

MEMORANDUM OF UNDERSTANDING

between

The Department of Emergency Services (DES)

and

**The Department of Natural Resources and Mines
(NR&M)**

regarding

**Arrangements for the Shared Administration of the
Dangerous Goods Safety Management Act**

Part 2 - Explosives

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PREAMBLE/CONTEXT

The following are the agreed outcomes of discussion between the Director-General of Department of Emergency Services (DES) and the Director-General of the Department of Natural Resources and Mines (NR&M) in relation to the roles, responsibilities and interests of both Departments in providing the safe storage and handling of Dangerous Goods and the Control of Major Hazard Facilities.

NR&M endorses the delegation process proposed and will actively encourage its officers to ensure that due diligence and a high level of consistency are exercised in administering their responsibilities.

DES will be the agency responsible for maintaining the legislation and will provide training, advice and technical support to facilitate its administration

NR&M will be the agency primarily responsible for the safe storage and handling of Explosives.

For delegated matters, NR&M officers will have the relevant powers of an Authorised Officer under the *Dangerous Goods Safety Management (DGSM) Act*.

1.0 Introduction

For Dangerous Goods Locations (DGLs) that contain explosives this Memorandum of Understanding (MoU) concerns the delineation of jurisdictions between the Departments pursuant to the *Explosives Act 1999* and the *Dangerous Goods Safety Management Act 2001 (DGSM Act)*.

In broad terms, the *DGSM Act* will have concurrent application on such sites. However, compliance with the requirements of the *Explosives Act 1999* will be deemed compliance with the equivalent requirements of the *DGSM Act* and, where there is inconsistency, the *Explosives Act 1999* will prevail.

For Major Hazard Facilities (MHFs) this MoU concerns arrangements for the shared administration of the *DGSM Act*, utilising a team approach, across government.

2.0 Purpose

This MoU is made for the purpose of facilitating:

- A co-operative approach between the parties and other agencies for the delineated and shared administration of the *DGSM Act* and Regulation;
- An understanding of the anticipated roles, responsibilities and obligations of the parties with respect to the delineated and shared administration of the *DGSM Act* and Regulation;

- The cost-effective use of resources devoted to the enforcement of regulatory requirements arising under:
 - the *DGSM Act*; and
 - the *Explosives Act 1999*
- The identification of jurisdictional boundaries and the establishment of operational responsibilities regarding:
 - the approval of facilities;
 - the auditing and monitoring of facilities;
 - the auditing and monitoring of operations; and
 - the investigation of incidents.

3.0 Definitions

“ADG Code” means the Australian Code for the Transport of Dangerous Goods by Road and Rail, as in force from time to time.

An “authorised officer” is a person appointed as an authorised officer under the *DGSM Act*.

A “combustible liquid” is one defined as such under the Australian Standard for the Storage and Handling of Flammable and Combustible Liquids (AS1940-1993); for example, diesel.

“Dangerous Goods” are goods listed as such or as goods too dangerous to be transported under the ADG Code.

A “Dangerous Goods Location” (DGL) is a place where Dangerous Goods or combustible liquids are stored or handled, or are likely to be stored or handled, in quantities that exceed thresholds prescribed under the DGSM Regulation.

The “Dangerous Goods Working Group” (DGWG) is a committee of Dangerous Goods specialists drawn from government, industry and community sectors, for the purpose of developing, implementing and improving Dangerous Goods safety management legislation. NR&M is represented.

“Explosives” are Class 1 Dangerous Goods and other materials defined as such under the Explosives Act.

A “facility” is a place where hazardous materials are, or are to be, stored or handled.

A “flammable liquid” is one defined as such under the Australian Standard for the Storage and Handling of Flammable and Combustible Liquids (AS1940-1993); for example, petrol.

A “hazardous material” is a substance that can cause harm to persons, property or the environment because of one or more of the following –

- (a) the chemical properties of the substance;
- (b) the physical properties of the substance;
- (c) the biological properties of the substance.

A “major accident” is a sudden occurrence (eg fire, explosion or emission) leading to serious danger or serious harm to persons, property or the environment.

A “Major Hazard Facility” (MHF) is a facility that is Classified as such by the chief executive under Part 4 of the *DGSM Act*.

