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DANGEROUS GOODS (TRANSPORT) ACT 1998

**DANGEROUS GOODS
(TRANSPORT)
(DANGEROUS GOODS
IN PORTS)
REGULATIONS 2001**

Western Australia

Dangerous Goods (Transport) (Dangerous Goods in Ports) Regulations 2001

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Dangerous Goods (Transport) Act 1998

Dangerous Goods (Transport) (Dangerous Goods in Ports) Regulations 2001

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Dangerous Goods (Transport) (Dangerous Goods in Ports) Regulations 2001*.

2. Commencement

These regulations come into operation on 1 February 2002.

3. Interpretation

- (1) In these regulations, unless the contrary intention appears —
- “**accountable person**”, in relation to a vessel, means both the master and the owner of the vessel;
- “**AS 3846**” means Australian Standard AS 3846—1998 *The handling and transport of dangerous cargoes in port areas*, published by Standards Australia;

Under regulation 3(2), the definitions of “**berth**” and “**berth operator**” in sections 1.3.6 and 1.3.7, respectively, of AS 3846 have the same meaning when used in these regulations. According to section 1.3.7 a berth operator is “any person or body of persons who has for the time being, the day-to-day control of the operation of a berth (IMO)”. Under this definition a person who contracted with the owner of a berth to use the berth to handle cargo and took responsibility for the day-to-day control of the operation of the berth would be a berth operator.

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“**consignor**” has the meaning given by regulation 11;

“**Division**”, in relation to explosives, has the meaning given by regulation 8;

“**emergency service**” means an ambulance, fire, police, or other emergency service;

“**Explosives Code**” means the *Australian Code for the Transport of Explosives by Road and Rail*, Second Edition, March 2000, published by the Commonwealth of Australia;

“**harbour master**” means a person who is the harbour master of a port;

“**hazard**” means anything that may result in death or injury to a person, or harm to the environment or to property;

“**owner**”, in relation to a vessel, has the meaning given by regulation 10;

“**port**” means —

- (a) a port within the meaning of section 3(1) of the *Port Authorities Act 1999*; and
- (b) a port within the meaning of section 3 of the *Shipping and Pilotage Act 1967*;

“**port area**” —

- (a) in relation to a port referred to in paragraph (a) of the definition of “port”, means the area or areas described, as amended from time to time, by order made by the Governor under section 24 of the *Port Authorities Act 1999*; and
- (b) in relation to a port referred to in paragraph (b) of the definition of “port”, means the area bounded by the limits specified in the Schedule to the *Shipping and Pilotage Act 1967*;

“**port authority**” means a body established by section 4(1) of the *Port Authorities Act 1999*;

“**prime contractor**” has the meaning given by regulation 9;

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“**risk**” means the probability of the occurrence of death or injury to a person, or harm to the environment or to property;

“**UN dangerous goods tests and criteria**” means the tests and criteria specified in —

- (a) the latest edition of the *Recommendations on the Transport of Dangerous Goods* published from time to time by the United Nations, as amended from time to time; or
- (b) the latest edition of the *Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria* published from time to time by the United Nations, as amended from time to time;

“**vessel**” means any thing used or capable of being used to transport people or things by water.

- (2) Subject to subregulation (3), unless the contrary intention appears, words and expressions defined in section 1.3 of AS 3846 and as amended from time to time have the same meanings when used in these regulations.
- (3) The definitions of “port area” and “port authority” in AS 3846 do not apply in these regulations.
- (4) For the purpose of these regulations, a reference to Class is reference assigned to goods by the UN dangerous goods tests and criteria.
- (5) Examples and notes in these regulations are provided to assist understanding and do not form part of these regulations.

4. Dangerous goods prescribed for the purposes of these regulations

Despite regulation 4 of the *Dangerous Goods (Transport) (General) Regulations 1999*, for the purpose of these regulations, substances or articles that are within the definition of “dangerous cargoes” as defined in AS 3846 are prescribed for

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the purposes of paragraph (a) of the definition of “dangerous goods” in section 3 of the Act to be dangerous goods.

