

Dangerous Goods Act 1998

\_An Act to regulate the manufacture, transport and sale of dangerous goods, to regulate other activities in relation to such goods, to repeal the Dangerous Goods Act 1976 and for related purposes\_  
\_[Royal Assent 22 May 1998]\_

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

\_PART 1 - Preliminary\_

\_1. Short title\_

This Act may be cited as the \_Dangerous Goods Act 1998\_.

\_2. Commencement\_

This Act commences on a day to be proclaimed.

\_3. Interpretation\_

In this Act, unless the contrary intention appears -

\_"authorised officer"\_ means an authorised officer appointed under section 10;

\_"Competent Authority"\_ means the Competent Authority specified in section 9(1) or a Competent Authority appointed under section 9(2);

\_"contravene"\_ includes fail to comply;

\_"dangerous goods"\_ means -

\_(a)\_ a substance or article prescribed as dangerous goods; or

\_(b)\_ a substance or article determined by a Competent Authority in accordance with the regulations to be dangerous goods;

\_"dangerous situation"\_ means a situation, involving the handling of dangerous goods, that is causing or is likely to cause imminent risk of death or injury to a person or harm to the environment or to property;

\_"drive"\_ includes operate;

\_"equipment"\_ includes machinery;

\_"government authority"\_ means -

\_(a)\_ a Government department within the meaning of the \_State Service Act 2000\_ or a discrete administrative part of such a department; or

\_(b)\_ a State authority within the meaning of the \_State Service Act 2000\_ ; or

\_(c)\_ a council, or a joint authority within the meaning of the \_Local Government Act 1993\_ ; or

\_ (d) \_ a Competent Authority;

\_"handling"\_ includes -

\_ (a) \_ in the case of any dangerous goods - manufacturing, packing, marking, transporting, storing, selling, supplying and using those dangerous goods and any incidental activities; and

\_ (b) \_ in the case of dangerous goods in the form of a liquid or gas - discharging and pumping those dangerous goods and any incidental activities;

\_"hose assembly"\_ means a hose, or hoses connected together, for use in the transportation or transfer of dangerous goods and includes -

\_ (a) \_ if there are 2 or more hoses connected together - the connections between the hoses; and

\_ (b) \_ the attachment connecting the hose or hoses to a tank on a vehicle, bulk container or storage container; and

\_ (c) \_ anything else, except a vehicle, bulk container or storage container, attached to the hose or hoses;

\_"involvement in the handling of dangerous goods"\_ includes -

\_ (a) \_ importing, or arranging for the importation of, dangerous goods into Tasmania; and

\_ (b) \_ marking or placarding packages and unit loads containing dangerous goods for handling, and placarding containers and vehicles in which dangerous goods are handled; and

\_ (c) \_ consigning dangerous goods for transport; and

\_ (d) \_ loading dangerous goods onto a vehicle, or into a container that is to be put on a vehicle, for transport or unloading dangerous goods that have been transported; and

\_ (e) \_ undertaking, or being responsible for, otherwise than as an employee or subcontractor, the handling of dangerous goods; and

\_ (f) \_ driving a vehicle carrying dangerous goods; and

\_ (g) \_ being the consignee of transported dangerous goods; and

\_ (h) \_ being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity covered by this definition;

\_"manufacture"\_ includes refining, distilling, making, remaking, breaking-up, sorting-out and reconditioning;

\_"marking"\_ includes labelling;

\_"Ministerial Council"\_ means the Ministerial Council for Road Transport established by an agreement known as the Heavy Vehicles Agreement which was made on 30 July 1991 between the Commonwealth, the States and the Australian Capital Territory, a copy of which is

set out in Schedule 1 to the National Road Transport Commission Act 1991 of the Commonwealth;

"offence" means an offence against this Act;

"premises" includes a structure, whether permanent or temporary, and land, but does not include a vehicle;

"regulations" means regulations made and in force under this Act;

"store" includes keep and possess;

"transport", in relation to dangerous goods, includes -

(a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, premise or place, for the purpose of their transport by vehicle, pipeline or other means; and

(b) the marking or placarding of packages and unit loads containing the goods, and the placarding of containers and vehicles and pipelines in which the goods are transported; and

(c) other matters incidental to the transport of the goods;

"vehicle" includes any kind of -

(a) vessel; or

(b) aircraft; or

(c) vehicle built or adapted to move on rails; or

(d) motor vehicle, being a vehicle that is built to be propelled by a motor that forms part of the vehicle; or

(e) trailer, being a vehicle that is built or adapted to be towed by a motor vehicle.

#### 4. References to codes, &c.

A reference in this Act to a code, standard, guideline or rule includes a reference to a code, standard, guideline or rule that is made outside Australia.

#### 5. Scope of Act

This Act does not apply to dangerous goods that are in a container that is designed to form part of, and forms part of, the fuel or battery system of a vehicle's engine, auxiliary engine, fuel-burning appliance or other part of a vehicle's propulsion equipment.