"The Parties" to this MoU are the Explosives Inspectorate of the Department of Natural Resources and Mines, and the Chemical Hazards and Emergency Management (CHEM) Unit of the Department of Emergency Services.

A “Place” includes land, a building, another structure or installation, a road, a vehicle, a tent or marquee, or any other place (even if the place is in a natural or undeveloped state) whether the place is on or under water or on the bed of any waters.

The “State” means the State of Queensland.

4.0 Acknowledgements

The parties acknowledge that:

- the objective of the *DGSM Act*, pursuant to Section 7, is to protect the safety of persons and to prevent harm to property and the environment from hazardous materials;
- the objective of the *Explosives Act* is to protect our community from the adverse impacts of explosives.
- both parties have an important role to play in establishing and maintaining safe working environments in Queensland; and
- overall responsibility for Dangerous Goods under the *DGSM Act* is co-ordinated by the CHEM Unit, on behalf of DES, with responsibilities delegated, as appropriate, to NR&M and other agencies.

Within this scenario, DES is recognised as:

- a provider of emergency management services (emergency management includes prevention, preparedness, response and recovery) contributing to the safety, health and well being of the Queensland community;
- the Queensland Government's Lead Agency for the Management of Hazardous Substances;

- the facilitator of a whole-of-government approach to hazardous materials management and a shared approach to the administration of the *DGSM Act* and Regulation;
- the agency responsible for maintaining the Dangerous Goods legislation and providing ongoing training, advice and technical support to facilitate its shared administration; and
- a source of expert technical advice with respect to hazardous materials management issues.

NR&M is recognised as:

- the agency responsible for the safe management of explosives;
- the agency responsible for the maintenance and administration of explosives safety legislation;
- a source of expert advice with respect to the safe management of explosives and a provider of explosives emergency response services;
- the agency responsible for the operation of a statewide explosives safety inspectorate.

NR&M is primarily responsible for enforcing the legislation as it applies to explosives within Dangerous Goods Locations (DGLs).

For Major Hazard Facilities (MHFs) DES will manage enforcement supported by NR&M and other agencies unless Explosives are the major component – in which case NR&M will have the leading role.

Towards this end appropriate NR&M officers will have the delegated powers of an Authorised Officer under the *DGSM Act*. These powers will be limited to matters within NR&M officers' expertise in the area of risk to the safety of people arising from explosives.

In broad terms, the delegated powers will include authority for the monitoring of MHF's, enforcement, investigation of incidents, as well as the investigation of complaints and related matters.

5.0 Policy Development and Consultation

DES recognises the need to consult with and support NR&M in its performance of delegated safety management responsibilities.

Policy Development

Both Departments are members of the Inter-Departmental Hazardous Substances Co-ordinating Committee (IDHSCC) - a forum convened to give effect to a whole-of-government approach to the safe management of hazardous materials in Queensland.

Both parties are also members of the Dangerous Goods Working Group (DGWG) - a sub-committee of the IDHSCC which will serve as a forum for the ongoing resolution of Dangerous Goods safety management issues relating to the DGSM Act and its implementation.

Against this background, both Departments agree that DES is responsible for the development of administrative arrangements and the co-ordination of hazardous materials safety management policy, whereas NR&M has a leading role in relation to Explosives.

Accordingly, each Department will consult the other on hazardous materials issues which have the potential to impact on the other Department's area of responsibility.

In particular, DES agrees to consult NR&M during the development and amendment of hazardous materials policy, legislation, administrative arrangements, standards guidelines and advisory papers which may impact on NR&M's role or activities.

NR&M agrees to consult DES during the development and amendment of explosives policy, legislation, administrative arrangements, standards, guidelines and advisory papers.

Both Departments will seek consensus as an outcome of their consultations.

Community Consultation

This MoU recognises the importance of industry and community education and awareness programs in achieving excellence in safety outcomes. Accordingly, the parties will:

- co-operate in the development of education and awareness programs and the provision of information to industry, small business and the community at large;
- utilise communication facilities, such as internet homepages and forums such as the IDHSCC and DGWG, to exchange information and consult on Dangerous Goods issues; and
- implement a broad and ongoing education and awareness campaign aimed at informing industry, small business and the general community about the advent and implications of the *DGSM Act* and all administrative arrangements supporting the legislation.
- DES will provide the financial resources to facilitate these programs at its discretion.

