

Queensland



Explanatory Notes for SL 2001 No. 200

Dangerous Goods Safety Management Act 2001

DANGEROUS GOODS SAFETY MANAGEMENT REGULATION 2001

1 The Regulation's Short Title and Number:

Dangerous Goods Safety Management Regulation 2001

2 The Authorising Law:

Section 187 of the *Dangerous Goods Safety Management Act 2001* provides for the Governor in Council to make regulations under the Act.

3 Policy Objectives of the Regulation:

The policy objective of the Regulation is the same as for the Act. The objective is to protect the safety of people, and prevent damage to property and the environment, from hazardous materials.

A hazardous material is a material which, in sufficient quantities, has the potential to cause harm to people, property or the environment because of its chemical, physical or biological properties. The main types of hazardous materials addressed by the Act include:

- **stated dangerous goods** which are goods classified under the Australian Dangerous Goods Code as dangerous goods of classes 2, 3, 4, 5, 6.1, 8 and 9 or goods too dangerous to be transported; and
- **stated combustible liquids** which are liquids classified by Australian Standard 1940 as C1 combustible liquids or C2 combustible liquids. (C2 combustible liquids are only included if they are stored or handled with fire risk dangerous goods.)

While the Regulation also addresses the storage and handling of small quantities of hazardous materials, its main focus is on facilities where the safety issues are most significant. The Act divides these hazardous facilities into three categories, based on the quantities of hazardous materials that are stored and handled. These categories are:

- **Dangerous Goods Locations (DGLs)**—these are sites where medium quantities of stated dangerous goods and combustible liquids are stored or handled;
- **Large Dangerous Goods Locations (Large DGLs)**—these are sites where large quantities of stated dangerous goods and combustible liquids are stored or handled; and
- **Major Hazard Facilities (MHFs)**—these are sites where very large quantities of hazardous materials or smaller quantities of highly dangerous materials are stored or handled and which pose a potential risk to the surrounding community.

The Regulation supports the implementation of the Act by providing the detail required for a number of the issues addressed by the Act. These issues include:

- the safety obligations of manufacturers, importers and suppliers of stated dangerous goods or combustible liquids;
- the safety obligations of occupiers of MHFs, DGLs and Large DGLs;
- the continued licensing of premises storing and handling flammable and combustible liquids; and
- the threshold quantities that identify the different categories of hazardous facility (MHF, DGL and Large DGL).

The Regulation also supports the policy objectives of the Act by:

- promoting an approach based on performance and safety outcomes rather than detailed prescription; (This is important because it allows industry flexibility in determining the method of compliance to achieve the desired safety outcomes.)
- addressing the need to modernise, consolidate and rationalise existing Queensland regulations covering dangerous goods storage safety; and
- supporting national moves to achieve uniformity in legislation relating to hazardous industry. (This is important because

achieving consistency of requirements across all jurisdictions will reduce costs to firms operating in more than one State or Territory.)

The national agreement to achieve uniformity is supported as both the Act and the Regulation are based on the following two national standards developed by the National Occupational Health and Safety Commission:

- the National Standard for the Control of Major Hazard Facilities; and
- the National Standard for the Storage and Handling of Workplace Dangerous Goods.

4 Consistency with the Policy Objectives of other Legislation:

The Regulation is consistent with the policy objectives of other related legislation.

5 Alternative ways of achieving the policy objectives:

Alternative means of achieving the policy objectives were considered and rejected by Cabinet when approval was sought to draft the legislation.

6 Benefits and Costs of Implementing the Regulation:

The Regulation will reduce the risk of accidents from hazardous industry and therefore ensure greater safety for Queensland's communities.

All implementation requirements for Government were addressed during the development and approval of the Act. There are no new resourcing implications for Government arising from the proposed Regulation.

Industry associations and their members are aware of the changes and have been supportive of the national approach adopted by the Regulation. While there will be some implementation costs for industry, these are offset by the reduction in accidents as well as cost reductions due to the performance based approach and the move to national uniformity.

In the case of Dangerous Goods Locations, the Economic Impact Assessment conducted for the National Standard for the Storage and Handling of Dangerous Goods found that the total estimated compliance costs were more than completely offset by the estimated savings from a reduction in injuries and accidents. The Assessment estimated, that in

discounted terms over ten years, compliance costs for all businesses would come to \$196.6 million and estimated savings would come to \$197.2 million.

