

Road and Rail Transport (Dangerous Goods) Act 1997 No 113

[1997-113]



New South Wales

Status Information

Currency of version

Historical version for 4 July 2002 to 26 November 2003 (accessed 19 December 2024 at 13:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Does not include amendments by**
[Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2003](#)

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 14 November 2003

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New South Wales

Contents

Long title	5
Part 1 Preliminary	5
Introductory note	5
1 Name of Act	5
2 Commencement	5
3 Purpose	5
4 Status of this Act under Commonwealth and ACT laws	5
5 Applications for review	5
6 Definitions	6
7 Act to bind Crown	7
8 Act to cease to be in force	7
9 Application of Commonwealth Acts Interpretation Act 1901	7
10 Scope of this Act	8
Part 2 Regulations	8
11 Regulation-making powers and adoption of regulations, codes or standards	8
12 Penalties under the regulations	11
Part 3 Appointment and powers of Competent Authorities and authorised officers	11
13 Appointment of Competent Authorities	11

14 Appointment of authorised officers	12
15 Identification cards	12
16 Return of identification cards.....	12
17 Competent Authority may delegate powers	12
18 General powers of authorised officers	13
19 Authorised officer may require name and address	14
20 Powers of authorised officer where offence suspected	15
21 Authorised officer to restore premises, vehicle or equipment to original condition after inspection	15
22 Offence to fail to comply with a direction	15
23 Self incrimination no excuse.....	15
24 Obtaining a warrant.....	16
25 Magistrate may issue warrants by telephone or facsimile.....	16
26 Availability of assistance and use of force in executing a warrant.....	16
27 Search and seizure etc of other evidence.....	16
28 Notice to remedy contravention	17
29 Notice to eliminate or minimise danger.....	18
30 Review of notices.....	19
31 Preventing injury and damage—taking direct action	19
Part 4 Exemptions.....	19
32 Exemptions.....	19
33 Variation and cancellation of exemptions and conditions.....	20
33A Review of exemptions etc.....	21
34 Application orders and emergency orders	21
Part 5 Offences, penalties, evidence and procedure	21
35 Failure to hold licence etc.....	21
36 Goods too dangerous to be transported	22
37 Duties concerning the transport of dangerous goods.....	22
38 Penalty notices for certain offences.....	23
39 Proceedings for an offence	23
40 Evidence.....	24
41 Use of codes of practice etc in proceedings	26
42 Conduct of company directors, employees or agents.....	26

Part 6 Miscellaneous	28
43 Recovery of costs from convicted person	28
44 Recovery of costs of government action	28
45 Prohibiting a person from involvement in the dangerous goods transport industry	29
46 Forfeiture	30
47 Delegation	30
48 Protection from liability	30
49 Assistance in emergencies or accidents	30
50 Minister to notify adoption of code etc	31
51 Disclosure of information	31
52 Savings and transitional regulations	32
53 Amendment of Acts	32
Note	32
Schedule 1 (Repealed)	32

Road and Rail Transport (Dangerous Goods) Act 1997 No 113



New South Wales

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

Part 1 Preliminary

Introductory note—

This Act is in most respects uniform with the *Road Transport Reform (Dangerous Goods) Act 1995* of the Commonwealth. If this Act does not contain a provision that is included in the Commonwealth Act, the numbering of this Act has a gap in the numbering in order to maintain consistent numbering with the Commonwealth Act. The main difference between this Act and the Commonwealth Act is that this Act applies to rail transport as well as road transport.

1 Name of Act

This Act is the *Road and Rail Transport (Dangerous Goods) Act 1997*.

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 Status of this Act under Commonwealth and ACT laws

* * * * *

Note—

The Commonwealth Act includes a provision relating to that Act's status as an ACT law.

5 Applications for review

Applications for review of decisions under this Act are to be made to the Administrative Decisions Tribunal.

Note—

See section 30 for decisions that may be reviewed.

6 Definitions

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

authorised officer means an authorised officer appointed under section 14.