6.0 Jurisdictions

Scope of Responsibilities

DES will be the agency responsible for maintaining the *DGSM Act* and Regulation and for training in relation to its provisions.

NR&M will be the agency primarily responsible for all matters relating to the safe management of Explosives.

Specifically, NR&M will be the agency responsible for all aspects of maintaining and administering the *Explosives Act 1999*.

NR&M officers will have the powers of an authorised officer for matters delegated under the *DGSM Act* - i.e. for Class 1 Dangerous Goods issues.

With respect to installations defined as "Major Hazard Facilities" under the *DGSM Act*, the requirements of the *DGSM Act* shall take precedence over the requirements of the *Explosives Act 1999* where conflict exists between the two.

DES Jurisdiction

In conceptual terms DES, through the *DGSM Act*, shall have jurisdiction over all requirements pertaining to the safe storage and handling of Dangerous Goods and combustible liquids.

In practical terms, the administration of those requirements will fall within the jurisdiction of agencies acting under delegated authority.

In this way the operational aspects of enforcement and compliance (approvals, auditing, monitoring and investigation) will be removed from DES - to fall within the jurisdictions of others.

In the case of explosives, all relevant authority will be delegated to NR&M to facilitate its leading role in this area.

The *DGSM Act* and the explosives legislation will be harmonised for consistency as far as possible.

NR&M Jurisdiction

Against this background, NR&M shall continue to have jurisdiction over:

- Safety at explosives facilities; and
- The audit of explosives related safety management systems.

Specifically, NR&M will be delegated authority under the *DGSM Act* to effect compliance with its provisions for explosives and to lead any teams established under the *DGSM Act* for the purpose of dealing with matters involving Class 1 Dangerous Goods.

With respect to incident notification, where the incident involves explosives which predominantly cause or contribute to the incident, notification under the *Explosives Act 1999* of the incident shall be deemed as notification under the *DGSM Act*. NR&M will, in turn, pass on any relevant notifications to DES (see also Section 10.0 “Notifications”).

Also, where the *DGSM Act* imposes a safety obligation on a person or persons and the *Explosives Act 1999* imposes an obligation that is at least equivalent, then compliance with the *Explosives Act 1999* obligation is taken to be compliance with the *DGSM Act* obligation.

Joint Jurisdictions

DES and NRM jurisdictions overlap on any site that is concurrently subject to the requirements of the *DGSM Act* and the *Explosives Act 1999*

For example any workplace, DGL or MHF where explosives are present together with other Classes of Dangerous Goods or flammable and combustible liquids would be subject to joint jurisdiction.

Where joint jurisdictions apply, it is proposed that DGSM responsibilities be shared according to the following principles:

- Agencies other than NR&M that enforce the requirements of the *DGSM Act* and Regulation (Parts 2 and 3) under delegated authority will, in the case of explosives, limit their application of the *DGSM* Legislation to noting their presence and notifying the Explosives Inspectorate with a view to providing for the co-ordinated, holistic management of all stated Dangerous Goods (including Class 1) at a workplace.
- For its part, NR&M will enforce the requirements of the *DGSM Act* and Regulation (Parts 2 and 3) under delegated authority without limitation in the case of Class 1 Dangerous Goods, with a view to providing for:
 - the safe management of individual explosives installations within a workplace; and
 - the holistic management of explosives at places where that is the only Class of Dangerous Goods stored and handled.

Jurisdiction Examples

The following non-exhaustive list of responsibilities illustrates the respective jurisdictions of each Department, and is provided to assist in understanding their respective roles.

- Explosives incident/inspection/audit at a DGL.

Explosives Branch - (NR&M)

- Explosives inspection/audit under the *DGSM Act* at a MHF with a major explosives component.

Explosives Branch (NR&M) to lead team involved.

CHEM Unit (DES) - to form team, assist with expertise and generally co-ordinate

- Explosives incident at a MHF

If explosives primarily the cause:

Explosives Branch (NR&M) to lead team involved.

CHEM Unit (DES) to form team, assist with expertise and generally co-ordinate.

If explosives not primarily the cause:

CHEM Unit (DES) to form team, lead team involved and generally co-ordinate.

Explosives Branch (NR&M) to assist with expertise.

7.0 Delineation of Jurisdictions

The following statement of delineation is provided to support and clarify the above. In every case, where one party has prime jurisdiction, the opportunity for the other party to be involved is both acknowledged and supported.

Area of Application		Departmental Responsibilities	
		Explosives Branch (NR&M)	CHEM Unit and Other Government Agencies
1.	Explosives at a non-workplace.	Full jurisdiction. [Explosives Act + delegated DGSM authority]	No jurisdiction. [Notify Explosives Inspectorate]
2.	Explosives at a workplace.	Full jurisdiction. [Explosives Act + delegated DGSM authority]	No jurisdiction. [Notify Explosives Inspectorate]
3.	Explosives at a DGL.	Full jurisdiction. [Explosives Act + delegated DGSM authority]	No jurisdiction. [Notify Explosives Inspectorate]
4.	Explosives at a MHF. (where the explosives do not constitute the major hazard)	Shared Jurisdiction	
		Full jurisdiction for the explosives component. [Explosives Act + delegated DGSM authority] NR&M contributes to and supports a team approach.	Full jurisdiction for Dangerous Goods other than explosives to other agencies under delegated DGSM authority. CHEM Unit to lead team.
5.	Explosives at a MHF (where the explosives are the major hazard)	Shared Responsibility	
		Full jurisdiction. for the explosives component. [Explosives Act + delegated DGSM authority] NR&M leads team. DGSM Act has precedence.	Full jurisdiction for Dangerous Goods other than explosives to other agencies under delegated DGSM authority. CHEM Unit to contribute to and support a team approach.

8.0 Roles and Responsibilities – Dangerous Goods Locations (DGLs)

This section confirms and clarifies the roles and responsibilities of DES and NR&M in relation to providing for the safe storage and handling of Dangerous Goods (including explosives) at DGLs.

8.1 Enforcement

The parties agree that:

Scope:

- NR&M will have primary carriage of all enforcement matters for explosives.
- For all other Classes of Dangerous Goods, DES will either delegate or devolve carriage of all enforcement matters to other agencies;
- NR&M's coverage of general matters such as placarding and manifest requirements will be confined to Explosives.
- DES will encourage other agencies to refer all explosives issues to NR&M for attention.
- NR&M's roles and responsibilities may be further extended or limited by mutual agreement.
- NR&M's carriage of responsibilities under the *DGSM Act* shall not negate or detract from its administration of the *Explosives Act 1999* which continues to be of force and effect.

Approach

- In applying the requirements of the *DGSM Act*, NR&M will strive to ensure that:
 - officers authorised under the *DGSM Act* have the appropriate skills and experience and participate in the training provided by DES;
 - consideration is given to the ongoing professional development of these officers in relation to Dangerous Goods safety management issues; and
 - relevant guidelines or administrative procedures are adopted to achieve consistency of administration.
- Officers authorised under the *DGSM Act* may issue directives under the *DGSM Act*. The issue of directives will be in accordance with the current NR&M enforcement policy.
- Notices issued under the *Explosives Act 1999* may be adapted for use as directives under the *DGSM Act*.

- Directives issued under the *DGSM Act* will be added to the NR&M record of notices.

8.2 Delegated Powers

The parties agree that:

- DES will delegate to NR&M all powers and functions necessary to effect compliance with the requirements of the *DGSM Act*.
- Specifically, DES will delegate to NR&M's Chief Executive all powers and functions necessary to facilitate the appointment of authorised officers under the *DGSM Act* and Regulation for the purpose of enforcing explosives provisions.
- The instrument of delegation will be a written confirmation of specific powers, signed by the Chief Executive officer of DES.
- NR&M shall administer the requirements of the *DGSM Act* according to the instrument of delegation and this MoU.
- NR&M will arrange to have its authorised officers' identity cards annotated to confirm their status under the *DGSM Act* - once they have been trained in its provisions.

