

Passed by both Houses



New South Wales

# Dangerous Goods (Road and Rail Transport) Bill 2008

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2008*



New South Wales

## **Dangerous Goods (Road and Rail Transport) Bill 2008**

Act No , 2008

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An Act to make provision for safety in the transport of dangerous goods by road and rail as part of the system of nationally consistent road and rail transport laws; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Dangerous Goods (Road and Rail Transport) Act 2008*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Purpose**

The purpose of this Act is to regulate the transport of dangerous goods by road and rail in order to promote public safety and protect property and the environment.

### **4 Definitions**

(1) In this Act, unless the contrary intention appears:

***authorised officer*** means an authorised officer appointed under section 17.

***Competent Authority***—see section 16.

***consignor*** of goods means a person who:

- (a) with the person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods, or
- (b) if paragraph (a) does not apply to the person or anyone else:
  - (i) engages a prime contractor or rail operator, either directly or indirectly or through an agent or other intermediary, to transport the goods, or
  - (ii) has possession of, or control over, the goods immediately before the goods are transported, or
  - (iii) loads a vehicle with the goods, for transport, at a place where the goods are awaiting collection and that is unattended (except by the driver) during loading, or
- (c) if paragraphs (a) and (b) do not apply to the person or anyone else, and the goods are imported into Australia—imports the goods.

***corresponding authority*** means a Competent Authority appointed under a corresponding law.

***corresponding law*** means:

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act, or
- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding law to this Act.

***dangerous activity*** means an activity:

- (a) that relates to the transport of dangerous goods by road or rail, and
- (b) that is occurring or may occur in relation to or in the immediate vicinity of the dangerous goods, and
- (c) that creates or could create an immediate risk of death or injury to a person, significant harm to the environment or significant damage to property.

***dangerous goods*** means:

- (a) a substance or article prescribed by the regulations as dangerous goods, or
- (b) a substance or article determined by a Competent Authority in accordance with the regulations to be dangerous goods.

***driver*** of a vehicle includes:

- (a) a two-up driver of the vehicle who is present in or near the vehicle, and
- (b) a person who is driving the vehicle as a driver under instruction or under an appropriate learner licence or learner permit, and
- (c) if the vehicle is a unit of rolling stock forming part of a train but is not its locomotive—the driver of the train, and
- (d) if the vehicle is a trailer—the driver of the motor vehicle towing the trailer.

***employee*** means an individual who works under a contract of employment, apprenticeship or training.

***employer*** means a person who employs persons under:

- (a) contracts of employment, apprenticeship or training, or
- (b) contracts for services.

***EPA*** means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991*.

***exercise*** a function includes perform a duty.

***function*** includes a power, authority or duty.

***goods too dangerous to be transported*** means:

- (a) a substance or article prescribed by the regulations as goods too dangerous to be transported, or
- (b) a substance or article determined by a Competent Authority, in accordance with the regulations, to be goods too dangerous to be transported.

***involvement in the transport of dangerous goods by road or rail*** includes:

- (a) importing, or arranging for the importation of, dangerous goods into Australia, and
- (b) packing dangerous goods for transport by road or rail, and
- (c) marking or labelling packages containing dangerous goods for transport by road or rail, and placarding vehicles and packaging on or in which dangerous goods are transported by road or rail, and
- (d) consigning dangerous goods for transport by road or rail, including the preparation of transport documentation, and
- (e) loading dangerous goods for transport by road or rail or unloading dangerous goods that have been transported by road or rail, and
- (f) undertaking, or being responsible for, otherwise than as an employee or sub-contractor, the transport of dangerous goods by road or rail, and
- (g) driving a vehicle carrying dangerous goods by road or rail, and
- (h) being the consignee of dangerous goods transported by road or rail, and
- (i) 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.

***jurisdiction*** means the Commonwealth or a State or Territory.

***motor vehicle*** has the same meaning as it has in the *Road Transport (General) Act 2005*.

***packaging***, in relation to goods, is anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported, and includes anything declared by the regulations to be packaging.

**Note.** It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which dangerous goods are directly placed.

***placard*** means a label or emergency information panel that is required by the regulations to be used in transporting dangerous goods.

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

**prime contractor**, in respect of the transport of dangerous goods by road, means the person who, in conducting a business for or involving the transport of dangerous goods by road, has undertaken to be responsible for, or is responsible for, the transport of the goods by road.

**public authority** means:

- (a) the Crown in any capacity, or
- (b) a body established by or under law, or the holder of an office established by or under law, for a public purpose, including a local government authority, or
- (c) a police force or police service.

**rail operator**, in respect of the transport of dangerous goods by rail, means the person who has undertaken to be responsible, or is responsible, for:

- (a) the transport of the goods by rail, or
- (b) the condition of a unit of rolling stock transporting the goods.

**road** has the same meaning as it has in the *Road Transport (General) Act 2005*.

**Note.** Under the *Road Transport (General) Act 2005* a reference to a road includes a road related area—see section 3 (3) of that Act.

**train** means 2 or more units of rolling stock (at least 1 unit of which is a locomotive or self-propelled unit) that are coupled together.

**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, for the purpose of their transport, and
- (b) the marking or labelling of packages containing dangerous goods, and the placarding of vehicles and packaging in which dangerous goods are transported, and
- (c) other matters incidental to their transport.

**transport documentation** means documentation required by the regulations for the transport of dangerous goods.

**two-up driver** means a person accompanying a driver of a vehicle on a journey or part of a journey, who has been, is or will be sharing the task of driving the vehicle during the journey.

**unit of rolling stock** means a vehicle designed to run on rails, but does not include a vehicle designed to operate both on and off rails when the vehicle is not operating on rails.

**vehicle** means:

- (a) a motor vehicle, or
- (b) a trailer, or
- (c) a unit of rolling stock.

**WorkCover** means the WorkCover Authority constituted by the *Workplace Injury Management and Workers Compensation Act 1998*.

- (2) Notes included in this Act are explanatory notes and do not form part of this Act.

## **5 Scope of this Act**

- (1) This Act does not apply to:
  - (a) dangerous goods that are, or form part of, personal safety equipment of persons in a vehicle transporting dangerous goods, and
  - (b) 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.
- (2) If a provision of this Act is inconsistent with another law that:
  - (a) relates to the storage and handling of dangerous goods, and
  - (b) does not relate to involvement in the transport of dangerous goods by road or rail,the other law prevails.
- (3) If a provision of this Act is inconsistent with the *Radiation Control Act 1990*, the *Radiation Control Act 1990* prevails.

## Part 2 Licensing and safety obligations

### 6 Licensing of vehicles transporting dangerous goods

- (1) A prime contractor must not use a vehicle to transport dangerous goods by road (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.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.

- (2) A person must not consign dangerous goods for transport by road on a vehicle if the person knows or reasonably ought to know that:
- (a) the regulations require the vehicle to be licensed to transport the goods, and
  - (b) the vehicle is not licensed under the regulations.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.

- (3) A person must not drive a vehicle transporting dangerous goods by road or rail if the person knows or reasonably ought to know that:
- (a) the regulations require the vehicle to be licensed to transport the goods, and
  - (b) the vehicle is not licensed under the regulations.

Maximum penalty: 100 penalty units.

### 7 Licensing of drivers transporting dangerous goods

- (1) A person must not employ, engage, cause or permit another person to drive a vehicle transporting dangerous goods by road or rail if the other person is required by the regulations to be licensed to drive the vehicle and is not so licensed.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.

- (2) A person must not drive a vehicle transporting dangerous goods by road or rail if:
- (a) the regulations require the person to be licensed to drive the vehicle, and
  - (b) the person is not licensed under the regulations.

Maximum penalty: 100 penalty units.

## 8 Goods too dangerous to be transported

A person must not:

- (a) consign goods for transport by road or rail if the regulations identify the goods as being too dangerous to be transported, or
- (b) arrange the transport of goods that the regulations identify as being too dangerous to be transported on a vehicle owned or controlled by the person.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.

## 9 Duties concerning the transport of dangerous goods

- (1) A person involved in the transport of dangerous goods by road or rail who fails to ensure that the goods are transported in a safe manner is guilty of an offence.
- (2) If a person involved in the transport of dangerous goods by road or rail fails to comply with a provision of this Act or the regulations 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.
- (3) It is a defence to any proceedings against a person for an offence against subsection (1) if the person proves that:
  - (a) it was not reasonably practicable for the person to comply with the provision, or
  - (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.

## 10 Reckless conduct causing death or serious injury by person with duties under section 9

- (1) In this section:  
*conduct* includes acts or omissions.
- (2) A person:
  - (a) whose conduct causes the death or serious injury of another person, and
  - (b) who owes a duty under section 9 when engaging in that conduct, and

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(c) who is reckless as to the danger of death or serious injury to any person that arises from that conduct, is guilty of an offence.

Maximum penalty: 1,000 penalty units or imprisonment for 4 years, or both, for an individual or 5,000 penalty units for a body corporate.

- (3) For the purposes of this section, a person's conduct causes death if it substantially contributes to the death.
- (4) If, on the trial of a person for an offence against this section, the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against section 9, the jury may acquit the person of the offence charged and find the person guilty of the offence against section 9, and the person is liable to punishment accordingly.

#### **11 Special defence for owners or operators**

- (1) It is a defence to a prosecution for an offence against this Act or the regulations alleged to have been committed by a person in the capacity of an owner or operator of a vehicle transporting dangerous goods if the person establishes that the vehicle was being used at the relevant time by:
- (a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the alleged offender, or
  - (b) an employee of the alleged offender who was acting at the relevant time outside the scope of the employment, or
  - (c) an agent (in any capacity) of the alleged offender who was acting at the relevant time outside the scope of the agency.
- (2) If the offence relates to a breach of this Act or the regulations in connection with alleged deficiencies concerning the vehicle or dangerous goods, the defence is not available unless the alleged offender establishes that:
- (a) the vehicle or dangerous goods had not, before they ceased to be under the alleged offender's control, been driven or transported on a road in Australia in breach of this Act or the regulations or a corresponding law arising in connection with all or any of those alleged deficiencies, and
  - (b) one or more material changes, resulting in the alleged breach, had been made after the vehicle or dangerous goods had ceased to be under the alleged offender's control.

- (3) In this section:
- deficiency concerning a vehicle or dangerous goods*** means a deficiency in anything that is required by the regulations to be carried on or in a vehicle or to be met in relation to dangerous goods.
- operator*** means:
- (a) in the case of a vehicle (not including a vehicle in a group of vehicles that are physically connected)—the person who is responsible for controlling or directing the operations of the vehicle, or
  - (b) in the case of a group of vehicles that are physically connected—the person who is responsible for controlling or directing the operations of the towing vehicle in the group.
- owner***, in respect of a vehicle, means a person who:
- (a) is the sole owner, a joint owner or a part owner of the vehicle, or
  - (b) has possession or use of the vehicle under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else.
- (4) For the purposes of this section, a person is not an operator merely because the person owns a vehicle or does any or all of the following:
- (a) drives a vehicle,
  - (b) maintains or arranges for the maintenance of a vehicle,
  - (c) arranges for the registration of a vehicle.

## **12 Offences by corporations—liability of directors and managers**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that the director or person:
- (a) was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (b) being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

- (4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.

## **Part 3 Regulations**

### **13 Regulation-making powers**

- (1) The Governor may make regulations, not 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.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the identification and classification of dangerous goods,
  - (b) identifying, classifying and regulating goods that are too dangerous to be transported (including prohibiting the transport of such goods),
  - (c) the making of determinations by a Competent Authority for the purposes of the regulations in relation to the following:
    - (i) the identification and classification of goods as dangerous goods,
    - (ii) the identification and classification of dangerous goods,
    - (iii) the specification of what is, and what is not, compatible with dangerous goods for transport purposes,
    - (iv) prohibiting or regulating the transport of dangerous goods by road or rail,
    - (v) regulating the containment of dangerous goods that are being, or that are to be, transported by road or rail,
  - (d) the analysis and testing of dangerous goods,
  - (e) fees that are to be paid for things done under this Act,
  - (f) the marking and labelling of packages containing dangerous goods for transport by road or rail and the placarding of vehicles and packaging on or in which dangerous goods are transported by road or rail,
  - (g) containers, vehicles, packaging, equipment and other items used in the transport of dangerous goods by road or rail,
  - (h) voluntary accreditation schemes, including privileges to be accorded or sanctions to be imposed under the schemes and the cancellation or suspension of the schemes,
  - (i) the loading of dangerous goods for, and the unloading of dangerous goods after, their transport by road or rail,
  - (j) the determination by a Competent Authority of routes along which, the areas in which and the times during which dangerous goods may or may not be transported by road or rail,

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- (k) procedures for the transport of dangerous goods by road or rail, including, but not limited to:
    - (i) the quantities and circumstances in which dangerous goods, or particular types of dangerous goods, may be transported, and
    - (ii) safety procedures and equipment,
  - (l) the licensing of:
    - (i) vehicles and drivers for the purposes of the transport of dangerous goods by road or rail, and
    - (ii) persons involved in the transport of dangerous goods by road or rail or for vehicles used in that transport,
  - (m) the mandatory accreditation of people involved in the transport of dangerous goods by road or rail or particular aspects of that transport,
  - (n) the approval by a Competent Authority of the form in which applications are to be made to the Authority, and the form in which documents are to be issued by the Authority, for the purposes of the regulations,
  - (o) the approval by a Competent Authority of:
    - (i) vehicles, packaging, equipment and other items used in relation to the transport of dangerous goods by road or rail, and
    - (ii) facilities for and methods of testing or using vehicles, packaging, equipment and other items used in relation to the transport of dangerous goods by road or rail, and
    - (iii) processes carried out in relation to the transport of dangerous goods,
  - (p) documents required to be prepared or kept by people involved in the transport of dangerous goods by road or rail and the approval by a Competent Authority of alternative documentation,
  - (q) obligations arising, and procedures to be followed, in the event of a dangerous situation in relation to the transport of dangerous goods by road or rail,
  - (r) the training and qualifications required of authorised officers and other people performing functions under this Act,
  - (s) the training and qualifications required of people involved in, and the approval of training courses and qualifications relating to involvement in, the transport of dangerous goods by road or rail,
  - (t) the recognition of laws of other jurisdictions relating to the transport of dangerous goods by road or rail and of things done under those laws, and the giving effect to those things,

- (u) the recognition of a body consisting of the Competent Authorities of this jurisdiction and other equivalent bodies in other jurisdictions to provide oversight on decisions made under this Act or the regulations that may have implications for other jurisdictions, and other matters in relation to such a body, including the recognition of decisions made by such a body,
- (v) the recognition of accredited providers of training, package testing, design verification and other similar activities,
- (w) the passing of information on persons relevant to licensing or compliance and enforcement matters to another Competent Authority and other authorities involved in the enforcement of road and rail laws,
- (x) requiring a person involved in the transport of dangerous goods by road or rail to hold insurance, or some other form of indemnity, in relation to that transport,
- (y) appeals against, and the review of, decisions under this Act, including conferring jurisdiction on a court or courts to hear appeals against, and on the Administrative Decisions Tribunal to review, decisions under the regulations,
- (z) applications for, and consideration of applications for, exemptions,
- (aa) registers of approvals, exemptions and determinations,
- (ab) the form of decisions under the Act,
- (ac) determinations by a Competent Authority,
- (ad) obligations of passengers in respect of transport of dangerous goods by rail.

**14 Regulations may adopt codes, standards and rules**

- (1) The regulations may apply, adopt or incorporate any or all of the provisions of a code, standard or rule relating to dangerous goods or to transport by road or rail. Those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.
- (2) The regulations may:
  - (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,by reference to such a code, standard or rule.

- (3) A reference in this section to a code, standard or rule includes a reference to one that is made outside Australia.

**15 Penalties under the regulations**

The regulations may create offences, and may provide for a maximum penalty, not exceeding 60 penalty units for an individual or 300 penalty units for a body corporate, for each offence.

## **Part 4 Administration**

### **Division 1 Competent Authorities and their authorised officers**

#### **16 Competent Authorities**

- (1) For the purposes of this Act, each of the following are Competent Authorities:
  - (a) the EPA, and
  - (b) WorkCover.
- (2) A Competent Authority:
  - (a) may exercise the functions of an authorised officer, and
  - (b) when exercising those functions, has all the immunities of an authorised officer.

#### **17 Appointment of authorised officers**

- (1) A Competent Authority may appoint a person to be an authorised officer.
- (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 Competent Authority may issue identification cards containing prescribed details to authorised officers.

#### **18 Identification cards**

Each authorised officer who is not a police officer must:

- (a) carry his or her identification card as an authorised officer while carrying out duties under this Act, and
- (b) if requested to do so by any person affected by the exercise of a power by an authorised officer under this Act, produce the officer's identification card to the person.

**Note.** See section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to a police officer's obligation to produce evidence that the police officer is a police officer (unless the police officer is in uniform).

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**19 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.  
Maximum penalty: 10 penalty units.

**20 Competent Authority may delegate functions**

A Competent Authority may delegate the exercise of any function of the Competent Authority under this Act (other than this power of delegation) to:

- (a) an authorised officer appointed by the Competent Authority, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

**Division 2 Powers of authorised officers****21 General powers of authorised officers appointed by EPA: application of Chapter 7 of Protection of the Environment Operations Act 1997**

- (1) An authorised officer appointed by the EPA has and may exercise the functions of an authorised officer under Chapter 7 and section 319A of the *Protection of the Environment Operations Act 1997* (the **POEO Act**) for the following purposes:
  - (a) for determining whether there has been compliance with or a contravention of this Act and the regulations,
  - (b) for obtaining information or records for purposes connected with the administration of this Act and the regulations,
  - (c) generally for administering this Act and the regulations.
- (2) The provisions of Chapter 7 and section 319A of the POEO Act apply to and in respect of this Act as if those provisions were part of this Act, subject to the following modifications:
  - (a) references in those provisions to an authorised officer were references to an authorised officer appointed by the EPA as a Competent Authority under this Act,
  - (b) references in those provisions to “this Act” were references to this Act,
  - (c) references in those provisions to the EPA were references to the EPA as a Competent Authority,
  - (d) the EPA as a Competent Authority was the appropriate regulatory authority for matters concerning this Act.

- (3) For the avoidance of doubt, a prosecution of a person for an offence against a provision of Chapter 7 of the POEO Act (as applying under this section) is to be taken as if the offence were an offence against this Act.
- (4) The functions that an authorised officer has under Chapter 7 of the POEO Act are, for the purposes of any provision of this Act, taken to be functions under this Act.
- (5) If an authorised officer has functions in respect of a matter under both Chapter 7 of the POEO Act (as applying under this section) and under any other provision of this Act, the fact that there is a restriction on the exercise of a function under this Act does not of itself operate to restrict the exercise by an authorised officer of any similar or the same function under Chapter 7 of the POEO Act.

**22 General powers of authorised officers appointed by WorkCover:  
application of Division 2 of Part 5 of Occupational Health and Safety Act  
2000**

- (1) An authorised officer appointed by WorkCover has and may exercise the functions of an inspector under Division 2 of Part 5 of the *Occupational Health and Safety Act 2000* (the **OHS Act**) for the following purposes:
  - (a) for determining whether there has been compliance with or a contravention of this Act and the regulations,
  - (b) for obtaining information or records for purposes connected with the administration of this Act and the regulations,
  - (c) generally for administering this Act and the regulations.
- (2) The provisions of Division 2 of Part 5 of the OHS Act apply to and in respect of this Act as if those provisions were part of this Act, subject to the following modifications:
  - (a) references in those provisions to an inspector were references to an authorised officer appointed by WorkCover as a Competent Authority under this Act,
  - (b) references in those provisions to “this Act” were references to this Act,
  - (c) references in those provisions to WorkCover were references to WorkCover as a Competent Authority.
- (3) For the avoidance of doubt, a prosecution of a person for an offence against a provision of Division 2 of Part 5 of the OHS Act (as applying under this section) is to be taken as if the offence were an offence against this Act.

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- (4) The functions that an authorised officer has under Division 2 of Part 5 of the OHS Act are, for the purposes of any provision of this Act, taken to be functions under this Act.
  - (5) If an authorised officer has functions in respect of a matter under both Division 2 of Part 5 of the OHS Act (as applying under this section) and under any other provision of this Act, the fact that there is a restriction on the exercise of a function under this Act does not of itself operate to restrict the exercise by an authorised officer of any similar or the same function under Division 2 of Part 5 of the OHS Act.

**23 Offence of obstructing or intimidating authorised officers and others exercising functions under Act**

A person must not:

- (a) obstruct, hinder or impede any authorised officer or a person assisting an authorised officer in the exercise of the officer's functions under this Act, or
- (b) intimidate or threaten or attempt to intimidate any authorised officer in the exercise of the officer's functions under this Act.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both, for an individual or 500 penalty units for a body corporate.

**24 Offence of impersonating an authorised officer**

A person must not impersonate, or falsely represent that the person is, an authorised officer.

Maximum penalty: 100 penalty units.

**25 Reciprocal powers of authorised officers**

- (1) This section has effect in relation to another jurisdiction while the corresponding law of the other jurisdiction contains provisions corresponding to this section.
- (2) The Minister may enter into agreements with a Minister of the other jurisdiction for the purposes of this section.
- (3) To the extent envisaged by such an agreement:
  - (a) authorised officers of this jurisdiction may, in the other jurisdiction, exercise powers conferred on authorised officers of the other jurisdiction by or under the corresponding law of the other jurisdiction, and
  - (b) authorised officers of the other jurisdiction may, in this jurisdiction, exercise powers conferred on authorised officers by this Act.

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- (4) Anything done by an authorised officer of this jurisdiction under subsection (3) (a) (including an omission of an act) is taken to have been done under this Act as well as under the corresponding law.
- (5) The regulations may make provision for or with respect to the exercise of powers under this section.

## **Part 5 Investigation, improvement and prohibition notices**

### **Division 1 Investigation notices**

#### **26 Investigation notices**

- (1) An authorised officer who has exercised any power under Part 4 may issue an investigation notice to a person if the authorised officer believes on reasonable grounds that it is necessary to issue the notice in order to facilitate the exercise of the authorised officer's powers under that Part.
- (2) An investigation notice must set out the grounds on which it is issued.
- (3) An investigation notice remains in force for the period specified in the notice. A notice may be renewed more than once by an authorised officer by issuing a further investigation notice in accordance with this section.

#### **27 Offence: failure to comply with investigation notice**

While an investigation notice is in force, the person to whom the notice is issued must:

- (a) stop the use or movement of, or interference with, any substance or thing that is specified in the notice, and
- (b) take measures to prevent the disturbance of any substance or thing that is specified in the notice, or any specified area in which it is located.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both, for an individual or 500 penalty units for a body corporate.

### **Division 2 Improvement notices**

#### **28 Issue of improvement notices**

- (1) If an authorised officer is of the opinion that any person:
  - (a) is contravening any provision of this Act or the regulations, or
  - (b) is likely to contravene such a provision, or
  - (c) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,the authorised officer may issue to the person a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice (being a reasonable period for the person to comply with the requirements imposed by the notice).

- (2) An improvement notice must:
- (a) state that the authorised officer is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the provision of this Act or the regulations in respect of which that opinion is held, and
  - (d) include information about obtaining a review of the notice under this Part.

**29 Offence: failure to comply with improvement notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both, for an individual or 500 penalty units for a body corporate.

**Division 3 Prohibition notices**

**30 Issue of prohibition notices**

- (1) If an authorised officer is of the opinion that there is occurring or about to occur any dangerous activity, the authorised officer may issue to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the authorised officer has certified in writing that the activity is not or is no longer a dangerous activity.
- (2) A prohibition notice must:
- (a) state that the authorised officer is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the activity in respect of which that opinion is held, and
  - (d) if in the authorised officer's opinion the activity involves a contravention or likely contravention of any provision of this Act or the regulations—specify that provision and state the reasons for that opinion, and
  - (e) include information about obtaining a review of the notice under this Part.

**31 Offence: failure to comply with prohibition notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both, for an individual or 500 penalty units for a body corporate.

**Division 4 General provisions relating to notices****32 Preventing injury and damage—taking direct action**

If:

- (a) an authorised officer believes on reasonable grounds that there is occurring or about to occur any dangerous activity, and
- (b) either:
  - (i) a person to whom a notice under section 28 or 30 has been given has not complied with 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 the authorised officer believes on reasonable grounds to be necessary to avert, eliminate or minimise the danger.

**33 Notices may include directions**

- (1) An authorised officer may include in a notice under this Part directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.
- (2) Any such direction may:
  - (a) adopt, by reference, the requirements of any industry or other code of practice or standard, and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter or to comply with the notice.

**34 Review of notices by Competent Authority**

- (1) A person who is issued with a notice under this Part may apply in writing to the relevant Competent Authority for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is issued or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.

- (4) The relevant Competent Authority is to review a notice that is the subject of a duly made application for review.
- (5) The notice is stayed (unless it is an investigation notice or a prohibition notice) from when the application for review is received by the relevant Competent Authority until the relevant Competent Authority gives notice to the applicant of the result of the review.
- (6) The relevant Competent Authority may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (7) Regulations may be made with respect to reviews under this section.
- (8) In this section, *relevant Competent Authority* means the Competent Authority that appointed the authorised officer who issued the notice concerned.

### **35 Appeal to Court following review**

- (1) A person who is not satisfied with the result of a review of a notice under this Part may appeal against the notice to:
  - (a) in the case of a review by the EPA—the Land and Environment Court, or
  - (b) in the case of a review by WorkCover—a Local Court constituted by an Industrial Magistrate sitting alone.
- (2) An appeal under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the court concerned.
- (3) The court to which an appeal under this section is made may, on the appeal, confirm the notice, vary it or revoke it.
- (4) Regulations may be made with respect to appeals under this section, including the time and manner in which such an appeal is to be made.

### **36 Application for stay of investigation or prohibition notice**

- (1) If a person duly applies under this Part for review of an investigation notice or a prohibition notice, the person may apply to the following courts for a stay of the notice:
  - (a) in the case of a review by the EPA—the Land and Environment Court, or
  - (b) in the case of a review by WorkCover—a Local Court constituted by an Industrial Magistrate sitting alone.

- (2) A stay may be granted for such period as the court concerned considers appropriate, but not so as to extend past the time when notice of the result of the review is given to the applicant by the relevant Competent Authority.
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court.

**37 Withdrawal of notices**

- (1) A notice under this Part may be withdrawn at any time by the authorised officer who issued the notice or by the Competent Authority if the authorised officer or the Competent Authority is satisfied that the notice was issued in error or is incorrect in some respect.
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued.

**38 Revocation or withdrawal of notice does not prevent issue of another notice**

The revocation or withdrawal of a notice under this Part does not prevent the issue of any other notice.

**39 Service of notices**

- (1) A notice under this Part (including a notice confirming, revoking or withdrawing such a notice) may be issued or given to a person:
  - (a) by delivering it personally to the person, or
  - (b) by leaving it with some other person at, or sending it by post or facsimile transmission to, the person's place of residence or business or the place of work to which the notice relates.
- (2) A notice under this Part that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.
- (3) A person must not remove a notice under this Part from a vehicle before the matters causing the contravention have been remedied (unless it is necessary to do so to remedy the matters).

Maximum penalty: 100 penalty units for an individual or 500 penalty units for a body corporate.
- (4) This section does not affect the operation of any provision of a law or the rules of a court authorising a notice or other document to be served in a manner not authorised by this section.

**40 Exhibition of notices**

- (1) An authorised officer may cause a notice containing a copy of or extract from a notice under this Part, or of the matter contained in the notice, to

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be exhibited at a place of work or on a vehicle concerned in a manner approved by the Competent Authority.

- (2) A person must not destroy, damage or remove a notice so exhibited except with the approval of the Competent Authority or an authorised officer.

Maximum penalty: 20 penalty units for an individual or 100 penalty units for a body corporate.

**41 Proceedings for offences not affected by notices**

The issue, variation, revocation or withdrawal of a notice under this Part does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

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## Part 6 Exemptions

### 42 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 transport of particular dangerous goods by road or rail.
- (2) A Competent Authority may, on its own initiative or in response to an application under subsection (1), 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 class of 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 class of persons were required to comply, and
    - (ii) would not cause unnecessary administrative or enforcement difficulties, particularly with respect to maintaining national uniformity of road transport laws or rail transport laws.
- (3) An exemption may be subject to conditions.
- (4) If a Competent Authority grants an exemption to one person, the Competent Authority 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) If a Competent Authority:
  - (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,the Competent Authority 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 conditions to which an exemption is subject is guilty of an offence.  
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both, for an individual or 500 penalty units for a body corporate.
- (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
  - (b) grants an exemption that is to remain in force for longer than 6 months,
- the Competent Authority must notify a Competent Authority of each other State or Territory of the details of the exemption.

#### **43 Variation and cancellation of exemptions and conditions**

- (1) A Competent Authority may cancel an exemption if it:
- (a) is satisfied that a condition to which the exemption is subject has not been complied with, or
  - (b) is no longer satisfied of the matters referred to in section 42 (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.

#### **44 Internal review of exemptions by Competent Authority**

- (1) 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) grants an exemption to a person or a class of persons subject to conditions, or
  - (d) 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 in writing to the Competent Authority for a review of the decision.

- (2) The application for review must be made within 7 days after the decision or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular decision.
- (4) The Competent Authority is to review the decision that is the subject of a duly made application for review.
- (5) The Competent Authority may stay a decision that is the subject of a duly made application for review.
- (6) The Competent Authority may, as a result of the review, confirm the decision, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (7) Regulations may be made with respect to reviews under this section.

#### **45 Appeal to Court following review**

- (1) A person, or a representative of a class of persons, who is not satisfied with the result of an internal review of a decision under this Part may appeal against the notice to:
  - (a) in the case of a review by the EPA—the Land and Environment Court, or
  - (b) in the case of a review by WorkCover—a Local Court constituted by an Industrial Magistrate sitting alone.
- (2) An appeal under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the court concerned.
- (3) The court to which an appeal is made under this section may, on the appeal, confirm the decision, vary it or revoke it.
- (4) Regulations may be made with respect to appeals under this section, including the time and manner in which such an appeal is to be made.

#### **46 Application orders and emergency orders**

- (1) The Minister may order, by notice published 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 of this State or to a specified area of this State.

## **Part 7 Criminal and other proceedings**

### **Division 1 Proceedings for offences generally**

#### **47 Proceedings for an offence**

- (1) A prosecution for an offence against this Act or the regulations may be brought by a Competent Authority or an authorised officer.
- (2) Subject to subsection (3), proceedings for an offence against this Act or the regulations that is prescribed by the regulations for the purposes of this subsection may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Industrial Court of New South Wales.
- (3) Proceedings for an offence against section 10 may only be dealt with summarily before the Industrial Court of New South Wales.
- (4) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for an offence referred to in subsection (2).
- (5) Proceedings for an offence against this Act or the regulations other than an offence referred to in subsection (2) or (3) may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (6) If proceedings for an offence against this Act or the regulations are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, 100 penalty units.
- (7) Proceedings for an offence under this Act or the regulations may be commenced within but not later than 2 years after the date on which the offence is alleged to have been committed.
- (8) Proceedings for an offence under this Act or the regulations may also be commenced within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of a Competent Authority or an authorised officer.
- (9) If subsection (8) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice, summons, information or application must contain particulars of the date on which evidence of the offence first came to the attention of a Competent Authority or an authorised officer and need not contain particulars of

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the date on which the offence was committed. The date on which evidence first came to the attention of a Competent Authority or an authorised officer is the date specified in the court attendance notice, summons, information or application, unless the contrary is established.

- (10) In this section, *evidence of an offence* means evidence of any act or omission constituting the offence.

#### **48 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **Division 2 Court orders in connection with offences**

### **49 Operation of Division**

(1) **Application to proved offences**

This Division applies where a court finds an offence against this Act or the regulations proved.

(2) **Meaning of proved offences**

Without limiting the generality of subsection (1), a court finds an offence proved if:

- (a) the court convicts the offender of the offence, or
- (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).

(3) **Definitions**

In this Division:

*the court* means the court that finds the offence proved.

*the offender* means the person who is found to have committed the offence.

### **50 Orders generally**

(1) **Orders may be made**

One or more orders may be made under this Division against the offender.

(2) **Orders are additional**

Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

(3) **Other action not required**

Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

### **51 Orders regarding monetary benefits**

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents 3 times the amount of any monetary benefits that:

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- (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence, and
  - (b) in the case of a journey that was interrupted or not commenced because of action taken by an authorised officer in connection with the commission of the offence—would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) For the purposes of this section, a person is an *associate* of another if:
- (a) one is a spouse, parent, brother, sister or child of the other, or
  - (b) they are members of the same household, or
  - (c) they are partners, or
  - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust, or
  - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate, or
  - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate, or
  - (g) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (4) In this section:
- beneficiary*, in relation to a trust, includes an object of a discretionary trust.
- monetary benefits* means monetary, financial or economic benefits.
- the court* does not include a Local Court.

## 52 Power to affect licences

The court that finds the driver of a vehicle guilty of an offence may make an order for either or both of the following:

- (a) that a licence the driver is required to have by the regulations is:
  - (i) cancelled, or
  - (ii) modified or suspended for a specified period,
- (b) that the driver is disqualified for a specified period from obtaining or holding a licence the driver is required to have by the regulations.

**53 Supervisory intervention orders**

- (1) The court may make an order under this section if the court considers an offender to be a systematic or persistent offender against this Act or the regulations.
- (2) The court may, on the application of a Competent Authority, make a supervisory intervention order requiring the offender (at the offender's own expense and for a specified period not exceeding one year) to do any or all of the following:
  - (a) to do specified things that the court considers will improve the offender's compliance with this Act or the regulations or specified provisions of this Act or the regulations, including (for example) the following:
    - (i) appointing or removing staff to or from particular activities or positions,
    - (ii) training and supervising staff,
    - (iii) obtaining expert advice as to maintaining appropriate compliance,
    - (iv) installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment),
    - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures,
  - (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Competent Authority or a person nominated by the Competent Authority,
  - (c) to furnish compliance reports to the Competent Authority or the court or both as specified in the order,
  - (d) to appoint a person to have responsibilities:
    - (i) to assist the offender in improving compliance with this Act and the regulations or specified provisions of this Act or the regulations, and
    - (ii) to monitor the offender's performance in complying with this or specified provisions of this Act and the regulations and in complying with the requirements of the order, and
    - (iii) to furnish compliance reports to the Competent Authority or the court or both as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.

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- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (5) The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the offender's ability or willingness to comply with this Act, having regard to:
- (a) the offences of which the offender has been previously found guilty, and
  - (b) the offences for which the offender has been proceeded against by way of penalty notices, and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the offender in connection with the transport of dangerous goods.
- (6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of:
- (a) the Competent Authority that applied for the order, or
  - (b) the offender, but only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (8) For the purposes of subsections (1) and (5), if a person has committed at least one offence against this Act or the regulations, the court may treat any offences that the person has committed against any corresponding law as if they had also been committed against this Act.
- (9) A person who contravenes an order under this section is guilty of an offence.  
Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.
- (10) In this section:
- compliance report***, in relation to an offender in respect of whom a supervisory intervention order is made, means a report relating to:
- (a) the performance of the offender in complying with:
    - (i) this Act and the regulations or provisions of this Act or the regulations specified in the order, and
    - (ii) the requirements of the order, and
  - (b) without limiting the above:
    - (i) things done by the offender to ensure that any failure by the offender to comply with this Act and the regulations or

the specified provisions of this Act or the regulations does not continue, and

- (ii) the results of those things having been done.

***intelligent transport system*** means a system involving the use of electronic or other technology (whether located in or on a vehicle, or on or near a road or rail, or elsewhere) that has the capacity and capability to monitor, collect, store, display, analyse, transmit or report information relating to:

- (a) a vehicle or its equipment or load, the driver of a vehicle, the operator of a fleet of vehicles or another person involved in road or rail transport, and
- (b) without limiting the above, whether a vehicle is being operated in conformity with this Act and the regulations and any authorisation issued under this Act.

**54 Prohibiting a person from involvement in the dangerous goods transport industry**

- (1) In sentencing an offender 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, order that the offender be prohibited for a specified period from involvement in the transport of dangerous goods by road or rail.
- (2) The matters to which a court must have regard are:
  - (a) the offender's record in the transport of dangerous goods by road or rail, and
  - (b) any prior convictions of the offender relating to dangerous goods, and
  - (c) the circumstances surrounding the commission of the offence for which the offender is being sentenced.
- (3) A person who contravenes an order under this section is guilty of an offence.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both, for an individual or 2,500 penalty units for a body corporate.

**55 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.

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- (2) Dangerous goods and containers forfeited to the Crown may be destroyed, sold or otherwise disposed of as directed by a Competent Authority.
  - (3) The person must pay to the Crown the reasonable costs of destruction, sale or other disposal.

**56 Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) a public authority has incurred costs and expenses in connection with an incident that relates to the transport of dangerous goods by road or rail being an incident:
    - (i) wholly or partly constituted by or arising from:
      - (A) the escape of dangerous goods, or
      - (B) an explosion or fire involving dangerous goods, or
    - (ii) that involves the danger of the escape of dangerous goods or an explosion or fire involving dangerous goods, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,  
order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) A Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

**57 Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) a public authority has incurred costs and expenses in connection with an incident that relates to the transport of dangerous goods by road or rail being an incident:
    - (i) wholly or partly constituted by or arising from:
      - (A) the escape of dangerous goods, or

- (B) an explosion or fire involving dangerous goods, or
- (ii) that involves the danger of the escape of dangerous goods or an explosion or fire involving dangerous goods, or
- (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage, the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

**58 Recovery of costs from convicted person**

- (1) The court may order that an offender must pay to a Competent Authority costs that:
  - (a) were reasonably incurred in taking that action, and
  - (b) are directly related to the investigation of the offence.
- (2) Those costs include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

**Division 3 General**

**59 Evidence**

- (1) If, in a prosecution for an offence against this Act or the regulations, an authorised officer gives evidence that the authorised officer believes any of the matters referred to in subsection (2), that evidence is admissible and is prima facie evidence of those matters.
- (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 packaging indicate that the substance is or the packaging contains particular dangerous goods—that the substance is or the packaging contains those dangerous goods, or
  - (d) if markings on or attached to a package indicate that the package contains particular dangerous goods—that the package contains those dangerous goods, or

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- (e) if markings or placards on or attached to a vehicle or equipment indicate that the vehicle or equipment is being used to transport dangerous goods—that the vehicle or equipment is being used to transport those dangerous goods, or
  - (f) if markings or placards on or attached to a substance or packaging indicate, in relation to the substance, the packaging or the contents of the packaging, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the substance, the packaging or the contents of the packaging has that capacity, tare weight, origin, character, specification, ownership or date of manufacture, or
  - (g) if markings or placards on or attached to a package indicate, in relation to the contents of the package, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the contents of the package has that capacity, tare weight, origin, character, specification, ownership or date of manufacture, or
  - (h) if markings or placards on or attached to, a vehicle or packaging indicate, in relation to the load of the vehicle or the contents of the packaging, a particular quantity of dangerous goods—that the vehicle or packaging contained that quantity of dangerous goods, or
  - (i) 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 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 42,
  - (b) documents relating to 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.

**60 Evidence regarding weighing**

For the purposes of this Act, evidence of a record made by:

- (a) the operator of a weighbridge or weighing facility, or
- (b) an employee of the operator of the weighbridge or weighing facility,

of the mass of a vehicle transporting dangerous goods or a container containing dangerous goods weighed at the weighbridge or facility is admissible in any proceedings and is *prima facie* evidence of the mass of the vehicle or container at the time it was weighed.

**61 Transport documentation**

- (1) Transport documentation is admissible in any proceedings under or for the purposes of this Act and is *prima facie* evidence of:
  - (a) the identity and status of the parties to the transaction to which it relates, and
  - (b) the destination or intended destination of the load to which it relates.
- (2) The reference in subsection (1) to the *status* of parties includes a reference to their status in respect of their involvement in the transport of dangerous goods.

**62 Proof of appointments and signatures unnecessary**

- (1) For the purposes of this Act, it is not necessary to prove the appointment of an authorised officer.
- (2) For the purposes of this Act, a signature purporting to be the signature of an authorised officer is evidence of the signature it purports to be.

**63 Use of codes of practice etc in proceedings**

- (1) This section applies to a code of practice, guideline or other document that is approved by the Australian Transport Council for the purpose of providing practical guidance to people engaged in the transport of dangerous goods by road or rail.
- (2) If:
  - (a) in proceedings against a person for an offence, it is alleged that a person contravened a provision of this Act or the regulations, and
  - (b) a code of practice, guideline or other document 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, guideline or other document has been published in the Gazette, or
    - (ii) copies of the code of practice, guideline or other document are available for purchase or inspection within this State,
- then:
- (d) the code of practice, guideline or other document 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, guideline or other document, the person is taken to have complied with the provision or requirement.

## **Part 8 Miscellaneous**

### **64 Act to bind Crown**

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

### **65 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 Competent Authority that appointed the authorised officer.

### **66 Confidentiality and disclosure of information**

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and (without limiting the foregoing) to:
  - (a) a person who is or was a delegate of a Competent Authority, or
  - (b) a person who is or was employed by, or engaged to provide services to or on behalf of, a Competent Authority, or
  - (c) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to a Competent Authority.
- (2) Except as provided by this section, a person to whom this section applies must not disclose any information obtained by the person in connection with the administration or execution of this Act, unless the disclosure is made:
  - (a) as required or authorised by or under this or any other Act, or
  - (b) with the consent of the person from whom the information was obtained, or
  - (c) in connection with the administration or execution of this Act, or
  - (d) to another Competent Authority or an authorised officer or a police officer, or
  - (e) to a prescribed public authority of any jurisdiction, or
  - (f) to a public authority of any jurisdiction for law enforcement purposes, or
  - (g) to a court or in connection with any legal proceedings, or
  - (h) in accordance with the regulations.

Maximum penalty: 5 penalty units.

- (3) A person to whom information has been disclosed under subsection (2) for a purpose must not use that information for any other purpose.  
Maximum penalty: 5 penalty units.
- (4) A Competent Authority may, for law enforcement purposes, give a record, device or other thing seized in accordance with this Part, or any information obtained in accordance with this Part, to a public authority, including a public authority of another jurisdiction.
- (5) A Competent Authority may communicate any information concerning the location, type and quantity of dangerous goods, which comes to its knowledge in the exercise of its functions under this Act, to any person or authority requiring the information to provide an emergency or rescue service or some other lawful service.
- (6) Nothing in this section prevents a Competent Authority providing information to a corresponding authority about:
  - (a) any action taken by the Competent Authority under this Act, or
  - (b) any information obtained under this Act, including any information contained in any records, devices or other things inspected or seized under this Act.
- (7) Nothing in this section prevents information from being used to enable the Competent Authority to accumulate aggregate data and to enable it to authorise use of the aggregate data for the purposes of research or education.
- (8) Nothing in this section authorises or permits the disclosure of information that is a train safety record (within the meaning of Division 3 of Part 3 of the *Rail Safety Act 2002*).

**67 Contracting out prohibited**

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or the regulations or of any provision of this Act or the regulations is void to the extent that it would otherwise have that effect.

