



New South Wales

# Dangerous Goods (Road and Rail Transport) Amendment (Model Law) Regulation 2023

under the

Dangerous Goods (Road and Rail Transport) Act 2008

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Dangerous Goods (Road and Rail Transport) Act 2008*.

PENNY SHARPE, MLC  
Minister for the Environment

## Explanatory note

The object of this regulation is to amend the *Dangerous Goods (Road and Rail Transport) Regulation 2022* as follows—

- (a) to give effect to recent amendments to the *Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail* by making amendments consequent on the replacement of edition 7.7 with edition 7.8 of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*,
- (b) to clarify fees for the application, amendment, renewal and transfer of dangerous goods vehicle licences,
- (c) to amend penalty notice amounts to correct errors.

This regulation is made under the *Dangerous Goods (Road and Rail Transport) Act 2008*, including sections 13, 14 and 15.

## **Dangerous Goods (Road and Rail Transport) Amendment (Model Law) Regulation 2023**

under the

Dangerous Goods (Road and Rail Transport) Act 2008

### **1 Name of regulation**

This regulation is the *Dangerous Goods (Road and Rail Transport) Amendment (Model Law) Regulation 2023*.

### **2 Commencement**

This regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Dangerous Goods (Road and Rail Transport) Regulation 2022

### [1] Section 13

Omit the section. Insert instead—

#### 13 Meaning of “bulk container”

- (1) A *bulk container* is a system for containing solid substances, including any liner or coating that—
- (a) is designed for transporting solid substances, which are in direct contact with the system, and
  - (b) is of a permanent character suitable for repeated use, and
  - (c) is designed to facilitate the transport of solid substances by one or more modes of transport, without the need for the substances to be unloaded and reloaded when transferred from one mode to another, and
  - (d) is fitted with devices that permit ready handling, and
  - (e) has a capacity of not less than 1m<sup>3</sup>.

**Examples—** Freight containers, offshore bulk containers, skips, bulk bins, swap bodies, trough-shaped containers, roller containers, load compartments of vehicles and flexible containers are bulk containers.

- (2) However, an IBC, large packaging or a portable tank is not a bulk container.

### [2] Section 18

Omit the section. Insert instead—

#### 18 References to “tank”

- (1) Unless the context otherwise requires, a reference in this regulation to a tank is a reference to a portable tank, a road tank vehicle, a rail tank wagon, or a receptacle used to contain a solid, liquid or gas.
- (2) However, a reference to a tank includes an item mentioned in subsection (1) that is used to transport a gas, as defined in section 2.2.1.1 of the ADG Code, only if it has a capacity of not less than 450L.

### [3] Section 30 Dangerous goods

Omit section 30(2). Insert instead—

- (2) However, goods that satisfy the criteria set out, or referred to, in Part 2 of the ADG Code are not dangerous goods if—
- (i) the goods are determined under section 22(1)(a) not to be dangerous goods, or
  - (ii) the goods are described as not subject to the ADG Code in a special provision in Chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the Dangerous Goods List, and any condition included in that description is met.

### [4] Section 61 Manufacturer’s duties—compliance plates on portable tanks, MEGCs and tank vehicles

Omit section 61(1). Insert instead—

- (1) A person who manufactures a portable tank for use in the transport of dangerous goods must attach a compliance plate to the tank in accordance with—

- (a) if the tank is not made of fibre reinforced plastic—Chapter 6.7 of the ADG Code, or
- (b) if the tank is made of fibre reinforced plastic—Chapter 6.7 and section 6.9.2.10 of the ADG Code.

Maximum penalty—

- (a) for an individual—40 penalty units, or
- (b) for a body corporate—200 penalty units.

- (1A) A person who manufactures an MEGC for use in the transport of dangerous goods must attach a compliance plate to the MEGC in accordance with Chapter 6.7 of the ADG Code.

Maximum penalty—

- (a) for an individual—40 penalty units, or
- (b) for a body corporate—200 penalty units.

**[5] Section 61(2)(a)**

Omit “Chapter 6.7 of the ADG Code permits”.

Insert instead “Chapter 6.7 and section 6.9.2.10 of the ADG Code permit”.

**[6] Section 61(3)**

Omit “6.9.2.2”. Insert instead “6.10.2.2”.

**[7] Sections 83–87, 236(2)(b) and 238(2)(b)**

Omit “6.9” wherever occurring. Insert instead “6.10”.

