



30 November 2020

Mr Andrew Palmer QC  
Dangerous Goods Act Review  
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Dear Mr Palmer,

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

The Australia New Zealand Industrial Gas Association (ANZIGA) is the industry association representing companies that produce and distribute industrial gases, including bulk and compressed gas for the industrial, medical, food, scientific and hospitality markets (referred as Industrial Gases) in Australia and New Zealand.

Industrial, food and medical gases are essential to the existence and wellbeing of hundreds of thousands of people, every day. Lifesaving, life enhancing or life promoting, compressed and bulk gases underpin the technologies that keep us connected and informed, and the lifestyle we desire.

They support Australia's manufacturing, refining, welding, chemical processing and electronics sectors. They also ensure that our food is nutritious, appealing and affordable and that our water is clean. The industrial gases sector, and the industrial and medical gases companies it represents, are an important enabler for many strategic industry sectors that support the Australian economy.

ANZIGA appreciates the opportunity to provide comments on the Independent Review of the Dangerous Goods Act 1985 and associated regulations.

ANZIGA members produce, store and distribute dangerous goods, and have extensive experience in the application of the legislation. Their operations range from distribution depots, manufacturing, and storage to major hazard facilities. They all operate nationally and are confronted with the many and varied differences in the legislation and its application and enforcement by the State and Territory jurisdictions.

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## Major Issues

### **National Consistency**

The benefits of nationally harmonised legislation are well documented and known. ANZIGA members, who operate at multiple jurisdictions, are aware of the costs of compliance when there are differing legislative requirements. This review of the Victorian Dangerous Goods Act and associated regulations are an ideal opportunity to align with other jurisdictions and introduce a modern approach to management of dangerous goods aligned with the broader work health and safety regime.

### **Suitable legislation**

The Dangerous Goods Act and Regulation is applicable to wide range of industries, both type and size. The complexity of the dangerous good use also differs significantly within these companies. The legislation must be relevant and suitable for to all. The Consultation Paper appears to have bias towards larger, more complex uses of dangerous goods and ignores the impact on small to medium size businesses.

ANZIGA believes that performance-based legislation accompanied by appropriate codes and guidance material is the most effective means of regulating the range of industries and the range of uses of dangerous goods. Industry specific guidance is necessary for smaller businesses to clearly understand their obligations and broader guidance for those organisations who are able to assess their own risks, needs and control mechanisms.

### **Resourcing**

The consultation paper discusses at some length concerns with the recent illegal activities and how these may be alleviated through legislative changes, more stringent requirements and a permissioning or licensing scheme.

The current legislation, while aged, still provides sufficient rigour to control the risks of dangerous goods in the workplace. Deliberate illegal activities will not be controlled with changes to the legislation. ANZIGA members believe that coordination between the relevant authorities, a well-resourced and knowledgeable inspectorate and dangerous goods unit at Worksafe, is necessary to provide the oversight required. This appears to be a contributing factor to the recent spate of illegal operations in Victoria.

### **Permissioning/ Licensing**

The current legislative regime requires notification to Worksafe once manifest quantities have been exceeded. Further notifications are required under the Major hazard Facility legislation. ANZIGA believes this is ample information for Worksafe to proactively enforce the legislation and provide targeted guidance and assistance as required. Worksafe should be able to develop a compliance strategy based on the information they have received.

ANZIGA does not support a further permission or licensing regime being introduced. This would introduce another level of complexity for many companies who have already assessed their risks based their activities and introduced appropriate controls.

ANZIGA members have also raised concerns on the lack of communication between the regulator and industry. In recent time the notification system has been transition to an on-line one without adequate information to industry. The continued distribution of hard copy notification forms has resulted in duplication of effort and confusion.

Attached are brief responses to some of the questions posed in the consultation paper. ANZIGA is happy to discuss any issues with you further and look forward to participating in the development of the new legislative framework.

Kind regards,



**Kathryn Walton**  
Executive Officer

Att.

**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?
- Question 2 To what extent does it promote the effective management of dangerous goods?
- Question 3 How could it be improved so that it better promotes these objectives?

*The role of legislation in promoting safety is not clear, however ANZIGA believes the current legislation provided a framework for the managing and controlling the risks of working with dangerous goods.*

*This legislation however requires modernisation and review to ensure it is suitable for modern managements systems and is consistent with, and compatible with, other workplace legislation.*

*The Victorian legislation must be reviewed to ensure maximum consistency with other jurisdictions and other closely linked legislation such as Work Health and Safety and Hazardous Substances and the EPA legislation.*

*The discussion paper appears to be looking for a legislative system which will eliminate, or least minimise, illegal noncompliance. ANZIGA is concerned that in an attempt to try to achieve this aim, those current companies who take compliance seriously will be burdened with greater unnecessary legislative compliance which will not result in improvements in safety.*

*The discussion paper also lacks discussion on the application of the DG regulatory regime to small and medium sized businesses. The inference is that the problems, or noncompliance, is only occurring in large enterprises, which lacks evidence. The prescriptive, outdated regulations would be difficult for small businesses to understand and apply.*

**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?

*ANZIGA would support the alignment with the national model WHS legislation to obtain this focus. This would also provide the consistency that industry requires and bring Victoria in line with the rest of other jurisdictions.*

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

***ANZIGA agrees that the legislation should be modernised and include a broad, general principle-based duty to minimise risks of harm to persons and property that is consistently applied across the various pieces of legislation. ANZIGA believes this can be best achieved through the adoption of the National WHS Model legislation.***

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?

