



INDEPENDENT REVIEW OF THE DANGEROUS  
GOODS ACT 1985 AND ASSOCIATED REGULATIONS



30 NOVEMBER 2020

## TABLE OF CONTENTS

---

1. EXECUTIVE SUMMARY .....	3
2. INDUSTRY COMMITMENT TO SAFETY AND HEALTH.....	4
3. CONSULTATION PAPER FEEDBACK.....	5
4. CONCLUDING REMARKS.....	9

## 1. EXECUTIVE SUMMARY

---

██████████, where everyone who goes to work in the industry returns home safe and healthy.

██████████ understands that the Independent Review of the *Dangerous Goods Act 1985* and associated regulations, announced in April 2020, forms part of the Victorian Government's response to high profile incidents associated with illegal chemical stockpiling at several sites across Melbourne.

██████████ is pleased to participate in the broader public discussion regarding the management of dangerous goods in Victoria, and submits for the Independent Reviewer's consideration a series of comments regarding issues raised in the Review's Consultation Paper dated October 2020. ██████████

██████████ notes that these considerations will be used to inform the Review's final report and recommendations to the Minister for Workplace Safety in mid-2021.

The Victorian resources sector is a consumer of dangerous goods. It manages the risks associated with on-site storage and handling of these products. The industry takes its obligations to manage dangerous goods seriously, and the sector is highly regulated through the *Dangerous Goods Act 1985* (Vic) (the DG Act), the Dangerous Goods (Explosives) Regulations 2011, the Dangerous Goods (HCDG) Regulations 2016 and the Dangerous Goods (Storage and Handling) Regulations 2012.

██████████ urges the Independent Review to target final recommendations at poorly performing operators and/or segments of the supply chain, rather than increasing regulatory burden for sectors and/or operators that are mature, compliant and responsible.

### Recommendations

██████████ provides the Independent Reviewer with following responses to issues raised in the Consultation Paper:

- Support inclusion of a broad, general principle-based duty
- Support amendment of regulations to reflect an "opt-out" option for those who can show evidence of safety systems and processes that provide same level of safety as the current prescriptive regime and development of non-mandatory codes to provide detailed guidance
- Reject the proposal to introduce a new licensing framework for regulated industries such as mining, noting that recent issues have primarily occurred amongst waste management providers not users of dangerous goods
- Support expansion of notification criteria to include reporting of significant high potential incidents
- Recommend development of criteria to inform the difference between 'suspicion' and 'reasonably believe' to enable entry for inspection and/or investigation purposes
- Support redirection of body corporate obligations to controlling entities
- Reject the proposal to require further financial assurance from Victorian minerals operations who already provide rehabilitation bonds and have insurances in place
- Support accreditation of waste providers to facilitate responsible disposal of waste
- Reject the introduction of a due diligence duty for provision of waste services as this is regulatory duplication with the Victorian Environmental Protection regime
- Recommend provision of further information regarding proposals for criminal and civil proceedings and focus enforcement activities on significant incidents not minor infringements
- Support Victorian adoption of Model WHS laws to streamline and modernise the legislation of dangerous goods.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

### 3. CONSULTATION PAPER FEEDBACK

---

██████████ submits for consideration the following series of comments regarding issues raised in the Review's Consultation Paper dated October 2020.<sup>2</sup>

#### **Term of Reference B: Being more risk-based and prevention focused**

##### ***A new general duty for dangerous goods? (p. 41-43)***

As a general rule ██████████ supports principle-based duties which focus on prevention and risk management. This is evidenced by ██████████ support of the duty of care model incorporated into the new Victorian environmental protection framework which will come in to force in July 2021. At the heart of this new regime is the General Environmental Duty (GED). The GED applies to all Victorians, and requires everyone to reduce the risk of their activities potentially harming the environment or human health through pollution or waste.

██████████ would support inclusion of a broad, general principle-based duty, like the illustrative example provided on page 43 of the Consultation Paper:

“any person engaging in any activity involving dangerous goods is required to minimise, so far as is reasonably practicable, the risks of harm to people or property arising from that activity”

It must be recognised however that general duties work well for well-intentioned duty holders (e.g. mature, risk-focused industry participants) compared with immature, rogue or intentionally non-compliant duty holders. The inclusion of such a duty may have little impact on the practices of these operators.

##### ***The role of regulations, codes and guidance (p. 44-46)***

The Review notes that ‘safe management of dangerous goods often requires a higher level of resources and technical knowledge than duty holders may have’. In practice this means regulations contain prescriptive duties. These can be interpreted as ‘minimum compliance standards’ and may stifle continuous improvement or adoption of best practice.

The Review suggests two options to address this issue:

- “opt-out” option for those who can show evidence of safety systems and processes that provide same level of safety as the prescriptive regime
- Non-mandatory codes to provide detailed guidance rather than mandatory regulation

██████████ encourages implementation of both options, as each provides flexibility for operators to meet dangerous goods obligations.

##### ***Permissioning frameworks (p. 46-49)***

The Explosives Regulations, High Consequence Dangerous Goods (HCDG) Regulations (pertaining to ammonium nitrate) and Transport Regulations all have licencing requirements, but no permissioning framework exists in the Storage and Handling Regulations for dangerous goods (noting the existence of a threshold that if exceeded requires notification to WorkSafe).

When considering whether a licence requirement should be introduced for dangerous goods sites that are high risk but do not meet the threshold to be classified as a major hazard facility, ██████████ notes that:

- the introduction of a new permitting process may add increased regulatory burden for little or no benefit, particularly as the current requirement to notify WorkSafe once certain quantities of dangerous goods being stored on site have been exceeded already exists, and

---

<sup>2</sup> Victorian State Government, Engage Victoria, [Independent Review of the Dangerous Goods Act 1985 and regulations](#), viewed 23 November 2020

- increased licencing is unlikely to address illegal operators.

██████████ does not support introduction of a new licensing framework for regulated industries such as mining. Controls are already in place for the resources sector through the DG Act, the Dangerous Goods (Explosives) Regulations 2011, the Dangerous Goods (HCDG) Regulations 2016 and the Dangerous Goods (Storage and Handling) Regulations 2012. Furthermore, the Occupational Health and Safety Regulations 2017 stipulate extensive additional occupational health and safety regulations for prescribed mines, including the requirement for a Safety Management System.<sup>3</sup> This ensures any 'high risk' mining operations are effectively managed and additional licencing requirements are not necessary.

If a final recommendation is made to progress introduction of a storage and handling licencing regime, eligibility criteria and assessment processes would need to be developed in conjunction with industry and must not be duplicative. It should simply provide clarity for those seeking permission to store and/or handle dangerous goods, and ensure those assessing these operators' applications can apply the criteria and procedures consistently. Additional implications to consider include requirements for suppliers to verify customer/user licence details prior to supplying bulk quantities of dangerous goods. If implemented, this may deter rogue operators, particularly if suppliers refuse to supply to those who cannot or will not provide evidence of their licence.

#### ***Incident notification (p. 51)***

The Review notes that dangerous goods duty holders do not have to notify WorkSafe of incidents unless they occur when people are in the vicinity of the incident - regardless of the potential to cause harm.

██████████ supports expansion of the notification criteria to include reporting of high potential incidents where they are deemed significant. This is similar to reporting of "Near Miss" incidents within the minerals sector. ██████████ recommends that criteria are developed in conjunction with industry to ensure that significant potential events are captured (from which lessons can be learned and shared) and that reporting burden is minimised.

#### **Term of Reference C: Deterring non-compliance and illegal activity**

##### ***Investigation and inspection powers (p. 56)***

The Consultation Paper highlights a concern that while powers of entry are considered broad, 'suspicion' is not a valid reason for entry, however 'reasonably believe' is a valid reason. The ██████████ agrees. An opportunity exists to clarify the difference between the two in order to reduce confusion.

██████████ recommends that criteria be developed (or clarified) to inform the difference between 'suspicion' and 'reasonably believe'.

##### ***Redirection of corporate obligations (p. 60)***

WorkSafe cannot compel a controlling body corporate to comply with a fine/notice/directive issued to a subsidiary entity. An ability to redirect to the controlling entity is proposed. This mitigates the risk of entities being wound-up.

██████████ supports the proposal for WorkSafe to redirect body corporate obligations to their controlling entities, noting that this promotes accountability and responsibility for compliance and risk management. However, this proposal alone is unlikely to address the activities of rogue operators.

##### ***Cost recovery powers and financial assurances (p. 60)***

WorkSafe currently has the ability to recover costs, but clean-up costs can be large, and costs can only be recovered if the site occupier has sufficient funds to cover the clean-up. The Review is seeking power to require financial assurance from operators.

