

Western Australia

Dangerous Goods (Transport) Act 1998

(No. 50 of 1998)

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Western Australia

Dangerous Goods (Transport) Act 1998

No. 50 of 1998

An Act to provide for the safe transport of dangerous goods by vehicles.

[Assented to 1 December 1998]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Dangerous Goods (Transport) Act 1998*.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation.

3. Interpretation (Cwlth s 6)

In this Act, unless the contrary intention appears —

“**authorized officer**” means an authorized officer appointed under section 11;

“**Competent Authority**” means a Competent Authority appointed under section 10;

“**dangerous goods**” means —

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

“**dangerous situation**” means a situation involving the transport of dangerous goods that is causing or is likely to cause imminent risk of death or injury to a person, or imminent harm to the environment or to property;

“**Gazette**” means the *Government Gazette* of Western Australia printed and published, or purporting to be printed and published, by the Government Printer and includes any supplement to the *Gazette*;

“government authority” means —

- (a) a department of the Public Service;
- (b) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body, office, post or position that is established or continued for a public purpose under a written law;
- (c) a local government;
- (d) a Competent Authority;

“involvement in the transport of dangerous goods” includes —

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

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- (h) being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity covered by this definition;

“Minister” has the same definition as in the *Interpretation Act 1984*;

“offence” means an offence against this Act;

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

“transport”, in relation to dangerous goods, means the transport of the goods by vehicle and 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;
- (b) the marking of packages and unit loads containing dangerous goods, and the placarding of containers and vehicles in which dangerous goods are transported; and
- (c) other matters incidental to their transport;

“vehicle” means any thing used or capable of being used to transport people or things by air, road, rail or water and it does not matter how any such thing is moved or propelled.

Note: The references in section headnotes to Commonwealth sections are references to sections in the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) as amended by the *Road Transport Reform (Dangerous Goods) Amendment Act 1997* (Cwlth).]

4. Reviews of decisions under this Act (Cwlth s 5)

Applications for review of decisions under this Act are to be made to a Local Court.

**5. Application of *Acts Interpretation Act 1901* (Cwlth)
(Cwlth s 9)**

- (1) Unless the contrary intention appears, the *Acts Interpretation Act 1901* of the Commonwealth applies to the interpretation of this Act.
- (2) The *Interpretation Act 1984* applies to the interpretation of this Act to the extent that it can do so consistently with the application of the *Acts Interpretation Act 1901* of the Commonwealth to the interpretation of this Act.

6. Scope of this Act (Cwlth s 10)

- (1) This Act does not apply to dangerous goods that are in a container that is designed to form part of, and forms part of, the fuel or battery system of a vehicle's engine, auxiliary engine, fuel burning appliance or other part of a vehicle's propulsion equipment.
- (2) Subject to subsection (3), if another written law relates to dangerous goods that law applies in addition to this Act, unless expressly provided otherwise.
- (3) If a provision of this Act is inconsistent with a provision of another written law —
 - (a) that relates to the storage and handling of dangerous goods; and
 - (b) that does not relate to the transport of dangerous goods,then the provision of the other written law prevails.
- (4) If a provision of this Act is inconsistent with a provision of another written law that relates to the transport of dangerous goods of a category that is prescribed for the purposes of this

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subsection by regulations under this Act, then the provision of the other written law prevails.

7. Crown bound (Cwlth s 7)

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

Part 2 — Regulations

8. Power to make (Cwlth s 11)

- (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) In particular, the regulations may make provision relating to the following:
 - (a) types and categories of dangerous goods and methods for deciding types and categories of dangerous goods;
 - (b) the determination by a Competent Authority of which goods are dangerous goods or dangerous goods of a particular type, or are too dangerous to be transported or too dangerous to be transported in bulk;
 - (c) the analysis and testing of dangerous goods;
 - (d) goods too dangerous to be transported or too dangerous to be transported in bulk;
 - (e) fees that are to be paid for things done under this Act;
 - (f) the marking of packages and unit loads containing dangerous goods for transport and the placarding of containers and vehicles in which dangerous goods are transported;
 - (g) containers and packaging used in the transport of dangerous goods;
 - (h) the manufacture of vehicles and containers for use in the transport of dangerous goods;

