



Dangerous Goods (Road and Rail Transport) Act 2010

An Act to regulate by nationally consistent legislation the transport of dangerous goods by road and rail in order to promote public safety and protect property and the environment, to repeal the *Dangerous Goods (Safe Transport) Act 1998* and for related and consequential purposes

[Royal Assent 17 September 2010]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Dangerous Goods (Road and Rail Transport) Act 2010*.

2. Commencement

The provisions of this Act commence on a day to be proclaimed.

3. Purpose

(1) 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.

(2) It is the intention of Parliament that the purpose of this Act will be achieved in the context of nationally consistent road and rail transport laws, having regard to regional and modal differences.

4. Definitions

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

associate has the meaning given by section 4A;

authorised, in relation to the driving of a vehicle or the running of an engine, has the meaning given by section 4G(3);

authorised officer means an authorised officer appointed under section 12;

broken down has the meaning given by section 4I;

combination means a road vehicle consisting of a vehicle with a motor and one or more trailers;

Competent Authority means the relevant Competent Authority appointed under section 11;

compliance purposes has the meaning given by subsection (2);

consignor has the meaning given by section 4B;

consigns has the meaning given by section 4B;

corresponding authority means a Competent Authority appointed under a corresponding law;

corresponding law means –

(a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or

(b) a law of another jurisdiction that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;

dangerous goods means –

(a) a substance or article prescribed as dangerous goods; or

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

dangerous situation means a situation that is causing, or is likely to cause, imminent risk of death or serious injury to a person, significant harm to the environment or significant damage to property;

driver, of a vehicle, includes –

(a) a two-up driver of the vehicle who is present in or near the vehicle; and

(b) a person who is driving the vehicle as a driver under instruction or under an appropriate learner licence or learner permit; and

(c) if the vehicle is a unit of rolling stock forming part of a train but is not its locomotive, the driver of the train; and

(d) if the vehicle is a trailer, the driver of the motor vehicle towing the trailer;

driver licence means a licence (including a probationary and a conditional licence) issued under a State law authorising the licensee to drive a road vehicle, but does not include –

(a) a licence issued under this Act; or

(b) a provisional or learner licence;

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

employer means a person who employs persons under –

(a) contracts of employment, apprenticeship or training; or

(b) contracts for services;

fit, in relation to the driving of a vehicle, has the meaning given by section 4G(2);

goods too dangerous to be transported means –

(a) a substance or article prescribed as goods too dangerous to be transported; or

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

government authority means –

(a) a department or an administrative unit of the public service; or

(b) an agency or instrumentality of the Crown; or

(c) a local government body; or

(d) the Competent Authority;

identity card means a card –

(a) issued to an authorised officer under section 12(4); or

(b) issued under another Act with an endorsement under section 12(5);

improvement notice means an improvement notice issued under section 72;

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

(a) a vehicle or its equipment or load, the driver of a vehicle, the operator of a fleet of vehicles or another person involved in road or rail transport; and

(b) without limiting the above, whether a vehicle is being operated in conformity with this Act and authorisations issued under it;

involvement in the transport of dangerous goods includes –

- (a) importing, or arranging for the importation of, dangerous goods into Australia; and
- (b) packing dangerous goods for transport; and
- (c) marking or labelling packages containing dangerous goods for transport and placarding vehicles and packaging on or in which dangerous goods are transported; and
- (d) consigning dangerous goods for transport, including the preparation of transport documentation; and
- (e) loading dangerous goods for transport or unloading dangerous goods that have been transported; and
- (f) undertaking, or being responsible for, otherwise than as an employee or subcontractor, the transport of dangerous goods; and
- (g) driving a vehicle carrying dangerous goods; and
- (h) being the consignee of dangerous goods that are transported; and
- (i) being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity covered by this definition;

journey means the transport of dangerous goods from where the goods are consigned to where the goods are delivered to the consignee;

jurisdiction means the Commonwealth or a State;

load has the meaning given by section 4D;

loader has the meaning given by section 4D;

offence means an offence against this Act;

operator has the meaning given by section 4E;

owner, in respect of a vehicle, means a person who –

- (a) is the sole owner, a joint owner or a part owner of the vehicle; or
- (b) has possession or use of the vehicle under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else;

pack has the meaning given by section 4C;

package, in relation to goods, means the complete product of the packing of the goods for transport and consists of the goods and their packaging;

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

Note It may be that the container constitutes the whole of the packaging, as in the case of a drum, in which dangerous goods are directly placed. Unlike in United Nations publications relating to the transport of dangerous goods, the term packaging is used in this Act in its ordinary meaning.

packer has the meaning given by section 4C;

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

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

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

public authority means –

(a) the Crown in any capacity; or

(b) a body established by or under law, or the holder of an office established by or under law, for a public purpose, including a local government authority; or

(c) a police force or police service;

public place includes a place –

(a) of public resort open to or used by the public as of right; or

(b) for the time being –

(i) used for a public purpose; or

(ii) open to access by the public –

whether on payment or otherwise; or

(c) open to access by the public by the express or tacit consent or sufferance of the owner of that place, whether the place is or is not always open to the public;

qualified, in relation to the driving of a vehicle, has the meaning given by section 4G(1);

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

(a) the transport of the goods by rail; or

(b) the condition of a unit of rolling stock transporting the goods;

residential purposes has the meaning given by section 42;

road has the meaning given by section 4J;

road-related area has the meaning given by section 4J;

road law means the Traffic Act 1925 and the Vehicle and Traffic Act 1999;

Note This definition of road law includes all regulations, rules and by-laws made under the two Acts. In particular, road law includes the *Road Rules*.

State includes a Territory;

this Act includes the regulations;

trailer means a road vehicle that is designed to be towed, or is towed, by another road vehicle but does not include a road vehicle propelled by a motor that forms part of that vehicle;

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

transport, in relation to dangerous goods, includes –

(a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, for the purpose of their transport; and

(b) the marking or labelling of packages containing dangerous goods, and the placarding of vehicles and packaging in or on which dangerous goods are transported; and

(c) other matters incidental to their transport;

transport documentation means documentation required by the regulations for the transport of dangerous goods;

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

unit of rolling stock means a conveyance that is designed to run on rails while it is on a railway track;

vehicle means –

(a) a road vehicle, including a combination; or

(b) a unit of rolling stock;

warrant means a warrant issued under section 49.

(2) For the purposes of this Act, a power to give a direction or to inspect a vehicle or premises or to search premises is exercised for compliance purposes if the power is exercised –

(a) to find out whether this Act is being complied with; or

(b) to investigate an offence or suspected offence.

4A. Meaning of associate

(1) A person is an associate of another person if –

(a) he or she is a spouse, parent, brother, sister or child of the other person; or

(b) they are members of the same household; or

(c) they are partners; or

(d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or

(e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or

(f) one is a body corporate (other than a public company whose shares are listed on the stock exchange) and the other is a shareholder in the body corporate; or

(g) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(2) For the purposes of subsection (1), a beneficiary of a trust includes an object of a discretionary trust.

4B. Meaning of consign and consignor

(1) A person consigns dangerous or other goods for transport, and is the consignor of the goods, if –

(a) subsection (2) applies to the person; or

(b) subsection (2) does not apply to the person or anyone else, but subsection (3) applies to the person; or

(c) subsections (2) and (3) do not apply to the person or anyone else, but subsection (4) applies to the person.

(2) This subsection applies to a person who, with the person's authority, is named or otherwise identified in transport documentation as the consignor of the goods.

(3) This subsection applies to a person who –

(a) engages a prime contractor or rail operator, either directly or through an agent or other intermediary, to transport the goods; or

(b) if paragraph (a) does not apply, has possession of, or control over, the goods in this jurisdiction immediately before the goods are transported; or

(c) if neither paragraph (a) nor (b) applies, loads a vehicle with the goods, for transport, at a place –

(i) where dangerous goods are awaiting collection; and

(ii) that is unattended (except by the driver) during loading.

(4) This subsection applies to a person if –

(a) the goods are imported into Australia; and

(b) the person is the importer of the goods.

4C. Meaning of pack and packer

A person packs dangerous or other goods for transport, and is a packer of the goods, if the person –

(a) puts the goods in the packaging (even if that packaging is already on a vehicle); or

(b) assembles, places or secures packages in packaging designed to hold, enclose or otherwise contain more than one package (even if that packaging is already on a vehicle); or

(c) supervises an activity mentioned in paragraph (a) or (b); or

(d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

Note For example, a person who uses a hose to fill the tank of a tank vehicle with petrol packs the petrol for transport for the purposes of this Act.

4D. Meaning of load and loader

(1) A person loads dangerous or other goods for transport, and is a loader of the goods, if the person –

(a) loads one or more packages of the goods in or on a vehicle; or

(b) places or secures one or more packages of the goods on a vehicle; or

(c) supervises an activity mentioned in paragraph (a) or (b); or

(d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

(2) Subsection (1) does not apply to the loading of goods into packaging that is already on a vehicle nor to the placing or securing of packages in or on a further packaging that is already on a vehicle.

4E. Meaning of operator

(1) A person is the operator of a vehicle if –

(a) in the case of a vehicle (including a vehicle in a group of vehicles that are physically connected), the person is responsible for controlling or directing the operations of the vehicle; or

(b) in the case of a group of vehicles that are physically connected, the person is responsible for controlling or directing the operations of the towing vehicle in the group.

(2) A person is not an operator merely because the person owns a vehicle or does any or all of the following:

(a) drives a vehicle;

(b) maintains or arranges for the maintenance of a vehicle;

(c) arranges for the registration of a vehicle.

4F. References to rolling stock

For the purposes of this Act, rolling stock that is designed to operate or be used on the road or on a railway track is rolling stock only while it is being operated or used on a railway track.

4G. Meaning of qualified, fit or authorised to drive or to run an engine

(1) For the purposes of this Act, a person is qualified to drive a vehicle or to run its engine if he or she –

(a) holds a driver licence of the appropriate class to drive the vehicle, and the driver licence is not suspended; and

(b) is not prevented by or under a law (including, for example, by the conditions of the licence) from driving the vehicle at the relevant time.

(2) For the purposes of this Act, a person is fit to drive a vehicle or to run its engine if he or she –

(a) is apparently physically and mentally fit to drive the vehicle; and

(b) without limiting the above, is not apparently affected by either or both –

(i) alcohol; or

(ii) any drug that affects his or her fitness to drive; and

(c) does not at the time have a concentration of alcohol in his or her blood that exceeds the amount permitted by a law of Tasmania; and

(d) does not at the time have a concentration of a drug, that affects his or her fitness to drive, in his or her blood or oral fluid that exceeds the amount permitted by a law of Tasmania.

(3) For the purposes of this Act, a person is authorised –

(a) to drive a vehicle if he or she is its operator or has the authority of the operator to drive it; or

(b) to run the engine of a vehicle if he or she is its operator or has the authority of the operator to drive the vehicle or to run the engine –

regardless of whether or not he or she is qualified to drive the vehicle or to run its engine.

4H. Meaning of unattended vehicle and driver of disconnected trailer

(1) For the purposes of this Act, a vehicle is unattended if –

(a) where the authorised officer concerned –

(i) is present at the scene, there is, after inspection and enquiry by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle who appears to be a driver of the vehicle; or

(ii) is not present at the scene but is able to inspect the scene by means of a camera or other remote surveillance system, there is, after inspection by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle who appears to be a driver of the vehicle; or

(b) where there is apparently such a person in, on or in the vicinity of the vehicle, the officer believes on reasonable grounds that –

(i) the person is not qualified, not fit or not authorised to drive it; or

(ii) the person is or appears to be unwilling to drive it; or

(iii) the person is subject to a direction under section 24 (Direction to leave vehicle) in relation to the vehicle.

(2) A reference in this Part to the driver of a vehicle is, in a case where the vehicle is a trailer and is not connected (either directly or by one or more other trailers) to a towing vehicle, a reference to the driver of the towing vehicle of the combination to which the trailer was, or apparently was, last connected.

4I. Meaning of broken down, in relation to vehicles

For the purposes of this Act –

(a) a motor vehicle is broken down if it is not possible to drive the vehicle because it is disabled through damage, mechanical failure, lack of fuel or any similar reason; and

(b) a trailer is broken down if it is not connected (either directly or by one or more other trailers) to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical failure or any similar reason.

4J. Road and road-related areas

(1) Each reference in this Act to a road includes a reference to a road-related area.

(2) Road and road-related area have the same meanings as they have in the Road Rules.

4K. Examples

(1) Examples are part of this Act and the regulations.