8.3 Auditing and Monitoring

- NR&M will continue to provide experienced officers and the infrastructure (officer accommodation, transport, communications, word processing, consumables) necessary to support the ongoing audit and inspection of explosives with a view to securing compliance with the requirements of the *DGSM Act* and Regulation.
- In doing so, NR&M will integrate the operational demands of the *DGSM Act* and Regulation with its ongoing operations.
- The nature, timing and extent of integration will be at NR&M's sole discretion, as will operational policy.

8.4 Complaints

- For the duration of this agreement NR&M will continue to respond to explosives complaints in pursuance of the *Explosives Act* in accordance with NR&M enforcement policy.

8.5 Joint Jurisdiction Protocol

The parties agree that:

- Joint jurisdictions arise where:
 - Class 1, Class 2, Class 3 and Class 7 Dangerous Goods or combustible liquids are present in sufficient quantities on sites storing other Classes of Dangerous Goods; and
 - an individual Local Government has elected to administer DGSM requirements (such as placarding) under delegated authority.
- It follows that NR&M's partners in a joint jurisdiction could include:
 - an individual Local Government; or
 - regional arm of the Division of Workplace Health and Safety (DWHS) within the Department of Industrial Relations (DIR); or
 - the Radiation Health Unit of Queensland Health.
- As Dangerous Goods typically give rise to environmentally relevant activities, the regional arm of the Environmental Protection Agency may also be present.
- To avoid duplication and to promote consistency, the parties agree that the following protocols are to be observed in relation to auditing and monitoring of installations that are workplaces and which fall under joint jurisdiction:
 - Where possible, the parties will encourage liaison between agencies to ensure that auditing and monitoring of installations and facilities creates minimal disruption to operations;
 - This will involve attendance at the same time, or agreement that one agency can represent the other; and
 - Any information arising in the course of an audit or any monitoring carried out by one agency which could be relevant to the other agency will be reported to the agency through agreed channels.

8.6 Training

- DES will provide all prospective authorised officers with comprehensive training in:
 - obligations established under the *DGSM Act*;
 - the powers of authorised officers;
 - the safe storage and handling of Dangerous Goods; and
 - placarding and manifest requirements.
- All DES training will be prepared in consultation with NR&M;

- Training will initially be available in Brisbane and will extend to regional centres – subject to demand; and
- DES will provide training materials and reference documentation for the use of authorised officers.

8.7 Technical Advice and Interpretation

The parties agree that:

- The CHEM Unit will serve as a source of expert advice, to NR&M, in relation to the general aspects of Dangerous Goods safety management, such as placarding and manifest requirements;
- The CHEM Unit will also facilitate the resolution of disputes over interpretation of the *DGSM Act* in this regard.
- The Explosives Branch of NR&M will serve as a source of expert advice to DES in relation to the technical aspects of explosives safety management.
- To facilitate NR&M access to technical advice, the CHEM Unit will provide and circulate key contact information via the CHEM Unit home page and this MoU (see Appendix ‘A’).

8.8 External Requests for Information and Advice

The parties agree that:

- Where practicable, DES will refer all external requests for information and advice relating to the safe storage and handling of Explosives to NR&M – in the first instance; and
- NR&M will refer to DES all requests for information on:
 - the safe storage and handling of all other Classes (except Class 2.1, Class 6.2 and Class 7 Dangerous Goods);
 - matters relating to its co-ordinating role (such as the ongoing development of guidelines and legislation); and
 - the general operation of the *DGSM Act*.

9.0 Roles and Responsibilities - Major Hazard Facilities (MHFs)

This section establishes the roles and responsibilities of DES and NR&M in relation to providing for the control of Major Hazard Facilities (MHFs).

9.1 Enforcement

The parties agree that:

- For a MHF with a minor explosives component:
 - DES will have primary carriage of all MHF enforcement matters; and
 - NR&M will have a supporting role.
- For a MHF with a major explosives component:
 - DES will have a co-ordinating role; and
 - NR&M will have a leading role.

9.2 Delegated Powers

- DES will be the lead administering agency for the control of Major Hazard Facilities (other than Class 2.1, Class 6.2 and Class 7 MHFs) and will exercise all the relevant powers necessary for the pursuit of that role.
- DES will delegate to NR&M's Chief Executive all powers and functions necessary to facilitate the appointment of authorised officers under the *DGSM Act* and Regulation for the purpose of enforcing explosives MHF provisions;
- NR&M will arrange to have its authorised officers' identity cards annotated to confirm their status under the *DGSM Act* - once they have been trained in its provisions.

