

**PUBLIC SCRUTINY
OF THE APPLICATION OF THE NATO PRINCIPLES
IN AUSTRALIA**

LIEUTENANT COLONEL DAVID C. CLYDE

AUSTRALIAN ARMY

ABSTRACT

Australia adopted the NATO Principles for the Storage and Transport of Ammunition and Explosives in 1981. Like many other nations, Australia faces problems of urban encroachment into areas surrounding explosives facilities. In addition, the Public increasingly questions the nature and purpose of Defence activities.

In 1988, the Australian Audit Office tabled a report which was highly critical of the Department of Defence's implementation of explosives safety principles and policy. This report led to a public inquiry by a Joint Parliamentary Committee.

The Committee's findings led to some important changes to the Australian Defence Forces' policy for the storage and handling of ammunition and explosives. In particular, a less prescriptive approach to the application of the NATO Principles was adopted. This permits the exercise of technical judgement in deciding what remedial action, if any, needs to be taken to allow activities which do not strictly comply with the Principles to continue. Other matters which arose from the inquiry included attitudinal changes towards issues of public safety and Ministerial accountability.

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PUBLIC SCRUTINY
OF THE APPLICATION IN AUSTRALIA
OF THE NATO STORAGE PRINCIPLES
FOR AMMUNITION AND EXPLOSIVES

INTRODUCTION

1. The Australian Defence Force, like that of many other nations, maintains a network of facilities designed to store, handle and maintain the ammunition and explosives necessary for the conduct of peacetime activities as well as to provide for anticipated requirements in the event of defence contingencies.

2. By their very nature, concentrations of explosives present a degree of risk to employees working with or near them and to the general public where public activities do or may take place adjacent to explosives related facilities. Historically, most explosives sites in Australia were situated in areas well away from housing and public utilities. However, as time has gone by, housing, utilities and recreational areas have encroached into areas around these facilities.

3. At the same time, the public has become more inclined to question the basis, motives and rationale of government, including Defence, activities. Such public questioning may be motivated by any one of a number of factors. It may be a genuine environmental concern; it may be politically motivated against the incumbent Federal, State or Local Government; it may be profit driven by developers who see the opportunity to acquire publicly owned land; or it may be concern that government activities do present a threat to public safety.

4. In our democracy, the motivation for such scrutiny is largely irrelevant: an appropriate response will still be necessary. The form of scrutiny may be through individuals or pressure groups raising issues in the media; through political questioning at one or another of the three levels of government; or through direct questioning of officials through mechanisms such as Freedom of Information legislation.

5. This coincidence of encroachment upon areas surrounding explosives facilities and increased scrutiny of Defence activities has resulted in a reappraisal of the application of safety principles, has emphasised the

importance of public safety, and has seen the Australian Defence Force critically examine the pertinence of their principles for the storage and handling of explosives.

6. This paper will describe the nature of public scrutiny of the storage and handling of ammunition and explosives in Australia and examine the development of policy arising from that experience.

BACKGROUND

Historical

7. From the early 1920s until the late 1970s, Australia followed safety principles for the storage and handling of explosives developed by the United Kingdom. In 1976 NATO undertook a review of Western military storage procedures which resulted in the publication of the NATO Principles for the Storage and Transport of Ammunition and Explosives. These Principles incorporate the United Nations' classification system for explosives which was developed following the establishment in 1953 of the UN Committee of Experts on the Transport of Dangerous Goods.

8. The Australian Department of Defence issued a Departmental Instruction in May 1981 directing the adoption of new procedures for the safe storage and handling of ammunition and explosives. The new procedures were based on the NATO Safety Principles and incorporated the UN classification system. The Departmental Instruction allowed a transition period for adoption of the new procedures; implementation was to be complete by December 1983.

Storage and Handling Facilities

9. The Australian Defence Force operates more than 40 locations for the storage and handling of ammunition and explosives. Between them, these locations contain over 1 000 facilities or potential explosion sites (PES). The functions of these facilities vary widely, ranging from ammunition repair facilities to storage sites holding a wide variety of explosive stores, from small arms ammunition to missiles and aerial bombs. PES include Ordnance Loading Aprons on airstrips and naval moorings for outfitting warships.

10. The nature of the facilities varies from modern, purpose-designed, high capacity storage sites to low capacity

storehouses built before World War 11. The location of facilities also varies widely: from new military airfields located many miles from the nearest town and where there is little foreseeable danger of urban encroachment to long established loading facilities for warships in the middle of Australia's busiest harbour and surrounded by industrial, housing and recreational developments.

