

To: Andrew Palmer QC, Independent Reviewer

Subject: AIHS response to consultation paper on the 'Independent Review of the Dangerous Goods Act 1985 and associated regulations'

Dear Mr Palmer,

The Australian Institute of Health and Safety (AIHS) thank you for the opportunity to comment on the issues raised in the Consultation Paper regarding the management of dangerous goods in Victoria.

With a 70-year history, the AIHS is the national association for the health and safety profession. Previously known as the Safety Institute of Australia, our vision is safe and healthy people in productive workplaces and communities. Our mission is to proactively shape and improve workplace health and safety now and in generations to come. One of the ways we pursue our mission is by providing a collective voice for the profession.

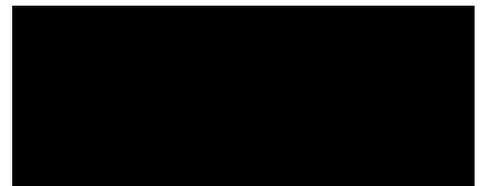
With more than 4,000 members, we represent a broader community of some 30,000 health and safety practitioners and professionals, people practicing health and safety in workplaces across Australia. We have branches in each state and territory and our Victorian branch has led this submission.

The AIHS welcomes further consultation into the drafting of the final report before submission to the Minister of Workplace Safety in 2021.

On behalf of the AIHS:

David Clarke  
CEO

Andrew Heinrichs  
Victorian Branch Chair



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Submission Lead

**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?***

The Victorian Dangerous Goods framework consisting of the 1985 Act and associated Regulations promotes the safety of persons and property through:

- Implementation of the ADG code for transportation of DG
- Licencing of DG vehicles and drivers
- Security and licensing provisions for Explosives and High Consequence Dangerous Goods
- Provision of a Code of Practice on Storage and Handling of Dangerous Goods

We agree with the independent reviewer that the DG (DG) framework does not deal with DG waste and is hampered by insufficient information-sharing between agencies with overlapping responsibilities.

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

Recent incidents such as the major chemical fires in West Footscray (August 2018) and at the Campbellfield waste management facility (April 2019) and subsequent identification of several sites illegally storing dangerous chemicals indicate that the DG regulatory framework is not effective enough.

The DG legislation and compliance information is complex, and there are significant barriers to compliance:

- The Storage & Handling Regulations include references to Australian Standards which are not freely available to industry and the community.
- There is currently no Compliance Code for Dangerous Goods Storage and Handling, which could be used to support achieving compliance with the legislation.
- The DG legislation does not address the storage/disposal of DG waste.

Some AIHS members have advised that WorkSafe Inspectors play an important role in effective DG management. Inspectors that visit sites with DG can highlight legislative non-compliance and issue improvement notices, which motivates employers to invest in compliance and in turn to better manage DG.

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

The AIHS believes that the DG Act and Regulations need to be modernised in line with the Occupational Health and Safety (OHS) Act (Vic) and Model WHS legislation. Best practice and safety management principles have evolved since 1985.

The adoption of the concept of risk minimisation 'so far as reasonably practicable' better aligns with the OHS Act (Vic) and other modern legislation.

The development of compliance codes and industry-specific guidance will help to promote these objectives.

## **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 adoption of a principle-based duty such as in the OHS Act and Environmental Protection Act, to ‘reduce the risk of harm, so far as reasonably practicable’ is encouraged.

This approach would focus duty-holders' attention on the risks associated with DG and encourage appropriate measures to be taken to control or mitigate those risks.

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

The DG Act needs to be updated by revising s31 of the DG Act from applying to limited groups who were ‘required to take precautions’, to anyone engaging in activities involving DG.

Further to this, the adoption of the concept of risk minimisation ‘so far as reasonably practicable’ would align with the OHS Act and other modern 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?***

The AIHS believes the current balance of duties is not appropriate to manage the hazards that exist in the Victorian DG sector.

The requirements for facilities that do not meet Major Hazard Facilities thresholds have allowed many businesses to operate with limited if any oversight by the Regulator.

Establishing mutual obligations for all parties handling DG, similar to ‘Chain of Responsibility’ legislation could elevate the importance of DG management.

The AIHS encourages information and data sharing between agencies to focus on prevention and enforcement activities in the DG sector.

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

We believe that codes and guidance material are important to enable small to medium-sized employers to comply with the DG regulatory scheme. Smaller businesses require simplicity and targeted materials to help them meet their duties.

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

The AIHS recommends that WorkSafe should:

- Update and maintain all existing Compliance Codes to align with current legislation
- Create a Compliance Code for DG Storage & Handling, and
- Develop codes and industry-specific guidance material for the worst performing/highest risk parts of the DG industry.