9.3 Auditing and Monitoring - MHF Team Approach

The parties agree that:

- Compliance with the MHF requirements of the *DGSM Act* will be evaluated by an audit team drawn from a range of agencies;
- The audit team leader will normally be drawn from the agency whose core responsibilities most closely match the nature of the facility in question;
- DES will typically facilitate and co-ordinate the activities of the audit team.
- NR&M will provide experienced officers whose task it will be to bring specialised expertise (in relation to explosives) to the activities and deliberations of each MHF audit team;

- Specifically, NR&M will be the lead administering agency for the control of MHFs with a major explosives component and will be delegated all powers necessary for the pursuit of that role.
- Any clear breach of the *Explosives Act 1999* that is revealed during the course of a MHF audit shall immediately be brought to the attention of the MHF audit team.
- The audit team will then discuss and resolve what course of action should follow and under which statute - without limiting NR&M's right to pursue any action under its own statutes.
- Where practicable, preference will be given to a remedy arising under the DGSM Act.
- MHF auditing and monitoring programs will be scheduled by the relevant MHF audit team.

9.4 Training

The parties agree that:

- DES will provide training and information on:
 - MHF obligations established under the *DGSM Act*;
 - the operational methods of MHF audit teams; and
 - the safety audit protocols that will be adopted.
- DES will provide training venues, training materials and reference documentation.

9.5 Advice and Information

The parties agree that:

Technical Advice and Information

- MHF audit teams will foster compliance with the requirements of the *DGSM Act* by working with industry on MHF safety issues;
- While the CHEM Unit will be represented on each audit team, CHEM Unit staff will defer to the technical expertise of their counterparts, as appropriate, within a collegiate approach;
- The CHEM Unit will be the leading authority for matters of interpreting the *DGSM Act* and will serve as the “first port of call” for NR&M in this regard.

General Advice and Information

- Where practicable, NR&M will refer all external requests for information and advice relating to the control of MHFs, other than explosives MHFs, to DES.
- DES will refer to NR&M all requests for information and advice on matters relating to its role.

10.0 Incident Notification and Response

NR&M will continue to respond to explosives incidents in accordance with current NR&M enforcement policy and, for the duration of this agreement, incident notifications will continue to be covered exclusively by existing State legislation and, where applicable, Local Government licence conditions.

Specifically, explosives incident notifications will continue to be covered by the *Explosives Act 1999*.

Incident notifications for all Classes of Dangerous Goods and combustible liquids will also continue to be covered by the *Workplace Health and Safety Act (WH&S Act)*;

DIR will therefore have an overlapping interest in explosives incidents - from an occupational health and safety standpoint.

As a co-administrator of the *DGSM Act*, DIR will inform DES of any major accidents involving Dangerous Goods.

Where the hazardous material was an explosive, DES will share the information provided with NR&M.

The incident will then be managed by NR&M, as happens now, with support from the CHEM Unit, if required.

When managing an incident within its jurisdiction, NR&M shall have the discretion to proceed under either the *Explosives Act 1999* or the *DGSM Act*, where an authorised officer is present.

For its part, NR&M will inform DES of any major accidents involving an explosives safety management failure.

11.0 Major Accidents and Investigations Involving Dangerous Goods

It is recognised that either or both parties will initially be made aware of incidents at installations using Explosives where they are the predominant cause of the incident.

Principles

As an overarching principle, the parties recognise the need and importance of co-operation on matters of interest to each other and undertake to:

- Participate in and support a team approach to the investigation of major accidents;
- Keep the other fully and freely informed of reported incidents which may fall either wholly or partially within their respective jurisdictions in an expeditious manner;
- Take responsibility for passing on all relevant information when originating an investigation of interest to the other party;
- Work together on any matters caught by both jurisdictions to ensure an outcome consistent with all relevant legislation.
- Inform the other when an election is made to relinquish involvement in an investigation where a matter is more appropriately dealt with by that jurisdiction;
- Strive to undertake all monitoring and investigative tasks with the maximum of efficiency and the least disruption to industry and the community.
- Consult, through the appropriate channels, on the release of each other's information under *Freedom of Information (FOI) Act 1992*.

