

**From: Jeff Simpson**

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**To: Dangerous Goods Act Review Secretariat**

Victorian Dangerous Goods Act & Associated Regulations Review  
WorkSafe Victoria

**30 November 2020**

**The eight key comments/proposals/matters I want focussed on from my Overall Comments are:**

**Under Q2 & Q4 & Q50: JS Proposal** – Chemical management high level competencies for professional / technical specialists need to be required by the DG Act, (and OH&S Act and EPA Act) & Regs.

**Under Q8: JS Proposal** – WorkSafe Victoria to set up an email list for alerting chemical management issues and changes for managing Dangerous Goods, Reactive Chemical Hazard substances and Serious Health hazard Hazardous Substances, for persons working / representing / consulting in this chemical management specialist area. A similar email list could also be set up by EPA Vic. Such lists need to be self-maintained (but where each member would need to adequately identify themselves). This email list then becomes a focussed information alerting system so that such persons become an extension of Work Safe Vic to keep the community aware of issues, proposals and changes.

**Under Q29: JS Proposal** – All businesses should have a duty to undertake due diligence in relation to the disposal of the Dangerous Goods operators waste; and each Business need to part of the feedback loop for how and when their waste was finally treated and disposed of to EPA Vic standards

**Under Q30: JS Proposal** – The person taking final waste disposal decision responsibility should carry their own personal Professional Indemnity and Public Liability insurance (as a contracted in consultant specialist requires).

**Under Q38: JS Proposal** – Chemical reactors for converting wastes back to starting point circular economy raw materials. Chemical reactors will require serious technical specialists to manage, to ensure there are no unexpected chemical / reactivity / waste risks. This will require Australia wide industry regulations to ensure such materials are used before new raw materials.

**Under Q42: JS Comment** – Yes, as Dangerous Goods waste is transported under the ADG Code in ALL other States and Territories. This requirement then properly protects the emergency services and public, should a waste incident occur whilst being transported, which the EPA Vic Act does not do as it has not been maintained for transport of Dangerous Goods to the same requirements.

**Under Q50: Are there any other relevant matters that the Review should consider?**

**50-1 / JS Comment** – Correctly understanding and managing Dangerous Goods is currently not a competency required for senior technical and regulatory specialists under the Victorian Dangerous Goods Act and/or Regulations.

E.g. How does a business check their specialist's competency to classify chemical hazards for your business?  
How do they know if the Reactive Chemical Hazards are really taken into account in their SDSs?

**50-1/ JS Proposal** – Include chemical management competencies needed into the DG Act, (and OH&S Act & EPA Act).

**50-2 / JS Comment – Being clear (and consistent with other States & Territories) for Storage and Handling of Dangerous Goods labelled Environmentally Hazardous under UN 3077 and UN 3082.**

In other WHS Regulations States & Territories, Dangerous Goods labelled Environmentally Hazardous under UN 3077 and UN 3082, is NOT required to be stored as Dangerous Goods (even though labelled as UN 3077 & UN 3082 D.Goods).

It is only imported Dangerous Goods labelled Environmentally Hazardous under UN 3077 and UN 3082 products that must be stored in Dangerous Goods storages (unless relabelled as Not AU Road & Rail Dangerous Goods).

Locally produced equivalent products are not even required to be labelled as Environmentally Hazardous chemicals under Australian regulations, though from liability many are (but not as AU Road & Rail Dangerous Goods)

**50-2/ JS Proposal** – This difference of storage requirements for DG Labelled vs Not DG Labelled Environmentally Hazardous products needs to be reviewed, and made consistent with other States & Territories.

**My overall comments follow (which include the eight key comments/proposals/matters above I want focused on):**

Jeff Simpson, Haztech Environmental Comment (30 Nov 2020) – designated with the “JS” abbreviation

On the **highlighted** Questions from the Independent Review of the Victorian Dangerous Goods Act 1985 and associated Regulations

**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 2** To what extent does it promote the effective management of Dangerous Goods?

**JS Comment** – A key issue in the current average effective chemical management of Dangerous Goods is the lack of high level competencies being required for professional / technical specialists. Many OHS&E professional / technical specialists usually do not normally have an effective understanding of reactive chemical hazards. (See also Question 50)

**JS Proposal** – Chemical management high level competencies for professional / technical specialists need to be added to the DG Act, (and OH&S Act and EPA Act) & Regs.

**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?

**JS Comment** – A key issue in effective chemical management of Dangerous Goods is the lack of high level competencies by professional / technical specialists. The OHS&E professional / technical specialists usually do not normally have an effective understanding of reactive chemical hazards.

**JS Proposal** – Chemical management high level competencies for professional / technical specialists need to be added to the DG Act, (and OH&S Act and EPA Act) & Regs.

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

**JS Comment** – Yes

**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?

**JS Comment** – Yes

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

**JS Proposal** – WorkSafe Victoria to set up an email list for alerting chemical management issues and changes for managing Dangerous Goods, Reactive Chemical Hazard substances and Serious Health hazard Hazardous Substances, for persons working / representing / consulting in this chemical management specialist area. A similar email list could also be set up by EPA Vic. Such lists need to be self-maintained (but where each member would need to adequately identify themselves). This email list then becomes a focussed information alerting system so that such persons become an extension of Work Safe Vic to keep the community aware of issues, proposals and changes.

