Submission: Independent review of the Dangerous Goods Act 1985

November 2020

The Anti-Toxic Waste Alliance (A-TWA or the Alliance) is a non-party political community alliance of 39 concerned groups and organisations across Melbourne, with a focus on the northern and western suburbs. A list of our members is provided in Attachment A.

We formed in April 2019 in response to the series of horrific toxic waste fires in our home suburbs. We are advocating for a step-change transformation in how toxic chemicals, prescribed wastes and recyclables are imported or generated, stored, transported, processed and disposed of in Victoria.

We promote public and environmental health protection to underpin this transformation. We act as a watchdog on industry, regulators and government agencies to ensure they fulfil their obligations under state and federal legislation, and to promote awareness and advocate for change where the laws do not adequately protect public and environmental health. We report breaches and issues of concern to relevant authorities including the Ombudsman, Victorian Auditor General, EPA, WorkSafe, relevant Ministers, politicians and councils.

A-TWA aims to influence political leaders, policy advisers, senior public servants and business leaders; raise public awareness; and unify community voices to achieve the following primary goal, outcomes and objectives.

Primary goal: To have our communities free of the health and safety threats from toxic and hazardous waste.

Non-negotiable outcomes

The Alliance has four non-negotiable outcomes we want the Victorian to achieve for the Victorian community within the next four years but no later than December 2024:

Outcome 1: This state adheres to the approved waste hierarchy pyramid, in which Avoid, Reuse, Recycle and achieving a circular economy are the top priorities. Sending waste to landfill will happen only rarely, and then only as the last resort.

Outcome 2: Greenhouse emissions generated by waste management activities in this state will be significantly reduced on 2019 levels.

Outcome 3: There will be no emissions or discharges from recycling and waste facilities that are hazardous to humans or the natural environment.

Outcome 4: Waste-related disaster incidents no longer affect Victorian communities.

A-TWA's Objectives

1. To have the Victorian Government and relevant regulatory bodies transparently prioritise protecting the community and environment from harm from waste, in policy and in practice. This includes applying a genuine 'zero tolerance' approach to waste sector operators whose actions put community and environmental health and safety at risk.

2. To have dangerous waste stockpiles treated as emergency-level fire and pollution threats that receive immediate, preventative intervention.

3. To have waste management declared an essential service.

4. To have the EPA and Worksafe appropriately empowered and resourced to defuse these threats, and consistently applying their powers to the fullest extent possible.

5. To have single-use plastics banned by the Government and significant investment in state-wide measures that dramatically reduce the amount of non-recyclable and non-re-useable waste being produced.

6. To have the world's most stringent emissions and air quality standards applied to waste management facilities in Victoria and robust monitoring systems in place at all high-risk sites to detect breaches.

Term of Reference A: The extent to which the Dangerous Goods Act 1985 (DG Act) and associated regulations promote the safety of persons and property and the effective management of dangerous goods.

Question 1 To what extent does Victoria's dangerous goods legislation promote the safety of persons and property?

The fire events over recent years have made it blatantly obvious that WorkSafe has failed in their mandate to effectively implement the Act by inadequate monitoring/regulating of existing licence holders and limiting their scope of governance by excluding illegal operators. Unscheduled site inspections/visits by WorkSafe should occur at both licenced and suspected illegal sites.

Even if the Act allows for detection and prosecution of illegal operators, the regulators need to mobilise and enforce this part of the Act.

These failures contributed to a major shortfall of one of the primary mandates of the Act - the safety of persons and property.

In July 2020, WorkSafe began implementing a new regulatory approach to target strategic (risk based) Dangerous Goods (DG) inspections. This included identifying the 200 highest risk DG sites in the state, which are now prioritised for increased WorkSafe inspections and oversight. It is staggering that, up until this year, a list of the highest risk sites and an associated regulatory enforcement program did not exist.

According to what we were told by WorkSafe ([redacted]), in June 2020, the operators of the 200 highest-risk sites are required under the Act to notify WorkSafe of their DG-related activities, however, there is no licensing requirement.

It is unacceptable that companies using, storing and transporting dangerous goods, that present a potential risk to human and environmental health and safety, are not required to have a formal licence.

The EPA and WorkSafe are, in essence, hobbled by their own legislation as it requires them to follow due process, as regulators. Who protects the community in the meantime, and where are the levers to pull to call a State of Emergency, as has been done for COVID, when there's a critical issue that's putting people and/or the environment at risk?