**[8] Section 145 Prime contractor’s duties—retention of documents**

Omit section 145(3). Insert instead—

- (3) It is a failure to comply with subsection (2) if the prime contractor—
  - (a) does not retain a legible hard copy of the document, or a legible copy of the document in electronic form, for the 3 months, or
  - (b) cannot produce, at any time during the 3 months at the request of an authorised officer, a legible hard copy of the document or a legible copy of the document in electronic form.

**[9] Section 177 Emergency plans**

Omit “Infrastructure and Transport Ministers’ Meetings” from section 177(5), definition of *emergency plan*.

Insert instead “Ministerial Council”.

**[10] Sections 238A and 238B**

Insert after section 238—

**238A Application to amend a licence to add or replace a vehicle**

- (1) A person may apply to the licensing authority to amend a dangerous goods vehicle licence for a road vehicle to—
  - (a) add an additional vehicle to the licence, or
  - (b) replace a road vehicle previously listed on the licence with a different vehicle.

- (2) The application must be accompanied by the fee prescribed in Schedule 1.
- (3) The application must include information required under section 234(2) for an application for the grant of a dangerous goods vehicle licence for the road vehicle.
- (4) Section 235 extends to an application under this section.
- (5) To avoid doubt, Division 7 does not apply to an application under this section.

**238B Adding or replacing vehicle on licence**

- (1) Subject to subsection (3), the licensing authority may amend a dangerous goods vehicle licence by adding or replacing a vehicle on the licence if—
  - (a) an application is made to the authority for the amendment, and
  - (b) the application complies with section 238A, and
  - (c) the applicant has complied with a requirement made under section 235, applying by operation of section 238A(4), in relation to the application, and
  - (d) the additional or replacement road vehicle is suitable to transport each type of dangerous goods intended to be transported in or on the road vehicle.
- (2) Without limiting subsection (1)(d), if an additional or replacement road vehicle is intended for use in the transport of dangerous goods in the form of a liquid or gas using a tank that will form part of the vehicle or be attached to it, the vehicle is suitable only if—
  - (a) the tank is an approved tank, and
  - (b) the vehicle complies with the requirements of Chapters 4.4 and 6.10 of the ADG Code applying to road vehicles for use in transporting dangerous goods in the form of a liquid or gas.
- (3) However, the licensing authority must not amend the licence if the applicant is subject to a court order prohibiting the applicant from involvement in the transport of dangerous goods by road.
- (4) If the licensing authority refuses to amend the licence, the authority must give the applicant written notice of the refusal and of the reasons for the refusal.

**[11] Section 272**

Insert after section 271—

**272 Transitional arrangement if ADG Code or related instrument amended or remade**

- (1) This section applies if—
  - (a) the ADG Code is amended or remade or a code, standard or rule applied or adopted by, or incorporated in, the ADG Code is amended or remade, and
  - (b) the amendment or remake has the effect of imposing a new requirement on a person, or modifying an existing requirement applying to a person, under this regulation.
- (2) The new requirement or modified existing requirement does not apply in relation to the person until the relevant period for the amendment or remake ends.

- (3) For subsection (2), this regulation applies in relation to the person during the relevant period as if the amendment or remake had not taken effect.
- (4) This section is subject to any other section of this regulation that provides for when or how the new requirement or modified existing requirement applies in relation to the person.
- (5) In this section—  
**relevant period**, for an amendment or remake mentioned in subsection (1)(a), means the period starting on the day the amendment or remake takes effect and ending on the day 12 months after that day.  
**requirement** means a duty, obligation, requirement or restriction, however described.

**[12] Schedule 1 Fees**

Omit Part 1, items 5–7. Insert instead—

5	Application for dangerous goods vehicle licence—section 234(3)	0.87 for each road vehicle
6	Application for renewal of dangerous goods vehicle licence—section 237(3)	0.87 for each road vehicle
6A	Application to amend a licence—section 238A(2)—	
	(a) to add an additional vehicle	0.87 for each road vehicle
	(b) to replace a road vehicle previously listed on a dangerous goods vehicle licence with a different vehicle	0.23 for each road vehicle
7	Application for transfer of dangerous goods vehicle licence—section 241(5)	0.11 for each road vehicle

**[13] Schedule 2 Penalty notice offences**

Omit the matter relating to section 6(1) and 6(2) under the heading “**Offences against the Act**”.

Insert instead—

Section 6(1)	\$2,000	\$10,000
Section 6(2)	\$800	\$4,000

**[14] Schedule 2**

Omit the matter relating to section 7(1) and 7(2) under the heading “**Offences against the Act**”.