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- (i) voluntary accreditation schemes, including privileges to be accorded or sanctions to be imposed under the schemes and the cancellation or suspension of the schemes;
- (j) the loading of dangerous goods for, and the unloading of dangerous goods after, their transport;
- (k) the determination by a Competent Authority of routes along which, the areas in which and the times during which dangerous goods may or may not be transported;
- (l) procedures for the transport of dangerous goods, including but not limited to —
 - (i) the quantities and circumstances in which dangerous goods, or particular types of dangerous goods, may be transported; and
 - (ii) safety procedures and equipment;
- (m) the licensing of —
 - (i) vehicles and drivers for the purposes of the transport of dangerous goods; and
 - (ii) people responsible for the transport of dangerous goods or for vehicles used in that transport;
- (n) the mandatory accreditation of people involved in the transport of dangerous goods or particular aspects of that transport;
- (o) the approval by a Competent Authority of the form in which applications are to be made to the Authority, and the form in which documents are to be issued by the Authority, for the purposes of the regulations;

- (p) the approval by a Competent Authority of —
 - (i) packages, containers, equipment and other items used in relation to the transport of dangerous goods; and
 - (ii) facilities for and methods of testing or using packages, containers, equipment and other items used, and processes carried out, in relation to the transport of dangerous goods;
 - (q) documents required to be prepared or kept by people involved in the transport of dangerous goods and the approval by a Competent Authority of alternative documentation;
 - (r) obligations arising, and procedures to be followed, in the event of a dangerous situation in relation to the transport of dangerous goods;
 - (s) the training and qualifications required of authorized officers and other people performing functions under this Act;
 - (t) the training and qualifications required of people involved in, and the approval of training courses and qualifications relating to involvement in, the transport of dangerous goods;
 - (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 effect to those things;
 - (v) the review of decisions under this Act;
 - (w) infringement notices, and documents and costs relating to infringement notices.
- (3) The regulations may apply, adopt or incorporate any or all of the provisions of a code, standard or rule relating to dangerous

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goods or to the transport of dangerous goods and those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.

- (4) The regulations may —
- (a) prescribe a substance or article as being dangerous goods; or
 - (b) prescribe various types of dangerous goods, including goods that are too dangerous to be transported, and methods for deciding which dangerous goods fall into each type,

by reference to such a code, standard or rule.

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

9. Penalties (Cwlth s 12)

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

Part 3 — Competent Authorities and authorized officers

10. Appointment of Competent Authorities (Cwlth s 13)

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

11. Appointment of authorized officers (Cwlth s 14)

- (1) A Competent Authority may, by notice in the *Gazette*, appoint people, or a class of people, to be authorized officers.
- (2) In appointing authorized officers, a Competent Authority may specify that the appointment is subject to conditions or restrictions relating to —
 - (a) the powers that are exercisable by those officers; or
 - (b) when, where and in what circumstances those officers may exercise powers.
- (3) A Competent Authority may issue identification cards containing prescribed details to authorized officers.

12. Identification cards (Cwlth s 15)

- (1) Each authorized officer who is not a police officer must —
 - (a) carry his or her identification card while carrying out duties under this Act; and

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

13. Return of identification cards (Cwlth s 16)

- (1) A person who has been issued with an identification card and who stops being an authorized officer must return his or her identification card to the appropriate Competent Authority as soon as practicable.
- (2) A person must not contravene subsection (1) without reasonable excuse.
Penalty: \$100.

14. Competent Authority may delegate powers (Cwlth s 17)

A Competent Authority may, by signed instrument, delegate any of his or her powers under this Act, other than the power of appointment under section 11 and this power of delegation, to authorized officers.

