

# Dangerous Goods Act 1975 No 68

[1975-68]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Occupational Health and Safety Amendment Act 1997 No 51](#), Sch 3.1 [1] and [3] (not commenced)
  - [Marine Safety Act 1998 No 121](#) (not commenced)
  - [Occupational Health and Safety Act 2000 No 40](#) (not commenced — to commence on 1.9.2001)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 24 August 2001

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# Dangerous Goods Act 1975 No 68



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Dangerous Goods Act 1975*.

### 2 Commencement

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

### 3 (Repealed)

### 4 Definitions

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

**Authority** means the WorkCover Authority constituted under the *WorkCover Administration Act 1989*.

**container** includes any receptacle and any covering.

**convey**, in relation to dangerous goods, includes carry, load, unload, transfer, transmit, pump or discharge the goods.

**court** means a Local Court constituted by a Magistrate.

**dangerous goods** means any substance or article prescribed as dangerous goods for the purposes of this Act.

**director** of a corporation means a person who is a director of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

**explosive** means any dangerous goods prescribed as an explosive for the purposes of this Act.

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

**inspector** means an inspector of dangerous goods appointed under section 6.

**licence** means a licence under this Act.

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

**permit** means a permit under this Act or the regulations.

**pipeline** means any:

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

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

**premises** means any land, building or enclosed place, or part thereof, or any portable structure.

**regulations** means regulations made under this Act.

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

**sell** includes:

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

- (d) attempt to sell, barter, exchange, offer for sale or expose for sale, and
- (e) except in section 13:
  - (i) agree to sell, barter or exchange,
  - (ii) send, forward or deliver for or on sale or for barter or exchange,
  - (iii) have in possession for sale, barter or exchange,
  - (iv) cause or suffer to be sent, forwarded or delivered for or on sale or for barter or exchange, and
  - (v) attempt to forward or deliver for or on sale or for barter or exchange.

**substance** includes any gas, any liquid, any gas mixture and any liquid mixture.

**vehicle** includes an aircraft.

**vessel** means any kind of vessel used in navigation.

## 5 Savings and relationship to other laws

- (1) Subject to subsections (2) and (3), where, by or under any other Act, any provision is made relating to dangerous goods, the provision so made shall be observed in addition to the provisions of this Act and the regulations, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.
- (2) Subject to subsection (3), where, by or under any other Act, any provision is made relating to dangerous goods that is inconsistent with a provision of this Act or a regulation, the provision of this Act or the regulation shall prevail.
- (3) Subsections (1) and (2) do not apply to, nor does this Act affect, a provision relating to dangerous goods made by or under the [Navigation Act 1901](#), the [Mines Inspection Act 1901](#), the [Coal Mines Regulation Act 1982](#), the [Construction Safety Act 1912](#), the [Radiation Control Act 1990](#) or the [Occupational Health and Safety Act 1983](#).

### 5A Act to bind the Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 5B Fees to be paid into WorkCover Authority Fund

Any fees paid under this Act or the regulations are to be paid into the WorkCover Authority Fund under the [WorkCover Administration Act 1989](#).

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

This Act does not apply to:

- (a) the transport of dangerous goods by road or rail, or
- (b) any associated activity or matter,

to the extent to which it is regulated by the [Road and Rail Transport \(Dangerous Goods\) Act 1997](#) or any regulations made under that Act.

## **Part 2 Administration**

### **6 Appointments**

- (1) The Authority may appoint as inspectors of dangerous goods any of the following persons:
  - (a) a statutory officer,
  - (b) a public servant,
  - (c) a person employed by a public or local authority,
  - (d) a person belonging to a class of persons prescribed by the regulations.
- (2) Such persons as may be necessary for the administration of this Act may be employed under Part 2 of the [Public Sector Management Act 1988](#).

### **7A Delegation of certain licensing functions to Environment Protection Authority**

- (1) The Authority may delegate to the Environment Protection Authority any of the Authority's powers, authorities, duties and functions under this Act or the regulations.
- (2) The Authority is required to delegate under this section the powers, authorities, duties and functions relating to licences authorising the carriage of dangerous goods if the Minister administering the [Protection of the Environment Administration Act 1991](#) so directs.
- (3) Any power, authority, duty or function delegated under this section may be delegated by the Environment Protection Authority under the [Protection of the Environment Administration Act 1991](#).
- (4) The Authority and the Environment Protection Authority may enter into an arrangement for the payment into the Consolidated Fund (instead of the WorkCover Authority Fund) of fees paid under this Act or the regulations in connection with licences to which delegations under this section apply. Any such arrangement has effect according to its tenor.

### **7 (Repealed)**



## **Part 3 Dangerous goods**

### **Division 1 Keeping**

#### **8 Licensing of premises**

- (1) The Authority may issue licences for the keeping of dangerous goods in or on premises.
- (2) A licence is not to be issued under this section unless it specifies:
  - (a) the person to whom it is issued,
  - (b) the dangerous goods or the class or classes of dangerous goods that may be kept, and
  - (c) the premises in or on which the dangerous goods may be kept.
- (3) While a licence under this section is in force, the premises specified in the licence are premises licensed under this section for the keeping of the dangerous goods or dangerous goods of the class or classes so specified.