Competent Authority means a Competent Authority appointed under section 13.

dangerous goods means:

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

dangerous situation means a situation involving the transport of dangerous goods by road or rail that is causing or is likely to cause imminent risk of death or injury to a person, or harm to the environment or property.

government authority means:

- (a) a Government Department, or
- (b) an agency or instrumentality of the Crown, or
- (c) a local government body, or
- (d) a Competent Authority.

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

- (a) importing, or arranging for the importation of, dangerous goods into New South Wales, and
- (b) marking packages and unit loads containing dangerous goods for transport by road or rail, and placarding containers and vehicles in which dangerous goods are transported by road or rail, and
- (c) consigning dangerous goods for transport by road or rail, and
- (d) loading dangerous goods onto a vehicle, or into a container that is to be put on a vehicle, for transport by road or rail or unloading dangerous goods that have been transported by road or rail, and
- (e) undertaking, or being responsible for, otherwise than as an employee or sub-contractor, the transport of dangerous goods by road or rail, and
- (f) driving a vehicle carrying dangerous goods by road or rail, and

- (g) being the consignee of dangerous goods transported by road or rail, and
- (h) 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.

offence means an offence against this Act.

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

this Act includes the regulations.

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 of packages and unit loads containing dangerous goods, and the placarding of containers and vehicles in which dangerous goods are transported, and
- (c) other matters incidental to their transport.

vehicle includes a locomotive, carriage, wagon or other vehicle that operates on a railway track.

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

7 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.

8 Act to cease to be in force

* * * * *

Note—

The Commonwealth Act includes provision for the expiry of that Act.

9 Application of Commonwealth [Acts Interpretation Act 1901](#)

- (1) The provisions of the [Acts Interpretation Act 1901](#) of the Commonwealth apply to the interpretation of this Act, except that, in relation to New South Wales:
 - (a) “Gazette” is to refer to the New South Wales Government Gazette, and
 - (b) “Minister” is to refer to the responsible Minister of New South Wales.
- (2) This section does not prevent the [Interpretation Act 1987](#) from applying to this Act to

the extent that it can do so consistently with the application of the *Acts Interpretation Act 1901* of the Commonwealth.

10 Scope of this Act

- (1) This Act does not apply to 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) Subject to subsections (3) and (4), the provisions of this Act have effect despite any other law.
- (3) 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.
- (4) If a provision of this Act is inconsistent with the *Radiation Control Act 1990*, the *Radiation Control Act 1990* prevails.

Part 2 Regulations

11 Regulation-making powers and adoption of regulations, codes or standards

- (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) The regulations may provide that the provisions of the regulations commence on the day they are published in the Gazette or on a later day or days specified in the regulations or specified by the Minister administering this Act by notice in the Gazette.
- (3) In particular, the regulations may make provision for or with respect to the following:
 - (a) types and categories of dangerous goods and methods for deciding types and categories of dangerous goods,
 - (b) the determination by a Competent Authority of which goods are dangerous goods or dangerous goods of a particular type, or are too dangerous to be transported or too dangerous to be transported in bulk,
 - (c) the analysis and testing of dangerous goods,
 - (d) goods too dangerous to be transported or too dangerous to be transported in bulk,