15. General powers of authorized officers (Cwlth s 18)

- (1) An authorized officer may, to find out whether this Act is being complied with, enter and search premises if the authorized officer believes on reasonable grounds that he or she will find a thing that has been, is being or is likely to be used in relation to the transport of dangerous goods; but if premises are unattended

or are a residence, the authorized officer may only enter if the occupier consents.

- (2) An authorized officer may enter and search premises, whether attended or not and whether or not a residence, if he or she believes on reasonable grounds that a dangerous situation exists as a result of anything occurring at the premises in relation to the transport of dangerous goods.
- (3) If an authorized officer believes on reasonable grounds that a vehicle has been, is being or is likely to be used for the transport of dangerous goods, the officer may, to find out whether this Act is being complied with —
 - (a) stop or detain the vehicle or cause the vehicle to be stopped or detained; and
 - (b) search the vehicle for dangerous goods or for documents, equipment or other things relating to the transport of dangerous goods.
- (4) If an authorized officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in relation to the transport of dangerous goods, the officer may, to find out whether this Act is being complied with, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.
- (5) If the inspection is not to take place immediately, the direction must be given by notice in writing specifying the time, date and location for the inspection.
- (6) An authorized officer may carry out an inspection of the kind referred to in subsection (4) without notice if the authorized officer believes on reasonable grounds that a dangerous situation exists.

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- (7) An authorized officer may, to find out whether this Act is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) or another person capable of doing so to give samples of a substance for examination and testing if the authorized officer believes on reasonable grounds that the substance is dangerous goods, ingredients of dangerous goods or goods that have been transported together with dangerous goods. The authorized officer must give a receipt in a form approved by a Competent Authority.
- (8) An authorized officer may, to find out whether this Act is being complied with, direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) to produce documents.
- (9) The authorized officer may make copies of the documents, or remove them to make copies, but if they are removed the authorized officer must —
 - (a) if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them; and
 - (b) give a receipt in a form approved by a Competent Authority.
- (10) An authorized officer may, to find out whether this Act is being complied with, leave at premises written directions to the occupier requiring the occupier, within a specified time —
 - (a) to give samples of a substance the authorized officer believes on reasonable grounds to be dangerous goods, or ingredients of dangerous goods, for examination and testing; or
 - (b) to produce documents that may help the authorized officer.

- (11) An authorized officer may, in order to find out whether this Act is being complied with, direct a person to answer questions that may help the authorized officer.
- (12) An authorized officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorized officer under this section.

**16. Authorized officer may require name and address
(Cwlth s 19)**

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

Penalty: \$500.

**17. Powers of authorized officer where offence suspected
(Cwlth s 20)**

- (1) This section applies if an authorized officer believes on reasonable grounds that he or she will find evidence of an

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offence at premises, including on a vehicle or equipment at the premises.

- (2) The authorized officer may enter the premises and search for or test the evidence.
- (3) If the premises are unattended or are a residence, the authorized officer may only enter with the consent of the occupier of the premises or with the authority of a warrant issued under section 21.
- (4) The authorized officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment or another person capable of doing so to give samples of a substance for examination and testing.

18. Authorized officer to restore vehicle or equipment to original condition after inspection (Cwlth s 21)

After inspecting premises, a vehicle or equipment under section 15 or 17, the authorized officer must take reasonable steps to return the premises, vehicle or equipment to the condition they were in immediately before the inspection.

19. Offence to fail to comply with a direction (Cwlth s 22)

A person who —

- (a) without reasonable excuse, fails to comply with a direction made by an authorized officer in accordance with section 15 or 17;
- (b) without reasonable excuse, obstructs an authorized officer or a person assisting an authorized officer in the exercise of a power of the authorized officer; or

- (c) gives to an authorized officer who is exercising such a power information that the person knows to be false or misleading in a material particular,

is guilty of an offence.

Penalty: For an individual, \$10 000 or imprisonment for 6 months or both.

For a body corporate, \$50 000.

20. Self incrimination no excuse (Cwlth s 23)

A person is not excused from answering a question asked under section 15 on the ground that the answer to the question might tend to incriminate the person, but except for a corporation —

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

is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against section 19.