#### **9 Keeping generally**

- (1) A person shall not keep dangerous goods except:
  - (a) in or on premises licensed under section 8 for the keeping of the dangerous goods,
  - (b) in or on premises licensed under section 19 for the manufacture of explosives, or
  - (c) in such quantities and in such manner and subject to such conditions as may be prescribed for the purposes of this section in relation to the goods.
- (2) Subject to subsections (3) and (4), a person who keeps dangerous goods in contravention of subsection (1), the owner of the goods and the person occupying the place where the goods are so kept are each guilty of an offence and liable to a penalty:
  - (a) if an individual—not exceeding 250 penalty units, or
  - (b) if a corporation—not exceeding 500 penalty units,and, in the case of a subsequent offence, if the offence continues, to a penalty not exceeding 100 penalty units for each day the offence continues.
- (3) An owner of dangerous goods or the occupier of the place where the goods were kept is not guilty of an offence under subsection (2) if the owner or occupier satisfies the court that the goods kept in contravention of subsection (1) were so kept without the

owner's or occupier's knowledge.

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

## **Division 2 Conveyance**

### **10 Licensing of vehicles and vessels**

- (1) The Authority may issue licences authorising the carriage of dangerous goods.
- (2) A licence is not to be issued under this section unless it specifies:
- (a) the person to whom it is issued,
  - (b) the dangerous goods or the class or classes of dangerous goods the person is authorised to carry, and
  - (c) the container in which the person is authorised to carry the dangerous goods (whether by reference to a vehicle or vessel of which it forms part, or otherwise).
- (3) While a licence under this section is in force:
- (a) the person to whom it was issued or transferred,
  - (b) any employee of that person acting in the course of his or her employment by that person, and
  - (c) if that person is a corporation—any person acting in his or her capacity as a director of the corporation,
- are authorised to carry the goods or goods of the class or classes specified in the licence in the container so specified but only when they are carrying the goods in accordance with the terms and conditions, if any, of the licence.

### **11 Offence of unlicensed conveyance**

- (1) A person shall not carry any dangerous goods prescribed for the purposes of this section in any container that is in or on, or forms part of, a vehicle or vessel unless the person is authorised by section 10 (3) to carry the dangerous goods in that container.
- Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.
- (2) A person is not guilty of an offence under subsection (1) if:
- (a) the person or the person's employer is authorised to carry the goods in the container under a law which has been declared to be a corresponding law for the

purposes of this section, and

(b) the dangerous goods are carried:

(i) on a prescribed journey, and

(ii) in accordance with the corresponding law.

(3) The Governor may, by order published in the Gazette, declare a law of another State or a Territory to be a corresponding law for the purposes of this section.

**Editorial note—**

See Gazette No 99 of 18.8.1995, p 4251.

(4) In this section:

**prescribed journey** means a journey:

(a) from a place outside the State to a place in the State,

(b) from a place in the State to a place outside the State, or

(c) between places outside the State via a route within the State that is a reasonable journey in all the circumstances.

## **12 Conveyance generally**

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

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

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

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

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

## **Division 3 General**

### **13 Offence of sale in public place**

(1) In this section, **public place** means any place, including any road, to which the public

has its own right to resort.

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

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

#### **14 Negligent or careless use etc**

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

- (a) to endanger or be likely to endanger the life of any person,
- (b) to cause or be likely to cause injury to any person, or
- (c) to damage or be likely to cause damage to any property not belonging to the firstmentioned person, other than property the owner of which has consented to its damage, proof of which shall lie on the firstmentioned person.

Maximum penalty: 250 penalty units or imprisonment for 12 months, or both.

### **Part 4 Special provisions relating to explosives**

#### **Division 1 Preliminary**

##### **15 Definition of “explosive”**

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

##### **16 Order declaring authorised explosives**

- (1) The Minister may, by order published in the Gazette, declare an explosive specified or described in the order to be an authorised explosive for the purposes of Division 2.
- (2) An order under this section may describe an explosive by reference to:
  - (a) a class or classes of explosives,
  - (b) a quantity, or
  - (c) circumstances in which, or other than in which, the explosive shall be an authorised explosive.

#### **Division 2 Import**

##### **17 Import licences and permits**

- (1) The Authority may issue licences authorising the importation of authorised explosives

into the State.

- (2) The Authority may issue permits authorising the importation into the State of explosives other than authorised explosives.
- (3) A licence or permit is not to be issued under this section unless it specifies:
  - (a) the person authorised to import an explosive, and
  - (b) the explosive or the class or classes of explosives that the person is authorised to import.
- (4) While a licence or permit under this section is in force:
  - (a) the person to whom it was issued or transferred,
  - (b) any employee of that person acting in the course of his or her employment by that person, and
  - (c) if that person is a corporation—any person acting in his or her capacity as a director of the corporation,

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

### **18 Offence of unlicensed importing**

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

Maximum penalty: 10 penalty units or, if a corporation, 50 penalty units.

## **Division 3 Manufacture**

### **19 Licences or permits to manufacture explosives**

- (1) The Authority may issue licences authorising the manufacture of explosives in or on premises.
- (1A) The Authority may issue permits authorising the manufacture of explosives in or on premises if the explosives are to be used in or on those premises by the persons to whom the permits are issued.
- (2) A licence or permit is not to be issued under this section unless it specifies:
  - (a) the person to whom it is issued,
  - (b) the explosive or the class or classes of explosives the person is authorised to manufacture, and

(c) the premises in or on which the person is authorised to manufacture the explosive.

(3) While a licence or permit under this section is in force:

(a) the person to whom it was issued or transferred,

(b) any employee of that person acting in the course of his or her employment by that person, and

(c) if that person is a corporation—any person acting in his or her capacity as a director of the corporation,

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

## **20 Offence of unlicensed manufacture**

(1) Subject to subsection (2), a person shall not manufacture any explosive unless the person is authorised by section 19 (3) to manufacture the explosive.

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case, and (in any case) if the offence continues, 250 penalty units for each day the offence continues.

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

(a) the manufacture, at a Government or industrial laboratory or a laboratory of an educational institution and under the supervision of a qualified person, of a quantity of explosive not exceeding an amount reasonably necessary for the purpose of chemical experiment and not intended for practical use or sale,

(b) the filling, in the prescribed manner, of safety cartridges that were not intended for sale,

(c) the reconditioning of an explosive under the supervision of an inspector, or

(d) the blending, at or near the place of use and in the prescribed manner, of the inexplusive components of an explosive.

## **Division 4 Sale, supply and receipt**

### **21 Sale licence**

(1) The Authority may issue licences authorising the sale of explosives.

(2) A licence is not to be issued under this section unless it specifies:

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

## **22 Authority to sell**

While a licence under section 8, 17, 19 or 21 is in force:

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

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

## **23 Offence of unlicensed sale**

A person shall not sell any explosive unless the person is authorised by section 22 to sell the explosive.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both, or, if a corporation, 50 penalty units.

## **24 Supply to minors**

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

Maximum penalty: 50 penalty units.

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

## **25 Receipt to be authorised**

(1) Subject to subsections (2) and (3), a person shall not:

- (a) supply an explosive to another, unless at the time of supply the person to whom the explosive is supplied, or
- (b) receive an explosive, knowing it to be an explosive, unless at the time of receipt the person,

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

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person is not guilty of an offence under subsection (1) relating to the supply of an explosive if he or she satisfies the court that he or she believed on reasonable grounds that the person to whom he or she supplied the explosive was authorised by or under the regulations to receive the explosive.
- (3) A person shall not be found guilty of an offence relating to the unauthorised receipt of an explosive under subsection (1) and of an offence of having the same explosive in the person's possession, control or custody under section 26 (1).

## **Division 5 Possession**

### **26 Possession of explosives**

- (1) Subject to subsection (2) and section 25 (3), a person who has explosives in his or her possession, control or custody is guilty of an offence and liable to a penalty not exceeding 250 penalty units or to imprisonment for a period not exceeding 12 months, or both, or, if a corporation, to a penalty not exceeding 500 penalty units.
- (2) A person is not guilty of an offence under subsection (1) if the person satisfies the court that:
  - (a) the person was authorised by or under the regulations to receive the explosives to which the alleged offence relates,
  - (b) the person received the explosives in any other lawful manner, or
  - (c) the person manufactured the explosives lawfully.

## **Part 5 Supplementary**

### **Division 1 Licences and permits**

#### **27 Licences generally**

- (1) The Authority may, from time to time, renew or transfer a licence.
- (2) The Authority shall refuse to issue, renew or transfer a licence in any case where the Authority thinks the interests of public safety or the peace so require.
- (3) A licence is subject to:
  - (a) any term or condition prescribed for all licences or for a class of licences to which it belongs, and
  - (b) any term or condition that the Authority thinks fit to impose and that is specified



in the licence.

- (4) A licence is in force for the period or periods specified in the licence, not exceeding 3 years from the date of issue or any renewal, unless it is sooner cancelled by the Authority under section 28 (3) or 32 (2).

#### **27A Commissioner of Police to report on explosives licences and permits**

- (1) This section applies to:
- (a) licences relating to explosives, and
  - (b) permits relating to explosives, being permits that are issued by the Authority.
- (2) For the purpose of enabling the Authority to determine an application for the issue, renewal or transfer of a licence or permit to which this section applies, the Authority may request the Commissioner of Police to furnish the Authority with a report in respect of any one or more of the following matters:
- (a) whether the applicant has been convicted in New South Wales or elsewhere of an offence and sentenced to imprisonment for 12 months or more and has been released from that imprisonment less than 5 years before the date of the application,
  - (b) whether the applicant is subject to a recognizance, granted in New South Wales or elsewhere, to be of good behaviour or to keep the peace,
  - (c) whether the applicant is the subject of a firearms prohibition order within the meaning of the *Firearms Act 1996*,
  - (d) whether the applicant is of good character and repute,
  - (d1) whether the applicant has a history of violence or threats of violence, with **violence** including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*,
  - (d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant,
  - (e) whether the applicant has good reason for holding the licence or permit,
  - (f) whether the applicant can be trusted to deal with explosives in the manner authorised by the licence or permit without danger to the public safety or the peace,
  - (g) whether the applicant has adequate facilities for the safe keeping of explosives,
  - (h) such other matters as the Authority may specify in the request.

- (3) The Commissioner of Police shall, upon receiving a request made under subsection (2), investigate the application to which the request relates and furnish to the Authority a report in respect of the matter or matters the subject of the request.

## **28 Suspension or cancellation**

- (1) Where the holder of a licence or permit is proceeded against for an offence against this Act or the regulations, or has failed to comply with a lawful direction or requirement of an inspector, the Authority may suspend the licence or permit until the proceeding has been disposed of or, as the case may be, until the direction or requirement has been complied with.
- (2) A licence or permit shall be deemed not to be in force during any period of its suspension.
- (3) The Authority may cancel a licence or permit if the holder of the licence or permit:
  - (a) has been convicted of an offence against this Act or the regulations,
  - (b) breaches a condition of the licence or permit, or
  - (c) surrenders the licence or permit to the Authority.

## **28A Special provision for suspension or cancellation of explosives licences and permits**

- (1) This section applies to licences and permits to which section 27A applies.
- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3).
- (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit.
- (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force.
- (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies.

- (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the [Crimes Act 1900](#).

**29 Reviews by Administrative Decisions Tribunal of decisions concerning licences and permits**

- (1) A person who is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:
- (a) a decision of a relevant decision-maker under this Act or the regulations relating to a licence,
  - (b) a decision of a relevant decision-maker under this Act or the regulations relating to a permit.
- (2) For the purposes of an application to the Tribunal under this section, a relevant decision-maker is taken to have refused an application to the decision-maker for the issue, renewal or transfer of a licence or permit if the application has not been granted within 1 month (or, if another period is prescribed by the regulations, within that other period) after the application is duly made.
- (3) An application under subsection (1) must be made within 28 days after the directly aggrieved person is notified of the decision.
- (4) Section 48 (Notice of decision and review rights to be given by administrators) of the [Administrative Decisions Tribunal Act 1997](#) is taken to require a relevant decision-maker to notify only a directly aggrieved person.
- (5) Section 53 (Internal reviews) of the [Administrative Decisions Tribunal Act 1997](#) does not apply to a decision of the kind referred to in subsection (1). Accordingly, section 55 (1) (d) of that Act does not apply to any such decision.
- (6) If an application is made to the Tribunal under subsection (1) by an aggrieved person who is not a directly aggrieved person, the Tribunal must notify the directly aggrieved person of the application (or may order the relevant decision-maker to notify the person of the application) as soon as is reasonably practicable after the application is made.
- (7) Without limiting section 67 (Parties to proceedings before Tribunal) of the [Administrative Decisions Tribunal Act 1997](#), the Tribunal may do any one or more of the following:
- (a) join an aggrieved person as a party to proceedings in the Tribunal brought by any other aggrieved person in respect of the same decision,
  - (b) allow an aggrieved person to make submissions to the Tribunal concerning a decision under review in proceedings brought by another aggrieved person and take those submissions into account in determining the proceedings.

(8) In this section:

**aggrieved person**, in relation to a decision relating to a licence or permit, means:

- (a) a directly aggrieved person, or
- (b) any other person aggrieved by the decision as referred to in subsection (1).

**directly aggrieved person**, in relation to a decision relating to a licence or permit, means:

- (a) the person who holds (or held) the licence or permit, or
- (b) a person who has applied for the licence or permit.

**relevant decision-maker**, in relation to a decision relating to a licence or permit, means the person or body authorised by or under this Act or the regulations to make the decision.

### **30 Offences relating to licences and permits**

- (1) A person must not make a statement to an inspector or police officer, in or in connection with an application for the issue, renewal or transfer of a licence or permit, that the person knows to be false or misleading in a material particular.
- (2) A person shall not, without reasonable excuse, have in his or her possession a licence or permit.
- (3) A person shall not, with intent to deceive, forge or alter a licence or permit.
- (4) The person to whom a licence or permit is issued or transferred shall not lend the licence or permit, or allow it to be used by any other person for any purpose for which it was issued or transferred.

Maximum penalty: 2 penalty units or imprisonment for 3 months, or both.

## **Division 2 Inspectors**

### **31 Powers of inspectors**

- (1) An inspector may at any time:
  - (a) subject to subsection (2), enter and examine any place, vehicle or vessel, or examine any container, fixture or fitting in or on which the inspector suspects on reasonable grounds that dangerous goods may be found,
  - (b) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance or article that the inspector suspects on reasonable grounds to be dangerous goods or an ingredient thereof or that is dangerous goods and in exercising the inspector's powers under this paragraph,

- open any container or cause any container to be opened,
- (c) subject to subsection (3), seize, remove or detain any substance or article that the inspector suspects on reasonable grounds to be dangerous goods and any container, vehicle or vessel in or on which the substance or article is being kept or conveyed, if the inspector suspects on reasonable grounds that there has been a contravention of this Act or the regulations in respect of the substance or article,
  - (d) for the purposes of paragraph (c), direct the occupier of any place where the substance or article is seized, or the owner of the substance or article, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the inspector, least endanger public safety,
  - (e) give directions for or with respect to the detention of any substance, article, container, vehicle or vessel that has been detained under paragraph (c),
  - (f) give to the occupier or licensee of any premises licensed under this Act directions in relation to the keeping of dangerous goods on the premises or instructions in writing to the licensee in relation to the premises,
  - (g) with the consent of the Minister, and at the cost of the owner or person in possession of the dangerous goods, destroy or render harmless or give directions for the destruction or rendering harmless of, any dangerous goods if:
    - (i) the inspector believes on reasonable grounds that it is necessary in the public interest or for the safety of any person so to do, or
    - (ii) the owner of the goods authorises the inspector in writing so to do,
  - (h) exercise the power conferred on the inspector by paragraph (g) without the consent of the Minister where imminent danger to the public or any person exists,
  - (i) make inquiries and require persons to answer questions relating to the observance of this Act and the regulations,
  - (j) where loss of life, injury to a person, damage to any property or danger to the public occurs involving dangerous goods, make any inquiry the inspector thinks necessary and for that purpose enter any place,
  - (k) require the production of any licence or permit or any book, record or writing required by the regulations to be held or kept and inspect, examine and take copies of or extracts from it,
  - (l) exercise such other powers as may be necessary for carrying out the provisions of this Act and the regulations.
- (2) Unless an inspector believes on reasonable grounds that imminent danger to the public or to any person exists, the inspector shall not enter a dwelling house pursuant

to the power granted the inspector under subsection (1) (a) except under the authority of a search warrant issued under section 42.

(3) An inspector is not empowered:

- (a) under subsection (1) (b)—to take samples of substances or articles, or
- (b) under subsection (1) (c)—to remove any substances, articles, containers, vehicles or vessels,

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

- (4) Where any dispute arises in relation to an amount payable by reason of an inspector destroying or rendering harmless dangerous goods under subsection (1) (g) a court may, on the application of the Minister made in the prescribed manner, assess the amount payable, which amount may then be recovered with costs by proceedings brought in the name of the Minister for the recovery of the amount as a debt due to the Crown in a court or in the Supreme Court.
- (5) A complaint made in pursuance of subsection (4) may only be made within 12 months from the time the amount was assessed.
- (6) Where, under subsection (1) (i), an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under section 32 in respect of a wilfully false or misleading answer to the question.
- (7) Subsection (6) applies whether the person required to answer a question objects to answering it or not.

### **32 Obstruction of inspectors etc**

(1) A person shall not:

- (a) refuse or fail to admit an inspector in the exercise of the inspector's authority under section 31 or under the authority of a search warrant issued under section 42,
- (b) wilfully obstruct or delay an inspector in the exercise of any power under section 31,
- (c) fail to comply with any reasonable direction or requirement of an inspector under section 31,
- (d) prevent, or attempt to prevent, a person from appearing before, or complying with a direction or requirement of, an inspector under section 31, or

- (e) wilfully give a false or misleading answer in purported compliance with a requirement of an inspector under section 31 (1) (i).

Maximum penalty: 250 penalty units.

- (2) If the licensee of any premises licensed under this Act fails to comply with any instruction in writing given by an inspector under section 31 (1) (f) within the period specified by the inspector in the instruction, the Authority may cancel the licence relating to the premises.

## **Division 3 Legal proceedings**

### **33 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may:
  - (a) be taken and prosecuted by an inspector or by any person acting with the authority of the Minister, and
  - (b) be disposed of summarily before a Local Court constituted by a Magistrate or before the Industrial Relations Commission in Court Session.
- (1A) The maximum monetary penalty that may be imposed in any such proceedings by a Local Court is 500 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is less.
- (1B) The maximum penalty that may be imposed in any such proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.
- (1C) 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 Relations Commission in Court Session apply to proceedings before a Local Court for offences against this Act or the regulations.
- (2) In proceedings for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority of the Minister without proof of the Minister's signature.
- (3) Notwithstanding anything in any other Act, proceedings for any such offence may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

### **34 Offences by corporations**

A person who is a director or an employee of a corporation which offends against this Act or the regulations is guilty of the same offence, and liable to be punished as an individual guilty of that offence, unless the person satisfies the court that:

