Department of **Local Government, Industry Regulation and Safety**
Dangerous Goods Safety

GOVERNMENT OF WESTERN AUSTRALIA

WorkSafe Western Australia

Consultation Regulatory Impact Statement

Dangerous Goods Safety Act 2004
and regulations reforms

December 2025

Acknowledgement of Country

The Department of Local Government, Industry Regulation and Safety and Quantum Consulting Australia respectfully acknowledge Aboriginal peoples as the Traditional Custodians of Western Australia.

We acknowledge the enduring connection Aboriginal people continue to share with the land, sea, and sky through both their ancestral ties and custodianship to Country.

We pay our respect to Elders both past and present, and acknowledge the value brought to our department through the collective contribution of Aboriginal and Torres Strait Islander peoples across Western Australia.

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Disclaimer

This document has been released to seek feedback on proposed amendments to the *Dangerous Goods Safety Act 2004* and regulations and does not represent, or purport to represent, legal advice or constitute Government policy.

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Message From the Chief Dangerous Goods Officer

Proposals for amendments to the *Dangerous Goods Safety Act 2004* and regulations

I am pleased to release this Consultation Regulatory Impact Statement (CRIS) outlining proposals for amendments to the Western Australian *Dangerous Goods Safety Act 2004* (DGS Act) and regulations.

In 2024, a review of the DGS Act was commissioned by the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) that aimed to:

- review the existing Western Australia dangerous goods legislation to identify opportunities to modernise and streamline the legislation;
- review the dangerous goods legislation for potential incorporation into the Western Australian *Work Health and Safety Act 2020* (WHS Act) suite of legislation;
- make recommendations regarding these options; and
- develop a high-level execution plan for the recommended option(s).

The review recommended retention of separate dangerous goods legislation as the scope of substances and activities covered by the DGS Act is sufficiently large, diverse and complex to justify a dedicated stand-alone regulatory framework, and identified a number of opportunities to:

- align equivalent elements of the dangerous goods legislation and work health and safety legislation;
- improve and modernise the DGS Act and regulations; and
- facilitate more effective enforcement under the DGS Act.

The review report was approved by the Minister for Mines and Petroleum and endorsed by the Minister for Industrial Relations.

The purpose of this CRIS is to consider proposed amendments to the DGS Act and regulations as identified in the review and through subsequent consultation within the Department of Local Government, Industry Regulation and Safety (LGIRS). In addition, the CRIS seeks feedback on those proposals, and any further reform proposals stakeholders wish to be considered.

I therefore encourage everyone with an interest in the regulation of dangerous goods to take the time to consider this paper and provide feedback. This is your opportunity to have your say in assisting to guide the future direction of this important piece of safety regulation.

Iain Dainty
Chief Dangerous Goods Officer

1 About This Paper

1.1 Purpose of this consultation paper

Dangerous goods are ubiquitous in modern society. They have been tightly regulated for many decades in Western Australia owing to the inherent hazards associated with their storage, handling, use and transport, and the inherent risks they therefore pose to people, property, and the environment. In addition, because dangerous goods are transported extensively by air, sea, road and rail, a complex international regulatory framework has developed under the auspices of the United Nations to foster uniformity of requirements across jurisdictions to support international and intra-national transport and trade.

Dangerous goods are used in large quantities at locations all over Western Australia across a wide range of commercial and industrial sectors. The *Dangerous Goods Safety Act 2004* (DGS Act) and regulations provide a comprehensive risk-based regulatory framework for the safe and secure storage, handling, and transport of dangerous goods. This framework relies on the use of approved and mandatory codes of practice that align with national and international standards.

In 2024, a review of the DGS Act was commissioned by the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) that aimed to:

- review the existing Western Australian dangerous goods safety (DGS) legislation to identify opportunities to modernise and streamline the legislation;
- review the dangerous goods safety legislation for potential incorporation into the Western Australian *Work Health and Safety 2020* (WHS Act) suite of legislation;
- make recommendations regarding these options; and
- develop a high-level execution plan for the recommended option(s).

The review process involved seeking feedback and suggestions from a range of stakeholders including:

- industry representative groups;
- dangerous goods licence holders;
- union representative groups;
- interstate dangerous goods regulators; and
- the general public.

While feedback was limited, it was generally supportive of retaining separate DGS legislation while taking the opportunity to make some improvements to provide greater clarity and consistency of application, and to reduce administrative complexity and the cost of compliance.

The review recommended retention of separate DGS legislation while identifying a number of opportunities to:

- align equivalent elements of the DGS and WHS legislation;
- improve and modernise the DGS Act and regulations; and
- facilitate more effective enforcement under the DGS Act.

The review report was approved by the Minister for Mines and Petroleum and endorsed by the Minister for Industrial Relations.

The 2014 statutory review of the DGS Act made a number of similar recommendations, which have not been enacted owing to a variety of factors. Furthermore, there have not been any updates to the DGS Act since it commenced in 2007. Following the commencement of WHS legislation in 2022, it is timely to:

- modernise the dangerous goods regulatory framework;
- streamline licences;
- remove duplication;
- future proof the legislation; and
- clarify ambiguous provisions.

The purpose of this paper is to consider the proposed DGS Act and regulation amendments as identified in the review and through subsequent internal departmental consultation. In addition, the CRIS provides an opportunity to obtain feedback on those proposals and to elicit any additional reform ideas stakeholders wish to be considered.

This paper considers each proposal in detail, outlining the intent and rationale and arguments for and against the proposal. It then seeks feedback from stakeholders in relation to these proposals or other suggestions for improvements, including commentary of the potential costs of a proposal.

A copy of the DGS Act, and associated regulations, is available from the Western Australian Legislation website.

On 1 July 2025, DEMIRS was reformed and renamed the Department of Local Government, Industry Regulation and Safety (LGIRS) as part of the State Government's Public Sector Reforms.

1.2 How to have your say

LGIRS is seeking feedback on proposed amendments to the DGS Act and regulations.

Making a submission

The closing date for submissions is: **5.00pm Friday 27 February 2026**.

Please forward submissions as follows:

- via the online survey available at Open consultations - WorkSafe – LGIRS.
- via the Microsoft Word survey available at Open consultations - WorkSafe – LGIRS and send to DGAct-CRIS.Feedback@lgirs.wa.gov.au
- by an email outlining your views to DGAct-CRIS.Feedback@lgirs.wa.gov.au
- by letter addressed to:

  CRIS - Dangerous Goods Safety Act and regulations review
  WorkSafe Petroleum Safety and Dangerous Goods
  Department of Local Government, Industry Regulation and Safety
  Locked Bag 14, Cloisters Square
  PERTH WA 6850

Please feel free to focus only on those areas that are important and relevant to you. You are also welcome to suggest alternative amendments or reform ideas. To assist in analysing the responses, please indicate in your submission in what capacity you are responding (e.g. industry body or association, as an individual or as an employee).

Information provided may become public

After the consultation period concludes, responses may be made publicly available on the LGIRS website. Your feedback forms part of a public consultation process and LGIRS may quote your submission in future publication. If you prefer your name to remain confidential, please indicate that in your submission.

As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or other information that you do not wish to become available to the public.

Although LGIRS has no objection to you copying all or part of this document, recognition of the source would be appreciated. Additional copies of this paper may be downloaded from the WorkSafe website.

1.3 Implementation

Feeback received will be collated and summarised before a final set of proposals is provided to the Minister for Industrial Relations for decision.

The updated DGS Act and regulation amendments will be implemented in stages to allow for concurrent reform processes and other dependencies. Subject to approval timelines and drafting priorities, an indicative sequencing of the process is as follows:

Amendment package	Sequence	Timing
DGS regulations amalgamation and general updates and improvements	On completion of drafting	2026
Revised fees (including single licence fees)	Following standard annual review of fees and charges	Mid-2027
Dangerous Goods Transport Regulations (including increased penalties)	On completion of national consultation process for the adoption of a revised Australian Dangerous Goods (ADG) Code and Model Law*	2026
Explosives regulations	Consequential amendments following adoption of revised Australian Dangerous Goods Code (ADG Code)	2026
DGS Act	In conjunction with amendments arising from the 2026 Statutory Review of the WHS Act	2027
DGS regulations penalty increases	Following passage of enabling DGS Act amendments	2027

* *The consultation process for this will be led by the National Transport Commission. The revised ADG Code will incorporate the currently separate Australian Code for the Transport of Explosives by Road and Rail.*

1.4 Evaluation

The effectiveness of any amendments made to the DGS Act and regulations will be reviewed by LGIRS post implementation.

2 The Issues Being Considered

The key question to be resolved in this paper is whether the proposed amendments should proceed as proposed, in modified form, or not at all.

To provide context, the relevant sets of safety legislation in Western Australia are:

- The *Work Health and Safety Act 2020* (WHS Act) which applies to work health and safety at all workplaces in Western Australia's jurisdiction, including mines, petroleum, general industries and geothermal operations; and
- The *Dangerous Goods Safety Act 2004* (DGS Act), which applies to both workplaces and non-workplaces and seeks to protect people, property, and the environment from the potentially adverse physical, ecological and security hazards posed by dangerous goods.

Currently, the DGS Act is supported by six sets of regulations:

- Dangerous Goods Safety (General) Regulations 2007 (DGS General Regulations);
- Dangerous Goods Safety (Storage and Handling of Non-Explosives) Regulations 2007 (DGS S&H Regulations);
- Dangerous Goods Safety (Explosives) Regulations 2007 (DGS Explosives Regulations);
- Dangerous Goods Safety (Security Sensitive Ammonium Nitrate) Regulations 2007 (DGS SSAN Regulations);
- Dangerous Goods Safety (Road and Rail Transport of Non-Explosives) Regulations 2007 (DGS Transport Regulations); and
- Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007 (DGS MHF regulations)

Consistent with the recommendations of the 2014 statutory review and the 2024 review of the DGS Act, the general aims of the proposed reforms are to:

Align equivalent elements of the DGS and WHS legislation

The DGS Act and WHS Act are complementary pieces of legislation, each focusing on different aspects of safety, albeit with some areas of joint scope. The purpose of the DGS Act is specifically focused on minimising risk to people, property and the environment from dangerous goods. The object of the WHS Act is more general, broadly aiming to secure the health and safety of workers and other persons at workplaces and minimise risks arising from work. In areas of mutual jurisdiction, both sets of legislation operate concurrently.

