

DANGEROUS GOODS ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 68, 1975.

An Act to consolidate and amend the law relating to explosives and other dangerous substances; to repeal the Explosives Act, 1905, the Inflammable Liquid Act, 1915, and certain other enactments; to amend the Maritime Services Act, 1935, the Pipelines Act, 1967, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 31st October, 1975.]

BE

Dangerous Goods.

BE it enacted by the Queen's Most Excellent Majesty, by No. 68, 1975
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows:—

PART I.**PRELIMINARY.**

1. This Act may be cited as the "Dangerous Goods Act, Short title. 1975".

2. (1) This section and section 1 shall commence on the Commence-
ment.
date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—ADMINISTRATION—ss. 6, 7.

PART III.—DANGEROUS GOODS—ss. 8–14.

DIVISION 1.—*Keeping*—ss. 8, 9.

DIVISION 2.—*Conveyance*—ss. 10–12.

DIVISION 3.—*General*—ss. 13, 14.

PART

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No. 68, 1975 **PART IV.—SPECIAL PROVISIONS RELATING TO EXPLOSIVES—ss. 15–26.**

DIVISION 1.—*Preliminary*—ss. 15, 16.

DIVISION 2.—*Import*—ss. 17, 18.

DIVISION 3.—*Manufacture*—ss. 19, 20.

DIVISION 4.—*Sale, supply and receipt*—ss. 21–25.

DIVISION 5.—*Possession*—s. 26.

PART V.—SUPPLEMENTARY—ss. 27–45.

DIVISION 1.—*Licences and permits*—ss. 27–30.

DIVISION 2.—*Inspectors*—ss. 31, 32.

DIVISION 3.—*Legal proceedings*—ss. 33–40.

DIVISION 4.—*Regulations*—s. 41.

DIVISION 5.—*Miscellaneous*—ss. 42–45.

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—AMENDMENT OF ACTS.

SCHEDULE 3.—TRANSITIONAL AND OTHER PROVISIONS.

Interpre-
tation.

4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Chief Inspector” means the person appointed under section 6 to hold office as Chief Inspector of Dangerous Goods and any person acting in that office;

“container” includes any receptacle and any covering;

“convey”,

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“convey”, in relation to dangerous goods, includes carry, No. 68, 1975
load, unload, transfer, transmit, pump or discharge
the goods;

“court” means a court of petty sessions constituted by
a stipendiary magistrate;

“dangerous goods” means any substance or article
prescribed as dangerous goods for the purposes of
this Act;

“director” has the meaning ascribed thereto by section 5
of the Companies Act, 1961;

“explosive” means any dangerous goods prescribed as an
explosive for the purposes of this Act;

“flash point”, in relation to any substance, means the
lowest temperature at which the substance, when
tested in a prescribed type of apparatus in a
prescribed manner, liberates a vapour at a rate
sufficient to produce an explosive mixture with the
air that is in immediate contact with the substance;

“inspector” means an inspector of dangerous goods
appointed under section 6 or the Chief Inspector;

“licence” means a licence under this Act;

“manufacture”, in relation to any explosive, includes the
blending together of any substances to make the
explosive, the breaking up of the explosive and the
re-making, altering or repairing of the explosive;

“permit” means a permit under this Act or the
regulations;

“pipeline”

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“pipeline” means any—

- (a) pipe; or
- (b) system of pipes,

less than 10 kilometres in length, other than a pipe or system of pipes constructed or required to be constructed under, or under an authority granted under, any Act other than this Act;

“premises” means any land, building or enclosed place, or part thereof, or any portable structure;

“regulations” means regulations made under this Act;

“safety cartridges” means cartridges for guns, rifles, pistols, revolvers or other small arms, the case of which can be extracted from the small arm after firing, and which are so enclosed as to prevent any explosion in one cartridge being communicated to other cartridges;

“sell” includes —

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) cause or suffer to be sold, bartered, exchanged, offered for sale or exposed for sale;
- (d) attempt to sell, barter, exchange, offer for sale or expose for sale; and

(e)

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(e) except in section 13—

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- (i) agree to sell, barter or exchange;
- (ii) send, forward or deliver for or on sale or for barter or exchange;
- (iii) have in possession for sale, barter or exchange;
- (iv) cause or suffer to be sent, forwarded or delivered for or on sale or for barter or exchange; and
- (v) attempt to forward or deliver for or on sale or for barter or exchange;

“substance” includes any gas, any liquid, any gas mixture and any liquid mixture;

“vehicle” includes an aircraft;

“vessel” means any kind of vessel used in navigation.

5. (1) Subject to subsections (2) and (3), where, by or under any other Act, any provision is made relating to dangerous goods, the provision so made shall be observed in addition to the provisions of this Act and the regulations, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.

(2) Subject to subsection (3), where, by or under any other Act, any provision is made relating to dangerous goods that is inconsistent with a provision of this Act or a regulation, the provision of this Act or the regulation shall prevail.

