



# **RESPONSE**

## **INDEPENDENT REVIEW OF THE DANGEROUS GOODS ACT 1985 AND REGULATIONS**

**Date: November 2020**

## 1 The Victorian Farmers Federation

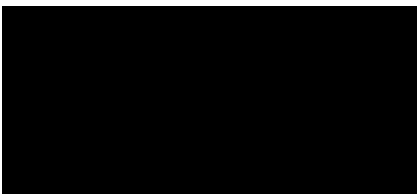
The Victorian Farmers Federation (VFF) is the only recognised consistent voice on issues affecting rural Victoria and we welcome the opportunity to respond to some of the questions raised in the consultation paper on the Independent Review of the Dangerous Goods Act 1985 and Regulations.

Victoria is home to 25 per cent of the nation's farms. They attract neither government export subsidies nor tariff support. Despite farming on only three per cent of Australia's available agricultural land, Victorians produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our state's dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg producers.

The VFF consists of a nine-person Board of Directors, with seven elected members and, a member representative Policy Council to set policy and seven commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based and regionally located staff.

Each VFF member is represented locally by one of the 200 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.



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Victorian  
Farmers  
Federation

## Our place in Victoria



### What we do



- Victoria's **20,775 farms** cover **10.6 million** hectares
- We are **24.2%** of Australian farmers
- **91%** family operated, with only **2%** foreign owned



- We employ **87,800** people mostly in regional areas
- **\$4739** of food consumed each year by every Australian
- As a net exporter we have long term food surity



- Our annual production is **\$13.16 billion**, **3.5%** of Victoria's economy
- **27.8%** of Victoria's exports are agricultural product valued at **\$11.9 billion**

### How we do it



**\$** Farmers invest **\$80 million** in R&D

**\$** Every R&D **\$1** converts to **\$12** in farmer generated impact

**↑** **2.7%** productivity growth through innovative efficiency gains

**👉** Farmers receive less than **1.5%** in government support



**♻️** **63%** reduction in greenhouse gas emissions between 1996-2016

**💧** Water consumption reduced by **7%** from 2014-2015

**🌱** Land conservation has increased to **18%** of total land mass.

**☠️** Farmers spend **\$20,000** annually on feral animals and pest weeds



**🐄** **3.5 million** beef cattle

**🐔** **140 million** chickens

**🐄** **1.1 million** dairy cows producing **6.186 billion** litres of milk

**🐷** **65,992** sows

**🐑** **13.1 million** breeding ewes and a fleece clip of **66,100 tonnes**

**🌾** **6.5 million** tonnes of grain

**🌿** **\$2.35 billion** in horticultural production

## Introduction

The Victorian Farmers Federation (VFF) as a member organisation assists farmers with various aspects of their business, including answering queries associated with Occupational Health and Safety.

The VFF supports the development of regulation that facilitates the safe handling and storage of dangerous goods whilst minimising regulatory burden on businesses.

At many times of the year Victorian farms will often have quantities of dangerous goods such as chemicals, fuel and fertiliser which are used in agricultural production.

Whilst as an industry agriculture produces little chemical waste, the recent case of illegal dumping by a rogue waste operator near Kaniva in West Wimmera region has highlighted the potential threat to surrounding agricultural production of waste operators illegally dumping of chemicals and other dangerous goods.

Rather than extending agency powers, the VFF believe streamlining existing overlapping legislation and improving inter agency cooperation will be critical in improving ongoing awareness and compliance of the safe handling and storage of dangerous goods.

Whilst outside the scope of the review, the VFF is concerned by the lack of adequate waste infrastructure in Victoria, including infrastructure and businesses able to safely destroy, recycle or reprocess chemical waste.

The VFF with respect to the questions raised in the consultation paper, we will answer those questions that appear below:

### **Questions in the Issues Paper:**

**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 VFF considers that the current dangerous goods (DG) legislation sufficiently promotes the safety of persons and property in that it provides a clear hierarchy of duties that align with the supply chain from manufacturers through to occupiers of workplaces where dangerous goods are stored and used.