In areas of legislative concurrence, consistent wording and alignment of approach is preferred to minimise confusion and administrative burden. Where possible and appropriate, and without distorting the intent or application of these provisions, it is proposed to amend the DGS Act and regulations to improve consistency with the WHS Act wording.

In this context, it is worth noting that many of the proposed DGS Act amendments would have taken effect automatically if the DGS Act had been incorporated into the WHS Act.

Improve, update and modernise the DGS Act

The DGS Act was passed in 2004 and the regulations in 2007. The language and many elements are inconsistent with more recent legislation, including the WHS Act, and there are some omissions and outdated references. Also, the various sets of regulations repeat information and are inconsistent in places.

Furthermore, the DGS Act is missing a number of enforcement elements contained in the WHS Act and this is an opportunity to align the two statutes.

Facilitate more effective enforcement under the DGS Act

The primary duty of the DGS Act requires a person to minimise the risk from dangerous goods to people, property and the environment. It is a preventative safety duty, and consequently the offence for a failure to comply with the duty does not consider whether injury, damage or harm actually occurred.

Where possible and appropriate, amendments that improve the effectiveness of enforcement activities under the DGS Act should be considered.

At workplaces where there are dangerous goods, the DGS Act operates in tandem with the WHS Act. It is therefore important that should an adverse incident occur at a place where both Acts apply, the resulting enforcement action(s) and outcome(s) should be effectively equivalent whichever set of enforcement tools is used. The penalties under the DGS Act have not been updated and are generally lower than those under the WHS Act.

The specific proposals to address these objectives are described in more detail in the next section.

3 Detailed Proposals

The following sections outline the proposed DGS Act and regulation amendments which are of varying complexity and significance. For each proposal, except the first, there is a background and rationale, and arguments for (including potential benefits) and against (including potential disadvantages) the proposal. The latter are aimed at stimulating consideration and discussion to produce informed feedback.

3.1 DGS Act amendments

3.1.1 Add an object in the DGS Act

Background and rationale

This proposal was first raised in the 2014 statutory review of the DGS Act in which it was suggested that an object should be included in the Act, with the wording based on that in the DGS Transport Regulations.

An object, often located at the beginning of a piece of legislation, outlines the underlying purposes of the legislation and can be used to resolve uncertainty and ambiguity.

An object may be interpretive in value where there are two equally valid interpretations of a clause.

Note that it is Parliamentary Counsel's Office policy to include objects in all Acts that do not have them. Not including objects is unlikely to be feasible.

The proposed object below includes reference to compliance to be consistent with the equivalent in the WHS Act, and includes a specific reference to security.

Proposal

It is proposed to include an object in the DGS Act as follows:

The object of this Act is:

(a) to set out the obligations of persons involved in the storage, handling, and transport of dangerous goods as they relate to safety and security; and

(b) to reduce as far as practicable the risks to people, property and the environment arising from the storage, handling, and transport of dangerous goods; and

(c) to give effect to the standards, requirements, and procedures of approved Codes so far as they apply to the storage, handling, and transport of dangerous goods; and

(d) to secure compliance with this Act through effective and appropriate compliance and enforcement measures.

Feedback sought

Feedback is sought on whether the proposed object:

- is sufficient;
- is insufficient (and if so, what is missing?); or
- should be reworded.

3.1.2 Review financial penalties in the DGS Act consistent with the equivalent offences in the WHS Act

Background and rationale

The DGS Act has not been amended since it was enacted in 2004 and many of the penalties in the Act and regulations are relatively low in comparison with the penalties for comparable offences in the WHS Act or equivalent dangerous goods legislation in other Australian jurisdictions.

There have been very few prosecutions for incidents causing injury since the DGS Act commenced. The majority of financial penalties that have been issued have been for illegal possession of explosives (mostly fireworks) or dangerous goods transport non-compliances (in the form of infringement notices). In the latter case the enforcement policy is to have a low tolerance to non-compliance owing to the immediate and potentially serious risks to public safety posed by dangerous goods transport.

For other dangerous goods sectors, for which there are relatively few infringement options, the issuance of remediation notices is the predominant enforcement action.

Fines – DGS Act

The maximum fine for an offence under the DGS Act is $100,000 for an individual or $500,000 for a body corporate under section 8 (duty of care) and for sections 11–16 under aggravated circumstances. In contrast, the maximum fines for commensurate offences under the WHS Act are $350,000 for an individual or $1,800,000 for a body corporate.

The following table lists the offence provisions and penalties in the DGS Act and the equivalent provisions and penalties in the WHS Act. There is defined methodology for the application of penalties, for ease a comparison of like for like has been chosen for this CRIS.

DGS Act and WHS Act equivalent offence penalties

DGS Act			WHS Act		
Section		Penalty[1]	Section		Penalty[1]
8	Duty to minimise risk from dangerous goods – to people, property and the environment	$100,000 $500,000	17 19 31	Duty to eliminate risk to health and safety so far as is reasonably practicable (SFARP) and if not reasonably practicable, to minimise those risk SFARP. Primary duty of care of PCBU to ensure health and safety of workers in the business or undertaking. Supported by range of subsidiary duties for PCBU (section 20–26A), workers etc. (section 27–29) Failure to comply with health and safety duty. Category 1 WHS Act breaches have been excluded as they include an element of causing serious harm which is not an element in the DGS Act. Category 2 breaches relate to exposing persons to a risk of injury or death, and Category 3 breaches of types other than Category 1 or 2.	Cat 2 $350,000 $1.8M Cat 3 $120,000 $570,000
9	Duty to report certain situations (reportable situation as defined by the regulations)	$50,000	35 38	Definition of notifiable incident includes dangerous incident Duty to notify of notifiable incidents	$12,500 $55,000
10	Offence for not preparing required safety management documents	$50,000 $250,000	31 Sch. 2	Duties, records and notices	
11	Offence for not holding a licence to handle dangerous goods	$50,000 $250,000	41 42	Requirements for authorisation of workplaces Requirements for authorisation of plant or substance	$55,000 $285,000 $25,000 $115,000
12	Offence for unlicenced possession of dangerous goods	$50,000 $250,000		Not applicable	
13	Offence for not holding a licence for a dangerous goods site	$50,000 $250,000	41	Requirements for authorised workplaces	
14	Offence for not holding a vehicle licence to transport dangerous goods	$50,000 / $10,000 $250,000		Not applicable	

[1] *Penalties shown first are for individuals and second for companies or bodies corporate*

DGS Act			WHS Act		
Section		Penalty[1]	Section		Penalty[1]
15	Offence for not holding a driver licence to transport dangerous goods	$50,000 / $10,000 $250,000	43	Requirements for authorisation of work	
16	Offence for transporting goods too dangerous to transport	$50,000 $250,000		Not applicable	
17	Aggravated offence provision (double penalty for s.11–16)			No equivalent	
24	Offence for not complying with a condition of an exemption	$10,000 $50,000	31–33	Failure to comply with a health and safety duty (section 31)	
40	Power for DGOs to restrict access to dangerous goods incidents in dangerous situations	$10,000	177	Powers supporting seizure	
47	Remediation notices for dangerous and other situations (…if the DGO suspects on reasonable grounds …)	$10,000 $50,000	191	Improvement notices (…if an inspector reasonably believes…)	
53	Ancillary powers and duties (interfere with seized items)	$5,000	175 etc.	Seizure and associated powers	
55	Offences for Directions, obstructing a DGO	$10,000 $50,000	188 197	Offence to hinder or obstruct inspector Compliance with prohibition notice	$12,500 $55,000
56	Infringement notices (in regulations) 10% of relevant penalty: Individual: $1,000, $500 or $100 Body corporate: $5,000, $2,500 or $500		193	No infringement notices	
63	Continuing offences, penalties for	$500 $2,500		Refer to section 71 of Interpretation Act 1984	
65	Prohibiting offender from involvement with dangerous goods (court imposed after conviction)	$50,000 $250,000	195	No equivalent	

The critical points of difference between the DGS Act and WHS Act penalties are:

- The penalties for DGS Act section 8 and sections 11–16 (under aggravated circumstances) are only equivalent to those of a category 1 offence under the WHS Act.
- All other DGS Act penalties are relatively comparable with the WHS Act equivalents (which may change following the statutory review of that Act in 2026).

Another consideration is the change in the consumer price index (CPI) since the DGS Act was passed in 2004; the CPI has increased by a factor of 1.7 (source: consumer price index).

Fines – DGS regulations

The DGS S&H Regulations, DGS Explosives Regulations, DGS SSAN Regulations and the DGS MHF Regulations all use the same penalty structure, where the penalty is set according to a three-tier system as follows:

Penalty level	Penalty for an individual	Penalty for a body corporate
Level 1	$10,000	$50,000
Level 2	$5,000	$25,000
Level 3	$1,000	$5,000

The DGS S&H Regulations, DGS Explosives Regulations and DGS SSAN Regulations stipulate a limited number of prescribed offences to which a modified penalty for Level 2 and 3 offences of 10 per cent of the maximum fine may apply.

In comparison to this, penalties for non-compliance in the WHS Regulations are up to $7,000 for individuals and $35,000 for a body corporate.

Section 18(3) of the DGS Act sets the maximum fines for offences under the regulations at $10,000 with or without imprisonment for an individual, or $50,000 for a body corporate.

