

13 May 2022

NSW Environment Protection Authority
4 Parramatta Square
12 Darcy Street,
Parramatta NSW 2150
Via Email : dg.reform@epa.nsw.gov.au

GAS ENERGY AUSTRALIA RESPONSE: NSW ENVIRONMENT PROTECTION AGENCY – REGULATORY IMPACT STATEMENT – PROPOSED DANGEROUS GOODS (Road and Rail Transport) REGULATION 2022

Dear NSW Environment Protection Agency,

Gas Energy Australia (GEA) thanks the NSW Environment Protection Agency (EPA) for the opportunity to provide comments on the Regulatory Impact Statement (RIS) - Proposed Dangerous Goods (Road and Rail Transport) Regulation 2022.

GEA is the national peak body representing the downstream gas fuels industry, encompassing Liquefied Petroleum Gas (LPG), Liquefied Natural Gas (LNG), Compressed Natural Gas (CNG) and Hydrogen (H₂). The industry comprises major companies and small to medium businesses in the gaseous fuels supply chain, including refiners, fuel marketers, equipment manufacturers, gas transporters, consultants and service providers to the industry.

Our products traverse NSW every day and the NSW Dangerous Goods Regulation is one of a number of regulatory requirements our industry embraces to ensure the safe and efficient delivery of products using Australian roads. Any changes in regulation at a State level must be in lock step with other jurisdictions and national codes¹ and regulations² and be simple and easy to apply.

The NSW EPA RIS is presented in such a way that the proposed changes to the NSW Dangerous Goods Regulations are treated as a *fait accompli*. The RIS asks you to agree to all of the regulatory amendments and it then presents three regulatory options for discussion.

GEA does not agree with all of the changes proposed for inclusion in the NSW Dangerous Goods Regulations. Furthermore GEA is concerned that the three options presented in the RIS all have inherent weaknesses and **GEA does not support any of the options as they are outlined in the RIS document.**

Indeed, we recommend that Option 3 be edited to remove unnecessary duplication and we contend that NSW Police and Fire and Rescue can and should be upskilled on how to manage dangerous goods incidents and Safework NSW become the sole authority for approvals in NSW.

In May 2021, GEA noted in our response to the draft of the NSW EPA Regulatory Strategy that there was a '*string 'em up, it'll teach 'em a lesson*' approach at that time, which now appears to permeated

¹ https://www.ntc.gov.au/sites/default/files/assets/files/ADG%20Code%207.7_0.pdf

² <https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2012-hvnlg>

the strategy document. It appears that in remaking the regulation, virtually in its entirety, that the EPA is appointing itself as the new sheriff in town and the only authority capable of enforcing the law.

The RIS unnecessarily complicates regulation, adds additional cost where it is not needed, yet fails to include a detailed review of the current regulations' effectiveness, including comparisons with other jurisdictions.

GEA is dismayed that the key drafting principle of "simplification" is only done from an EPA perspective but would impose upon industry a more complex regime with multiple regulators having coverage of the same issues. The "mirroring" of laws and responsibilities proposed in the remake of the regulation, in fact, duplicates those already in existence, including under the in the Heavy Vehicle National Law, the Model Workplace Health and Safety Law and NSW Road rules. This adds greater complexity, not simplification.

Our members advise that it is becoming increasingly difficult to obtain quotes for insurance coverage for small and medium enterprises engaged in engineering and in support of dangerous goods. We are concerned that the imposition of additional tasks into the remake of the regulation will be a signal to insurers to significantly and unjustifiably increase premiums. This comes at a time when carbon neutral gases, such as green hydrogen and biomethane, will be key in meeting carbon reduction targets in NSW and, indeed, Australia-wide. This new regulatory approach could pose a potential new barrier to entry for participants in that objective.

GEA believes that the analysis in the RIS can be improved to make NSW the leader in dangerous goods regulation through comparisons with other jurisdictions, which need to be included so that lessons from incidents are learned and improvements are identified and adopted from other jurisdictions' experiences. It is worth noting that NSW has two representatives, and is the only jurisdiction where an EPA, is a member of the DG Competent Authorities panel.³ All other jurisdictions have a Transport or Worksafe representatives.

GEA strongly recommends that the RIS be recast to take into account the current regulations' effectiveness, including comparisons with lessons from other jurisdictions.