11. For many PES, prescribed safety arcs (Outside Quantity Distances (OQD)) are wholly contained within the Defence Property Boundary (DPB) and thus, provided the authorised explosive (NEQ) limits do not increase and the property boundaries do not contract, urban encroachment is of little consequence. There are a number of sites, however, where OQD, particularly the major facilities OQD, do extend beyond the DPB and where encroachment is a significant problem. Safeguarding, that is, the process of ensuring that development which is incompatible with the nature of the use of the defence facility does not take place within particular OQD, is an essential part of managing affected sites.

12. In a number of instances, ammunition activities are such that prescribed safety distances are already breached. In these cases, Public Risk Waivers (PRW), always requiring approval by the Minister for Defence, are required. PRW are normally approved only on the basis that action is in hand to remedy the circumstances requiring the PRW. This may be by acquiring the land, building new facilities or by ceasing or altering the non-compliant ammunition activities.

PUBLIC SCRUTINY

13. As previously explained, the Australian Department of Defence adopted the NATO Principles in 1981 with full implementation to be achieved by December 1983. The instruction implementing the change was written for a technical audience and, at that time, was not formally submitted for Ministerial approval, a factor which was later to attract criticism.

Ombudsman's Inquiry

14. The first important public scrutiny of the storage and handling of ammunition and explosives within the Australian Defence Forces arose in 1980 - before adoption of the NATO Principles by Australia. This was part of an inquiry by the Federal Ombudsman. The Ombudsman is appointed

by the Government to investigate complaints by the Public concerning decisions or actions by Government agencies, which a member of the Public considers wrong or unfair and which cannot be resolved satisfactorily through the normal legal or appeals processes.

15. In 1980, the Ombudsman considered representations from a complainant relating to attempts by the Department to prevent use of private land in a manner which was incompatible with explosives operations conducted on an adjoining defence establishment. The Ombudsman criticised the Department for not being clear on how it should protect its interests in relation to land adjacent to ammunition and explosives facilities. He recommended that:

- . as far as practicable, the Department should ensure that outside quantity distances are confined within the DPB.
- . where outside quantity distances extend beyond the DPB, the Department should ensure that all affected landholders are notified and special agreements made.

16. The Department accepted these recommendations but with the proviso that only land out to the inhabited building distance need be wholly contained within the DPB. As will be seen however, the Department's application of the inhabited building distance in all circumstances was to attract later criticism, as was the Department's tardiness in implementing the recommendations. The Ombudsman's inquiry, although not a major event in itself, was a warning of the nature of future public interest in the activities of defence explosives facilities.

Auditor-General's Efficiency Report

17. The Auditor-General heads the Australian Audit Office (AAO) which is a statutory authority responsible to the Australian Parliament. It routinely audits the activities of all Government departments to ensure compliance with relevant government policies and departmental instructions. It is also required to report on the efficiency and effectiveness of the processes used by departments and government agencies in the discharge of their responsibilities.

18. In 1985, the AAO reviewed the implementation of safety principles for the storage and handling of ammunition and explosives as part of a routine audit of the Defence Department's property management. The routine review of

safety principles became a formal efficiency audit in 1986. The objective of the audit was to assess the administrative effectiveness of the department's procedures and practices in implementing its own instructions relating to the storage and handling of ammunition and explosives. It did not attempt to assess the adequacy of the safety principles inherent in the instructions.

19. The audit was a complex affair which lasted until the report was tabled in Parliament in April 1988 and which delved into every important aspect of the way in which the Department managed explosives. The scope of the audit can be gauged from its major findings:

The Department failed to meet its December 1983 target date for the implementation of the new safety principles, with no evidence of a concerted and co-ordinated effort to implement them until around 1986 and 1987.

By early 1988 there were still many locations at which explosives related operations did not comply with the adopted principles.

Waivers, numbering over 100, had been issued or were pending approval, implying that Departmental operations were being conducted in a manner that imposed a level of hazard to the public that was greater than the level acceptable under the safety principles.

In several situations, non-compliant activities continued without the necessary waiver approval.

At the time of adoption of the new safety principles, the Department gave little consideration to the cost implications, and, despite advice from the Attorney-General that government approval should have been sought, adopted the new principles without seeking government endorsement.

Despite the fact that the Department had adopted a system involving the provision of safeguarding maps to local government planning authorities, these maps were not being provided.

21 recommendations stemmed from these findings.

20. In Australia, Auditor-General's reports are publicly available documents and important or controversial findings are routinely reported in the Press.

21. However, few members of the Press or of the public take time to read all the factors impinging on the key findings of an audit report or to read associated documentation. Thus the fact that the Department has a near impeccable safety record when it comes to handling explosives receives comparatively little emphasis, while non-compliant activities which may endanger public safety are highly newsworthy. That some of the key findings were procedural only (that is, relating to the processing of paperwork, approvals and the like) and did not alter the nature of the actual risk also received little emphasis.