- (e) fees that are to be paid for things done under this Act,
- (f) the marking of packages and unit loads containing dangerous goods for transport by road or rail and the placarding of containers and vehicles in which dangerous goods are transported by road or rail,
- (g) containers and packaging used in the transport of dangerous goods by road or rail,
- (h) the manufacture of vehicles and containers for use in the transport of dangerous goods by road or rail,
- (i) voluntary accreditation schemes, including privileges to be accorded or sanctions to be imposed under the schemes and the cancellation or suspension of the schemes,
- (j) the loading of dangerous goods for, and the unloading of dangerous goods after, their transport by road or rail,
- (k) 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,
- (l) 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,
- (m) the licensing of:
 - (i) vehicles and drivers for the purposes of the transport of dangerous goods by road or rail, and
 - (ii) people responsible for the transport of dangerous goods by road or rail or for vehicles used in that transport,
- (n) the mandatory accreditation of people involved in the transport of dangerous goods by road or rail or particular aspects of that transport,
- (o) 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,
- (p) the approval by a Competent Authority of:
 - (i) packages, containers, 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 packages, containers, equipment and other items used, and processes carried out, in relation to the transport of dangerous goods by road or rail,
- (q) 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,
- (r) 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,
- (s) the training and qualifications required of authorised officers and other people performing functions under this Act,
- (t) 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,
- (u) the recognition of laws of other Australian 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,
- (v) the review of decisions under this Act, including conferring jurisdiction on the Administrative Decisions Tribunal to review decisions under the regulations,
- (w) penalty notices, and documents and costs relating to penalty notices,
- (x) the determination by a Competent Authority of which goods are incompatible with particular dangerous goods,
- (y) insurance or indemnity requirements in respect of the transport of dangerous goods by road or rail,
- (z) applications for, and consideration of applications for, exemptions,
- (aa) registers of exemptions and determinations,
- (bb) the form of decisions under the Act,
- (cc) determinations by a Competent Authority,
- (dd) obligations of passengers in respect of transport of dangerous goods by rail.

Note—

The Commonwealth Act has no provisions equivalent to paragraphs (x)–(dd).

- (4) 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.

- (5) 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.
- (6) A reference in this section to a code, standard or rule includes a reference to one that is made outside Australia.
- (7) The regulations may apply any or all of the provisions of regulations in force from time to time under an Act of the Commonwealth or another State or a Territory as regulations applying under this Act (and, in so applying such regulations, may provide for their citation for the purposes of the law of this State). Any such regulations may be applied as they currently exist, as amended by the regulations under this Act or as amended from time to time.
- (8) Any regulation applying or adopting a regulation, code, standard or rule may contain incidental, supplementary or transitional provisions.

12 Penalties under the regulations

The regulations may create offences, and may provide for a maximum penalty, not exceeding \$3,000 for an individual or \$15,000 for a body corporate, for each offence.

Part 3 Appointment and powers of Competent Authorities and authorised officers

13 Appointment of Competent Authorities

- (1) The Minister may, by notice in the Gazette, appoint Competent Authorities.
- (2) A Competent Authority:
- (a) may exercise all the powers and perform all the functions of an authorised officer, and
 - (b) when exercising those powers or performing those functions, has all the immunities of an authorised officer.

14 Appointment of authorised officers

- (1) A Competent Authority may appoint people, or a class of people, to be authorised officers.
- (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.

15 Identification cards

- (1) 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 it is practicable, produce it before exercising a power of an authorised officer under this Act.
- (2) A police officer who is exercising or about to exercise a power of an authorised officer under this Act must, if practicable, comply with a request to identify himself or herself by:
 - (a) producing the officer's police identification, or authorised officer identification card (if issued), or
 - (b) stating orally or in writing the officer's name, rank and place of duty, or the officer's identification number.

16 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: \$100.

17 Competent Authority may delegate powers

A Competent Authority may, by signed instrument, delegate any of his or her powers under this Act, other than this power of delegation, to authorised officers.

18 General powers of authorised officers

- (1) An authorised officer may, to find out whether this Act has been or is being complied with, enter and search premises if the authorised officer believes on reasonable grounds that he or she will find a thing that has been, is being or is likely to be used in relation to the transport of dangerous goods by road or rail. However, if the premises are unattended or are a residence, the authorised officer may only enter if the occupier consents.
- (2) An authorised officer may enter and search premises, whether attended or not and whether or not a residence, if he or she believes on reasonable grounds that a dangerous situation exists as a result of anything occurring at the premises in relation to the transport of dangerous goods by road or rail.
- (3) If an authorised officer believes on reasonable grounds that a vehicle has been, is being or is likely to be used for the transport of dangerous goods by road or rail, the officer may, to find out whether this Act has been or is being complied with:
 - (a) stop or detain the vehicle or cause the vehicle to be stopped or detained, and
 - (b) search the vehicle for dangerous goods or for documents, equipment or other things relating to the transport of dangerous goods.
- (4) If an authorised officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in relation to the transport of dangerous goods by road or rail, the officer may, to find out whether this Act has been or is being complied with, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.
- (5) If the inspection is not to take place immediately, the direction must be given by notice in writing specifying the time, date and location for the inspection.
- (6) An authorised officer may carry out an inspection of the kind referred to in subsection (4) without notice if the authorised officer believes on reasonable grounds that a dangerous situation exists.
- (7) An authorised officer may, to find out whether this Act has been or is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) or another person capable of doing so to give samples of a substance for examination and testing if the authorised officer believes on reasonable grounds that the substance is dangerous goods, ingredients of dangerous goods or goods that have been transported together with dangerous goods. The authorised officer must give a receipt in a form approved by a Competent Authority.
- (8) An authorised officer may, to find out whether this Act has been or is being complied

