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## New Dangerous Goods regulation now in force – What you need to know

### What has changed?

The regulation of the storage and handling of dangerous goods (apart from explosives) now comes within the OH&S Regulation 2001<sup>1</sup>. A new Chapter 6A deals with the management of dangerous goods, using a similar approach to that of Chapter 6 which deals with hazardous substances.

A newly-developed industry code of practice – *Storage and Handling of Dangerous Goods*<sup>2</sup> – is now the practical guide to employers and occupiers of premises.

Quantities now include substances in process inside the premises, as well as those in storage areas or depots. Previously, substances that were in actual use in a process of manufacture were excluded from the regulations. For many organisations, this change will trigger new obligations.

### Duty of care squarely with the occupier

Previously, a Dangerous Goods Licence signified a “degree of approval” by the regulator. Now the duty of care lies squarely with the occupiers of premises.

The focus is on how dangerous goods are used at the premises, as well as how they are stored. Competent persons – defined in the new code – must assess risks at every stage. Depending on quantities held, written emergency plans are also required.

The repealed Dangerous Goods (General) Regulation 1999 contained a list of mandatory obligations for the keeping of dangerous goods. These provided a convenient “tick list”.

By contrast, the new code of practice is advisory. This means that it does not have to be followed – but the occupier needs to clearly show that an alternative course of action is being followed that achieves the same or better level of health, safety and welfare at work. This may not be a straightforward exercise!

In all, the requirements are significantly more demanding than was previously the case.

### A few of the obvious differences

Aspect	Old regulation	New regulation
Places where dangerous goods are stored and used	Focus on keeping of dangerous goods in “depots”	Bulk storage locations, Package storage locations, Manufacturing locations
Role of Australian standards	Listed in regulation	Same standards, but now listed as advisory in Code

Aspect	Old regulation	New regulation
Documentation	Register of dangerous goods and hazardous substances on premises, with MSDSs	Same
Notification	Apply for Dangerous Goods licence if quantities above a specified minimum	Notify WorkCover if quantities above "Manifest Quantity" (generally higher than previous "licensable quantities")
Declaration that relevant standards have been observed	Part of licence application ("stamped plans" for depots)	Part of general duty to assess risk for all dangerous goods locations. Persons must be competent for this task.
Authorisation	Dangerous Goods licence	Notification only. No authorisation provided by WorkCover. Duty of care lies with occupier.
Labels and signage	Specified in regulation	Advisory in Code, for quantities greater than "Placarding Quantity," and for bulk storage
Emergency preparedness	General requirements	Code advises written emergency management plan for premises holding more than "Manifest Quantities"
Information for Emergency Services	Part of licence application – site sketch showing depots, fire fighting equipment, etc	Manifest information posted at front entry – includes site plan, emergency contact details, etc
Significant changes made at premises (new dangerous goods, different storage arrangements, etc)	Apply to modify licence	General duty to assess risks. Need to notify WorkCover if quantities exceed, or likely to exceed "Manifest Quantity"

## Subtle differences

The old regulation was quite prescriptive. It could have created the impression – in the minds of some people at least – that complying with all of the regulations automatically meant "things were safe".

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?

Persons are not bound to follow the advisory code of practice. But it may be difficult 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 – conducted by competent people.

At a practical level, most people will regard the Code as a worthwhile yardstick. Even so, the Code advises a more stringent level of risk assessment than previously.

## Other material

For further information, click on this link to the WorkCover [Fact Sheet for Users of Dangerous Goods](#) or visit [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

## Where to find help?

Advitech has competent persons who can conduct audits, reviews and risk assessments related to the handling of dangerous goods and hazardous substances. We offer an initial assessment of the site, followed by a brief report in order to help the occupier judge the work required for full compliance with regulations.

We can assist with all stages of implementation.

## References:

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

## For more information, please contact:

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Advitech has consultants who are members of the *Australasian Institute of Dangerous Goods Consultants*