#### ***Question 9: Should a permissioning framework be introduced for higher-risk sites and/or activities involving DG?***

The AIHS recommends that a licensing scheme be introduced for DG sites that are high risk, but do not meet the thresholds to be deemed 'Major Hazard Facilities'. This would allow the Regulator to ensure DG compliance and facilities are fit for purpose before awarding licences.

High risk facilities could include those that exceed greater than 10% of Schedule 14 quantities listed in the OHS regulations and:

- DG with the history of, or potential for significant incidents
- Incompatibility of DG being stored
- Proximity to sensitive users e.g. residential areas, schools, hospitals etc.

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

The AIHS recommends that duty holders should report DG incidents to WorkSafe as well as emergency services and to consider broadening incident notification obligations to include 'high potential incidents' similar to Queensland's mining and quarrying 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?***

A core AIHS principle is that all workers have a responsibility for health and safety, however that accountability is vested in line management, with ultimate accountability with business leaders.

Costs of emergency response and remediation should be borne by the offending parties in addition to penalties for companies that actively or negligently evade their DG management duties.

For small to medium enterprises that may be unaware of their DG responsibilities, the use of 'enforceable undertakings' to educate peers and contribute to locally affected communities should be considered.

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

The AIHS encourages information sharing and harnessing data analysis/data matching capabilities that exist within other government organisations, to focus on prevention and enforcement activities in the dangerous goods sector.

Specifically, the AIHS suggests that the following DG information could be developed or shared:

- Monitor the importation of DG materials through customs or DG suppliers
  - Perform data validation between importation and destination against DG manifests?
- Transport documentation or certificates (similar to EPA Prescribed Industrial Waste Transport certificates) which require notification from waste consigner, transporter, and waste treatment facility to be sent to the Regulator.
- Mutual sharing arrangements with EPA, councils, emergency services, safety & environmental regulatory agencies in other states & territories, such as:
  - emergency services incident attendance or reports involving DG
  - any infringements or penalties relating to DG transport, use, storage by any parties in the product lifecycle
  - DG vehicle & drivers' license information
  - essential services audits and breaches/infringements e.g., due to occupier failure to comply with essential services requirements
- Accredited DG waste treatment or landfill sites should be obligated to report on waste received
- DG facilities could be required to complete online self-reporting annually to maintain their licensing.

Use of data analysis of existing WorkSafe information relating to DG:

- Notifiable incidents
- Workers' compensation reports / incidents
- Entry reports.

#### **Question 13: Are the triggers for notification appropriate?**

The AIHS recommends that duty holders be required to self-report online on an annual basis similar to National Greenhouse and Reporting (NGER) requirements. This data could be analysed for any exceptions that may require WorkSafe / Inspectorate intervention.

#### **Question 14: What types of information should be notified?**

The AIHS suggests that any information relating to licence conditions or type and quantities of DG stored should be validated using multiple sources. Any inconsistencies arising from this validation could be used to drive notification or enforcement intervention.

Other data that might be useful for data-matching or market intelligence purposes could include:

- Suppliers of DG (overseas vs local)
- Amount/types of DG obtained/used
- Waste providers/treatment facilities
- Any changes in operations/core business.

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

As the Independent Reviewer has suggested, the provisions within the DG Act that restrict sharing of information may in fact lead to no information being shared at all.

This situation should be remedied and the AIHS believes that agencies should be able to communicate with each other to the extent that enables them to mitigate the risks of DG to people, property or the environment.

***Question 17: What kind of information sharing should be permitted?***

The AIHS suggests that the following information should be shared, or capability to share information be developed:

- DG transportation documentation (similar to EPA Prescribed Industrial Waste Transport certificates)
- emergency services incident attendance or reports involving DG
- any infringements or penalties relating to DG transport, use, storage by any parties in the DG lifecycle
- DG vehicle & driver license information with interstate agencies
- essential services audits and any infringements e.g. due to occupier failure to comply with essential services requirements.

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

The AIHS understands that agencies have limited resources, so it would appear sensible and efficient to pool resources and delegate powers between agencies as appropriate.

However, we have concerns in regards to the substantial amount of subject matter expertise required to effectively advise and inspect workplaces with DG risks. Providing and maintaining adequate training and knowledge to appropriately enforce multiple compliance frameworks would be a significant challenge.

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

A DG Inspector should be permitted to enter any commercial premises to inspect compliance or to investigate suspected breaches of DG legislation. We believe the current thresholds for Inspectors to gain access to a premises are too high/narrow.

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

As is currently the case, the AIHS maintain that Inspector entry into residential premises should only proceed with consent from the occupier or upon obtaining a search warrant.