#### 6. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

### PART 2 - Regulations

#### 7. Regulation-making powers and adoption of codes, &c.

- (1) The Governor may make regulations prescribing matters -
- (a) required or permitted to be prescribed by this Act; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision relating to the following:

- (a) types and categories of dangerous goods and methods for determining types and categories of dangerous goods;
- (b) the analysis and testing of dangerous goods and the taking of samples for that purpose;
- (c) goods too dangerous to be transported or too dangerous to be transported in bulk;
- (d) fees that are to be paid for things done under this Act;
- (e) the marking or placarding of packages and unit loads containing dangerous goods and the placarding of places, premises, containers and vehicles at or in which dangerous goods are handled;
- (f) containers and packaging and materials used in the handling of dangerous goods;
- (g) the manufacture of vehicles, pipelines, containers and other equipment used in the handling of dangerous goods;
- (h) the construction or modification of premises used for the storage or other handling of dangerous goods;
- (i) the accreditation of persons involved in the handling of dangerous goods or in the installation, repair or alteration of equipment used in the handling of dangerous goods;
- (j) the loading and unloading of dangerous goods;
- (k) the sale, supply and distribution of dangerous goods;
- (l) the sale, supply and installation of equipment used in the handling of dangerous goods;
- (m) the design, installation, alteration, repair and disposal of any equipment for containing, supplying or consuming dangerous goods;
- (n) the import and export of dangerous goods to and from Tasmania;
- (o) the establishment, maintenance and management of public magazines;
- (p) the determination of places at which, premises in which, routes along which, the areas in which and the times during which dangerous goods may or may not be handled;
- (q) procedures for the handling of dangerous goods including, but not limited to -

\_(i)\_ the quantities and circumstances in which dangerous goods, or particular types of dangerous goods, may be handled; and

\_(ii)\_ the disposal or abandonment of dangerous goods or of equipment used in the handling of dangerous goods; and

\_(iii)\_ safety information, procedures and equipment; and

\_(iv)\_ hazard identification and risk management; and

\_(v)\_ the preparation, implementation, testing and review of emergency management plans; and

\_(vi)\_ obligations arising, and procedures to be followed, in the event of a dangerous situation; and

\_(vii)\_ controls in relation to the stability or integrity of dangerous goods;

\_(r)\_ the licensing of -

\_(i)\_ persons for the purposes of the handling of dangerous goods; and

\_(ii)\_ premises, vehicles and equipment used in the handling of dangerous goods;

\_(s)\_ additives to dangerous goods;

\_(t)\_ the form of applications, notices, licences and other documents for the purposes of the regulations;

\_(u)\_ the approval of -

\_(i)\_ packages, containers, equipment and other items used in the handling of dangerous goods; and

\_(ii)\_ facilities for and methods of testing or using packages, containers, equipment and other items used, and processes carried out, in the handling of dangerous goods;

\_(v)\_ documents required to be prepared or kept by persons involved in the handling of dangerous goods and the approval of alternative documentation;

\_(w)\_ the training and qualifications required of -

\_(i)\_ authorised officers and other persons performing functions under this Act; and

\_(ii)\_ persons involved in, and the approval of training courses and qualifications relating to involvement in, the handling of dangerous goods;

\_(x)\_ the recognition of laws of other jurisdictions relating to the handling of dangerous goods and of things done under those laws, and the giving of effect to those things;

\_(y)\_ the reconsideration and review of decisions under this Act;

(z) infringement notices, and the documents and costs relating to infringement notices.

(3) The regulations may apply, adopt or incorporate all or any of the provisions of a code, standard, guideline or rule relating to dangerous goods or to the handling of dangerous goods and those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.

(4) The regulations may, by reference to such a code, standard, guideline or rule -

(a) prescribe a substance or article as being dangerous goods; or

(b) prescribe various types of dangerous goods, including goods that are too dangerous to be transported, and methods for deciding which dangerous goods fall into each type.

(5) The regulations may prescribe a law of another State, or of a Territory, that relates to the manufacture, transport or other handling of dangerous goods as being a corresponding law for the purposes of this Act.

(6) The regulations may -

(a) be of limited or general application; and

(b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and

(c) authorise any matter to be determined, applied or regulated by the Minister or a Competent Authority.

## 8. Penalties under the regulations

The regulations may create offences, and may provide for a maximum penalty, not exceeding 100 penalty units for an individual or 250 penalty units for a body corporate, for each offence.

## PART 3 - Competent authorities and authorised officers

### 9. Competent Authorities

(1) The Head of the State Service Agency in which this Act is administered is a Competent Authority for the purposes of this Act.

(2) The Minister may, by notice in the Gazette, appoint other Competent Authorities for the purposes of this Act.

(3) A Competent Authority -

(a) has power to do all of the things that it is authorised to do by this or any other Act; and

(b) has power to do all other things necessary or convenient to be done in connection with the exercise of the Competent Authority's powers; and

(c) may exercise all the powers and perform all the functions of an authorised officer.

\_ (4) \_ A Competent Authority, when exercising the powers or performing the functions of an authorised officer, has all the immunities of an authorised officer.

#### \_10. Appointment of authorised officers\_

\_ (1) \_ A Competent Authority may, by notice in the Gazette, appoint persons, or a class of persons, to be authorised officers.

\_ (2) \_ In appointing authorised officers, a Competent Authority may specify that the appointment is subject to conditions or restrictions relating to -

\_ (a) \_ the powers that are exercisable by those officers; or

\_ (b) \_ when, where and in what circumstances those officers may exercise powers.

\_ (3) \_ A State Service officer or State Service employee, with the approval of the Head of the State Service Agency in which the officer or employee is employed, may be appointed as an authorised officer and if so appointed -

\_ (a) \_ holds that office in conjunction with State Service employment; and

\_ (b) \_ duties performed by the officer or employee in his or her capacity as an authorised officer are taken to be part of the person's duties as a State Service officer or State Service employee.