(2) An example of the operation of a provision of this Act or the regulations –

(a) is not exhaustive; and

(b) may extend the meaning of the provision; and

(c) does not limit the meaning of the provision, unless the contrary intention appears.

4L. Notes

(1) Notes that are at the foot of a provision are part of this Act and the regulations.

(2) Marginal notes, footnotes at the bottom of a page and endnotes are not part of this Act or the regulations.

5. Binding the Crown

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

6. Application of Commonwealth Acts Interpretation Act

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies to the interpretation of this Act, except that *Gazette* and Minister have the same meaning as in the *Acts Interpretation Act 1931*.
- (2) This section does not prevent the *Acts Interpretation Act 1931* from applying to the interpretation of this Act to the extent that it can do so consistently with the application of the provisions of the *Acts Interpretation Act 1901* of the Commonwealth.
- (3) This section has effect subject to section 4.

7. Scope of this Act

- (1) This Act does not apply to –
 - (a) dangerous goods that are, or form part of, personal safety equipment of persons in a vehicle transporting dangerous goods; and
 - (b) dangerous goods that are in a container that is designed to form part of, and forms part of, the fuel or battery system of a vehicle's engine, auxiliary engine, fuel-burning appliance or other part of a vehicle's propulsion equipment.
- (2) The sections of this Act have effect despite any other law.

PART 2 - Regulations

8. Powers to make regulations and adoption of codes and standards

- (1) The Governor may make regulations prescribing matters –
 - (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision relating to one or more of the following:
 - (a) identifying and classifying goods as dangerous goods and the identification and classification of dangerous goods;

- (b)** identifying, classifying and regulating goods that are too dangerous to be transported, including prohibiting the transport of such goods;
- (c)** the making of determinations by the Competent Authority in relation to –
 - (i)** the identification and classification of goods as dangerous goods; and
 - (ii)** the identification and classification of dangerous goods; and
 - (iii)** the specification, for transport purposes, of what is, and what is not, compatible with dangerous goods; and
 - (iv)** prohibiting or regulating the transport of dangerous goods by road or rail; and
 - (v)** regulating the containment of dangerous goods that are being, or that are to be, transported by road or rail;
- (d)** the analysis and testing of dangerous goods;
- (e)** fees that are to be paid for things done under this Act;
- (f)** the marking and labelling of packages containing dangerous goods for transport and the placarding of containers, vehicles and packaging on or in which dangerous goods are transported;
- (g)** containers, vehicles, packaging, equipment and other items used in the transport of dangerous goods;
- (h)** the manufacture of containers, vehicles, packaging, equipment and other items for use in the transport of dangerous goods;
- (i)** 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;
- (k)** the determination by the Competent Authority of routes along which, the areas in which and the times during which dangerous goods may or may not be transported;
- (l)** procedures for the transport of dangerous goods, including –
 - (i)** the quantities and circumstances in which dangerous goods, or particular types of dangerous goods, may be transported; and
 - (ii)** safety procedures and equipment required;

(m) the licensing of –

(i) vehicles and drivers for the purpose of the transport of dangerous goods; and

(ii) persons involved in the transport of dangerous goods or for vehicles used in that transport;

(n) the mandatory accreditation of persons involved in the transport of dangerous goods or particular aspects of that transport;

(o) the approval by the 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 the Competent Authority of –

(i) vehicles, packaging, equipment and other items used in relation to the transport of dangerous goods; and

(ii) facilities for, and methods of, testing or using vehicles, packaging, equipment and other items used in relation to the transport of dangerous goods; and

(iii) processes carried out in relation to the transport of dangerous goods;

(q) documents required to be prepared or kept by persons involved in the transport of dangerous goods and the approval by the 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;

(s) the training and qualifications required of authorised officers and other persons performing functions under this Act;

(t) the training and qualifications required of persons involved in, and the approval of training courses and qualifications relating to involvement in, the transport of dangerous goods;

(u) the recognition of laws of other jurisdictions relating to the transport of dangerous goods and of things done under those laws, and the giving of effect to those things;

(v) infringement notices, and documents and costs relating to infringement notices;

(w) the recognition of a body, consisting of the Competent Authority and other equivalent bodies in other jurisdictions, that is to make decisions and to provide oversight on decisions made under this Act or the regulations, for the purposes of

national uniformity and other matters in relation to such a body, including the recognition of decisions made by such a body;

(x) the recognition of accredited providers of training, package testing, design verification and other similar activities;

(y) the passing of information on persons relevant to licensing or compliance and enforcement matters to another Competent Authority and other authorities involved in the enforcement of road and rail laws;

(z) requiring a person involved in the transport of dangerous goods to hold insurance, or some other form of indemnity, in relation to that transport.

(3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

(4) The regulations may enable the Minister or the Competent Authority to authorise another person or body to perform a specific act or function.

(4A) The regulations –

(a) may require a matter affected by the regulations to be approved by or to the satisfaction of a specified person or body, or a specified class of persons or bodies; or

(b) may confer a discretionary authority, or impose a duty, on a specified person or body, or a specified class of persons or bodies.

(5) 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 their transport which may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.

(6) The regulations may, by reference to such a code, standard or rule –

(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.

(7) The regulations may provide for savings and transitional arrangements necessary or expedient for bringing this Act into operation.

(8) Regulations made under subsection (7) may take effect on the day on which this Act commences or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

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

9. Penalties under the regulations

The regulations may create offences, and may provide for a maximum penalty, not exceeding 50 penalty units for an individual or 250 penalty units for a body corporate, for each offence.

10. Applications for review

The regulations may provide a system for review of decisions made under this Act and identified in the regulations.

PART 3 - Competent Authorities and Authorised Officers

Division 1 - Appointment and arrangements

11. Appointment of Competent Authorities

(1) The Minister may, by notice in the *Gazette*, appoint one or more Competent Authorities for the purposes of this Act.

(2) The appointment of a Competent Authority takes effect on –

(a) the date specified in the notice that is a date on or after the date the Minister signed the notice; or

(b) if no such date is specified, gazettal.

(3) The 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.

(4) A notice under this section is not –

(a) a statutory rule for the purposes of the Rules Publication Act 1953; or

(b) subordinate legislation for the purposes of the Subordinate Legislation Act 1992.

12. Appointment of authorised officers

(1) The Competent Authority may, by notice in the *Gazette*, appoint an individual, or a class of individuals, to be authorised officers.

(2) The appointment of an authorised officer takes effect on –

(a) the date specified in the notice that is a date on or after the date the notice was signed; or

(b) if no such date is specified, gazettal.

(3) In appointing an authorised officer, the Competent Authority may specify that the appointment is subject to conditions or restrictions relating to –

(a) the powers that are exercisable by the officer; or

(b) when, where and in what circumstances the officer may exercise powers.

(4) The Competent Authority is to issue each authorised officer who is not a police officer with an identity card containing any prescribed details.

(5) However, instead of an identity card issued under subsection (4), the Competent Authority may arrange for an endorsement containing the prescribed details to be placed on –

(a) in the case of an inspector under the *Work Health and Safety Act 2012*, the identity card issued under section 157 of that Act; or

(b) in the case of an authorised officer under the *Explosives Act 2012*, the identity card issued under section 33(1) of that Act.

(6) A notice under this section is not –

(a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

(b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

13. Identity cards

(1) An authorised officer who is not a police officer must –

(a) carry his or her identity card 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 is 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 his or her police identification, or identity card (if issued); or

(b) stating orally or in writing his or her name, rank and place of duty, or his or her identification number.

14. Return of identity cards

A person who has been issued with an identity card and who stops being an authorised officer must return his or her identity card to the appropriate Competent Authority as soon as practicable.

Penalty:

Fine not exceeding 20 penalty units.

15. Impersonating authorised officers

A person must not impersonate an authorised officer.

Penalty:

Fine not exceeding 85 penalty units.

16. Competent Authority may delegate powers

(1) The Competent Authority may delegate any of its powers under this Act by signed instrument.

(2) Subsection (1) does not apply to the Competent Authority's power –

(a) to appoint authorised officers; or

(b) to delegate its powers under this section.

17. Competent Authority may provide information to corresponding authority

(1) The Competent Authority may provide information to a corresponding authority about –

(a) any action taken by the Competent Authority under this Act; or

(b) any information obtained under this Act, including any information contained in any records, devices or other things inspected or seized under this Act.

(2) This section has effect subject to applicable privacy legislation.

18. Reciprocal powers of authorised officers

(1) This section has effect in relation to another jurisdiction while the corresponding law of the other jurisdiction contains provisions corresponding to this section.

(2) The Minister may enter into agreements with a Minister of the other jurisdiction for the purposes of this section.

(3) To the extent envisaged by such an agreement –

(a) authorised officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers conferred on authorised officers of the other jurisdiction by or under the corresponding law of the other jurisdiction; and

(b) authorised officers of the other jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers conferred on authorised officers by this Act.

(4) Anything done by an authorised officer of this jurisdiction under subsection (3)(a) (including an omission of an act) is taken to have been done under this Act as well as under the corresponding law.

(5) The regulations may make provision for or in respect of the exercise of powers under this section.

Division 2 - General powers – road vehicles

Subdivision 1 - Application

19. Application of Division

This Division applies to a road vehicle if –

(a) one of the following applies to the vehicle:

(i) it has a placard on it;

(ii) it is carrying a container that has a placard on it;

(iii) an authorised officer believes on reasonable grounds that it is carrying dangerous goods or goods too dangerous to be transported;

(iv) an authorised officer believes on reasonable grounds that it is licensed under this Act, or that it is used to carry goods for commercial purposes; and

(b) the vehicle is situated –

(i) on a road; or

(ii) in or on a public place; or

(iii) in or on premises occupied or owned by the Competent Authority or by any other public authority; or

(iv) in or on any premises where an authorised officer is lawfully present after entry under Division 4 of this Part.

Subdivision 2 - Directions in respect of road vehicles

20. Direction to stop road vehicle

(1) An authorised officer may, for compliance purposes, direct –

(a) the driver of a vehicle to which this Division applies to stop the vehicle; or

(b) the driver of the vehicle or any other person not to do any one or more of the following:

(i) move the vehicle;

(ii) interfere with it or any equipment in or on it;

(iii) interfere with its load.

(2) A direction to stop a vehicle may require that it be stopped without delay, or that it be stopped at the nearest place for it to be safely stopped as indicated by the officer.

(3) A direction given under subsection (1) does not prevent an authorised officer from giving the driver or another person a later inconsistent direction under another provision of this Act.

(4) A direction given under subsection (1) ceases to be operative to the extent that an authorised officer –

(a) gives the driver or another person a later inconsistent direction; or

(b) indicates to the driver or another person that the direction is no longer operative.

(5) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

21. Direction to move road vehicle

(1) An authorised officer may, for compliance purposes, direct the driver of a vehicle to which this Division applies to move it or cause it to be moved to the nearest suitable location that is within the prescribed distance and specified by the officer.

(2) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

Fine not exceeding 50 penalty units.

(3) In proceedings for an offence against subsection (2), it is a defence if the person charged establishes that –

(a) it was not possible to move the vehicle concerned because it was broken down; and

(b) the breakdown occurred for a physical reason beyond the driver's control; and

(c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

(4) In this section –

prescribed distance means a distance (in any direction) within a radius of 30 kilometres of –

(a) the location of the vehicle when the direction is given; or

(b) any point along the forward route of the journey, if the direction is given in the course of a journey of the vehicle;

suitable location means a location that the authorised officer believes on reasonable grounds to be a suitable location having regard to any matters the officer considers relevant in the circumstances.

22. Direction to produce documents

(1) An authorised officer may, for compliance purposes, direct the driver of a vehicle to which this Division applies to produce to the authorised officer –

(a) the driver's driver licence; and

(b) any licence the driver is required to have by the regulations; and

(c) any transport documentation that is required to be carried on the vehicle by the regulations.

(2) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

Fine not exceeding 35 penalty units.

(3) The authorised officer may seize a licence, other than a driver licence, produced to the officer in response to the direction if the officer reasonably believes that –

(a) the licence has been cancelled or suspended; or

(b) the licence has otherwise ceased to have effect; or

(c) the licence has been varied and the variation is not recorded on the licence; or

(d) the person who produced the licence is not the licensee.

(4) An authorised officer to whom a document that appears to be a licence is produced in response to the direction may seize the document if the officer reasonably believes that the document is not a licence.

23. Direction to move road vehicle in case of danger or obstruction

(1) This section applies if an authorised officer believes on reasonable grounds that a vehicle to which this Division applies is –

(a) seriously endangering public safety, the environment or road infrastructure; or

(b) causing or likely to cause an obstruction to traffic or any other event lawfully authorised to be held on the road; or

(c) obstructing or hindering, or likely to obstruct or hinder, one or more vehicles from entering or leaving land adjacent to the road.

