

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?

In the broader industry the application of the DG Act has been very reactive and not preventative. Incidents happen and then they're investigated, but at that point the damage has already been done. Issues discovered involving large quantities of DG's in Melbourne warehouses over the past couple of years are examples of reactivity which costs the tax payer large amounts when it comes to cleaning up. The law itself appears mostly adequate, however the enforcement could be better and more wide spread. MHF's understand the hazardous nature of DG's and are audited regularly, other groups should also be scrutinised, such as but not limited to, non-MHF's and Local Governments. These groups generally require regular auditing and coaching.

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

Improvements listed in the consultation paper appear valid, however must be backed up with physical enforcement. Harmonisation with other jurisdictions is needed, there is no reason why the same substance in one jurisdiction is more hazardous in one state when compared to another state. Harmonisation started in 2010/2011 but was not completed. Legislation could be improved by incorporating the initial intent of WHS harmonisation into DG legislation.

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 is very difficult for law to have any impact on illegal activities. What is required is better systems and regulations to track and trace DG's. It then requires boots on the ground to check any suspicious activities right away, not weeks later after the damage is done. Inter-government collaboration would be required to deter illegal activity.

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

Identification could be via use of a tracking and tracing system linked to a database and GIS hotspots. Warnings could then prompt a DG Audit to be carried out by Work Safe. A process such as this would require cross government data sharing.

No additional legal powers should be given without first testing and implementing preventative measures.

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, but are smaller organisations aware of them? As has been seen, smaller organisations can also house large quantities of DG's.

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

As mentioned in question 12; I don't think additional legal powers are needed in the first instance. Government could first focus on prevention, collaborate and share resources. Unfortunately, we don't see much collaboration within government, Work Safe, EPA, Emergency Services, etc. There is a lot of information out there that can be accessed if it was jointly processed and this would assist with monitoring.

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

Massively, this is the number one problem. Too much bureaucracy leads to less valid or mis-information.

Question 17 What kind of information sharing should be permitted?

Any valid information that can be used. A single location for industry to make submissions to government, emergency response plans are a perfect example and cross multiple government agencies. This should also tie into a simple portal for approvals. Making a process simple assists with compliance.

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

Lack of consultation and missed information. An example is seen in the *OHS Act 2004*. Employees must consult with workers and in the *OHS Regs 2017*, MHF's are as per the Safety Case process asked to consult with nearby MHF's. Industry must consult and so should government. Consultation should also cross jurisdictions, that is the purpose of harmonisation.

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

For the purpose of an audit the inspector should have the power to enter at short notice. For the purpose of an incident an inspector should await advice from emergency services.

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

This is where consultation between emergency services and other agencies needs to occur. A residential premise is different to a workplace, unless it is being used as a workplace. This is a grey area.

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

This makes sense, however how does an accredited waste provider become accredited and are they regularly audited? These groups need to be carefully managed.

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

Perhaps if not already happening a DG Operator should be given the ability to become an accredited waste provider. There may be instances where this could be safer and more easily controlled.

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

Duty.

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?

Both options are needed.

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

Until preventative measures are incorporated into legislation and agencies are able to better communicate and consult amongst themselves I would not be focusing on greater infringements and penalties. There needs to be a balance of prevention and reaction.

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

I think that whatever the penalties are, the outcome of the fines, etc will be determined by the courts. The greater the crime, the greater the penalty. A penalties approach may not be taken as seriously if prevention and guidance is not a primary focus. Penalties need to be applied evenly and fairly, this includes government agencies that do not comply with the law, this ensure rule of law is met.

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?
- 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?
- Question 37 What are the main challenges in the disposal of chemical waste in 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?
- Question 39 How does Victoria's dangerous goods legislation need to adapt and change in order to meet these issues and challenges?

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?
- Question 42 Should DG Act and Transport Regulations apply to the transport of prescribed industrial waste?
- Question 43 Should amendments to the Australian Dangerous Goods Code (ADG Code) come 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?
- Question 45 How can the way in which dangerous chemicals are classified and captured be streamlined?
- Question 46 Should Essential Safety Measures compliance be a condition of operating a dangerous goods site or facility?
- Question 47 Should occupiers be required to implement the advice given by emergency services authorities, rather than simply "have regard to" it?
- Question 48 Should Victoria recognise interstate dangerous goods licences?
- Question 49 Should ammonium nitrate be regulated by the Explosives Regulations?

Term of Reference F: Other relevant matters

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