

## **“Separate risk assessments”**

### Draft report

From “Overview” p xxxiv:

“The ASCC is currently developing a combined set of workplace dangerous goods and workplace hazardous substances regulations. This would avoid the need for firms to conduct **two separate risk assessments** for chemicals that are both hazardous substances and dangerous goods.”

### Situation in NSW

There is no legislative requirement in NSW to conduct separate risk assessments. OH&S Regulation 2001 Clause 9 requires the employer to identify hazards to employees and any other person legally at the workplace. It requires, in particular, that hazards arising from a long list, including:

- (c1) dangerous goods (including the storage or handling of dangerous goods), and
- (d) hazardous substances (including the production, handling, use, storage, transport or disposal of hazardous substances), and

Clause 10 then requires the employer to assess the risk of harm arising from any hazard identified and Clause 11 requires the employer to eliminate or control those risks.

Clauses 34 to 38 require controllers of work premises to identify hazards, assess risks, eliminate or control risks and provide information. Clause 35 provides:

- (3) A risk assessment may relate to more than one place of work or hazard so long as it takes account of the particular circumstances of each place of work or hazard.

While Clause 168, referring to hazardous substances, requires records to be kept and available to employees and Clause 51 provides particular risk control measures for atmospheric contaminants, which, as indicated in the note to Clause 161, may arise from the use of hazardous substances, there is no requirement to conduct a separate risk assessment for hazardous substances. Clause 167 specifically provides that a single register may be kept for both hazardous substances and dangerous goods.

In relation to an employer where dangerous goods are stored or handled at the place of work, Clause 174N, the employer is determined to be an “occupier” and in addition to duties as an employer for records to be kept and available to employees (Clauses 174ZQ, ZW and ZX) is required to consider hazards to public health and safety arising from the dangerous goods (Clause 174P(2)). In addition, Division 3 provides for particular risk control measures for dangerous goods. Again, there is no requirement to conduct a separate risk assessment for dangerous goods and Clause 174ZW(5) provides that a single register may be kept for both hazardous substances and dangerous goods.

### Comment

While it is true that, in general, different risk control measures apply to hazardous substances (e.g. limiting worker exposure) and to dangerous goods (e.g. separation), there is no requirement in NSW to conduct separate risk assessments. It is unlikely that separate risk assessments are mandated in other states. What is true is that the requirement for risk assessment of hazardous substances applied from an early date (by the 90s in most states) and for dangerous goods from a later date (when prescriptive regulations were replaced), and this may have resulted in a second assessment of many substances by some employers. However, this was a once off situation and no longer applies. The final report should reflect this.

## **“Reduced cost and increased compliance”**

### Draft report

From p 154: “Dual risk assessments increase costs to industry and regulators”  
“Regulations for the control of use of hazardous substances and dangerous goods require firms to assess and control the risks posed by the chemicals. If a chemical is both a hazardous substance and a dangerous good, firms have to carry out two separate risk assessments.”

[as indicated above, this is not the case]

From p159: “The ASCC concluded that eliminating the requirement for dual risk assessments would deliver savings to industry with a net present value of over \$174 million.

While this estimate was based on a number of assumptions, some of which have been queried by respondents to the ASCC, the Commission is satisfied that eliminating the need for dual risk assessments would deliver significant net savings to industry.”

[as indicated above, this is not the case]

From “Key points” p139: “Replacing the existing parallel systems of regulation for hazardous substances and dangerous goods with a single system of regulations for all workplace hazardous chemicals should reduce some of the costs to firms, and the simplification could increase compliance.”

### Cost reduction

Since the assumption of dual risk assessments is demonstrably incorrect, the savings to industry will be less than claimed (by a net present value of \$174 million) and the overall benefit of single regulation thus reduced.

### Comment - Workplace compliance

There is a concern that the combining of all requirements into one set of regulations will diminish the application of the specific control measures which apply to dangerous goods.

Control measures to reduce operator exposure, as required for hazardous substances, are quite different from the control measures for dangerous goods, such as those mitigating incident consequences related to inventory. While hazardous substance control measures can often be directly derived from a Safety Data Sheet (SDS), those for storing and handling dangerous goods often require the application of one or more standards and the consideration of inventories, distances, electrical equipment in hazardous areas etc. Unless the distinction is maintained, the likelihood of dangerous goods incidents will increase.

### Comment - Public safety

A dangerous goods incident is likely to have an effect outside the workplace (fire, explosion, toxic gas escape etc). This needs to be considered when hazards are identified and control measures determined. Currently, this is not covered in the emphasis on “workplace” chemicals in national standards and may not be covered in the current review of OH&S legislation (although it has been addressed in existing NSW OH&S legislation).

There is another issue associated with dangerous goods elsewhere than in workplaces. Since dangerous goods incidents can result in effects outside the premises, including death, injury and damage to property and environment, there must be controls on domestic and other storage of dangerous goods. For example, inventories must be limited to quantities unlikely to have serious off-site effects or else the “workplace” rules must apply. Combination of dangerous goods regulation with workplace hazardous substances must not reduce public safety.