(3)

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No. 68, 1975 (3) Subsections (1) and (2) do not apply to, nor does this Act affect, a provision relating to dangerous goods made by or under the Navigation Act, 1901, the Mines Inspection Act, 1901, the Coal Mines Regulation Act, 1912, the Scaffolding and Lifts Act, 1912, or the Radioactive Substances Act, 1957.

PART II.

ADMINISTRATION.

Appoint-
ments.

6. The Governor may, under and subject to the Public Service Act, 1902, appoint and employ—

- (a) a Chief Inspector of Dangerous Goods;
- (b) inspectors of dangerous goods; and
- (c) such other officers and employees as may be necessary for the administration of this Act.

Annual
report.

7. The Chief Inspector shall annually furnish a report of the administration of this Act and the regulations to the Minister, which report shall be laid before both Houses of Parliament.

PART III.

DANGEROUS GOODS.

DIVISION 1.—*Keeping.*

Licensing of
premises.

8. (1) The Chief Inspector may issue licences for the keeping of dangerous goods in or on premises.

(2)

Dangerous Goods.

(2) The Chief Inspector shall not issue a licence under No. 68, 1975 this section unless it specifies—

- (a) the person to whom it is issued;
- (b) the dangerous goods or the class or classes of dangerous goods that may be kept; and
- (c) the premises in or on which the dangerous goods may be kept.

(3) While a licence under this section is in force, the premises specified in the licence are premises licensed under this section for the keeping of the dangerous goods or dangerous goods of the class or classes so specified.

9. (1) A person shall not keep dangerous goods except— ^{Keeping generally.}

- (a) in or on premises licensed under section 8 for the keeping of the dangerous goods;
- (b) in or on premises licensed under section 19 for the manufacture of explosives; or
- (c) in such quantities and in such manner and subject to such conditions as may be prescribed for the purposes of this section in relation to the goods.

(2) Subject to subsections (3) and (4), a person who keeps dangerous goods in contravention of subsection (1), the owner of the goods and the person occupying the place where the goods are so kept are each guilty of an offence and liable to a penalty—

- (a) if an individual—not exceeding \$1,000; or

(b)

Dangerous Goods.

No. 68, 1975 (b) if a corporation—not exceeding \$5,000,

and, in the case of a subsequent offence, if the offence continues, to a penalty not exceeding \$1,000 for each day the offence continues.

(3) An owner of dangerous goods or the occupier of the place where the goods were kept is not guilty of an offence under subsection (2) if he satisfies the court that the goods kept in contravention of subsection (1) were so kept without his knowledge.

(4) A person is not guilty of an offence under this section if he satisfies the court that, at the time the alleged offence occurred, the dangerous goods in respect of which the offence is alleged to have been committed were being conveyed in accordance with this Act and the regulations.

DIVISION 2.—Conveyance.

**Licensing of
vehicles and
vessels.** 10. (1) The Chief Inspector may issue licences authorising the carriage of dangerous goods.

(2) The Chief Inspector shall not issue a licence under this section unless it specifies—

- (a) the person to whom it is issued;
- (b) the dangerous goods or the class or classes of dangerous goods he is authorised to carry; and
- (c) the vehicle or vessel in or on which he is authorised to carry the dangerous goods.

(3)

Dangerous Goods.

(3) While a licence under this section is in force— No. 68, 1975

- (a) the person to whom it was issued or transferred;
- (b) any employee of that person acting in the course of his employment by that person; and
- (c) if that person is a corporation—any person acting in his capacity as a director of the corporation,

are authorised to carry the goods or goods of the class or classes specified in the licence in or on the vehicle or vessel so specified but only when they are carrying the goods in accordance with the terms and conditions, if any, of the licence.

11. A person shall not carry any dangerous goods prescribed for the purposes of this section in or on any vehicle or vessel unless he is authorised by section 10 (3) to carry the dangerous goods in or on the vehicle or vessel. Offence of unlicensed conveyance.

Penalty : \$1,000 or, if a corporation, \$5,000.

12. (1) A person conveying dangerous goods shall at all times take such precautions as are necessary to prevent access by persons, other than persons lawfully entitled to have access or engaged in the conveyance of the goods, to the goods. Conveyance generally.

Penalty : \$1,000 or, if a corporation, \$5,000.

(2)

Dangerous Goods.

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(2) Subject to any regulation relating to the venting of dangerous goods, a person shall not convey dangerous goods, or cause dangerous goods to be conveyed, unless any container and any vehicle or vessel in or on which the goods are conveyed are so constructed and maintained and the goods are so confined as to prevent, during the normal incidents of the conveyance, escape of the goods or any part of them.

Penalty : \$1,000 or, if a corporation, \$5,000.

(3) Subsections (1) and (2) do not affect any power to make a regulation for or with respect to the conveyance of dangerous goods.

DIVISION 3.—*General.*

Offence of
sale in
public
place.

13. (1) In this section, "public place" means any place, including any road, to which the public has its own right to resort.

(2) A person shall not sell dangerous goods in a public place.

Penalty : \$1,000 or, if a corporation, \$5,000.

Negligent
or careless
use, etc.