Explosives Inspectors' Responsibilities

In relation to Explosives Inspectors' responsibilities, the parties agree that:

- Explosives Inspectors are responsible for the administration of the safety and technical provisions of the *Explosives Act 1999* and are required to approve, inspect and audit installations and investigate incidents involving explosives
- The Inspectorate is responsible for the approval of equipment and installations and the issuing of licences, permits and approvals under the *Explosives Act 1999*.
- The Inspectorate provides a 24 hour emergency response capability.

With the advent of the DGSM Act, Explosives inspectors may also have the powers of authorised officers.

In the event of a major accident at a MHF (other than an Explosives MHF), the MHF Team Leader may call on NR&M staff, to perform or assist with those functions for which they would normally have delegated responsibility.

This could require NR&M staff to:

- undertake a site inspection;
- secure evidence;
- take statements; or
- compile an accident report.

CHEM Unit Responsibilities

The CHEM Unit provides a 24-hour emergency response service, which may place CHEM Unit staff at the scene of an accident ahead of a NR&M's Authorised Officer.

Under normal circumstances, CHEM Unit staff will support NR&M Authorised Officers in their deliberations and investigations at an accident scene through the provision of advice on scientific and technical matters.

In the case of a major accident at a MHF (other than a Class 1 MHF), however, it is agreed that CHEM Unit staff will assume a co-ordinating role with NR&M support.

Where a team-based or joint investigation is undertaken, it shall be led by the most appropriate authority and, specifically, by a person mutually agreed between the parties as having the most experience in the type of accident in question.

Operational Protocols

To facilitate their respective roles and functions the parties agree that:

- The regional arm of the agency (where applicable) receiving advice of an incident or accident which may fall within the other's jurisdiction is to provide notification to the other jurisdiction as soon as an incident is assessed as being of interest;
- For NR&M an accident is of interest if it involves Explosives.
- For the CHEM Unit, an accident is of interest if it involves serious danger or serious harm to persons, property or the environment.

- The agency receiving the advice is to notify the informing agency as soon as practicable of:
 - any wish to proceed with an investigation; or
 - any intention to relinquish the investigation if it is considered to be outside the jurisdiction of that agency; and
 - if an investigation is to proceed, the intended participation in the investigation process.
- Where a decision is made to proceed with an investigation, the receiving agency is to attend the scene as soon as practicable;
- Both agencies will co-operate to ensure timely and accurate outcomes to the investigations when both are involved. This may entail:
 - joint interviews of witnesses; or
 - sharing of photographic and other evidence; or
 - agreement as to the location of and access to seized evidence.
- Either agency will provide, upon request of the other, technical assistance where specialist skill and knowledge may be required;
- Where either agency undertakes an investigation of mutual interest, a copy of any report prepared in relation to the investigation will be forwarded without charge to the other agency on the basis that doing so will not prejudice any legal proceedings which have been, or may be initiated by the agency which prepared the report;
- Where either agency issues a notice which may be of interest to the other agency a copy of that notice shall be forwarded to that agency; and
- Where a joint investigation is undertaken, it is agreed that it shall be led by the person (agency) with the most expertise in the type of incident in question. For example, an explosion in a magazine would be led by an Explosives Inspector but a small chemical spill fire which resulted in the destruction of a magazine would probably be led by CHEM Unit.

12.0 Prosecutions

The following points relate to prosecutions (if any) mounted under *the DGSM Act* for breaches of explosives safety management requirements.

For Workplaces that are not MHFs

For places that are not MHFs it is agreed that:

- NR&M will have carriage of prosecutions arising within its jurisdiction.
- DES will (as appropriate) provide expert scientific advice and support during investigations, together with advice on the viability of prosecutions under the DGSM Act.
- The agency advocating prosecution under the DGSM Act will bear the cost of proceeding.

For Major Hazard Facilities (MHFs)

For Major Hazard Facilities (other than explosives MHFs) it is agreed that DES will, as appropriate:

- Co-ordinate investigation;
- Provide for enforcement actions (eg directives); and
- Keep the MHF team fully informed.