\_ (4) \_ A police officer may, with the approval of the Commissioner of Police, be appointed as an authorised officer and if so appointed -

\_ (a) \_ holds that office in conjunction with his or her position as a police officer; and

\_ (b) \_ duties performed by the police officer in his or her capacity as an authorised officer are taken to be part of his or her duties as a police officer.

#### \_11. Identification cards\_

\_ (1) \_ A Competent Authority -

\_ (a) \_ must issue an identification card containing prescribed details to each authorised officer that it appoints who is not a police officer; and

\_ (b) \_ may issue an identification card containing prescribed details to each authorised officer that it appoints who is a police officer.

\_ (2) \_ An authorised officer who is not a police officer must -

\_ (a) \_ carry the officer's identification card while carrying out duties under this Act; and

\_ (b) \_ if it is practicable, produce the officer's identification

card before exercising a power of an authorised officer under this Act.

(3) A police officer who is exercising or about to exercise a power of an authorised officer under this Act must, if practicable, comply with a request to identify himself or herself by -

(a) producing the officer's police identification, or authorised officer identification card, if issued; or

(b) stating orally or in writing the officer's name, rank and place of duty, or the officer's identification number.

#### 12. Return of identification cards

(1) A person who has been issued with an identification card and who stops being an authorised officer must return his or her identification card to the appropriate Competent Authority as soon as practicable.

(2) A person must not contravene subsection (1) without reasonable excuse.

Penalty:

Fine not exceeding one penalty unit.

#### 13. Competent Authority may delegate powers

A Competent Authority may delegate any of the Competent Authority's powers under this Act or the regulations, other than the power of appointment under section 10 and this power of delegation, to an authorised officer.

#### 14. General powers of authorised officers

(1) An authorised officer may, to find out whether this Act is being complied with, enter and search premises if the authorised officer believes on reasonable grounds that he or she will find a thing that has been, is being or is likely to be used in the handling of dangerous goods but, if the premises are unattended or are a residence, the authorised officer may only enter if the occupier consents.

(2) An authorised officer may enter and search premises, whether attended or not and whether or not a residence, if he or she believes on reasonable grounds that a dangerous situation exists as a result of anything occurring at the premises in relation to the handling of dangerous goods.

(3) If an authorised officer believes on reasonable grounds that a vehicle has been, is being or is likely to be used in the handling of dangerous goods, the officer may, to find out whether this Act is being complied with -

(a) stop or detain the vehicle or cause the vehicle to be stopped or detained; and

(b) search the vehicle for dangerous goods or for documents, equipment or other things relating to the handling of dangerous goods.

\_ (4) \_ If an authorised officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in the handling of dangerous goods, the officer may, to find out whether this Act is being complied with, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.

\_ (5) \_ If the inspection is not to take place immediately, the direction is to be given by notice in writing specifying the time, date and location for the inspection.

\_ (6) \_ An authorised officer may carry out an inspection of the kind referred to in subsection (4) without notice if the authorised officer believes on reasonable grounds that a dangerous situation exists.

\_ (7) \_ An authorised officer may, to find out whether this Act is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) or another person capable of doing so to give samples of a substance for examination and testing if the authorised officer believes on reasonable grounds that the substance is dangerous goods, ingredients of dangerous goods or goods that have been handled together with dangerous goods.

\_ (8) \_ An authorised officer may, to find out whether this Act is being complied with, direct a person in charge or apparently in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) to produce documents.

\_ (9) \_ The authorised officer may make copies of the documents, or remove them to make copies, but if they are removed the authorised officer must -

\_ (a) \_ if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them; and

\_ (b) \_ give a receipt in a form approved by a Competent Authority.

\_ (10) \_ An authorised officer may, to find out whether this Act is being complied with, leave at premises written directions to the occupier requiring the occupier, within a specified time -

\_ (a) \_ to give samples of a substance the authorised officer believes on reasonable grounds to be dangerous goods, or ingredients of dangerous goods, for examination and testing; or

\_ (b) \_ to produce documents that may help the authorised officer.

\_ (11) \_ An authorised officer may, in order to find out whether this Act is being complied with, direct a person to answer questions that may help the authorised officer.

\_ (12) \_ An authorised officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorised officer under this section.

\_15. Authorised officer may require name and address\_

\_(1)\_ An authorised officer may require a person to state the person's name and address if the authorised officer believes on reasonable grounds that the person has been involved in the handling of dangerous goods.

\_(2)\_ When making the requirement, the authorised officer must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.

\_(3)\_ The authorised officer may require the person to give evidence of the correctness of the stated name or address if the authorised officer suspects on reasonable grounds that the stated name or address is false.

\_(4)\_ A person must comply with the authorised officer's requirement under subsection (1) or (3) unless the person has a reasonable excuse for not complying with it.

Penalty:

Fine not exceeding 5 penalty units.

#### \_16. Powers of authorised officer where offence suspected\_

\_(1)\_ This section applies if an authorised officer believes on reasonable grounds that he or she will find evidence of an offence at premises, including on a vehicle or equipment at the premises.

\_(2)\_ The authorised officer may enter the premises and may -

\_(a)\_ search for or test the evidence; and

\_(b)\_ do whatever is necessary to preserve the evidence, including placing a seal, lock or guard; and

\_(c)\_ seize the evidence.

\_(3)\_ The authorised officer may enter the premises and search for or test the evidence.

\_(4)\_ If the premises are unattended or are a residence, the authorised officer may only enter if the occupier consents.

\_(5)\_ The authorised officer may -

\_(a)\_ stop or detain the vehicle or cause the vehicle to be stopped or detained; or

\_(b)\_ search the vehicle or equipment; or

\_(c)\_ direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.