The Transport Regulations do not use the same penalty structure as the other DGS Regulations and has a wider variety of individual penalties and a larger number of infringement offences. The penalties in the Transport Regulations were compared with the equivalent regulations in South Australia (as at 2023), Victoria (as at 2022–23) and New South Wales (as at 2023–24) and which are all subject to automatic annual CPI adjustment as summarised in the following table:

Summary of comparative dangerous goods transport penalties*

WA	SA		NSW		VIC	
Penalty	Penalty	Multiplier	Penalty	Multiplier	Penalty	Multiplier
$100	$400	4	$1,000	10	$1,154	11.54
$300	$400	1.33	$1,500	5	$3,642	12.14
$500	$650	1.3	$5,000	10	$5,679	11.36
$600	$800	1.33	$4,000	5	$6,731	11.22
$1,500	$3,250	2.17	$10,000	6.67	$17,307	11.54
$3,000	$4,000	1.33	$7,500	2.5	$33,654	11.22
$5,000	$10,000	2	$10,000	2	$33,654	6.73
$10,000	$20,000	2	$20,000	2	$33,654	3.37

* *Where there are multiple options for the penalty in another state, the lower value has been cited.*

This analysis does not show a consistent trend across jurisdictions other than that the Western Australian penalties are mostly lower by a factor of two or more, with a higher multiplier for the lower penalties. The latter is probably to ensure the lower-level penalties provide a meaningful deterrent.

The penalties in the DGS Transport Regulations are also notably lower than those in other DGS regulations in Western Australia.

Proposal

Taking all of the above into consideration, it is proposed to:

- Increase the financial penalties for a section 8 offence by a factor of six (to $600,000 for an individual and $3,000,000 for a body corporate).
- Double all other financial penalties under the DGS Act so as to maintain their real value and remain comparable with WHS Act penalties (note: this requires an amendment to section 18 of the DGS Act).
- Double the financial penalties under section 17(2) to $200,000 for an individual and $1,000,000 for a body corporate.
- Amend section 18(3) of the DGS Act to double all financial penalties allowed to be imposed under the regulations.
- Double the financial penalties in the DGS S&H Regulations, DGS Explosives Regulations, DGS SSAN Regulations and DGS MHF Regulations to maintain their real value and general parity with the WHS Act (once section 18(3) has been amended).
- Treble the penalties in the DGS Transport Regulations (does not rely on amendment of section 18(3).

Arguments for

DGS Act section 8 offences are equivalent to the most serious failure to comply with a health and safety duty under the WHS Act. Penalties should align so that a prosecution under either Act for an equivalent offence would have a comparable outcome.

Financial penalties should provide a credible deterrent to non-compliance with legislative requirements rather than be seen or borne as a cost of doing business. Penalties should also be sufficient to warrant the costs to the regulator of taking enforcement actions through the courts.

The scale of financial penalties should not be of concern for compliant operators.

Arguments against

Existing penalties are sufficient.

Increased penalties may cause operators to cover up non-compliances to avoid prosecution or be an unreasonable cost to industry.

3.1.3 Match imprisonment penalties in the DGS Act with the equivalent offences in the WHS Act

Background and rationale

Both the DGS Act and WHS Act include a number of offences where non-compliance could result in imprisonment. Maximum imprisonment penalties under the WHS Act are generally higher than for the DGS Act as summarised below.

Imprisonment offences under the DGS Act and WHS Act

DGS Act		WHS Act	
Section	Offence and maximum penalty	Section	Offence and maximum penalty
		30A	Industrial manslaughter: 20 years
8	Duty to minimise risk from dangerous goods: 4 years	31	Failure to comply with health and safety duty: 5 years
10	Safety management documents: 2 years		
11	Unlicensed person involved with dangerous goods: 2 years		
12	Unlicensed possession of dangerous goods: 2 years		
13	Unregistered or unlicensed dangerous goods sites: 2 years		
14	Unlicensed vehicle transporting dangerous goods: 2 years		
15(1)	Unlicensed driver transporting dangerous goods: 2 years		
15(2)	Person employing unlicensed driver to transport dangerous goods: 2 years		
16	Transporting goods too dangerous to transport: 2 years		
17	Aggravated offence: 4 years		
24	Conditions of an exemption, failing to comply with: 10 months	31–33	
65	Prohibiting offender from involvement with dangerous goods: 2 years		
		190	Offence to assault, threaten or intimidate inspector: 2 years
18	Maximum penalty for offences in regulations: 10 months		

Note: While the DGS Act contains nominally more individual offences that could attract imprisonment, the WHS Act's overall requirement to comply with health and safety duties applies to a greater number of requirements under that Act.

The critical penalty that needs to align with the WHS Act equivalent is that for an offence under section 8.

Proposal

Increase the term of imprisonment for a section 8 offence from four to five years.

No increase any other terms of imprisonment in the DGS Act.

Arguments for

DGS Act section 8 offences are equivalent to the most serious failure to comply with a health and safety duty under the WHS Act and the penalties should align so that a prosecution under either Act for an equivalent offence would have a comparable outcome.

Arguments against

The existing penalty is sufficient.
Section 8 may be used where serious harm or fatality has not occurred.

Increased penalties may cause operators to cover up non-compliances to avoid prosecution or become more litigious in defending prosecutions.

3.1.4 Introduce a manslaughter offence into the DGS Act

Background and rationale

Section 30A of the WHS Act provides for an offence of industrial manslaughter where a person engages in conduct knowing that it could result in serious injury or death and disregards the likelihood.

This offence has higher penalties than for other failures to comply with a health and safety duty:

- for an individual: 20 years imprisonment or a fine of $5,000,000
- for a body corporate: a fine of $10,000,000

The DGS Act does not have an equivalent provision.

A manslaughter offence under the DGS Act would mirror that provided for in the WHS Act and apply to:

- a person who is involved directly or indirectly in storing, handling or transporting dangerous goods;
- who engages in conduct directly related to the storing, handling or transport of dangerous goods that causes the death of an individual;
- where the conduct relates to a failure to comply with the requirement to minimise risk to people;
- the person knew the conduct was likely to cause death or serious harm;
- the person undertook the conduct likely to cause death or serious harm to an individual in disregard to that likelihood.

The most common incidences of death or serious injury related to dangerous goods are associated with road crashes involving dangerous goods transport vehicles. In these cases, the death or serious injury are almost always a result from the physical collision rather than from the dangerous goods, although there have been cases of the latter (NSW crash).

The dangerous goods regulator does not take enforcement actions for dangerous goods transport incidents which are road traffic incidents. These are dealt with by the police.

The DGS Act applies in the workplace, and there is already an industrial manslaughter provision available in workplaces through the WHS Act. The DGS Act also applies outside of workplaces, and there is already a manslaughter provision available through the Criminal Code. For this reason, there may not be a requirement to include an industrial manslaughter provision in the DGS Act.

Proposal

It is **not** proposed to include an offence of manslaughter into the DGS Act.

Arguments for

The industrial manslaughter provision in the WHS Act should be sufficient and the DGS Act does not need to replicate them. Non-workplace charges can be dealt with by police.

Arguments against

Is it important that the DGS Act should mirror the WHS Act for critical offences so as to provide an equivalent level of deterrence, particularly for the most serious incidents that cause death.

A manslaughter offence under the DGS Act would apply to deaths caused at non-workplaces which are not covered by the WHS Act.

3.1.5 Include a provision to disallow insurance or other indemnities against fines

Background and rationale

Section 272A of the WHS Act prevents the use of insurance or other indemnities against fines and reads as follows:

No insurance or other indemnities against fines

1. In this section – indemnify means indemnify wholly or partly; insurance policy includes any contract of insurance.
2. An insurance policy is of no effect to the extent that, apart from this subsection, it would indemnify a person for the person's liability to pay a fine for an offence against this Act.
3. A person (A) must not:
   (a) enter into, or offer to enter into, an insurance policy that purports to indemnify a person for the person's liability to pay a fine for an offence against this Act; or
   (b) indemnify, or offer to indemnify, another person for the other person's liability to pay a fine for an offence against this Act; or
   (c) be indemnified, or agree to be indemnified, by another person for A's liability to pay a fine for an offence against this Act; or
   (d) pay to another person, or receive from another person, an indemnity for a fine for an offence against this Act.

The clear aim of this is to prevent using insurance to pay fines, and treating the financial mitigation of serious non-compliance as a normal cost of business.

Proposal

Include a provision in the DGS Act equivalent to section 272A of the WHS Act.

Arguments for

The DGS Act should align with the WHS Act on common enforcement provisions.

Financial penalties are intended to provide a deterrence to non-compliance and allowing them to be insurable undermines this.

Arguments against

There is no evidence that this actually occurs and it may not be possible to obtain such insurance.

This proposal is unnecessary as normally non-compliance voids insurance.

3.1.6 Include provisions for enforceable undertakings in the DGS Act

Background and rationale

Enforceable undertakings are a feature of many regulatory schemes, including the WHS Act (WHS undertakings – policy) and its equivalents, in other jurisdictions.

WorkSafe ACT (Enforceable undertakings – WorkSafe ACT) sets out a number of benefits of enforceable undertakings as follows:

An enforceable undertaking:

- provides for significant and ongoing commitments that aim to achieve improved work health and safety outcomes and compliance beyond what is required by the law, whereas legal proceeding may not achieve such outcomes;
- provides an opportunity for organisational reform to implement effective workplace health and safety;
- provides a similar deterrent effect to a successful legal proceeding, due to the financial imposition of the enforceable undertaking; and
- provides an opportunity for the person to communicate to their industry peers and the community generally about the consequences of unsafe work practices and the opportunities that putting in place safe work practices can bring.

In the dangerous goods context, the option of an enforceable undertaking would not apply to individual licence holders (e.g. dangerous goods or explosives drivers, shotfirers, fireworks operators).

Enforceable undertakings may be less harsh than the power the Chief Officer has to direct a person to conduct an audit under section 46 of the DGS Act.