***ANZIGA agrees that these impose the right combination of duties but would ne improved by adoption the National Model.***

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

***ANZIGA supports the use of codes, and industry or sector-based guidance, to support the application and implementation of modernised DG legislation. The use of codes and other guidance material which would contain the more the prescriptive options for compliance is a proven method to ensure that all businesses no matter their size or complexity have access to appropriate assistance in implementation.***

***The role of codes and guidance must be clear however, as they should not restrict the use of other control methods where they are found to provide adequate or better controls. A regulatory regime such as the one for dangerous goods must recognise that some facilities who have been licenced as MHFs may have systems of work that provide controls level over and above that described in Dangerous Goods codes and guidance.***

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

***Code and Guidance material must be clear, informative and useful for all industry sectors. This may involve the production of multiple guides to cover all required sectors.***

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

***ANZIGA does not support a permissioning framework for high risk and other activities. A licensing system introduces a complexity of regulation and a prescription that is outdated and has limited benefits.***

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

*The requirement to report incidents is contained in multiple pieces of legislations, DG, OHS/WHS and EPA. This inevitably leads to confusion and misunderstanding that jeopardises compliance. ANZIGA recommends that the incident reporting between the different agencies is reviewed, consolidated and coordinated to aid compliance.*

**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?

*ANZIGA believes the only true way to deter noncompliance is appropriate enforcement. Increased fines, stricter controls will not deter those that believe they will not be caught.*

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

*Again, noncompliance can only be detected and controlled using appropriate observation and investigation. The legislation, no matter how strict and detailed, will not stop those that wilfully don't comply. An inspectorate that actively enforce the regulations and use the information and sources available to them will deter those that wish to engage in non-compliant dangerous goods activities*

*ANZIGA members have also identified the lack of interagency communication as being detrimental to the enforcement of the current regulatory regime and the identification of unknown sites.*

**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?

*ANZGA members believes the current triggers for notification are appropriate, however the barriers to notification must be addressed. The current system is unclear, not clearly defined and could be simplified.*

*ANZIGA believes that hard copy letters and notification forms are still sent to dangerous goods facilities, but the forms are not be used. Notifications must be made online. This however is not clear, creating confusion, additional work and adding to the possibility of noncompliance or incorrect notification.*

Question 14 What types of information should be notified?

***The current notification requirements are adequate.***

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

***ANZIGA believes that interagency cooperation would produce better outcomes.***

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

Question 17 What kind of information sharing should be permitted?

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

***Communication between the agencies has been identified by ANZIGA members as a major obstacle to effective management, as has the differences in approach and requirements of the various pieces of legislation.***

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

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

***ANZIGA does not support this proposal.***

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?

***The adoption of the Model WHS legislation would provide these powers.***

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

***Worksafe should be able to enter a workplace where there is a reasonable suspicion that dangerous goods are being stored illegally.***

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?

***ANZIGA understands that accredited waste providers are not regulated by WorkSafe Victoria, but they are defined activity by the EPA. ANZIGA therefore believes it is inappropriate to cross reference legislation in this way.***

***This question does not put limits on the type or quantity of dangerous good waste being referred to. ANZIGA believes that a blanket requirement such as this is excessive, unwarranted and costly, and it cannot be supported.***

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

***This proposal is not supported by ANZIGA. Regulating 'due diligence' is excessive, and the cost to some businesses would not be justified. The oversight of the operations and activities of regulated disposal companies is an enforcement activity for government not users of the service.***

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?

***ANZIGA does not support the introduction of an infringement scheme. Improvement notices that assist industry with compliance must not be replaced with infringement notices, it would be seen purely as a revenue raising task.***

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

***ANZIGA believes that penalties are only one aspect of enforcement and they need to be considered as a whole.***

**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?

***The ANZIGA members believe that the lack of facilities plus the corresponding cost is the main challenge. The Victorian government needs to proactively encourage and support the establishment of facilities to cover the vast range of waste that needs to be disposed or repurposed.***

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?

***The Victorian legislation needs to be flexible and able to be applied in a changing environment. This supports the need for it to be performance based as far as possible, with the detail in codes and guidance material that is more easily amended to changing needs. The dangerous goods legislation needs to be aligned in principle with OHS/WHS, MHF and EPA legislation.***

#### **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)?

***ANZIGA believes it should adopt the same structure and this could be achieved by incorporating it into the same framework.***

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

***Yes, see above.***

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

***This is an issue regulated by EPA, not WorkSafe Victoria. Duplication of regulation or 'double dipping' should not be allowed.***

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

***ANZIGA believes the more important question is whether it should be adopted consistently both in content and timing with other jurisdictions. This question would get the support of the ANZIGA.***

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?

***While it is unclear how the enforcement of such an obligation would be applied, ANZIGA does not endorse this suggestion.***

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

***ANZIGA believes the adoption of the WHS National Model Regulations in Victoria would streamline these classifications.***

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

***No ANZIGA believes this approach is unnecessary for many companies that utilise dangerous goods on their site. A blanket proposal like this is unwarranted.***

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

***ANZIGA does not support this suggestion. The operators of a facility are the only ones who truly understand the risks and how best to implement controls. While operators should ‘have regard to’ their advice, it is ultimately their responsibility to ensure their workplaces are safe and the controls reasonable.***

Question 48 Should Victoria recognise interstate dangerous goods licences?

***ANZIGA believes this type of recognition is essential for industry. The inconsistencies and the need to hold several different licenses is not only a cost burden but a waste of time and resources***

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

***While ANZIGA is does not handle ammonia nitrate, it would be a dangerous precedent to regulate a substance as an explosive when it is not classified as an explosive.***

***This issue was the subject of a recommendation from the 2008 Productivity Commission Report on Chemicals and Plastic Regulation that has never been implemented. A process to resolve the inconsistencies was established by the Commonwealth Attorney Generals Department during their discussions on Security Chemicals which was also not progressed by the jurisdictions.***

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

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

***Not at this stage.***