Further, during and in the immediate aftermath of the West Footscray/Tottenham fire in August 2018, no-one stepped forward to take on responsibility for engaging with and informing the surrounding the community and, in particular, the most directly affected residents. The Health Department, WorkSafe, EPA and Maribyrnong City Council didn't consider that those residents who were in closest proximity to the fire and the resulting

pollution in Stony Creek had a natural right to formal health monitoring, compassionate engagement and direct communication about what was going on. We couldn't get accurate information, particularly relating to potential health risks, from government agencies.

As well as considering the issue of DG in their own right, the rights of the community must also take priority in application processes. A planning permit must already been granted for a business to commence operations, and not be applied for retrospectively. That a business dealing in dangerous goods can operate in Victoria without a planning permit is grossly unwise and an insult to the community. Our health and wellbeing, and that of the environment we rely on to survive, must not be left up to the whims and practices of private enterprise.

It is imperative that the burden is not increased on those communities that already have a high number of the recently identified highest risk DG sites, as well as industrial operations classified as major hazardous operations (e.g. refineries). Just because a suburban residential community is already accommodating DG and high risk sites, does not mean they should be exposed to more; on the contrary, there must be deliberate efforts to reduce their burden, not increase it. Communities in Coolaroo, Campbellfield, Brooklyn, Altona and Laverton North have borne the brunt to date.

Question 2 To what extent does it promote the effective management of dangerous goods?

Clearly, based on the experience of people in communities such as Coolaroo, Campbellfield, inner-west Melbourne and Kaniva, among others, the Act has not been effective in promoting the effective management of dangerous goods in this state.

There has not been an onus on WorkSafe to identify and intensively inspect the highest-risk DG sites. There has not been a requirement for companies handling DG to do more than notify WorkSafe of their activities, rather than requiring the more stringent checks and balances of holding a licence. There has not been an explicit requirement for WorkSafe to proactively investigate suspicious activity and proactively rout out illegal activities.

Ultimately, there must be a recognition that there is one primary goal that must cover all regulatory frameworks, which is to protect human life and the environment and places the onus and accountability on the duty holders to operate under those legal frameworks.

Question 3 How could it be improved so that it better promotes these objectives?

The *Dangerous Goods Act* needs to be quickly brought into line with the intent of the new *Environment Protection Amendment Act (2018).* The spirit that has informed the development of the General Environmental Duty – that it is everyone's responsibility to reduce harm from their activities – needs to be applied to the DG Act and all legislation relating to dangerous and hazardous goods.

The legislation must require that a licence is mandatory for any activity relating to DGs. The time that can elapse between notifications – currently at 5 years - is too long – a lot can happen in that time, which can make a business non-compliant. In addition, the

lack of a systematic inspection regime adds to the risk. It is too late once the damage has been done and the safety, health and wellbeing of people in our communities have been irreparably compromised.

The handoff between DG and environment protection legislation and regulations should mean that the standards and penalties in each are commensurate and reflect the uppermost priorities of public and environmental protection.

It should be noted that, under the current Environment Protection Act, the EPA is largely only able to react to pollution incidents and threats once they have occurred, rather than being able to proactively intervene to prevent them from happening in the first place. Once the EP Amendment Act 2018 comes into force next year, the General Environmental Duty and other new laws will give the EPA more teeth in this respect. However, it is important to recognise that many of the pollution-related incidents the EPA responds to are the direct result of improper handling, storage or disposal of dangerous and hazardous goods. Addressing these issues by strengthening regulations and enforcement measures under the DG Act, would therefore be likely to reduce the incidence of DG-related incidents requiring EPA (and other emergency services) response.

In addition, the OHS regulations regarding the handling of hazardous goods are yet another set of instruments to be familiar with. These various instruments in their necessary complexity could be harmonised in an attempt to develop a single source of truth to encourage and facilitate compliance.

The new EPA website has clarified some of this, showing the interconnectedness of the instruments. The EPA Digital tracking system for materials in and out, nature and quantities could work for DGs. Knowing the quantities of materials and their location is essential in developing strategies and mechanisms to preventing illegal operations.

Term of Reference B: How the DG Act and associated regulations could be enhanced to be more risk-based and prevention focused

Question 4 How could the DG Act and associated regulations be enhanced to be more risk-based and prevention-focused?

A licencing system is essential for any DG activity – the nature and quantities of materials can set the requirements and protections in place. This will also be necessary for a tracking system to work successfully. This system would then feed into a system for recording the transporting of DGs as they leave premises for further treatment or disposal.

The assessment process for a person to become involved in DG should include a fit and proper person test. Particular attention must be paid to identifying whether the proponent has links with organised crime figures or operations, their previous criminal record, and business and compliance history. This stage of the process is also an opportunity to educate the applicant/s in the regulation and requirements of the sector.

