

# Independent Review of the Dangerous Goods Act 1985 and associated regulations Consultation Paper questions

**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 UFU considers that Victoria's dangerous goods legislation does not effectively deter the illegal stockpiling of chemicals and other dangerous goods and disposal and transport of dangerous goods waste.

The big chemical warehouse fires of 2018 and 2019 that sent plumes of toxic smoke across Melbourne, contaminated waterways and caused firefighters to suffer health impacts from the chemicals present at the fires and the further discovery of other illegal stockpiles of dangerous chemicals indicate serious failures of the current regulatory regime.

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

The UFU considers Victoria's dangerous goods legislation is not effective in deterring non-compliance and those who engage in illegal activity.

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

The UFU supports the introduction of a tracking system from cradle to grave for dangerous goods which would assist in identifying unknown dangerous goods sites. We consider there is a real need to watch the whole supply chain and ensure people who dispose of dangerous waste do so responsibly.

The UFU also supports enhancements to WorkSafe's ability to bring effective enforcement proceedings, including action against officers of body corporates, issuing of infringement notices and the introduction of civil penalty regime in addition to the current criminal prosecution.

The UFU would support Fire Rescue Victoria (FRV) being able to initiate prosecutions independently of WorkSafe. FRV already has the power to issue infringement notices under the Vic Building Act 1993. This power to issue infringement notices should be extended to the Dangerous Goods Act.

The UFU considers that the dangerous goods associated regulations be amended to include a ban on the use, storage and release of PFAS containing firefighting foam. Only Fluorine Free foam concentrates should be allowed in Victoria given the long-term human health and environmental impacts associated with PFAS containing foam releases.

**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?

UFU supports WorkSafe and Fire Rescue Victoria Commission having the ability to issue Infringement Notices. This would bring a stronger focus onto activities which present higher risks and enhance the DG Act and associated regulations to meet the aims of the DG Act.

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

UFU supports the adoption of a broad, general principle-based duty such as those found in comparable legislation, such as the OHS Act to minimise risks of harm to persons and property. However, a principle-based duty should be supplemented by more detailed and prescriptive regulation.

Question 6 Broadly speaking, do the Storage and Handling, Explosives, High Consequences Dangerous Goods and Transport Regulations impose the right combination of the different kinds of duties?

The UFU considers the detailed and prescriptive duties in the above regulations impose the kinds of duties that are required and should be maintained. However, the duties placed on a person in the various regulations should take into account that an employer has more control over a workplace than a worker and therefore should have a higher duty.

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

UFU supports guidance material to support regulatory regimes by way of supplementary material. For example, guidance material may provide technical information on how to comply with legislation/regulations. However, the safe management of dangerous goods requires detailed and prescriptive regulation and mandatory codes of practice.

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

UFU supports regulations and mandatory codes of practice as the preferred material to accompany the legislation. Guidance notes are just that - guidance only.

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

UFU supports the adoption of a licensing scheme that includes conditions to be met before a licence is granted, a 'fit and proper person' test and WorkSafe managed requirements on occupiers to do hazard and risk studies.

In addition, WorkSafe should report to Fire Rescue Victoria any matters that are specifically related to, or impact upon, the fire protection system.

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

UFU supports duty holders, particularly at high risk sites, being required to notify WorkSafe of an incident involving any escape, spillage or leakage of dangerous goods.

Duty holders should of course be required to report to WorkSafe incidents involving fires and explosions, incidents reported to emergency services and incidents that caused injuries and deaths.

**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**

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?

The UFU supports the introduction of a licensing scheme and an enforcement framework that provides for infringement notices to be issued and prosecutions instigated by WorkSafe and RFV.

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

The UFU supports the introduction of a tracking system from cradle to grave for identifying unknown dangerous goods sites.

In addition, better co-ordination and information sharing between WorkSafe, Environmental Protection Authority, Victorian Building Authority, Local Councils and Fire Rescue Victoria to identify unknown dangerous goods sites.

Further the ability for individuals to act as whistle-blowers and/or to provide information anonymously.

In broad terms, the UFU also supports a broad public awareness campaign encouraging reports of suspicious DG related activities. Such a campaign should also make duty holders aware of the significant penalties that apply in the event of breaches (including the risk of imprisonment). It should also make duty holders concerned about the likelihood of random inspections etc. so that they start to take their responsibilities more seriously. This should all be supported by extra resources being allocated to WorkSafe for the purposes of DG specific activities.

Question 13 Are the triggers for notification appropriate?

The UFU considers the update of notification every 5 years or longer as determined by WorkSafe as inadequate and should occur more frequently. Notification requirements should include updated site plans identifying storage layout location, copy of site manifest of dangerous goods and an emergency management plan.

Question 14 What types of information should be notified?

The UFU considers that notification information should include site plan identifying storage layout location, firefighter access, copy of site manifest of dangerous goods with type and quantity of material and an emergency management plan.

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

The UFU supports the introduction of a tracking system from cradle to grave for dangerous goods that could be used by WorkSafe to monitor the dangerous goods market. There should also be enforced placarding on sites with dangerous goods.