> **Proposal**
>
> Include the option for enforceable undertakings (DGS undertaking) in the DGS Act to apply to non-occupational licence holders using the same wording as the WHS Act as far as possible.

Arguments for

Inclusion of enforceable undertakings into the DGS Act expands the range of enforcement options to match those available under the WHS Act and supports the achievement of its objectives.

Arguments against

There are sufficient enforcement options available in the DGS Act already.

Enforceable undertakings are a soft option for companies. Non-compliant operators should be prosecuted and fined.

3.1.7 Include an offence of assaulting, threatening, or intimidating a dangerous goods officer

Background and rationale

Unlike the WHS Act (section 190), the DGS Act does not contain any offences relating to assaulting, threatening or intimidating a dangerous goods officer (DGO) in the exercise of their duties. When confronted with physical or strong verbal resistance the practice of DGOs is to leave the location and return with a police officer. However, the same protections ought to be afforded to DGOs as apply to all other WorkSafe inspectors.

Proposal

It is proposed to include an offence in the DGS Act whereby if a person assaults, threatens or intimidates a DGO they face the same penalties as in the WHS Act as follows:

1. In this section — assault has the meaning given in section 222 of the Criminal Code.
2. A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, a DGO or a person assisting a DGO.
   Penalty for this subsection:
   (a) for an individual, imprisonment for 2 years and a fine of $55 000;
   (b) for a body corporate, a fine of $285 000.

Arguments for

All WorkSafe inspectors, or those assisting them, should be afforded the same protections when doing their work.

Arguments against

Assault is already an offence under the Criminal Code and a separate provision is not required.

3.1.8 Include an offence to impersonate a DGO

Background and rationale

Unlike the WHS Act (section 189), the DGS Act does not include an offence of impersonating a DGO. Such an action, although unlikely, could have the effect of tampering with evidence of non-compliance and preventing appropriate enforcement action from being taken.

Proposal

It is proposed to include an offence in the DGS Act to impersonate a DGO with the same penalties as the WHS Act as follows:

- A person who is not a DGO must not, in any way, hold themselves out to be a DGO.
  Penalty: a fine of $12,500.

Arguments for

The rules and safeguards relating to DGOs should be the same as for all other WorkSafe inspectors.

Arguments against

A person impersonating a DGO is such a rare occurrence that such a provision is superfluous.

3.1.9 Amend the time limits applicable to the issue of infringement notices

Background and rationale

Section 56(2) of the DGS Act states:

> A DGO who has reason to believe that a person has committed a prescribed offence against the regulations may, within 60 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

Infringement notices are applicable to specified non-compliances for which demonstrating the non-compliance is straightforward. These are most common in the DGS Transport Regulations. Alleged offenders have the option to pay the infringement or escalate the matter to a court. In most cases, the non-compliance is observed on the spot, but in some circumstances, it might only become known as a result of an incident or the non-compliance being reported to the regulator.

It has sometimes been a problem to meet the 60-day time limit to issue a notice owing to the fact that the incident relating to the alleged offence has not become known to a DGO until after the time limit has elapsed. While failing to report a reportable incident is in itself an offence (section 9(2)) it is preferable to take enforcement action for the primary offence at an appropriate level, rather than needing to escalate to a court action for a secondary offence of not reporting.

For simplicity, three possible approaches to resolving this problem have been considered.

- Option 1: amend the time for issue of an infringement notice to 90 days after the alleged offence is believed to have happened.
- Option 2: amend the wording so that the infringement notice must be given within 60 days of the DGO becoming aware of the alleged offence.
- Option 3: amend the wording so that the infringement notice must be given within 30 days of the DGO becoming aware of the alleged offence.

Option 1 has the same potential problem as the current requirement if an incident is deliberately not reported to avoid enforcement action; only the amount of time is changed. However, where the incident comes to the DGO's attention in a timely manner, it allows more time than is necessary to investigate and issue the notice, given that such offences are relatively straightforward.

Option 2 avoids the problem posed by non or late reporting, but then potentially allows too long a period for the issue of the notice. The current 60-day limit presumably allows for some lag in reporting and then time to investigate and prepare to issue the notice. However, 60 days may be too long to just do the investigation and issue the notice.

Option 3 avoids the problem posed by non or late reporting and allows a sufficient period for timely investigation and issue of the notice.

Proposal

It is proposed to amend section 56(2) to the following:

> A DGO who has reason to believe that a person has committed a prescribed offence against the regulations may, within 30 days of becoming aware of the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

Arguments for

The proposed alternative does not place any time limit on when an infringement notice can be issued after the offence occurred. This removes incentive to not report incidents. The 30-day limit on issuing the notice ensures timely investigation and the issue of a notice once the non-compliance becomes known to the regulator.

Referring to when the regulator became aware of a non-compliance is consistent with the wording of section 232 of the WHS Act in relation to commencement of proceedings.

Arguments against

The current wording should be retained as the incidents of non-reporting are rare and the current approach works well enough.

3.1.10 Remove the need to gazette Dangerous Goods Officer appointments in the Government Gazette

Background and rationale

Section 27 of the DGS Act requires Dangerous Goods Officer appointments to be published in the Government Gazette (the Gazette) as follows:

27. Dangerous goods officers, appointment and extent of powers

The Chief Officer, by notice in the Gazette, may appoint persons, or a class of persons, to be dangerous goods officers.

The equivalent requirement does not apply to the appointment of WorkSafe inspectors under section 56 of the WHS Act.

The gazettal process is an unnecessary administrative burden.

DGO names may be confirmed by contacting the department

Proposal

It is proposed to remove the requirement to gazette dangerous goods officer appointments.

Arguments for

The rules for appointment of Dangerous Goods Officers and WorkSafe inspectors should be the same and the least administratively burdensome.

Arguments against

Dangerous Goods Officers have greater powers in relation to emergency management and so their appointments should be more public.

3.1.11 Enhance entry and investigation powers

Background and rationale

The investigations and entry powers in the DGS Act and WHS Act are generally the same but, in some places, the WHS Act is more complete.

There are two provisions that the DGS Act is missing. The WHS Act states:

167B(7) An inspector executing an entry warrant may call on the assistance of a police officer who, in providing assistance, may use force, including force against a person, that is reasonably necessary in the circumstances.

167C(1) An inspector who enters a place under an entry warrant may, for the purpose for which the warrant is issued and otherwise subject to the contents of the warrant, do all or any of the following:

(i) if the inspector reasonably suspects that any document, or any document of a class, to which this paragraph applies as stated in the warrant under section 167(5)(d) is stored on, or can be accessed or recovered from, a computer or other device at the place (the device):

(i) access and operate the device to search for, access, recover, download, print out, copy or reproduce the document;

(ii) require any person at the place who has, or appears to have, control of the device, or knowledge of how the device can be accessed or operated, to give the inspector any code, password or other information that is reasonable and necessary for accessing or operating the device as referred to in the subparagraph;

There is no equivalent of section 167B(7) in the DGS Act.

Section 38(2) of the DGS Act has less scope and is less detailed than section 167(1)(i) of the WHS Act.

Proposal

It is proposed to:

(a) Amend the entry warrant rules in the DGS Act to include reference to obtaining assistance from a police officer.

(b) Amend the investigative powers in the DGS Act as they relate to obtaining documents or records to match those in the WHS Act.

Arguments for

Dangerous Goods Officers should have the same investigative and entry powers and capabilities as WorkSafe inspectors. There is a reputational risk for the regulator if entry warrants are not executed appropriately and the potential to prosecute an individual or organisation may be put at risk.

Arguments against

The proposed changes are minor and not necessary given how infrequently entry warrants are used.

3.1.12 Include a confidentiality of information provision in the DGS Act

Background and rationale

Section 271 of the WHS Act contains a set of requirements relating to confidentiality of information gathered by the regulator. It places restrictions on persons exercising powers or functions under the Act while allowing sharing of information for enforcement purposes as required by a lawful authority.

The DGS Act has no such provision.

> **Proposal**
>
> It is proposed to include a section in the DGS Act that mirrors section 271 of the WHS Act.

Arguments for

A confidentiality provision provides protections for information relating to regulated entities and provides penalties for misuse of information by the regulator or for sharing of information about complainants without consent.

The ability to share information with other regulators can reduce duplication of effort in investigations where multiple inspectorates are involved, and improve the efficiency of enforcement action.

Arguments against

The DGS Act has worked well enough without such a provision.

The commencement of the *Privacy and Responsible Information Sharing Act 2024* legislation (1 July 2026) will be sufficient to manage the issue.

3.1.13 Include provision in the DGS Act to ensure no conflicts with the WHS Act

Background and rationale

Section 8A of the Australian Capital Territory's *Dangerous Substances Act 2004* reads as follows:

8A Relationship of Act to WHS Act

1. A person is taken to have complied with a duty under this Act in relation to a substance, thing or circumstance if the person:
   (a) has a corresponding duty under the WHS Act in relation to the substance, thing or circumstance; and
   (b) has complied with the duty under the WHS Act.
2. A duty or power under this Act in relation to a dangerous substance has no effect to the extent that it is inconsistent with a duty under the WHS Act in relation to the substance.
3. However, a duty or power under this Act in relation to a dangerous substance must not be taken to be inconsistent with a duty under the WHS Act to the extent that they can operate concurrently.

The intent of this provision is to ensure there are no conflicts between the two Acts which work in tandem as do the DGS Act and the WHS Act.

Proposal

It is proposed to include a section in the DGS Act that mirrors section 8A of the ACT *Dangerous Substances Act 2004*.

Arguments for

This provision will provide certainty to industry in relation to duties for the handling of dangerous goods, particularly at non-licenced sites.

Arguments against

The DGS Act has worked well enough without such a provision.

