

# Independent Review of the Dangerous Goods Act 1985 and associated regulations

## Consultation Paper questions + responses by W.V.Peter Hunt

### **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 of its application, it does quite well, but the specific exclusion provided by DG Act Section 8(2) has contributed to the events leading to this enquiry.*

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

*The combination of dangerous goods storage and transport under the DG Act is effective, but the Section 8(2) exclusion places management of waste transport exclusively under the EPA whose prime function is about the fate of chemicals, not their safe storage and transport, whereas WorkSafe's prime function is about that safety and it has competent resources to manage dangerous goods.*

*As a result of this exclusion, dangerous goods exempted by Section 8(2) are required to be transported in accordance with the Environment Protection (Industrial Waste Resource) Regulations 2009 (EP(IWR) Reg). This regulation (Clause 15) requires only that "the prescribed industrial waste does not escape, spill or leak from the vehicle at any time" and does not prescribe any standards for the container such as those required under DG transport legislation. This can, and does, result in dangerous goods being transported in substandard containers. When these containers are received and unloaded from trucks, they are much more likely to be damaged in handling and more likely to leak in even short term storage.*

*In addition, there is no requirement in the Environment Protection (Industrial Waste Resource) Regulations 2009 to label the containers nor to carry emergency information documents (both required by DG transport legislation). This makes difficulties for emergency responders.*

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

*Rescind DG Act Section 8(2)*

### **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 DG act covers a very limited number of the chemicals classified as hazardous under GHS and covers essentially only storage and transport. Within this limited scope, prescriptive legislation has achieved safety and benefits from global experience within that scope. The result is something where the answers to what is required are provided in practical terms. This is different from OHS/WHS legislation which must cover a huge range of materials and activities and where risk is best controlled by applying principles to the individual case.*

*I do not believe the suggested enhancement would produce better outcomes*

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

*Not necessary*

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?

*Yes*

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

*Approved codes of practice (DG Act Sections 56-60) by virtue of their weight in proceedings allow for more detailed and practical ways of complying with the legislation and have been effective in Victoria and other jurisdictions. Their existing role should continue.*

*However, codes should offer practical advice, not simply restate the regulations. Unfortunately, this has been a fault in many codes produced by many agencies in various jurisdictions*

*Guidance material has a different, but no less important role. It can provide clear guidance on a single issue and guidance material can be issued quickly in response to incidents or requests by persons needing practical ways of compliance*

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

*For codes:*

*The only code for DG has sections which follow the headings in the regulations. It would be far more usable if it had sections and headings such as "Storage and handling of small quantities", "retail storage and sales" "controls for specific dangerous goods" (for example a former NSW code available at [https://www.safework.nsw.gov.au/data/assets/pdf\\_file/0005/50729/storage-handling-dangerous-goods-1354.pdf](https://www.safework.nsw.gov.au/data/assets/pdf_file/0005/50729/storage-handling-dangerous-goods-1354.pdf)). Sadly, many of the model codes produced by SafeWork Australia lack useful examples. For codes, greater use by external consultants could ensure good practical advice.*

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

*No. Additional burdens on SafeWork and industry are not needed; they will not catch rogue operators such as those whose activities triggered this enquiry*

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

*OHS Act Section 37(2) already includes appropriate kinds:*

*This Part also applies to an incident that exposes a person in the immediate vicinity to an immediate risk to the person's health or safety through—*

*.....*

*(d) an implosion, explosion or fire; or*

*(e) the escape, spillage or leakage of any substance including dangerous goods (within the meaning of the Dangerous Goods Act 1985); or ...*

**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**

Independent Review of the Dangerous Goods Act 1985 and associated regulations

Consultation Paper questions – **Responses by W.V.Peter Hunt**

Page 2 of 7

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?

*Liaison with EPA to identify storage locations etc. and, most importantly, the rescission of DG Act section 8(2)*

**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. Altering triggers will not affect rogue operators. With respect to waste legislation, it should be amended as necessary to include a chain of responsibility requirement to allow the EPA to investigate to determine which link(s) is responsible for non-compliance rather than leaving some unfortunate property owner for waste left by others. This should apply to all waste, not just DG*

Question 14 What types of information should be notified?

*Same as currently*

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

*See answer to Q 21*

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

*This appears to have been a problem in the past. If any restrictions remain, they should be removed*

Question 17 What kind of information sharing should be permitted?

*In relation to dangerous goods or suspected dangerous goods, information on the goods, their location and transport details should be shared with WorkSafe by environmental agencies, port agencies and first responders (police, fire and ambulance)*

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

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

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

*Only where necessary and where the delegated agency appoints only suitably qualified and experienced persons to exercise those powers. Secondment of suitably qualified and experienced persons for several months could be useful.*

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

*Where the premises appear to be other than residential and the inspector has reasonable grounds to enter*

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

*Yes, the threshold provided by DG Storage and Handling Reg Clause 6(k) is appropriate*

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

*No*

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?