In the case of major hazard facilities, the Economic Impact Assessment conducted for the National Standard for the Control of Major Hazard Facilities found that on average the additional costs arising from implementing the National Standard would be 11.4% of current expenditure (current expenditure being what is typically spent to meet with legislative requirements or international best practice). For individual facilities this ranged from \$49,000 to \$1,151,000. These costs are considered relatively minor in comparison with the potentially devastating consequences of a major accident. For example, the 1998 accident at the Esso gas facility in Longford, Victoria, resulted in two fatalities, injuries to eight people and more than \$2 billion in costs.

7 Consistency with Fundamental Legislative Principles:

The Regulation does not infringe Fundamental Legislative Principles, except for limited references to Australian standards and international codes. The standards and codes referred to include AS 1940, AS 2430, the Australian Dangerous Goods Code, the Dangerous Goods Regulations published by the International Air Transport Association, and the International Maritime Dangerous Goods Code published by the International Maritime Organization.

This practice of referring to Australian standards and codes is a normal legislative approach. The complexity and technical detail contained in the standards and codes would have been extremely difficult to incorporate into the Regulation. Furthermore, it would have expanded the size of the regulations to unworkable proportions.

Stakeholders support this approach as they have a high level of understanding and familiarity with these standards and codes.

8 Consultation Undertaken and Results:

In the development of this Regulation, extensive and ongoing consultation has been undertaken with Local Government, State Government agencies, industry and community groups.

Two significant mechanisms of consultation for the Regulation have been the Inter-Departmental Hazardous Substances Coordinating Committee and the Dangerous Goods Working Group.

- **The Inter-Departmental Hazardous Substances Coordinating Committee** facilitates a whole-of-government approach to hazardous materials. This Committee comprises representatives of State Government agencies that are responsible for the management of hazardous materials, as well as the Department of State Development, Queensland Rail, the Local Government Association of Queensland, and the Queensland Port Authorities Association.
- To ensure that consultation on the legislation included industry and other non-Government stakeholders, the Committee established the **Dangerous Goods Working Group** to oversee the preparation and implementation of the legislation. The Working Group comprises representatives of seven industry organisations, seven State Government agencies, the Local Government Association of Queensland, the Queensland Conservation Council and the Queensland Council of Unions.

The Regulation is supported by the Dangerous Goods Working Group, the Inter-Departmental Hazardous Substances Coordinating Committee and other stakeholders consulted in the drafting process. Substantive changes were made during drafting to accommodate the needs of key stakeholder groups. Issues raised included:

- adherence to national standards;
- administrative simplicity;
- clarity;
- practicality; and
- enforcement.

In addition to consultation directly relating to the Regulation, nation-wide consultation was undertaken during the development of the national standards on which the legislation is based. Both Standards were the result of years of consultation between the National Occupational Health and Safety Commission, government agencies, industry and the unions.

9 Regulatory Impact Statement:

As Economic Impact Statements (EIAs) were completed on a national basis by the National Occupational Health and Safety Commission, a Regulatory Impact Statement specific to this Regulation is not attached. This approach is supported by the Business Regulation Reform Unit, who advised that in view of Section 46(1)(g) and (h) of the *Statutory Instruments Act 1992*, a Regulatory Impact Statement is not required. The economic impact assessments were conducted during the preparation of the two national standards that the Regulation is based upon.

Detailed Explanation of the Regulation

Part 1—Preliminary

- Section 1 states that the title of the Regulation is the “*Dangerous Goods Safety Management Regulation 2001*”.
- Section 2 provides the commencement date of the Regulation as 7 May, 2002.
- Section 3 references the dictionary (schedule 5) where key words used in the Regulation are defined.
- Section 4 outlines a situation to which the Regulation does not apply. It does not apply to a vehicle loaded with stated dangerous goods or combustible liquids if the vehicle is parked temporarily on a site and the vehicle and the load comply with the ADG Code.
- Section 5 states that the threshold quantities which determine whether a site is a DGL or a Large DGL are set out in schedule 1.
- Section 6 states the threshold quantities which determine whether a site is a possible MHF are set out in schedule 2.
- Section 7 provides a clarification if conflict between documents occurs. It states that this Regulation prevails in the event of any conflict with the Australian Standards that are referred to in the Regulation.

Part 2—Safety Obligations for Manufacturers, Importers and Suppliers

This part details safety obligations that apply to a manufacturer, importer and/or supplier of stated dangerous goods or combustible liquids.