with, direct a person in charge or apparently in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) to produce documents.

- (9) The authorised officer may make copies of the documents, or remove them to make copies, but if they are removed, the authorised officer must:
- (a) if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them, and
 - (b) give a receipt in a form approved by a Competent Authority.
- (10) An authorised officer may, to find out whether this Act has been or is being complied with, leave at premises written directions to the occupier requiring the occupier, within a specified time:
- (a) to give samples of a substance the authorised officer believes on reasonable grounds to be dangerous goods, or ingredients of dangerous goods, for examination and testing, or
 - (b) to produce documents that may help the authorised officer.
- (11) An authorised officer may, in order to find out whether this Act has been or is being complied with, direct a person to answer questions that may help the authorised officer.
- (12) An authorised officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorised officer under this section.

19 Authorised officer may require name and address

- (1) An authorised officer may require a person to state the person's name and address if the authorised officer believes on reasonable grounds that the person has been involved in the transport of dangerous goods by road or rail.
- (2) When making the requirement, the authorised officer must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.
- (3) The authorised officer may require the person to give evidence of the correctness of the stated name or address if the authorised officer suspects on reasonable grounds that the stated name or address is false.
- (4) A person must comply with the authorised officer's requirement under subsection (1) or (3) unless the person has a reasonable excuse for not complying with it.

Maximum penalty: \$500.

20 Powers of authorised officer where offence suspected

- (1) This section applies if an authorised officer believes on reasonable grounds that he or she will find evidence of an offence at premises, including on a vehicle or equipment at the premises.
- (2) The authorised officer may enter the premises and search for or test the evidence.
- (3) If the premises are unattended or are a residence, the authorised officer may only enter with the consent of the occupier of the premises or with the authority of a warrant issued under section 24.
- (4) The authorised officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment or another person capable of doing so to give samples of a substance for examination and testing.

21 Authorised officer to restore premises, vehicle or equipment to original condition after inspection

After inspecting premises, a vehicle or equipment under section 18 or 20, the authorised officer must take reasonable steps to return the premises, vehicle or equipment to the condition it was in immediately before the inspection.

22 Offence to fail to comply with a direction

A person who:

- (a) without reasonable excuse, fails to comply with a direction made by an authorised officer in accordance with section 18 or 20, or
- (b) without reasonable excuse, obstructs an authorised officer or a person assisting an authorised officer in the exercise of power of the authorised officer, or
- (c) gives to an authorised officer who is exercising such a power information that the person knows to be false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: \$10,000 or imprisonment for 6 months, or both, for an individual or \$50,000 for a body corporate.

23 Self incrimination no excuse

A person is not excused from answering a question asked under section 18 on the ground that the answer to the question might tend to incriminate the person, but, except for a body corporate:

- (a) the answer to the question, or
- (b) any information, document or thing obtained as a direct or indirect consequence of

the answer to the question,

is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against section 22.

24 Obtaining a warrant

- (1) If an authorised officer believes on reasonable grounds that there is, or there will be within the next 72 hours, evidence of an offence at a residence, at unattended premises or at an unattended vehicle or equipment, the authorised officer may apply to an authorised justice for a warrant authorising him or her to enter the premises, vehicle or equipment and seize the evidence.
- (2) The authorised justice must not issue a warrant unless he or she is satisfied that there are reasonable grounds for doing so.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

25 Magistrate may issue warrants by telephone or facsimile

* * * * *

Note—

The Commonwealth Act includes a provision relating to the issue of search warrants by telephone or facsimile. In New South Wales this is dealt with under the [Search Warrants Act 1985](#).