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

### **35 Third party procedure**

- (1) The person against whom the proceedings are brought for a contravention of the provisions of this Act or the regulations is, upon information laid by the person and on giving to the prosecution not less than 3 days' notice of the person's intention, entitled to have any other person to whose act or default he or she alleges that the contravention was due brought before the court in the proceedings.
- (2) If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he or she used all due diligence to ensure that the provisions in question were complied with, the information against the original defendant for the offences shall be dismissed.
- (3) Where a defendant seeks to avail himself or herself of the provisions of subsection (2):
  - (a) the prosecution, as well as the person whom the defendant charges with the offence, has the right to cross-examine the defendant if the defendant gives evidence, and any witness called by the defendant in support of the defendant's pleas, and to call rebutting evidence, and
  - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to those proceedings.

### **36 Liability of employers**

- (1) Where any person, as the employee of another person, who is in this section referred to as **the employer**, contravenes this Act or the regulations, the employer is guilty of an offence against this Act or the regulations, as the case may be.
- (2) The employer is not guilty of an offence arising under subsection (1) if the employer satisfies the court that:
  - (a) the employer did not authorise or permit the contravention by the employee, and
  - (b) the employer used all due diligence to prevent such a contravention.



- (3) The employer may be proceeded against and convicted pursuant to subsection (1) whether or not the employee has been proceeded against or been convicted under this Act.
- (4) Nothing in subsection (1) prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act or the regulations is actually committed.

### **37 Retention and disposal of seized property**

- (1) In this section, **prescribed period**, in relation to any dangerous goods or containers seized under section 31 (1) (c), means the period of 6 months commencing from the time of seizure of the goods or containers or any other period fixed by a court in relation to the goods or containers upon application by the Minister in the prescribed manner.
- (2) The Minister may, during the prescribed period:
  - (a) retain any dangerous goods or containers seized under section 31 (1) (c), or
  - (b) at any time that the goods or containers have not been forfeited to the Crown under section 38 (1), return the goods or containers to the person from whom they were seized.
- (3) If any dangerous goods or containers seized under section 31 (1) (c) have not been forfeited to the Crown under section 38 (1) within the prescribed period, the Minister shall, at the expiration of that period:
  - (a) return the goods or containers to the person from whom they were seized or, if a court finds that person not to be the owner, to the person who appears to the Minister to be their owner, or
  - (b) cause a notice to be advertised in the prescribed manner stating that the Minister intends to apply to a court under section 38 (2) for an order for forfeiture of the goods or containers.

### **38 Forfeiture**

- (1) Where a person is convicted of an offence against this Act or the regulations, the court may order forfeiture of:
  - (a) all or any part of the dangerous goods in respect of which the offence was committed, or
  - (b) any containers of those dangerous goods,if the court finds them to be the property of the person so convicted, and the goods or containers shall upon the making of the order be deemed to be forfeited to the Crown.

- (2) On application by the Minister in the prescribed manner, a court may order forfeiture to the Crown of any dangerous goods or containers:
- (a) that have been seized by an inspector under section 31 (1) (c), and
  - (b) in respect of which a notice has been advertised under section 37 (3) (b),
- and the goods or containers shall upon the making of the order be deemed to be forfeited to the Crown.

### **39 Disposal of forfeited property**

- (1) Any dangerous goods or containers forfeited to the Crown shall be disposed of as the Minister directs.
- (2) Where dangerous goods or containers are disposed of under subsection (1) by way of sale, the proceeds shall be paid into the Treasury and be carried to the Consolidated Fund.

### **40 Evidence**

- (1) An allegation in an information in respect of an offence against this Act or the regulations that any substance or article in relation to which the offence is alleged to have been committed is dangerous goods or an explosive within the meaning of this Act, or a member of a class of dangerous goods, shall be accepted by the court as evidence of the truth of the allegation, unless the contrary is proved.
- (2) In proceedings for an offence against this Act or the regulations:
  - (a) a certificate purporting to be signed by a prescribed officer and to certify:
    - (i) that a licence or permit of the description specified in the certificate has, or has not, been issued or transferred pursuant to this Act or the regulations to any person so specified, and, in the case of a licence or permit that has been so issued or transferred, the date of issue or transfer of the licence or permit, any terms, conditions and other particulars contained in the licence or permit and any date or period on, or during, which the licence was, or was not, in force, or
    - (ii) that a person specified in the certificate was an inspector on any date, or during any period, specified in the certificate,shall be evidence of the facts so certified,
  - (b) a printed document that is or purports to be a standard, rule, code or specification of a body referred to in section 41 (3) (e) (i) and that has been or purports to have been published or issued by or on behalf of that body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule, code or specification, and

- (c) evidence that a container was marked at any time in a manner prescribed in relation to a class of dangerous goods is also evidence that dangerous goods of that class were in the container at that time, unless the contrary is proved.