Division 1—Packing, marking and supply

- Section 8 states that the manufacturer or importer has an obligation to determine whether goods are stated dangerous goods.
- Section 9 states that the manufacturer or importer has an obligations to safely pack, label and supply dangerous goods or combustible liquids.
- Section 10 states that the supplier has an obligation not to supply unless the labelling and packaging complies with the Regulation.

- Section 11 places safety obligations on a retailer who supplies stated dangerous goods or combustible liquids in a container provided by a purchaser.

Division 2—Material Safety Data Sheets

- Section 12 states the obligations of manufacturers or importers to prepare, amend and review material safety data sheets.
- Section 13 allows for the recognition and use of material safety data sheets prepared in accordance with equivalent legislation.
- Section 14 states that manufacturers, importers or suppliers have an obligation to provide material safety data sheets.
- Section 15 states that manufacturers and importers have an obligation to provide additional information on confidential ingredients to a doctor treating a patient affected by the dangerous goods.

Part 3—Safety Obligations for Occupiers

This part details safety obligations that apply to occupiers of major hazard facilities, large dangerous goods locations and dangerous goods locations.

Division 1—Obligations applying to occupiers of major hazard facilities and dangerous goods locations

Subdivision 1A—Definitions for Div 1

- Section 16 defines “occupier” to mean occupier of a major hazard facility or dangerous goods location. The purpose of this is to simplify reading and reduce repetition.

Subdivision 1—Hazard identification and risk assessment

- Section 17 states that occupiers have an obligation to identify hazards.
- Section 18 states that occupiers have an obligation to assess risk.
- Section 19 states that occupiers have an obligation to review a risk assessment when the risk changes, an accident occurs or 5 years elapse.

- Section 20 requires a copy of the risk assessment to be made available to persons likely to be exposed to a hazard.

Subdivision 2—Risk minimisation by substitution of goods or reduction of quantity

- Section 21 requires an occupier to consider substituting goods or reducing their quantity to achieve an acceptable level of risk.

Subdivision 3—Risk minimisation for storage and handling systems

- Section 22 requires an occupier to ensure before using a new storage or handling system that it is designed, constructed and installed so that, when used properly, risk is at an acceptable level.
- Section 23 requires an occupier, by design and location of storage or handling systems, to minimise the risk from a hazardous materials emergency to persons property or the environment outside the boundary.
- Section 24 states the obligations of an occupier in regard to the operation of a storage or handling system so that an acceptable level of risk is maintained.
- Section 25 states the obligations of an occupier in regard to storing stated dangerous goods or combustible liquids in tanks so that an acceptable level of risk is achieved.
- Section 26 states the safety obligations of an occupier in regard to cleaning or making safe decommissioned storage or handling systems.
- Section 27 states the obligations of an occupier to protect storage or handling systems from impact with vehicles, mobile plant or other things at the facility.
- Section 28 states the obligations of an occupier in regard to use of new systems or procedures so that an acceptable level of risk is achieved.

Subdivision 4—Risk minimisation for workers and visitors

- Section 29 states the obligations of an occupier in regard to the provisions of induction, information, supervision, education and training to workers.
- Section 30 states the obligations of an occupier in regard to providing personal protective or safety equipment for workers.
- Section 31 states the obligations of an occupier in regard to minimising the risk for visitors.
- Section 32 states the obligations of an occupier in regard to plant security.

Subdivision 5—Stability and interaction of stated dangerous goods or combustible liquids

- Section 33 states the obligations of an occupier to ensure the stability of stated dangerous goods or combustible liquids.
- Section 34 states the obligations of an occupier in regard to preventing dangerous interaction with other goods.
- Section 35 states the obligations of an occupier in regard to preventing contamination of food or personal products.
- Section 36 states the obligations of an occupier in regard to eliminating ignition sources in areas where there may be a flammable atmosphere.

Subdivision 6—Risk minimisation by spill control

- Section 37 states the obligations of an occupier in regard to spill containment.
- Section 38 states the obligations of an occupier in regard to the transfer of stated dangerous goods or combustible liquids.
- Section 39 states the obligations of an occupier in regard to the equipment necessary for the containment and clean-up of reasonably foreseeable spills or leaks.

Subdivision 7—Risk minimisation by providing information

- Section 40 states that an occupier has an obligation to obtain material safety data sheets and provide workers with access to them.
- Section 41 states that an occupier has an obligation to keep a register of stated dangerous goods or combustible liquids.
- Section 42 states that an occupier has an obligation to give safety records to a new occupier.
- Section 43 states the obligations of an occupier in regard to the marking of packages.
- Section 44 states the obligations of an occupier in regard to the marking of portable containers.