The characterisation of duty holders into one of the five archetypical categories (i.e. Willing and able; Well intentioned; Reluctant; Uninformed; Deliberately evasive) was not a consideration when the DG Act was originally drafted. Laws should not be drafted with the intent of differentiating between the compliance practices of duty holders.

The VFF considers that significantly more effort needs to be invested into developing clear easy to understand resources to assist compliance, recognising the diversity of businesses that may be captured by this regulation.

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

The VFF considers that the objects of the DG Act are sufficiently clear to promote the effective management of dangerous goods. The West Footscray bulk storage fire was certainly a significant and catastrophic dangerous goods incident which stemmed from illegally stockpiling dangerous goods, resulting in large chemical fires. This event led to a subsequent blitz on storage facilities by a WorkSafe-led task force which identified a few other potentially dangerous storage facilities. Since the West Footscray industrial fire, the Government has introduced further penalties for rogue operators who manufacture, store, transport, transfer, sell or use dangerous chemicals.

Although the DG Act has been in operation since 1985, there have been limited information and education campaigns, or inspection programs by the States regulator, WorkSafe, to promote compliance expectations and consequences for failure to comply.

Interestingly, the discussion paper makes almost no mention of overall injuries or incidents attributed to incorrect storage and handling requirements from the time of inception of the Act. There is no annual recording of workplace fatality statistics as there is for measurement of performance of the OHS Act 2004 and there is no mention in the discussion paper about the compliance and enforcement activities of the regulator to assist in making an informed decision on the effectiveness or adequacy of the laws over a longer period (i.e. over three and a half decades).

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

The VFF considers that while the objects of the DG Act remain suitable and fit for purpose the current legislation is too complex and difficult to interpret.

Overlapping of the legislation into different legislative frameworks, e.g. OHS and Storage and Handling Regulations and other Acts and Regulations, as the consultation paper illustrates on page 22, does not enhance understanding of the Act. Perhaps the duty holder requirements in the Act should be split up into various parts, e.g. manufacture, storage, transport, etc. The language used in the Act should be reviewed, as does the terminology, e.g. Dangerous goods and hazardous substances terms are not interchangeable.

**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?**

The VFF considers that recrafting of the DG Act to align it with the risk based and prevention-focused approach catered for in the Occupational Health and Safety Act 2004, and the more recently re-crafted EP Act 2017 (which is largely modelled on the OHS Act) is worth consideration so as to ensure a level of consistency and familiarity for duty holders.

The recrafting of the OHS Act may also provide an opportunity to align the DG and OHS Acts through the inclusion of Act notes in the DG Act to align duties under both Acts. The use of Act notes is a feature of the

consolidated OHS Regulations 2017 and it would certainly be worth considering applying a similar approach to the DG Act.

An example of effective use of Act notes is the linkage of Principal Contractor duties under Regulation 335 of the OHS Regulations 2017 to prepare an OHS Coordination Plan which is linked to the duties under Section 26 of the Act which provide for the duties of Persons who manage or control workplaces.

The VFF considers that there is sufficient scope within the variety of duty holders captured by the OHS Act to sufficiently capture the broad scope of duty holders that the DG Act would apply to.

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

The VFF considers that a broad, general principle-based duty akin to the Section 21 Duty of Employers under the OHS Act should be considered and that such duty should be countenanced on the basis of 'so far as is reasonably practicable' so as to create closer alignment with both the OHS and EP Acts.

As previously noted, recognising the challenges for small businesses with less prescriptive legislation, it is critical that sufficient resources are provided to assist operators to understand the laws and comply.

**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 VFF considers that the Storage and Handling, Explosives, High Consequences Dangerous Goods and Transport Regulations do provide sufficient coverage for the range of duty holders, activities, and business practices. Manufacturers seem to have a good level of understanding of their obligations to properly package and label packages and containers. The road transport industry appears to have a good grasp of its responsibility, particularly in the transportation of high consequence dangerous goods.

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

While the *2013 Code of Practice: The Storage and Handling of Dangerous Goods* remains a useful resource for safety practitioners and employers, the VFF considers that developing simpler, easier to use, practical guidance for small businesses would be helpful.