\_(6)\_ The authorised officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment or another person capable of doing so to give samples of a substance for examination and testing.

#### \_17. Authorised officer to restore premises or property to original

condition after inspection\_

\_(1)\_ After inspecting premises, a vehicle or equipment under section 14 or 16, the authorised officer must take reasonable steps to return the premises, vehicle or equipment to the condition they were in immediately before the inspection.

\_(2)\_ No action lies against an authorised officer, a Competent Authority or the Crown in respect of the failure by an authorised officer to comply with subsection (1).

\_18. Offence to fail to comply with a direction\_

A person must not -

\_(a)\_ without reasonable excuse, fail to comply with a direction given by an authorised officer in accordance with section 14 or 16; or

\_(b)\_ without reasonable excuse, obstruct an authorised officer or a person assisting an authorised officer in the exercise of power of the authorised officer; or

\_(c)\_ give to an authorised officer who is exercising such a power information that the person knows to be false or misleading in a material particular.

Penalty:

In the case of -

\_(a)\_ a body corporate - a fine not exceeding 500 penalty units; and

\_(b)\_ an individual - a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

\_19. Self-incrimination no excuse\_

A person is not excused from answering a question asked under section 14 on the ground that the answer to the question might tend to incriminate the person, but, except for a corporation -

\_(a)\_ the answer to the question; or

\_(b)\_ any information, document or thing obtained as a direct or indirect consequence of the answer to the question -

is not admissible in evidence against the person in proceedings other than proceedings for an offence against section 18.

\_20. Notice to remedy contravention\_

\_(1)\_ If an authorised officer believes on reasonable grounds that a person -

\_(a)\_ is contravening this Act; or

\_(b)\_ has contravened this Act in circumstances that make it likely that the contravention will be repeated -

the authorised officer may give the person a notice requiring the person to remedy the matters causing the contravention.

\_(2)\_ A notice under this section is to -

\_(a)\_ be in writing; and

\_(b)\_ state the name of the person to whom it is directed; and

\_(c)\_ state that the authorised officer believes that the person to whom the notice is directed -

\_(i)\_ is contravening a provision of this Act; or

\_(ii)\_ has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated; and

\_(d)\_ state the grounds on which the belief is based; and

\_(e)\_ specify the provision of this Act; and

\_(f)\_ specify a day by which the matters referred to in the notice must be remedied.

\_(3)\_ An authorised officer may include in a notice under this section directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of this Act.

\_(4)\_ A notice under this section that relates to a vehicle or equipment or premises may be given by placing it securely on the vehicle or equipment or premises in a conspicuous position.

\_(5)\_ A person must not -

\_(a)\_ contravene a notice under this section; or

\_(b)\_ remove a notice under this section from a vehicle or equipment or premises before the matters causing the contravention have been remedied, unless it is necessary to do so to remedy the matters.

Penalty:

In the case of -

\_(a)\_ a body corporate - a fine not exceeding 500 penalty units;  
and

\_(b)\_ an individual - a fine not exceeding 100 penalty units.

\_21. Notice to eliminate or minimise danger\_

\_(1)\_ If an authorised officer believes on reasonable grounds that -

\_(a)\_ a dangerous situation exists; and

\_(b)\_ a person is in a position to take measures to avert, eliminate or minimise the danger -

the authorised officer may issue a notice requiring the person to take

those measures.

\_(2)\_ The notice -

\_(a)\_ may be given orally or in writing in the case of imminent danger; or

\_(b)\_ is to be given in writing in any other case.

\_(3)\_ A notice under this section is to -

\_(a)\_ state the name of the person to whom it is directed; and

\_(b)\_ identify the situation that, in the authorised officer's opinion, is causing the danger; and

\_(c)\_ state the grounds on which the belief is based; and

\_(d)\_ specify the measures to be taken; and

\_(e)\_ specify a day by which the measures are to be taken.

\_(4)\_ A written notice under this section that relates to a vehicle or equipment or premises may be given by placing it securely on the vehicle or equipment or premises in a conspicuous position.

\_(5)\_ A person must not -

\_(a)\_ contravene a notice under this section; or

\_(b)\_ remove a written notice under this section from a vehicle or equipment or premises before measures have been taken to avert, eliminate or minimise the danger, unless it is necessary to do so to avert, eliminate or minimise the danger.

Penalty:

In the case of -

\_(a)\_ a body corporate - a fine not exceeding 500 penalty units; and

\_(b)\_ an individual - a fine not exceeding 100 penalty units.

\_22. Review of notices\_

A person to whom a notice under section 20 or 21 is directed may apply to the Competent Authority to reconsider the decision to issue the notice.

\_23. Taking direct action to prevent injury and damage\_

\_(1)\_ If -

\_(a)\_ an authorised officer believes on reasonable grounds that a dangerous situation exists; and

\_(b)\_ either -

\_(i)\_ a person to whom a notice under section 20 or 21 has been given has contravened the notice; or

(ii) giving such a notice to a person would not be appropriate to avert, eliminate or minimise the danger -

the authorised officer may take or cause to be taken any action he or she believes on reasonable grounds to be necessary to avert, eliminate or minimise the danger.

(2) The cost of taking the action is recoverable as a debt due to the Crown from -

(a) in a case to which subsection (1) (b) (i) applies - the person who contravened the notice; or

(b) in a case to which subsection (1) (b) (ii) applies - the person to whom a notice under section 20 or 21 might reasonably have been given had it been appropriate to do so to avert, eliminate or minimise the danger.