(2) The officer may direct the driver of the vehicle, or a person who is apparently in charge of the vehicle, to do either or both of the following:

(a) to move the vehicle, or cause it to be moved, to the extent necessary to avoid the danger, obstruction or hindrance;

(b) to do anything else reasonably required by the officer, or to cause anything else reasonably required by the officer to be done, to avoid the danger, obstruction or hindrance.

(3) A person who is given a direction under subsection (2) must comply with the direction.

Penalty:

Fine not exceeding 50 penalty units.

(4) In proceedings for an offence in relation to the contravention of a direction under subsection (2)(a), it is a defence if the person charged establishes that –

(a) it was not possible to move the vehicle concerned because it was broken down; and

(b) the breakdown occurred for a physical reason beyond the driver's control; and

(c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

(4A) For the purposes of subsection (1)(a), road infrastructure includes things listed in the definition of rail or road infrastructure in section 93.

24. Direction to leave vehicle

(1) This section applies if the driver of a vehicle to which this Division applies fails to comply with a direction given by an authorised officer under another provision of this Division.

(2) This section also applies if an authorised officer believes on reasonable grounds that the driver of a vehicle to which this Division applies –

(a) is not fit to drive the vehicle in order to comply with such a direction; or

(b) is not qualified to drive the vehicle in order to comply with such a direction; or

(c) is not authorised to drive the vehicle in order to comply with such a direction.

(3) The officer may direct the driver to do any one or more of the following:

(a) to vacate the driver's seat;

(b) to leave the vehicle;

(c) not to occupy the driver's seat until permitted to do so by an authorised officer;

(d) not to enter the vehicle until permitted to do so by an authorised officer.

(4) The officer may direct any other person to do either or both of the following:

(a) to leave the vehicle;

(b) not to enter the vehicle until permitted to do so by an authorised officer.

(5) A person who is given a direction under subsection (3) or (4) must comply with the direction.

Penalty:

Fine not exceeding 50 penalty units.

Subdivision 3 - Other powers in respect of road vehicles

25. Moving unattended road vehicle to enable exercise of other powers

(1) This section applies if an authorised officer –

(a) believes on reasonable grounds that a vehicle to which this Division applies is unattended on a road; and

(b) is seeking to exercise powers in respect of the vehicle for compliance purposes; and

(c) believes on reasonable grounds that the vehicle should be moved to enable or to facilitate the exercise of those powers.

(2) The officer may –

(a) move the vehicle (by driving or towing it or otherwise); or

(b) authorise another person to move it (by driving or towing it or otherwise) –

to the extent reasonably necessary to enable or to facilitate the exercise of the powers concerned.

(3) The officer may enter the vehicle, or authorise another person to enter it, for the purpose of moving the vehicle.

(4) The officer or person authorised by the officer may use reasonable force to do any or all of the following:

(a) to open unlocked doors and other unlocked panels and objects;

(b) to gain access to the vehicle, or its engine or other mechanical components, to enable the vehicle to be moved;

(c) to enable the vehicle to be towed.

(5) An authorised officer must not authorise a person to move a vehicle in accordance with this section unless the officer believes on reasonable grounds that the person is qualified and fit to do so.

26. Powers of authorised officers – inspection

(1) An authorised officer may, for compliance purposes, inspect a vehicle to which this Division applies.

(2) The power to inspect a vehicle includes the power –

(a) to enter the vehicle; and

(b) to weigh, test, measure or take photographs of the vehicle or any part of it or its equipment or load; and

(ba) to take, in accordance with section 52A, a sample of any part of the vehicle's load; and

(c) to check the existence or details of, or take photographs of, placards or other information required by the regulations to be displayed in or on the vehicle or any load on it; and

(d) to inspect and take copies of or extracts from any records that are located in or on the vehicle and that are required to be carried in or on the vehicle by the regulations; and

(e) to access or download information that is required to be kept by the regulations and that is –

(i) stored electronically in equipment located in or on the vehicle; or

(ii) accessible electronically from equipment located in or on the vehicle.

(3) Nothing in this section authorises the use of force, but an authorised officer may under this section do any or all of the following:

(a) open unlocked doors and other unlocked panels and objects;

(b) inspect anything that has been opened or otherwise accessed;

(c) move but not take away anything that is locked up or sealed.

(4) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or any other person.

27. Powers of authorised officers – searches

(1) An authorised officer may, for compliance purposes, search a vehicle to which this Division applies if the officer believes on reasonable grounds that –

(a) the vehicle has been used, is being used, or is likely to be used, in the commission of an offence; or

- (b) the vehicle has been or may have been involved in a dangerous situation.
- (2) The officer may form the necessary belief during or after an inspection or independently of an inspection.
- (3) The officer may enter the vehicle for the purpose of or in connection with conducting the search.
- (4) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or any other person.
- (5) Without limiting the above, the power to search a vehicle under this section includes any or all of the following:
 - (a) the power to search for evidence of an offence;
 - (b) the power to search for and inspect any records, devices or other things that relate to the vehicle or any part of its equipment or load and that are located in or on the vehicle;
 - (c) the power to take copies of or extracts from any or all of the following:
 - (i) any records that are located in or on the vehicle and that are required to be carried in or on the vehicle by the regulations;
 - (ii) any transport documentation located in or on the vehicle;
 - (iii) any other records, or any readout or other data obtained from any device or thing, located in or on the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence;
 - (d) the power to take, in accordance with section 52A, a sample of any part of the vehicle's load.
- (6) The power to search a vehicle under this section does not include a power to search a person.
- (7) The officer may seize and remove a record, device or other thing from the vehicle that the officer believes on reasonable grounds provides, or may on further inspection provide, evidence of an offence.
- (8) The officer may use reasonable force in the exercise of powers under this section.

28. Moving unattended or broken down road vehicle where danger or obstruction

- (1) This section applies if an authorised officer believes on reasonable grounds that a vehicle to which this Division applies –

(a) is unattended or broken down; and

(b) is causing a dangerous situation.

(2) The officer may –

(a) move the vehicle (by driving or towing it or otherwise); or

(b) authorise another person to move it (by driving or towing it or otherwise) –

to the extent reasonably necessary to avoid the dangerous situation.

(3) The officer may enter the vehicle, or authorise another person to enter it, for the purpose of moving the vehicle.

(4) The officer may drive the vehicle even though the officer is not qualified to do so, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle who is more capable of driving it than the officer.

(5) A person authorised by the officer may drive the vehicle even though the authorised person is not qualified to do so, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle who is more capable of driving it than the authorised person.

(6) The officer or person driving a vehicle under the authority of this section is exempt from any other provision of this Act or of a provision of a road law to the extent that it would require him or her to be licensed or otherwise authorised to drive it.

(7) The officer or person authorised by the officer may use reasonable force to the extent reasonably necessary to avoid the danger or obstruction.

29. Powers of authorised officers – immobilised road vehicle

(1) This section applies if an authorised officer believes on reasonable grounds that a vehicle to which this Division applies is broken down or otherwise immobilised on a road.

(2) The authorised officer may give directions to the driver or a person apparently in charge of the vehicle about how –

(a) repair work is to be carried out on the vehicle; or

(b) the vehicle is to be towed off the road; or

(c) the dangerous goods are to be removed from the vehicle; or

(d) the dangerous goods are to be dealt with after their removal from the vehicle.

(3) A person who is given a direction under subsection (2) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

30. Powers of authorised officers in emergencies

(1) This section applies if a vehicle to which this Division applies is involved in an incident resulting in a dangerous situation.

(2) An authorised officer may give directions to the driver or a person apparently in charge of the vehicle about –

(a) the transport of any goods in the vehicle from the place of the incident; or

(b) how otherwise to deal with the goods.

(3) The direction must –

(a) be in writing and be signed by the authorised officer; and

(b) state the name of the person to whom it is given; and

(c) identify the incident; and

(d) identify the dangerous goods to which it relates.

(4) However, if it is not practicable to give the direction in writing, the direction may be given orally and confirmed in writing within 48 hours.

(5) A person who is given a direction under subsection (2) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

31. Authorisation not required for driving under this Division

It is immaterial that an authorised officer or a person driving a vehicle under the authority of this Division is not authorised to do so by the operator of the vehicle.

Division 3 - Directions in respect of rolling stock and trains

Subdivision 1 - Application

32. Application

- (1) This Division applies to a unit of rolling stock –
- (a) that has a placard on it; or
 - (b) that is carrying a container that has a placard on it; or
 - (c) that an authorised officer knows or believes on reasonable grounds is carrying dangerous goods or is carrying a container containing dangerous goods.
- (2) This Division applies to a train that an authorised officer knows or believes on reasonable grounds includes a unit of rolling stock to which this Division applies.

Subdivision 2 - Power to give directions in respect of rolling stock and trains

33. Powers of authorised officers – rail operators

- (1) An authorised officer may, for compliance purposes, direct the rail operator in respect of a train that includes a unit of rolling stock to which this Division applies to cause the train to stop at a place where it may be safely inspected by the officer.
- (2) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

34. Powers of authorised officers – train drivers

- (1) An authorised officer may, for compliance purposes, direct the driver of a train that includes a unit of rolling stock to which this Division applies or any other person not to do any one or more of the following:
- (a) move the train;
 - (b) interfere with the train or any equipment in or on it;
 - (c) interfere with any load on any unit of rolling stock that forms part of the train.

(2) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

35. Powers of authorised officers – others

(1) If a unit of rolling stock to which this Division applies does not form part of a unit, an authorised officer may, for compliance purposes, direct a person not to do any one or more of the following:

(a) move the unit;

(b) interfere with the train or any equipment or container in or on it;

(c) attach any other rolling stock to the unit.

(2) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

36. Powers of authorised officers – documents

(1) An authorised officer may direct the driver of a train that includes a unit of rolling stock to which this Division applies to produce to the authorised officer any transport documentation that is required to be carried on the train by the regulations.

(2) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

Fine not exceeding 35 penalty units.

Subdivision 3 - Other powers in respect of trains

37. Powers of authorised officers – inspection

(1) An authorised officer may, for compliance purposes, inspect a unit of rolling stock to which this Division applies or a train that includes or that the authorised officer believes on reasonable grounds includes a unit of rolling stock to which this section applies.

(2) The power to inspect a unit of rolling stock or a train includes the power –

(a) to enter the unit or train; and

(b) to weigh, test, measure or take photographs of the unit or train or any part of it or its equipment or load; and

(ba) to take, in accordance with section 52A, a sample of any part of the load of the unit or train; and

(c) to check the existence or details of, or take photographs of, placards or other information required by the regulations to be displayed in or on the unit or any load on it; and

(d) to inspect and take copies of or extracts from any records that are located in or on the train and that are required to be carried in or on the train by the regulations; and

(e) to access or download information that is required to be kept by the regulations and that is –

(i) stored electronically in equipment located in or on the train; or

(ii) accessible electronically from equipment located in or on the train.

(3) Nothing in this section authorises the use of force, but an authorised officer may under this section do any or all of the following:

(a) open unlocked doors and other unlocked panels and objects;

(b) inspect anything that has been opened or otherwise accessed;

(c) move, but not take away, anything that is locked up or sealed.

(4) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the unit of rolling stock or train or any other person.

38. Powers of authorised officers – search

(1) An authorised officer may, for compliance purposes, search a unit of rolling stock to which this Division applies or a train that includes or that the authorised officer believes on reasonable grounds includes a unit of rolling stock to which this section applies, if the officer believes on reasonable grounds that –

(a) the unit of rolling stock or train has been used or is being used, or is likely to be used, in the commission of an offence; or

(b) the unit of rolling stock or train has been or may have been involved in a dangerous situation.

(2) The officer may form the necessary belief during or after an inspection or independently of an inspection.

(3) The officer may enter the unit of rolling stock or train for the purpose of or in connection with conducting the search.

(4) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the unit of rolling stock or train or any other person.

(5) Without limiting the above, the power to search a unit of rolling stock or train under this section includes any or all of the following:

(a) the power to search for evidence of an offence;

(b) the power to search for and inspect any records, devices or other things that relate to the unit of rolling stock or train or any part of its equipment or load and that are located in or on the unit of rolling stock or train;

(c) the power to take copies of or extracts from any or all of the following:

(i) any records that are located in or on the unit of rolling stock or train and that are required to be carried in or on the unit of rolling stock or train by the regulations;

(ii) any transport documentation located in or on the unit of rolling stock or train;

(iii) any other records, or any readout or other data obtained from any device or thing, located in or on the unit of rolling stock or train that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence;

(d) the power to take, in accordance with section 52A, a sample of any part of the load of the unit of rolling stock or train.