14. A person shall not abandon or negligently or carelessly prepare for use, pack, keep, convey or use any dangerous goods in such a manner or in such circumstances as—

(a) to endanger or be likely to endanger the life of any person;

(b) to cause or be likely to cause injury to any person;
or

(c)

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- (c) to damage or be likely to cause damage to any property not belonging to the firstmentioned person, other than property the owner of which has consented to its damage, proof of which shall lie on the firstmentioned person. No. 68, 1975

Penalty : \$1,000 or imprisonment for 12 months, or both.

PART IV.

SPECIAL PROVISIONS RELATING TO EXPLOSIVES.

DIVISION 1.—*Preliminary.*

15. In a Division of this Part, except Division 3 and this Division, "explosive" does not include any explosive prescribed as an explosive in respect of which the Division does not apply. Definition of "explosive".

16. (1) The Minister may, by order published in the Gazette, declare an explosive specified or described in the order to be an authorised explosive for the purposes of Division 2. Order declaring authorised explosives.

(2) An order under this section may describe an explosive by reference to—

- (a) a class or classes of explosives;
- (b) a quantity; or
- (c) circumstances in which, or other than in which, the explosive shall be an authorised explosive.

Import
licences and
permits.

17. (1) The Chief Inspector may issue licences authorising the importation of authorised explosives into the State.

(2) The Chief Inspector may issue permits authorising the importation into the State of explosives other than authorised explosives.

(3) The Chief Inspector shall not issue a licence or permit under this section unless it specifies—

- (a) the person authorised to import an explosive; and
- (b) the explosive or the class or classes of explosives that he is authorised to import.

(4) While a licence or permit under this section is in force—

- (a) the person to whom it was issued or transferred;
- (b) any employee of that person acting in the course of his employment by that person; and
- (c) if that person is a corporation—any person acting in his capacity as a director of the corporation,

are authorised to import the explosive or an explosive of the class or classes specified in the licence or permit but only when they import the explosive in accordance with the terms and conditions, if any, of the licence or permit, as the case may be.

Dangerous Goods.

18. A person shall not import an explosive into the State unless he is authorised by section 17 (4) to import the explosive.

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Offence of
unlicensed
importing.

Penalty : \$1,000 or, if a corporation, \$5,000.

DIVISION 3.—Manufacture.

19. (1) The Chief Inspector may issue licences authorising the manufacture of explosives in or on premises.

Manufactur-
ing licence.

(2) The Chief Inspector shall not issue a licence under this section unless it specifies—

- (a) the person to whom it is issued;
- (b) the explosive or the class or classes of explosives he is authorised to manufacture; and
- (c) the premises in or on which he is authorised to manufacture the explosive.

(3) While a licence under this section is in force—

- (a) the person to whom it was issued or transferred;
- (b) any employee of that person acting in the course of his employment by that person; and
- (c) if that person is a corporation—any person acting in his capacity as a director of the corporation,

are authorised to manufacture the explosive or an explosive of the class or classes specified in the licence in or on the premises so specified but only when they manufacture the explosive in accordance with the terms and conditions, if any, of the licence.

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No. 68, 1975 **20.** (1) Subject to subsection (2), a person shall not manufacture any explosive unless he is authorised by section 19 (3) to manufacture the explosive.

Offence of unlicensed manufacture.

Penalty : \$1,000 or, if a corporation, \$5,000, and, in any case, if the offence continues, \$1,000 for each day the offence continues.

(2) A person is not guilty of an offence under subsection (1) if he satisfies the court that the act alleged to have constituted the offence was—

- (a) the manufacture, at a Government or industrial laboratory or a laboratory of an educational institution and under the supervision of a qualified person, of a quantity of explosive not exceeding an amount reasonably necessary for the purpose of chemical experiment and not intended for practical use or sale;
- (b) the filling, in the prescribed manner, of safety cartridges that were not intended for sale;
- (c) the reconditioning of an explosive under the supervision of an inspector; or
- (d) the blending, at or near the place of use and in the prescribed manner, of the inexplusive components of an explosive.

DIVISION 4.—*Sale, supply and receipt.*

Sale licence.

21. (1) The Chief Inspector may issue licences authorising the sale of explosives.

(2)

Dangerous Goods.

(2) The Chief Inspector shall not issue a licence under No. 68, 1975 this section unless it specifies—

- (a) the person to whom it is issued ; and
- (b) the explosive or the class or classes of explosives he is authorised to sell.

22. While a licence under section 8, 17, 19 or 21 is in force— Authority to sell.

- (a) the person to whom it was issued or transferred ;
- (b) any employee of that person acting in the course of his employment by that person ; and
- (c) if that person is a corporation—any person acting in his capacity as a director of the corporation,

are authorised to sell any explosive or an explosive of any class or classes specified in the licence but only when they sell the explosive in accordance with the terms and conditions, if any, of the licence.

23. A person shall not sell any explosive unless he is authorised by section 22 to sell the explosive. Offence of unlicensed sale.

Penalty : \$1,000 or imprisonment for 12 months, or both, or, if a corporation, \$5,000.

24. (1) Subject to subsection (2), a person shall not sell or otherwise supply any explosive to a person who is under the age of 18 years. Supply to minors.