#### PART 4 - Exemptions

##### 24. Exemptions

(1) A person or a representative of a class of persons may apply to a Competent Authority for an exemption from compliance with a provision of the regulations in relation to the handling of particular dangerous goods.

(2) A Competent Authority may exempt the person or class of persons from compliance with the provision if the Competent Authority is satisfied that -

(a) it is not reasonably practicable for the person or persons to comply with the provision; and

(b) granting the exemption -

(i) would not be likely to create a risk of death or injury to a person, or harm to the environment or to property, greater than that which would be the case if the person or persons were required to comply; and

(ii) would not cause unnecessary administrative or enforcement difficulties, particularly with respect to maintaining national uniformity of laws relating to the handling of dangerous goods.

(3) An exemption may be subject to conditions.

(4) A Competent Authority that grants an exemption to one person must send a notice to the person stating -

(a) the provisions of the regulations that are the subject of the exemption; and

(b) the dangerous goods to which the exemption applies; and

(c) the period of time for which the exemption remains in force; and

(d) the conditions to which the exemption is subject; and

(e) the geographical area for which the exemption is valid.

(5) A Competent Authority that -

(a) grants an exemption to a class of persons; or

(b) grants an exemption that is to remain in force for longer than 6 months -

must place a notice in the Gazette specifying all the details in subsection (4) and the person or class of persons to which the exemption applies.

(6) A person who fails to comply with a condition to which an exemption is subject is guilty of an offence.

Penalty:

In the case of -

(a) a body corporate - a fine not exceeding 500 penalty units; and

(b) an individual - a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

(7) If an exemption is granted to one person, the person must keep a copy of the notice of exemption in the vehicle or premises to which it applies.

(8) If a Competent Authority -

(a) grants an exemption to a class of persons or an exemption that is to remain in force for longer than 6 months; and

(b) the exemption relates to the transport of dangerous goods by road -

the Competent Authority must give notification and details of the exemption to the Competent Authorities of each other State, and of each Territory, that have responsibilities relating to the transport of dangerous goods by road.

(9) An exemption granted by a Competent Authority under a corresponding law has the same force and effect for the purposes of this Act as an exemption granted under this section.

25. Variation and cancellation of exemptions and conditions

(1) A Competent Authority may cancel an exemption if -

(a) the Competent Authority is satisfied that a condition to which the exemption is subject has not been complied with; or

(b) the Competent Authority is no longer satisfied of the matters referred to in section 24(2).

(2) An exemption granted to a person is to be varied or cancelled by notice in writing given to the person, and the variation or cancellation takes effect from the day on which the notice is given, or from a later day specified in the notice.

\_(3)\_ An exemption granted to a class of persons is to be varied or cancelled by notice published in the Gazette and the variation or cancellation takes effect on the day of publication, or from a later day specified in the notice.

\_(4)\_ A Competent Authority may vary or cancel conditions to which the exemption is subject or impose new conditions.

#### 26. Review of exemptions, &c.

If a Competent Authority -

\_(a)\_ refuses to grant an exemption to a person or a class of persons; or

\_(b)\_ cancels an exemption granted to a person or a class of persons; or

\_(c)\_ varies or cancels conditions to which an exemption granted to a person or a class of persons is subject or imposes new conditions -

the person or a representative of the class of persons may apply to the Competent Authority for a review of the decision.

#### 27. Application orders and emergency orders

\_(1)\_ The Minister may order, by notice in the Gazette, that the operation of the regulations, or of specified parts of the regulations -

\_(a)\_ is suspended for a specified period; or

\_(b)\_ is varied in a manner specified by the Minister.

\_(2)\_ An order may have effect in relation to the whole State or to a specified area of the State.

\_(3)\_ If the suspension or variation relates to the transport of dangerous goods by road, the order is to be consistent with the provisions relating to application orders and emergency orders in the agreements scheduled to the National Road Transport Commission Act 1991 of the Commonwealth.

\_(4)\_ If the Ministerial Council terminates an emergency order made under this section, the Minister must publish notice of the termination in the Gazette.

### PART 5 - Offences, penalties, evidence and procedure

#### 28. Failure to be accredited

A person who is required by the regulations to be accredited to be involved in the handling of dangerous goods or a particular aspect of that handling must not be so involved without being so accredited.

Penalty:

In the case of -

\_(a)\_ a body corporate - a fine not exceeding 2 500 penalty units;  
and

\_(b)\_ an individual - a fine not exceeding 500 penalty units or  
imprisonment for a term not exceeding 2 years, or both.

\_29. Failure to hold licence, &c.\_

\_(1)\_ A person must not use a vehicle to transport dangerous  
goods, other than as the driver of the vehicle, if -

\_(a)\_ the regulations require the vehicle to be licensed to  
transport the goods; and

\_(b)\_ the vehicle is not licensed under the regulations.

Penalty:

In the case of -

\_(a)\_ a body corporate - a fine not exceeding 2 500 penalty units;  
and

\_(b)\_ an individual - a fine not exceeding 500 penalty units or  
imprisonment for a term not exceeding 2 years, or both.

\_(2)\_ A person must not employ, engage or permit another person  
to drive a vehicle transporting dangerous goods if that other person  
is required by the regulations to be licensed to drive the vehicle and  
is not so licensed.

Penalty:

In the case of -

\_(a)\_ a body corporate - a fine not exceeding 2 500 penalty units;  
and

\_(b)\_ an individual - a fine not exceeding 500 penalty units or  
imprisonment for a term not exceeding 2 years, or both.