21. Obtaining a warrant (Cwlth s 24)

- (1) If an authorized officer believes on reasonable grounds that there is, or there will be in the next 72 hours, evidence of an offence at a residence, at unattended premises or at an unattended vehicle or equipment, the authorized officer may apply to a magistrate for a warrant authorizing him or her to enter the premises, vehicle or equipment and seize the evidence.

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- (2) The application must be made by information on oath, and must include —
 - (a) the purpose for which the warrant is to be issued and the nature of the offence the authorized officer suspects has been or is likely to be committed;
 - (b) a description of the residence, premises, vehicle or equipment;
 - (c) the type of evidence to be searched for and seized;
 - (d) whether consent to enter the residence, premises, vehicle or equipment has been sought, and whether —
 - (i) consent has been refused or withdrawn; or
 - (ii) consent has been unable to be obtained after reasonable efforts have been made to obtain it;
 - (e) if the officer assumes that consent will not be given if it is sought — the grounds on which that assumption was made;
 - (f) whether the powers authorized by the warrant will need to be exercised at any time of the day or night or between specified hours; and
 - (g) the period for which the authorized officer believes the warrant needs to remain in force.
- (3) The magistrate must not issue a warrant unless he or she is satisfied that there are reasonable grounds for doing so.
- (4) If the magistrate decides to issue a warrant, the magistrate must state in the warrant —
 - (a) the name of the authorized officer to whom it is directed;
 - (b) the purpose for which the warrant is issued and the nature of the offence the authorized officer suspects has been, is being or will be committed;

- (c) a description of the residence, premises, vehicle or equipment;
- (d) the type of evidence to be searched for and seized;
- (e) whether the powers authorized by the warrant may be exercised at any time of the day or night or between specified hours; and
- (f) the period for which the warrant is to remain in force (not exceeding 7 days).

22. Warrants may be issued by telephone or fax (Cwlth s 25)

- (1) An authorized officer may make an application to a magistrate for a warrant by telephone, facsimile or other electronic means —
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice with the applicant to the extent that is practicable in the circumstances.
- (3) An application under this section must include all information required to be given in an application for a warrant under section 21, but the application may, if necessary, be made before the information is sworn.
- (4) If —
 - (a) an application is made under this section;
 - (b) the magistrate has considered the information in the application and any further information the magistrate requires; and

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- (c) the magistrate is satisfied that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant,
- the magistrate may complete and sign the same form of warrant that would be issued under section 21.
- (5) If the magistrate decides to issue the warrant, the magistrate must inform the applicant, by telephone, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) If the information referred to in subsection (3) was not sworn, the authorized officer must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give to the magistrate the information duly sworn.
- (7) The magistrate must attach to the documents given under subsection (6) the form of warrant completed by the magistrate.
- (8) If it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorized, the court must assume, unless the contrary is proved, that the exercise of the power was not duly authorized unless the form of warrant signed by the magistrate is produced in evidence.
- (9) If an application for a warrant is made under this section, section 21 applies as if —
- (a) section 21(1) referred to 48 hours rather than 72 hours; and
 - (b) section 21(4)(f) referred to 48 hours rather than 7 days.

23. Availability of assistance and use of force in executing a warrant (Cwlth s 26)

- (1) A warrant may authorize a police officer to assist in executing the warrant.
- (2) In executing a warrant, an authorized officer or a police officer assisting may use such force as is necessary and reasonable in the circumstances.