(3) (Repealed)

## **Division 4 Regulations**

### **41 Regulations**

- (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 and, in particular, for or with respect to:
  - (a) the issue, renewal, transfer, suspension, cancellation, duration and terms of permits, whether under this Act or the regulations, and licences, the fees payable for permits and licences and the conditions subject to which permits and licences are issued,
    - (a1) regulating or prohibiting the use of explosives in connection with the carrying out of any construction or other work, including requiring any person using or in charge of explosives for that purpose to hold a permit under the regulations,
  - (b) the import or export of dangerous goods into or from the State,
  - (c) the preparation for use, packing, keeping, conveying, manufacture, use, sale, abandonment, disposal, destruction and rendering harmless of dangerous goods and containers which are intended for use, are being used or have been used in connection with dangerous goods,
  - (d) the design, construction, cleanliness, venting, ventilation, marking and maintenance of vehicles, vessels, containers, pipelines and any other equipment or things which are intended for use, are being used or have been used in connection with dangerous goods,
    - (d1) regulating or prohibiting the installation, alteration, connection and disconnection of containers, pipelines and any other equipment or things which are intended for use, are being used or have been used in connection with dangerous goods,
  - (e) the siting, design, construction, ventilation, illumination, fittings, fixtures and management of premises intended for use or used in connection with dangerous goods,
  - (f) regulating or prohibiting smoking, the lighting or use of fire and any other dangerous, or potentially dangerous, prescribed activities in the vicinity of

dangerous goods and on or in, or in the vicinity of, premises, vehicles, vessels, containers or pipelines used or that have been used in connection with dangerous goods,

- (g) prescribing the procedures to be followed in respect of any premises licensed under this Act that cease to be so licensed and the persons by whom those procedures are to be followed,
- (h) the provision, maintenance, testing and use of safety and first aid facilities, including fire-fighting equipment, in any premises licensed under this Act, in a vehicle, vessel or container used for the conveyance of dangerous goods and in prescribed circumstances involving a risk of injury or damage arising from dangerous goods,
- (i) prescribing the procedures to be followed in the event of an escape or a spillage of dangerous goods or of damage to any vehicle, vessel, container, pipeline or other equipment or thing while being used in connection with dangerous goods,
- (j) applications to have an explosive declared to be an authorised explosive under section 16 and fees payable in connection therewith,
- (k) the inspection, examination and testing of dangerous goods and equipment intended for use or used in connection therewith, and the fees payable therefor,
- (l) the driving of vehicles and the navigation and mooring of vessels conveying dangerous goods,
- (m) the making, keeping, production and inspection of records relating to dangerous goods and the furnishing of returns and other information relating thereto, and
- (n) the insurance to be effected by a person concerned in the conveyance of dangerous goods for the purpose of indemnifying the person in respect of liability that may be incurred on account of injury or damage:
  - (i) arising out of a fire or an explosion on or in, or in the vicinity of, or
  - (ii) the escape or spillage of dangerous goods in, on or from,  
a container in which dangerous goods are carried.

(2) The power of the Governor under subsection (1) may be exercised notwithstanding the provisions of any Act other than this Act, the *Navigation Act 1901*, the *Mines Inspection Act 1901*, the *Coal Mines Regulation Act 1982*, the *Construction Safety Act 1912*, the *Radiation Control Act 1990* and the *Occupational Health and Safety Act 1983*.

(3) A regulation may:

- (a) apply differently according to such factors as may be specified in the regulation,
  - (b) provide that any act or thing shall be done or be in accordance wholly or partly with the approval or to the satisfaction of a prescribed person or a person of a prescribed class of persons,
  - (c) confer upon a prescribed person, or class of persons, a discretionary authority,
  - (d) confer on a prescribed person, or class of persons, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements,
  - (e) (Repealed)
  - (f) exempt persons, or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemption from provisions of the regulations by a prescribed person, or class of persons, or both,
  - (f1) exempt the Crown, either absolutely or subject to conditions, from any provisions of this Act or provide for the grant to the Crown of absolute or conditional exemption from any provisions of this Act by a prescribed person, or class of persons, or both, and
  - (g) impose a penalty not exceeding 250 penalty units for any breach of a regulation or of a term or condition of a licence or permit and in addition, where the breach continues, a penalty not exceeding 10 penalty units for every day the breach continues.
- (3A) A regulation may create an offence with a penalty not exceeding 250 penalty units if a person does any gasfitting work while the person is not:
- (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the [Home Building Act 1989](#), or
  - (b) under the immediate supervision of such a holder,
- or if a person employs anyone else who does any such work in those circumstances.
- (4) Where a reference to a temperature reading in any standard, rule, code or specification adopted pursuant to subsection (3) is a reference to a temperature reading expressed in terms or in a manner used in connection with the Fahrenheit scale, that reading shall, unless the context or subject-matter is such that it would be inappropriate or the contrary intention appears, be construed as a reference to a reading in terms or in a manner used in connection with the Celsius scale that is:
- (a) its equivalent, or
  - (b) where its equivalent is not a whole number, the next higher whole number to its

equivalent.