(6) The power to search a unit of rolling stock or train under this section does not include a power to search a person.

(7) The officer may seize and remove a record, device or other thing from the unit of rolling stock or train that the officer believes on reasonable grounds provides, or may on further inspection provide, evidence of an offence.

(8) The officer may use reasonable force in the exercise of powers under this section.

39. Powers of authorised officers – immobilised train

(1) This section applies to a train –

(a) that has failed or is otherwise immobilised; and

(b) that includes a unit of rolling stock to which this Division applies.

(2) An authorised officer may give directions to a person who is involved in the transport of the dangerous goods on the train about how –

(a) the dangerous goods are to be removed from the train; or

(b) the dangerous goods are to be dealt with after their removal from the train.

(3) A person who is given a direction under subsection (2) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

40. Powers of authorised officers in emergencies

(1) This section applies if a train that includes a unit of rolling stock to which this Division applies is involved in an incident resulting in a dangerous situation.

(2) An authorised officer may give, to a person who is involved in the transport of the dangerous goods on the train, directions about –

(a) the transport of the goods from the place of the incident; or

(b) how otherwise to deal with the goods.

(3) The direction must –

(a) be in writing and be signed by the authorised officer; and

(b) state the name of the person to whom it is given; and

(c) identify the incident; and

(d) identify the dangerous goods to which it relates.

(4) However, if it is not practicable to give the direction in writing, the direction may be given orally and confirmed in writing within 48 hours.

(5) A person who is given a direction under subsection (2) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

Division 4 - Powers to inspect and search premises

Subdivision 1 - Preliminary

41. Application

This Division applies to premises occupied or controlled by a person involved in the transport of dangerous goods.

42. Residential purposes

For the purposes of this Division, premises are not being used for residential purposes merely because temporary or casual sleeping or other accommodation is provided on the premises for vehicle drivers.

Subdivision 2 - Power to search premises

43. Power to inspect premises

(1) An authorised officer may, for compliance purposes, inspect premises to which this Division applies.

(2) The officer may enter the premises for the purpose of conducting the inspection.

(3) Without limiting the above, the officer may inspect, or enter and inspect, any vehicle at the premises.

(4) Before an authorised officer enters premises (not being a public place) under this section, the officer must give the occupier of the premises reasonable notice of the intention to enter unless –

(a) the officer believes on reasonable grounds that the giving of the notice would defeat the purpose for which it is intended to enter the premises; or

(b) entry to the premises is made with the consent of the occupier of the premises; or

(c) the officer believes on reasonable grounds that entry is required as there is an immediate risk to safety because of the carrying out of an operation at the premises in respect of dangerous goods; or

(d) entry is authorised by a warrant.

(5) This section does not authorise, without consent, the entry or inspection of –

(a) premises that are apparently unattended, unless the officer believes on reasonable grounds that the premises are not unattended; or

(b) premises that are, or any part of premises that is, used predominantly for residential purposes.

(6) Without limiting the above, the power to inspect premises under this section includes any or all of the following:

(a) the power to inspect and take copies of or extracts from any records located at the premises and required to be kept by or under the regulations;

(b) the power to check the existence of and inspect any devices (including weighing, measuring, recording or monitoring devices) required to be installed, used or maintained by or under the regulations, and to inspect and take copies of or extracts from any readout or other data obtained from any such device;

(c) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material;

(d) the power to take, in accordance with section 52A, a sample of any substance or packaging on the premises.

(7) This section does not authorise the use of force, but the officer may under this section do any or all of the following:

(a) open unlocked doors and other unlocked panels and objects;

(b) inspect anything that has been opened or otherwise accessed under the power to use reasonable force in the exercise of a power to enter or move a vehicle under this Part;

(c) move, but not take away, anything that is locked up or sealed.

(8) An authorised officer who enters premises under this section must not unnecessarily impede any activities being conducted at the premises.

44. Power to search premises

(1) An authorised officer may, for compliance purposes, search premises to which this Division applies, if the officer believes on reasonable grounds that there may be at the premises records, devices or other things that may provide evidence of an offence.

(2) The officer may form the necessary belief during or after an inspection of the premises or independently of such an inspection.

(3) The officer may enter the premises for the purpose of conducting the search.

(4) Without limiting the above, the officer may search, or enter and search, any vehicle at the premises.

(5) The search may be conducted –

(a) at any time under the authority of a warrant; or

(b) at any time with the consent of the occupier or other person apparently in charge of the premises; or

(c) if a business is carried on at the premises, at any time during the ordinary business hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without a warrant and without the consent of the occupier or other person apparently in charge of the premises or any other person.

(6) Before an authorised officer enters premises (not being a public place) under this section, the officer must give the occupier or other person apparently in charge of the premises reasonable notice of the intention to enter unless –

(a) the giving of the notice would be reasonably likely to defeat the purpose for which it is intended to enter the premises; or

(b) entry to the premises is made with the consent of the occupier of the premises; or

(c) entry is required in circumstances where the authorised officer reasonably believes there is an immediate risk to safety because of the carrying out of an operation at the premises in respect of dangerous goods; or

(d) entry is authorised by a warrant.

(7) This section does not authorise, without a warrant or consent, the entry or searching of –

(a) premises that are unattended, unless the officer believes on reasonable grounds that the premises are not unattended; or

(b) premises that are, or any part of premises that is, used predominantly for residential purposes.

(8) Without limiting the above, the power to search premises under this section includes any or all of the following:

(a) the power to search for evidence of an offence;

(b) the power to search for and inspect any records, devices or other things that relate to –

(i) a vehicle or any part of its equipment or load located at the premises; or

(ii) any dangerous goods or packaging located at the premises;

(c) the power to take copies of or extracts from any or all of the following:

(i) any records that are located at the premises and are required to be kept by or under the regulations;

(ii) any transport documentation located at the premises;

(iii) any other records, or any readout or other data obtained from any device or thing, located at the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence;

(d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material;

(e) the power to take, in accordance with section 52A, a sample of any substance or packaging on the premises.

(9) The power to search premises under this section does not include a power to search a person.

(10) The officer may seize and remove any records, devices or other things from the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence.

(11) The officer may use reasonable force in the exercise of powers under this section.

Division 5 - Other directions

45. Direction to give name and other personal details

(1) If an authorised officer suspects on reasonable grounds that a person –

(a) has committed, is committing or is about to commit an offence; or

(b) may be able to assist in the investigation of an offence –

the officer may direct the person to give the officer then and there any or all of the person's personal details.

(2) If an authorised officer suspects on reasonable grounds that a personal detail given by a person in response to a direction under subsection (1) is false or misleading, the officer may direct the person to produce evidence then and there of the correctness of the detail.

(3) A person who is given a direction under subsection (1) or (2) must comply with the direction.

Penalty:

Fine not exceeding 35 penalty units.

(4) A person who is given a direction under subsection (1) must not give, in purported response to the direction, any details that are false or misleading in a material particular.

Penalty:

Fine not exceeding 35 penalty units.

(5) A person who is given a direction under subsection (2) must not produce, in purported response to the direction, any evidence that is false or misleading in a material particular.

Penalty:

Fine not exceeding 35 penalty units.

(6) In this section –
personal details, in relation to a person, means –

(a) the person's full name; and

(b) the person's date of birth; and

(c) the address of where the person is living; and

(d) the address of where the person usually lives; and

(e) the person's business address.

46. Direction to produce records, devices or other things

(1) An authorised officer may, for compliance purposes, direct a person to produce –

(a) any records required to be kept by the person under this Act; or

(b) any records in the person's possession or under the person's control that are required to be kept under this Act; or

(c) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control relating to or indicating an offence.

(2) The direction must –

(a) specify –

(i) the records, devices or other things; or

(ii) the classes of records, devices or other things –

that are to be produced; and

(b) state where, when and to whom the records, devices or other things are to be produced.

(3) The officer may do any or all of the following:

(a) inspect records, devices or other things that are produced;

(b) make copies of, or take extracts from, records, devices or other things that are produced;

(c) seize and remove records, devices or other things that are produced that the officer believes on reasonable grounds may on further inspection provide evidence of an offence.

(4) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 170 penalty units; or

(b) an individual, a fine not exceeding 35 penalty units.

47. Direction to provide information

(1) An authorised officer may, for compliance purposes, direct a person involved in the transport of dangerous goods to provide information to the officer about a vehicle or any load or equipment carried or intended to be carried by a vehicle.

(2) Without limiting the above, a direction under subsection (1) may require a person who is associated with a particular vehicle to provide information about the current or intended trip of the vehicle, including –

(a) the location of the start or intended start of the trip; and

(b) the route or intended route of the trip; and

(c) the location of the destination or intended destination of the trip.

(3) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 170 penalty units; or

(b) an individual, a fine not exceeding 35 penalty units.

48. Direction to provide reasonable assistance for powers of inspection and search

(1) An authorised officer may direct a person who is involved in the transport of dangerous goods to provide reasonable assistance to the officer to enable the officer effectively to exercise a power in relation to goods with which the person is involved.

(2) Without limiting the above, the assistance may include helping the officer to do any or all of the following:

(a) to find and gain access to any records or information relating to a vehicle, including but not limited to –

(i) records and information required to be kept in or on a vehicle; or

(ii) records and information in a useable form for the purpose of ascertaining their compliance with requirements imposed by this Act;

(b) to find and gain access to devices on which information is electronically stored and the information stored on them;

(c) to weigh or measure –

(i) the whole or any part of a vehicle; or

(ii) the whole or any part of its equipment or load;

(d) to operate equipment or facilities for a purpose relevant to the power being or proposed to be exercised;

(e) to provide access free of charge to photocopying equipment for the purpose of copying any records or other material;

(f) to take a sample of any substance or packaging in accordance with section 52A.

(3) A person who is given a direction under subsection (1) must comply with the direction.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 50 penalty units.

Division 6 - Provisions regarding inspections and searches

49. Warrants

(1) This section applies if an authorised officer believes on reasonable grounds that –

(a) there may be at particular premises, then or within the next 72 hours, records, devices or other things that may provide evidence of an offence; or

(b) a vehicle has been or may have been involved in an offence or a dangerous situation and –

(i) the vehicle is or has been located at particular premises; or

(ii) particular premises are or may be otherwise connected (directly or indirectly) with the vehicle or any part of its equipment or load.

(2) The officer may apply to a magistrate for the issue of a warrant authorising the officer to exercise a power to enter and search the premises under this Part.

(3) In this section –
magistrate means a magistrate within the meaning of the Magistrates Court Act 1987.

50. Use of assistants and equipment

(1) An authorised officer may exercise powers under this Part with the aid of such assistants and equipment as the officer considers reasonably necessary in the circumstances.

(2) Powers that may be exercised by an authorised officer under this Part may be exercised by an assistant authorised and supervised by the officer, but only if the officer considers that it is reasonably necessary in the circumstances that the powers be exercised by an assistant.

51. Use of equipment to examine or process things

(1) An authorised officer exercising a power under this Part may bring to, or on to, a vehicle or premises any equipment reasonably necessary for the examination or processing of things found in, on or at the vehicle or premises in order to determine whether they are things that may be seized.

(2) If –

(a) it is not practicable to examine or process the things at the vehicle or premises; or

(b) the occupier of the vehicle or premises consents in writing –

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.

(3) The officer, or a person assisting the officer, may operate equipment already in, on or at the vehicle or premises to carry out the examination or processing of a thing found in, on or at the vehicle or premises in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that –

(a) the equipment is suitable for the examination or the processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

52. Use or seizure of electronic equipment

(1) If –

(a) a thing found in, on or at a vehicle or premises is, or includes, a disk, tape or other device for the storage of information; and

(b) equipment in, on or at the vehicle or premises may be used with the disk, tape or other storage device; and

(c) the authorised officer concerned believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether an offence has been committed –

the officer or a person assisting the officer may operate the equipment to access the information.

(2) If the officer or a person assisting the officer finds that a disk, tape or other storage device in, on or at the vehicle or premises contains information of a kind referred to in subsection (1)(c), he or she may –

(a) put the information in documentary form and seize the documents so produced; or

(b) copy the information to another disk, tape or other storage device and remove that storage device from the vehicle or premises; or

(c) if it is not practicable to put the information in documentary form or to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.

