

Submission to: Federal Attorney-General's Department

Title: Chemical Security – Precursors to homemade explosives – Consultation Regulation Impact Statement

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1. Introduction

This submission details the views of the members of the Australian Trucking Association (ATA) on the proposed *Chemical Security – Precursors to homemade explosives consultation regulation impact statement* released for public comment.

Trucking operators that are involved in transporting chemicals of security concern primarily move freight in bulk, and due to the delicate and sensitive nature of this freight, is keen to ensure the security of its workforce and other Australians are not compromised. Accordingly, the ATA is committed to working with governments and other industry groups to achieve a workable, acceptable and viable solution.

2. Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body that represents the trucking industry. Its members include state and sector based trucking associations, some of the nation's largest transport companies, and businesses with leading expertise in truck technology.

3. Overview

The Australian Trucking Association has been involved with the Attorney-General's Department as a member of the National Industry Reference Group – Chemical Security, and has attended meetings over the past 12 months discussing issues affecting chemicals of security concern.

There are 11 chemicals of security concern that have been identified, listed as follows:

- Hydrogen peroxide (H₂O₂)
- Sodium chlorate (NaClO₃)
- Nitric acid (HNO₃)
- Potassium chlorate (KClO₃)
- Sodium perchlorate (NaClO₄)
- Potassium perchlorate (KClO₄)
- Ammonium perchlorate (NH₄ClO₄)
- Sodium nitrate (NaNO₃)
- Potassium nitrate (KNO₃)
- Nitromethane (CH₃NO₂)
- Sodium azide (NaN₃)

Unfortunately, while these chemicals perform necessary tasks in everyday use, they can also have a devastating effect when used for illegal acts, such as when used in homemade explosives.

Some of these chemicals are widely available, for example hydrogen peroxide and nitric acid. While accessing chemicals in bulk is not easily accessible, only a small amount of chemical is required to have a fatally destructive effect. Therefore, the transport of these chemicals in small amounts, such as that undertaken by couriers or taxi trucks, is more of a concern than that transported by heavy vehicles in tankers.

The trucking industry already has many strong procedures and protocols in place to ensure exposure of these chemicals to illegitimate use is minimised. Thorough employee checks and training of staff, along with ongoing awareness of potential theft opportunities and accounting for stock, ensure bulk chemicals are managed in a safe and secure manner.

COAG's report in 2008 regarding Chemicals of Security Concern provided six overarching principles to guide the development of strategies to manage chemicals of security, with the key points being that strategies should be nationally coordinated and consistent, control measures should be cost effective and developed in partnership with industries to ensure appropriate knowledge is integrated, and that the outcomes should not restrict industry competitiveness and trade.

After consultation with key members who regularly engage in the movement of this type of freight, the ATA advises the following preferences to the options proposed:

Option 1 - Targeted awareness campaign

This option is not supported. Effectively, this means no real change to the status quo. Industry already provides information to employees regarding security of freight, and this is not restricted only to chemicals.

Option 2 - Industry Code

While this option is supported, a self-managed compliance regime is not supported. Where compliance with a code relies on internal reviews, there is an opportunity for businesses to flout the requirements, and therefore obtain a commercial advantage. This will cause good operators to leave the system, leaving second rate operators to move the freight, which is not an ideal situation.

Option 3 - Government Code

This option is supported, provided there is a specific code or section within a code that relates only to transport of chemicals. It is not feasible for operators to comply with the requirements of different codes for different chemical industry groups; it is sensible for the trucking and transport industry to have its own requirements to comply with.

Option 4 - Regulation

This option is not supported. The cost to our industry would be extremely high, the requirements impractical, and would create a major impost on operators. This cost, in turn, would need to be passed on to customers, which ultimately increases the cost of chemicals. There is also limited evidence that risk would be lowered in any substantial way to justify the increased cost to operate.

The following commentary and recommendations are provided by the ATA in response to the PwC paper prepared for the Attorney-General's Department in relation to chemical security.

3.1. Recommendations**Recommendation 1**

The ATA recommends the Attorney-General's Department adopt a blend of Options 2 and 3, so all relevant industries have strong input into the development of an enforceable government code.

Recommendation 2

The ATA recommends the transportation of chemicals is identified as a section within the new code, to minimise the risk of transport companies being required to comply with multiple site requirements across multiple industry sectors in relation to chemicals of security concern.

Recommendation 3

The ATA recommends the requirements for security checks be streamlined into a one-check process, with one identification card provided to an applicant, which is presentable at any of the areas where such a card may be required (for example, ports or airports). Further, the proposed Code of Practice identifies the type of training and topics required to be covered for employees to ensure uniformity across the nation.