Businesses with a bad track record of complying with WorkSafe and/or EPA laws and regulations should be ineligible from holding a DG licence. Similarly, for those businesses with a licence or permit, consider introducing an approach similar to the licence demerit points system that applies to Victorian drivers. For example, reaching a certain level of repeat 'offending', as measured via demerit points, would result in immediate suspension, disqualification or revoking of the licence. If members of the public can be 'regulated' in this way because they are deemed as being an unacceptable risk to other road users, then surely operators responsible for handling dangerous goods can be held to similar account.

A requirement to document materials, ingredients and quantities is essential for tracking purposes, to keep materials on the right side of legality and for the protection for workers, community and the environment.

Regulations do need to be prescriptive as materials are volatile and there is risk in the length of their chain of existence. Given the concentrations of many of these premises in the same industrial areas, and their proximity to residential areas, there is a duty of care to community and the environment, as well as workers and emergency crews.

The stockpiling of chemicals in significant quantities was made possible by operators being outside any oversight or compliance framework and the inadequate record keeping for both their holding and transporting operations.

Strengthening and harmonising the various legislative frameworks will assist in compliance – in intent and purpose, if not in detail. Any regulatory changes should seek to find a way to make the handover between legislative instruments clear and easy to follow.

Question 5 Should dangerous goods legislation include a broad, general principle-based duty to minimise risks of harm to persons and property?

Absolutely! The new EP Amendment Act gives the EPA more power to be proactive rather than reactive (i.e. being able to take preventative action before a major incident happens, rather than only responding after the worst has happened). The DG Act needs to contain a similar duty that gives WorkSafe stronger powers to be able to investigate and act on suspicious activity and take actions to address identified risks to public health and safety.

It must not be left up to the whims of individuals who happen to be in decision-making positions at any given time, for this type of preventative regulatory and enforcement action to happen. It needs to be legislated and explicitly stated in the Act.

Also, as stated earlier, many of the fires and other dangerous pollution incidents plaguing communities in Melbourne's northern and western suburbs over the past few years were the direct result of improper handling, storage or disposal of dangerous and hazardous goods – and the lack of strong regulatory monitoring and enforcement of those people responsible for these goods. Addressing this as a priority, through a general duty, will help to reduce these incidents, and thus the need for the EPA's general duty come into play.

Question 7 What role should codes and guidance materials play in supporting the DG Act and associated regulations?

All DG should require management plans for their safe handling – currently that is not a requirement – only for quantities that exceed the prescribed manifest quantity in Schedule 2 of the DG (S&H) Regulations 2012. (For example, in 2019, it apparently only required a 5-litre bottle of red dye to 'blow over in the wind' to turn a large section of Stony Creek in Yarraville, a vivid blood red. This came just over one year after all life in the creek was destroyed due to the chemical cocktail it became downstream of the West Footscray-Tottenham fire site – a major incident cause by alleged illegal misappropriation and storage of industrial chemicals.)

The minimum requirements for safe handling of DGs should have a strong and clear regulatory framework to encourage best practice and compliance. Codes and guidance materials should be supplementary materials – if the informing principles and regulations are sound, these materials can play an educative role – and allow for innovation. Any changes in treatments or handling methods need a solid testing process behind them according to the nature, risk and quantity of the material(s) in question.

Question 8 Do you have any suggestions about how the codes and guidance material issued by WorkSafe could be improved?

'Reasonably practical' is a subjective measure depending on the motivations of the duty holder – the archetypes as mentioned suggest there would be a broad spectrum of definitions for this. It needs to be more prescriptive in setting in place protections and operating systems.

Question 9 Should a permissioning framework be introduced for higher-risk sites and/or activities involving dangerous goods?

As stated earlier, the devastating waste-related fires and associated illegal activities in Victoria over the past few years make it clear that there must be a strong permissioning framework for higher-risk DG sites. What happened at Bradbury Industrial Services is a glaring example of what can happen when there is no such framework in place.

The health and safety of the community and the environment cannot be left in the hands of people running private businesses. A system based on self-reporting and notifications has failed. A much more stringent approach is needed to the way in which any organisation handling dangerous goods is legislated and regulated. This is even more crucial when their activities are close to residential areas.

There needs to be a licensing regime that prevents – and catches out – any organisation handling or storing DG inappropriately. They must be held closely to account in regard to fulfilling the terms of their licence, including an undertaking to comply with all relevant legislation in going about their business.

Licence conditions in terms of quantities stored must be adhered to – and overseen – a digital reporting system will give an idea of the waste profile of individual businesses.

Question 10 What kinds of incidents involving dangerous goods should duty holders be required to report to WorkSafe?

All accidents and incidents must be notified even if no injury or external harm was done. Any incident could be an indicator of system failure, and awareness of the causes could prevent a catastrophe.

OHS systems record 'near misses' as an opportunity to improve systems, reduce risk and educate users. If notification is not necessary, then clean-ups could be inadequate creating flow-on problems. There may then be the possibility that duty holders could hide an incident if reporting is not a requirement. A tracking system would identify when materials go missing by being inappropriately disposed of.

Term of Reference C: The efficacy of the DG Act and associated regulations in deterring non-compliance and illegal activity in relation to the management of dangerous goods

Infringement notices could only be in place for minor transgressions – this runs the risk of being perceived as the cost of doing business. Multiple infringement notices should set off a trigger for stronger actions. As previously mentioned, using a demerit points system similar to that imposed on every Victorian who holds a driver's licence, would act as a deterrent to businesses doing the wrong thing, while also helping to, ultimately, protect public health and safety.

Documentation of materials, ingredients and quantities is essential for tracking purposes and to keep materials on the right side of legality and for the protection of workers, community and environment.

The framework needs to be enforceable – so codes and guidance notes can be at best supplementary to regulation that stipulate minimum outcomes. The duty holder may have inadequate means to meet that outcome – which begs the question whether they should be permitted to operate a DG-related business in the first place?

The legislation should work to reduce the number of unwilling, incapable, or unscrupulous duty holders from the industry. Dealing with such materials incurs major responsibilities and ignorance or lack of resources should be no excuse.

Non-compliance and illegal activity were facilitated by the lack of a licensing system, and the absence of a tracking system for materials – either at the hands of the EPA or WorkSafe. Any new regulatory framework must address this.

Question 11 How could the dangerous goods legislation be made more effective in deterring non-compliance and illegal activity in relation to the management of dangerous goods?

It has been said that inadequate resourcing is an issue. That was the case with the EPA and significant investment has been made in the people and systems required to do the work to protect communities and the environment. One example is the new EPA Waste Crime Prevention Inspectorate, which has more than 70 officers, many of them former police officers. This type of commitment must flow across to the regulation and policing of activities involving DGs.

The Alliance wants to see unannounced inspections becoming the norm. There must be continual vigilance in terms of intensive monitoring of the highest risk sites (for e.g. the 200 sites identified by WorkSafe this year). Regional offices should be established to allow locally based inspectors to get to know duty holders and establish stronger links with members of the local community. This reflects what we hope the EPA model will become.

Licensing – permissions – should have regulatory requirements in sync across the spectrum, EPP, OHS, DG – material types and quantities may vary the level of assessment given.

Education has a key role to play in encouraging compliance, and materials should be developed in an easily understood format and language. There does need to be education and support for those less willing and able, so they can be picked up and brought into the system. The General Environmental Duty in the new E Amendment Act is only part of the picture, however it can encourage a shift in thinking and awareness of responsibilities.

Investigating the possibilities of harmonisation of legislation and regulation between WorkSafe and EPA will also assist with compliance.

Question 12 What methods could WorkSafe use to identify unknown dangerous goods sites, and do those methods require additional legal powers?

It's a resource issue – the whole self-reporting doesn't work. Any handling of any dangerous goods should be licensed, even if different tiers of licensing are required.

Having a regime of inspection and education gives people more opportunity to comply when you build relationships with operators so they are aware of oversight.

Technologies such as drones, stormwater and drain testing can support physical site visits.

Question 13 Are the triggers for notification appropriate?

No, we don't believe so - all accidents and incidents must be notified even if no harm done, as they might be an indicator of system failure, and could prevent a catastrophe. OHS record 'near misses' as an opportunity to improve systems, reduce risk and educate users. If notification isn't necessary clean-ups could be inadequate.
Of course, there may then be the possibility that people will hide incidents if reporting is necessary – but it is the same outcome.

Question 14 What types of information should be notified?

Accident and incident on the premises, and in transporting the material.

Question 15 What methods could WorkSafe use to monitor the dangerous goods market, and do those methods require additional legal powers?

Tracking of quantities in and out, and a much tougher inspection regime,

Question 16 To what extent is the detection of unknown or illegal dangerous goods activity hampered by restrictions on information sharing by government agencies?

There needs to be a single data source for all activities relating to dangerous goods.

Question 17 What kind of information sharing should be permitted?

Any information relating to prior illegal or non-compliant activity, licence transgressions and quantity and type of materials handled by a business, access to the tracking system

Question 18 What are the obstacles to the effective management of dangerous goods where the functions and powers of multiple agencies intersect and overlap?