Penalty : \$200.

(2)

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(2) A person is not guilty of an offence under subsection (1) if he satisfies the court that he believed on reasonable grounds that the person in respect of whom the alleged offence was committed had attained the age of 18 years.

Receipt
to be
authorised.

25. (1) Subject to subsections (2) and (3), a person shall not—

(a) supply an explosive to another, unless at the time of supply the person to whom the explosive is supplied ;
or

(b) receive an explosive, knowing it to be an explosive, unless at the time of receipt he,

is authorised by or under the regulations to receive the explosive.

Penalty : \$1,000 or imprisonment for 12 months, or both.

(2) A person is not guilty of an offence under subsection (1) relating to the supply of an explosive if he satisfies the court that he believed on reasonable grounds that the person to whom he supplied the explosive was authorised by or under the regulations to receive the explosive.

(3) A person shall not be found guilty of an offence relating to the unauthorised receipt of an explosive under subsection (1) and of an offence of having the same explosive in his possession, control or custody under section 26 (1).

DIVISION 5.—*Possession.*

Possession
of
explosives.

26. (1) Subject to subsection (2) and section 25 (3), a person who has explosives in his possession, control or custody is guilty of an offence and liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding 12 months, or both, or, if a corporation, to a penalty not exceeding \$5,000.

(2)

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(2) A person is not guilty of an offence under sub-section (1) if he satisfies the court that—

- (a) he was authorised by or under the regulations to receive the explosives to which the alleged offence relates;
- (b) he received the explosives in any other lawful manner; or
- (c) he manufactured the explosives lawfully.

PART V.

SUPPLEMENTARY.

DIVISION 1.—*Licences and permits.*

27. (1) The Chief Inspector may, from time to time, renew or transfer a licence. Licences generally.

(2) The Chief Inspector shall refuse to issue, renew or transfer a licence in any case where he thinks the interests of public safety so require.

(3) A licence is subject to—

- (a) any term or condition prescribed for all licences or for a class of licences to which it belongs; and
- (b) any term or condition that the Chief Inspector thinks fit to impose and that is specified in the licence.

(4)

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No. 68, 1975 (4) A licence is in force for the period or periods specified in the licence, not exceeding 3 years from the date of issue or any renewal, unless it is sooner cancelled by the Chief Inspector under section 28 (3) or 32 (2).

Suspension and cancellation **28.** (1) Where the holder of a licence or permit is proceeded against for an offence against this Act or the regulations, or has failed to comply with a lawful direction or requirement of an inspector, the Chief Inspector may suspend the licence or permit until the proceeding has been disposed of or, as the case may be, until the direction or requirement has been complied with.

(2) A licence or permit shall be deemed not to be in force during any period of its suspension.

(3) The Chief Inspector may cancel a licence or permit if the holder of the licence or permit—

- (a) has been convicted of an offence against this Act or the regulations;
- (b) breaches a condition of the licence or permit; or
- (c) surrenders the licence or permit to the Chief Inspector.

Appeals. **29.** (1) A person who is aggrieved by—

- (a) a decision of the Chief Inspector relating to a licence; or
- (b) a decision of a person, other than the Minister, relating to a permit,

may appeal against the decision to the Minister.

(2)

(2) The Minister may decide—

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- (a) to refuse to grant the appeal;
- (b) to grant the appeal wholly or partly; or
- (c) that a licence or permit be issued subject to such terms and conditions specified in the licence or permit as could have been imposed by the person against whose decision the appeal is brought and as the Minister thinks fit.

(3) The decision of the Minister on an appeal under this section—

- (a) is final and binding on the person against whose decision the appeal is brought and the appellant; and
- (b) shall be carried into effect.

(4) Where the regulations prescribe—

- (a) the manner in which an appeal is to be made under this section—the appeal shall be made in that manner; or
- (b) the period within which an appeal is to be made under this section—the appeal shall be made within that period.

(5) Where—

- (a) the Chief Inspector fails to grant an application for the issue, renewal or transfer of a licence; or

(b)

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- (b) any person empowered by or under this Act to issue a permit fails to grant an application for the issue of a permit,

he shall be deemed to have refused to grant the application upon the expiration of—

- (c) subject to paragraph (d)—one month after the application was received by the Chief Inspector or person, as the case may be; or
- (d) where the regulations prescribe some other period—that other period.

Offences
relating to
licences
and
permits.

30. (1) A person shall not, in an application for a licence or permit, make a statement that is false or misleading in a material particular.

(2) A person shall not, without reasonable excuse, have in his possession a licence or permit.

(3) A person shall not, with intent to deceive, forge or alter a licence or permit.

(4) The person to whom a licence or permit is issued or transferred shall not lend the licence or permit, or allow it to be used by any other person for any purpose for which it was issued or transferred.

Penalty : \$200 or imprisonment for 3 months, or both.

DIVISION

*Dangerous Goods.***DIVISION 2.—Inspectors.**

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31. (1) An inspector may at any time—Powers of
inspectors.