Recommendation 4

The ATA recommends the courier and taxi truck sector be considered when determining potential controls to manage the security of chemicals that are not moved in bulk.

Recommendation 5

The ATA recommends that the Attorney-General's Department works with state based organisations that develop training for Dangerous Goods, with a view to including the management of chemicals of security concern as a module within this training.

Recommendation 6

The ATA recommends that a list of parties involved in the commercial use or transportation of chemicals be established to clearly identify relevant groups required to comply with the code. This will reduce the requirement for the general public to comply with the code when a product may be used strictly for personal reasons.

Recommendation 7

The ATA recommends that if legislation changes are considered to introduce chemicals of security concern into dangerous goods or hazardous facilities legislation, that the legislation be Commonwealth law, not state law, thus reducing the risk of multiple sets of legislation for industry to comply with.

4. Commentary

4.1. Statement of the problem

After attending various meetings and demonstration days with the Attorney-General’s Department, Australian Federal Police and Defence, the ATA acknowledges the issues highlighted in PwC’s paper regarding the use of homemade explosives are real and of significant concern.

The 11 identified chemicals of security concern can be utilised by both terrorists and criminals. However, it would be impossible to ban these chemicals altogether, as they are used daily by thousands of Australians in our every-day life. In 2010, Access Economics prepared the regulatory impact statement for the Office of the Australian Safety and Compensation Council (now Safe Work Australia), which estimated there were approximately 600,000 workplaces in Australia with chemical users.¹

The development of risk assessments by the Chemical Security Risk Assessment Unit identified the transport of hydrogen peroxide and nitric acid as very high risks. This is mainly due to the transportation of these chemicals in small amounts, such as those undertaken by couriers and taxi trucks, rather than transportation of chemicals in bulk amounts, such as in a tanker.

While the chemicals of security concern have complex scientific names, they are commonly used in every-day items. We have provided a table below showing some of the common uses for these chemicals.

Table 1 – Scientific name and common uses of chemicals of security concern

Scientific name	Common use
Hydrogen peroxide	Hair bleach
Sodium chlorate	Herbicide
Nitric acid	Used to artificially age wood; used in the production of fertilizers
Potassium chlorate	Fireworks; disinfectant
Sodium perchlorate	Ingredient of bleaching powder used in paper and pulp processing
Potassium perchlorate	Used in medication for hyperthyroidism
Ammonium perchlorate	Fireworks
Sodium nitrate	Glass manufacture; food preservative
Potassium nitrate	Used in toothpaste for sensitive teeth
Nitromethane	Pharmaceuticals; pesticides; drag car racing
Sodium azide	Used in detonation of car air-bags during a crash

¹ Australian Safety and Compensation Council (2010), ‘Regulatory Impact Statement: Proposed Revisions to the National OHS Framework for the Control of Workplace Hazardous Substances and Dangerous Goods’, September, http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/Documents/472/Chemicals_RIS_Jan_2010_PDF.pdf. Accessed on 30 March 2012.

4.2. Potential solutions

The Federal Government can be used as a way of streamlining the handling of chemicals of security concern. By adopting a government code of practice, where industry has significant input into the requirements of the code, all industries involved in the use of these chemicals will be acting in unison, following a uniform set of guidelines to ensure the security of chemicals is maintained to the highest level.

The ATA is supportive of a code that has enforceable penalties for non-compliance. Previous codes in the transport sector have proven fallible, with the best operators who work hard to achieve compliance losing out financially to operators who have little interest in compliance, and who therefore receive an unfair commercial advantage. We understand this may not be the view of other sectors who are involved with chemicals of security concern. It should be remembered there is little risk of penalty if compliance is maintained.

The ATA has been advised by its members that initiatives are already in place in most trucking businesses that move chemical freight to ensure security of the freight. This may include employee checks (such as police and ASIO checks), monitoring of freight en route, and site security if freight is stored at a depot. Many of these initiatives could be included in a code to ensure best practice is being adopted by companies that are involved in moving chemical freight.

Recommendation 1

The ATA recommends the Attorney-General's Department adopt a blend of Options 2 and 3, so all relevant industries have strong input into the development of an enforceable government code.

Recommendation 2

The ATA recommends the transportation of chemicals is identified as a section within the new code, to minimise the risk of transport companies being required to comply with multiple site requirements across multiple industry sectors in relation to chemicals of security concern.

It is important that in order to prevent duplication of process, applications for security cards and licences is streamlined. Currently, an applicant seeking a Maritime Security Identification Card (MSIC) is required to complete a police check and an ASIO check. If that applicant then wishes to apply for an Unsupervised Handling Licence (UHL), the same checks need to be undertaken again, which means increased cost to industry, and duplication in terms of the type of checks being undertaken. Further, if the applicant then wishes to obtain an Airport Security Identification Card, the full process must be undertaken a third time.