\_(3)\_ A person must not drive a vehicle transporting dangerous  
goods if -

\_(a)\_ the regulations require the vehicle to be licensed to  
transport the goods; and

\_(b)\_ the vehicle is not licensed under the regulations.

Penalty:

Fine not exceeding 100 penalty units.

\_(4)\_ A person must not drive a vehicle transporting dangerous  
goods if -

\_(a)\_ the regulations require the person to be licensed to drive  
the vehicle; and

\_(b)\_ the person is not licensed under the regulations.

Penalty:

Fine not exceeding 100 penalty units.

30. Goods too dangerous to transport

A person must not transport goods that the regulations identify as being too dangerous to transport.

Penalty:

In the case of -

(a) a body corporate - a fine not exceeding 2 500 penalty units;  
and

(b) an individual - a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

31. Duties concerning the handling of dangerous goods

(1) A person involved in the handling of dangerous goods who fails to ensure, as far as is practicable, that the goods are handled in a safe manner is guilty of an offence.

Penalty:

In the case of -

(a) a body corporate - a fine not exceeding 5 000 penalty units if the failure results in death or serious injury to a person, or a fine not exceeding 2 500 penalty units in any other case; and

(b) an individual - a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 2 years, or both, if the failure results in death or serious injury to a person, or a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, in any other case.

(2) If a person involved in the handling of dangerous goods fails to comply with a provision of this Act in circumstances where the person knew, or ought reasonably to have known, that the failure would be likely to endanger the safety of another person or of property or the environment, the person is guilty of an offence.

Penalty:

In the case of -

(a) a body corporate - a fine not exceeding 5 000 penalty units if the failure results in death or serious injury to a person, or a fine not exceeding 2 500 penalty units in any other case; and

(b) an individual - a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 2 years, or both, if the failure results in death or serious injury to a person, or a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, in any other case.

32. Infringement notices

(1) The regulations may provide for a person to be served with an infringement notice requiring payment of a penalty for an offence, not exceeding the penalty that would otherwise apply, against the regulations as an alternative to prosecution in court for the offence.

(2) The regulations must specify -

(a) the offences to which the alternative applies; and

(b) the time within which the penalty must be paid.

(3) A Competent Authority may withdraw an infringement notice by serving a notice on the person on whom the infringement notice was served.

(4) If a person pays the fixed penalty and any prescribed costs, and the infringement notice is later withdrawn, the person is entitled to a refund of the penalty.

(5) If a person pays the fixed penalty and any prescribed costs within -

(a) the time specified in the infringement notice; or

(b) a longer period -

(i) specified in a reminder notice given to the person; or

(ii) allowed by the person who issued the notice -

and before a summons is served on the person in respect of the alleged offence -

a prosecution in court is not to be taken against the person for the offence and a conviction must not be recorded against the person for the offence.

(6) A prosecution in court may be taken or continued for the offence if -

(a) the person served with the infringement notice does not pay the fixed penalty and any prescribed costs within the period referred to in subsection (5); or

(b) the infringement notice is withdrawn.

### 33. Limitation period for offences

Proceedings for an offence against this Act may be commenced not later than 12 months after the date on which the offence is alleged to have been committed.

### 34. Proceedings for an offence

A prosecution for an offence may be brought by an authorised officer.

### 35. Evidence

(1) In a prosecution for an offence, if an authorised officer gives evidence that he or she believes any of the matters referred to in subsection (2), the court must accept the authorised officer's

evidence as prima facie evidence of that matter if -

(a) the court considers the belief to be reasonable; and

(b) there is no evidence to the contrary.

(2) The matters are -

(a) that dangerous goods described in shipping documents carried in a vehicle are being carried in the vehicle; or

(b) that particular goods are dangerous goods or dangerous goods of a particular type; or

(c) if markings or placards on or attached to a substance or container indicate that the substance is or the container contains particular dangerous goods, that the substance is or the container contains those dangerous goods; or

(d) if markings or placards on or attached to a vehicle or equipment indicate that the vehicle or equipment is being used to transport or otherwise handle dangerous goods, that the vehicle or equipment is being used to transport or otherwise handle those dangerous goods; or

(e) if markings or placards on, or attached to, a substance or container indicate, in relation to the substance, the container or the contents of the container, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture, that the substance, the container or the contents of the container has that capacity, tare weight, origin, character, specification, ownership or date of manufacture; or

(f) if markings or placards on, or attached to, a vehicle or container indicate, in relation to the load of the vehicle or the contents of the container, a particular quantity of dangerous goods, that the vehicle or container contained that quantity of dangerous goods; or

(g) that a person was not, at a particular time, accredited or the holder of a licence relating to dangerous goods.

(3) A court may admit into evidence -

(a) a copy of a document made under section 14(9) and certified by the authorised officer as being a true copy; or

(b) a photographic, mechanical or electronic recording made under section 14(12) and certified by the authorised officer as being a true recording.

(4) A court may admit the following documents as evidence if they appear to be signed by a Competent Authority or by a person exercising powers delegated by a Competent Authority for the relevant purpose:

(a) documents relating to whether a person is exempt from certain requirements under section 24;

(b) documents relating to premises, vehicles, equipment or other items required by the regulations to be approved by a Competent

Authority;

(c) documents relating to accreditation or licensing by a Competent Authority;

(d) documents relating to the analysis of goods or substances by or on behalf of a Competent Authority.