- (a) subject to subsection (2), enter and examine any place, vehicle or vessel, or examine any fixture or fitting in or on which he suspects on reasonable grounds that dangerous goods may be found;
- (b) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance or article that he suspects on reasonable grounds to be dangerous goods or an ingredient thereof or that is dangerous goods and in exercising his powers under this paragraph, open any container or cause any container to be opened;
- (c) subject to subsection (3), seize, remove or detain any substance or article that he suspects on reasonable grounds to be dangerous goods and any container, vehicle or vessel in or on which the substance or article is being kept or conveyed, if he suspects on reasonable grounds that there has been a contravention of this Act or the regulations in respect of the substance or article;
- (d) for the purposes of paragraph (c), direct the occupier of any place where the substance or article is seized, or the owner of the substance or article, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the inspector, least endanger public safety;
- (e) give directions for or with respect to the detention of any substance, article, container, vehicle or vessel that has been detained under paragraph (c);

(f)

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- (f) give to the occupier or licensee of any premises licensed under this Act directions in relation to the keeping of dangerous goods on the premises or instructions in writing to the licensee in relation to the premises;
- (g) with the consent of the Minister, and at the cost of the owner or person in possession of the dangerous goods, destroy or render harmless or give directions for the destruction or rendering harmless of, any dangerous goods if—
 - (i) he believes on reasonable grounds that it is necessary in the public interest or for the safety of any person so to do; or
 - (ii) the owner of the goods authorises him in writing so to do;
- (h) exercise the power conferred on him by paragraph (g) without the consent of the Minister where imminent danger to the public or any person exists;
- (i) make inquiries and require persons to answer questions relating to the observance of this Act and the regulations;
- (j) where loss of life, injury to a person, damage to any property or danger to the public occurs involving dangerous goods, make any inquiry he thinks necessary and for that purpose enter any place;
- (k) require the production of any licence or permit or any book, record or writing required by the regulations to be held or kept and inspect, examine and take copies of or extracts from it;
- (l) exercise such other powers as may be necessary for carrying out the provisions of this Act and the regulations.

(2)

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(2) Unless an inspector believes on reasonable grounds that imminent danger to the public or to any person exists, he shall not enter a dwelling house pursuant to the power granted him under subsection (1) (a) except under the authority of a search warrant issued under section 42. No. 68, 1975

(3) An inspector is not empowered—

(a) under subsection (1) (b)—to take samples of substances or articles; or

(b) under subsection (1) (c)—to remove any substances, articles, containers, vehicles or vessels,

that appear to the inspector to be in the custody of a person unless the inspector makes out and tenders to the person a receipt in or to the effect of the prescribed form.

(4) Where any dispute arises in relation to an amount payable by reason of an inspector destroying or rendering harmless dangerous goods under subsection (1) (g) a court may, on the application of the Minister made in the prescribed manner, assess the amount payable, which amount may then be recovered with costs by proceedings brought in the name of the Minister for the recovery of the amount as a debt due to the Crown in a court or in the Supreme Court.

(5) A complaint made in pursuance of subsection (4) may only be made within 12 months from the time the amount was assessed.

(6)

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(6) Where, under subsection (1) (i), an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under section 32 in respect of a wilfully false or misleading answer to the question.

(7) Subsection (6) applies whether the person required to answer a question objects to answering it or not.

Obstruction
of inspector,
etc.

32. (1) A person shall not—

- (a) refuse or fail to admit an inspector in the exercise of his authority under section 31 or under the authority of a search warrant issued under section 42;
- (b) wilfully obstruct or delay an inspector in the exercise of any power under section 31;
- (c) fail to comply with any reasonable direction or requirement of an inspector under section 31;
- (d) prevent, or attempt to prevent, a person from appearing before, or complying with a direction or requirement of, an inspector under section 31; or
- (e) wilfully give a false or misleading answer in purported compliance with a requirement of an inspector under section 31 (1) (i).

Penalty : \$1,000.

(2)

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(2) If the licensee of any premises licensed under this Act fails to comply with any instruction in writing given by an inspector under section 31 (1) (f) within the period specified by the inspector in the instruction, the Chief Inspector may cancel the licence relating to the premises. No. 68, 1975

DIVISION 3.—*Legal proceedings.*

33. (1) Proceedings for an offence against this Act or the regulations may— Proceedings
for
offences.

- (a) be taken and prosecuted by any person acting with the authority of the Minister; and
- (b) be disposed of summarily before a court of petty sessions.

(2) In proceedings for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority of the Minister without proof of the Minister's signature.

(3) Any such proceedings may only be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

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No. 68, 1975 **34.** A person who is a director or an employee of a corporation which offends against this Act or the regulations is guilty of the same offence, and liable to be punished as an individual guilty of that offence, unless he satisfies the court that—

Offences
by
corporations.

- (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

Third
party
procedure.

35. (1) A person against whom proceedings are brought for a contravention of the provisions of this Act or the regulations is, upon information laid by him and on giving to the prosecution not less than 3 days' notice of his intention, entitled to have any other person to whose act or default he alleges that the contravention was due brought before the court in the proceedings.

(2) If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he used all due diligence to ensure that the provisions in question were complied with, the information against him for the offence shall be dismissed.