The necessary complexity of the systems is an obstacle. Investment should be made to make the information and instructional material as accessible as possible. Given the complementarity and intersection of much of the regulatory framework, meaningful sharing of information is essential. Improved oversight will be an additional benefit.

Question 19 How could interagency coordination in relation to dangerous goods be improved?

Harmonised legislative frameworks. Co-ordination is also an issue that must be addressed system-wide. The joint Resource Recovery Facilities Audit Taskforce (RRFAT) model established in response to the recycling and waste management crisis, is a collaborative regulatory model that brings together WorkSafe, EPA, Fire Rescue Services Victoria, Emergency Management Victoria, and the Department of Environment, Land, Water and Planning – this would be a useful arrangement to formalise and maintain for the longer-term.

All government agencies and regulatory bodies must be using one set of data and treating the storage, movement and disposal of dangerous goods and material as jointly responsible authorities charged with protecting public and environmental health and safety first and foremost. This approach will also protect workers.

A statutory power is needed that requires interagency coordination and common shared data, to enable adequate strategic emergency prevention and response. This must not be treated as a 'nice to have' or ad hoc activity left up to the whim of the government or regulatory leaders of the day. Each agency must have clearly described responsibilities to avoid duplication of tasks. It must be legislated as a mandatory practice.

The West-Footscray Tottenham fire site had recently been assessed by the relevant Local Government Authority not long before the fire and officers failed to sniff out a potential hazard by not investigating the centralised band of containers inside the facility. This type of intelligence could have been progressed further via WorkSafe.

One system that EPA and Worksafe oversee – reporting and record keeping requirements should be the same for each authority. The burden of compliance needs to be reduced to encourage it. As resourcing is an issue – one system should supply all agencies involved in the management of dangerous and hazardous materials.

Question 20 Should powers be delegated between agencies to improve coordination?

There need to be clear lines of reporting and communication to avoid things falling through the cracks and unnecessary duplication. A case management system with clearly articulated responsibilities and tasks would also be a repository of information on businesses and duty holders.

Question 21 Under what circumstances should a dangerous goods inspector be permitted to enter a place where dangerous goods might be stored?

The bar of 'belief' is too high – suspicion is adequate. Again, perceived rights of business continually appear to be prioritised over those of community and environment. The Act

needs to change to require and empower WorkSafe to take pre-emptive action to address high-risk sites that are suspected of posing undue risks to workers, community and environment.

We note, again, that this year WorkSafe has developed a list of the 200 highest risk sites, and emphasise that such a list must be kept up-to-date as a priority and resources for monitoring of those sites maintained, with the highest priority given to sites near residential areas.

Obviously inspectors need much more power to inspect suspicious premises and agencies MUST be communicating with each other.

Question 22 Should there be a power for inspectors to enter a residential premise? What should the threshold for these powers be?

Yes – in the presence of evidence from site operations that there is non-compliant activity taking place. If criminal charges are to be laid it would be essential.

Question 23 Does WorkSafe need broader powers to intervene at non-compliant sites?

As noted above, the bar of 'believe' is too high – suspicion is adequate. Again, rights of business are repeatedly being prioritised over those of workers, the wider community and environment. This is not acceptable – this model needs to be flipped the other way, to ensure that the duty of care is always, first and foremost, directed towards workers, residents and the environment.

Once a site is identified as being dangerously non-compliant, it should come under an immediate interventional management program to expedite its compliance, in view of the public health and safety risks involved.

There needs to be a system that will deal with unwilling/evasive duty holders.
An inspection regime, while a resource heavy exercise, is essential to undertake. This is also an opportunity to educate non-compliant duty holders. It will increase the knowledge of the sector about the regulatory system – making it less likely that things can snowball as we have previously seen happen.

Question 24 If so, what powers does it need, and what should be the threshold to the exercise of those powers?

The Act must enable WorkSafe, or the most appropriate body, to quickly seize control of a potentially dangerous site to address the risks to public health and safety, rather than hobbling them within drawn out compliance processes.

There needs to be a regulatory capacity to suspend operations if they are exceeding limits established through a licencing framework - businesses should be stopped from receiving or producing goods until returning to a state of compliance.
Quantities should be licenced and tracked, so operating in excess of the licenced amount would trigger a regulatory response.

Once an incident has unfolded, there must be a mechanism in the Act that gives the power to step in to protect community and environment. It took two years after the

West Footscray-Tottenham fire before WorkSafe was finally able to declare Danbol unfit or unable to clean up the site.