5. Application

- (1) These regulations do not apply to the transport of dangerous goods by an authorised officer, or an officer of an emergency service, to the extent necessary to avert, eliminate, or minimise a dangerous situation.
- (2) These regulations do not apply to the handling and transport in a port area or the transport on a vessel of materials of a type referred to in section 7.1 of AS 3846.

Regulation 13(1) expressly provides that AS 3846, other than Section 7 (which deals with radioactive substances), applies to and in relation to the handling and transport of a dangerous cargo in a port area and the transport of a dangerous cargo on a vessel. These regulations do not apply to the handling and transport of materials of the type referred to in section 7.1 because the handling of radioactive substances is governed by the *Radiation Safety Act 1975* administered by the Department of Health.

- (3) These regulations do not apply to the handling or transport in a port area of dangerous goods, other than bunkering fuel, required for the navigation, safety, or maintenance of a vessel and forming part of the equipment or stores of the vessel.
- (4) These regulations do not apply to and in relation to the handling and transport of a dangerous cargo in a port area or a part of a port area or at a berth —
 - (a) that is within a petroleum site (within the meaning of that term given by section 5 of the *Petroleum Safety Act 1999*); or
 - (b) which is the subject of a hazards control plan prepared under section 45C(2) of the *Explosives and Dangerous Goods Act 1961*.
- (5) If a provision of these regulations imposes a duty on a master of a vessel, the vessel’s owner —
 - (a) must not authorise or direct the master to contravene the provision; and

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- (b) must ensure, as far as is reasonably practicable, that the master does not contravene the provision.

Penalty: \$ 3 000.

- (6) The Competent Authority may, in writing, exempt any person or class of persons, either absolutely or subject to conditions, from any provision of these regulations and may, in writing, vary or revoke any such exemption.

6. Inconsistent laws

If a provision of these regulations is inconsistent with a provision of the *Navigation Act 1912* of the Commonwealth, the latter provision prevails to the extent of the inconsistency.

7. Codes and standards

- (1) In this regulation —
“**instrument**” means a code, standard or rule (whether made in or outside Australia) relating to dangerous goods or their transport, and includes a provision of an instrument.
- (2) In these regulations, a reference to an instrument includes a reference to another instrument as applied or adopted by, or incorporated in, the first instrument.
- (3) In these regulations, unless the contrary intention appears, a reference to an instrument is a reference to the instrument as amended from time to time.
- (4) If a provision of these regulations is inconsistent with a provision of an instrument that is applied by these regulations, the provision of these regulations prevails to the extent of the inconsistency.

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8. Divisions of explosives

In these regulations and for the purposes of AS 3846 —

“**Division**”, in relation to explosives, means —

- (a) the Division number to which the explosives are assigned by an entry in column 4 in Appendix 2 of the Explosives Code; or
- (b) the Division number that is assigned to the explosives under the UN dangerous goods tests and criteria.

Examples:

If a substance listed in column 2 of Appendix 2 of the Explosives Code is given, in column 4, a Classification Code of 1.2A, “1” indicates the substance has been assigned to dangerous goods Class 1 because it is an explosive, “2” indicates the substance has been assigned to Division 1.2 because of the hazard it presents, and “A” indicates the substance has been assigned to Compatibility Group A. In these regulations the substance is said to be of “Class 1.2A”.

If a substance is not listed in column 2 of Appendix 2 of the Explosives Code, it will be classified as Class 1 if it is accepted under the UN dangerous goods tests and criteria into dangerous goods Class 1, it will be assigned a Division number in accordance with those tests and criteria and Addendum I to Appendix 2 of the Code, and it will be assigned a Compatibility Group letter in accordance with those tests and criteria and Addendum I to Appendix 2 of the Code.

9. Prime contractor

A person is the prime contractor for the transport of a dangerous cargo by water if the person, in conducting a business for or involving the transport of a dangerous cargo by water, undertakes to be responsible, or is responsible, for the transport of the dangerous cargo by water.