26 Availability of assistance and use of force in executing a warrant

* * * * *

Note—

The Commonwealth Act includes a provision relating to the execution of search warrants. In New South Wales this is dealt with under the [Search Warrants Act 1985](#).

27 Search and seizure etc of other evidence

If, in the course of searching under this Act, an authorised officer finds things (other than things specified in a warrant under this Act) that the authorised officer believes on reasonable grounds:

- (a) would constitute evidence of an offence, and
- (b) would be concealed, lost or destroyed, or used in committing an offence, if the officer did not seize them,

the authorised officer may:

- (c) seize the things, or
- (d) do whatever is necessary to preserve the evidence, including placing a seal, lock or guard.

28 Notice to remedy contravention

(1) If an authorised officer believes on reasonable grounds that a person:

- (a) is contravening this Act, or
- (b) has contravened this Act in circumstances that make it likely that the contravention will be repeated,

the authorised officer may give the person a notice requiring the person to remedy the matters causing the contravention.

(2) A notice under this section must:

- (a) be in writing, and
- (b) state the name of the person to whom it is directed, and
- (c) state that the authorised officer believes that the person to whom the notice is directed:
 - (i) is contravening a provision of this Act, or
 - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated, and
- (d) state the grounds on which the belief is based, and
- (e) specify the provision of this Act, and
- (f) specify a day by which the matters referred to in the notice must be remedied.

(3) An authorised officer may include in a notice under this section directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of this Act.

(4) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.

(5) A person who:

- (a) contravenes a notice under this section, or
- (b) removes a notice under this section from a vehicle before the matters causing the contravention have been remedied (unless it is necessary to do so to remedy the

matters),

is guilty of an offence.

Maximum penalty (subsection (5)): \$10,000 for an individual or \$50,000 for a body corporate.

29 Notice to eliminate or minimise danger

(1) If an authorised officer believes on reasonable grounds that:

- (a) a dangerous situation exists, and
- (b) a person is in a position to take measures to avert, eliminate or minimise the danger,

the authorised officer may issue a notice requiring the person to take those measures.

(2) A notice under this section must:

- (a) be in writing, and
- (b) state the name of the person to whom it is directed, and
- (c) identify the situation that, in the authorised officer's opinion, is causing the danger, and
- (d) state the grounds on which the belief is based, and
- (e) specify the measures to be taken, and
- (f) specify a day by which the measures are to be taken.

(3) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.

(4) A person who:

- (a) contravenes a notice under this section, or
- (b) removes a notice under this section from a vehicle before measures have been taken to avert, eliminate or minimise the danger (unless it is necessary to do so to avert, eliminate or minimise the danger),

is guilty of an offence.

Maximum penalty (subsection (4)): \$10,000 for an individual or \$50,000 for a body corporate.

30 Review of notices

A person to whom a notice under section 28 or 29 is directed may apply for a review of the decision to issue the notice.

31 Preventing injury and damage—taking direct action

If:

- (a) an authorised officer believes on reasonable grounds that a dangerous situation exists, and
- (b) either:
 - (i) a person to whom a notice under section 28 or 29 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 he or she believes on reasonable grounds to be necessary to avert, eliminate or minimise the danger.

Part 4 Exemptions

32 Exemptions

- (1) A person or a representative of a class of people 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 exempt the person or class of people from compliance with the provision if the Competent Authority is satisfied that:
 - (a) it is not reasonably practicable for the person or people 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 people 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, he or she 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 people, 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 people 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: \$10,000 or imprisonment for 6 months, or both, for an individual or \$50,000 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 people, 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.

33 Variation and cancellation of exemptions and conditions

(1) A Competent Authority may cancel an exemption if:

- (a) he or she is satisfied that a condition to which the exemption is subject has not been complied with, or
- (b) he or she is no longer satisfied of the matters referred to in section 32 (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 people 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.