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

The VFF considers that guidance created to date has tended to blend management of the risks of both hazardous substances and dangerous goods and as a consequence risks that are particular to the storage and handling of dangerous goods (e.g. segregation, bulk storage, licensing requirements) have not been given adequate (i.e. proportionate) attention.

The VFF would support the creation of simpler, easy to follow, guidance for businesses that relates specifically to the identification, storage, and handling of dangerous goods. Such guidance should identify that there are two parts of safety regulation that relate to chemical safety in the workplace and include the necessary hyperlinks to direct duty holders to guidance that relates to storage and handling of hazardous substances as separate useful reading material.

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

The VFF does not support the introduction of a permissioning (i.e. licensing) framework for 'higher risk sites'. The discussion paper does not provide a definition of what type of workplace or environment would constitute a 'higher risk site', or clarity around the volumes of materials that would be able to be stored in a workplace before meeting the requisite licensing expectations.

The introduction of a permissioning framework would potentially create significant red tape burdens for a significant number of VFF members who would at various times of the year store significant quantities of bulk fuel and chemical storages.

The current notification requirements, which also provide capacity for the regulator to determine that a site is a Major Hazard Facility, are appropriate.

While the creation of a licensing framework might make it easier for the regulator to identify workplaces to visit and monitor, it may also create a risk that workplaces which store 'significant quantities' of dangerous goods which fall below the thresholds that might apply to such a licensing regime might then fall under the radar.

Licensing should only be used where it is identified that the holding of a license correlates with a need for a competency (e.g. high risk work licensing) or qualification and should not be used because of questions of legal compliance. The discussion paper points out that unscrupulous persons may still engage in inappropriate storage of dangerous goods irrespective of whether a licensing regime exists.

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

Incident notification duties under the OHS Act do relate to the immediate risk, or the immediacy of risks that may be present which could pose a potential risk to persons or property.

The VFF considers that there is already sufficient scope within the OHS Act (Section 37(2)(e)) for duty holders to notify WorkSafe of Dangerous Goods incidents. Should an incident occur outside of working hours or in an unoccupied workplace, such as the venue of the West Footscray chemical fire, the notification of WorkSafe of the incident would have been superfluous. Whilst there may have been greater public safety risks created (i.e. significant air quality, inhalation risks) notification to the regulator would not appear to have any real benefit or assist in the management of the risks arising from such an event, which would be mostly likely to managed by multiple agencies.

**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?**

If a dangerous goods incident occurs in a workplace setting, which the vast majority of incidents do, it is well within the capacity of the regulator, WorkSafe, to make a decision to pursue charges under either the OHS Act 2004 or the DG Act.

Just last year, the Government introduced the Dangerous Goods Amendment (Penalty Reform) Act 2019, and a provision was inserted, creating the new offence of “conduct in respect of dangerous goods that endangers persons”. The “reckless conduct” offence will carry a penalty of up to 10 years jail or a maximum fine of \$627,836 for individuals who engage in reckless conduct in the manufacture, storage, transport, sale or use of dangerous goods that places a person in danger of death. Body Corporates who engage in reckless conduct that places a person in danger of death will face maximum fines of \$6,608,800.

Fines were increased for failing to comply with the direction of a WorkSafe Inspector and for several other offences, for failing to carry out duties under the Act.

The discussion paper highlights that those who are ‘deliberately evasive’ are likely to still be deliberately evasive, irrespective of the penalties that exist.

Government has amended the OHS Act to include the offence of workplace manslaughter on the premise that the amendments were necessary to make employers take safety more seriously. The offence carries a potential maximum fine of \$16.5m and potential jail sentences of up to 25 years.

The idea that increased penalties and jail sentences will not be ‘more effective’ in deterring non-compliance and illegal activity is a misnomer.

Increased levels of education to encourage the reluctant and to support the uninformed, combined with promotion which informs people that there are consequences for non-compliance is needed.

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

WorkSafe should engage in much greater promotion and education on the storage of dangerous goods, including messaging about the consequences of non-compliance.

The buildings and structures that have been used by the deliberately evasive duty holders are, or were at least, at the point when they were loaded with the bulk storages of dangerous goods, used as a workplace and therefore WorkSafe already has sufficient powers to enter these workplaces to exercise their powers. WorkSafe do not require additional legal powers.

Where concerns arise about WorkSafe’s capacity to access residential properties, it is open to WorkSafe to collaborate with other relevant Government agencies, including the EPA. However, VFF does not support giving further powers to WorkSafe to enter residential properties.

**Question 13 Are the triggers for notification appropriate?**

The VFF considers that the triggers for notification are appropriate.

The VFF also considers that greater effort could be placed into simplifying the method of calculating the storage quantities to make it easier for small business employers to identify whether their workplace is required to notify the regulator of its bulk storages.

**Question 14 What types of information should be notified?**



The 'manifest' requirements have existed for decades and have remained adequate. The manifest calculations are risk based and predominantly relate to provision of information in an emergency situation and signage requirements.

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

It is not clear as to how the regulator could monitor the dangerous goods market and there does not appear to be any rational argument for it to be given additional legal powers to enable this to occur.

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

VFF does not have a view with respect to the capacity of government agencies to share information.

**Question 17 What kind of information sharing should be permitted?**

VFF does not have a view with respect to the capacity of government agencies to share information.

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

VFF does not have a view with respect to the capacity of government agencies to share information.

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

VFF does not have a view with respect to the capacity of government agencies to share information.

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

VFF does not have a view with respect to the capacity of government agencies to share information.

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

Inspectors have a capacity under Section 104 of the OHS Act to obtain warrants to enable entry into premises where potentially dangerous quantities of substances are stored where the premises are part of the workplace.

The VFF considers that Inspectors should not have a capacity to enter residential premises.

Bulk storages may be illegally placed onto privately owned land, as was reported in Lara Vic, and it is then within the remit of the EPA to address the environmental risks.

In July 2020, the EPA laid charges in relation into the alleged failure to remove illegally dumped waste at a residential property. It is evident that the EPA have the capacity to address illegal dumping on residential properties and there is sufficient scope between Government agencies to address illegal activities at both workplaces and residential properties.

<https://www.epa.vic.gov.au/about-epa/news-media-and-updates/news-and-updates/epa-lays-charges-against-individual-in-relation-to-lara-waste-pile>

The VFF considers that increased cooperation and collaboration between Government agencies should not only be practised in times of crisis but also in educating the community about safe storage practices and potential consequences at various other times.

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

The VFF strongly opposes the suggestion that there should be a power for Inspectors to enter residential premises.

As suggested in response to the previous question there is sufficient scope between the OHS and EP Acts to enable Government agencies (i.e. WorkSafe and the EPA) to address illegal storage activities.

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

The premise of the question is that the Review is interested in whether broader powers such as those introduced by the EPAA 2018 are necessary to enable WorkSafe to intervene in an effective and timely way at noncompliant sites.

The question itself countenances the premise that whilst WorkSafe does not have the power to intervene in non-workplaces (e.g. a premises occupied by a duty holder that has gone into liquidation) that it is certainly open to the EP Authority to intervene.

The VFF considers that between the OHS, DG and EP Acts that there is scope for regulatory agencies to deal with non-compliant workplaces or properties. The VFF considers that the problems that have arisen (i.e. incidents) have not been attributable to the absence of powers but more due to a failure to educate duty holders on what is expected and failure to then inspect and enforce the laws appropriately.

VFF does not support giving broader powers to WorkSafe to enter premises, as other more appropriate authorities hold these powers. Better collaboration and information sharing between regulatory agencies would deliver better safety outcomes.

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

See response to question 23.

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

Similar to question 23, there is sufficient scope between the OHS, DG and EP Acts to enable WorkSafe or the EPA to issue appropriate directions to officers or other controlling entities (i.e. a property owner) to take actions to address dangerous situations.

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

Persons that engage in unlawful DG activities to make an easy dollar are unlikely to have insurances to cover their unlawful activities and, if caught, are also unlikely to have retained sufficient funds as to cover their legal expenses, potential fines and also the costs of remediation.