(3) An officer or a person assisting an officer must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

52A. Sample-taking procedure

(1) In this section –

person from whom the sample was taken means –

(a) in the case of an inspection or search under section 26, 27, 37 or 38, the driver of the vehicle, or the person apparently in charge of the vehicle; and

(b) in the case of an inspection or search under section 43 or 44, the occupier, or apparent occupier for the time being, of the premises.

(2) Despite anything in this Part to the contrary, an authorised officer may only take a sample if it is safe to do so and if the taking of the sample will not result in a dangerous situation arising.

(3) Unless it is not safe to do so, the authorised officer must, immediately after taking any sample of a substance, divide the sample into the following parts:

(a) one part that is to be retained for future comparison;

- (b) one part that is to be given to the person from whom the sample was taken;
 - (c) if the authorised officer intends to have the sample tested or analysed, one part for the purposes of that testing or analysis.
- (4) The authorised officer must then –
- (a) enclose each part of the sample in a container that prevents the contamination of the sample; and
 - (b) mark or label the container in a way that enables the part of the sample to be identified.
- (5) If an authorised officer intends to take a sample of any packaging under this Part, before removing the packaging from the vehicle or premises, as the case may be, he or she must give a written receipt, that identifies the sample, to the person from whom the sample was taken.
- (6) If an authorised officer finds numerous packages during an inspection or search and the packages appear to be identical, the authorised officer may take one or more of the packages as samples.
- (7) If subsection (6) applies, the officer must, immediately after taking the sample –
- (a) enclose each sample in a container that prevents the contamination of the sample; and
 - (b) mark or label the container in a way that enables the part to be identified; and
 - (c) give one of the samples to the person from whom the sample was taken.
- (8) If a person who is offered a sample, or part of a sample, under subsection (3)(b) or subsection (7)(c) refuses to accept the sample or part, the authorised officer must retain the sample or part.
- (9) The authorised officer must give a sample, or part of a sample, retained under subsection (8) to the person to whom it was offered if he or she is subsequently asked to do so by that person.

Division 7 - Other provisions regarding seizure

53. Receipt for and access to seized material

If a record, device or other thing is seized and removed under this Part, the authorised officer concerned must –

- (a) give a receipt for it to the person from whom it is seized and removed; and

(b) if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

54. Embargo notices

(1) This section applies if –

(a) an authorised officer is authorised to seize any record, device or other thing under this Part; and

(b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.

(2) The authorised officer may issue an embargo notice under this section.

(3) An embargo notice is a notice forbidding the movement, sale, leasing, transfer, over-recording, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of the authorised officer or the Competent Authority.

(4) The embargo notice must –

(a) be in the prescribed form or contain the prescribed particulars; and

(b) list each activity that it forbids; and

(c) set out a copy of subsection (8).

(5) The authorised officer may issue the embargo notice –

(a) by causing a copy of the notice to be served on the person with responsibility for the vehicle or premises concerned; or

(b) if that person cannot be located or ascertained after all reasonable steps have been taken to do so, by affixing a copy of the notice to the record, device or other thing in a prominent position.

(6) A person who knows that an embargo notice relates to a record, device or other thing must not –

(a) do anything that is forbidden by the notice; or

(b) instruct another person to do so.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 340 penalty units; or

(b) an individual, a fine not exceeding 70 penalty units.

(7) It is a defence to a charge for an offence against subsection (6) to establish that the person charged –

(a) moved the record, device or other thing, or part of it, to protect or preserve it;
or

(b) notified the officer who issued the notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.

(8) A person upon whom an embargo notice has been served must take reasonable steps to prevent any other person from doing anything forbidden by the notice.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 340 penalty units; or

(b) an individual, a fine not exceeding 70 penalty units.

(9) Despite anything in any other Act, a sale, lease or transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Division 8 - Miscellaneous

55. Limit on use of force

A provision of this Part that authorises an authorised officer to use reasonable force does not authorise the use of force against an individual unless the authorised officer is also a police officer.

56. Consent

(1) Before obtaining the consent of a person for the purposes of a provision of this Part, an authorised officer must inform the person that he or she may refuse to give consent.

(2) An entry by or the exercise of any power under this Part by an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(3) Consent may be withdrawn after it has been given, and the power concerned must no longer be exercised by virtue of the consent.

57. Manner of giving directions under this Part

- (1) A direction under this Part may be given orally, in writing or in any other manner.
- (2) A direction not given in person may be sent or transmitted by post, telephone, facsimile, electronic mail, radio or in any other manner.
- (3) A direction may be given to a driver orally or by means of a sign or signal (electronic or otherwise), or in any other manner.

58. Directions to state when to be complied with

- (1) If given orally, a direction under this Part must state whether it is to be complied with then and there or within a specified period.
- (2) If given in writing, a direction under this Part must state the period within which it is to be complied with.

59. Directions may be given under more than one provision

- (1) An authorised officer may, on the same occasion, give directions under one or more sections of this Part.
- (2) Without limiting the above, an authorised officer may, in the course of exercising powers under a provision of this Part, give either or both of the following:
 - (a) further directions under the provision;
 - (b) directions under one or more other sections of this Part.

60. Restoring vehicle or premises to original condition after action taken

- (1) This section applies if –
 - (a) an authorised officer or a person authorised by the officer has taken action in the exercise or purported exercise of a power under this Part in relation to a vehicle or its equipment or load or in relation to any premises; and
 - (b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Part.
- (2) The officer must take reasonable steps to return the vehicle, equipment, load or premises to the condition it was in immediately before the action was taken.

61. Self-incrimination no excuse

- (1) A person is not excused from answering any question asked, or providing any information required, by an authorised officer under this Act on the grounds that the answer or information may tend to incriminate the person.

(2) However, in proceedings for an offence against this Act, any answer or information given or provided to an authorised officer pursuant to a requirement of an authorised officer under this Act is not admissible in evidence against the person giving the answer or providing the information –

(a) if the person claims before giving the answer or providing the information that the answer or information may tend to incriminate the person; or

(b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the answer was given or the information was provided.

62. Providing evidence to other authorities

Except as provided by any applicable privacy legislation, the Competent Authority may, for law enforcement purposes, give a record, device or other thing seized in accordance with this Part, or any information obtained in accordance with this Part, to a public authority, including a public authority of another jurisdiction.

63. Obstructing or hindering authorised officers

(1) A person must not obstruct or hinder an authorised officer or a person assisting an authorised officer in the exercise of a power under this Part.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 340 penalty units; or

(b) an individual, a fine not exceeding 70 penalty units.

(2) However, an offence is not committed under this section unless it is established that the power –

(a) was being exercised lawfully; and

(b) without limiting paragraph (a), was –

(i) exercisable without consent; or

(ii) being exercised with consent or under the authority of a warrant.

(3) The prosecution bears a legal burden in relation to the matters in subsection (2).

PART 4 - Exemptions

64. Exemptions

(1) A person, or a representative of a class of persons, may apply to the Competent Authority for an exemption from compliance with a provision of the regulations in relation to the transport of particular dangerous goods.

(2) The Competent Authority may, on its own initiative or on application under subsection (1), exempt a person or class of persons from compliance with a provision of the regulations in relation to the transport of particular dangerous goods if the Competent Authority is satisfied that –

(a) it is not reasonably practicable for the person or class of persons to comply with the provision; and

(b) granting the exemption –

(i) would not be likely to create a risk of death or injury to a person, or harm to the environment or to property, greater than that which would be the case if the person or class of persons were required to comply; and

(ii) would not cause unnecessary administrative or enforcement difficulties, particularly in respect of maintaining national uniformity of road and rail transport laws.

(3) An exemption may be subject to conditions, including a condition that it applies to either or both of the following:

(a) the transport of dangerous goods by road;

(b) the transport of dangerous goods by rail.

(4) If the Competent Authority grants an exemption to a person, the Competent Authority must send a notice to the person stating –

(a) 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 the Competent Authority –

(a) grants an exemption to a class of persons; or

(b) grants an exemption that is to remain in force for longer than 6 months –

the Competent Authority must publish a notice in the *Gazette* specifying all the details in subsection (4) and the person or class of persons to which the exemption applies.

(6) A person operating under an exemption must comply with any condition subject to which the exemption was granted.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units or imprisonment for a term not exceeding 6 months, or both.

(7) If an exemption is granted to a person, and the exemption applies to a vehicle or to premises, the person must keep a copy of the notice of exemption in the vehicle or premises.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 85 penalty units; or

(b) an individual, a fine not exceeding 20 penalty units.

(8) If the Competent Authority –

(a) grants an exemption to a class of persons; or

(b) grants an exemption that is to remain in force for longer than 6 months –

the Competent Authority must notify the Competent Authority of each other State of the details of the exemption.

(9) A notice under this section is not –

(a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

(b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

65. Variation and cancellation of exemptions and conditions

(1) The Competent Authority may cancel an exemption if –

(a) the Authority is satisfied that a condition to which the exemption is subject has not been complied with; or

(b) the Authority is no longer satisfied of the matters referred to in section 64(2).

(2) The Competent Authority may vary or cancel conditions to which an exemption is subject or impose new conditions.

(3) 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.

(4) An exemption granted to a class of persons is to be varied or cancelled by notice published in the *Gazette*, and the variation or cancellation takes effect on the day of publication, or from a later day specified in the notice.

(5) A notice under this section is not –

(a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

(b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

66. Review of exemption &c.

If the Competent Authority –

(a) refuses to grant an exemption to a person or a class of persons; or

(b) cancels an exemption granted to a person or a class of persons; or

(c) grants an exemption to a person or a class of persons subject to conditions; or

(d) varies or cancels conditions to which an exemption granted to a person or a class of persons is subject or imposes new conditions –

the person or a representative of the class of persons may apply for a review of the decision as prescribed.

67. 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 may have effect in relation to the whole of this jurisdiction or to a specified area.

(3) A notice under this section is not –

(a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

(b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

PART 5 - Offences and Penalties

68. Reserved

This section has been left blank so as to preserve uniformity with other jurisdictions with regard to numbering of the Act.

69. Failure to hold licence &c.

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

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 2 100 penalty units; or

(b) an individual, a fine not exceeding 450 penalty units or imprisonment for a term not exceeding 2 years, or both.

(1A) A person must not consign dangerous goods for transport by road on a vehicle if the person knows, or reasonably ought to know, that –

(a) the regulations require the vehicle to be licensed to transport the goods; and

(b) the vehicle is not licensed under the regulations.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

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

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 2 100 penalty units; or

(b) an individual, a fine not exceeding 450 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) A person must not drive a vehicle transporting dangerous goods if –

(a) the regulations require the vehicle to be licensed to transport the goods; and

(b) the vehicle is not licensed under the regulations.

Penalty:

Fine not exceeding 85 penalty units.

(4) A person must not drive a vehicle transporting dangerous goods if –

(a) the regulations require the person to be licensed to drive the vehicle; and

(b) the person is not licensed under the regulations.

Penalty:

Fine not exceeding 85 penalty units.

70. Goods too dangerous to be transported

(1) A person must not consign goods for transport if the regulations identify the goods as being goods too dangerous to be transported.

Penalty:

In the case of –

(a) a body corporate –

(i) if contravention results in the death of or serious injury to a person, a fine not exceeding 4 200 penalty units; or

(ii) in any other case, a fine not exceeding 2 100 penalty units; or

(b) an individual –

(i) if contravention results in the death of or serious injury to a person, a fine not exceeding 850 penalty units or imprisonment for a term not exceeding 4 years, or both; or

(ii) in any other case, a fine not exceeding 450 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) Subsection (1) includes a person who arranges for the conveyance of goods too dangerous to be transported on a vehicle owned or controlled by the person.

71. Duties concerning transport of dangerous goods

(1) A person involved in the transport of dangerous goods by road or rail who fails to ensure that the goods are transported in a safe manner is guilty of an offence.

Penalty:

In the case of –

(a) a body corporate –

(i) if contravention results in the death of or serious injury to a person, a fine not exceeding 4 200 penalty units; or

(ii) in any other case, a fine not exceeding 2 100 penalty units; or

(b) an individual –

(i) if contravention results in the death of or serious injury to a person, a fine not exceeding 850 penalty units or imprisonment for a term not exceeding 4 years, or both; or

(ii) in any other case, a fine not exceeding 450 penalty units or imprisonment for a term not exceeding 2 years, or both.

(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 reasonably ought 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.

Penalty:

In the case of –

(a) a body corporate –

(i) if contravention results in the death of or serious injury to a person, a fine not exceeding 4 200 penalty units; or

(ii) in any other case, a fine not exceeding 2 100 penalty units; or

(b) an individual –

(i) if contravention results in the death of or serious injury to a person, a fine not exceeding 850 penalty units or imprisonment for a term not exceeding 4 years, or both; or

(ii) in any other case, a fine not exceeding 450 penalty units or imprisonment for a term not exceeding 2 years, or both.