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

The UFU supports better information sharing between government agencies including local councils.

The UFU remains concerned that previous government interventions failed to prevent the incident at West Footscray and Campbellfield and await the Coroner's reports in this regard.

Question 17 What kind of information sharing should be permitted?

The UFU supports the sharing of information including as identified in Question 13 and location/operation of suspected illegal sites, suspected illegal transportation of dangerous goods and information known to police regarding illegal dangerous goods operations.

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 UFU considers that lack of a clear mandate and clear protocols, such as a memorandum of understanding, to share information and intelligence between government agencies are obstacles to effective management of dangerous goods. Overlap of functions and powers may lead to confusion as to which agencies are doing what.

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

The UFU considers information sharing could be improved by better interagency coordination through clear protocols such as a memorandum of understanding, a more permissive legislative framework and the introduction of a tracking system from cradle to grave for dangerous goods that is accessible to all relevant government agencies.

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

The UFU supports clearer delineation of the roles and responsibilities of different agencies to improve coordination. However, WorkSafe is the regulator and its powers should not be delegated to others. Under FRV Act 1958, FRV has powers in relation to access to any premises for ascertaining whether laws relating to storage and prevention of fire are being complied with. Better information sharing, coordination and working together required between agencies.

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

The UFU considers that a dangerous goods inspector should be permitted to enter a place where there is a reasonably held suspicion that dangerous goods might be stored. An inspector should have full authority to enter a place where there are reasonable grounds for believing that there is an illegal stockpile of dangerous goods, such as chemicals. Under FRV Act 1958, FRV has powers in relation to access to any premises for ascertaining whether laws relating to storage and prevention of fire are being complied with.

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

The UFU considers that an inspector should be able to enter residential premises where there is a reasonable belief that dangerous goods might be stored in accordance with the current provisions in the DG Act i.e. consent of occupier or search warrant.

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

The UFU supports WorkSafe having the powers to intervene at non-compliant sites. However, also consider that lack of enforcement by regulators may not be due to lack of powers but issues such as lack of information, resources and willingness to carry out enforcement.

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

The UFU supports the broader inspection that will come into force under the amendments to the EPA Act 2017 being introduced to enable WorkSafe to intervene in an effective way at non complaint sites.

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

The UFU supports WorkSafe having the power to redirect obligations to the individual officers of the body corporate and to a related or associated entity. Too often company directors avoid the cost of personal liability by going into administration and liquidation. The costs of the clean-up from large industrial fires like West Footscray are enormous and should not be borne by the public.

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

The UFU supports WorkSafe being able to recover the costs of cleaning up a dangerous goods site from a range of people including the owner, occupier and person who caused the circumstances e.g.

dangerous goods operator that knowingly paid for removal of dangerous goods for a price too good to be legitimate.

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?

The UFU supports measures such as provision of financial assurances, bonds etc. that will hold entities to account for damage to property, environment or injury to individuals.

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

The UFU supports dangerous goods operators only disposing of their waste to accredited waste providers.

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

The UFU considers that, at the very least, dangerous goods operators should be under an obligation to undertake due diligence when choosing a waste provider. In keeping with our position of a cradle to grave tracking system of dangerous goods, operators should be required to register with WorkSafe each engagement i.e. each operator be required to notify the WorkSafe who they have engaged and itemise what they have disposed of including name and quantities of material.

Question 30 Should officer liability for dangerous goods offences be based on a due diligence test or duty?

The UFU supports officer liability for dangerous goods offences be based on a due diligence duty, similar to the due diligence duty under the Model WHS Laws.

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 UFU supports the introduction of a civil penalty regime that operates alongside the criminal regime so that WorkSafe would have the option of bringing a criminal and/or civil penalty proceedings for some offences depending on evidence.

The UFU also considers that the penalty regime should enable individuals such as individual firefighters, or at least, the FRV to bring legal proceedings against offenders.

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

The UFU supports the introduction of an infringements scheme for dangerous goods offences but not at the expense of prosecutions where damage, injury or fatality has occurred or the operator has behaved with callous disregard for the consequences of their actions.

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

The UFU supports the application of the highest penalties under the DG Act new offences including for reckless conduct that endangers persons and would support an increase in maximum penalties

for all offences to deter irresponsible operators. The UFU remains concerned the pre-amendment penalty regime failed to sufficiently deter rogue operators such as Graham Leslie White and is yet to be convinced that the improved regime will remedy the situation.

**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 UFU considers some of biggest changes that have impacted on our members are the increase of illegal stockpiling of chemicals along with the new stash and burn business model, the importing of manufactured goods such as flammable cladding and non-compliance with building essential safety measures, such as fire pumps, sprinklers and smoke alarms - inoperable or not working.

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

A range of issues come to mind, including; the stockpiling of dangerous goods, sites not purpose built for storage of dangerous goods, the floor dropping out of the recycling market, unscrupulous people entering industry, no duty or onus on person disposing of dangerous goods. We recommend placing a duty of person disposing of dangerous goods similar to asbestos disposal i.e. can't give it to just anyone. From a fire perspective before any activity the building must be properly inspected and licensed to do what it is going to do.