(3)

Dangerous Goods.

(3) Where a defendant seeks to avail himself of the No. 68, 1975 provisions of subsection (2)—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, has the right to cross-examine the defendant if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and
- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to those proceedings.

36. (1) Where any person, as the employee of another person, who is in this section referred to as “the employer”, contravenes this Act or the regulations, the employer is guilty of an offence against this Act or the regulations, as the case may be. Liability of employers.

(2) The employer is not guilty of an offence arising under subsection (1) if he satisfies the court that—

- (a) he did not authorise or permit the contravention by the employee; and
- (b) he used all due diligence to prevent such a contravention.

(3) The employer may be proceeded against and convicted pursuant to subsection (1) whether or not the employee has been proceeded against or been convicted under this Act.

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(4) Nothing in subsection (1) prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act or the regulations is actually committed.

Retention and disposal of seized property.

37. (1) In this section, "prescribed period", in relation to any dangerous goods or containers seized under section 31 (1) (c), means the period of 6 months commencing from the time of seizure of the goods or containers or any other period fixed by a court in relation to the goods or containers upon application by the Minister in the prescribed manner.

(2) The Minister may, during the prescribed period—

- (a) retain any dangerous goods or containers seized under section 31 (1) (c); or
- (b) at any time that the goods or containers have not been forfeited to the Crown under section 38 (1), return the goods or containers to the person from whom they were seized.

(3) If any dangerous goods or containers seized under section 31 (1) (c) have not been forfeited to the Crown under section 38 (1) within the prescribed period, the Minister shall, at the expiration of that period—

- (a) return the goods or containers to the person from whom they were seized or, if a court finds that person not to be the owner, to the person who appears to the Minister to be their owner; or
- (b) cause a notice to be advertised in the prescribed manner stating that the Minister intends to apply to a court under section 38 (2) for an order for forfeiture of the goods or containers.

38.

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38. (1) Where a person is convicted of an offence against this Act or the regulations, the court may order forfeiture of— No. 68, 1975
Forfeiture.

- (a) all or any part of the dangerous goods in respect of which the offence was committed; or
- (b) any containers of those dangerous goods,

if the court finds them to be the property of the person so convicted, and the goods or containers shall upon the making of the order be deemed to be forfeited to the Crown.

(2) On application by the Minister in the prescribed manner, a court may order forfeiture to the Crown of any dangerous goods or containers—

- (a) that have been seized by an inspector under section 31 (1) (c); and
- (b) in respect of which a notice has been advertised under section 37 (3) (b),

and the goods or containers shall upon the making of the order be deemed to be forfeited to the Crown.

39. (1) Any dangerous goods or containers forfeited to the Crown shall be disposed of as the Minister directs. Disposal
of for-
feited
property.

(2) Where dangerous goods or containers are disposed of under subsection (1) by way of sale, the proceeds shall be paid into the Treasury and be carried to the Consolidated Revenue Fund.

40.

Dangerous Goods.

No. 68, 1975 **40.** (1) An allegation in an information in respect of an offence against this Act or the regulations that any substance or article in relation to which the offence is alleged to have been committed is dangerous goods or an explosive within the meaning of this Act, or a member of a class of dangerous goods, shall be accepted by the court as evidence of the truth of the allegation, unless the contrary is proved.

Evidence.

(2) In proceedings for an offence against this Act or the regulations—

(a) a certificate purporting to be signed by a prescribed officer and to certify—

(i) that a licence or permit of the description specified in the certificate has, or has not, been issued or transferred pursuant to this Act or the regulations to any person so specified, and, in the case of a licence or permit that has been so issued or transferred, the date of issue or transfer of the licence or permit, any terms, conditions and other particulars contained in the licence or permit and any date or period on, or during, which the licence was, or was not, in force; or

(ii) that a person specified in the certificate was an inspector on any date, or during any period, specified in the certificate,

shall be evidence of the facts so certified;

(b) a printed document that is or purports to be a standard, rule, code or specification of a body referred to in section 41 (3) (e) (i) and that has been or purports to have been published or issued by or on behalf of that body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule, code or specification; and

(c)

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- (c) evidence that a container was marked at any time **No. 68, 1975** in a manner prescribed in relation to a class of dangerous goods is also evidence that dangerous goods of that class were in the container at that time, unless the contrary is proved.