This is inefficient and a waste of our government resources. Instead, the parameters surrounding the types of checks undertaken should be integrated into one check, with the one security identification card providing clearance for all the relevant sectors. This means, one card for MSIC, UHL, ASIC (airports), dangerous goods (although would not replace the dangerous goods licence issued by state WorkCover authorities, as additional nationally recognised training is required) and chemicals of security concern.

The various security checks and licences required by employees to handle chemicals and explosives could be streamlined and integrated into one check. Presently, the requirements for UHL checks are different in each jurisdiction. This needs to be addressed, to ensure consistency between jurisdictions and the most efficient, secure check is being conducted. This prevents applicants from applying in a jurisdiction that has low levels of checks or none at all. It is essential when addressing security concerns that COAG's directive of national harmonisation be addressed.

The security checks should specifically relate to potential terrorist or criminal activity in relation to the chemicals, and should not seek to punish individuals with a criminal history or some unrelated objective. The ATA has previously made submissions to government arguing that the range of offences covered by the MSIC and ASIC regimes is too extensive for any useful purpose, and simply punishes people who ran off the rails early in life.

Recommendation 3

The ATA recommends the requirements for security checks be streamlined into a one-check process, with one identification card provided to an applicant, which is presentable at any of the areas where such a card may be required (for example, ports or airports). The criminal offence covered by the check should be pared back to those that genuinely create security risks. Further, the proposed Code of Practice should identify the type of training and topics required to be covered for employees to ensure uniformity across the nation.

An area that causes the most concern is the courier and taxi truck sector. This division within transport may often transport chemicals in small amounts, individually packaged, and potentially have a higher level of risk in terms of theft or diversion of chemicals. Often, the driver of the smaller delivery vehicle may be completely unaware of the type of freight being carried, and probably hasn't completed any dangerous goods training. We are unsure how to best address this concern.

Recommendation 4

The ATA recommends the courier and taxi truck sector be considered when determining potential controls to manage the security of chemicals that are not moved in bulk.

We have identified that some of the chemicals are not identified as dangerous goods, and that the management and training provided to obtain a dangerous goods licence is currently managed by state based organisations, such as WorkSafe. To ensure information regarding chemicals of security concern is addressed, we believe a module within dangerous goods training should be adopted to cover only chemicals of security concern.

Recommendation 5

The ATA recommends that the Attorney-General's Department works with state based organisations that develop training for Dangerous Goods, with a view to including the management of chemicals of security concern as a module within this training.

The ATA suggests that a list of parties that move or use the chemicals of security concern be established to clearly identify who needs to comply with the code. For example, farmers, hairdressers and pharmaceutical companies might be examples of groups that would be required to comply with the code, whereas personal use of chemicals (such as hair dye or medication) may be identified as not needing to comply with the code.

Recommendation 6

The ATA recommends that a list of parties involved in the commercial use or transportation of chemicals be established to clearly identify relevant groups required to comply with the code. This will reduce the requirement for the general public to comply with the code when a product may be used strictly for personal reasons.

There is already legislation in place to manage dangerous goods and hazardous facilities, and an option that has been anecdotally considered is a review of this legislation with a view to including management of chemicals of security concern. However, the problem then arises that this legislation is presently state-based, and unless model law is developed, with states implementing the model law without change, there is a real risk of each state implementing its own requirements with legislation. The issue then arises of the requirement of industries whose business crosses state borders to comply with multiple sets of legislation.

Recommendation 7

The ATA recommends that if legislation changes are considered to introduce chemicals of security concern into dangerous goods or hazardous facilities legislation, that the legislation be Commonwealth law, not state law, thus reducing the risk of multiple sets of legislation for industry to comply with.

5. Conclusion

The Australian Trucking Association appreciates the opportunity to contribute to this consultation regulatory impact statement. Our members are concerned about the potential outcome of the options provided, and trust the Attorney-General's Department will continue to communicate closely with the ATA in relation to this matter.

At a recent Power of Explosives day, organised by the Attorney-General's Department with demonstrations conducted by Australian Federal Police and Defence, it was clear the amount of damage a small amount of chemical can cause when used for illegal purposes. The trucking industry has strong procedures and protocols in place to provide assurance that illegal use of chemical is minimised. Should a code be developed, we would expect that some of these controls would be implemented as requirements of the code.

We also endorse the work being done by the Attorney-General's Department, and look forward to working closely with the department to further contribute to this work. We anticipate the opportunity to provide a relevant and operational view from the trucking industry through consultation with our members.