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

The UFU considers the future of dangerous goods industry has the potential for increased illegal activity particularly in the waste market for many reasons identified in the consultation paper hence the need for prescriptive duties in regulations and a tracking system from cradle to grave of dangerous goods.

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

The business model needs to be addressed. Basically, stash and burn model by rogue operators has been uncovered via the massive industrial fires in West Footscray August 2018 and Bradbury Industrial Services Pty Ltd April 2019. The West Footscray fire is allegedly linked to a criminal network involving Graham Leslie White. EPA documents allegedly suggest clients of Bradbury who paid the company to remove and dispose of chemicals knew Bradbury was incorrectly storing the product. It appears that it was well known amongst industry sources that Bradbury was undercutting other companies by offering dramatically lower prices to dispose of chemicals. Bradbury and White are allegedly linked to more than a dozen chemical stockpiles in Melbourne and at a bush property in western Victoria.

Question 38 Are there new technologies being introduced into the dangerous goods industry that will change the way the industry operates? Will this create new risks?

The UFU has no comment.

Question 39 How does Victoria's dangerous goods legislation need to adapt and change in order to meet these issues and challenges?

The UFU considers Victoria's dangerous goods legislation needs tougher penalties for breaches of legislation, greater enforcement by regulators and a tracking system from cradle to grave of dangerous goods.

#### **Term 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)?

The UFU notes that amendments to the DG Act have brought the DG Act more in line with the OHS Act.

The UFU is not opposed to modelling the new DG Act on the language, structure and conceptual framework more closely on the OHS Act. However, we do not support replacing the specific duties such as those found in section 31 of the DG Act with a broad general principle-based duty at this stage, particularly in the absence of a cradle to grave tracking system of dangerous goods.

Question 41 Should dangerous goods legislation be incorporated within the OHS Act?

The UFU does not support the dangerous goods legislation being incorporated within the OHS Act. The DG Act imposes specific responsibilities for protecting the health and safety of workers and the general public in relation to storing, handling, manufacturing, transporting, transferring, selling, importing, disposing of and using dangerous goods, and importing explosives into Victoria whereas the OHS Act only imposes general duties.

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

The UFU supports the DG Act and Transport Regulations applying to the transport of prescribed industrial waste.

One of the large industrial fires referred above involved chemical waste illegally transported to a warehouse in West Footscray. Regulation of the transport of chemical waste would support the tracking of this waste and may assist in preventing illegal chemical waste transportation and storage.

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

The UFU supports amendments to the ADG Code coming into force automatically.

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?

The UFU does not support the detailed regulations and offence provisions in the Transport Regulations being replaced by a single offence of failing to comply with the ADG Code. We are concerned that this would lead to a lessening of the protections that detailed regulations and offence provisions provide.



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

The UFU considers that, while streamlining the way in which dangerous chemicals are classified and captured may make things easier, it may lessen the protections provided by the current classification and capture system. However, there are gaps with current classification and capture such that how is it that flammable cladding can be imported into the country and be used in building construction? Flammability in cladding materials has led to increasingly frequent fires in Victoria and around the world.

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

The UFU supports Essential Safety Measures compliance as a condition of operating a dangerous goods site or facility. Compliance with building essential safety measures, such as good firefighter access, fire pumps, sprinklers, smoke alarms and placard/ manifest of types of chemicals and quantities on site are essential to protecting the health and safety of firefighters.

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

The UFU supports occupiers being required to implement the advice given by emergency services authorities rather than simply “have regard to” it. Compliance with advice given by firefighters such as operable fire pumps, sprinklers and smoke alarms and removal of flammable cladding is essential to protect firefighters in the performance of their job and the safety of the public.

Question 48 Should Victoria recognise interstate dangerous goods licences?

The UFU does not support the recognition of interstate dangerous goods licences.

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

The UFU supports ammonium nitrate being regulated by the Explosives Regulations. Ammonium nitrate can present a significant risk to the community as occurred when a large amount stored in Beirut exploded in August 2020.

#### **Term of Reference F: Other relevant matters**

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

The UFU considers that there should be introduced into the penalty regime a provision that would enable individuals such as firefighters to bring legal proceedings for compensation against offenders independently of the rights of firefighters to make claims under the Victorian workers compensation scheme. In relation to rights under workers' compensation there should be the option for individuals to be compensated via deeming legislation (similar to the presumptive legislation) so that if a firefighter is exposed to chemical cocktail and becomes unwell it be deemed to be a condition that arises from the exposure.

The reasons for this are compelling. For example, the illegal stockpile of dangerous chemical waste that gave rise to the West Footscray fire on 30 August 2018 exposed many members of the UFU to the risk of serious injury and even death. Apart from the cocktail of chemicals that UFU members

were exposed to as a result of the fire, our members were also exposed to immediate physical danger whilst attending the fire due to, amongst other dangers, exploding chemical drums literally flying through the air.

It is hard to imagine a more obvious example of reckless endangerment as provided for in the DG Act. In the event of successful prosecutions in these types of incidents WorkSafe should as a matter of course seek the maximum 5 years term of imprisonment as set out in the DG Act.