Putting WorkSafe into a position where it can recover costs following dangerous goods incidents would be inconsistent with WorkSafe's role as a regulatory agency responsible for enforcement and not remediation.

WorkSafe does recover costs of work-related injuries from negligent third parties under the Workplace Injury Rehabilitation and Compensation (WIRC) Act 2013, which are mostly covered through employers' public liability insurances. To increase WorkSafe's powers for other recoveries for Dangerous Goods incidents would create significant burdens on employers who would most likely have to take out additional insurance coverage.

Property damage from DG incidents are already covered under general property insurances and so there appears little value in providing the regulator with additional recovery powers.

**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 idea of recovery powers and financial assurances would be totally inconsistent with the purpose and objectives of the DG Act which is to provide for the safe manufacture, transportation, and handling of dangerous goods. The intent and purpose of the legislation is not to safeguard the Government from expense when things go awry.

Major Hazard Facilities (MHF's) are required to prepare and maintain detailed business cases to outline how they will ensure the safety of their operations. The additional expectation of providing financial assurances would be completely add odds with the intent of preventing DG incidents in the first place.

Employers are atypically already assessed for their fire safety and emergency preparedness by their insurance brokers in consideration of their property and public liability insurance requirements, taking into account the dangerous nature of their business activities and dangerous good storage and handling activities.

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

The overlapping scope of the DG Act, OHS Act and Regulations and EP Act already provide sufficient coverage for the lifecycle of dangerous goods products and materials.

It is appropriate that the DG Act should remain limited to manufacture, storage, transport, sale and use of dangerous goods and that the disposal of dangerous goods should remain covered under the EP Act.

Industry has come to recognise the duties under both the DG and EP Acts. The disposal of 'proscribed wastes' and requirements to enter into contracts with reputable waste management companies (e.g. Cleanaway, Veolia etc.) are well recognised.

The blending of waste disposal responsibilities into the DG Act would risk muddying the waters for employers and could potentially serve to undermine the importance of managing risks associated with disposal that are largely revolved around protection of the environment (i.e. land and water).

Recognising the challenges for small businesses such as farmers in assessing suitable waste management companies, the VFF suggests that practical guidance, developed through collaboration between the respective agencies (i.e. WorkSafe and EPA) could assist small business to recognise the boundaries between DG responsibilities and waste disposal obligations under the EP Act but that there is no need to incorporate waste management responsibilities, such as use of licensed contractors, into the DG Act.

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

As per the response to question 28, the boundaries between the DG Act for manufacture, storage and transportation and responsibilities for waste management and disposal under the EP Act are fairly well recognised by industry.

The EP Act already provides an adequate 'chain of responsibility' for those disposing of wastes from their business and those responsible for the appropriate transportation and disposal of those waste materials.

Waste disposal businesses are required to have licenses with the EPA and are already well versed in maintaining through records and tracking documentation.

Any additional 'due diligence' responsibilities would only serve to replicate the already well established framework which has been established by industry and reputable waste disposal contractors.

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

The Victorian Government has not adopted the Model Work Health and Safety Act and therefore also not adopted the due diligence obligations that exist under that legislative framework.

The DG Act is not subordinate to the OHS Act but it would seem to be somewhat illogical to insert a due diligence requirement into a legislative instrument that is narrower in scope than the OHS Act and which has parallels to the subordinate Hazardous Substance and Major Hazard Facility chapters of the OHS Regulations 2017.

It is open to WorkSafe to articulate its expectations of what is expected of Officers to take reasonable care under Section 145 of the OHS Act by way of production of a Section 12 WorkSafe Position. This recommendation has been put to WorkSafe on numerous occasions.

The VFF does not support the inclusion of a due diligence test or duty under the DG Act.

**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 VFF notes that the capacity for WorkSafe to issue civil penalties (i.e. Infringement notices) has existed under the OHS Act since 2004 and that WorkSafe has not implemented the policy framework to give effect to that section of the Act.

As noted earlier in this submission there is also no data or evidence contained within the discussion paper about prosecutions, improvement notices and prohibition notices related to Dangerous Goods offences.