*In general terms, yes, but provisions already exist for more than one person to have the same obligations (e.g. DG Storage and Handling Reg Clause 8) and there are provisions in the DG Act relating to officers (e.g. Section 3(4)(h)). However the issues associated with controlling entities may require additional powers.*

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

*Only those ordered by a court and in relation to from whom, see answer to Q 27*

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?

*There is already an insurance requirement for DG transport. For storage, an alternative to insurance could be that agencies should not have power to require this under normal circumstances, but if a means can be established whereby a court can issue such a requirement on reasonable grounds, this could work.*

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

*No. Existing waste regulations are adequate in this respect*

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

*No. Existing waste regulations are adequate in this respect*

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

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

*These are hated by industry, as around Australia many infringements are issued which should be challenged, but the expense is usually many times the infringement cost. This is a particular concern for Australian companies whose major shareholder is a US corporation, where infringements can be viewed differently.*

*It may be appropriate to have infringements applicable only to clearly cut "administrative" issues such as failure to notify (DG Reg Clause 66)*

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

*Only if out of kilter with equivalent OHS 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?

*DG Act does not cover a “dangerous goods industry” – it covers any industry which stores, handles or transports DG, such as supply chains from manufacture/import through to retail outlets (supermarkets, hardware stores, pool shops etc) as well as hospitals, surfboard manufacturers, printing works etc. etc.*

*The biggest change has been the decline of local production and the increase in small importers, many of whom treat DG out of ignorance as just another commodity. This requires more education and inspections.*

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

*No; this is a compliance resource issue*

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

*See second part of answer to Q34*

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

*Waste processing is intrinsically expensive and land use planning approval for facilities is not easy to obtain. This issue requires government support and consistency across jurisdictions*

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?

*Lithium ion batteries (classified as dangerous goods) pose significant fire risks. The risks associated with transport are adequately addressed, but the risks associated with use and disposal are not necessarily well addressed. New battery chemistry is being developed to replace lithium ion batteries and that will bring different risks. It is not clear that the DG Act is the right place to address battery storage systems. Possibly domestic and commercial buildings should be covered by the Building Code of Australia (part of the National Construction Code) and electrical regulations, but large battery farms by land use legislation*

*Hydrogen as an energy source should be covered by pipeline and DG legislation. Any proposal to cover the use of hydrogen as a fuel gas (other than as a small percentage added to natural gas as supplied) should not simply be included in existing gas fitting requirements*

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)?

*No, unless Victoria adopts WHS legislation, it does not need those changes*

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

*No, unless Victoria adopts WHS legislation. At this stage it will require separate legislation covering the transport of dangerous goods, as in those States which have adopted WHS.*

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

*It should apply to any materials classified as dangerous goods, including prescribed industrial waste in order to ensure the risks in transport are properly managed. This is the situation in other jurisdictions and it removes problems associated with standards of containers, labelling and emergency information as covered in the answer to Q2*

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

*Yes. This is necessary for interstate movement of DG and the control of dangerous goods imported by air or sea as the three modal codes (ADG on land in Australia, IATA/ICAO for local and global air transport and IMDG for local and global sea transport) are all based on UN recommendations and amended every two years (land and sea) or every year (air)*

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 ADG is a technical document (how you do it) and does not prescribe who has the duty.*

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

*Classification is a global issue and any attempt to replace the UN GHS and DG classifications (intended for different situations) would be a disaster and would not be good for Australia's international reputation – even USA uses those systems. DG classification is appropriate for physical dangers associated with storage and transport; GHS classification is designed to protect workers and users exposed to dangers, including long term exposure and other risks.*

*It would however be simpler and produce a better and safer result if the Victorian legislation had a single requirement for safety data sheets (SDSs), covering the current requirements on OHS and DG. The current split leads to confusion and results in many poor quality SDSs. Whichever legislation it is put under, the other can require compliance with it.*

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

*No, compliance with existing requirements is adequate. WorkSafe can place additional requirements on facilities with from 10% to 99% of the major hazard facility threshold*

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

*No. There have been instances in Australia where such advice is not necessarily the best solution to an issue. It would be reasonable to require the pcbu who chooses not to implement to provide WorkSafe with a report by a suitably qualified consultant demonstrating that their solution is of equivalent safety*

Question 48 Should Victoria recognise interstate dangerous goods licences?

*Presumably this question relates to driver and vehicle licences, so yes, particularly as DG transport legislation is quite well harmonised across all states and territories (although there are some differences)*

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

*No. DG(HCDG) Reg covers ammonium nitrate adequately.*

*Ammonium nitrate itself is not technically classified as an explosive under the UN classification system, although it requires storage under very specific conditions. It is not necessary to include it in Explosives Regs which address many other issues such as pyrotechnics. While some states and territories do regulate it under their explosives legislation, there is benefit in regulating it separately and nothing to be gained by removing it from DG(HCDG) reg*

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

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