DIVISION 4.—*Regulations.*

41. (1) The Governor may make regulations, not **Regulations.** inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the issue, renewal, transfer, suspension, cancellation, duration and terms of permits, whether under this Act or the regulations, and licences, the fees payable therefor and the conditions subject to which they are issued;
- (b) the import or export of dangerous goods into or from the State;
- (c) the preparation for use, packing, keeping, conveying, manufacture, use, sale, abandonment, disposal, destruction and rendering harmless of dangerous goods and containers which are intended for use, are being used or have been used in connection with dangerous goods;
- (d) the design, construction, cleanliness, venting, ventilation, marking and maintenance of vehicles, vessels, containers, pipelines and any other equipment or things which are intended for use, are being used or have been used in connection with dangerous goods;

(e)

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- (e) the siting, design, construction, ventilation, illumination, fittings, fixtures and management of premises intended for use or used in connection with dangerous goods;
- (f) regulating or prohibiting smoking, the lighting or use of fire and any other dangerous, or potentially dangerous, prescribed activities in the vicinity of dangerous goods and on or in, or in the vicinity of, premises, vehicles, vessels, containers or pipelines used or that have been used in connection with dangerous goods;
- (g) prescribing the procedures to be followed in respect of any premises licensed under this Act that cease to be so licensed and the persons by whom those procedures are to be followed;
- (h) the provision, maintenance, testing and use of safety and first aid facilities, including fire-fighting equipment, in any premises licensed under this Act, in a vehicle or vessel used for the conveyance of dangerous goods and in prescribed circumstances involving a risk of injury or damage arising from dangerous goods;
- (i) prescribing the procedures to be followed in the event of an escape or a spillage of dangerous goods;
- (j) applications to have an explosive declared to be an authorised explosive under section 16 and fees payable in connection therewith;
- (k) the inspection, examination and testing of dangerous goods and equipment intended for use or used in connection therewith, and the fees payable therefor;
- (l) the driving of vehicles and the navigation and mooring of vessels conveying dangerous goods; and

(m)

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-
- (m) the making, keeping, production and inspection of records relating to dangerous goods and the furnishing of returns and other information relating thereto. **No. 68, 1975**

(2) The power of the Governor under subsection (1) may be exercised notwithstanding the provisions of any Act other than this Act, the Navigation Act, 1901, the Mines Inspection Act, 1901, the Coal Mines Regulation Act, 1912, the Scaffolding and Lifts Act, 1912, and the Radioactive Substances Act, 1957.

(3) A regulation may—

- (a) apply differently according to such factors as may be specified in the regulation;
- (b) provide that any act or thing shall be done or be in accordance wholly or partly with the approval or to the satisfaction of a prescribed person or a person of a prescribed class of persons;
- (c) confer upon a prescribed person, or class of persons, a discretionary authority;
- (d) confer on a prescribed person, or class of persons, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements;
- (e) adopt wholly or partly or by reference—
 - (i) any of the standards, rules, codes or specifications specified in the regulation that have been recommended or adopted by the American Petroleum Institute, the British Standards Institution, the Institute of Petroleum or the Standards Association of Australia (whether published before or after the commencement of this section); or

(ii)

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- (ii) any standards, rules, codes or specifications approved by the Minister and published in the Gazette (whether published before or after the commencement of this section),

relating to the matter with which the regulation deals together with any additions or amendments thereto (whether made or published before or after the commencement of this section) that are so specified;

- (f) exempt persons, or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemption from provisions of the regulations by a prescribed person, or class of persons, or both; and
- (g) impose a penalty not exceeding \$500 for any breach of a regulation or of a term or condition of a licence or permit and in addition, where the breach continues, a penalty not exceeding \$100 for every day the breach continues.

(4) Where a reference to a temperature reading in any standard, rule, code or specification adopted pursuant to subsection (3) is a reference to a temperature reading expressed in terms or in a manner used in connection with the Fahrenheit scale, that reading shall, unless the context or subject-matter is such that it would be inappropriate or the contrary intention appears, be construed as a reference to a reading in terms or in a manner used in connection with the Celsius scale that is—

- (a) its equivalent; or
- (b) where its equivalent is not a whole number, the next higher whole number to its equivalent.

(5)

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(5) A regulation that prescribes dangerous goods or explosives may describe the goods or explosives, as the case may be, by reference to—

- (a) a class or classes of substances, articles, dangerous goods or explosives;
- (b) a quantity; or
- (c) circumstances in which, or other than in which, substances, articles, dangerous goods or explosives shall be prescribed, or prescribed as, dangerous goods or explosives.

(6) A regulation that prescribes dangerous goods may describe the goods by reference to a flash point.

DIVISION 5.—Miscellaneous.

42. Upon a complaint made on oath by an inspector that the inspector suspects on reasonable grounds that a breach of this Act or the regulations has been or is being committed, or that preparation has been or is being made to commit such a breach, within any dwelling house, a justice of the peace may issue a search warrant authorising an inspector named in the warrant together with a member of the police force at any time or times within 14 days from the date of issue of the warrant to enter, if need be by the use of reasonable force, the dwelling house named in the warrant, and to search the dwelling house and any fixtures or fittings therein.

43.

Dangerous Goods.

No. 68, 1975 43. (1) Where—

Arrest
without
warrant.

- (a) an inspector or a member of the police force has called upon any person to comply with any provision of this Act or the regulations;
- (b) the person fails to comply with the provision; and
- (c) the inspector or member believes on reasonable grounds that grave danger to the public or to any person or property exists,

the inspector or a member of the police force may arrest the person without warrant.

(2) A person arrested under subsection (1) shall be removed from the place at which he was arrested and brought as soon as conveniently may be before a court of summary jurisdiction.

Disclosure
of
information.