Subdivision 8—Accidents

- Section 45 states the obligations of an occupier in regard to the response to hazardous materials emergencies.
- Section 46 states the obligations of an occupier in regard to the investigation of an accident.
- Section 47 states the obligations of an occupier in regard to risk assessment and control following accidents.
- Section 48 states the obligations of an occupier in regard to the provision of particulars about an accident to the chief executive if requested.

Subdivision 9—Risk minimisation by warning placards

- Section 49 allows existing warning placards to continue to be used if the information is still correct.
- Section 50 states that an occupier has an obligation to display warning placards.
- Section 51 states where 'HAZCHEM' outer warning placards should be located.
- Section 52 states where information placards should be located.

- Section 53 states that the occupier must ensure that the form and dimensions of the 'HAZCHEM' outer warning placard comply with schedule 3.
- Section 54 states that the occupier must ensure that the form and dimensions of information placards for stated dangerous goods or combustible liquids in tanks comply with schedule 3.
- Section 55 states that the occupier must ensure that the form and dimensions of information placards for stated dangerous goods or combustible liquids in packages comply with schedule 3.

Subdivision 10—Risk minimisation by fire protection

- Section 56 states the obligations of an occupier in regard to fire protection systems.

Division 2—Further obligations applying to occupiers of major hazard facilities and large dangerous goods locations

This part details further safety obligations specifically for occupiers of major hazard facilities and large dangerous goods locations. These safety obligations relate to keeping a manifest and emergency plans and procedures.

- Section 57 defines “occupier” to mean the occupier of a major hazard facility or a large dangerous goods location.
- Section 58 states that the occupier must keep a manifest of dangerous goods or combustible liquids, that complies with schedule 4, readily available for use by emergency services.
- Section 59 states that the occupier must keep the manifest up to date.
- Section 60 states the obligations of the occupier in regard to where and how the manifest is kept.
- Section 61 lists details that the occupier must ensure are included in emergency plans and procedures.

Division 3—Further obligations applying to occupiers of large dangerous goods locations only

- Section 62 states the obligations of the occupier in regard to notifying the chief executive of a large dangerous goods location.

Division 4—Obligations applying to occupiers of workplaces that are not major hazard facilities or dangerous goods locations

This Division details safety obligations for workplaces storing or handling minor quantities of stated dangerous goods or combustible liquids ie below the thresholds for a dangerous goods location or a rural workplace. These safety obligations are tailored to the lower risk applicable and are less onerous than those applying to dangerous goods locations and major hazard facilities.

- Section 63 defines “occupier” to mean the occupier of a workplace that is not a major hazard facility or a large dangerous goods location, where stated dangerous goods or combustible liquids are stored or handled.
- Section 64 states the obligations of the occupier in regard to identifying hazards associated with the storage or handling of dangerous goods or combustible liquids at the occupier’s workplace.
- Section 65 states the obligations of the occupier in regard to assessing and minimising risk associated with any identified hazards.
- Section 66 states the obligations of the occupier in regard to the decommissioning of storage or handling systems.
- Section 67 states the obligations of the occupier in regard to providing induction, information, education, training and supervision for persons involved with the storage and handling of stated dangerous goods or combustible liquids.
- Section 68 states the obligations of the occupier in regard to providing personal protective or safety equipment for workers.
- Section 69 states the obligations of the occupier in regard to preventing unauthorised access.
- Section 70 states the obligations of the occupier in regard to preventing interaction of incompatible dangerous goods or combustible liquids.

- Section 71 states the obligations of the occupier in regard to preventing contamination of food or personal products.
- Section 72 states the obligations of the occupier in regard to eliminating ignition sources in areas where there may be a flammable atmosphere.
- Section 73 states the obligations of the occupier in regard to spill containment.
- Section 74 states the obligations of the occupier in regard to material safety data sheets.
- Section 75 states the obligations of the occupier in regard to keeping and maintaining a register of stated dangerous goods or combustible liquids.
- Section 76 states the obligations of the occupier in regard to the marking of packages.
- Section 77 states obligations of the occupier in regard to the provision of information placards for stated dangerous goods or combustible liquids in tanks.

Part 4—Flammable and Combustible Liquids

This part details the licensing requirements for facilities storing flammable and combustible liquids. (This continues an existing licensing system from the *Building (Flammable and Combustible Liquids) Regulation 1994*.)