Civil penalty offences are likely to have a disproportionate impact on small business employers and run contrary to the preferred constructive approach that is taken by WorkSafe Inspectors.

The introduction of a civil penalty regime would need to be balanced against rights for review of decisions, such as internal review under the OHS Act 2004, so that employers are not burdened with the expense of taking matters to VCAT or the courts.

As there is significant overlap between the enforcement of the OHS Act and the DG Act by WorkSafe, it is already within the scope of WorkSafe's current enforcement activities, to issue improvement notices and prohibition notices under the OHS Act for DG breaches. A DG breach is also likely to constitute a health and safety risk.

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

The VFF does not support the introduction of an infringement scheme for dangerous goods. Infringement notices would most likely be applied for administrative type breaches such as not having a dangerous goods manifest prepared, or not having safety data sheets, which would in many circumstances not correlate with poor or unsafe workplace practices.

Physical hazards such as storing dangerous goods unsafely or failing to have appropriate protections in place (e.g. fire systems, traffic management, adequate DG signage) have been sufficiently dealt with by WorkSafe through the issuance of improvement notices and prohibition notices under the OHS Act. There has been no demonstrable need for infringement notices to be applied.

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

As suggested in a few instances in this submission most DG incidents (i.e. the majority) are likely to occur in a workplace context and therefore, fall under the scope of both the DG Act and OHS Act. The penalties were increased with the Dangerous Goods Amendment (Penalty Reform) Act 2019.

The new offence of workplace manslaughter under the OHS Act, will apply in circumstances where a death arises in a workplace, a duty is owed and the death is attributable to the negligence of the company or its Officers (paraphrased). The OHS Act clearly provides for duties that relate to the safe handling and storage of dangerous goods, notification of DG incidents and safe systems of work related to DG's which would cover activities involving manufacture and transportation.

There have been successful prosecutions under the OHS Act relating to the handling, storage and transportation of dangerous goods over the years and the new offence could have been applied to a number of these incidents.

The individual responsible for the West Footscray chemical fire has been hit with 55 charges by WorkSafe for offences under both the OHS and DG Acts.

**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?**

In the context of the farming and agriculture industry, management practices for the safe handling and storage of dangerous goods have improved considerably since the DG Act was introduced in 1985. The improvements have largely come about from improved efficiencies in farming techniques and collaborative relationships that farmers have formed with their chemicals and dangerous goods suppliers.

The farming and agriculture sectors are significant users of hazardous chemicals, but the bulk of materials are used for farm production. The industry is not a significant generator of waste.

Trade suppliers over the years have established programs for the collection, re-use and recycling of their used containers, drums, and packaging e.g., DrumMUSTER Program.

The farming community, by and large, recognises that the handling and storage of dangerous goods presents greater risks than just to the immediacy of the farming property that might be directly affected by an incident but also to whole regions. Bushfire risks and environmental damage to waterways are two ever clear dangers that people in the agricultural community are highly aware of. There are also stronger regional supports in regional areas with Fire Services playing a much more significant role in supporting regional communities to manage fire risks, which creates a focus on dangerous goods storage practices.

The VFF support steps being taken to deter illegal dumping of chemicals and other dangerous goods. Recently, the case of illegal dumping near Kaniva in West Wimmera region, highlighted the threat to surrounding agricultural production.

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

Mutual recognition of licensing between jurisdictions is a critical challenge for the industry, particularly for farmers in border regions.

Licensing of waste management contractors and waste management facilities is a critical risk, particularly given the shortage of services available in regional areas.

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

The VFF considers that it is critical that sufficient resources are provided to assist operators to understand the laws and how to comply.

Industries will need to evolve to the adoption of the Globally Harmonised System (GHS) for chemicals. There is likely to be a gradual increase in the use of the dangerous goods pictograms on the sides of packages and containers that are imported from overseas. It will be critical that industry is properly educated and informed.

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

The VFF is concerned by the lack of adequate waste infrastructure in Victoria, including infrastructure and businesses able to safely destroy, recycle or reprocess chemical waste.

**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 VFF does not have a view on new technologies that might affect the dangerous good industry.