10. Owner

A person is an owner of a vessel if the person —

- (a) is the sole owner, a joint owner, or a part owner of it; or

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- (b) has possession or use of it under a credit, hire purchase, lease, or other agreement.

11. Consignor

- (1) A person consigns a dangerous cargo for transport in a vessel, and is the consignor of the cargo, if —
 - (a) subregulation (2) applies to the person;
 - (b) subregulation (2) does not apply to the person or anyone else, but subregulation (3) applies to the person; or
 - (c) subregulations (2) and (3) do not apply to the person or anyone else, but subregulation (4) applies to the person.
- (2) This subregulation applies to a person who, with the person's authority, is named or otherwise identified as the consignor of the dangerous cargo in shipping documentation for the transport of the cargo in a vessel.
- (3) This subregulation applies to a person who —
 - (a) engages a person, either directly or through an agent or other intermediary, to transport the dangerous cargo in a vessel; or
 - (b) has possession of, or control over, the dangerous cargo immediately before it is transported in a vessel.
- (4) This subregulation applies to a person if —
 - (a) the dangerous cargo is imported into Australia; and
 - (b) the person is the importer of the cargo.

12. Penalties

- (1) This regulation applies to a provision prescribing a penalty for an offence.
- (2) The penalty is the maximum fine for an individual who is found guilty of the offence.
- (3) If a body corporate is found guilty of the offence, the maximum fine for the body corporate is 5 times the penalty.

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Part 2 Handling and transport of a dangerous cargo

Division 1 AS 3846 applies

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Part 2 — Handling and transport of a dangerous cargo

Division 1 — AS 3846 applies

13. The handling and transport of a dangerous cargo in a port area or on a vessel to be in accordance with AS 3846 (other than Section 7)

- (1) Subject to regulation 5(1), (3), (4), and (6), and 7(4), AS 3846 (other than Section 7) applies to and in relation to the handling and transport of a dangerous cargo in a port area and the transport of a dangerous cargo on a vessel.
- (2) A person who is subject to a requirement of AS 3846 who does not comply with that requirement commits an offence.
Penalty: \$3 000.

14. Regulatory authority

For the purposes of AS 3846, the Regulatory authority is each person who is a Competent Authority appointed under section 10 of the Act.

15. Designated port officer

For the purposes of AS 3846, the Regulatory authority may appoint an authorised officer as a designated port officer.

Division 2 — Duties of consignor

16. Advance notification of a dangerous cargo

A consignor of a dangerous cargo in a vessel must give the harbour master notification in accordance with Section 3 of AS 3846.

Penalty: \$3 000.

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Handling and transport of a dangerous cargo **Part 2**
Duties of a master **Division 3**
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17. Consignor's duties in relation to handling and transport of explosives

- (1) A consignor of explosives in a vessel must ensure that the explosives are classified in accordance with section 4.2(d) of AS 3846.
- (2) A consignor of explosives in a vessel must ensure that the explosives are segregated from other explosives and dangerous goods in accordance with section 4.4 of AS 3846.
Penalty applicable to subregulations (1) and (2): \$3 000.

18. Duties of consignor in relation to handling and transport of ammonium nitrate or calcium hypochlorite

- (1) A consignor of ammonium nitrate or calcium hypochlorite in a vessel in a package or a freight container must ensure that the package or container is in accordance with section 6.8.2 or 6.8.3, as the case requires, of AS 3846.
- (2) A consignor of ammonium nitrate in a vessel in bulk must ensure that it is handled and transported in accordance with section 6.8.4 of AS 3846.
- (3) For the purpose of this regulation, a reference in section 6.8.4 of AS 3846 to the "relevant authority" is to be taken to be a reference to the "regulatory authority".
Penalty applicable to subregulations (1) and (2): \$3 000.

Division 3 — Duties of a master

19. Advance notification of a dangerous cargo

- (1) In this regulation —
"specified dangerous cargo" means a dangerous cargo of a type specified by the harbour master of the port.