Division 1—Application of part

- Section 78 states that this part applies to the storage and handling of flammable and combustible liquids as per Australian Standard 1940. (AS1940 is very widely known in industry and Local Government.)
- Section 79 states that the administration and enforcement of this part is devolved to local government.
- Section 80 stresses the importance of a property boundary in determining the setback distances for package and tank storage locations. This limits the overflow of significant risks beyond the property boundary.

Division 2—Offences

- Section 81 prohibits a person making false or misleading statements for an licence application or renewal.
- Section 82 prohibits the storage of flammable and combustible liquids on premises without a licence.
- Section 83 requires the licensee to comply with licence conditions.

Division 3—Licences to store flammable or combustible liquids

- Section 84 allows an occupier to apply for a licence to store flammable or combustible liquids on premises, and details the information the applicant has to provide.
- Section 85 requires the chief executive officer to consider and make a decision on the application.
- Section 86 provides the criteria to be satisfied before a licence can be granted.
- Section 87 provides for the chief executive officer to investigate the applicant's suitability and allows for further information to be requested from the applicant.
- Section 88 details the procedures that the chief executive is to follow after making a decision on the application for a licence.
- Section 89 allows for the applicant to appeal if the application is not decided within 60 days.
- Section 90 defines when a licence becomes effective.
- Section 91 defines the term of a licence.
- Section 92 allows for the imposition of licence conditions.
- Section 93 relates to the form and particulars to be included on the licence.

Division 4—Renewal of licence

- Section 94 provides for and states the procedures and obligations related to an application for renewal of a licence.
- Section 95 provides for the chief executive officer to require the applicant to provide further information.

- Section 96 states the status of licence while the application for renewal is considered.

Division 5—Amendment of licences

- Section 97 provides for and states the procedures and obligations related to an application to amend a licence.
- Section 98 allows the chief executive officer to require the applicant to provide further information.

Division 6—Transfer of licences

- Section 99 provides for and states the procedures and obligations related to an application to transfer a licence.
- Section 100 allows the chief executive officer to require the applicant to provide further information.

Division 7—Suspension or cancellation of licences

- Section 101 states the grounds for suspension or cancellation of a licence.
- Section 102 requires the chief executive officer to give a licensee a written notice in instances where the chief executive officer believes a ground exists to suspend or cancel a licence.
- Section 103 provides for representation about show cause notices.
- Section 104 enables the chief executive officer to end a show cause process without further action following acceptable representations.
- Section 105 provides for the suspension or cancellation of a licence.
- Section 106 provides for the return of a cancelled licence.

Division 8—Other provisions about licences

- Section 107 defines other requirements for licence applications.
- Section 108 clarifies the status of licensee in instances where a licence is issued jointly to more than one person.
- Section 109 provides for a licensee to surrender a licence.

- Section 110 provides for, and states the procedures and obligations related to an application to replace a lost, stolen, destroyed or damaged licence.

Division 9—Reviews and appeals

Subdivision 1—Internal review of decisions

- Section 111 requires the appeal process to start with an application for internal review.
- Section 112 allows a person to apply to the chief executive officer for a review of the original decision.
- Section 113 states the process and timeframe for applying for review.
- Section 114 states the procedures and obligations concerned with the review decision.
- Section 115 provides for a stay of operation of decision.

Subdivision 2—Appeals

- Section 116 defines who may appeal a review decision.
- Section 117 defines the magistrates court that may be appealed to.
- Section 118 defines the appeal process.
- Section 119 provides for a stay of operation of the review decision to secure the effectiveness of the appeal.
- Section 120 defines the hearing procedures.
- Section 121 defines the powers of court on appeal and their relationship with the chief executive officer's decision.
- Section 122 allows for appeals to District Court, but only on questions of law.

Division 10—Transitional

- Section 123 defines “former regulation” to mean the *Building (Flammable and Combustible Liquids) Regulation 1994* in this division.

- Section 124 states the status of licence applications pending immediately prior to commencement of this regulation.
- Section 125 states the status of licences and suspended licences existing immediately prior to commencement of this regulation.

Schedules:

- Schedule 1 details the minimum threshold quantities for dangerous goods locations and large dangerous goods locations.
- Schedule 2 details the hazardous materials and prescribed quantities for major hazard facilities.
- Schedule 3 details the requirements for warning placards.
- Schedule 4 details the information to be contained in a manifest.
- Schedule 5 is a dictionary that defines key words used in the Regulation.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Emergency Services.