

Transport of dangerous goods Competent Authorities Panel Guide for applicants



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1. Introduction

The purpose of this guide is to provide information for applicants seeking approvals, exemptions, determinations and other actions through Australia's transport of dangerous goods Competent Authorities Panel (CAP). This guide provides an overview of the role and functions of CAP, the application process, and the available review mechanisms for CAP decisions.

This guide is not intended to be a substitute for, or interpretation of, the state and territory transport of dangerous goods laws themselves, under which CAP decisions are made. Users of this guide should also consult with the Competent Authority in their state or territory.

2. The Competent Authorities Panel

2.1. What is CAP?

CAP is the national panel of state and territory Competent Authorities for the transport of dangerous goods by road and rail in Australia. It has been established under state and territory transport of dangerous goods laws, which are based on the national *Model Legislation—Transport of Dangerous Goods by Road or Rail*.

Each road and rail Competent Authority of each state and territory is a member of CAP and is entitled to appoint a representative to participate and vote on its behalf. The current Competent Authority members of CAP are:

- the Department of Transport and Main Roads, Queensland – road and rail;
- the New South Wales Environment Protection Authority and WorkCover New South Wales;
- WorkSafe ACT;
- WorkSafe Victoria;
- WorkSafeTasmania;
- Safe Work South Australia;
- the Department of Mines and Petroleum, Western Australia; and
- Northern Territory WorkSafe.

CAP's main responsibility is to consider submissions requesting national exemptions, determinations and classifications for matters that may be at variance to Edition 7.4 of the *Australian Dangerous Goods Code (ADG7.4)* or the state dangerous goods regulations. CAP is responsible for ensuring mutual recognition of decisions between Australia's states and territories so that businesses can operate nationally or across state borders without needing to apply separately to each Competent Authority.

Submissions to CAP for exemption, approval or determination must first be considered by the Competent Authority in the relevant state or territory to ensure that:

1. the matter may have effects outside the relevant state or territory; and
2. the submission is complete and complies with legal requirements.

The Competent Authority then takes the submission, with their recommendation, to CAP for national consideration.

The CAP secretariat function is provided by the Commonwealth Department of Infrastructure and Regional Development. The CAP chair is appointed from the participating states and territories. The current chair is Mr Adrian Simonetta from WorkSafe Victoria.

A number of observers also participate in CAP meetings to help ensure coordination in different transport modes, in national and international regulatory forums, and in other areas of regulation. These observers are:

- the Commonwealth Department of Infrastructure and Regional Development;
- the Australian Maritime Safety Authority;
- the Civil Aviation Safety Authority;
- Safe Work Australia;
- the Australian Fire and Emergency Service Authorities Council; and
- the National Transport Commission.

The majority of CAP decisions take the form of approvals, exemptions and determinations.

2.2. What is an approval?

The Competent Authority in each state and territory can grant approval for packaging designs that are required to undertake performance testing under ADG7.4. Examples of types of packaging that require approval are portable tanks, multi-element gas containers (MECGs), pressure receptacles, aerosol dispensers, intermediate bulk containers (IBCs), drums, barrels, jerry cans, boxes, bags and composite packaging. Performance testing can include drop tests, leakproofness tests, hydraulic tests and stacking tests.

Approvals for bulk containers and tank vehicles are given on the basis of an engineering design complying with the relevant standard.

The Competent Authority issuing an initial (state or territory) approval can take a submission to CAP if the same approval is likely to be required in at least one other state or territory (for example, if the approved tank design is to be used in other states and territories). In other words, one state or territory, or a group of states or territories, or all of the states and territories may agree to recognise an approval issued in, for example, New South Wales. This is known as 'mutual recognition.'

If an approval is being considered for national coverage (recognition in all states and territories) and a majority of CAP's members agree to the approval, that approval is taken to be a decision of each member of CAP, and has national coverage.

In rare instances a Competent Authority can also bring an application to CAP that it has not approved or is opposed to.