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Division 3 Duties of a master

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- (2) The master of a vessel transporting a specified dangerous cargo who takes the vessel into a port without obtaining the written approval of the harbour master of the port to do so before entering the port commits an offence.
- (3) The accountable person of a vessel on which a dangerous cargo is transported into a port must give the harbour master notification in accordance with Section 3 of AS 3846.
Penalty applicable to subregulations (2) and (3): \$3 000.

20. Master's duties in relation to handling and transport of explosives

- (1) The master of a vessel on which explosives are transported into or out of a port must ensure in relation to the vessel that the handling and transport of the explosives in the port area is in accordance with section 4.2(g), (j), (k), (o), (q), (r), and (s) of AS 3846.
- (2) The master of a vessel in relation to which explosives are handled must ensure that the explosives are handled in accordance with section 4.3 of AS 3846.
Penalty applicable to subregulations (1) and (2): \$3 000.

21. Duties of master in relation to handling and transport of ammonium nitrate or calcium hypochlorite

- (1) The master of a vessel in relation to which ammonium nitrate or calcium hypochlorite is handled at a special berth must ensure in relation to the vessel that the handling of the ammonium nitrate or calcium hypochlorite is in accordance with section 6.6.1(b), (e), (f), (g), and (k) and 6.6.2 of AS 3846.
- (2) The master of a vessel in relation to which ammonium nitrate or calcium hypochlorite is handled in a port must ensure that emergency procedures in accordance with section 6.7 of AS 3846 are in place before the ammonium nitrate or calcium hypochlorite is handled.
Penalty applicable to subregulations (1) and (2): \$3 000.

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Handling and transport of a dangerous cargo **Part 2**
Duties of a master **Division 3**
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22. Duties of master in relation to handling and transport of a bulk liquid dangerous cargo

- (1) The master of a vessel on which a bulk liquid dangerous cargo is transported must ensure that the handling and transport of the cargo is in accordance with section 8.2.1, 8.2.3.5, 8.2.3.6, 8.2.3.7, 8.2.4.1(b), 8.2.4.3, 8.2.6, 8.2.7, 8.2.8, 8.2.9, 8.2.10, 8.2.11.1, 8.2.11.2, 8.2.13.1, 8.2.13.2, and 8.2.13.3 of AS 3846.
- (2) Without limiting subregulation (1), the master of a vessel on which a flammable bulk liquid dangerous cargo is transported must ensure in relation to the vessel that the handling and transport of the cargo is in accordance with section 8.3.2, 8.3.3, 8.3.4, 8.3.5, 8.3.7.2, and 8.3.7.3 of AS 3846.
- (3) Without limiting subregulation (1), the master of a vessel on which bulk liquefied gas is transported must ensure in relation to the vessel that the handling and transport of the gas is in accordance with section 8.4 of AS 3846.
- (4) Without limiting subregulation (1), the master of a vessel on which a bulk toxic or corrosive liquid is transported must ensure in relation to the vessel that the handling and transport of the liquid is in accordance with section 8.5.2 and 8.5.5 of AS 3846.
- (5) Without limiting subregulation (1), the master of a vessel that is a multipurpose carrier must ensure that the requirements referred to in section 8.6 of AS 3846 are complied with in relation to the vessel.

Penalty applicable to subregulations (1), (2), (3), (4), and (5):
\$3 000.

23. Duties of master in relation to handling and transport of a bulk solid dangerous cargo

- (1) The master of a vessel on which a bulk solid dangerous cargo is transported must in relation to the vessel comply with the requirements of section 9.8 of AS 3846.

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Division 4 Duties of a berth operator

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- (2) The master of a vessel on which a bulk solid dangerous cargo is transported must ensure in relation to the vessel that the handling and transport of the cargo is in accordance with section 9.3, 9.4, 9.5, 9.6, and 9.7 of AS 3846.

Penalty applicable to subregulations (1) and (2): \$3 000.

24. Duties of master in relation to fire precautions

The master of a vessel —

- (a) on which a flammable dangerous cargo is present;
- (b) on which there is a tank or space that has contained a liquid flammable dangerous cargo; or
- (c) on which repair work is carried out in a hazardous area or a restricted area,

must ensure that repair work is carried out in accordance with section 11.6.2 of AS 3846.

