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Mr Colin Radford
CEO
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1 Malop Street
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21 March 2022

Dear Mr Radford,

REGULATORY IMPACT STATEMENT FOR DANGEROUS GOODS (STORAGE AND HANDLING) REGULATIONS 2022

I would like to thank your staff at WorkSafe Victoria for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the sunset review of the *Dangerous Goods (Storage and Handling) Regulations 2022* (the proposed Regulations).

As you know, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 15 March 2022 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background

In Victoria, the *Dangerous Goods Act 1985* (DG Act) regulates dangerous goods including storage and handling of these goods. Its purpose is to minimise harm to people, the environment and damage to property from the misuse or mishandling of dangerous goods. Dangerous goods may be explosive, corrosive, flammable, combustible, oxidising, water reactive or have other hazardous properties.

WorkSafe explains dangerous goods are stored and handled in a wide range of industries, including mining, manufacturing and construction.

Given the wide-ranging uses for dangerous goods, WorkSafe estimates up to 39,000 employers in these industries are subject to the current Regulations, and up to 658,000 Victorian workers, or approximately 28 per cent of the Victorian workforce, could be at risk of harms if dangerous goods are not properly stored and handled. WorkSafe explains that contact with dangerous goods in workplaces during the life of the current Regulations (2012-21) has caused an average of 1 death and 105 injuries per year.

The current Regulations support the objectives of the DG Act by specifying the duties of manufacturers, suppliers and occupiers of premises that store dangerous goods (duty holders) in relation to the storage and handling of dangerous goods (for example classification, labelling and signage requirements). This specifies how duty holders should ensure the health and safety of workers and the general public through safe storage and handling of dangerous goods.

This RIS is being undertaken concurrently with the Independent Review of the DG Act 1985 (the Review). Given that this Review may result in significant changes to the current Regulations in the near future, WorkSafe has not considered making significant changes to the Regulations in this RIS to avoid multiple changes being made to the regulatory framework in a short period of time.

The current Regulations are due to sunset on 27 November 2022. WorkSafe explains that if the Regulations are not replaced, the legislative framework for dangerous goods will not address the specific risks to people, property and the environment associated with storage and handling of dangerous goods.

Analysis

WorkSafe outlines the reasons for analysing only one option in this RIS (essentially remaking the current Regulations) – given the broader Review underway and WorkSafe’s desire to avoid multiple changes to the regulatory framework in a short period of time.

Therefore, the proposed Regulations include only minor changes to the current Regulations and mainly involve the modernisation and clarification of terminology. WorkSafe explains in the RIS that the purpose of these minor changes is to simplify the drafting style of the Regulations. The proposed Regulations will feature the same key obligations and requirements that exist under the current Regulations.

WorkSafe has analysed the proposed Regulations against the base case where the current Regulations would expire, but storage and handling of dangerous goods would still be regulated by other parts of the current regulatory framework including the DG Act, the *Occupational Health and Safety Act 2004* (OHS Act) and the *Environmental Protection Act 2017* (EP Act). WorkSafe explains that in the absence of the Regulations, the lack of specific requirements to address the risks associated with storage and handling of dangerous goods would mean that these risks would not be effectively managed.

The proposed Regulations continue the provisions of the current Regulations to ensure that:

- Goods must be determined to be dangerous or not;
- Goods must be classified;
- Goods must be packed, marked and labelled;
- Safety data sheets (SDS) must be prepared and provided; and
- Where necessary, supply must be prohibited.

The proposed Regulations also continue the following provisions for occupiers of premises where dangerous goods are stored or handled:

- Workers whose health or safety is likely to be affected must be consulted with;
- Workers and visitors must be trained, supervised, inducted or had information provided to them;
- SDSs must be obtained from the manufacturer or supplier;
- A register of goods must be kept;
- Hazards must be identified and marked;
- Risk control measures must be in place;
- Fire control and emergency management measures must be taken;
- If the quantity of dangerous goods stored exceeds designated amount, manifests and/or placards must be prepared;
- WorkSafe must be notified in certain prescribed circumstances (e.g., quantities stored change) or if the amount of dangerous goods stored exceeds a threshold amount; and
- If the amount of dangerous goods stored exceeds a fire protection threshold then a fire protection system must be established.

WorkSafe uses data from the 2012 Dangerous Goods (Storage and Handling) RIS and the 2017 Occupational Health and Safety RIS to make assumptions about attribution, rates of compliance, cost efficiencies and the percentage of businesses that would meet certain requirements in the absence of regulation. It explains that these assumptions are conservative. It estimates that the average annual cost of the proposed Regulations on industry will be about \$11.6 million, similar to the cost of the current Regulations. This estimate includes:

- \$3.4 million for costs to manufacturers and suppliers; and
- \$8.2 million for occupiers.

WorkSafe has not quantified costs to government associated with the proposed Regulations. It notes the proposed Regulations maintain the status quo and are unlikely to result in significant implementation costs.

A break-even analysis approach (over 10 years) is used to estimate the number of injuries and illnesses, as well as the number of deaths, that would need to be prevented for the benefits of the proposed Regulations to equal the costs.

WorkSafe indicates a conservative estimate for the average value of a claim involving contact with dangerous goods is approximately \$41,000. WorkSafe explains that if an

additional 284 claims (which it uses as a proxy for injuries or illnesses) are avoided per year as a result of the proposed Regulations, the benefits would exceed the costs. This is in addition to the approximately 105 injuries or illnesses that occur yearly because of contact with dangerous goods under the status quo.

Based on research and approaches used in other jurisdictions, WorkSafe has used a value of a statistical life of about \$6 million. WorkSafe explains that the benefits of the proposed Regulations would exceed the costs if at least 2 additional deaths per year were prevented. This is in addition to the 1 death that currently occurs yearly because of contact with dangerous goods.

WorkSafe states that, in its view, it is feasible that the Regulations will break-even because both injuries, illnesses and deaths will be avoided, the size of the at-risk population is large and conservative assumptions about the cost of the Regulations have been used.

Implementation and Evaluation

In the RIS, WorkSafe explains that since the proposed Regulations include only minor changes relative to the current Regulations, it is expected that existing approaches to implement and enforce the Regulations will continue. WorkSafe will communicate the changes to the proposed Regulations to key stakeholders and advisory committees via a range of communications channels.

WorkSafe notes that it has not developed an extensive evaluation strategy of the impacts of the proposed Regulations yet given that the broader Review of dangerous goods may result in significant changes to regulatory arrangements. It commits to developing a comprehensive evaluation strategy for the Regulations once the Review is completed and any resulting changes have been made to the regulatory framework. WorkSafe has also committed to seeking feedback from stakeholders relating to the accuracy and relevance of the assumptions used to develop cost estimates used in the impact analysis.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation