

[Act 1997 No 113]



New South Wales

Road and Rail Transport (Dangerous Goods) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to regulate the transport of dangerous goods by road and rail as part of a national scheme for road transport and to enable regulations to be made containing the regulatory scheme.

This Bill is part of a national scheme designed to achieve the objectives of the Heads of Government agreements on heavy and light vehicles made in 1991 and 1992 (the agreements form schedules to the *National Road Transport Commission Act 1991* of the Commonwealth).

The purpose of the national scheme is to produce improvements in road safety, transport efficiency and reductions in the cost of administration of road transport. This is to be achieved by the creation of uniform or consistent road transport legislation throughout Australia, including national standards and codes of practice in relation to the transport of dangerous goods.

In accordance with this scheme, the National Road Transport Commission has been developing a reformed national road transport law in six modules. Each module must be submitted to the Ministerial Council for Road Transport (consisting of the Commonwealth, State and Territory Ministers for road transport). If a module is accepted by the Ministerial Council, the Commonwealth is required to enact legislation for the Australian Capital Territory and the Jervis Bay Territory. The States and the Northern Territory are then required to enact legislation adopting or mirroring the Commonwealth legislation. The first module dealing with heavy vehicle charges was implemented in New South Wales by the *Road Transport (Heavy Vehicle Registration Charges) Act 1995*.

The second module dealing with the road transport of dangerous goods was approved by the Ministerial Council in 1994 (amendments were also approved in 1996). Consequently the Commonwealth Parliament enacted the *Road Transport Reform (Dangerous Goods) Act 1995* (with amendments in 1997). It is intended that regulations for the road transport of dangerous goods are to be adopted by each State and Territory after the enactment of their respective enabling legislation.

The *Road Transport Reform (Dangerous Goods) Act 1995* has also been complemented by the development of the Rail (Dangerous Goods) Rules for the purposes of the Australian Code for the Transport of Dangerous Goods. These rules mirror the draft regulations for road transport of dangerous goods with alterations to take account of the specific features of rail transport.

This Bill will therefore, in a single Act, enable the adoption of nationally consistent regulations for the transport of dangerous goods by road and the adoption of regulations for the transport of dangerous goods by rail that are consistent with the scheme applying to road transport.

Outline of provisions

Note: * indicates a provision included for parity in section numbering with the *Road Transport Reform (Dangerous Goods) Act 1995* of the Commonwealth.

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 sets out the purpose of the proposed Act which is to regulate the transport of dangerous goods by road and rail in order to promote public safety and protect property and the environment.

Clause 4 *

Clause 5 confers jurisdiction on the Administrative Decisions Tribunal to review certain decisions made under the proposed Act.

Clause 6 defines certain words and expressions used in the proposed Act.

Clause 7 provides that the proposed Act binds the Crown.

Clause 8 *

Clause 9 applies the provisions of the *Acts Interpretation Act 1901* of the Commonwealth (with minor exceptions) to the interpretation of the proposed Act.

Clause 10 provides that the proposed Act will not apply to dangerous goods that are in a container that is part of the fuel or battery system of a vehicle's engine or other propulsion equipment. This clause also provides that the *Radiation Control Act 1990* and any other laws relating to the storage and handling of dangerous goods (but not relating to the transport of dangerous goods by road or rail) will prevail over the proposed Act.

Part 2 Regulations

Clause 11 provides that the Governor may make regulations on a wide range of matters required or permitted to be prescribed by the proposed Act or that are necessary or convenient to be prescribed. The clause sets out a number of particular matters in relation to which regulations may be made, including classification, labelling, packaging, stowage and transport of dangerous goods, mandatory licensing of persons involved in the transport of dangerous goods and obligations arising in an emergency. The regulations made under these powers will contain the regulatory scheme for the transport of dangerous goods by road or rail.

Clause 12 enables the regulations to create offences for breach of the regulations with maximum penalties of \$3,000 for an individual or \$15,000 for a body corporate.

Part 3 Appointment and powers of Competent Authorities and authorised officers

Clause 13 provides that the Minister may appoint Competent Authorities by notice in the Gazette. It is intended that Competent Authorities will be responsible for the administration and enforcement of the proposed Act and the regulations.

Clause 14 states that a Competent Authority may appoint people or a class of people to be authorised officers. A Competent Authority may specify that such an appointment is subject to conditions or restrictions and may issue identification cards for people appointed as authorised officers.

Clause 15 requires authorised officers, who are not police officers, to carry identification cards while carrying out their duties and produce them before exercising a power under the proposed Act. Police officers, if practicable, must on request identify themselves by producing their identification cards or stating their name, rank, place of duty or identification number.

Clause 16 makes it an offence for a person who has been issued with an identification card not to return it as soon as practicable after ceasing to be an authorised officer (maximum penalty \$100).

Clause 17 empowers a Competent Authority to delegate his or her powers under the proposed Act to authorised officers.

Clause 18 confers certain powers on authorised officers, including the power to enter and search premises, stop or detain and search vehicles, inspect vehicles, take samples, seize and copy documents and require persons to answer questions.

Clause 19 enables an authorised officer, who believes on reasonable grounds that a person has been involved in the transport of dangerous goods by road or rail, to require that person to state their name and address. Failure to do so without a reasonable excuse is an offence (maximum penalty \$500).

Clause 20 enables an authorised officer to enter premises (not being unattended or a residence) to search for and test evidence, if the officer believes on reasonable grounds that he or she will find evidence of an offence.

Clause 21 requires an authorised officer to take reasonable steps to return premises, vehicles or equipment inspected pursuant to proposed section 18 or 20 to the condition they were in immediately before the inspection.

Clause 22 makes it an offence for a person to, without reasonable excuse, fail to comply with a direction of an authorised officer under proposed section 18 or 20 or to obstruct the officer in the exercise of his or her power, or knowingly provide false or misleading information to an authorised officer (maximum penalty \$10,000 or 6 months, or both, for an individual or \$50,000 for a body corporate).

Clause 23 provides that a person is not excused from answering a question under proposed section 18 on the grounds that the answer might tend to incriminate the person. The answer to the question and any information, documents or things obtained as a direct or indirect consequence of the answer to the question, are generally not admissible in evidence against an individual but may be admissible against a body corporate.

Clause 24 enables an authorised officer to apply for a warrant to search residences, unattended premises, vehicles and equipment and to seize evidence.

Clause 25 *

Clause 26 *

Clause 27 enables an authorised officer to seize or preserve evidence of other offences (not specified in the warrant) which may be discovered during the course of a search under the proposed Act.

Clause 28 allows an authorised officer to issue a notice to a person whom the officer believes is contravening the proposed Act or has contravened and is likely to repeat the contravention of the proposed Act, requiring that person to remedy the matters causing the contravention. It makes it an offence to contravene a notice, or remove a notice that has been placed on a vehicle in accordance with the proposed section, before the matters in the notice have been remedied (maximum penalty \$10,000 for an individual or \$50,000 for a body corporate).

Clause 29 allows an authorised officer to issue a notice against a person when the officer believes a dangerous situation exists and that person is in a position to take measures to avert, eliminate or minimise the danger. It makes it an offence to contravene a notice, or remove a notice that has been placed on a vehicle in accordance with the proposed section before the matters in the notice have been remedied (maximum penalty \$10,000 for an individual or \$50,000 for a body corporate).

Clause 30 enables the recipient of a notice under proposed section 28 or 29 to apply to the Administrative Decisions Tribunal for a review of the decision to issue the notice.

Clause 31 outlines the circumstances in which an authorised officer may take direct action to avert, eliminate or minimise a dangerous situation.

Part 4 Exemptions

Clause 32 enables a Competent Authority to grant an exemption to a person or class of people from compliance with a provision of the regulations. Failure to comply with a condition in an exemption is an offence (maximum penalty \$10,000 or imprisonment for 6 months, or both, for an individual or \$50,000 for a body corporate). This clause also details various procedural and formal requirements relating to exemptions.

Clause 33 deals with the cancellation and variation of exemptions and conditions.

Clause 33A*

Clause 34 provides that the Minister may order a suspension or variation of the regulations or specified parts of the regulations. Such orders must be in compliance 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.

Part 5 Offences, penalties, evidence and procedure

Clause 35 creates the following offences in relation to the transport of dangerous goods by road or rail:

- using a vehicle (other than as a driver) to transport dangerous goods without a licence for the vehicle where the regulations require the vehicle to be licensed to transport dangerous goods (maximum penalty \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate),
- employing, engaging or permitting another person to drive a vehicle transporting dangerous goods where the other person does not have a licence to drive the vehicle as required by the regulations (maximum penalty \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate),
- driving a vehicle transporting dangerous goods without a licence for the vehicle where the regulations require the vehicle to be licensed to transport dangerous goods (maximum penalty \$10,000),
- failing to be accredited to transport dangerous goods by road or rail where the regulations require such accreditation (maximum penalty \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate),

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- driving a vehicle transporting dangerous goods without a licence to drive such a vehicle where a licence is required under the regulations (maximum penalty \$10,000).

Clause 36 makes it an offence to transport goods that the regulations identify as being too dangerous to transport (maximum penalty \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate).

Clause 37 makes it an offence to fail to ensure, as far as practicable, that dangerous goods are transported in a safe manner or to fail to comply with a provision of the proposed Act where the person knows or reasonably ought to know that the failure would be likely to endanger the safety of another person or of property or the environment. The maximum penalty if the failure results in death or serious injury is \$100,000 or imprisonment for 4 years, or both, for an individual or \$500,000 for a body corporate. In any other case the maximum penalty is \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate.

Clause 38 provides that authorised officers may serve penalty notices on persons who have committed certain offences against the proposed Act (such offences to be specified by the regulations). A person served with such a notice, who does not wish the matter to be dealt with by a court, may pay within the time specified in the notice the penalty prescribed by the regulations.

Clause 39 sets out the courts in which proceedings for offences under the proposed Act may be taken and the time within which such proceedings must be taken.

Clause 40 contains evidentiary provisions.

Clause 41 deals with the admissibility as evidence, and the treatment in proceedings, of codes of practice, guidelines or other documents approved by the Ministerial Council for Road Transport or the Australian Transport Council.

Clause 42 deals with matters relating to the prosecution of companies and their directors or senior managers.

Part 6 Miscellaneous

Clause 43 allows an authorised officer to apply to a court to require a person convicted of an offence to pay any costs reasonably incurred in taking action against that person and in the investigation of the offence.

Clause 44 enables a government authority that incurs costs as a result of an incident involving the escape of dangerous goods or an explosion or fire involving dangerous goods, or involving the danger of such an escape, explosion or fire, to recover so much of the costs as were reasonably incurred.

Clause 45 provides that a court, in sentencing a person for an offence, may make an order prohibiting the person for a specified period from involvement in the transport of dangerous goods by road or rail. It will be an offence to contravene such an order (maximum penalty \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate).

Clause 46 empowers a court that has convicted a person for an offence in relation to dangerous goods to order the dangerous goods and their container to be forfeited in certain circumstances. Goods so forfeited may be destroyed, sold or otherwise disposed of as directed by a Competent Authority.

Clause 47 empowers the Minister to delegate by instrument in writing to a Competent Authority all or any of the Minister's powers under the proposed Act (other than the power to make an application order or emergency order and the power of delegation).

Clause 48 protects an authorised officer from civil liability for acts or omissions done honestly and in good faith in the course of his or her duties.

Clause 49 protects a person from 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.

Clause 50 requires the Minister to publish in the Gazette, as soon as practicable after a regulation is made, details of where any regulation, code, standard or rule applied or adopted by the regulation, or any amendment or replacement of the regulation, code, standard or rule, may be obtained inspected.

Clause 51 restricts the disclosure of information obtained by persons in connection with the administration or execution of the proposed Act.

Clause 52 is a formal provision that allows regulations of a savings or transitional nature to be made.

Clause 53 gives effect to Schedule 1 that makes consequential amendments to other Acts.

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Schedule 1 makes consequential amendments to the following Acts:

Dangerous Goods Act 1975

Fines Act 1996

Justices Act 1902

Land and Environment Court Act 1979

Protection of the Environment Administration Act 1991

Rail Safety Act 1993

Search Warrants Act 1985.