Penalty: \$3 000.

Division 4 — Duties of a berth operator

25. Berth operator's duties in relation to handling and transport of explosives

- (1) A berth operator must ensure that the handling and transport of explosives at a berth in a port area is in accordance with section 4.2(a), (b), (c), (e), (f), (h), (i), (j), (l), (m), (o), (p), (q), (r), (s), and (t), and 4.5 of AS 3846.
- (2) A berth operator must not allow quantities of explosives exceeding the net explosive quantity limit of Table 4.2 to AS 3846 to be handled at a berth other than a special berth that has been approved by the Competent Authority having regard to the considerations referred to in AS 3846 section 4.6.2.
- (3) A berth operator must ensure that traffic management at a berth at which explosives are being handled or transported is in accordance with section 4.8 of AS 3846.

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Duties of a berth operator **Division 4**
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- (4) A berth operator must ensure that a lift truck used to handle explosives at a berth complies with section 4.9 of AS 3846.
- (5) A berth operator must ensure in accordance with section 4.10 of AS 3846 that a customer's representative is present before any explosives are handled or transported at a berth in a port area.
- (6) A berth operator must ensure in accordance with section 4.11 of AS 3846 that the handling of explosives at a berth is suspended during an electrical storm.
- (7) A berth operator must ensure that emergency procedures in accordance with section 4.12 of AS 3846 are in place before any explosives are handled or transported at a berth.
Penalty applicable to subregulations (1), (2), (3), (4), (5), (6), and (7): \$3 000.

26. Berth operator's duties in relation to handling and transport of other dangerous cargoes

- (1) A berth operator must ensure that the handling and transport of a packaged dangerous cargo of Class 2, 3, 4, 5, 6, 8, or 9 at a berth is in accordance with section 5.2 of AS 3846.
- (2) A berth operator must not allow a packaged dangerous cargo listed in Table 5.1 of AS 3846 to be kept at a berth except in accordance with section 5.3 of AS 3846.
- (3) A berth operator must ensure that a dangerous cargo in a port area that has been unloaded from a vessel or is being prepared for transport in a vessel is segregated in accordance with section 5.4.1 of AS 3846.
Penalty applicable to subregulations (1), (2), and (3): \$3 000.

27. Berth operator's duties in relation to handling or transport of ammonium nitrate or calcium hypochlorite

- (1) A berth operator must not allow a dangerous cargo referred to in section 6.2 of AS 3846 to be handled at an ordinary berth unless

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the aggregate quantity of the cargo does not exceed that listed in Table 6.1 to AS 3846.

- (2) If the aggregate quantity of a dangerous cargo referred to in section 6.2 of AS 3846 to be handled at a berth is equal to or exceeds that listed in Table 6.1 to AS 3846, the berth operator must not allow the cargo to be handled at a berth other than a berth that has been declared by the Competent Authority to be a special berth having regard to the requirements and considerations referred to in AS 3846 sections 6.5.1 and 6.5.2.
- (3) A berth operator must ensure that ammonium nitrate or calcium hypochlorite handled at a special berth is handled in accordance with section 6.6.1 and 6.6.3 of AS 3846.
- (4) A berth operator must ensure that the emergency procedures or precautions in relation to ammonium nitrate or calcium hypochlorite referred to in section 6.7 of AS 3846 are followed.
- (5) A berth operator must ensure that ammonium nitrate fertiliser that is transported in bulk is handled in accordance with section 6.8.4 of AS 3846.
- (6) For the purpose of this regulation, a reference in section 6.8.4 of AS 3846 to the “relevant authority” is to be taken to be a reference to the “regulatory authority”.

Penalty applicable to subregulations (1), (2), (3), (4), and (5):
\$3 000.

