

## Changes to Dangerous Goods Regulation – What Does this Mean for Employers?

### What is changing?

The regulation of the storage and handling of dangerous goods (apart from explosives) is now included as part of OH&S Regulation 2001<sup>1</sup>. This places dangerous goods in a risk management framework, consistent with all other types of hazards found in workplaces. This creates new obligations for employers.

### Why is this being done?

All states and territories agreed some time ago to adopt a national standard for dangerous goods. The National Occupational Health and Safety Commission (NOHSC) declared such a standard in 2001, and in response NSW has introduced a new Chapter 6A to the existing regulations. In some ways the new chapter is similar to the existing Chapter 6 that deals with hazardous substances.

### When did the changes occur?

From 1 September 2005.

### What does it mean for employers, especially those in small businesses?

It is the government's intention to reduce the prescriptive nature of the existing regulations and instead move to a risk management framework where standards become advisory rather than mandatory.

This can pose problems for smaller businesses where previously the regulations and standards at least provided the opportunity to "tick off" items on a list. Implicit in this view is the conclusion that if all the items have been checked, then management has fulfilled its OHS obligations.

In reality the existing OHS regulations do not provide any such certainty and the proposed changes are in the same vein. In fact this line of thinking highlights a failing with prescriptive regulation – full compliance with regulations cannot of itself assure safe systems. There is always the possibility that the regulations have not fully anticipated every risk situation.

For this reason OHS management has been continuously moving towards an outcomes-based, risk management framework. This does not mean that prescriptive regulation has been abandoned – in fact it is essential in many critical applications – but it has been augmented with a hazard identification, risk management and control focus. And remember – just because a person has complied with the OHS Regulation, it does not mean that they cannot be found to have breached the OHS Act (See Section 29 of the Act).

### What will happen at a practical level?

A new approved industry code of practice<sup>2</sup> will become the practical guide to employers and others now that the new Chapter 6A is part of the regulations. The code should be observed unless an alternative course of action that achieves the same or better level of health, safety and welfare at work is being followed.

At a practical level, it may be difficult for an employer to show that an alternative course of action is justified unless there has been a proper, thorough and comprehensive identification of hazards, risk, control measures and the like. However there is certainly scope for this to occur.

It is most likely that smaller businesses will continue to treat the requirements as mandatory rather than advisory. Existing standards listed in the Dangerous Goods (General) Regulation 1999 are included in the proposed code, as advisory. If this is the case there should be little change for smaller businesses on this score.

## Need for risk management

All businesses will need to understand that a further step is required. In the same way that the current OHS regulations impose a general obligation for employers and occupiers of premises to identify and control risks, such obligation will also apply to dangerous goods.

## Why is this such a big change?

Up to now the control has been largely prescriptive – “tick the boxes”. Under the new scheme boxes must still be ticked, but in addition, risks will have to be identified and controlled. It is just that dangerous goods have been the subject of considerable prescription, so the changes may be a bit more difficult to deal with at first.

## How does this link with hazardous substances?

Since most dangerous goods are also hazardous substances, there is a natural overlap. This means there is an opportunity to avoid some duplication:

- Both require manufacturers to provide material safety data sheets
- Both require information to be given to employees
- Both require registers to be kept (to help provide information, etc). For dangerous goods, manifests are an extra requirement (for use by emergency services, and for notifying of quantities above certain levels, etc)
- Both require hazards and risks to be identified and controlled
- Both have regulations for specifics, eg carcinogenic substances, corrosive substances

## References:

1. Regulations under NSW Occupational Health and Safety Act 2000
2. Storage and handling of dangerous goods: Code of Practice 2005 – WorkCover NSW

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