

Independent Review of the Dangerous Goods Act 1985 and associated regulations

Consultation Paper questions

My responses follow the questions below. I give permission for these to be made public.

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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?

To the extent that it is actively enforced. Relying on voluntary reporting of quantities leaves open the abuse of the system by those who have no intention of complying.

Optional additional actions include:

1. Site inspections of non-DG notified facilities to verify.
2. mandatory reporting by transport companies when they make deliveries of DGs in excess of placard quantities where no placards are displayed
3. A 'report a problem' hotline that is actually followed up.
4. Close the loophole that exempts waste from compliance with the DG Act

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

To the extent that businesses choose to comply, or are aware of their obligations. For the rest we rely on luck.

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

Provide resources for active enforcement.

Better communication with people working in the industry generally, rather than just high level industry groups that only include large companies. An effective and consistently utilised email list notifying any release of guidance, public comment or new interpretation of existing legislation, Gazetting of updates to the ADG Code, or delays in gazetting updates to the ADG would be a minimum.

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?

By the addition and enforcement of mandatory levels of training to ensure that workplaces are informed enough to recognise risk and adopt effective prevention.

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

To persons and surrounding property, yes. Reasonable controls must be in place to ensure the safety of site personnel, including evacuation, and nearby persons and surrounding properties. Where there is sufficient isolation of the premises that only site property damage will occur, this is rightly a decision between the site and their property insurance company. Enforcing minimisation of risk to own property can lead to mandatory adoption of preventative or mitigating technologies out of proportion to the likelihood of incidents occurring, due to interpretation of what is acceptable risk.

The increased cost put those implementing property protection at a competitive disadvantage, purely on the basis of this interpretation. For others, an assessment that controls are not needed becomes a decision that will in all probability never be tested.

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?

Only in conjunction with MHF, and if you aren't able to consider that duty then this split is a big part of the problem with any limited review.

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

Provide concrete guidance and explain the limitations of that guidance, and why these limitations apply in terms of what hazards would no longer be covered. Get them written by people with technical knowledge and experience. Get them, reviewed before release by interested members of the industry. Stop letting your legal department bowdlerise them in the fear of someone holding the department to account on advice supplied.

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

Codes and Guidance should provide clear examples of acceptably minimised risk. If required, they can include circumstances where the suggested controls will be clearly insufficient.

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

MHF legislation already applies. It is meaningless to do this assessment in isolation from the MHF part of OHS legislation.

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

Injury to personnel, visitors or public, or events where these could have occurred.
Damage to property requiring attendance by emergency services, or which may have put employees at risk.

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?

It could be actively enforced, rather than reactively enforced. A considerable increase in resources would be required.

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

Physical inspection of premises seeing unexpected movements of heavy vehicles.

Removal of exemption for Waste in section 8(2) of the Act. This exemption does not apply in other states, and its presence in Victoria limits future control of waste movements

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 13 Are the triggers for notification appropriate?

Yes, just not enforced. There is also no use of the Notification data for strategic purposes, such as identifying potential MHF sites as occurs in other states.

Question 14 What types of information should be notified?

Current details would be adequate.

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

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

How would I know what the restrictions are? Waste movements should be available to DG authorities to identify potential sites of concern

Question 17 What kind of information sharing should be permitted?

Waste movements to Worksafe.

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

Egos and ignorance usually.

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

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

- Question 21 Under what circumstances should a dangerous goods inspector be permitted to enter a place where dangerous goods might be stored?
- Question 22 Should there be a power for inspectors to enter a residential premises? What should the threshold for these powers be?
Reasonable suspicion that the site exceeds the quantities identified in Regulation 6 (k).
- Question 23 Does WorkSafe need broader powers to intervene at non-compliant sites?
I am not familiar with the current limits on action within Worksafe.
- Question 24 If so, what powers does it need, and what should be the threshold to the exercise of those powers?
- Question 25 Should WorkSafe have the power to redirect body corporate obligations to their officers and controlling entities?
- Question 26 What costs should WorkSafe be able to recover, and from whom?
- 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?
- Question 28 Should dangerous goods operators only be permitted to dispose of their waste to accredited waste providers?
Do they not now? In my experience the majority of DG are hazardous waste, thought there may be exceptions.
- Question 29 Alternatively, should dangerous goods operators have a duty to undertake due diligence in relation to the disposal of their waste?
Certainly.
- Question 30 Should officer liability for dangerous goods offences be based on a due diligence test or duty?
Yes, in concert with a minimum required level of training.
- 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?
- Question 32 Should an infringements scheme be introduced for dangerous goods offences, and if so, which ones?
- Question 33 Should maximum penalties be increased for (some or all) dangerous goods offences?

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?

Much less formulation, much higher level of imports. The result is a move to passive storage rather than active manufacture.

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

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

More of the same.

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

Distortion of the industry leading to lack of local resources to use recycled waste material.

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?

You had better start thinking about people attaching Lithium storage batteries to weatherboard houses.

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

Add Regulation 6(k) lithium battery storage limit.

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)?

Why not just adopt Work Health and Safety legislation and gain the added benefit of National consistency?

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

Work Health and Safety? What a good idea! We could have National consistency and make use of National resources. Otherwise not at this stage.

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

Yes. Absolutely yes. This is needed to properly protect the Emergency services and the public using roads.

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

Yes. The delay in adoption of ADG7.7, which should have occurred automatically on 1 October 2020 is a disaster for the transport industry, essentially pushing the use of the considerable simplifications for LQ transport nationally back by six months.

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?

No. The detail in the Regulations provide structure for responsibilities and the Chain of Responsibility, and many aspects that are not present in the Code. The ADG Code should remain as much as possible aligned with the UN Model Regulations.

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

They can't: the detail is there for a reason for the most part. If there is streamlining to be done it should be done at the UN level.

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

What essential safety measures? How would these be defined, and how would they be updated to reflect new technologies?

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

If this were done there must be some means for arbitration.

Question 48 Should Victoria recognise interstate dangerous goods licences?

Yes.

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

SSAN is sufficient.

Term of Reference F: Other relevant matters

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

There should be an explicit responsibility for the manufacturer or importer to classify dangerous goods according to the ADG Code.

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