24. Search and seizure etc. of other evidence (Cwlth s 27)

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

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

the authorized officer may —

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

25. Notice to remedy contravention (Cwlth s 28)

- (1) If an authorized officer believes on reasonable grounds that a person —
 - (a) is contravening this Act; or
 - (b) has contravened this Act in circumstances that make it likely that the contravention will be repeated,

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

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- (2) A notice under this section must —
- (a) be in writing;
 - (b) state the name of the person to whom it is directed;
 - (c) state that the authorized officer believes that the person to whom the notice is directed —
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated;
 - (d) state the grounds on which the belief is based;
 - (e) specify the provision of this Act; and
 - (f) specify a day by which the matters referred to in the notice must be remedied.
- (3) An authorized officer may include in a notice under this section directions as to the measures to be taken to remedy the contravention, or to avoid further contravention of, this Act.
- (4) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.
- (5) A person who —
- (a) contravenes a notice under this section; or
 - (b) removes a notice under this section from a vehicle before the matters causing the contravention have been remedied (unless it is necessary to do so to remedy the matters),

is guilty of an offence.

Penalty: For an individual, \$10 000.

For a body corporate, \$50 000.

26. Notice to eliminate or minimize danger (Cwlth s 29)

- (1) If an authorized officer believes on reasonable grounds that —
- (a) a dangerous situation exists; and
 - (b) a person is in a position to take measures to avert, eliminate or minimize the danger,

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

- (2) A notice under this section must —
- (a) be in writing;
 - (b) state the name of the person to whom it is directed;
 - (c) identify the situation that, in the authorized officer's opinion, is causing the danger;
 - (d) state the grounds on which the belief is based;
 - (e) specify the measures to be taken; and
 - (f) specify a day by which the measures are to be taken.
- (3) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.
- (4) A person who —
- (a) contravenes a notice under this section; or
 - (b) removes a notice under this section from a vehicle before measures have been taken to avert, eliminate or minimize the danger (unless it is necessary to do so to avert, eliminate or minimize the danger),

is guilty of an offence.

Penalty: For an individual, \$10 000.

For a body corporate, \$50 000.

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27. Review of notices (Cwlth s 30)

A person to whom a notice under section 25 or 26 is directed may apply for a review of the decision to issue the notice.

28. Preventing injury and damage by direct action (Cwlth s 31)

If —

- (a) an authorized officer believes on reasonable grounds that a dangerous situation exists; and
- (b) either —
 - (i) a person to whom a notice under section 25 or 26 has been given has not complied with the notice; or
 - (ii) giving such a notice to a person would not be appropriate to avert, eliminate or minimize the danger,

the authorized officer may take or cause to be taken any action he or she believes on reasonable grounds to be necessary to avert, eliminate or minimize the danger.

Part 4 — Exemptions

29. Exemptions (Cwlth s 32)

- (1) A person or a representative of a class of people may apply to a Competent Authority for an exemption from compliance with a provision of the regulations in relation to the transport of particular dangerous goods.
- (2) A Competent Authority may exempt the person or class of people from compliance with the provision if he or she is satisfied that —
 - (a) it is not reasonably practicable for the person or people to comply with the provision; and
 - (b) granting the exemption —
 - (i) would not be likely to create a risk of death or injury to a person, or harm to the environment or to property, greater than that which would be the case if the person or people were required to comply; and
 - (ii) would not cause unnecessary administrative or enforcement difficulties, particularly with respect to maintaining national uniformity of laws relating to the transport of dangerous goods.
- (3) An exemption may be subject to conditions.
- (4) If a Competent Authority grants an exemption to one person, he or she must send a notice to the person stating —
 - (a) the provisions of the regulations that are the subject of the exemption;
 - (b) the dangerous goods to which the exemption applies;

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- (c) the period of time for which the exemption remains in force;
 - (d) the conditions to which the exemption is subject; and
 - (e) the geographical area for which the exemption is valid.
- (5) If a Competent Authority —
- (a) grants an exemption to a class of people; or
 - (b) grants an exemption that is to remain in force for longer than 6 months,

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

- (6) A person who fails to comply with conditions to which an exemption is subject is guilty of an offence.

Penalty: For an individual, \$10 000 or imprisonment for 6 months or both.

For a body corporate, \$50 000.