**68 Recovery of costs of public authorities**

- (1) This section applies to an incident that relates to the transport of dangerous goods by road or rail 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 public 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 authority or to the Crown by action in a court of competent jurisdiction.
- (3) The costs are recoverable jointly or severally from the following people:
  - (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 sub-contractor of another person, for the transport of the dangerous goods by road or rail.
- (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 sub-contractor of the person.
- (5) The recovery of costs incurred by one public 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 public 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 public 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 principal officer of the relevant public 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.

**69 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 public 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.

**70 Minister to notify adoption of code etc**

- (1) If the regulations apply, adopt or incorporate provisions of a regulation, code, standard 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 regulation, code, standard or rule may be obtained or inspected.
- (2) If:
  - (a) the regulations apply, adopt or incorporate provisions of a regulation, code, standard or rule as in force from time to time, and
  - (b) the regulation, code, standard 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 regulation, code, standard or rule has been amended or replaced and giving details of places where the amended or replaced regulation, code, standard or rule may be obtained or inspected.
- (3) A reference in this section to a code, standard or rule includes a reference to one that is made outside Australia.

**71 Delegation**

The Minister may by instrument in writing delegate all or any of the Minister's powers under this Act (other than powers under section 46 (Application orders and emergency orders) and this power of delegation) or the regulations to a Competent Authority.

**72 Savings, transitional and other provisions**

Schedule 1 has effect.

**73 Amendment of other Acts**

The Acts set out in Schedule 2 are amended as set out in that Schedule.

**74 Repeal**

The *Road and Rail Transport (Dangerous Goods) Act 1997* is repealed.

Clause 75 Dangerous Goods (Road and Rail Transport) Bill 2008

Part 8 Miscellaneous

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**75 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## Schedule 1 Savings, transitional and other provisions

(Section 72)

### Part 1 General

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definition

In this Part, *former Act* means the *Road and Rail Transport (Dangerous Goods) Act 1997*.

#### 3 Authorised officers

- (1) A person appointed as an authorised officer under the former Act and holding that position immediately before the commencement of section 17 of this Act is taken to have been appointed as an authorised officer under that section and the appointment is subject to the same conditions as were imposed on the original appointment.
- (2) An identification card issued to an authorised officer under the former Act is taken to be an identification card issued under this Act until its replacement under the Act, and may be used by the authorised officer even though it refers to provisions of the former Act.

Dangerous Goods (Road and Rail Transport) Bill 2008

Schedule 1 Savings, transitional and other provisions

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- (3) The functions conferred on an authorised officer by Division 2 of Part 4 of this Act extend to matters arising before the commencement of that Division.

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## Schedule 2 Amendment of other Acts

(Section 73)

### 2.1 Explosives Act 2003 No 39

#### **Section 5 Act not to apply to transport of dangerous goods covered by other scheme**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*”.

Insert instead “*Dangerous Goods (Road and Rail Transport) Act 2008*”.

### 2.2 Fines Act 1996 No 99

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Omit the matter relating to the *Road and Rail Transport (Dangerous Goods) Act 1997*.

Insert instead in appropriate order:

*Dangerous Goods (Road and Rail Transport) Act 2008*,  
section 48

### 2.3 Industrial Relations Act 1996 No 17

#### **Section 210 Freedom from victimisation**

Insert after section 210 (1) (ib):

- (ic) informs any person or body of, or gives evidence in relation to, a breach or alleged breach of the *Dangerous Goods (Road and Rail Transport) Act 2008* or the regulations under that Act (or a provision of a law of another State or Territory that corresponds to that Act or those regulations), or

### 2.4 Land and Environment Court Act 1979 No 204

#### **[1] Section 17 Class 1—environmental planning and protection appeals**

Insert at the end of section 17 (i):

, and

- (j) appeals under section 35 (1) (a) or 45 (1) (a) of the *Dangerous Goods (Road and Rail Transport) Act 2008*.

**[2] Section 21 Class 5—environmental planning and protection summary enforcement**

Omit “section 39 (4) of the *Road and Rail Transport (Dangerous Goods) Act 1997*” from section 21 (da).

Insert instead “section 47 (5) of the *Dangerous Goods (Road and Rail Transport) Act 2008*”.

**2.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 2 Search warrants under other Acts**

Omit the matter relating to the *Road and Rail Transport (Dangerous Goods) Act 1997*.

**2.6 Maritime Services Act 1935 No 47**

**Section 38 Regulations**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*” from the definition of *dangerous goods* in section 38 (4).

Insert instead “*Dangerous Goods (Road and Rail Transport) Act 2008*”.

**2.7 Pipelines Act 1967 No 90**

**Section 5 Application of Act**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*” from section 5 (1) (e).

Insert instead “*Dangerous Goods (Road and Rail Transport) Act 2008*”.

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## **2.8 Protection of the Environment Administration Act 1991 No 60**

### **Section 3 Definitions**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*” from the definition of *environment protection legislation* in section 3 (1).

Insert instead in appropriate order “*Dangerous Goods (Road and Rail Transport) Act 2008*”.

## **2.9 Protection of the Environment Operations Act 1997 No 156**

### **[1] Dictionary**

Omit “railway locomotive” from the definition of *plant*.

Insert instead “unit of rolling stock”.

### **[2] Dictionary**

Insert in alphabetical order:

*unit of rolling stock* means a vehicle designed to run on rails, but does not include a vehicle designed to operate both on and off rails when the vehicle is not operating on rails.

## **2.10 Rail Safety Act 2002 No 96**

### **Sections 102 (c) and 115 (a)**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*” wherever occurring.

Insert instead “*Dangerous Goods (Road and Rail Transport) Act 2008*”.

## **2.11 Road Transport (Safety and Traffic Management) Act 1999 No 20**

### **Sections 8 (3) (g) (i) and 60 (1) (b)**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*” wherever occurring.

Insert instead “*Dangerous Goods (Road and Rail Transport) Act 2008*”.

## **2.12 Transport Administration Act 1988 No 109**

### **Section 88Y Obligations and rights under Occupational Health and Safety Act 2000 and other legislation**

Omit “*Road and Rail Transport (Dangerous Goods) Act 1997*” from paragraph (c) of the definition of ***employer liability legislation*** in section 88Y (3).

Insert instead “*Dangerous Goods (Road and Rail Transport) Act 2008*”.