

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?

No response

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

No response

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

It could be better supported by guidance material covering particular aspects rather than the one all-encompassing Code of Practice that currently exists, and is out of date.

It also needs a more comprehensive general duty, similar to that in the OHS Act s.21 - s.32. Such a duty would need to be mindful not to impose SFAIRP on the transport of dangerous goods. The requirements relating to transport of dangerous goods are prescriptive so there needs to be an acknowledgment that if a duty holder has complied with all of the prescriptive requirements, then the safety case is assumed to have been met..

The DG Act often appears as the poor cousin of the OHS Act. This is reinforced by the lower priority that WorkSafe Victoria appears to give it.

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?

Without the support of available training packages for those managing the risks associated with dangerous goods, moving to a fully risk-based and prevention focus is likely to result in more incidents. The current approach of risk based, with the identification of specific risk in the regulations at least provides some guidance to risk managers.

While various levels of OHS/WHS training and qualifications are available, there are virtually none available for dangerous goods risk management

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

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?

The duties are generally hampered by the employer-employee relationship that underpins Victorian OHS laws and the 'occupier' principle in the DG laws.. A move to placing the duty on the person in control of the activity, regardless of their relationship to the persons or property that the activity puts at risk would be much better.

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

Codes and other guidance material should play a greater role in demonstrating what compliance might look like in various industries or situations. They should provide practical, usable guidance and not just reiterate the duty.

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

There should be more codes, each covering discreet topics or situations. Similar to the approach taken for the OHS Act and Regulations. The current DG approach of one, all-encompassing CoP does not provide sufficient guidance for managing risks

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

No, a licensing scheme would introduce a greater burden on both the regulator and industry without necessarily increasing safety. Many of the poorly managed sites operate outside the law. Greater benefit would be achieved by improving the Notification scheme and providing greater awareness and guidance, e.g. through Codes of Practice.

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

The duty to Notify WorkSafe should be broad but not so broad as to capture releases such as a vent valve operating as intended. The incident needs to pose a risk that's significant enough that WorkSafe may want to investigate, whether with a view to taking regulatory action or to identifying learnings for the duty holder or the industry more broadly.

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?

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

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?

Refer to the recent consultation and feedback re Notification triggers and information. This question ignores the issues with the current legislation (VWA and EPA) that sees the last person holding the waste as being responsible. This incentivises people renting warehouses and filling them with illegal waste and then skipping out leaving the landlord responsible. The producer of the waste should be traced and prosecuted. It's their responsibility to ensure the waste they create is legally disposed of.

Question 14 What types of information should be notified?

See response to Question 13

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

Conducting audits of manufacturers and other waste generators of their waste disposal procedures and contracts. Arguably, these activities are the domain of the EPA and should be conducted by them.

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

Information sharing is not only hampered by legislative restrictions but also by a reluctance of various authorities to share the information. An MOU supported by a joint agency body could assist in identifying the relevant information and the process for sharing.

Question 17 What kind of information sharing should be permitted?

Any information that assists other agencies to perform their legislated functions.

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

Refer to answers for questions 16 and 17

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

Interagency secondments of inspectors would be beneficial in improving understanding of the role and function of each agency and the overlaps or interrelationships

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

Yes

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

The current power of entry is sufficient. Particularly when coupled with entry powers under the OHS Act. To my knowledge, there are no inspectors who are appointed under the DG Act but not the OHS Act.

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

This power was removed as it was considered to be out of step with the principles of civil liberty and natural justice. Why would a DG inspector be given more power than the police? If an inspector believes there is an immediate issue, they should contact police.

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

The powers to enable inspectors to deal with poor or non-compliant sites already exist. There has been a distinct lack of WorkSafe's resourcing and attention to DG sites. The DG Act provisions (general duties) and enforcement focus need to be given the same level of importance and attention as the OHS Act

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?

The current cost recovery provisions are part of the problem. Requiring the owner of the property to pay the costs incentivises renting of premises for illegal storage and dumping. The cost recovery should be placed on the person(s) responsible for the goods. Generator (consignor), contractor, lessee.

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?

Requiring financial assurances could be seen as discriminatory. It could also lead to an increase in illegal storage. It would be better to require insurance that covers clean-up and disposal costs, same as required for transport.

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

DG operators should have a duty to ensure their waste or unwanted DG is properly disposed of. This should include sending it to an accredited provider and obtaining a certificate of disposal/recycling.

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

See response to Question 28

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

There are several concepts in the WHS legislation that could be followed. In particular, the concept that the person in control of the activity is the primary duty holder and the concept of due diligence. The decision by Victoria not to follow WHS on these matters has led to Victoria falling behind.

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?

An infringement scheme may be appropriate for black and white items such as Notification, Manifest, chemical register but it would need to be where these don't exist rather than the inspector's opinion of their quality.

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

Penalties for dangerous goods offences should be commensurate with those for breaches of the OHS Act.

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?

No response

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

No response

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

No response

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

No response

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?

No response

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

No response

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)?

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

No view other than if this is done, separate legislation for transport of dangerous goods and legislation relating to explosives should be retained.

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

Yes, if the prescribed waste also meets the criteria for classification as a dangerous good. The risks associated with these aspects are different and should be recognised as such. Environmental protection legislation is aimed at managing the environmental risks associated with the substance. Dangerous goods transport legislation is aimed at managing the safety risks associated with the substance. This principle is no different to that of the storage and handling of dangerous goods. Any site that stores and handles dangerous goods is legislated under the Dangerous Goods (Storage and Handling) Regulations. They may also be required to hold a licence under environmental protection legislation. It seems incongruous that a prescribed waste that is also a dangerous good is not legislated in the same manner.

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

The amendments should come into effect on the date agreed by ITMM. Variations in implementation dates across the jurisdictions causes confusion for industry and prevents national carriers and consignors from taking advantage of new provisions.

- 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?

This idea was suggested in an issues paper released by the NTC in June 2020. [REDACTED]

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

Hazardous chemicals (and articles) are currently classified to two different criteria, GHS and DG. These classification systems serve different purposes and recognise that the risks associated with transport are different to the risks associated with using or handling chemicals. Both classification systems have their place and should remain.

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

It should be a basic condition for operating any workplace.

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

No. However, if they choose not to implement the advice given by emergency service authorities, they should be required to demonstrate that they have received, and implemented, the advice of a qualified fire engineer.

- Question 48 Should Victoria recognise interstate dangerous goods licences?

Yes, but only for non-site-based activities.

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

Given that the licensing and security clearance arrangements for ammonium nitrate are very similar to those for explosives, this option should be explored.

Term of Reference F: Other relevant matters

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