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

The VFF considers that the fundamentals of the current DG legislative framework are sound and that there is not real need for significant change.

The VFF considers that greater education and awareness is needed and that along with the VFF, both WorkSafe and the Environment Protection Agency, can play a greater role in supporting regional Victoria in increasing knowledge about good DG management practices.

### **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 VFF considers that a new DG Act should adopt (as far as possible) the structure, order, language, and conceptual framework of the OHS Act and in a similar manner to the re-write of the Environmental Protection Act 2018.

The VFF supports the inclusion of Act notes into the DG Act to draw linkages to the duties that exist under the OHS Act. As both Acts are administered by the same regulator (i.e. WorkSafe) and most DG incidents are investigated and prosecuted under the OHS Act 2004, it appears sensible to link the two acts together more closely during the drafting process.

The incorporation of Act notes may also negate the need for unnecessary repetition, overlap and duplication which may serve to confuse duty holders.

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

Rather than considering whether DG legislation should be incorporated within the OHS Act, the VFF suggests that serious consideration should be given to consolidating responsibilities for DG management into a specific chapter of the consolidated OHS Regulations 2017, sitting alongside the chapter that relates to hazardous substances.

Safety professional and educators will almost always follow up with discussions about safety practices related to the management of hazardous substances, with discussions about dangerous goods. The two issues are unquestionably intrinsically related. It may be of greater benefit for workplace safety to simplify the legislative regime by having the two subjects more closely aligned in the legislative framework.

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

The VFF considers that the transportation of prescribed waste should remain covered under EP Act 2018 as the term 'prescribed waste' is well established and recognised in its application as related to environmental risks.

Many prescribed industrial wastes would not be classified as dangerous goods as they may not have the characteristics of DG's.

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

The VFF supports the retention of the current processes whereby amendments to the ADG Code do not come into operation in Victoria until gazetted by the Victorian Government. The current practices instil a

greater level of confidence that duty holders are informed and kept aware of and significant changes as they are more likely to be communicated by WorkSafe.

A suitable timeframe is required for educational reasons and also for guidance material to be produced to assist in any new regulations being introduced.

**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 VFF does not have a view on this question.

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

The VFF suggests that the processes for calculation of quantities for production of dangerous goods manifests could be simplified, but this may be more appropriate for a compliance Code or guidance material.

The Globally Harmonised System (GHS) for Classification of and Labelling of Chemicals has been in operation since 2016 and Australia has been transitioning towards adoption of the GHS over the last five years.

Whilst information exists on the WorkSafe website about the GHS there has been minimal promotion of public dissemination about the changes and what the implications will be for industry.

<https://www.worksafe.vic.gov.au/globally-harmonized-system-ghs-classification-and-labelling-chemicals>

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

The VFF considers that the very reason that regulations are in place for 'Major Hazard Facilities' is in recognition of the need for essential safety measures commensurate with the significant quantities and risk profiles of those facilities.

The VFF does not support the imposition of additional 'essential safety measures' on other workplaces without clarification on the quantities/volumes of materials that would classify a workplace/premises as constituting a 'dangerous goods site or facility'.

Consideration of identifying where there is a need to classify sites based on their risk profiles should be the subject of a thorough independent investigation and cost benefit analysis.

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

The VFF considers that the requirement for occupiers of workplaces to have regard for advice given by emergency services is sufficient, as duty holders have to manage the risks in their workplace, so far as is reasonably practicable, under the OHS Act and due regard would be had for what the duty holder know, or ought to have known, about the hazards and risks that were present.

**Question 48 Should Victoria recognise interstate dangerous goods licences?**

The VFF strongly supports mutual recognition of interstate dangerous goods licenses.



The availability of an increased number of licensed transporters, waste management practitioners and waste management facilities can only serve to increase the likelihood of increased compliance.

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

Regulating ammonium nitrate under the Explosives Regulations would not negate the fact, that it is still a dangerous goods.

The VFF considers that regulation of ammonium nitrate under the Explosives Regulations is an inappropriate question for this review and that the issue should be subject to broader review and consultation with industry separate to this review.

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

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

The VFF has no further matters to raise.