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

- (8) If a Competent Authority —

- (a) grants an exemption to a class of people; or
- (b) grants an exemption that is to remain in force for longer than 6 months,

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

30. Variation and cancellation of exemptions and conditions (Cwlth s 33)

- (1) A Competent Authority may cancel an exemption if —
 - (a) he or she is satisfied that a condition to which the exemption is subject has not been complied with; or
 - (b) he or she is no longer satisfied of the matters referred to in section 29(2).
- (2) An exemption granted to a person is to be varied or cancelled by notice in writing given to the person, and the variation or cancellation takes effect from the day on which the notice is given, or from a later day specified in the notice.
- (3) An exemption granted to a class of people is to be varied or cancelled by notice published in the *Gazette*, and the variation or cancellation takes effect on the day of publication, or from a later day specified in the notice.
- (4) A Competent Authority may vary or cancel conditions to which the exemption is subject or impose new conditions.

31. Review of exemptions etc. (Cwlth s 33A)

If a Competent Authority —

- (a) refuses to grant an exemption to a person or a class of people;
- (b) cancels an exemption granted to a person or a class of people; or
- (c) varies or cancels conditions to which an exemption granted to a person or a class of people is subject or imposes new conditions,

the person or a representative of the class of people may apply for a review of the decision.

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32. Application orders and emergency orders (Cwlth s 34)

- (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 that relates to the transport of dangerous goods by road must be consistent with the provisions relating to application orders and emergency orders in the agreements scheduled to the *National Road Transport Commission Act 1991* of the Commonwealth.
- (3) An order may have effect in relation to the whole jurisdiction or to a specified area.
- (4) Section 42 of the *Interpretation Act 1984* applies to an order as if it were regulations.

Part 5 — Offences, penalties, evidence and procedure

33. Duties concerning the transport of dangerous goods (Cwlth s 37)

- (1) A person involved in the transport of dangerous goods who fails to ensure, as far as is practicable, that the goods are transported in a safe manner is guilty of an offence.
- (2) If a person involved in the transport of dangerous goods fails to comply with a provision of this Act in circumstances where the person knew, or ought reasonably to have known, that the failure would be likely to endanger the safety of another person or of property or the environment, the person is guilty of an offence.

Penalty:

- (a) if the failure results in death or serious injury to a person —
 - (i) for an individual, \$100 000 or imprisonment for 4 years or both;
 - (ii) for a body corporate, \$500 000;
- (b) in any other case —
 - (i) for an individual, \$50 000 or imprisonment for 2 years or both;
 - (ii) for a body corporate, \$250 000.

34. Failure to hold licence etc. (Cwlth s 35)

- (1) A person 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

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

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

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

(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: \$10 000.

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

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

(5) A person must not drive a vehicle transporting dangerous goods if —

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

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

Penalty: \$10 000.

35. Goods too dangerous to be transported (Cwlth s 36)

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

Penalty: For an individual, \$50 000 or imprisonment for 2 years or both.

For a body corporate, \$250 000.

36. Infringement notices (Cwlth s 38)

- (1) The regulations may provide for a person to be served with an infringement notice requiring payment of a fixed penalty for an offence (not exceeding the penalty that would otherwise apply) against the regulations as an alternative to prosecution in court for the offence.
- (2) The regulations must specify —
 - (a) the offences to which the alternative applies; and
 - (b) the time within which the penalty must be paid.
- (3) A Competent Authority may withdraw an infringement notice by serving a notice on the person on whom the infringement notice was served.
- (4) If a person pays the fixed penalty and any prescribed costs, and the infringement notice is later withdrawn, the person is entitled to a refund of the penalty.
- (5) If a person pays the fixed penalty and any prescribed costs within —
 - (a) the time specified in the infringement notice; or

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- (b) a longer period —
 - (i) specified in a reminder notice given to the person; or
 - (ii) allowed by the person who issued the notice, and before a summons is served on the person in respect of the alleged offence,

a prosecution in court is not to be taken against the person for the offence and a conviction must not be recorded against the person for the offence.

- (6) A prosecution may be taken or continued for the offence if —
 - (a) the person served with the infringement notice does not pay the fixed penalty and any prescribed costs within the period referred to in subsection (5); or
 - (b) the infringement notice is withdrawn.