28. Duties of berth operator in relation to handling and transport of a bulk liquid dangerous cargo

- (1) A berth operator must ensure that a bulk liquid dangerous cargo is handled and transported in accordance with section 8.2.1, 8.2.3.5, 8.2.3.8, 8.2.4.1(a), 8.2.4.2, 8.2.5, 8.2.9, 8.2.12, 8.2.13.1, and 8.2.13.2 of AS 3846.
- (2) In relation to the handling and transport of a bulk liquid dangerous cargo at a berth, a berth operator must comply with

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Handling and transport of a dangerous cargo

Part 2

Duties of a berth operator

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such of the requirements of section 8.2.3.2, 8.2.3.3, 8.2.3.4, 8.2.3.7, and 8.2.6 of AS 3846 as apply to a berth operator.

- (3) Without limiting subregulation (1), a berth operator handling or transporting a flammable bulk liquid dangerous cargo at a berth must ensure that it is handled or transported in accordance with section 8.3.4, 8.3.6, and 8.3.7.3 of AS 3846.
- (4) Without limiting subregulation (1), a berth operator handling or transporting a bulk toxic or corrosive liquid at a berth must ensure that it is handled or transported in accordance with section 8.5.2, 8.5.3, 8.5.4, and 8.5.5 of AS 3846.
- (5) A berth operator handling or transporting a bulk liquefied gas must ensure that the handling and transport of the gas is in accordance with section 8.4 of AS 3846.
- (6) A berth operator must ensure that the requirements referred to in section 8.6 of AS 3846 are complied with in relation to a multipurpose carrier.

Penalty applicable to subregulations (1), (2), (3), (4), (5), and (6): \$3 000.

29. Duties of berth operator in relation to handling and transport of a bulk solid dangerous cargo

- (1) A berth operator handling or transporting a bulk solid dangerous cargo at a berth must ensure that the information referred to in section 9.2(b) and (c) of AS 3846 is available to interested persons.
- (2) A berth operator handling or transporting a bulk solid dangerous cargo at a berth must ensure that the handling or transport of the cargo is in accordance with section 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8 of AS 3846.

Penalty applicable to subregulations (1) and (2): \$3 000.

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Part 2 Handling and transport of a dangerous cargo

Division 5 Duties of an owner of a cargo

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30. Duties of berth operator in relation to firefighting resources

- (1) A berth operator handling a dangerous cargo at a berth must comply with the requirements of section 10.3.1, 10.3.3, 10.4.2, and 10.4.3 of AS 3846.
- (2) A berth operator handling a dangerous cargo at a berth must ensure that the fire protection system at the berth complies with section 10.3.2, 10.3.4, 10.4.1, 10.4.4, 10.6, and 10.7 of AS 3846.
- (3) A berth operator handling flammable liquids at a berth must comply with the requirements of section 10.5 of AS 3846.
Penalty applicable to subregulations (1), (2), and (3): \$3 000.

31. Duties of berth operator in relation to tanker berths

- (1) A berth operator of a tanker berth must comply with the requirements of clause E3.2.1, E3.2.2, E3.2.3, E3.2.5, E3.2.6, E3.2.7, E4.2, E4.3, and E5 of Appendix E to AS 3846 unless the operation complies with the requirements of clauses F1 and F2 of Appendix F to AS 3846.
Penalty: \$3 000.
- (2) In clauses F1 and F2 of Appendix F to AS 3846 referred to in subregulation (1), a reference to “should” means “shall”.

Division 5 — Duties of an owner of a cargo

32. Duties of an owner of explosives in relation to the handling and transport of the explosives

- (1) The owner of explosives delivered to a port area must ensure that the explosives are delivered in accordance with section 4.2(a) of AS 3846 and that they are classified in accordance with section 4.2(d) of AS 3846.
- (2) The owner of explosives handled or transported in a port area must ensure in accordance with section 4.10 of AS 3846 that a customer’s representative is present before the explosives are handled or transported.
Penalty applicable to subregulations (1) and (2): \$3 000.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Handling and transport of a dangerous cargo

Part 2

Duties of an owner of a cargo

Division 5

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33. Duties of an owner of other dangerous cargoes

- (1) The owner of a dangerous cargo of a type listed in Table 5.1 of AS 3846 must ensure that the cargo is delivered to and removed from a berth in accordance with section 5.2.1 of AS 3846.
- (2) Subject to subregulation (1), the owner of a packaged dangerous cargo of Class 2, 3, 4, 5, 6, 8, or 9 must ensure that the cargo is delivered to and removed from a berth in accordance with section 5.2.2 of AS 3846.