Insert instead—

Section 7(1)	\$2,000	\$10,000
Section 7(2)	\$800	—

**[15] Schedule 2**

Insert “, (1A)” after “Section 61(1)” under the heading “**Offences against this Regulation**”.

**[16] Schedule 3 Dictionary**

Omit “former Ministerial body known as the Transport and Infrastructure Council, or the Infrastructure and Transport Ministers’ Meetings” from the definition of *ADG Code*.

Insert instead “Ministerial Council”.

**[17] Schedule 3, definition of “CAP or Competent Authorities Panel”**

Omit “16 June”. Insert instead “13 June”.

**[18] Schedule 3, definition of “cargo transport unit”**

Omit “, or freight,” from paragraphs (a) and (b) wherever occurring.

Insert instead “or freight”.

**[19] Schedule 3, definition of “food packaging”**

Insert at the end of paragraph (b)—

, or

- (c) plastic wrapping intended for the packaging of food.

**[20] Schedule 3, definitions of “freight container”, “inner packaging”, “large packaging”, “outer packaging”, “overpack”, “packaging”, “portable tank” and “tubes”**

Omit the definitions. Insert in alphabetical order—

*freight container* means a container that—

- (a) is of a permanent character suitable for repeated use, and
- (b) is designed to facilitate the transport of goods by one or more modes of transport, without the need for the goods to be unloaded and reloaded when the container is transferred from one mode to another, and
- (c) is fitted with devices that permit the ready stowage and handling of the container, particularly in relation to the transfer of the container from one mode of transport to another, and
- (d) is designed in a way that facilitates the ease of loading and unloading of goods from the container, and
- (e) for a container used to transport goods other than radioactive material—has an internal volume of not less than 1m<sup>3</sup>.

*inner packaging* has the meaning given section 1.2.1 of the ADG Code.

*intermediate packaging* has the meaning given in section 1.2.1 of the ADG Code.

*large packaging* means packaging that—

- (a) consists of outer packaging that contains articles or inner packagings, and
- (b) is designed for mechanical handling, and
- (c) has—
  - (i) a net mass of more than 400kg or a capacity of more than 450L, and
  - (ii) a volume of not more than 3m<sup>3</sup>.

*Ministerial Council* means the body, however described, that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to infrastructure and transport.

**outer packaging** has the meaning given in section 1.2.1 of the ADG Code.

**overpack** means an enclosure, other than large packaging, used to contain one or more packages in a way that forms one unit for convenience of stowage and handling during transport.

**Examples—**

- packages placed or stacked on a pallet and secured by strapping, shrink wrapping, stretch wrapping or another suitable way
- packages placed in protective outer packaging such as in a box or crate

**packaging** includes—

- (a) inner packaging, intermediate packaging, outer packaging, an overpack, large packaging, an IBC, an MEGC, a tank (including the tank of a tank vehicle), a bulk container or freight container, a drum, a barrel, a jerry can, a box and a bag, and
- (b) any other components or materials used for containing the contents of the packaging or performing another safety function in relation to the transport of the packaging and its contents.

**portable tank** means a tank used for the transport of a solid, liquid or gas that—

- (a) includes a shell fitted with service equipment and structural equipment necessary for the transport of the solid, liquid or gas, and
- (b) is capable of being loaded and unloaded without removing its structural equipment, and
- (c) has stabilising components external to its shell, and is capable of being lifted when full, and
- (d) is designed primarily to be loaded on to a vehicle or vessel and is equipped with skids, mountings or accessories to facilitate mechanical handling, and
- (e) for a tank used for transporting a substance of UN Class 1 and UN Class 3 to 9—is a multimodal tank, and
- (f) for a tank used for transporting non-refrigerated, liquefied gases of UN Class 2—is a multimodal tank having capacity of more than 450L, and
- (g) for a tank used for transporting refrigerated, liquefied gases of UN Class 2—is a thermally insulated tank having a capacity of more than 450L, and
- (h) is not an item that is not considered to be a portable tank for the purposes of the ADG Code.

**Note—** See the definition of **portable tank** in section 1.2.1 of the ADG Code for the list of items that are not considered to be a portable tank for the purposes of the ADG Code.

**rail tank wagon** means a rail wagon of which a tank forms an integral part.

**rail wagon** means a unit of rolling stock that—

- (a) is designed to carry freight by rail, and
- (b) bears a unique identifying number or alphanumeric identifier.

**road tank vehicle** means a road vehicle of which a tank forms part or to which a tank, other than a portable tank, is attached.

**tube** means a pressure receptacle of seamless or composite construction having a water capacity exceeding 150L but not more than 3,000L.