37. Proceedings for an offence (Cwlth s 39)

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

38. Evidence (Cwlth s 40)

- (1) In a prosecution for an offence, if an authorized 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 shipping documents carried in a vehicle were being carried in the vehicle;
 - (b) that particular goods were dangerous goods or dangerous goods of a particular type;
 - (c) if markings or placards on or attached to a substance or container indicated that the substance was or the container contained particular dangerous goods — that the substance was or the container contained those dangerous goods;
 - (d) if markings or placards on or attached to a vehicle or equipment indicated that the vehicle or equipment was being used to transport dangerous goods — that the vehicle or equipment was being used to transport those dangerous goods;
 - (e) if markings or placards on or attached to a substance or container indicated, in relation to the substance, the container or the contents of the container, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture — that the substance, the container or the contents of the container had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;
 - (f) if markings or placards on or attached to a vehicle or container indicated in relation to the load of the vehicle or the contents of the container, a particular quantity of dangerous goods — that the vehicle or container contained that quantity of dangerous goods;
 - (g) that a person was not, at a particular time, accredited or the holder of a licence relating to dangerous goods.

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- (3) A court may admit into evidence —
- (a) a copy of a document made under section 15(9) and certified by the authorized officer as being a true copy; or
 - (b) a photographic, mechanical or electronic recording made under section 15(12) and certified by the authorized officer as being a true recording.
- (4) A court may admit the following documents as evidence if they appear to be signed by a Competent Authority or by a person exercising powers delegated by a Competent Authority for the relevant purpose:
- (a) documents relating to whether a person is exempt from certain requirements under section 29;
 - (b) documents relating to vehicles, equipment or other items required by the regulations to be approved by a Competent Authority;
 - (c) documents relating to accreditation or licensing by a Competent Authority.
- (5) The court must accept the documents as proof of the facts stated in them if there is no evidence to the contrary.
- (6) All courts must take judicial notice of the signature of a Competent Authority on a document authorized or required to be signed for the purposes of this Act.

39. Use of codes of practice etc. in proceedings (Cwlth s 41)

- (1) This section applies to a code of practice, guideline or other document that is approved by the Minister for the purpose of providing practical guidance to people engaged in the transport of dangerous goods.

(2) If—

- (a) in proceedings against a person for an offence, it is alleged that a person contravened a provision of this Act;
- (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 the State,

then —

- (d) the code of practice, guideline or other document is admissible in the proceedings; and
- (e) if the court is satisfied that, at the relevant time, the person acted in accordance with the code of practice, guideline or other document, the person is taken to have complied with the provision or requirement.

**40. Conduct of company directors, employees or agents
(Cwlth s 42)**

- (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

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- (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show —
 - (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the relevant state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate (the “**employer**”) by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence, to have been engaged in also by the employer unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If a body corporate commits an offence, a person who is a director, secretary or manager of the body corporate or who is otherwise concerned in the management of the body corporate is liable to be punished as an individual who has been found guilty of the offence unless the person satisfies the court that —
 - (a) the person did not know that the offence was committed;

- (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or
 - (c) the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (6) Despite anything in this Act, a person is not liable to be punished by imprisonment for an offence if —
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3), (4) and (5) had not been enacted.
- (7) Proceedings for an offence may be brought against a director of a body corporate whether or not proceedings for the offence are brought against the body corporate.
- (8) In this section —
- “director”**, of a body corporate, includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory;
- “engaging in conduct”** includes failing or refusing to engage in conduct;
- “state of mind”** of a person includes —
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.