33A Review of exemptions etc

* * * * *

Note—

The Commonwealth Act includes a provision conferring a right to seek reviews of decisions relating to exemptions.

34 Application orders and emergency orders

- (1) The Minister may order, by notice 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 must be consistent with the provisions relating to application orders and emergency orders in the agreements scheduled to the *National Road Transport Commission Act 1991* of the Commonwealth.
- (3) An order may have effect in relation to the whole of this State or to a specified area of this State.

Part 5 Offences, penalties, evidence and procedure

35 Failure to hold licence etc

- (1) A person must not use a vehicle to transport dangerous goods by road or rail (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: \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate.

- (2) A person must not employ, engage 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: \$50,000 or imprisonment for 2 years, or both, for an individual or

\$250,000 for a body corporate.

- (3) A person must not drive a vehicle transporting dangerous goods by road or rail 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: \$10,000.

- (4) A person who is required by the regulations to be accredited to be involved in the transport of dangerous goods by road or rail or a particular aspect of that transport must not be so involved without being so accredited.

Maximum penalty: \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate.

- (5) 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 for this subsection: \$10,000.

36 Goods too dangerous to be transported

A person must not transport by road or rail goods that the regulations identify as being too dangerous to be transported.

Maximum penalty: \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate.

37 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, as far as is practicable, 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 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.

Maximum penalty:

- (a) if the failure results in death or serious injury to a person—\$100,000 or imprisonment for 4 years, or both, for an individual or \$500,000 for a body corporate, or
- (b) in any other case—\$50,000 or imprisonment for 2 years, or both, for an individual or

\$250,000 for a body corporate.

38 Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence against this Act, being an offence prescribed by the regulations for the purposes of this section.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, and is not in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) The regulations:
 - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) may prescribe the penalty payable for the offence if dealt with under this section, and
 - (c) may prescribe different penalties for different offences or classes of offences.
- (6) The penalty prescribed for an offence is not to exceed \$3,000.
- (7) This section does not limit the operation of this Act or any other Act in relation to proceedings that may be taken in respect of offences.

39 Proceedings for an offence

- (1) A prosecution for an offence may be brought by an authorised officer.
- (2) Proceedings for an offence against this Act that is prescribed by the regulations for the purposes of this subsection may be dealt with:
 - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Industrial Relations Commission in Court Session.
- (3) 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 an offence referred to in subsection (2).

- (4) Proceedings for an offence against this Act other than an offence referred to in subsection (2) may be dealt with:
 - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (5) If proceedings for an offence against this Act 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, \$10,000.
- (6) Proceedings for an offence under this Act may be commenced:
 - (a) in the case of an offence under section 35, 36 or 37 or any offence prescribed by the regulations for the purposes of this subsection—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
 - (b) in any other case—within but not later than 12 months after that date.
- (7) Proceedings for an offence under this Act may also be commenced:
 - (a) in the case of an offence under section 35, 36 or 37 or any offence prescribed by the regulations for the purposes of this subsection—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer, or
 - (b) in any other case—within but not later than 12 months after that date.
- (8) If subsection (7) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the information or application, unless the contrary is established.
- (9) In this section:

evidence of an offence means evidence of any act or omission constituting the offence.

40 Evidence

- (1) In a prosecution for an offence, if an authorised officer gives evidence that he or she believes any of the matters referred to in subsection (2), the court must, if:
 - (a) it considers the belief to be reasonable, and
 - (b) there is no evidence to the contrary,

accept the matters as proved.

(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 container indicate that the substance is or the container contains particular dangerous goods—that the substance is or the container contains those dangerous goods, or
- (d) 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
- (e) if markings or placards on, or attached to, a substance or container indicate, in relation to the substance, the container or the contents of the container, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the substance, the container or the contents of the container has that capacity, tare weight, origin, character, specification, ownership or date of manufacture, or
- (f) if markings or placards on, or attached to, a vehicle or container indicate, in relation to the load of the vehicle or the contents of the container, a particular quantity of dangerous goods—that the vehicle or container contained that quantity of dangerous goods, or
- (g) 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 into evidence:

- (a) a copy of a document made under section 18 (9) and certified by the authorised officer as being a true copy, or
- (b) a photographic, mechanical or electronic recording made under section 18 (12) and certified by the authorised officer as being a true recording.