In relation to the proposed changes, GEA has the following comments which were identified in the RIS in comparison to the 2014 Regulation:

- ***require roll stability systems to be fitted, maintained and operational on heavy tank vehicles used to transport dangerous goods and create duties for owners, consignors, loaders, prime contractors and drivers***

GEA supports the requirement for roll stability and would recommend a national approach, rather than piecemeal jurisdictional regulations. This should be done nationally through the Australian Design Rules and the Heavy Vehicle National Law (HVNL). The duties, as outlined in the HVNL, would negate the need to create duties in the NSW Dangerous Goods Regulations.

³ <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/transport-australia/transport-dangerous-goods/competent-authorities-dangerous-goods>

- ***mirror the requirements in the NSW Road Rule 300-2 which specifies areas where drivers and prime contractors are prohibited from transporting placard loads of dangerous goods, subject to exemptions***

GEA does not support mirroring the requirements of the NSW Road Rule 300-2. Having the same rule in two regulations introduces the potential for double jeopardy. A driver could be prosecuted under the NSW Road Rule and also under the proposed NSW Dangerous Goods Regulations, and a prime contractor could be prosecuted under the WHS laws and the proposed NSW Dangerous Goods Regulations. While any breach should be pursued and remedied under law, it is unreasonable to penalise anyone multiple times for the same offence.

- ***clarify that in an incident resulting in a dangerous situation, a dangerous goods driver must notify the contractor and emergency services as soon as practicable. The prime contractor must notify the EPA as soon as practicable within one hour of becoming aware of the incident***

GEA does not support this amendment. The loose definitions attached to the regulations could be interpreted as almost anything requiring notification and, more importantly, it triggers two lead agencies in an emergency response incident/process, likely leading to confusion, delay and inefficiency at a time when clarity, timeliness and precision of effort is paramount.

It would be more beneficial and appropriate to upskill the Police and Fire and Rescue on how to manage dangerous goods that pose a risk to human health and the environment, rather than add another link in the chain.

- ***clarify who the EPA may authorise to approve packaging and tank designs, and create an offence for providing false or misleading information in relation to an application for approval of a dangerous goods tank design***

GEA recommends that the remake of the regulation embrace simplicity and nominate a single responsible body for NSW. As noted above, NSW has two representatives on the Dangerous Goods Competent Authorities Panel. We recommend that Safework NSW become the sole authority and be resourced to undertake this role. This would align with other jurisdictions and workplace health and safety laws.

- ***prescribe licence and other fees and provide for adjustment of fees for inflation in accordance with the Consumer Price Index from 2023–24***

GEA does not support automatic fee increases as a default position without the ability for review.

- ***require a person undertaking maintenance, testing or inspection of a licensed dangerous goods vehicle to ensure that such work is carried out in accordance with the ADG Code, and to provide the vehicle owner with an honest report of any non-compliance with the Code.***

GEA supports the intent of this amendment and we recommend that it be tabled by NSW for inclusion in the HVNL Review that is currently underway.

- ***make machinery changes and other changes in language and formatting to align as close as practicable with the Model Subordinate Instrument.***

GEA supports these changes.

Noting our comments to the proposed amendments as outlined above, GEA offers the following comments on the three options listed in the RIS:

- **Option 1: Allow the Regulation to be automatically repealed**

This option has some benefits as it would reduce regulatory overlap. It does, however, require the other regulators (Police, Transport and Worksafe) to review their regulations and fill in any regulatory or enforcement gap. This would need a staged approach. It is not a practical solution in the short-term, but the reduction in regulatory overlap and, subsequent, simplicity in compliance, is a compelling reason for consideration.

- **Option 2: Remaking the Regulation without change**

With the issues GEA has outlined above, both in the RIS and the proposed amendments in the remaking of the regulation, this option has merit as a temporary solution to allow a full and comprehensive review to take place. However, it does not address the immediate needs that were the impetus for the amendments in the first instance.

- **Option 3: Remaking the Regulation with amendments**

If the remaking of the regulation is constrained to the wording of the Public Consultation Draft Dangerous Goods (Road and Rail Transport) Regulation 2022 under the Dangerous Goods (Road and Rail Transport) Act 2008, it would increase complexity and unnecessary costs. We do not support this approach.

In summary, the three options listed in the RIS all have fundamental issues that will adversely impact our industry. GEA recommends that the Option 3 be edited to remove duplication, have Police and Fire and Rescue be upskilled on how to manage dangerous goods incidents and Safework NSW become the sole authority for approvals in NSW. Furthermore, that the RIS be recast to take into account the current regulations' effectiveness, including comparisons with other jurisdictions.

Kind regards,

A handwritten signature in black ink, appearing to read "Brett Heffernan".

Mr Brett Heffernan
Chief Executive Officer
Gas Energy Australia