PART 6 - General Administrative Sanctions

Division 1 - Improvement notices

72. Improvement notices

(1) This section applies if an authorised officer is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of this Act.

(2) The authorised officer may serve on the person an improvement notice requiring the person to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, before the date specified in the notice.

(3) The improvement notice must specify a date (with or without a time) by which the person is required to remedy the contravention or likely contravention, or the matters or activities causing the contravention or likely contravention, that the officer considers is reasonable having regard to the severity of any relevant risks and the nature of the contravention or likely contravention.

(4) The improvement notice must –

(a) state that the authorised officer is of the opinion referred to in subsection (1); and

(b) state the reasons for that opinion; and

(c) specify the sections of this Act in respect of which that opinion is held; and

(d) include information about obtaining a review of the notice; and

(e) state that it is issued under this section.

(5) The improvement notice may but need not specify the method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied.

73. Contravention of improvement notice

(1) A person on whom an improvement notice is served must comply with the notice unless the person has a reasonable excuse for not doing so.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(2) In proceedings for an offence under subsection (1), it is a defence if the person establishes that –

(a) the alleged contravention or likely contravention; or

(b) the matters or activities occasioning the alleged contravention or likely contravention –

specified in the notice were remedied within the period specified in the notice, albeit by a method different from that specified in the notice.

74. Amendment of improvement notices

(1) An improvement notice served by an authorised officer may be amended by that authorised officer or any other authorised officer.

(2) An amendment of an improvement notice is effected by service on the person affected of a notice stating the terms of the amendment.

(3) An amendment of an improvement notice is ineffective if it purports to deal with a contravention of a different provision of this Act from that dealt with in the improvement notice as first served.

(4) A notice of an amendment of an improvement notice must –

(a) state the reasons for the amendment; and

(b) include information about obtaining a review of the notice; and

(c) state that it is issued under this section.

75. Cancellation of improvement notices

(1) An improvement notice served by an authorised officer may be cancelled by the authorised officer or the Competent Authority.

(2) To be effective, a notice of cancellation of an improvement notice must be served on the person affected.

76. Clearance certificates

(1) An authorised officer may issue a clearance certificate to the effect that all requirements, or a specified requirement, of an improvement notice have been complied with.

(2) A requirement of an improvement notice ceases to be operative on receipt, by the person on whom the improvement notice is served, of a clearance certificate to the effect that –

(a) all requirements of the notice have been complied with; or

(b) the specific requirement has been complied with.

Division 2 - Formal warnings

77. Formal warnings

(1) An authorised officer may, instead of taking proceedings against a person for a contravention of this Act, formally warn the person if the officer believes –

(a) the person had taken reasonable steps to prevent the contravention and was unaware of the contravention; and

(b) the contravention is appropriate to be dealt with by way of a formal warning under this section.

(2) A formal warning must be in writing.

(3) In this section –

proceedings includes action by way of an infringement notice.

78. Withdrawal of formal warnings

(1) A formal warning may be withdrawn by the Competent Authority by serving on the alleged offender a notice of withdrawal within 21 days after the formal warning was given.

(2) After the formal warning has been withdrawn, proceedings may be taken against the person for the contravention.

(3) In this section –

proceedings includes action by way of an infringement notice.

Division 3 - Infringement notices

79. Infringement notices

(1) In this section –

infringement offence means an offence against this Act or the regulations that is prescribed by the regulations to be an infringement offence.

(2) An authorised officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained the age of 16 years.

(4) An infringement notice –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to more than 4 offences.

(5) The regulations –

(a) may prescribe the penalty applicable to each infringement offence that is payable under an infringement notice; and

(b) may prescribe different penalties for bodies corporate and individuals.

(6)

PART 7 - General Court-based Sanctions

Division 1 - Proceedings for offences

80. Proceedings for offences

Proceedings for an offence may be dealt with summarily.

81. Proceedings for an offence may be brought by authorised officers

A prosecution for an offence may be brought by an authorised officer.

82. Period within which proceedings for offences may be commenced

(1) Unless this Act otherwise provides, proceedings for an offence may be commenced within –

(a) the period of 2 years after the commission of the alleged offence; or

(b) a further period of one year commencing on the day on which the Competent Authority or an authorised officer first obtained evidence of the commission of the

alleged offence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings.

(2) For the purposes of subsection (1), a certificate purporting to have been issued by the Competent Authority or an authorised officer as to the date when the Authority or the officer first obtained evidence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings is admissible in any proceedings and is prima facie evidence of the matters stated.

Division 2 - Available sanctions

83. Sanctions imposed by courts

(1) A court that finds a person guilty of an offence may impose any one or more of the sanctions provided for by this Part.

(2) Without affecting a court's discretion, the court is required to take into consideration, when imposing more than one of the sanctions provided for by this Part, the combined effect of the sanctions imposed.

(3) Nothing in this Part affects any discretions or powers that a court or other person or body has apart from this Part.

(4) If one or more courts make orders under this Part that result in both a supervisory intervention order and an exclusion order being in force at the same time in relation to the same person, the supervisory intervention order has no effect while the exclusion order has effect.

Division 3 - Fines

84. Reserved

This section has been left blank so as to preserve uniformity with other jurisdictions with regard to numbering of the Act.

Division 4 - Commercial benefits penalty orders

85. Commercial benefits penalty orders

(1) The court that finds a person guilty of an offence may, on the application of the Competent Authority, make an order under this section.

(2) The court may make a commercial benefits penalty order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that –

(a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and

(b) in the case of a journey that was interrupted or not commenced because of action taken by an authorised officer in connection with the commission of the offence, would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.

(3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account –

(a) benefits of any kind, whether monetary or otherwise; and

(b) any other matters that it considers relevant, including (for example) –

(i) the value of any goods involved in the offence; and

(ii) the distance over which any such goods were or were to be carried.

(4) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.

(5) Nothing in this section prevents the court from ordering payment of an amount that is –

(a) less than 3 times the estimated gross commercial benefit; or

(b) less than the estimated gross commercial benefit.

Division 5 - Licensing and registration sanctions

86. Power to affect licences

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

(a) that a licence the driver is required to have by the regulations is –

(i) cancelled; or

(ii) modified or suspended for a specified period;

(b) that the driver is disqualified for a specified period from obtaining or holding a licence a driver is required to have by regulations.

(2) An order under this section operates by force of this Act and takes effect immediately or from a later specified date.

(3) In this section –

specified means specified in the order made under this section.

87. Power to affect road vehicle registration

(1) This section applies if the registered operator of a road vehicle is found guilty of an offence under this Act in relation to the vehicle.

(2) The court that finds the person guilty of the offence may make an order that the registration of the vehicle is –

(a) cancelled; or

(b) suspended for a specified period.

(3) The court may also make an order that the registered operator, or an associate of the registered operator, is disqualified from registering the vehicle for a specified period.

(4) If the court considers that another person who is not present in court may be substantially affected by an order under this section, the court may issue a summons to that other person to show cause why the order should not be made.

(5) An order under this section operates by force of this Act and takes effect immediately or from a later specified date.

(6) In this section –

registered operator, in relation to a road vehicle, means the person recorded on a register maintained in accordance with an Australian road law as the person responsible for the vehicle;

specified means specified in the order made under this section.

Division 6 - Supervisory intervention orders

88. Supervisory intervention orders

(1) The court that finds a person guilty of an offence may, on the application of the Competent Authority, if the court considers the person to be a systematic or persistent offender against this Act, make an order under this section.

(2) The court may make a supervisory intervention order requiring the person (at the person's own expense and for a specified period not exceeding one year) to do any or all of the following:

(a) to do specified things that the court considers will improve the person's compliance with this Act or specified sections of this Act, including (for example) the following:

(i) appointing or removing staff to or from particular activities or positions;

(ii) training and supervising staff;

- (iii)** obtaining expert advice as to maintaining appropriate compliance;
- (iv)** installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment);
- (v)** implementing monitoring, compliance, managerial or operational practices, systems or procedures;
- (b)** to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Competent Authority or a person nominated by the Authority;
- (c)** to furnish compliance reports to the Competent Authority or the court, or both, as specified in the order;
- (d)** to appoint a person to have responsibilities –
 - (i)** to assist the person in improving compliance with this Act or specified sections of this Act; and
 - (ii)** to monitor the person's performance in complying with this or specified sections of this Act and in complying with the requirements of the order; and
 - (iii)** to furnish compliance reports to the Competent Authority or the court or both as specified in the order.
- (3)** The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.
- (4)** The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (5)** The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with this Act, having regard to –
 - (a)** the offences of which the person has previously been found guilty; and
 - (b)** the offences for which the person has been proceeded against by way of unwithdrawn infringement notices; and
 - (c)** any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with the transport of dangerous goods.
- (6)** The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.

(7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of –

(a) the Competent Authority; or

(b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

(8) For the purposes of subsections (1) and (5), if a person has committed at least one offence against this Act, the court may treat any offences that the person has committed under any corresponding law as if they had also been committed under this Act.

(9) In this section –

compliance report, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to –

(a) the performance of the person in complying with –

(i) this Act or sections of this Act specified in the order; and

(ii) the requirements of the order; and

(b) without limiting the above –

(i) things done by the person to ensure that any failure by the person to comply with this or the specified sections of this Act does not continue; and

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

89. Contravention of supervisory intervention order

A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in a contravention of the requirement.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

Division 7 - Exclusion orders

90. Exclusion orders

(1) The court that finds a person guilty of an offence may, on the application of the Competent Authority, if the court considers the person to be a systematic or persistent offender against this Act, make an order under this section.

(2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences, the court may make an exclusion order prohibiting the person, for a specified period, from involvement in the transport of dangerous goods or in any aspect of that transport.

(3) The court cannot make an exclusion order that prohibits the person from driving or registering a vehicle.

(4) The court may only make an order under this section if it is satisfied –

(a) that the person should not continue the things that are the subject of the proposed order; and

(b) that a supervisory intervention order is not appropriate, having regard to –

(i) the offences of which the person has previously been found guilty; and

(ii) the offences for which the person has been proceeded against by way of unwithdrawn infringement notices; and

(iii) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with involvement in the transport of dangerous goods.

(5) A court that has power to make exclusion orders may revoke or amend an exclusion order on the application of –

(a) the Competent Authority; or

(b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

(6) For the purposes of subsections (1) and (4), if a person has committed at least one offence against this Act, the court may treat any offences that the person has committed under any corresponding law as if they had also been committed under this Act.

91. Contravention of exclusion order

A person who is subject to a prohibition contained in an exclusion order must not engage in conduct that results in a contravention of the prohibition.

Penalty:

In the case of –

- (a) a body corporate, a fine not exceeding 420 penalty units; or
- (b) an individual, a fine not exceeding 85 penalty units.

Division 8 - Forfeiture orders

92. Forfeiture

- (1) The court that finds a person guilty of an offence in relation to dangerous goods may, on the application of the Competent Authority and if the court is satisfied that the person owns the goods or that their owner cannot be identified, order, in addition to imposing any other penalty, that the dangerous goods and their packaging be forfeited to the Crown.
- (2) Dangerous goods and packaging forfeited to the Crown may be collected, packaged, transported, destroyed, sold or otherwise disposed of as directed by the Competent Authority.
- (3) The person found guilty of the offence must pay to the Crown the reasonable costs of collecting, packaging, transporting, storing, destroying, selling or otherwise disposing of the dangerous goods and packaging.

PART 8 - Compensation Orders

Division 1 - Definitions

93. Definitions

In this Part –

compensation order means an order made under this Part;

rail or road authority means a person or body (whether or not a public authority) that is responsible for the care, control or management of a railway or road, as the case may be;

rail or road infrastructure includes –

- (a) a road, including its surface or pavement; and
- (ab) a railway including its rails and junctions; and
- (b) anything under or supporting a road or a railway, its surface, pavement or rails and maintained by a rail or road authority; and
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a rail or road system or supporting a railway or road; and

(d) any bridge or other work or structure located above, in or on a railway or road and maintained by a rail or road authority; and

(e) any traffic control devices, railway or tramway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything referred to in paragraph (a), (ab), (b), (c) or (d).

93A. Compensation orders

The court that finds a person guilty of an offence may make an order under this Part.

Division 2 - General compensation orders

94. Compensation orders for damage to rail or road infrastructure

(1) The court may make a compensation order requiring the offender to pay a rail or road authority such amount by way of compensation as the court thinks fit for damage to any rail or road infrastructure that the rail or road authority has incurred or is likely to incur in consequence of the offence.