(4) 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 32, or

- (b) documents relating to vehicles, equipment or other items required by the regulations to be approved by a Competent Authority, or
 - (c) documents relating to accreditation or licensing by a Competent Authority.
- (5) The court must accept the documents as proof of the facts stated in them if there is no evidence to the contrary.
- (6) All courts must take judicial notice of the signature of a Competent Authority on a document authorised or required to be signed for the purposes of this Act.

41 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 Ministerial Council for Road Transport or 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, 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.

42 Conduct of company directors, employees or agents

- (1) If, in proceedings for an offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, employee or agent of the body

corporate within the scope of his or her actual or apparent authority, and

- (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority, and
 - (b) that the employee or agent had the relevant state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate (the **employer**) by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence, to have been engaged in also by the employer unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If a body corporate commits an offence against this Act, a person who is a director, secretary or manager of the body corporate or who is otherwise concerned in the management of the body corporate is liable to be punished as an individual who has been found guilty of the offence unless the person satisfies the court that:
- (a) the person did not know that the offence was committed, or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence, or
 - (c) the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (6) Despite anything in this Act, a person is not liable to be punished by imprisonment for an offence if:
- (a) a person other than a body corporate is convicted of an offence, and
 - (b) the person would not have been convicted of the offence if subsections (3), (4) and (5) had not been enacted.
- (7) Proceedings for an offence against this Act may be brought against a director of a

body corporate whether or not proceedings for the offence are brought against the body corporate.

(8) In this section:

director, of a body corporate, includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory.

engaging in conduct includes failing or refusing to engage in conduct.

state of mind of a person includes:

- (a) the knowledge, intention, opinion, belief or purpose of the person, and
- (b) the person's reasons for the intention, opinion, belief or purpose.

Part 6 Miscellaneous

43 Recovery of costs from convicted person

If a court convicts a person of an offence following action taken by an authorised officer under section 18 or 20, the court may, on application by or on behalf of the authorised officer, order that, in addition to any other penalty, the defendant must pay any costs that were reasonably incurred in taking that action and are directly related to the investigation of the offence. Those costs include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

44 Recovery of costs of government action

- (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 government 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 government 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 government 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 government 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 government 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.

45 Prohibiting a person from involvement in the dangerous goods transport industry

- (1) In sentencing a person 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, and in addition to imposing any other penalty, order that the person 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 person's record in the transport of dangerous goods by road or rail, and
 - (b) any prior convictions of the person relating to dangerous goods, and
 - (c) the circumstances surrounding the commission of the offence for which the person is being sentenced.

- (3) A person who contravenes an order under this section is guilty of an offence.

Maximum penalty: \$50,000 or imprisonment for 2 years, or both, for an individual or \$250,000 for a body corporate.

46 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.

- (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.

47 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 34 and this power of delegation) or the regulations to a Competent Authority.

48 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 authorised officer's employer.

49 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 government 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.

50 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.

51 Disclosure of information

- (1) Except as provided by subsection (2) or (3), a person must 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, unless the disclosure or publication is made:
 - (a) with the consent of the person from whom the information or document was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purpose of any legal proceedings arising out of this Act or of any report of such proceedings.

Maximum penalty: \$550.

- (2) A Competent Authority may communicate any matter that comes to its knowledge in the exercise of its powers, authorities, duties or functions under this Act to an officer or authority engaged in administering this Act or a corresponding law of the Commonwealth, or another State or Territory.
- (3) 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 powers, authorities, duties or functions under this Act, to any person or authority requiring the information to provide an emergency or rescue service or some other

lawful service.

52 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.

53 Amendment of Acts

The Acts specified in Schedule 1 are amended as set out in that Schedule.

Note—

The Commonwealth Act does not contain provisions equivalent to sections 51-53.

Schedule 1 (Repealed)