In the meantime, the unsecure site, full of significant quantities of unburned chemicals, was left as-is, posing an ongoing threat to the community and nearby Stony Creek. This is unacceptable. The fact that the fire was caused by illegal chemical stockpiling activities by Danbol's tenant, and Danbol's clear historic links with organised crime, should be enough to trigger the regulator/s to step in and seize control of the site while still being legally able to seek recompense for the costs of making it safe. Only when this is changed under law, will rogue and illegal operators face the full consequences of their actions. As it currently stands, only their workers, surrounding residents and environmental assets are facing the full consequences of these irresponsible people's actions.

Clearly, companies such as Bradbury and Danbol cannot and should not be trusted to clean up their own messes when public health and safety is at stake. Bradbury had a long history of non-compliance. Danbol had clear links with organised crime figures. The fires at these sites are clear evidence that organisations such as these should not be entrusted with sites or goods that pose unacceptable risks to public health and safety. The relevant authorities must have powers to immediately seize a dangerous/hazardous site and remediate it to remove the risks.

Question 25 Should WorkSafe have the power to redirect body corporate obligations to their officers and controlling entities?

Yes – when other measures have failed – the timeliness is an issue here. If a business has become non-compliant to this extent, the likelihood that they will voluntarily comply is unlikely. Duty holders should not be able to hide behind legal structures to avoid penalty or meeting of requirements under the Act.

It is a landlord's responsibility to know what is going on in their industrial premises – for their own protection as much as anything else. Phoenixing leaves the landlord exposed and bearing costs.

Question 26 What costs should WorkSafe be able to recover, and from whom?

WorkSafe should start with all costs possible – the taxpayer should not have to bear this cost burden. The onus – and ultimate cost of non-compliance and breaking the laws must be on the businesses responsible for the breach. The issue of costs should be an added impetus to developing a stronger system so things don't get to this point. There are costs involved in getting costs back too – net benefit can be compromised.

We understand that a regulator is bound to follow due legal processes within their governing Act, however, there must be exemptions under the Act that enable/authorise an emergency response to expedite the clean-up. This year, we have seen just how quickly governments can act to intervene and lockdown entire cities, states, and even the entire country, in response to COVID-19 – all in the name of protecting human life. Why, then, cannot we have the same capacity for prompt intervention apply when a DG site or activity is posing an unacceptable risk to human life?

Question 27 Should WorkSafe be empowered to require entities engaging in dangerous goods activities to provide financial assurances, and if so, how should this be done?

If entering DG territory – assurance or insurance is essential to meet obligations, and a condition of gaining a licence. This needs to be separate from standard 3rd party insurance.

Question 28 Should dangerous goods operators only be permitted to dispose of their waste to accredited waste providers?

Waste disposal services should be under the same licence and oversight restrictions as those who produce the waste – they are still dangerous goods – possibly more dangerous than their component parts individually.

Licence conditions in terms of quantities stored are required to be adhered to – and overseen – reporting will give an idea of the waste profile of individual businesses.
All DG should have management plans attached to their products.

Question 29 Alternatively, should dangerous goods operators have a duty to undertake due diligence in relation to the disposal of their waste?

How are they equipped to make that decision? How can the undertakings of a disposal business be assessed by a DG operator if not licenced in some way? There shouldn't be a 'market' for these goods; certainly not one driven solely by commercial, for-profit imperatives.

Question 31 Should a civil penalty regime be introduced into the dangerous goods legislation, so that WorkSafe has the option of bringing a civil penalty proceeding in relation to a dangerous goods contravention, as an alternative to a criminal prosecution?

The burden of proof is lower for a civil case, either way, anyone successfully prosecuted under civil or criminal law should be prohibited from further dealings, as automatically failing a fit and proper person test.

Question 32 Should an infringements scheme be introduced for dangerous goods offences, and if so, which ones?

Any offence needs a corresponding infringement. Enforcement and penalties need to be increased to act as a stronger deterrent – not just to be seen as an absorbable cost, and facilitating the motivation and opportunity to proceed until apprehended.

A system of notices can be graded according to the offence. Failure to comply with either type of notice is a criminal offence and can result in prosecution.
A timeframe to be set around compliance – depending on the issue. These infringements and notices to be on record of individuals and company name.

We also advocate for, as mentioned earlier, an infringement scheme with fines and also demerit points that, once certain trigger points are reached, result in immediate suspension, disqualification and, eventually, delicensing.

Question 33 Should maximum penalties be increased for (some or all) dangerous goods offences?

We welcome a much higher penalty regime – in line with new EP and OHS penalties. The level of penalty must adequately reflect the potential and actual impact the offender's activities had. For example, an individual can be jailed for many years for the premeditated murder of another person. An individual who wilfully ignores and breaches DG or EP laws that affect the health of hundreds, or even tens of thousands of people, and put their lives at risk, must face penalties commensurate with the impact of their crime.