3.1.14 Align the statute of limitations for prosecutions under the DGS Act with the WHS Act

Background and rationale

The time allowed to commence a prosecution for an indictable offence under the DGS Act is one year as set out in section 21 of the *Criminal Procedures Act 2004* as follows:

21. When prosecution can be commenced

1. A prosecution of a person for an indictable offence may be commenced at any time, unless another written law provides otherwise.
2. A prosecution of a person for a simple offence must be commenced within 12 months after the date on which the offence was allegedly committed, unless another written law provides otherwise or the person consents to it being commenced at a later time.

Investigations and subsequent preparation of prosecution briefs, particularly for complex or serious offences, are time-consuming. One year is frequently inadequate to complete an investigation and prepare a prosecution brief to the required standard.

Proposal

Allow two years to commence a prosecution under the DGS Act, to align with section 232 of the WHS Act.

Arguments for

One year is frequently insufficient to complete investigations and prepare prosecution briefs to the required standard and ensure the DGS Act is enforced effectively with limited resources.

This proposal matches the time limitation under the WHS Act.

It is important that serious non-compliances are prosecuted and the time allowed to achieve this should not be unnecessarily short. Aligning with the WHS Act is logical and reasonable.

Arguments against

One year should be sufficient to complete investigations and prosecutions if they are done efficiently. The shorter time minimises disruption and cost for accused parties.

3.1.15 Remove the need for approved codes of practice to be tabled in Parliament

Background and rationale

The DGS Act promotes a risk management approach and makes extensive use of performance-based standards, approved codes of practice and mandatory codes of practice to align with national and international standards. There are a wide range of approved codes, including many Australian and Industry Standards. This fulfills a commitment to the Australian Workplace Relations Ministers Council to adopt a nationally consistent approach to workplace safety. For example, storage of flammable liquids should be performed in accordance with the approved code of practice AS 1940, *The storage and handling of flammable and combustible liquids*.

Section 20(1) of the DGS Act makes it clear that the purpose of codes of practice is to provide practical guidance. It also states that a code of practice needs to be approved by the Minister.

Section 20(3) requires the Minister's approval of any revision to a code.

Section 20(5) requires details of codes to be published in the Government Gazette, and section 20(8) states that "A person is not liable in any civil or criminal proceeding only because the person has not complied with a provision of an approved code of practice".

Section 20(7) states that, "a code of practice approved under this section is a regulation for the purpose of section 42 of the *Interpretation Act 1984*".

One result of this is that all approved codes of practice must be tabled in Parliament. The State Solicitor's Office has indicated that this presents a particular problem where the State does not own copyright on Australian or Industry standards.

The department has consistently treated approved codes in the spirit of Section 20(1), using compliance with approved codes as the default expectation for meeting the requirements of Section 8 of the DGS Act (Duty to minimise risk from dangerous goods) unless equivalent or better measures are documented and put in place. They have never been used as specific mandatory requirements in the same way as regulations.

The WHS Act provisions relating to approved codes of practice in Section 274 closely mirror those in the DGS Act but notably do not contain an equivalent to Section 20(7).

Section 275 of the WHS Act also reinforces the intended purpose of approved codes, namely, "an approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with".

> **Proposal**
>
> Repeal section 20(7) to avoid the problem of the department not owning copyright on Australian and industry standards.

Arguments for

Repealing Section 20(7) will address the copyright problem and clarify that approved codes are not applied as regulations and avoid the potential that no currently approved codes are legally valid.

This will also align the DGS Act with the WHS Act and reinforce the way approved codes are used for enforcement purposes.

It will streamline the process for making or amending codes and reduce the cost to the taxpayer of associated administrative work.

Arguments against

Section 20(7) was a deliberate inclusion and should be retained and complied with. All requirements under the DGS Act should be subject to Parliamentary scrutiny and potentially subject to disallowance.

3.2 Regulation amendments – general

3.2.1 Combine the DGS General Regulations, DGS S&H Regulations, DGS Explosives Regulations, DGS SSAN Regulations and DGS MHF Regulations into a single set of Dangerous Goods Safety Regulations

Background and rationale

Dangerous goods safety is currently regulated under six different sets of regulations:

- Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007
- Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007
- Dangerous Goods Safety (Explosives) Regulations 2007
- Dangerous Goods Safety (Security Sensitive Ammonium Nitrate) Regulations 2007
- Dangerous Goods Safety (General) Regulations 2007
- Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007.

This arrangement has several problems:

- There is considerable duplication of information and requirements across the various regulations.
- There are some inconsistencies for identical or similar requirements.
- The separate regulations create multiple licensing regimes.
- It is difficult to track cross-references or overlapping requirements between the regulations.

The proposed consolidated regulations would be structured generally as follows:

- Definitions
- Duties
- Dangerous goods storage and handling
- Explosives safety
- Explosives and SSAN Security
- Major hazard facilities
- Dangerous goods pipelines
- Goods in ports
- Licensing – occupational and trading
- Schedules.

The existing technical and administrative requirements would remain unchanged, but the overall language and style of the regulations would be harmonised.

Consolidation of the regulations (other than the DGS Transport Regulations) has previously been approved for drafting as early as 2011 and was further supported unanimously by the Minister's Ministerial Advisory Panel (MAP) and described in recommendation 35 of the report into the review of the work health and safety laws in 2018.

The proposal has received industry support when previously proposed.

The DGS Transport Regulations are based on national model legislation, which is mirrored in all other Australian jurisdictions, all of which have stand-alone dangerous goods transport regulations. Regulation of dangerous goods transport is sufficiently different and isolated from the other dangerous goods sectors that blending these regulations with the others would be of no benefit.

This proposal supports the introduction of a single site trading licence which is addressed in the following proposal.

Proposal

It is proposed to combine the DGS General Regulations, DGS S&H Regulations, DGS Explosives Regulations, DGS SSAN Regulations and the DGS MHF Regulations into a single set of Dangerous Goods Safety Regulations.

Arguments for

The proposed combined regulations mirror the structure of the WHS Act and its regulations.

It should be easier for new entrants to the industry, as well as existing operators, to navigate the legislation if it is consolidated and rationalised.

Arguments against

The current arrangements have worked well and are familiar to industry.

3.2.2 Allow operators flexibility to hold a single licence for multiple activities conducted at, or associated with, a site, or to hold multiple licences

Background and rationale

The proposed amalgamation of DGS regulations provides an opportunity to simplify licensing requirements for non-occupational (i.e. trading) licences.

Under the current arrangements there are a number of separate trading licence types as follows:

Dangerous goods trading licence types

Regulations	Licence types	Application
S&H	Storage	Site-based
Explosives	Import / export	Non site-based
	Manufacture	Site-based
	Manufacture (MPU)	Non site-based
	Storage	Site-based
	Supply	Non site-based
	Transport	Non site-based

Regulations	Licence types	Application
SSAN	Storage	Site-based
	Import / export	Non site-based
	Manufacture	Site-based
	Storage	Site-based
	Supply	Non site-based
	Transport	Non site-based
	Fertiliser	Site-based

Under these schemes, multiple licences may be required for a single operation. Duplicate information may also be required for each licence application (e.g. security plans), with separate fees payable for each licence, and payment periods varying between each licence.

It is proposed to allow an operator the option of retaining multiple licences or having a single licence for a combination of activities. Non site-based licences could be covered by a licence where that activity had a logical link to the site-based licence. For example, an explosives manufacturer could combine supply and export licences with the explosives manufacture licence, along with a dangerous goods storage licence (for ammonium nitrate) and an SSAN storage licence.

A single licence that applies to multiple activities (e.g. explosives storage and explosives manufacture) would indicate what each of those activities were.

The assessment of technical requirements would be unchanged for each component of the combined licence, but the assessment of security requirements would be done holistically instead of being broken up into multiple overlapping components.

A rationalisation of licence fees to reflect the reduced administrative load of processing combined licences would be required.

This proposal has received strong industry support when previously suggested.

Note: implementation of single licences is subject to development of new dangerous goods licensing system functionality.

Proposal

Introduce the option for a single dangerous goods safety licence for all dangerous goods storage and handling, explosives and security sensitive ammonium nitrate activities, at or associated with a site, as an alternative to multiple licences.

Arguments for

A single licence for multiple activities will reduce the administrative burden on new licence applicants as well as existing operators.

The proposal will help avoid the possibility of operators not realising which licence endorsements are needed for their site.

This is the same approach as that which has operated successfully under the *Environmental Protection Act 1996* since that Act commenced.

Arguments against

Each different activity should be regulated and licensed separately for clarity.

3.2.3 Exempt operating battery energy storage systems from licensing

Background and rationale

There is an increasing trend of building large battery energy storage system facilities. These batteries are often classified as dangerous goods and so these facilities currently require a dangerous goods storage and handling licence.

This creates an overlap with the responsibilities of Energy Safety, which is the primary regulator for these systems as follows:

- If the battery forms part of a consumer's electrical installation, then the Electricity (Licensing) Regulations 1991 apply; and
- If the battery forms part of an electricity network (i.e. Western Power) then the Electricity (Network Safety) Regulations 2015 apply.

Proposal

Exempt large battery energy storage system facilities from licensing under the DGS S&H Regulations when they come within the jurisdiction of the Building and Energy Group of LGIRS.

However, the DGS Act will still apply to these sites (e.g. in relation to overall duties, emergency response and offsite hazards). If necessary, additional provisions could be added to the DGS S&H Regulations at a later date.

Arguments for

It is inappropriate for two regulators to implement separate but related (i.e. both pertaining predominantly to safety) approval processes on the same operation.

Even if such facilities are not licensed under the DGS Act, the general safety requirements in the DGS Act and regulations would still apply and this can be communicated to relevant operators.

Arguments against

The dangerous goods storage and handling licensing requirements should be retained to ensure operators are aware of their dangerous goods safety obligations.

3.2.4 Regulate rural dangerous goods locations or small quantity dangerous goods locations under the WHS regulations instead of the DGS S&H regulations

Background and rationale

Part 7 of the DGS S&H Regulations provides an abbreviated set of safety management requirements for rural and small quantity dangerous goods sites, which are not required to be licensed under the regulations.