22. This is not to say that the Department did not deserve criticism for its failure to implement fully its own instructions in the timeframe originally planned. Indeed, the Department accepted almost all of the 21 Audit recommendations without equivocation. The point is, however, that the nature of public scrutiny will rarely permit presentation or publicity of the facts in a way that is favourable to the Department. Non-compliance is newsworthy; compliance, or 'doing your job' is not.

23. The effect of the Auditor-General's report was to publicise the issue of public safety and public risk associated with activities adjacent to defence facilities. The public became and remains more curious about the nature of defence activities and more likely to question those activities, either directly or through their Members of Parliament. Within the Department, there was greater awareness of the need to be concerned about public safety and of the need to consult with and to keep the affected public informed.

24. A further aspect which arose from the Audit report was that of Ministerial responsibility. Audit noted that it should be a decision of the Minister, not of Departmental officials, to determine the degree to which the public should be put at risk and hence suggested that only the Minister should approve Public Risk Waivers. This finding in itself caused little difficulty to the Department, but the Audit report went on to contend that in not abiding by this principle, the Department had deliberately misled the Minister. Audit reached this conclusion through its interpretation of a complex sequence of submissions to the Minister and the timing with which these were presented. The assertions were untrue and later accepted as such by the Minister. However, the onus still fell on the Department to disprove the contention, a difficult and time consuming task. The lesson from this episode is, perhaps, that once a public

scrutiny finds areas of non-compliance which it can see or believe to be to the Department's advantage, its suspicions will feed upon themselves and it will tend to assign only the darkest motives to the Department's actions. Openness wherever possible is the best recourse for Departmental officials. At times, however, security considerations will limit the degree of openness available to the Department. It then is even more important that the Minister exercise his responsibility to decide the degree of risk to which the Public may be put.

Joint Parliamentary Committee of Public Accounts Inquiry

25. The Joint Parliamentary Committee of Public Accounts (JPCPA) is a committee of elected Parliamentarians from both Houses of Parliament and including members of all political parties represented in the parliament. The Committee is mainly concerned with examining the accounts of receipts and expenditure of the Federal Government and its agencies. However, its role extends to examining Auditor-General's reports which comment on the efficiency with which responsibilities are discharged. Hence, in practice, it can inquire into the efficiency of most aspects of Government activity.

26. The Committee resolved to inquire into the Auditor-General's report on the storage and handling of ammunition and explosives in April 1988 - immediately the Report was tabled in Parliament. It set itself very broad terms of reference: to examine matters raised by the Auditor-General, and to examine the adequacy of the Department's responses.

27. The inquiry lasted for about eighteen months and resulted in a report which made twelve recommendations. These recommendations did not conflict with or substantially add to those of the earlier Auditor-General's report. They were primarily concerned with the mechanisms that the Department used to implement the recommendations of the Auditor-General. Thus, where the Auditor-General recommended that Departmental instructions provide for timely processing of PRWs, the JPCPA recommended a strict timetable of four weeks for such processing.

28. The principal conclusions of the JPCPA inquiry were that, although Defence had an excellent safety record, its management of the application of the NATO principles left a great deal to be desired and that its implementation of the Auditor-General's recommendations was tardy. Most importantly, the Committee, early in its deliberations, agreed with contemporary Defence opinion that the Department's approach to the application of the NATO

principles was far too prescriptive. That is, the Department had adopted a template approach to quantity distances, leaving little scope for the exercise of technical judgement in the light of local conditions.

29. This situation had largely arisen because of the way the Department accepted and applied the Ombudsman's recommendations described earlier. As a result of those recommendations, it was the Department's policy to equate the DPB with a Group 4 Risk, that is, the inhabited building distance. Thus a non-compliant situation arose when the prescribed safety distance for an inhabited building extended beyond the DPB, despite the fact that there may have been no inhabited buildings affected by the PES. As a result, the degree of public risk assumed by the Department was much higher than the actual risk. Clearly, to remedy non-compliant situations under the Department's interpretation, land out to the inhabited building distance had to be acquired - a costly exercise, and one which, no doubt, contributed to the Department's tardiness in implementing its own instructions.

30. In its recommendations the JPCPA also emphasised the need for a better system of monitoring and auditing the application of the NATO principles, particularly if a less prescriptive approach was to be taken. Each of the services had its own technically competent licensing staff who were able to exercise professional judgement on the application of principles and procedures. However, the Committee was concerned that the NATO principles should be applied uniformly and objectively. Thus an independent, centrally controlled process was necessary to advise, monitor and audit the operations of the Services. Such a centrally controlled system also provided a mechanism for reporting to the Minister and for enabling the Minister to exercise control over a process for which he is ultimately accountable.