Once charged with any offence, any offender should be prohibited from returning to operate in the industry in any capacity that involves dangerous goods.

Term of Reference D: Whether any amendments to the DG Act and associated regulations are required to respond to emerging issues and challenges related to the management of dangerous goods?

Question 34 How has the dangerous goods industry changed from when the DG Act was first introduced?

The nature of materials, quantity, complexity and importation have changed in the 35 years since the act was first introduced. Many of these operations are located in legacy industrial estates that are now ringed by residential areas. In many instances, DG operations are within a few hundred metres of people's homes. In the past, many of the local residents worked in the nearby factories and were not necessarily aware of the risks these industries posed, or their rights.

Community expectations about the level of safety, emissions and corporate responsibility required from these types of operations have changed significantly. Residents' tolerance levels have decreased commensurately with our growing awareness of the many risks and dangers involved, and due to the lived experience of potentially lethal waste-related fires and other pollution incidents.

Question 35 Are there any other emerging issues and challenges that Victoria's dangerous goods legislation should be responding to?

The waste industry must also be equipped to deal with DG products. Involvement of organised crime in the industry – structural change, licensing, reporting requirements can all mean that material is traceable and its disappearance onto the black market be no longer be possible.
All DG should have management plans attached – currently that is not a requirement.

Question 36 What does the future of the dangerous goods industry look like?

The Alliance is hopeful that the industry's practices will be 'cleaned up' significantly in the next couple of years. Stringent due diligence, policing, licensing and enforcement will quickly weed out the unscrupulous operators and reward those who are willing and capable of doing the right thing by the law and the community.

We also trust there will be other shifts in public policy to improve waste management practices and regulation, following on from recent government inquiries and reports. The industry is on notice. It must be held to account. And the appropriate regulators must also be held to account and adequately resourced to enforce the law.

Product stewardship, circular economy principles and other reforms can bring about a seismic shift in the DG sector.

Question 37 What are the main challenges in the disposal of chemical waste in Victoria?

The handling of disposal of chemical waste is currently hamstrung by processing limitations – capacity is low, which can encourage the growth of other non-compliant options. Ideally – waste should be processed in the state of origin, thus avoiding transport and handling risks.

Terms of Reference E: Ways to streamline and modernise the DG Act and regulations

Question 40 Should a new DG Act adopt (as far as possible) the structure, order, language and conceptual framework of the Occupational Health and Safety Act 2004 (OHS Act)?

Is the distinction between hazardous and dangerous too confusing? All have risk attached and the requirements should be related to the risk and possible harm – from both the material itself, the quantities, possible interactions with other materials and location.

We think that harmonisation of as much of the regulatory framework as is practicable will assist with understanding and compliance. Parity with the Environment Protection Amendment Act 2018 and regulations is also recommended.

Question 41 Should dangerous goods legislation be incorporated within the OHS Act?
The OHS act should certainly refer to DG regulations and categories and incorporate them – same assessment of risk. Dealing safely with dangerous and hazardous goods in the workplace is central to their management.

Question 42 Should DG Act and Transport Regulations apply to the transport of prescribed industrial waste?

Yes – all transporting of materials that present a level of risk should come under transport regulations. This would include suitability of vehicle, storage requirements while on board and handling facilities at either end.

Question 43 Should amendments to the Australian Dangerous Goods Code (ADG Code) come into force automatically?

Yes – anticipate that there would be a process leading to this point which would mean that people dealing in those goods could be informed. Again, the primary purpose of any change should be the protection of the community and the environment – the consultation process would be the opportunity to inform all stakeholders.

A comprehensive licensing system means that all participants are able to be informed of any changes.

Question 44 Should the detailed regulations and offence provisions in the Transport Regulations be replaced by a single offence of failing to comply with the ADG Code?

Yes - the penalty could relate to the provisions in the code – levels according to material, quantities, effect, was there an incident? It may be a secondary charge.

Question 45 How can the way in which dangerous chemicals are classified and captured be streamlined?

A national single schedule of material definitions applicable across all agency and legislative responsibilities.

Develop a graphical representation of the compliance system – a flow chart to identify the component parts might make it easier as a ready reference source.

Question 46 Should Essential Safety Measures compliance be a condition of operating a dangerous goods site or facility?

Yes – instruments such as these are an opportunity to inform duty holders of their responsibilities and also the legislative instruments they are operating under. Ignorance is no excuse.

Question 47 Should occupiers be required to implement the advice given by emergency services authorities, rather than simply "have regard to" it?