For explosives MHFs, it is agreed that NR&M will assume these responsibilities and it is further agreed that:

- The agency leading the MHF team will provide for prosecutions.
- The decision to proceed with a prosecution will be made after consultation between the parties.
- The agency advocating prosecution under the DGSM Act will bear the cost of proceeding.

For all Places

Consideration will be given to all other avenues for achieving the safety outcomes required by the DGSM Act prior to any prosecution being mounted.

The rights of either party to launch prosecutions under its own legislation are not affected by these arrangements, but should consider a whole of government outcome.

13.0 Implementation and Commencement

With regard to the implementation of this MoU, DES and NR&M agree to:

- Pursue the intent of this Agreement in a spirit of co-operation;
- Maintain regular contact to monitor and promote its effective implementation (regular scheduled meetings of the DGWG); and
- Consult from time to time as to its interpretation or operation, particularly in early stages.

DES and NR&M undertake to circulate this MoU to all relevant parties within their departments and to encourage compliance with its contents.

This MoU will also be combined with others covering the shared administration of the *DGSM Act* and published and distributed to promote industry awareness of the arrangements agreed.

Commencement

The commencement of this MoU will be concurrent with the commencement of the *DGSM Regulation*.

14.0 Dispute Resolution

DES and NR&M agree to work together to arrive at mutually acceptable solutions to any problems or disputes that may arise in relation to this MoU.

Where regional/district personnel are in dispute as to either agency's jurisdiction or responsibilities or as to what course of action is appropriate in any given circumstance, the dispute is to be referred to the Chief Inspector of Explosives (for NR&M personnel) and the Director, CHEM Unit (for DES personnel).

Where problems or disputes cannot be resolved at this level, it is agreed that the matter should go before the chief executive officers of each agency.

15.0 Term and Review of MoU

It is agreed that this Memorandum of Understanding shall have a term of two years from the commencement date, unless by mutual agreement, it is reviewed at an earlier time and re-drafted.

The Departments undertake to formally review this agreement within one month of the second anniversary of its execution.

16.0 Variations

DES and NR&M agree that this MoU may be varied or modified at any time with the agreement of all signatories.

The MoU may also be terminated by the written agreement of all signatories.

Amendment or termination of the MoU will not affect the terms of agreements or contracts which are in place.

17.0 Execution of Agreement

Dated this _____ of _____ 2001.

Signed for and on behalf of the Department of Emergency Services

.....
Michael Kinnane
Director-General

Signed for and on behalf of the Department of Natural Resource and Mines.

.....
Terry Hogan
Director-General

THE CONTACT DETAILS FOR DES AND NR&M

<i>DEPARTMENT OF EMERGENCY SERVICES</i>	
OFFICE	CONTACT TELEPHONE NO.
<p>CHEMICAL HAZARDS AND EMERGENCY MANAGEMENT (CHEM) UNIT</p> <p>Block C, Level 2 Emergency Services Complex Cnr Park and Kedron Park Roads KEDRON QLD 4031</p> <p>Postal: GPO Box 1425 BRISBANE QLD 4001</p> <p>Fax: (07) 3247 8433</p> <p>Homepage: Web: http://home.pacific.net.au/~chem</p>	<p>For technical advice and support</p> <p>Telephone: (07) 3247 8444</p> <p><i>ask for:</i></p> <p>The Service Co-ordinator, Dangerous Goods</p> <p><i>or:</i></p> <p>The Service Co-ordinator, Major Hazards</p> <p><i>or:</i></p> <p>The Service Co-ordinator, Legislation Policy and Coordination</p> <p>For emergencies: call 000 in the first instance.</p>
<i>DEPARTMENT OF NATURAL RESOURCES AND MINES</i> <i>www.dme.qld.gov.au</i>	
OFFICE	CONTACT TELEPHONE NO.
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<p>SOUTHERN REGION</p> <p>55 Little Edward Street SPRING HILL</p> <p>Postal PO Box 839 SPRING HILL 4004</p>	<p>Colleen Read, Inspector of Explosives</p> <p>Telephone (07) 3237 1630 Fax (07) 3224 2580 E-mail cread@dme.qld.gov.au</p>
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