These provisions were included in the DGS S&H Regulations because the *Occupational Health and Safety Act 1984*, in force at the time, did not provide adequate regulatory coverage for such sites. The WHS Act now provides that coverage in Division 5, Control of risk.

As a rule, rural and small quantity dangerous good sites are inspected by WorkSafe WHS inspectors. Dangerous goods officers are more focused on licensed dangerous goods sites and dangerous goods transport, but can assist WorkSafe inspectors as required for non-licensed sites.

> **Proposal**
>
> Repeal Part 7 of the DGS S&H Regulations.

Arguments for

Part 7 of the DGS S&H Regulations duplicates requirements in the WHS Regulations and rural and small quantity sites are predominantly regulated under the WHS Act. The dangerous goods inspectorate can still contribute to regulating these sites as needed but as a rule these sites do not receive attention specifically as dangerous goods sites.

Arguments against

All dangerous goods sites should be dealt with under the dangerous goods legislation which also takes into account the potential impacts on property and the environment.

3.2.5 Exempt persons from needing to hold a fireworks operator licence or pyrotechnics (special use) licence if they hold a relevant contractor licence

Background and rationale

The DGS Explosives Regulations have two tiers of licence for fireworks and pyrotechnics (special use) displays. In each case there is a distinction between a contractor, who can apply for an event permit and is responsible for the conduct of that event and the activities of operators, and an operator who works for the contractor and carries out the physical tasks related to the event.

In the case of one-person contractors, the contractor necessarily also performs the duties of an operator, but even in larger contractor companies, the principal will frequently perform operator duties.

To save contractors from needing to hold two licences for essentially one activity it makes sense to allow a licensed fireworks contractor to perform the duties of a fireworks operator without a separate operator licence if that person has the requisite training and experience that would make them eligible for an operator licence.

Proposal

Exempt persons from needing to hold a fireworks operator licence or pyrotechnics (special use) licence if they hold a fireworks contractor licence and have met the technical and training requirements to be a fireworks operator.

Arguments for

Requiring two licences for a contractor who also performs operator duties imposes unnecessary bureaucracy and cost.

Arguments against

The functions of contractors and operators are different and should require separate licences.

Some contractors will not retain the requisite skills to safely carry out the duties of a fireworks operator if they do not perform these duties regularly.

3.2.6 Embed the effect of Dangerous Goods Exemption Notice No. 79 of 7 October 2022 into the DGS Explosives Regulations

Exemption Notice No. 79 reads as follows:

> Pursuant to section 22 of the *Dangerous Goods Safety Act 2004*, I hereby exempt holders of a Western Australia fireworks contractor licence from the need to hold an explosives transport licence for the transport of fireworks on water as required by Regulation 97(2) of the Dangerous Goods Safety (Explosives) Regulations 2007.

Conditions of exemption

- This exemption only applies to fireworks that are being transported by water for the purpose of conducting a fireworks display under a fireworks event permit.
- The safety management of transporting the fireworks on water must be detailed in the contractor's Explosives Management Plan (EMP).

Period of exemption

This exemption replaces exemption No. 74 and expires on 31 October 2027, or when regulatory amendments make this exemption obsolete, or when amended or cancelled pursuant to Section 22(4) of the Act, whichever comes first.

This exemption has been found to be necessary and appropriate as a permanent arrangement.

Proposal

Embed the effect of Dangerous Goods Exemption Notice No. 79 into the DGS Explosives Regulations.

Arguments for

Allowances and rules for ongoing or recurring activities should be in the regulations rather than in exemptions that are difficult to find or know about.

Arguments against

It is easier to withdraw an exemption than amend the regulations if this allowance is found to be unacceptable.

3.2.7 Reduce the licence threshold for hydrogen facilities to 500 L

Background and rationale

If the use of hydrogen as an alternative fuel becomes a widespread practice it could lead to the development of large numbers of production, storage, distribution and dispensing facilities.

At present, hydrogen is treated under the DGS Act as an industrial gas and not as a commercial fuel dispensed by retailers to the public. Consequently, a person storing, producing or handling hydrogen in quantities less than 5,000 L is not required to hold a dangerous goods licence.

Many of the anticipated retail or commercial production and storage facilities, vehicle refuelling stations, pipelines and other various infrastructure and operations, are likely to hold quantities of hydrogen well below the current licensing threshold (noting there are no such facilities at present). As a result, these facilities would be unlicensed and in the absence of a robust licence approval process to ensure adequate design, this could pose unacceptable safety risks to the general public.

Licensing would be supplemented by a requirement for such facilities to comply with the relevant forthcoming Australian Standards on hydrogen (Hydrogen – Standards Australia).

The change in licensing threshold would not affect the existing practices for hydrogen storage in cylinders or multi element gas containers.

> **Proposal**
>
> It is proposed to amend the DGS S&H Regulations to lower the threshold for facilities engaged in hydrogen production or storage and handling from 5,000 L to 500 L.

Arguments for

Hydrogen is a dangerous, highly explosive gas and rigorous safety controls are required to ensure its safe storage and use, particularly when in a non-industrial or retail setting.

The licensing approval process ensures such facilities are properly designed and built before they begin operating.

Arguments against

The current licensing threshold is appropriate. General health and safety duties under the DGS Act and WHS Act are sufficient for smaller operations, including compliance with the relevant standards that can be approved codes of practice.

3.2.8 Align references to medical assessment standards between the DGS Transport Regulations and DGS Explosives Regulations

Background and rationale

Regulation 158 of the DGS Explosives Regulations makes reference to the medical standards in *Assessing Fitness to Drive for commercial and private vehicle drivers*, Fourth Edition 2012, published by Austroads Ltd (ISBN 978-1-921991-01-1). This is used as part of the explosives driver licence assessment.

Regulation 221 of the DGS Transport Regulations makes a similar reference to the medical standards described in *Assessing Fitness to Drive for commercial and private vehicle drivers*, Fifth Edition 2016, published by Austroads Ltd (ISBN 987-1-925451-10-8)

These publications have been superseded by the 2022 edition.

Proposal

Amend the DGS Explosives Regulations and align with the DGS Transport Regulations when referencing a medical standard for assessing fitness to drive for commercial and private vehicle drivers so it always refers to the current edition.

Arguments for

It does not make sense to apply two different medical standards for the same purpose within the same suite of legislation.

The 2012 edition of the medical standard is now out of date by two editions.

Medical practitioners would expect to use the current edition of a standard, may not have access to superseded standards or be aware that one is still in force.

Arguments against

The regulations should always refer to a specific edition and only be updated after consideration of changes between editions.

Referenced standards are equivalent to regulations and should be subject to disallowance in parliament.

3.2.9 Align the duties for manufacturers and importers of explosives with those for other dangerous goods

Background and rationale

A key element of the dangerous goods safety regime is the correct classification of dangerous goods and the ability to verify this is correct and that accurate technical information is available about the goods to those who are in possession of them.

The regime set out in the DGS Explosives Regulations is not as complete as that which applies in the DGS S&H Regulations in relation to:

- keeping of records that substantiate a classification
- the ability for the Chief Officer to direct analysis of goods
- the ability of the Chief Officer to determine a classification
- compliance with the ADG Code.

It is also deficient in relation to:

- marking and labelling of packages and articles in accordance with the Australian Explosives Code
- maintaining currency of safety data sheets
- provision of technical data sheets

Proposal

It is proposed to (for explosives manufacturers and importers):

1. Align the classification requirements for explosives with those that apply to other dangerous goods.
2. Ensure marking and labelling of packages complies with the Australian Explosives Code.
3. Ensure the provision of a current safety data sheet to any person who has possession of them or to whom the explosives are supplied.
4. Ensure the availability of technical data Sheets to anyone in possession of explosives.

Arguments for

The proposal simply applies the same standards to explosives as applies to all other dangerous goods.

Arguments against

These requirements will impose an excessive regulatory burden on explosives manufacturers and importers. The current system works well without these changes.

3.3 Major Hazard Facility regulation amendments

3.3.1 Adopt wording from the Model WHS Regulations into the DGS MHF Regulations to provide greater clarity and consistency with comparable regulatory functions

Background and rationale

The DGS MHF regulations and the Model Work Health and Safety Regulations (Model WHS regulations) relating to MHFs (Chapter 9) set out essentially similar regulator regimes. However, there are some differences in language and scope where the WHS version is clearer or better focused.

The DGS MHF Regulations are unique in using the term 'safety report' for what is referred to as a 'safety case' in all other MHF regulations and in the Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022.

There is a clear difference between the definition of 'notifiable change' in the DGS MHF Regulations and the description of 'modification' in the Model WHS Regulations.

The DGS MHF Regulations wording is:

notifiable change, in relation to a place, means a significant change to:

(a) any plant, process or substance used at the place (including the introduction of new plant, process or substance); or

(b) the layout of the place or where dangerous goods are to be stored, handled or transported within the place.

A significant change triggers both a notification process and a review of the safety report (including the risk assessment and safety management system).

The equivalent wording in the Model WHS Regulations is:

> In these Regulations, a reference to a modification of a major hazard facility is a reference to a change or proposed change at the major hazard facility that has or would have the effect of:
>
> (a) creating a major incident hazard that has not previously been identified; or
>
> (b) significantly increasing the likelihood of a major incident occurring; or
>
> (c) in relation to a major incident that may occur, significantly increasing:
>
> (i) its magnitude; or
>
> (ii) the severity of its health and safety consequences.

Where a change or proposed change means:

> A change or proposed change of any kind, including any of the following:
>
> (a) a change to any plant, structure, process or chemical or other substance used in a process, including the introduction of new plant, a new structure, a new process or a new chemical;
>
> (b) a change to the quantity of Schedule 15 chemicals present or likely to be present at the major hazard facility;
>
> (c) a change to the operation, or the nature of the operation, of the major hazard facility;
>
> (d) a change in the workers' safety role;
>
> (e) a change to the major hazard facility's safety management system;
>
> (f) an organisational change at the major hazard facility, including a change in its senior management.