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

**JS Comment** – WorkSafe Victoria needs to be informed of all Dangerous Goods incidents that could lead to serious consequences, so WorkSafe Victoria can take appropriate action to manage them and minimise the chance of similar future incidents. As general starting point is for a quantity >205L Drum; or lower for unusual reactive hazards.

There needs to be a general duty to inform WorkSafe Victoria of such Dangerous Goods / reactive hazard incidents.

#### **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?

**JS Comment** – Illegal activity does not come within the scope of the Act or Regulations as this is not ever reported. These non-compliance and illegal activity sites must be able to be highlighted by adjacent / nearby businesses without becoming a problem to these other businesses for “dobbing in”.

Transport Drivers delivering Dangerous Goods to sites that obviously have placarding quantities present, but no placards externally on the property should be required to report such discrepancies to WorkSafe Victoria.

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

**JS Comment** – Reinstate the “olden” days right for an Authority inspector to enter all industrial premises to check.

#### **Term of Reference C continued: 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 16** To what extent is the detection of unknown or illegal Dangerous Goods activity hampered by restrictions on information sharing by government agencies?

**JS Comment** – There is a clear need for relevant Government Authorities to rapidly share information that may be confidential, in order to manage a Dangerous Goods / Serious Chemical Hazard incident or potential problem. This would need to include all applicable Government Authorities, Victorian Councils, and potentially Federal Government Authorities.

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

**JS Comment** – There needs to be a right of entry to all areas of a Business that can be used by Work Safe Vic, so that Dangerous Goods can be found and properly managed. This should be part of the requirements to operate a Business.

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

**JS Comment** – There needs to be a right of entry to all areas of a residential premises that can be used by Work Safe Vic, so that suspected illegal and high risk Dangerous Goods (such as Fire Works) can be found and managed.

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

**JS Comment** – Yes

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

**JS Comment** – Work Safe Vic should be able to recover operational costs above what are the normal Work Safe Victoria costs to operate. E.g. Unusually costly analysis needing to be done, and bringing in Specialist expertise.

**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?

**JS Comment** – Financial Assurances (in one go) might be a restriction on starting a new business. If it is decided Financial Assurances are needed they could be ramped up each year: say 10%, 20%, 20%, 25%, 25%.

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

**JS Proposal** – All businesses should have a duty to undertake due diligence in relation to the disposal of the Dangerous Goods operators waste; and each Business need to part of the feedback loop for how and when their waste was finally treated and disposed of to EPA Vic standards

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

**JS Proposal** – The person taking final waste disposal decision responsibility should carry their own personal Professional Indemnity and Public Liability insurance (as a contracted in consultant specialist requires).

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

**JS Comment** – There is a lack of adequate chemical waste/chemical resource infrastructure in Victoria/Australia. In 1985 the EPA Vic ran a 2 day waste workshop for the community at Phillip Island. The community made a clear statement at the end of Day 1 they wanted a Cradle to Cradle concept for resource recovery (i.e. a Circular Economy). The EPA Vic went with their own Cradle to Grave concept, so no serious chemical waste / resource recovery facilities have been built since to return the wastes to a similar raw material starting point industry uses (e.g. back to a Hydrocarbon mixture that can be refined, reacted, etc). And there are no Australian regulations requiring this recovered material to be used before new raw materials can be bought and used.

**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?

**JS Proposal** – Chemical reactors for converting wastes back to starting point circular economy raw materials. Chemical reactors will require serious technical specialists to manage to ensure there are no unexpected chemical / reactivity / waste risks. This will require Australia wide industry regulations to ensure such materials are used before new raw materials.

#### **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) ?

**JS Comment** – As far as possible

**Question 41** Should Dangerous Goods legislation be incorporated within the OHS Act?

**JS Comment** – Not at this stage. The acute hazards of Dangerous Goods need Chemical Management specialist knowledge (e.g. for reactive chemical hazards). The more general OH&S managers need Dangerous Goods and reactive chemical hazards high level professional knowledge training.

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

**JS Comment** – Yes, as Dangerous Goods waste is transported under the ADG Code in ALL other States and Territories. This requirement then properly protects the emergency services and public, should a waste incident occur whilst being transported, which the EPA Vic Act does not do as it has not been maintained for transport of Dangerous Goods to the same requirements.

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

**JS Comment** – Yes. And the ADG Code coming into force automatically needs to be resourced to happen. With a maximum of 3 months to come into force, so a minimum delay is allowed in special circumstances.

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

**JS Comment** – The Dangerous Goods Storage & Handling Regulations require different management to the Major Hazard Facility Regulations and can't be compared for the different thresholds. These two sets of regulations are for completely different situations!

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

**JS Comment** – I regard that we need a requirement to discuss and agree on the final adjusted advice to be implemented.

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

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

**50-1 / JS Comment** – Correctly understanding and managing Dangerous Goods is currently not a competency required for senior technical and regulatory specialists under the Victorian Dangerous Goods Act and/or Regulations.

E.g. How does a business check their specialist's competency to classify chemical hazards for your business?  
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**50-1/ JS Proposal** – Include chemical management competencies needed into the DG Act, (and OH&S Act and EPA Act). (See also Question 2)

**50-2 / JS Comment** – **Being clear (and consistent with other States & Territories) for Storage and Handling of Dangerous Goods labelled Environmentally Hazardous under UN 3077 and UN 3082.**

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Comment Finish

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