2.3. What is an exemption?

A state or territory Competent Authority can grant an exemption to a person or a representative of a 'class of persons' (for example, an organisation that represents a particular industry) from having to comply with specified provisions of the transport of dangerous goods laws in that state or territory. The Competent Authority can grant an exemption only if it decides that:

- it is not reasonably practicable for the person or class of persons to comply with the specified provisions;
- granting the exemption would not increase the risk of death, injury, or harm to the environment or property, and would provide for 'equivalent safety' if the regulations were applied; and
- granting the exemption would not cause unnecessary difficulties with administration or enforcement.

Information provided by the applicant needs to substantiate these three key aspects.

An exemption will always specify:

- which provisions of the transport of dangerous goods laws the person is exempted from;
- what kinds of dangerous goods the exemption applies to;
- how long the exemption lasts before expiring;
- any conditions on the exemption; and
- any geographical restrictions.

The Competent Authority issuing the initial (state or territory) exemption can take a submission to CAP if the same exemption is likely to be required in at least one other state or territory. As for approvals, if a majority of CAP's members agree to national coverage for the exemption, that exemption is taken to be a decision of each member of CAP and applies nationally.

Exemptions agreed to by CAP have a term of 10 years unless CAP specifies a shorter period.

2.4. What is a determination?

A state or territory Competent Authority can also make determinations. A determination may specify, among other things, that certain goods:

- are not dangerous goods;
- belong to a specified UN class, division or category;
- do not have a particular 'subsidiary risk';
- are not substances of a particular 'packing group';
- are incompatible with certain other dangerous goods;
- are or are not too dangerous to transport;
- may not be transported in a specific packaging;
- may only be transported in a particular vehicle, on a particular route, or at a particular time.

The Competent Authority issuing the initial (state or territory) determination can take a submission to CAP if the same determination is likely to be required in at least one other state or territory. If CAP's members agree to the determination, that determination is taken to be a decision of each relevant member of CAP. If the determination is being proposed for national coverage and a majority of CAP members agree, the determination has national coverage.

2.5. What matters should be referred to CAP for information?

Nearly any matter touching on dangerous goods or their transport can be referred to CAP for information. The decision on what to bring to CAP for information is made by members and observers of CAP. The following are examples of matters that have been referred to CAP for information:

- Industry associations that develop guidelines for particular types of dangerous goods vehicles (for example, vacuum tankers) should keep CAP informed of innovations or developments in tank design.
- Industry associations involved with dangerous goods packaging developments can lodge updates with CAP.
- Industry associations that develop Codes of Practice for activities directly related to dangerous goods transport and transfer (for example, bitumen application) should inform CAP.

2.6. What is an interpretation?

An interpretation is confirmation or clarification of the applicability, scope or meaning of a requirement in the regulations, ADG7.4 or ancillary standards.

Operators are welcome to approach CAP with technical interpretations through their state Competent Authority.

3. CAP communications

3.1. The CAP web page

The CAP web page is hosted on the website of the Department of Infrastructure and Regional Development at:

https://www.infrastructure.gov.au/transport/australia/dangerous/competent_authorities.aspx

On the CAP web page you will find the CAP submissions pro forma and the CAP decisions register.

3.2. Competent Authority contacts

Contact details for each Competent Authority are included in section 1.2.4.1 of ADG7.4. The Department of Infrastructure and Regional Development website also contains up to date contact information for the Competent Authorities for road and rail transport of dangerous goods in each state and territory at:

https://www.infrastructure.gov.au/transport/australia/dangerous/str_compauth.aspx

3.3. Communicating with, and making submissions to, CAP

It is not possible to contact CAP directly or to make a submission directly to CAP. Applicants for CAP approvals, exemptions and determinations must apply through their state or territory Competent Authority. It is the role of the Competent Authority to liaise between the applicant and CAP on matters

before CAP. The Competent Authority effectively acts as the ‘sponsor’ of the submission when it is considered by CAP.

3.4. General requirements for submissions

Submissions to be considered by CAP should use the submissions pro forma available on the CAP web page. Applicants should complete the submission pro forma carefully and completely, providing as much relevant information as possible to support the application. Insufficient or unclear information may delay CAP’s decision. The applicant should consult with the sponsoring Competent Authority to ensure their application is in the correct form and provides sufficient information for CAP to make a decision. Supplementary documents should be provided when necessary.