(5) The court must accept the documents as proof of the facts stated in them if there is no evidence to the contrary.

(6) All courts must take judicial notice of the signature of a Competent Authority on a document authorised or required to be signed for the purposes of this Act.

### 36. Codes of practice

(1) For the purpose of providing practical guidance to persons involved in the handling of dangerous goods, the Minister may approve a code of practice.

(2) A code of practice may -

(a) consist of any code, standard, guideline, rule or other document relating to dangerous goods formulated, prepared or adopted by a Competent Authority; and

(b) apply, incorporate or refer to the whole or any part of any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

(3) The Minister may approve any revision of a code of practice or revoke a code of practice.

(4) Before approving a code of practice or the revision or revocation of a code of practice, the Minister must -

(a) consult with such employer and employee organisations as the Minister considers appropriate having regard to the application of the code of practice; and

(b) by notice published in the Gazette and in 3 daily newspapers published and circulating in the State, give 30 days' notice of the Minister's intention to approve the code of practice or the revision or revocation of the code of practice.

(5) The Minister must give notice in the Gazette of -

(a) the approval of a code of practice; or

(b) the approval of the revision of the whole or part of a code of practice; or

(c) the revocation of a code of practice.

(6) A Competent Authority must cause to be made available for inspection by members of the public without charge during normal office hours a copy of -

(a) every approved code of practice; and

\_(b)\_ if an approved code of practice has been revised and the revision has been approved, the approved code of practice as so revised; and

\_(c)\_ if an approved code of practice applies, incorporates or refers to any other document, that other document.

\_(7)\_ The Minister may cause copies of an approved code of practice to be made available for purchase.

\_(8)\_ An approved code of practice and any approved version of a code of practice have effect on the day on which notice of the approval is published in the Gazette.

\_(9)\_ An approved code of practice ceases to have effect on the day on which notice of the revocation of the code is published in the Gazette.

\_(10)\_ A person is not liable to any civil or criminal proceedings merely because the person has failed to observe a provision of a code of practice approved under this section.

### 37. Use of codes of practice, &c., in proceedings

\_(1)\_ This section applies to a code of practice that is approved by the Minister under section 36.

\_(2)\_ If -

\_(a)\_ in proceedings against a person for an offence, it is alleged that a person contravened a provision of this Act; and

\_(b)\_ a code of practice to which this section applies specifies a means of complying with the provision or with a requirement of the provision; and

\_(c)\_ either -

\_(i)\_ the code of practice has been published in the Gazette; or

\_(ii)\_ notice of the approval of the code of practice has been published in the Gazette; or

\_(iii)\_ copies of the code of practice are available for purchase or inspection -

then -

\_(d)\_ the code of practice is admissible in the proceedings; and

\_(e)\_ if the court is satisfied that, at the relevant time, the person acted in accordance with the code of practice, the person is taken to have complied with the provision or requirement.

### 38. Conduct of company directors, employees or agents

\_(1)\_ In this section -

"director", of a body corporate, includes a constituent member of a body corporate incorporated for a public purpose by a law of the

Commonwealth or of a State or Territory;

"engaging in conduct" includes failing or refusing to engage in conduct;

"state of mind" of a person includes -

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(2) If, in proceedings for an offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show -

(a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the relevant state of mind.

(3) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(4) If, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show -

(a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the relevant state of mind.

(5) Conduct engaged in on behalf of a person other than a body corporate (in this subsection called "the employer") by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence, to have been engaged in also by the employer unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.

(6) If a body corporate commits an offence against this Act, a person who is a director, secretary or manager of the body corporate or who is otherwise concerned in the management of the body corporate is liable to be punished as an individual who has been found guilty of the offence unless the person satisfies the court that -

(a) the person did not know that the offence was committed; or

(b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or

(c) the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(7) Despite anything in this Act, a person is not liable to be punished by imprisonment for an offence if -

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (4), (5) and (6) had not been enacted.

(8) Proceedings for an offence against this Act may be brought against a director of a body corporate whether or not proceedings for the offence are brought against the body corporate.

#### PART 6 - Miscellaneous

##### 39. Recovery of costs from convicted person

(1) A court that convicts a person of an offence following action taken by an authorised officer under section 14 or 16 may, on application by or on behalf of the authorised officer, order that, in addition to any other penalty, the defendant must pay any costs that were reasonably incurred in taking that action and are directly related to the investigation of the offence.

(2) The costs referred to in subsection (1) include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

##### 40. Recovery of costs of government action

(1) This section applies to an incident that relates to the handling of dangerous goods, being an incident -

(a) wholly or partly constituted by or arising from -

(i) the escape of dangerous goods; or

(ii) an explosion or fire involving dangerous goods; or

(b) that involves the danger of the escape of dangerous goods or an explosion or fire involving dangerous goods.

(2) If a government authority incurs costs as a result of the occurrence of an incident to which this section applies, so much of the costs as were reasonably incurred are recoverable as a debt due to the Crown.

(3) The costs are recoverable jointly or severally from the following persons:

(a) the person who was the owner of the dangerous goods at the time of the incident;

(b) the person who was in control or possession of the dangerous goods at the time of the incident;

(c) the person who caused the incident;

(d) the person responsible, otherwise than as an employee, agent or subcontractor of another person, for the handling of the dangerous goods.

(4) Costs are not recoverable from a person who establishes that -

(a) the incident was due to the act or default of another person; and

(b) the person could not, exercising reasonable care, have prevented the incident; and

(c) the incident was not attributable to an employee, agent or subcontractor of the person.