(2) A compensation order may be made on the application of the rail or road authority or the Competent Authority.

(3) A compensation order may only be made in favour of the rail or road authority.

(4) The court may make a compensation order if it is satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage.

(5) The court may make a compensation order on an application made when it finds the offender guilty of the offence, or on an application made not later than the period within which a prosecution for the offence could have been commenced.

95. Assessment of compensation

(1) In making a compensation order, the court may assess the amount of compensation in such manner as it considers appropriate, including (for example) the estimated cost of remedying the damage.

(2) In assessing the amount of compensation, the court may take into account such matters as it considers relevant, including –

(a) any evidence adduced in connection with the prosecution of the offence; and

(b) any evidence not adduced in connection with the prosecution of the offence but adduced in connection with the making of the proposed order; and

- (c) any certificate of the rail or road authority stating that it maintains the rail or road infrastructure concerned; and
- (d) any other certificate of the rail or road authority, such as a certificate –
- (i) estimating the monetary value of all or any part of the rail or road infrastructure or of the damage to it; or
- (ii) estimating the cost of remedying the damage; or
- (iii) estimating the extent of the offender's contribution to the damage.

96. Service of certificates

- (1) If a rail or road authority proposes to use a certificate in proceedings, it must serve a copy of the certificate on the defendant at least 28 working days before the day on which the matter is set down for hearing.
- (2) Such a certificate cannot be used in the proceedings unless a copy of it has been served in accordance with this section.
- (3) A defendant who wishes to challenge a statement in such a certificate must serve a notice in writing on the rail or road authority at least 14 working days before the day on which the matter is set down for hearing.
- (4) The notice must specify the matters in the certificate that are intended to be challenged.
- (5) If the defendant is intending to challenge the accuracy of any measurement, analysis or reading in the certificate, the defendant must specify the reason why the defendant alleges that it is inaccurate and must specify the measurement, analysis or reading that the defendant considers to be correct.
- (6) The defendant cannot challenge a matter in the certificate if the requirements of this section have not been complied with in relation to the certificate, unless the court gives leave to do so in the interests of justice.

97. Limits on amount of compensation

- (1) If, in making a compensation order, the court is satisfied that the commission of the offence concerned contributed to the damage but that other factors not connected with the commission of the offence also contributed to the damage, the court must limit the amount of the compensation payable by the offender to the amount it assesses as being the offender's contribution to the damage.
- (2) The maximum amount of compensation cannot exceed the monetary jurisdictional limit of the court in civil proceedings.
- (3) The court may not include in the order any amount for –
- (a) personal injury or death; or

(b) loss of income (whether sustained by a rail or road authority or any other person or organisation); or

(c) damage to any property (including a vehicle) that is not part of the rail or road infrastructure.

Division 3 - Costs compensation orders

98. Recovery of costs

(1) A court that finds a person guilty of an offence may, in addition to imposing any other sanction, order the convicted person to pay the Competent Authority costs –

(a) that were reasonably incurred in taking the action; and

(b) that were directly related to the investigation of the offence.

(2) Those costs include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

(3) An order may be made on the application of the Competent Authority made either at the time of the finding of guilt, or at any time not later than the period within which a prosecution for the offence could have commenced.

Division 4 - Costs and recovery

99. Costs

The court has the same power to award costs in relation to the proceedings for a compensation order as it has in relation to civil proceedings, and the relevant provisions of laws applying to costs in relation to civil proceedings apply with any necessary adaptations to costs in relation to the proceedings for the compensation order.

100. Enforcement of compensation order and costs

A compensation order, and any award of costs, are enforceable as if they were a judgment of the court in civil proceedings.

101. Relationship with orders or awards of other courts and tribunals

(1) A compensation order may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage, based on the same or similar facts, and if a court purports to make an order under this Part in those circumstances –

(a) the order is void to the extent that it covers the same matters as those covered by the other award; and

(b) any payments made under the order to the extent to which it is void must be repaid by the rail or road authority.

(2) The making of a compensation order does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage, based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.

PART 9 - General Liability and Evidentiary Provisions

Division 1 - Basis of liability for offences

102. Multiple offenders

(1) This section applies if a provision of this Act provides (expressly or impliedly) that each of 2 or more persons is liable for an offence.

(2) Proceedings may be taken against all or any of the persons.

(3) Proceedings may be taken against any of the persons –

(a) regardless of whether or not proceedings have been commenced against any of the other persons; and

(b) if proceedings have been commenced against any of the other persons, regardless of whether or not the proceedings have been concluded; and

(c) if proceedings have been concluded against any of the other persons, regardless of the outcome of the proceedings.

(4) This section has effect subject to any provision of this Act to the contrary.

103. Double jeopardy

(1) A person may be punished only once in relation to the same failure to comply with a particular provision of this Act, even if the person is liable in more than one capacity.

(2) Despite subsection (1), a person may be punished for more than one breach of a provision of this Act if the breaches relate to different parts of the same vehicle or of the same dangerous goods.

104. Liability of directors, partners, employers and others for offences by bodies corporate, partnerships, associations and employees

(1) If a body corporate commits an offence, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and is punishable accordingly.

(2) If a person who is a partner in a partnership commits an offence in the course of the activities of the partnership, each other person who is a partner in the partnership, and each other person concerned in the management of the partnership, is taken to have committed the offence and is punishable accordingly.

(3) If a person who is concerned in the management of an unincorporated association commits an offence in the course of the activities of the unincorporated association, each other person concerned in the management of the unincorporated association is taken to have committed the offence and is punishable accordingly.

(4) If an employee commits an offence, the employer is taken to have committed the offence and is punishable accordingly.

(5) This section does not affect the liability of the person who actually committed the offence.

(6) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.

(7) It is a defence to a charge for an offence arising under subsection (1) if the defendant establishes that –

(a) the defendant was not in a position to influence the conduct of the body corporate in relation to the actual offence; or

(b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

(8) It is a defence to a charge for an offence arising under subsection (2) or (3) if the defendant establishes that –

(a) the defendant was not in a position to influence the conduct of the person who actually committed the offence; or

(b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

(9) It is a defence to a charge for an offence arising under subsection (4) if the defendant establishes that –

(a) the defendant had no knowledge of the actual offence; and

(b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

105. Complicity and common purpose (aiding and abetting)

(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person who aids, abets, counsels or procures the commission of an offence to be guilty –

(a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and

(b) the offence must have been committed by the other person.

(3) For the person who aids, abets, counsels or procures the commission of an offence to be guilty, the person must –

(a) have intended that –

(i) his or her conduct would aid, abet, counsel or procure the commission of any offence of the type the other person committed; or

(ii) his or her conduct would aid, abet, counsel or procure the commission of an offence; and

(b) have been reckless about the commission of the offence that the other person in fact committed.

(4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person –

(a) terminated his or her involvement; and

(b) took reasonable steps to prevent the commission of the offence.

(5) This section does not affect the liability of the principal offender.

(6) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.

106. Causing or permitting

(1) A person who causes or permits another person to commit an offence is taken to have committed that offence and is punishable accordingly.

(2) This section does not affect the liability of the person who actually committed the offence.

(3) This section does not apply in relation to directions given by authorised officers under this Act.

(4) A person may be found guilty of causing or permitting another person to commit an offence even if the person who committed the offence has not been prosecuted or has not been found guilty.

107. Coercing, inducing or offering incentive

(1) A person who urges another person to commit an offence is guilty of an offence and is punishable accordingly.

(2) Without limiting the above, a person urges another person to commit an offence if the person threatens, intimidates, coerces, induces or offers an incentive to the other person to commit the offence.

(3) This section does not affect the liability of the person who actually committed the offence.

Division 2 - General defences

108. Sudden or extraordinary emergency

(1) It is a defence to a charge for an offence if the person charged carried out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.

(2) This section applies if and only if the person carrying out the conduct reasonably believed that –

(a) circumstances of sudden or extraordinary emergency existed; and

(b) committing the offence was the only reasonable way to deal with the emergency; and

(c) the conduct was a reasonable response to the emergency.

109. Lawful authority

It is a defence to a charge for an offence if the person charged establishes that the conduct constituting the offence was authorised or excused by or under a law.

110. Other defences

Nothing in this Act affects defences available under other laws of this jurisdiction.

Division 3 - Special defences

111. Special defence for owners or operators

(1) It is a defence to a charge for an offence alleged to have been committed by a person in the capacity of an owner or operator of a vehicle transporting dangerous goods if the person establishes that the vehicle was being used at the relevant time by –

(a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the alleged offender; or

(b) an employee of the alleged offender who was acting at the relevant time outside the scope of the employment; or

(c) an agent (in any capacity) of the alleged offender who was acting at the relevant time outside the scope of the agency.

(2) If the offence relates to a breach of this Act in connection with alleged deficiencies concerning the vehicle or dangerous goods, the defence is not available unless the alleged offender establishes that –

(a) the vehicle or dangerous goods had not, before they ceased to be under the alleged offender's control, been driven or transported in Australia in breach of this Act or a corresponding law arising in connection with all or any of those alleged deficiencies; and

(b) one or more material changes, resulting in the alleged breach, had been made after the vehicle or dangerous goods had ceased to be under the alleged offender's control.

(3) In this section –

deficiency concerning the vehicle or dangerous goods means a deficiency in anything that is required by the regulations to be carried on or in a vehicle or to be met in relation to dangerous goods.

112. Special defence of compliance with direction

It is a defence to a charge for an offence if the person charged establishes that the conduct constituting the offence was done in compliance with a direction given by an authorised officer or a police officer.

Division 4 - General evidentiary provisions

113. Vicarious responsibility

(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 (the employer) in relation to particular conduct, it is sufficient to show –

(a) that the conduct was engaged in by an employee or agent of the employer 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) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a person other than a body corporate (the employer) by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken 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) 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 any jurisdiction;

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.

114. 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 matter as proved.

(2) The matters are –

(a) that dangerous goods described in transport documents carried in a vehicle are being carried in the vehicle; or

(b) that particular goods are dangerous goods or dangerous goods of a particular type; or

(c) if markings or placards on or attached to a substance or packaging indicate that the substance is, or the packaging contains, particular dangerous goods, that the substance is, or the packaging contains, those dangerous goods; or

(d) if markings on, or attached to, a package indicate that the package contains particular dangerous goods, that the package contains those dangerous goods; or

(e) if markings or placards on or attached to a vehicle or equipment indicate that the vehicle or equipment is being used to transport dangerous goods, that the vehicle or equipment is being used to transport those dangerous goods; or

(f) if markings or placards on or attached to a substance or packaging indicate (in relation to the substance, the packaging or the contents of the packaging) a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture, that the substance, the packaging or the contents of the packaging have that capacity, tare weight, origin, character, specification, ownership or date of manufacture; or

(g) if markings on, or attached to, a package indicate, in relation to the contents of the package, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture, that the contents of the package have that capacity, tare weight, origin, character, specification, ownership or date of manufacture; or

(h) if markings or placards on or attached to a vehicle or packaging indicate, in relation to the load of the vehicle or the contents of the packaging, a particular quantity of dangerous goods, that the vehicle or packaging contains that quantity of dangerous goods; or

(i) that a person was not, at a particular time, accredited or the holder of a licence relating to dangerous goods.

(3) A court may admit the following documents as evidence if they appear to be signed by the Competent Authority or by a person exercising powers delegated by the Competent Authority for the relevant purpose:

(a) documents relating to whether a person is exempt from certain requirements under section 64;

(b) documents relating to vehicles, equipment or other items required by the regulations to be approved by the Competent Authority;

(c) documents relating to accreditation or licensing by the Competent Authority.

115. Evidence regarding weighing

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

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

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

116. Proof of appointments and signatures unnecessary

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

117. Transport documentation

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

118. Use of codes of practice &c. in proceedings

- (1) This section applies to a code of practice, guideline or other document that is approved by the Australian Transport Council for the purpose of providing practical guidance to persons engaged in the transport of dangerous goods.
- (2) If in proceedings against a person for an offence –
 - (a) 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 jurisdiction –

then –

(d) the code of practice, guideline or other document is admissible in the proceedings; and

(e) if the court is satisfied that, at the relevant time, the person acted in accordance with the code of practice, guideline or other document, the person is taken to have complied with the provision or requirement.

PART 10 - Prohibition Notices

119. Definition

For the purpose of this Part –

dangerous activity means an activity –

(a) that relates to the transport of dangerous goods by road or rail; and

(b) that is occurring or may occur in relation to or in the immediate vicinity of the dangerous goods; and

(c) that is creating, or that could create, a dangerous situation or a risk to the safety of any person.