3.5. Oral presentations

For particularly significant or complex matters, CAP may invite the applicant or representatives of the applicant to provide an oral presentation at a CAP meeting in support of their submission. Presentations will ordinarily involve one or two speakers and last for a maximum of 30 minutes, including time for questions. Basic presentation aids such as a laptop and a projector will usually be available. Presenters should consult with the sponsoring Competent Authority on presentation requirements. Presenters should supply their presentation to the CAP Secretariat at, or shortly after, the presentation.

4. CAP processes

4.1. Meeting schedule

CAP normally meets twice a year around May and November, but can vary the frequency and timing of its meetings as required. Applications can be lodged with CAP via the sponsoring Competent Authority at any time, but the earlier an application is submitted the more likely CAP can give it full consideration. Submissions received by CAP less than four weeks before a meeting are unlikely to be considered at that meeting.

CAP can also elect to decide a matter out-of-session at any time if CAP members are of the view that a meeting is not required.

CAP decisions will normally be conveyed to the applicant by the sponsoring Competent Authority in the weeks after the CAP meeting. Queries about timing should be addressed to the sponsoring Competent Authority.

4.2. CAP confidentiality

Under rules approved by the Commonwealth and all state and territory governments, CAP members are required to treat CAP’s proceedings and internal information as confidential.

4.3. Commercial information

Applications to CAP will often contain commercially sensitive (or ‘commercial-in-confidence’) information. CAP takes the security of commercially sensitive information seriously and CAP members will not release commercially sensitive information to any unauthorised party.

4.4. Personal information

CAP's members, secretariat and observers are subject to relevant privacy legislation, including the Commonwealth *Privacy Act 1988* and applicable state and territory privacy laws. For more information see the website of the Office of the Australian Information Commissioner at <http://www.oaic.gov.au> or relevant state or territory websites.

4.5. Communication of decisions on applications

All CAP decisions are entered into the public CAP decisions register, which records:

- the reference number used by CAP to identify the matter;
- the name (usually a business name) of the applicant;
- the subject or title of the matter;
- the originating state or territory;
- the number and date of the CAP meeting at which the decision was made;
- the nature of the decision (approval, exemption, determination, or rejections of these);
- the reference number used by CAP to identify the decision;
- the 'application' of the decision (whether to a specified person or a specified class or group of persons);
- the geographical scope of the decision (national or only specified states and/or territories);
- the reference number used by the originating state or territory Competent Authority;
- the date of effect of the decision; and
- the expiry date of the decision.

The register is updated after each CAP meeting. In accordance with its confidentiality rules, CAP does not publish details of the proceedings leading to decisions or the internal information used to make decisions.

4.6. Amendments and cancellations

Under state and territory transport of dangerous goods legislation, any Competent Authority or CAP decision is subject to amendment or cancellation under certain circumstances. Applicants should contact their Competent Authority for more information on amendments and cancellations.

4.7. Feedback on applications

It is the responsibility of the sponsoring Competent Authority to inform the applicant of CAP's decision and the relevant issues considered by CAP, and to advise the applicant on next steps, if required. Other CAP members (that is, other Competent Authorities) are not able to discuss CAP's decision with the applicant. CAP observers also cannot discuss CAP decisions.

4.8. Freedom of Information

Members and observers of CAP are subject to freedom of information laws at both Commonwealth and state/territory levels. Members of the public are entitled to apply for the release of documents in accordance with the applicable freedom of information law. Any decision to release or withhold documents is subject to legislative criteria and due process. For more information see the website of the

Office of the Australian Information Commissioner at <http://www.oaic.gov.au> or the relevant state or territory website.

5. Review of decisions

5.1. Reconsideration by CAP

A person whose interests are affected by a decision of CAP can consult with the sponsoring Competent Authority about whether there is scope for CAP reconsideration. In general, an unsuccessful submission is highly unlikely to be accepted again in its original form. If necessary, the applicant should consult with the relevant Competent Authority about how the submission can be improved or made clearer. CAP will apply the same criteria in considering a revised submission as it would a new submission.

5.2. Merits review

Decisions of CAP are made under state and territory law. For legal purposes, a CAP decision is actually a collection of separate decisions of each relevant state or territory Competent Authority. Applicants whose interests are affected by a decision of CAP may have access to merits review in the relevant states and/or territories, and should seek professional advice. There is no national merits review of decisions of CAP.