- (5) A regulation that prescribes dangerous goods or explosives may describe the goods or explosives, as the case may be, by reference to:
  - (a) a class or classes of substances, articles, dangerous goods or explosives,
  - (b) a quantity, or
  - (c) circumstances in which, or other than in which, substances, articles, dangerous goods or explosives shall be prescribed, or prescribed as, dangerous goods or explosives.
- (6) A regulation that prescribes dangerous goods may describe the goods by reference to a flash point.
- (7) A regulation may apply, adopt or incorporate any publication as in force from time to time.

## **Division 5 Miscellaneous**

### **42 Search warrant**

- (1) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).
- (2) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in any dwelling-house.
- (3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant, when accompanied by a member of the police force:
  - (a) to enter the dwelling-house, and
  - (b) to search the dwelling-house for evidence of a contravention of this Act or the regulations.
- (4) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.

### **43 Arrest without warrant**

- (1) Where:
  - (a) an inspector or a member of the police force has called upon any person to comply with any provision of this Act or the regulations,

(b) the person fails to comply with the provision, and

(c) the inspector or member believes on reasonable grounds that grave danger to the public or to any person or property exists,

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

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

#### **44 Disclosure of information**

(1) Except as provided by subsection (2) or (3), a person shall not disclose any information or publish any document or part of a document obtained by the person in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made:

(a) with the consent of the person from whom the information or document was obtained,

(b) in connection with the administration or execution of this Act or the regulations, or

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Maximum penalty: 5 penalty units.

(2) The Authority may communicate any matter which comes to its knowledge in the exercise or performance of its powers, authorities, duties or functions under this Act or the regulations to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to dangerous goods or explosives.

(3) The 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 or the regulations, to any person or authority requiring the information to provide an emergency or rescue service or some other lawful service.

#### **45 Repeals, amendments and transitional provisions**

(1), (2) (Repealed)

(3) Schedule 3 has effect.

#### **Schedules 1, 2 (Repealed)**

## Schedule 3 Transitional and other provisions

(Section 45 (3))

### Part 1 Savings and transitional provisions consequent on the enactment of certain Acts

#### 1 Regulations

- (1) The regulations may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Occupational Health and Safety Legislation (Amendment) Act 1994*

*WorkCover Legislation Amendment Act 1995*

*Business Licences Repeal and Miscellaneous Amendments Act 2001*

- (2) Any such provision may, if the regulations so provide, take effect as 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.

#### 2 Saving of certain licences and permits

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

#### 3 References to repealed Acts

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



Act or of an instrument made under this Act.

## **Part 2 Provisions consequent on the enactment of [Occupational Health and Safety Legislation \(Amendment\) Act 1994](#)**

### **4 Definitions**

In this section:

**amending Act** means the [Occupational Health and Safety Legislation \(Amendment\) Act 1994](#).

**Chief Inspector** means the person who held the office of Chief Inspector of Dangerous Goods immediately before the amendment of section 6 by Schedule 4 (2) to the amending Act.

### **5 Chief Inspector**

- (1) The Chief Inspector is taken to hold office as an inspector under the [Occupational Health and Safety Act 1983](#) (as amended by Schedule 1 (4) to the amending Act).
- (2) Nothing in the amending Act or this clause is taken to affect the terms and conditions of employment of the Chief Inspector under the [Public Sector Management Act 1988](#).
- (3) The Authority may, under the [WorkCover Administration Act 1989](#), delegate to the Chief Inspector the exercise on its behalf of such of its functions under this Act as it thinks fit.

### **6 Transfer of functions to WorkCover Authority**

- (1) Anything done by or in relation to the Chief Inspector in the exercise of a function conferred or imposed on the Chief Inspector under this Act is taken, after the commencement of Schedule 4 (2) to the amending Act, to have been done by or in relation to the Authority and the functions under this Act are to be exercised by the Authority.
- (2) Any proceedings to which the Chief Inspector is a party immediately before the commencement of the amendment to this Act made by Schedule 4 (2) to the amending Act are not affected by that amendment.
- (3) However, on the commencement of that amendment, the Authority is taken to be a party to those proceedings instead of the Chief Inspector.

### **7 References to Chief Inspector**

A reference in any other Act, in an instrument made under any Act or in any document of any kind to the Chief Inspector is to be read as a reference to the WorkCover Authority.

## **8 Proceedings for offences**

Section 33, as in force immediately before the commencement of Schedule 4 (14) to the amending Act, continues to apply in relation to proceedings pending immediately before that commencement.

## **9 Inspectors**

An inspector appointed under section 6 as in force immediately before the amendment of that section by Schedule 4 (2) is taken to be appointed under section 6 as amended.

## **Part 3 Provisions consequent on enactment of the [WorkCover Legislation Amendment Act 1995](#)**

### **10 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 33 (1A) of this Act by the [WorkCover Legislation Amendment Act 1995](#) does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.