120. Prohibition notice may be served

(1) This section applies if an authorised officer believes on reasonable grounds that a dangerous activity is occurring or may occur.

(2) The authorised officer may serve on a person who has or appears to have control over the activity a notice that prohibits the person –

(a) from carrying on, or commencing, the activity; or

(b) from carrying on, or commencing, the activity in a specified way –

until the authorised officer has certified in writing that the activity is not or is no longer a dangerous activity.

121. Prohibition notice

(1) A prohibition notice has effect –

(a) upon being served; or

(b) if the notice specifies a later date, on that date.

(2) A prohibition notice served on a person must –

(a) state that the notice is served in accordance with this Act; and

(b) require the person to cease the dangerous activity or to cease carrying it out in a specified manner; and

(c) state the basis for the authorised officer's belief that the activity is a dangerous activity; and

(d) if the authorised officer believes that the dangerous activity involves a contravention of a law, specify the law and the relevant provision of it; and

(e) state how a review of the decision to serve the notice may be obtained; and

(f) state the penalty for failing to comply with the notice.

(3) A prohibition notice may include a direction on the measures to be taken to minimise or eliminate the risk caused by the dangerous activity.

(4) A direction may offer a choice of ways to minimise or eliminate the risk caused by the dangerous activity.

(5) A prohibition notice that prohibits the carrying out of an activity in a specified way may do so by specifying –

(a) a place where the activity may not be carried out; or

(b) any thing that may not be used in connection with the activity; or

(c) any procedure that may not be followed in connection with the activity.

122. Contravention of prohibition notice

A person upon whom a prohibition notice is served must comply with the requirements set out in the notice unless the person has a reasonable excuse for not doing so.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

123. Oral direction may be given before prohibition notice is served

(1) This section applies if an authorised officer believes on reasonable grounds –

(a) that a dangerous activity is occurring or may occur; and

(b) that it is not reasonable or immediately possible to serve a prohibition notice.

(2) The officer may orally direct a person who has or appears to have control over the activity to do or not to do a specified act.

(3) The officer must state the reason for giving the direction.

(4) A person to whom a direction is given must comply with it, unless the person has a reasonable excuse for not doing so.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(5) It is a reasonable excuse for not complying with a direction if the authorised officer did not tell the person that it is an offence not to do so.

(6) A direction under this section ceases to have effect if a prohibition notice in respect of the activity is not served within 5 days of the direction being given.

124. Withdrawal of prohibition notice

A prohibition notice may be withdrawn by an authorised officer or the Competent Authority serving notice of withdrawal on the person served with the prohibition notice.

125. Amendment of prohibition notice

(1) A prohibition notice may be amended by an authorised officer serving notice of amendment on the person served with the prohibition notice.

(2) The notice of amendment must –

(a) state the terms of the amendment; and

(b) state the reasons for the amendment; and

(c) include information about obtaining a review of the decision to amend the notice; and

(d) state that it is served under this section.

(3) An amendment of a prohibition notice is ineffective if it purports to deal with a contravention of a different provision of a law from that dealt with in the prohibition notice.

126. Proceedings for offence not affected by prohibition notice

The service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence under this Act.

PART 11 - Miscellaneous

Division 1 - Indemnities

127. Protection from liability

(1) An authorised officer or a person who is authorised under this Act by an authorised officer to do or to omit to do something 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 or to a person mentioned in subsection (1) attaches instead to the Competent Authority.

128. Indemnity not affected by certain matters

(1) An indemnity under this Division is not affected merely because a vehicle was in fact not carrying dangerous goods.

(2) An indemnity under this Division is not affected merely because goods were not in fact dangerous goods.

129. Other indemnities not affected

This Division does not affect any other indemnity provided under another law, if the other indemnity is not inconsistent with an indemnity provided under this Division.

Division 2 - General

130. Dismissal or other victimisation of employee or contractor assisting with or reporting breaches

(1) An employer must not dismiss an employee or contractor, injure an employee or contractor in his or her employment or alter an employee's or contractor's position to his or her detriment because the employee or contractor –

(a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of a requirement of this Act or a corresponding law; or

(b) has made a complaint about a breach or alleged breach of a requirement of this Act or a corresponding law to the employer, a fellow employee or fellow contractor, a trade union or a public agency.

(2) An employer or prospective employer must not refuse or deliberately omit to offer employment to a prospective employee or prospective contractor or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective contractor would be treated in relation to the terms on which employment is offered because the first-mentioned prospective employee or prospective contractor –

(a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of a requirement of this Act or a corresponding law; or

(b) has made a complaint about a breach or alleged breach of a requirement of this Act or a corresponding law to a former employer, a former fellow employee or former fellow contractor, a trade union or a public agency.

(3) A person who is an employer of the person concerned must not engage in conduct that results in a contravention of subsection (1).

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(4) A person who is an employer or prospective employer of the person concerned must not engage in conduct that results in a contravention of subsection (2).

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(5) In proceedings for an offence under this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the defendant's action was not actuated by the reason alleged in the charge lies on the defendant.

(6) If a person is found guilty of an offence under this section, the court may, in addition to imposing a penalty on the offender, make either or both of the following orders:

(a) an order that the offender pay within a specified period to the employee or contractor or to the prospective employee or prospective contractor such damages as it thinks fit by way of compensation;

(b) an order that –

(i) the employee or contractor be reinstated or re-employed in the employee's or contractor's former position or (if that position is not available) in a similar position; or

(ii) the prospective employee or prospective contractor be employed in the position for which the prospective employee or prospective contractor had applied or (if that position is not available) in a similar position.

(7) The maximum amount of damages cannot exceed the monetary jurisdictional limit of the court in civil proceedings.

(8) An order for payment of damages is enforceable as if it were a judgment of the court sitting in civil proceedings.

(9) A person must comply with an order for employment, reinstatement or re-employment.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(10) A person who is subject to an order under subsection (6)(b) must not engage in conduct that results in a contravention of the order.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(11) In this section –

contractor means an individual who works under a contract for services;

public agency means an authorised officer or a police officer of this or any other jurisdiction or a Competent Authority of this or any other jurisdiction.

131. Confidentiality

(1) This section applies to a person engaged or previously engaged in the administration of this Act and (without limiting the foregoing) to –

(a) a person who is or was a delegate of the Competent Authority; or

(b) a person who is or was employed by, or engaged to provide services to or on behalf of, the Competent Authority; or

(c) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Competent Authority.

(2) A person to whom this section applies must not divulge or communicate information obtained (whether by that person or otherwise) in the administration of this Act except –

(a) as required or authorised by or under this or any other Act; or

(b) with the consent of the person from whom the information was obtained or to whom the information relates; or

(c) in connection with the administration of this Act; or

(d) to the Competent Authority, a corresponding authority, an authorised officer or a police officer; or

(e) to a prescribed public authority of any jurisdiction; or

(f) to a public authority of any jurisdiction for law enforcement purposes; or

(g) to a court or in connection with any legal proceedings; or

(h) in accordance with guidelines approved by the Minister.

(3) Information that has been disclosed under subsection (2) for a particular purpose must not be used for any other purpose by –

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

(4) A person must not engage in conduct that results in a contravention of subsection (2) or (3).

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(5) Nothing in this section prevents information from being used –

(a) to assist a person in deciding whether or not to withdraw a formal warning for any offence; or

(b) to enable the Competent Authority to accumulate aggregate data and to enable it to authorise use of the aggregate data for the purposes of research or education.

132. False or misleading statements or records provided to Authority or officials

(1) A person must not make a statement to the Competent Authority or to an authorised officer who is exercising a power under this Act that the person knows, suspects or reasonably ought to know is false or misleading in a material particular.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(2) A person must not give a record to the Competent Authority or to an authorised officer who is exercising a power under this Act that the person knows, suspects or reasonably ought to know is false or misleading in a material particular.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 420 penalty units; or

(b) an individual, a fine not exceeding 85 penalty units.

(3) Subsection (2) does not apply if, at the time the person gave the record to the Competent Authority or officer, the person informed the Authority or officer that the record was false or misleading in a material particular and specified in what respect it was false or misleading.

(4) In this section –

authorised officer includes a person who is assisting an authorised officer or police officer.

133. Contracting out prohibited

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

134. Recovery of costs of public authorities

(1) This section applies to an incident that relates to the transport of dangerous goods by road or rail, being an incident –

(a) wholly or partly constituted by or arising from –

(i) the escape of dangerous goods; or

(ii) an explosion or fire involving dangerous goods; or

(b) that involves the danger of the escape of dangerous goods or an explosion or fire involving dangerous goods.

(2) If a public authority incurs costs as a result of the occurrence of an incident to which this section applies, so much of the costs as were reasonably incurred are recoverable as a debt due to the authority by action in a court of competent jurisdiction.

(3) The costs are recoverable jointly or severally from the following persons:

(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 subcontractor 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 subcontractor of the person.
- (5) The recovery of costs incurred by one public authority as a result of the occurrence of an incident to which this section applies, including an award or judgment in relation to those costs or expenses, does not preclude the recovery of costs incurred by another public authority as a result of the occurrence of the incident.
- (6) This section does not affect a right to recover an amount in respect of costs or expenses that exists apart from this section, but a public authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on other rights.
- (7) In proceedings under this section, a document apparently signed by the principal officer of the public authority specifying details of the costs reasonably incurred as a result of the occurrence of an incident to which this section applies is, in the absence of evidence to the contrary, proof of the matter so specified.

135. Assistance in emergencies or accidents

- (1) A person does not incur civil liability for an act done honestly and in good faith, and without any fee, charge or other reward, for the purpose of assisting or attempting to assist in a situation in which an emergency or accident involving dangerous goods occurs or is likely to occur.
- (2) Subsection (1) does not apply to a person whose act or omission was wholly or partly the cause of the occurrence or likely occurrence.
- (3) Subsection (1) applies to a public authority even though the authority requires payment for a service provided in connection with the occurrence or likely occurrence.
- (4) This section does not apply to an authorised officer.

136. Minister to notify adoption of code &c.

- (1) If the provisions of a code, standard or rule are applied, adopted or incorporated by the regulations, the Minister must, as soon as practicable after the regulations are made, publish in the *Gazette* a notice giving details of places where the code, standard or rule may be obtained or inspected.
- (2) If –
- (a) the provisions of a code, standard or rule are applied, adopted or incorporated, by the regulations, as in force from time to time; and

(b) the 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 code, standard or rule has been amended or replaced and giving details of places where the amended or replaced 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.

(4) A notice under this section is not –

(a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

(b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

137. Delegation

The Minister may, by instrument in writing, delegate all or any of the Minister's powers under this Act to a Competent Authority other than the powers under the following sections:

(a) section 11 (Appointment of Competent Authorities);

(b) section 67 (Application orders and emergency orders).

138. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

(a) the administration of this Act is assigned to the Minister for Workplace Relations; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

139.

See Schedule 1.

140. Legislation repealed

The legislation specified in Schedule 2 is repealed.

141. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

142. Consequential amendments of regulations do not prevent their subsequent amendment

The amendment by this Act of a provision of any regulations does not prevent that or any other provision of those regulations from being amended or rescinded by a subsequent regulation.

SCHEDULE 1

The amendments effected by Section 139 and this Schedule have been incorporated into the authorised version of the appropriate Acts and Statutory Rules.

SCHEDULE 2 - Legislation repealed

Section 140

*Dangerous Goods (Safe Transport) Act 1998 (No. 6 of 1998)
Dangerous Goods Amendment Act 2005 (No. 51 of 2005)*

SCHEDULE 3 - Legislation rescinded

Section 141

*Dangerous Goods (Road and Rail Transport) Regulations 1998 (No. 162 of 1998)
Dangerous Goods (Road and Rail Transport) Amendment Regulations 2000 (No. 128 of 2000)
Dangerous Goods (Road and Rail Transport) Amendment Regulations 2003 (No. 160 of 2003)
Dangerous Goods (Road and Rail Transport) Amendment Regulations 2009 (No. 44 of 2009)*

Table Of Amendments

Act	Number and year	Date of commencement
Dangerous Goods (Road and Rail Transport) Act 2010	No. 16 of 2010	1.1.2011
Work Health and Safety (Transitional and Consequential Provisions) Act 2012	No. 2 of 2012	1.1.2013
Explosives Act 2012	No. 4 of 2012	1.1.2013
Justice and Related Legislation (Miscellaneous Amendments) Act 2013	No. 20 of 2013	20.6.2013