---

<sup>3</sup> Victorian Government, [Occupational Health and Safety Regulations 2017](#), Part 5.3, p 347-381, viewed 16 November 2020

██████████ does not support this proposal. The Victorian minerals industry already provides the Victorian government with rehabilitation bonds to cover closure costs associated with normal operations, and has insurances in place covering a range of risks (e.g. fire). ██████████ has concerns regarding how “adequate” levels of assurance would be determined, and what types of assurance instruments would be acceptable. Furthermore, depending on the model adopted (e.g. a pooled fund), “good operators” are made to pay for “bad operators” poor performance. This does not address the issue of preventing poor performance in the first instance. If progressed, assurances should only be required for operators who provide a significant risk of non-conformance (for example specific dangerous goods waste services providers), and ██████████ exemption for the Victorian minerals industry.

### ***Responsibly disposing of dangerous goods (p. 62-63)***

From July 2021 Victoria’s new *Environmental Protection Act* (EP Act) will place duties on producers of industrial waste to dispose of this at a lawful place. The Consultation paper seeks input regarding accreditation of waste providers or introduction of a duty to undertake due diligence of the waste recipient.

The Victorian resources sector is attuned to the need to responsibly dispose of waste.

██████████ supports the concept for accreditation of waste providers, as this aligns with requirements under the new EP Act. However the introduction of a due diligence duty appears to be regulatory duplication. Furthermore, requiring due diligence may not improve performance of rogue providers. Investigation of the opportunity for WorkSafe to accredit waste providers and undertake due-diligence rather than customers of the service is warranted.

### ***Enforcement proceedings (p. 63-65)***

The Consultation Paper notes that the Review is considering a number of ways to enhance WorkSafe’s ability to enforce proceedings and in turn deter non-compliance. These considerations include the:

- ability to prosecute individuals rather than entities (to prevent liquidation to avoid prosecution)
- introduction of civil penalties in addition to criminal proceedings
- introducing infringements as an immediate enforcement tool, and
- increasing penalties.

██████████ notes that further analysis of the interface between the DG Act and the *Occupational Health and Safety Act 2004* (Vic) (the OHS Act) is needed to fully understand any implications of the first two points above. Provision of additional information would enable an informed response to the proposed options regarding prosecution of individuals (currently not supported) and the introduction of civil penalties (may be supported if reasonable review options and defences are in place).

The introduction of specific infringements for activities that are “easily proved” is unlikely to address serious or significant dangerous goods problems. The lack of discretion regarding when and how these immediate enforcement options are used may be perceived as heavy-handed, and the opportunity to promote a culture of working together to achieve better outcomes for the management of dangerous goods may be lost. Regulatory effort should focus on serious and significant issues rather than minor infringements.

The Consultation Paper notes that penalties were reviewed in 2019, yet a further review is suggested. If the resources available to the regulator to implement regulatory reform are finite, allocation of these resources to other priority areas may be a more sensible option than undertaking a further review.

## **Term of Reference E: Streamlining and modernising**

### ***Harmonising the DG Act with the OHS Act and Incorporating dangerous goods legislation within the OHS Act (p. 70-72)***

The Consultation Paper states:

This Review is considering a number of ways to streamline and modernise the DG Act, including:

- harmonising the language, structure and conceptual framework with the OHS Act
- incorporating the dangerous goods legislation within the framework of the OHS Act
- more closely aligning Victoria's dangerous goods legislation with other Australian dangerous goods legislation, and
- other proposals suggested by stakeholders during preliminary consultation.

██████████ policy position has been to advocate for Victorian adoption of Model WHS laws. This is most closely aligned with the second option specified above, bringing all safety legislation into a single framework.

The Australian minerals industry has integrated safety and health issues across varied operations, and seeks an integrated approach from governments to support a growing, diverse and mobile workforce. ██████████ continues to advocate uniform national workplace health and safety legislation, supported by industry-specific and hazard-specific (such as dangerous goods, confined spaces, lead etc.) regulation, to enable holistic management of risks and bring greater certainty, efficiency and clarity to industry participants.

Uniform national legislation would also help to ensure that compliance challenges do not detract from the practical tasks of identifying, managing and minimising risk and the continuous improvement of safety and health outcomes by companies and workforces who operate across jurisdictions.

#### ***Other Opportunities for Streamlining - Explosives Regulations (p. 80)***

The Review is questioning whether the HCDG Regulations (equivalent to ammonium nitrate) should be rolled into the Explosives Regulations. Unless there are additional issues not raised in the Consultation Paper, ██████████ considers that changing the location of where these regulations can be found (with no change to what is actually required) provides limited regulatory improvements. In addition, if the resources available to the regulator to implement regulatory reform are finite, allocation of these resources to other priority areas may be more beneficial.