Part 6 — Miscellaneous

41. Recovery of costs from convicted person (Cwlth s 43)

If a court convicts a person of an offence following action taken by an authorized officer under section 15 or 17, the court may, on an application by or on behalf of the authorized officer, order that, in addition to any other penalty, the defendant must pay any costs that were reasonably incurred in taking that action and are directly related to the investigation of the offence, including costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

42. Recovery of costs of government action (Cwlth s 44)

- (1) This section applies to an incident that relates to the transport of dangerous goods, being an incident —
 - (a) wholly or partly constituted by or arising from —
 - (i) the escape of dangerous goods; or
 - (ii) an explosion or fire involving dangerous goods;
 - or
 - (b) that involves the danger of the escape of dangerous goods or an explosion or fire involving dangerous goods.
- (2) If a government authority incurs costs as a result of the occurrence of an incident to which this section applies, so much of the costs as were reasonably incurred are recoverable as a debt due to the authority or to the Crown by action in a court of competent jurisdiction.
- (3) The costs are recoverable jointly or severally from the following people:

- (a) the person who was the owner of the dangerous goods at the time of the incident;
 - (b) the person who was in control or possession of the dangerous goods at the time of the incident;
 - (c) the person who caused the incident;
 - (d) the person responsible, otherwise than as an employee, agent or sub-contractor of another person, for the transport of the dangerous goods.
- (4) Costs are not recoverable from a person who establishes that —
- (a) the incident was due to the act or default of another person;
 - (b) the person could not, exercising reasonable care, have prevented the incident; and
 - (c) the incident was not attributable to an employee, agent or sub-contractor of the person.
- (5) The recovery of costs incurred by one government authority as a result of the occurrence of an incident to which this section applies, including an award or judgment in relation to those costs or expenses, does not preclude the recovery of costs incurred by another government authority as a result of the occurrence of the incident.
- (6) This section does not affect a right to recover an amount in respect of costs or expenses that exists apart from this section, but a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on other rights.
- (7) In proceedings under this section, a document apparently signed by the principal officer of the relevant government authority specifying details of the costs reasonably incurred as a result of the occurrence of an incident to which this section applies is, in

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the absence of evidence to the contrary, proof of the matter so specified.

43. Prohibiting a person from involvement in the dangerous goods transport industry (Cwlth s 45)

- (1) In sentencing a person for an offence, a court may, having regard to the matters referred to in subsection (2) and to such other matters as it thinks fit, and in addition to imposing any other penalty, order that the person be prohibited for a specified period from involvement in the transport of dangerous goods.
- (2) The matters to which a court must have regard are:
 - (a) the person's record in the transport of dangerous goods;
 - (b) any prior convictions of the person relating to dangerous goods;
 - (c) the circumstances surrounding the commission of the offence for which the person is being sentenced.
- (3) A person who contravenes an order under this section is guilty of an offence.

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

44. Forfeiture (Cwlth s 46)

- (1) If—
 - (a) a person is convicted by a court of an offence in relation to dangerous goods; and
 - (b) the person owns the goods or the owner cannot be identified,

the court may, in addition to imposing any other penalty, order the dangerous goods and their container to be forfeited to the Crown.

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

45. Delegation (Cwlth s 47)

The Minister may by instrument in writing delegate all or any of the Minister's powers under this Act (other than the powers in section 32) to a Competent Authority.

46. Protection from liability (Cwlth s 48)

- (1) An authorized officer does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties.
- (2) A liability that would, apart from this section, attach to an authorized officer attaches instead to the relevant Competent Authority.

47. Assistance in emergencies or accidents (Cwlth s 49)

- (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.

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- (2) Subsection (1) does not apply to a person whose act or omission was wholly or partly the cause of the occurrence or likely occurrence.
- (3) Subsection (1) applies to a government authority even though the government authority requires payment for a service provided in connection with the occurrence or likely occurrence.
- (4) This section does not apply to an authorized officer.

48. Minister to notify adoption of code etc. (Cwlth s 50)

- (1) If the regulations apply, adopt or incorporate provisions of a code, standard or rule, the Minister must, as soon as practicable after the regulations are made, publish in the *Gazette* a notice giving details of places where the code, standard or rule may be obtained or inspected.
 - (2) If —
 - (a) the regulations apply, adopt or incorporate provisions of a code, standard or rule 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.
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