(5) The recovery of costs incurred by one government authority as a result of the occurrence of an incident to which this section applies, including an award or judgment in relation to those costs or expenses, does not preclude the recovery of costs incurred by another government authority as a result of the occurrence of the incident.

(6) This section does not affect a right to recover an amount in respect of costs or expenses that exists apart from this section, but a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on other rights.

(7) In proceedings under this section, a document apparently signed by the head, chief executive officer or principal officer of the relevant government authority specifying details of the costs reasonably incurred as a result of the occurrence of an incident to which this section applies is, in the absence of evidence to the contrary, proof of the matter so specified.

41. Prohibiting a person from involvement in the handling of dangerous goods

(1) In sentencing a person for an offence, a court may, having regard to the matters referred to in subsection (2) and to such other matters as it thinks fit, and in addition to imposing any other penalty, order that the person be prohibited for a specified period from involvement in the handling of dangerous goods.

(2) The matters to which a court must have regard are -

(a) the person's record in the handling of dangerous goods; and

(b) any prior convictions of the person relating to dangerous goods; and

(c) the circumstances surrounding the commission of the offence for which the person is being sentenced.

(3) A person who contravenes an order under this section is guilty of an offence.

Penalty:

In the case of -

(a) a body corporate - a fine not exceeding 2 500 penalty units;  
and

(b) an individual - a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

#### 42. Forfeiture

(1) If -

(a) a person is convicted by a court of an offence in relation to dangerous goods; and

(b) the person owns the goods or the owner cannot be identified -  
the court may, in addition to imposing any other penalty, order the dangerous goods and their container to be forfeited to the Crown.

(2) Dangerous goods and containers forfeited to the Crown may be destroyed, sold or otherwise disposed of as directed by a Competent Authority.

(3) If a Competent Authority incurs costs as a result of effecting the destruction, sale or other disposal, so much of the costs as were reasonably incurred are recoverable as a debt due to the Crown.

#### 43. Delegation

The Minister may by instrument in writing delegate all or any of the Minister's powers under this Act or the regulations, other than powers under section 27, to a Competent Authority.

#### 44. Protection from liability

(1) An authorised officer does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties.

(2) A liability that would, apart from this section, attach to an authorised officer attaches instead to the relevant Competent Authority.

#### 45. Assistance in emergencies or accidents

(1) A person does not incur civil liability for an act done honestly and in good faith, and without any fee, charge or other reward, for the purpose of assisting or attempting to assist in a situation in which an emergency or accident involving dangerous goods occurs or is likely to occur.

(2) Subsection (1) does not apply to a person whose act or omission was wholly or partly the cause of the occurrence or likely occurrence.

(3) Subsection (1) applies to a government authority even though the authority requires payment for a service provided in connection with the occurrence or likely occurrence.

(4) This section does not apply to an authorised officer.

\_46. Minister to notify adoption of code, &c.\_

\_ (1) \_ If the regulations apply, adopt or incorporate provisions of a code, standard, guideline or rule, the Minister must, as soon as practicable after the regulations are made, publish in the Gazette a notice giving details of places where the code, standard, guideline or rule may be obtained or inspected.

\_ (2) \_ If -

\_ (a) \_ the regulations apply, adopt or incorporate provisions of a code, standard, guideline or rule as in force from time to time; and

\_ (b) \_ the code, standard, guideline or rule is amended or replaced -

the Minister must, as soon as practicable after the amendment or replacement, publish in the Gazette a notice stating that the code, standard, guideline or rule has been amended or replaced and giving details of places where the amended or replaced code, standard, guideline or rule may be obtained or inspected.

\_47. \_

The amendments effected by this section have been incorporated into the authorised version of the Fire Service Act 1979.

\_48. \_

The amendment effected by this section has been incorporated into the authorised version of the Dangerous Goods Act 1976.

\_49. Savings and transitional regulations\_

\_ (1) \_ In this section -

"commencement day" means the day proclaimed under section 2;

"repealed Act" means the Dangerous Goods Act 1976.

\_ (2) \_ The Governor may make regulations of a savings and transitional nature consequent on the enactment of this Act.

\_ (3) \_ The regulations may take effect on the commencement day or a later day.

\_ (4) \_ Without limiting the generality of subsection (2), the regulations may provide for -

\_ (a) \_ the termination or temporary continuation, with or without any modifications reasonably required for the purposes of this Act, of any licence, permit, approval, authority or other right or entitlement subsisting under the repealed Act immediately before the commencement day; and

\_ (b) \_ the termination or temporary continuation of any appointment made under section 5 of the repealed Act and subsisting immediately before the commencement day; and

\_ (c) \_ the exercise after the commencement day, in the interests of

public safety, of a power that was exercisable by a person under the repealed Act immediately before that day.

(5) The regulations may authorise any matter to be determined, applied or regulated by the Minister or a Competent Authority.

#### 50. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 -

(a) the administration of this Act is assigned to the Minister for Workplace Standards; and

(b) the Department responsible to the Minister for Workplace Standards in relation to the administration of this Act is the Workplace Standards Authority.

#### Table Of Amendments

Act Number and year	Date of commencement
Dangerous Goods Act 1998 No. 6 of 1998	1.1.1999
State Service (Consequential and Miscellaneous Amendments) Act 2000 No. 86 of 2000	1.5.2001
Police Service (Consequential Amendments) Act 2003 No. 76 of 2003	1.1.2004

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CURRENT VIEW: 1 Jan 2004 -

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VIEW THE SESSIONAL VERSION

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