG notes that there is a significant difference between jurisdictions in their respective interpretation of 'what constitutes a MHF', and therefore what pertains to a MHF within a jurisdiction. Whilst this issue may be driven by differences in the legislation of jurisdictions, it remains extremely challenging for a MHF operator with MHFs in multiple jurisdictions, i.e., inconsistency and confusion.

As an example, 'security and emergency management' of MHFs is addressed differently by some jurisdictions, with New South Wales being more prescriptive in security and emergency management requirements than other jurisdictions.

Other instances involve duplication of MHF regulation with other jurisdictional regulations (e.g., explosives and mining).

#### 4.1c) What concerns do you have with expectations of what should be included in a safety case?

A key concern of AEISG is the apparent lack of understanding by some jurisdictions of the MHF sector, specifically the relative complexity of processes (hazards, risks, safety systems) between the spectrum of MHFs. This has unfortunately, in some instances, led to expectations such as a small manufacturing plant (with a simple process) expected to produce a safety case of the complexity required for a petro-chemical facility (multiple and complex processes).

It is understood and accepted that a MHF will operate to a Safety Case, however, though the structure of a Safety Case is similar, the level of detail / content is determined by the relative complexity of a MHF.

#### 4.1d) What duplication or overlap is there between the MHF Regulations and other legislation?

AEISG provided a submission to SWA, on the 2018 review of the Model WHS Laws, which included as part of the AEISG submission, as an attachment, a 'PROPOSAL TO EXCLUDE EXPLOSIVES FACILITIES FROM MAJOR HAZARD FACILITY (MHF) REQUIREMENTS UNDER MODEL WORK HEALTH AND SAFETY REGULATIONS'.

Consistent with that submission, AEISG is of the view that Model WHS Laws have resulted in unintended consequences which seriously impact the activities of the explosives industry in Australia, i.e., there is duplication of licensing and regulatory oversight of explosives facilities under Chapter 9 of the Model Work Health and Safety Regulation pertaining to MHFs.

Explosives legislation has existed in all Australian state / territory jurisdictions for a very long time. Facilities where explosives are manufactured and / or stored are subject to licensing and siting requirements which remove them from community surrounds through the application of internationally recognised safety distances, depending on the type and maximum quantity of explosives at each facility. With the inclusion of 'explosives' on the Schedule 15 'Hazardous chemicals at MHFs (and their threshold quantity)', explosives facilities, which were already licensed and subject to existing legislation with greater risk control measures, are subject to additional licensing as MHFs.

AEISG continues to seek exclusion of explosives facilities from Chapter 9 of the Model WHS Regulations, with such exclusion to be defined in Section 530 of the Model Work Health and Safety Regulation to facilitate national consistency of application.

#### 4.1e) What do you consider contributes to regulatory complexity for MHFs?

A key issue is that MHF regulation is inconsistently interpreted by State / Territory / Federal jurisdictions, thereby leading to inconsistent implementation, and resulting in regulatory complexity for MHFs.

The intent of MHF regulation is to provide a mechanism for a harmonised approach by jurisdictions – this goal is yet to be achieved.

### **Technical and administrative amendments needed in the MHF Regulations (Section 4.2)**

4.2a) What administrative or technical changes could be made to the current MHF Regulations to improve application and consistency of the MHF laws across jurisdictions?

Suggested administrative / technical changes include:

- Remove 'Explosives' from schedule 15 substances as they are already heavily regulated in state and territory legislation.
- Part 9.5 (574) 'Safety role for worker' – the intent of this requirement does not appear to be clear, is causing some confusion to operators of MHFs, and should be reviewed to ensure understandability. Perhaps the focus of this section should be upon 'consultation and communication' and integrated into 575?

4.2b) What other non-regulatory changes could be made (e.g. additional or improved guidance) to improve application and consistency of the MHF laws across jurisdictions?

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### **Other issues with the model WHS regulations for MHFs? (Section 4.3)**

4.3a) How well do you think the current model MHF Regulations meet the intended policy objectives outlined in section 2 of the model WHS Act, particularly with advances in technology and emerging industries?

There have been significant changes in explosives technology over the years and that within this context the threshold for applying the WHS Regulations to storage of Ammonium Nitrate Emulsion, Suspension or Gel (ANEs) should be raised to 2,500 tonnes

There is no specific quantity limit for ANEs in the MHF Regulations, hence ANE has incorrectly been captured by the generic entry for Oxidising substances of Packing Group II (200 tonnes). It should be noted that the limit for Ammonium Nitrate, UN 1942 (Packing Group III) is 2,500 tonnes.

This is an anomaly that requires to be corrected.

4.3b) What other issues do you have relating to the model MHF Regulations that were not raised in the Review of the model WHS laws or otherwise addressed in the previous questions?

- What changes to the model MHF Regulations do you consider would address these issues?

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- What new or updated guidance would assist in addressing these issues?

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4.3c) Are there any aspects of jurisdictional MHF laws or international regulatory frameworks for MHFs that you think should be considered for the model MHF Regulations?

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