Yes – if advice is given by these authorities, it is to prevent harm and preventative measures also are the responsibility of the duty holder.

Question 48 Should Victoria recognise interstate dangerous goods licences?

All states should aim for a national system of definitions (and legislation) to allow for parity across borders and acknowledging the level of movement of these substances around the country. It would also assist with international movements of goods.

Question 49 Should ammonium nitrate be regulated by the Explosives Regulations?

Yes – the risk is sufficient to have a dedicated framework governing their storage, handling and transport. This must include strict limitations on where it can be stored, with a substantial buffer zone from residential communities, workplaces and civic facilities.

Term of Reference F: Other relevant matters

Question 50 Are there any other relevant matters that the Review should consider?

- Accountability and product stewardship to be informed by timely and accurate data. We call for international best practice models to be applied, and if sufficiently robust models are lacking, then let Victoria take the lead and create them.
- Setting up the systems to make sure that disastrous incidents such as the 2017 Coolaroo, 2018 Tottenham-West Footscray and 2019 Campbellfield fires are never permitted to happen again.
- Location must be a factor in determining risk and when approving all future DG applications. Existing sites close to residential areas and major community facilities need to be intensively monitored and preferably relocated, and new applications refused.

  This involves local and state government-level planning issues. We often hear from WorkSafe and EPA that proposed and existing dangerous or hazardous operations are located within industrial estates. However, many of Melbourne's legacy industrial areas, are donut estates surrounded by residential housing, schools and other public facilities. In many instances, homes are less than 500m from these sites. Campbellfield, Brooklyn and Laverton North are examples.
- Planning, buffers, building regulations are mostly the role of local government – but the opportunities for them to participate in the regulatory system are limited – due to high costs.
- Buildings to be assessed as for fit for purpose – to be a suitable structure and sound to carry on the business.
- Mandating protective measures at any facility in the event of fire; protection measures for the stormwater system and waterways.

Conclusion

In summary, on behalf of our 39 community-level member organisations and individual members, A-TWA calls on the Victorian Government to ensure that:

1. The revised Act places the greatest priority enabling strong preventative actions by regulators and other relevant agencies to protect the community from harm from operations and activities involving dangerous goods.
2. The communities that already bear the load of living and working in close proximity of businesses dealing in hazardous or dangerous goods must be protected from any additional load.
3. A preventative approach must be taken to protect the environment from harm from DG activities. Where harm does occur, comprehensive rehabilitation must be undertaken, preferably at the offender's expense.
4. Business interests are not permitted to overwhelm the intent of the Act, or take precedence over protecting the community and the environment from harm (and that this be made explicit in the Act and associated regulations and standards).
5. A unified data system is established and shared between agencies to provide information across the full spectrum of operations for dangerous and hazardous goods.
6. The Act must require transparent practices, accountability and product stewardship among businesses and contribute to the development of a circular economy where safe and appropriate.

Submitted by:

Sue Vittori, A-TWA Chair and Jane Miller, A-TWA Secretary

[redacted]

Attachment A:

A-TWA membership as at 1 October 2020

	Organisation / Group / Individual
1	Broadmeadows Progress Association
2	Friends of Merri Creek
3	Friends of Stony Creek
4	Friends of Cruickshank Park
5	Australian Workers Union
6	Rail Tram and Bus Union – Vic
7	Friends of Maribyrnong Valley
8	Friends of Steele Creek
9	Maribyrnong Truck Action Group
10	Friends of Lower Kororoit Creek
11	Terminate Tulla Toxic Waste Dump Action Group
12	St Mary's Coptic Orthodox College, Coolaroo
13	Friends of Edgars Creek
14	Friends of Moonee Ponds Creek
15	Western Region Environment Centre
16	Darebin Parklands Association
17	Friends of Kororoit Creek
18	Darebin Creek Management Committee
19	Hume Climate Action Now
20	Werribee Riverkeeper/River Association
21	Darebin Community Network
22	Port Phillip Baykeeper
23	Fawkner Residents Association
24	Climate Action Moreland
25	Maidstone and West Footscray Residents Action/Activation Group
26	Sustainable Fawkner
27	Brooklyn Residents Action Group
28	Friends of Will Will Rook Pioneer Cemetery
29	Clean Up Stony Creek Facebook Community
30	Hume Residents Airport Action Group
31	Yarra Riverkeeper
32	Brooklyn Pollution Action Group

33	Kananook Creek Association
34	Friends of the Earth Melbourne
35	Newlands Friends of the Forests
36	Greenvale Residents Association
37	Northern Community Recycling Group
38	Coolaroo Community Voices
39	Sunbury Against Toxic Waste