A modification similarly triggers a requirement to review the safety assessment, emergency management plan and safety management system.

The critical difference between these two definitions is that the Model WHS Regulations focus on the potential safety implications of the changes as opposed to just the changes, and broadens the scope of changes to be considered.

Proposal

It is proposed to:

1. Replace the term 'safety report' with 'safety case' in the DGS MHF Regulations.
2. Adopt the wording for 'modification' from the Model WHS Regulations as the basis for defining what is a notifiable change in the DGS MHF Regulations.

Arguments for

The use of the term safety case is the standard nomenclature across all Australian jurisdictions and in petroleum safety legislation.

A review of a safety report should only be triggered by a change that has potential or actual significant implications for safety management at an MHF. The Model WHS Regulations approach does this while the current DGS MHF regulation wording potentially requires reporting and reviews of safety reports for relatively minor physical changes that fall well within the scope of the approved safety report.

The Model WHS Regulations approach rightly includes matters beyond changes to physical plant that could significantly adversely affect safety management.

The Model WHS Regulations approach is used in all other Australian jurisdictions.

Arguments against

The regulator needs to be able to closely scrutinise all changes at an MHF. The current definition of significant change forces operators to notify all changes, big and small.

The DGS MHF Regulations should focus solely on engineering matters and physical structures and not on changes in management structure or personnel.

3.3.2 Empower the Chief Officer to determine the operator of an MHF if satisfied that an entity has management control of a facility

Background and rationale

The definition of operator in the DGS MHF Regulations reads as follows:

> Operator, of a place, including a major hazard facility, means the person who has the control or management of the place

The equivalent definition in the Model WHS Regulations is:

> The operator of a facility is the person conducting the business or undertaking of operating the facility who has:
>
> (a) management or control of the facility; and
> (b) the power to direct that the whole facility be shut down.

In both cases, the requirements of the regulations place a range of obligations on the operator.

There is usually little doubt about the identity of an operator but there has been at least one occasion in Western Australia where the operation of a facility was conducted by one entity while ownership rested with another (the latter having the power to shut down the facility). This situation created the risk of both parties denying responsibility for safety management and incidents at the facility, which in turn could adversely affect safety and make it more difficult for WorkSafe to take effective enforcement action.

Proposal

It is proposed to:

(a) widen definition of operator in the DGS MHF Regulations to mirror that in the Model WHS Regulations (i.e. include reference to the power to shut a facility down).
(b) include in the DGS MHF Regulations the power for the Chief Officer to determine the operator if not satisfied that the nominated operator has both management control and the power to direct that the facility be shut down.

Arguments for

The proposed changes will ensure that there is no ambiguity about who has management control of a facility and which entity is responsible for the operation of an MHF.

The proposed changes will ensure that the correct entity can be unambiguously identified, be properly responsible for safety management, and be the entity subject to enforcement action for any non-compliances at an MHF.

Arguments against

MHFs are large complex facilities that require significant financial investment. There is never any ambiguity about ownership and control.

3.3.3 Remove the major hazard facility classification for dangerous goods storage-only sites

Background and rationale

As in all Australian jurisdictions, an MHF regime operates in Western Australia. However, Western Australia has retained a robust licensing regime for dangerous goods sites that requires operators to conduct risk assessments and implement safety management controls commensurate with the risk. This is supported by a large number of approved and mandatory codes of practice. Furthermore, sites with greater than 10 times manifest quantities of dangerous goods are required to prepare a Fire and Emergency Services Guide in consultation with the Department of Fire and Emergency Services. The licensing regime, particularly for large storage sites, provides a credible and effective alternative to the MHF safety case approach.

The regulations for classification of MHFs in Western Australia allow for discretion whereas in other jurisdictions, storage and handling of certain dangerous goods above specified quantities triggers automatic MHF classification. In all other respects the requirements are essentially the same as they are all based on the original major hazard facility standard.

The decision whether to classify a site as an MHF hinges on two factors.

Regulation 19(3) of the DGS MHF Regulations requires the Chief Officer to be satisfied that the place has more than the critical quantity of Schedule 1 substances and that a major incident could occur at the place.

Regulation 19(4) includes an assessment of the quantity of dangerous goods, the circumstances in which the substances are stored etc., whether any other written law that applies to the place for the purpose of ensuring that dangerous goods are stored, handled and transported safely, and the likely effects of an incident at the place on people, property or the environment.

Overall, this allows the Chief Officer to determine the most appropriate regulatory approach to achieve the optimum safety outcome at a site.

The arguments in favour of discretion may be summarised as follows:

1. MHF classification should be driven by consideration of both hazard (i.e. quantity of goods) and likelihood, taking risk control measures and other circumstances into consideration (e.g. site location, layout, design, operator), not just hazard.
2. The dangerous and explosives goods licensing system, supported by the code of practice regime and emergency management requirements provides a robust regulatory alternative to the MHF safety case approach, particularly for dangerous goods storage and explosives sites.
3. Automatic classification is inconsistent with the Council of Australian Governments regulatory principles (Principles and guidelines for national standard setting and regulatory action) which require the regulatory effort to be the minimum required to achieve the desired outcomes.
4. Imposing MHF status on sites that do not require the application of the additional risk-control measures of a safety case regime would dilute the MHF inspectorate's focus on more complex and potentially very dangerous operations. Staff with the requisite technical and regulatory knowledge and experience to administer MHF requirements are very difficult to find and retain.

5. Dangerous goods storage site operators often lack the organisational sophistication to benefit from a complex safety case approach as opposed to a more rules-based and code of practice approach.
6. Application of mandatory classification may cause some operators to deliberately build facilities with dangerous goods quantities below threshold levels which could be economically inefficient.

As of June 2025, there are 25 sites designated as MHFs in Western Australia. It is hard to precisely calculate how many sites in Western Australia would be automatically classified as MHFs in accordance with the Model WHS Regulations. The estimated number of such sites, based on one substance alone exceeding the default Model WHS Regulations' quantity limit is 71 for dangerous goods storage (several more sites could be classified based on cumulative quantities of relevant substances) and 189 for explosives storage sites (based on licensed storage capacity).

The DGS MHF Regulations specifically exclude explosives storage-only sites from MHF classification, but not where another type of dangerous goods licence is required for that site. Adoption of a single licence system will require this exemption to be widened so that holding ancillary licences at the same site (e.g. supply, transport or export licences) or having these activities as part of a single licence, does not override the exemption.

The large number of explosives storage sites captured by the relatively low MHF threshold for blasting explosives has been addressed in New South Wales and Victoria by exempting mines (which could lead operators to locate facilities on mines instead of more appropriate locations). In South Australia and Queensland, explosives sites where no processing is involved are exempted in their MHF regulations. That is, the Western Australian policy approach has been partly adopted in these jurisdictions to address the problem of over-classification.

The significant number of potential MHF sites in Western Australia reflects in large measure the size and scope of the State's resources sector (see 2023–23 CME Factsheet WA economy) and the range of supporting industries it requires. However, there is also a number of activities that are present in any large town or city, such as water and wastewater treatment facilities and gas-powered power stations that could be captured by mandatory classification.

The DGS MHF Regulations describe the following classes of MHFs:

- Class A: high complexity processing
- Class B: medium complexity processing
- Class C: low complexity processing or dangerous goods stored and frequently handled
- Class D: storage only and dangerous goods infrequently handled.

The Western Australian approach to MHF classification has followed a clear policy position for over 15 years and in accordance with that policy, no dangerous goods storage-only, explosives, or ammonium nitrate storage sites have been declared as MHFs.

Proposal

It is proposed to:

(a) amend the explosives storage sites exemption under regulation 3(2)(b of the DGS MHS Regulations) to allow ancillary licenced activities without triggering the potential for MHF classification

(b) amend the description of Class C MHFs to remove reference to dangerous goods storage

(c) remove the Class D MHF classification.

Arguments for

The proposed explosives site amendment will not create a loophole whereby activities that would normally be classified as MHFs can avoid classification as they would be incompatible with explosives storage and manufacture and there are no such examples.

The proposed changes to class descriptions reflects long-standing MHF classification policy and practice whereby storage-only and explosives sites are not classified as MHFs as they are adequately regulated under the relevant dangerous goods regulatory schemes. This has allowed MHF inspectorate to focus its attentions on complex processing facilities where they are most needed, noting that Western Australia has a large number of such facilities compared to other Australian jurisdictions.

The proposed change to MHF class descriptions will give industry investment and regulatory certainty and remove incentives to build facilities at sub-optimal scale to work around the regulations.

Arguments against

All large dangerous goods storage and explosives sites should be subject to the MHF regulatory framework as they are in other jurisdictions.

3.3.4 Remove the major hazard facility classification for all explosives sites

Background and rationale

The DGS Explosives Regulations and supporting codes of practice provide a strict and highly prescriptive regime for the manufacture and storage of explosives.

The DGS MHF Regulations currently exempt explosives storage sites from MHF classification but not explosives manufacturing sites.

Explosives manufacture typically does not involve complex processing, and blasting explosives are not inherently hazardous if relatively straightforward controls applied. Apart from the explosives themselves, explosives manufacturing typically involves the storage of ammonium nitrate which is subject to a highly prescriptive code of practice.

All explosives manufacturing sites in Western Australia are located on State explosives facilities.

An explosives manufacturing facility would not be approved if it was proposed to operate in conjunction with, or close to, an incompatible dangerous goods activity.

> **Proposal**
>
> Expand the exemption for explosives facilities from storage sites to sites with any type of explosives licence.

Arguments for

This proposal reflects current practice. Very stringent requirements apply to explosives storage and manufacturing facilities and associated ammonium nitrate or ANE storage.