31. The JPCPA enquiry represented an important extension of the process initiated by the Auditor-General. Senior Service officers and Departmental officials were called before this public Committee to explain the rationale behind their decisions. No members of the Committee were technically trained or even had much understanding of the way the Services went about their business. Thus, matters which seemed to practising professionals to be elementary or self-explanatory had to be explained and justified in the public domain. The ensuing critical examination of policies and procedures, although painful at the time, led to a better appreciation and a more rational approach to the issues of public safety and accountability.

THE DEVELOPMENT OF POLICY

32. Prior to the JPCPA enquiry, policy for the storage and handling of ammunition and explosives was contained in a 1981 Departmental instruction. A separate instruction detailed the Waiver process. The Department had determined as a result of the Auditor-General's investigation that its policy needed to be revised and re-published. It took advantage of the opportunity to raise policy issues with the JPCPA before developing policy for Ministerial approval.

33. In reviewing policy, the Department started with some premises which, though obvious enough, had been highlighted in both the Auditor-General's report and by the JPCPA. These included the primacy of Ministerial accountability, that is, that it is the Minister who is responsible for determining the degree of risk to which the public may be put; the need to put public safety to the forefront in decision-making; and the need to consult with the public, including land owners and local planning authorities, when the public may be affected by Defence activities.

34. With these basics in mind, revised policy provided for a less prescriptive interpretation of the NATO principles, the appointment of a Defence Central official (the Assistant Chief of the Defence Force for Logistics (ACLOG)) as the central authority responsible for policy, and it gave comprehensive guidance on the waiver and safeguarding processes.

35. A less prescriptive application of the NATO principles demands the exercise of technical judgement. The existence of the Australian Ordnance Council (AOC), an independent body reporting to the Chief of the Defence Force, whose charter includes providing technical advice on all aspects associated with handling explosives, greatly facilitated these policy changes. Each of the Services and every ammunition and explosives facility possesses technically qualified staff able to exercise the necessary judgement in applying the Principles. The AOC represents an authoritative body able to interpret the NATO principles in a consistent manner and able to advise the technical staffs on the ground. It also provides a medium by which experience in applying local Australian conditions at one facility can be passed on to others.

36. As the central authority responsible for policy, ACLOG monitors implementation by each of the Services. He achieves this through a reporting mechanism which also enables the Minister to be kept informed. Each of the Services has established its own technical monitoring authority able to ensure compliance with Service instructions. Overall and fully independent monitoring has been achieved by adding an audit role to the functions of the AOC.

37. One of the major criticisms in the Auditor-General's report and the JCPA was the loose application of the waiver and safeguarding processes. The revised policy greatly tightens these aspects by formally requiring consultation with State and Local Government authorities and affected members of the public and by stipulating timeframes by which matters such as waiver approvals must be obtained. The policy directive is now specific and comprehensive on issues such as the production and distribution of safeguarding maps, the sequence of the approval process and the need for reporting on these issues.

38. Policy, then, has undergone a quite fundamental philosophical change in its approach to issues of public safety. On the one hand, it is now less prescriptive relying on the application of technical and professional judgement; on the other hand, it now requires much tighter central control over monitoring and reporting on how that judgement is exercised.

CONCLUSION

39. The mechanisms for public scrutiny described in this paper are a part of the established, formal processes of Government in Australia. As mentioned at the outset, the public is much more likely to question the purpose of defence related activities and, in many cases, to seek to have those activities stopped or moved elsewhere. This questioning can be, and increasingly is, through less formal avenues than those described. However, a policy of consulting with the Public on issues of public safety and on the use of land close to explosives facilities goes a long way towards allaying suspicions, forestalling questioning and, in the end, saving time and effort in responding to the more formal official inquiries which might otherwise ensue.

40. The NATO Principles are a widely used mechanism for providing guidance on safety issues for the storage and handling of ammunition and explosives. The Australian experience in applying these principles has been illustrative of the pitfalls of too narrow an interpretation of principles which require the exercise of technical judgement in their application. This shortcoming has undoubtedly been compounded by bureaucratic delays and uncertainty in promulgating and enforcing policy.

41. Policies on explosives ordnance safety are now more widely understood and, as a result of the processes of public scrutiny and review within the Department, are greatly improved. Implementation is rightly devolved to the Services but central monitoring and independent auditing provide a basis for positive and responsible implementation of the NATO Principles. The overriding lesson from Australia's experience is that Defence activities of any sort, but especially those involving a risk to public safety, cannot be isolated from the community. The Minister has, and must exercise, responsibility for issues affecting public safety, particularly where security concerns may preclude full discussion of the issues. Nonetheless, frankness and consultation with those affected must be paramount.