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

The AIHS believes that it is reasonable to compel compliance by intervening at non-compliant sites with a direction that has not been complied with within agreed timeframes.

***Question 25: Should WorkSafe have the power to redirect body corporate obligations to their officers and controlling entities?***

The AIHS believe this power is important to prevent companies from avoiding their responsibilities by putting their business into voluntary administration etc.

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

The AIHS agrees that WorkSafe should be able to recover costs associated with incident clean up and remediation from duty holders. A broadening of duty holders to include both site landlords and tenants is therefore important.

***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?***

The AIHS suggests that these financial assurances could be linked to the permissioning of high risk DG facilities. Financial assurances should be sufficient to cover conservative cost estimates associated with incident clean up and remediation, based on permitted DG quantities.

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

Yes.

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

The AIHS believes that DG operator's due diligence should only extend to confirming that DG waste providers are accredited at the point in time that they are being used, for the type of DG involved.

We believe it is the Regulator's role to communicate and ensure that waste treatment operators that are no longer accredited cannot continue accepting DG waste.

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

The AIHS believes in harmonisation of legislation and alignment of duties for officers and principals conducting a business or undertaking (PCBUs). In this case, officer liability should be based on due diligence in line with the OHS Act and Model WHS legislation.

**Term of Reference D: Whether any amendments to the Dangerous Goods 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 best practice and OHS management principles have evolved since 1985.

DG are increasingly being imported into Australia rather than manufactured. WorkSafe needs to better understand this shift in business operating climates.

Specifically in a Victorian context, Melbourne has seen high population growth in recent decades. This growth has placed pressure on the state's waste system. Similarly, changing demographics mean that more people are living closer to what were traditionally industrial areas.

From an OHS perspective, community expectations have generally increased, meaning there is greater focus on significant incidents and poor risk management practices. The waste sector may not have evolved with these higher standards of operation expected of industry.

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

We live in an age where nanotechnology and genetically modified products are becoming the norm, so legislation needs to be flexible to accommodate emerging issues and challenges.

The increase in risks associated with PFAS is an example of the evolving DG risk profile and state of knowledge. The disposal of materials associated with emerging industries like solar energy mean that ongoing research is necessary to address emerging and evolving sources of risk.

The waste stream will continue to evolve, impacting Victorian workers and communities' safety and health. The AIHS can assist this research program by engaging our membership to participate in research into emerging issues or challenges for the DG industry.

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

The AIHS understands that there are limited waste treatment and landfill facilities in Victoria.

The AIHS recommends that part of the permissioning process for high-risk DG facilities could include reviewing the full product life cycle of the DG from manufacture to disposal.

***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?***

Waste incineration activities may be an option to respond to Victoria's waste management demands. These will be enabled by innovative technologies. The AIHS advocates for evidence and risk-based analysis to inform the controls developed to manage the risks associated with these operations.

## 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)?***

The AIHS believes in harmonisation and simplification of legislation to improve understanding and compliance with the aim of improving health and safety for all.

Alignment with the OHS Act structure, order, language and conceptual framework would be appropriate.

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

The AIHS believes that incorporation of DG legislation into the OHS Act and Regulations would further improve DG management.

***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?***

The AIHS believes that there is merit in simplifying offences, however this would need to be considered once drafted and shared widely for consultation and review.

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

Yes.

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

Yes.

***Question 48: Should Victoria recognise interstate dangerous goods licences?***

The AIHS believes it is important to maintain mutual recognition of individual and vehicular DG licenses, however we suggest the following should be considered as well:

- If there are significant differences in licensing requirements between states, a Victorian-specific license endorsement could help to ensure knowledge of and compliance to Victorian-specific DG requirements.
- It is imperative that all states share licence information to allow adequate management and enforcement activities across borders.

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

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

Please consider the following recommendations:

#### **Recommendation 1**

Could the Workplace Essentials program be more targeted to focus on small to medium-sized employers in the DG sector?

Suitably qualified OHS/ DG Professionals could be engaged to provide tailored guidance, advice and support to assist small to medium businesses to meet their DG legislative requirements.

#### **Recommendation 2**

Create self-assessment tools, specific to industry sectors, which occupiers can use, to determine their obligations and duties under the DG regulatory framework and incentivise the various levels:

- At the base level, meeting the prescriptive duties would have an inspector visit to verify controls are in place and adequate.
- As they start to comply and meet expectations, provide an annual submission (performance-based duties) to WorkSafe with reduced regulatory oversight from WorkSafe
- Compliance with the program could reduce inspections from WorkSafe and decrease the potential for prosecutions due to non-compliance.