44. (1) Except as provided by subsection (2), a person shall not disclose any information or publish any document or part of a document obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

- (a) with the consent of the person from whom the information or document was obtained;
- (b) in connection with the administration or execution of this Act or the regulations; or
- (c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : \$500.

(2) The Chief Inspector may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions

under

Dangerous Goods.

under this Act or the regulations to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to dangerous goods or explosives. No. 68, 1975

45. (1) Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed. Repeals, amendments and transitional provisions.

(2) Each Act specified in Column 1 of Schedule 2 is amended in the manner specified opposite that Act in Column 2 of Schedule 2.

(3) Schedule 3 has effect.

SCHEDULE 1.

Sec. 45 (1).

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1905, No. 41	Explosives Act, 1905	The whole Act.
1915, No. 15	Inflammable Liquid Act, 1915	The whole Act.
1931, No. 3	Inflammable Liquid (Amendment) Act, 1931.	The whole Act.
1937, No. 35	Statute Law Revision Act, 1937	So much of the Second Schedule as amends Acts No. 41, 1905, No. 15, 1915, and No. 3, 1931.
1946, No. 25	Inflammable Liquid (Amendment) Act, 1946.	The whole Act.
1952, No. 6	Inflammable Liquid (Amendment) Act, 1952.	The whole Act.
1953, No. 37	Inflammable Liquid (Amendment) Act, 1953.	The whole Act.
1968, No. 35	Explosives (Amendment) Act, 1968	The whole Act.
1969, No. 19	Explosives (Amendment) Act, 1969	The whole Act.
1973, No. 53	Inflammable Liquid (Amendment) Act, 1973.	The whole Act.
1974, No. 77	Explosives (Amendment) Act, 1974 Miscellaneous Acts (Administrative Changes) Amendment Act, 1975.	The whole Act. Section 12.

SCHEDULE

Dangerous Goods.

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SCHEDULE 2.

Sec. 45 (2).

AMENDMENT OF ACTS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
1919, No. 41	Local Government Act, 1919.	Section 10 (1)— Omit "the Explosives Act, 1905; the Inflammable Liquid Act, 1915", insert instead "the Dangerous Goods Act, 1975".
1935, No. 47	Maritime Services Act, 1935.	Section 38 (3) (d) (j)— Omit "inflammable liquid, or dangerous goods," insert instead "dangerous goods". Section 38 (4)— Omit the definitions of "dangerous goods" and "inflammable liquid", insert instead the following definition:— "dangerous goods" has the meaning ascribed thereto in section 4 of the Dangerous Goods Act, 1975.
1962, No. 43	Factories, Shops and Industries Act, 1962.	Section 73 (1) (c)— Omit "Inflammable Liquid Act, 1915", insert instead "Dangerous Goods Act, 1975".
1967, No. 90	Pipelines Act, 1967.	Section 5 (1) (a)— Omit "Inflammable Liquid Act, 1915", insert instead "Dangerous Goods Act, 1975". Section 5 (1) (e)— Omit "inflammable liquid or dangerous goods, within the meaning of the Inflammable Liquid Act, 1915", insert instead "dangerous goods within the meaning of the Dangerous Goods Act, 1975".
1969, No. 28	Consumer Protection Act, 1969.	Section 4 (2)— Omit "Explosives Act, 1905, Inflammable Liquids Act, 1915", insert instead "Dangerous Goods Act, 1975".
1973, No. 38	Firearms and Dangerous Weapons Act, 1973.	Section 6 (1)— From the definition of "explosive" omit "Explosives Act, 1905", insert instead "Dangerous Goods Act, 1975".

SCHEDULE

Dangerous Goods.

SCHEDULE 3.

No. 68, 1975

TRANSITIONAL AND OTHER PROVISIONS.

Sec. 45 (3).

1. On the commencement of this Schedule—

Certain
officers
deemed
appointed.

- (a) the person appointed under section 21 of the Inflammable Liquid Act, 1915, who held office as chief inspector, within the meaning of that Act, immediately before that commencement shall be deemed to have been appointed under section 6 as Chief Inspector of Dangerous Goods; and

(b) any person appointed—

- (i) under section 38 of the Explosives Act, 1905; or
(ii) under section 21 of the Inflammable Liquid Act, 1915,

who held office as an inspector, within the meaning of either of those Acts, immediately before that commencement shall be deemed to have been appointed under section 6 as an inspector.

2. Where any license or permit lawfully issued under a provision of the Explosives Act, 1905, or the Inflammable Liquid Act, 1915, was in force immediately before the commencement of this Schedule and would have, but for that commencement, continued in force for a period of time, the license or permit, as the case may be, shall be deemed to be, on and from that commencement, but for no longer period than that period of time, a licence or permit issued under the corresponding provision of this Act or the regulations.

Saving of
certain
licenses
and permits.

3. Where the Explosives Act, 1905, or the Inflammable Liquid Act, 1915, or an instrument made under either of those Acts or any provision thereof is referred to in any other Act or any instrument made under any other Act, the reference extends to this Act, to any corresponding instrument made under this Act or to any corresponding provision of this Act or of an instrument made under this Act.

References
to repealed
Acts.

MINE