Arguments against

Potentially highly hazardous facilities should be capable of being classified and regulated as MHFs.

3.3.5 Expand criteria for revoking MHF classification

Background and rationale

The DGS MHF Regulations, for classification of MHFs in Western Australia, allow for discretion whereas in other jurisdictions, storage and handling of certain dangerous goods above specified quantities triggers automatic classification. In all other respects the requirements are essentially the same as they are all based on the original MHF standard.

The decision whether to classify a site as an MHF under regulation 19(4) of the DGS MHF Regulations includes a range of considerations that allows the Chief Officer to determine the most appropriate regulatory approach to achieve the optimum safety outcome at a site.

Currently, the Chief Officer may only revoke a decision to classify a place as an MHF under regulation 22(1) if not longer satisfied as required under regulation 19(3) which reads as follows:

The Chief Officer may decide to classify a place as a major hazard facility for the purposes of these regulations if the Chief Officer is satisfied on reasonable grounds that:

(a) more than the critical quantity of Schedule 1 substances is at the place or is likely to be at the place; and
(b) a major incident could occur at the place.

The effect of this is that while the particular circumstances of a place and alternative regulatory options can be considered as a reason to not classify a place as an MHF, once a place has been classified as an MHF, the only allowable criterion for declassifying it is a reduction in the quantity of Schedule 1 substances below the critical quantity.

This does not allow for the possibility that over time, the Chief Officer may take the view that an alternative regulatory approach may be sufficient and MHF classification is no longer the optimum regulatory approach.

> **Proposal**
>
> Expand options to revoke MHF classification to match all the elements of regulation 19 of the DGS MHF Regulations, and take into account factors other than just the quantity of Schedule 1 substances.

Arguments for

The proposal is consistent with the current MHF classification policy whereby particular circumstances at a place and alternative regulatory schemes are taken into consideration in classifying facilities as MHFs.

This may allow for declassification of smaller, low complexity sites as MHFs and free MHF regulator resources to focus on larger, more complex MHFs.

Arguments against

The quantity of Schedule 1 dangerous goods should be the only factor in MHF classification.

3.3.6 Include the concept of validation in the DGS MHF Regulations as per regulation 67 of the WHS PAGEO Regulations

Background and rationale

Regulation 27 of the DGS MHF Regulations sets out a process for the Chief Officer to approve a safety report. The key elements are that the safety report complies with regulation 25(2) (i.e. contains notifiable information, risk assessment, safety management system) and that "the safety report demonstrate that the operator of the facility will take all reasonably practicable measures to minimise the risk to people, property or the environment from dangerous goods at the facility".

This is summarised on the WorkSafe website at: Preparing a safety report for a MHF and in the publication *Development and submission of a safety report – major hazard facilities guide*.

Neither the regulations nor the guidance material are specific about how much information is required to satisfy the Chief Officer; in practice this is an iterative process.

The Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022 contain a provision relating to validation of proposed operations and proposed significant changes to operations which reads in part as follows:

67. Validation of proposed operations and proposed significant changes to operations

2. The regulator may, by notice in writing, require an operator to provide a validation in respect of:
   (a) proposed operation; or
   (b) proposed significant change to an operation.
3. For the purposes of subregulation (2)(a), a validation of a proposed operation is a statement in writing by an independent person in respect of the design, construction and installation (including instrumentation, process layout and process control systems) of a facility associated with the proposed operation, to the extent that these matters are covered by the scope of the validation agreed between the regulator and the operator.
4. For the purposes of subregulation (2)(b), a validation of a proposed significant change to an operation is a statement in writing by an independent person in respect of the proposed change, to the extent required by the scope of the validation agreed between the regulator and the operator.
5. The validation must establish, to the level of assurance reasonably required by the regulator:
   (a) in the case of a proposed operation — that the design, construction and installation (including instrumentation, process layout and process control systems) of a facility associated with the proposed operation incorporate measures that:
      (i) will protect the health and safety of persons at or in the vicinity of the facility; and
      (i) are consistent with the formal safety assessment for the proposed operation; and
   (b) in the case of an operation — that, after any proposed significant change to the operation, a facility associated with the operation will incorporate measures that will protect the health and safety of persons at or in the vicinity of the facility.
6. An operator who has provided material for a validation must satisfy the regulator that each person who undertook the validation had the necessary competence, ability and access to data, in respect of each matter being validated, to arrive at an independent opinion on the matter.

Further information is provided in: *Development and submission of a safety case: Interpretive guideline*.

Independent validation of facility and equipment designs is a commonly used, and arguably critical, quality assurance process for complex industrial facilities and is standard practice in the petroleum industry. There is an argument that as a number of MHFs are petroleum facilities, and already follow this practice, it would make sense to mirror this requirement in the DGS MHF Regulations.

In proposing this concept, it is noted that the scope would be limited to facility and equipment design as construction and installation cannot be validated in advance.

Proposal

Include in the DGS MHF Regulations, as an adjunct to regulation 25, a regulation allowing the Chief Officer to require an operator to provide a validation in respect of the design (including instrumentation, process layout and process control systems) of a facility associated with the proposed operation that will protect the health and safety of persons at or in the vicinity of the facility.

Arguments for

Inclusion of a formal validation process reflects the critical importance of ensuring appropriate facility and process design in the safety report approval process.

It is important to include this requirement in the DGS MHF Regulations to ensure the validation is conducted by a suitable independent person.

The proposal does not relate to construction and commissioning of facilities as these come after the safety report approval process.

Arguments against

This proposal is unnecessary as the Chief Officer already has the ability to ask for this type of information as part of the safety report approval process. The utility and application of this idea could just be included in the guidance material.

Validation is not included in the Model WHS Regulations and should not be included in the DGS MHF Regulations.

3.3.7 Mandatory formal five-year safety report review

Background and rationale

Regulation 30 of the DGS MHF Regulations sets out the circumstances that trigger a review of a safety report. These include new or changes to plant or processes, site layout, dangerous goods incidents, or changes in surrounding land use or zoning. Regulation 30(1)(e) requires a review to be conducted:

As soon as practicable after the expiry of:

(i) 5 years since the last review under this regulation; or

(ii) if a review has not been conducted, 5 years since the safety report for the facility was first approved under regulation 27(1)

The MHF inspectorate has found that reviews triggered by relatively small changes in plant or specific incidents address the immediately affected part of the safety report, but operators may not conduct a thorough review of the management system. As worded, regulation 30(1)(e) does not clearly require a thorough review of the safety case at any time.

Furthermore, if a review is conducted in relation to an incident, for example, this resets the 5-year timetable for reviews.

Regulation 60 of the WHS PAGEO Regulations reads as follows:

60. Revision after 5 years

1. An operator engaging in an operation for which a safety case is in force must submit a revised safety case to the regulator — (a) as soon as practicable after the period of 5 years beginning on the date on which the safety case was first accepted under regulation 55(1); and (b) as soon as practicable after the period of 5 years beginning on the date of each acceptance of a revised safety case under regulation 62(1).
2. Subregulation (1) applies whether or not a revised safety case submitted under regulation 58(1) or 59(7) has been accepted under regulation 62(1) within the 5-year period.
3. A revised safety case submitted under this regulation must describe the means by which the operator will ensure the ongoing integrity of the technical and other control measures identified by the formal safety assessment for the operation.

It is proposed to introduce the equivalent of this requirement for MHFs.

Proposal

It is proposed to:

- amend regulation 30(3) of the DGS MHF Regulations to require a regular formal safety report review as follows (subject to Parliamentary Counsel advice on wording):
  - as soon as practicable after the expiry of 5 years since the safety report for the facility was first approved under regulation 27(1), and on the anniversary of that date every 5 years thereafter or as otherwise approved by the Chief Officer.
- inset a new subregulation 30(2A) equivalent to regulation 60(3) of the WHS PAGEO Regulations.

Arguments for

It is critical that MHF operators should periodically conduct a formal and thorough review of their safety management systems and safety report and not just rely on incremental amendments in response to various triggers. The current regulations do not clearly require this.

Arguments against

The current arrangements ought to be sufficient. The proposed change will create extra work for MHF operators with little benefit.

The Model WHS Regulations operate much the same as the DGS MHF Regulations.

3.3.8 Change of nomenclature from critical to notifiable quantity

Background and rationale

All MHF regulations refer to threshold levels of Schedule 1 substances. In other jurisdictions, a site storing greater than threshold quantities is automatically classified as an MHF, whereas in Western Australia, this may not necessarily be the case.

Sites with greater than 10 per cent of the threshold quantity of Schedule 1 substances are obliged to notify the regulator and this triggers a decision about whether or not to classify the site as an MHF.

The Model WHS Regulations (regulation 537) simply refer to quantities of Schedule 1 substances that exceed 10 per cent of their threshold quantity. The equivalent regulation in the DGS MHF Regulations (regulation 9) uses a similar description but assigns this value a specific term 'critical quantity'.

It has been found that there is some confusion in industry about the terms 'critical' and 'threshold' and their respective purpose, and often it is wrongly assumed that the critical quantity is the trigger for MHF classification.

In practice, the critical quantity is only used to determine if a notification is required.

> **Proposal**
>
> Substitute 'notifiable quantity' for 'critical quantity' in the DGS MHF Regulations.

Arguments for

The terminology will match the purpose of this defined term and should reduce confusion in industry.

This is the simplest approach to resolving the identified ambiguity.

Arguments against

The change is not necessary; the term is not confusing if you read the regulations carefully.

4 Questions

To simplify the provision of feedback, the amendment proposals are listed in a response form which is available from Open consultations - WorkSafe – LGIRS as an online form or Microsoft Word document.

Respondents are invited to:

- indicate support for or objection to the various proposals on a five-point scale;
- provide free text comments on the proposals (including potential unintended consequences);
- provide proposals or suggestions for other potential legislative reforms.

Closing date for submissions: **5.00pm Friday 27 February 2026**

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