Penalty applicable to subregulations (1) and (2): \$3 000.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Part 3 Safety management system

r. 34

Part 3 — Safety management system

34. Hazard identification

- (1) A berth operator must ensure that any hazard associated with the handling and transport of a dangerous cargo in a port area is identified.
- (2) Without limiting the generality of subregulation (1), when identifying a hazard associated with the handling and transport of a dangerous cargo in a port area the berth operator must consider —
 - (a) the chemical and physical properties of the cargo;
 - (b) the chemical and physical reaction between the cargo and other substances and articles which could cause a hazard should they come into contact with one another;
 - (c) any handling or transport procedures relating to the cargo;
 - (d) any information about the inherent hazardous properties of the cargo, including material safety data sheets for the cargo; and
 - (e) the type and characteristics of incidents known to be associated with the cargo, including incidents affecting the plant or structures at a berth used in the handling or transport of the cargo.
- (3) A person who contravenes subregulation (1) or (2) commits an offence.

Penalty: \$3 000.

35. Risk assessment

- (1) If a hazard is identified under regulation 34, the berth operator must assess the risks associated with the hazard.
- (2) A berth operator must ensure that —
 - (a) a record is kept of —
 - (i) the assessment; and

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Safety management system

Part 3

r. 36

-
- (ii) each review of the assessment conducted under regulation 37;
 - (b) a copy of that record is kept while the assessment is current or being reviewed; and
 - (c) the record is made available, on request, to the Competent Authority.
- (3) A person who contravenes subregulation (1) or (2) commits an offence.
Penalty: \$3 000.

36. Control of risk

- (1) A berth operator must ensure that any risk associated with the handling and transport of a dangerous cargo in the port area is controlled —
 - (a) by eliminating the hazards associated with that risk; or
 - (b) if it is not practicable to eliminate a hazard, by minimising that risk as far as is practicable.
- (2) To ensure that a berth operator is in control of all dangerous cargoes in the port area, the berth operator must ensure that control measures and safe systems of work are implemented, supervised, and maintained in the port area.
- (3) If non-compliance with a control measure or safe system of work results in a risk, the berth operator must ensure that hazards associated with the risk are eliminated, or if it is not practicable to eliminate those hazards, that the risk is minimised so far as is practicable.
- (4) A berth operator must ensure that structures and plant associated with the handling and transport of dangerous cargoes at a berth are designed, manufactured, installed, commissioned, operated, tested, maintained, repaired, and decommissioned so as to eliminate the hazards giving rise to a risk, or where it is not practicable to eliminate a risk, to reduce the risk as far as is practicable.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Part 3 Safety management system

r. 37

- (5) A person who contravenes subregulation (1), (2), (3), or (4) commits an offence.

Penalty: \$3 000.

37. Review of safety management system

- (1) If directed to do so by the Competent Authority, a berth operator must ensure that a review is carried out by a person nominated by the Competent Authority of any one or more of the following —
- (a) the berth operator's procedures for identifying hazards associated with the handling and transport of a dangerous cargo in a port area;
 - (b) the berth operator's methods for assessing risks associated with hazards relating to the handling and transport of a dangerous cargo in a port area;
 - (c) the berth operator's procedures for controlling risks associated with the handling and transport of a dangerous cargo in a port area.
- (2) A berth operator must give the Competent Authority a copy of the report of the review.
- (3) If —
- (a) a review is carried out by a person nominated by the Competent Authority; and
 - (b) as a result of the review, the Competent Authority directs the berth operator to put in place measures for controlling risks associated with the handling and transport of a dangerous cargo in a port area,
- the berth operator must comply with that direction.
- (4) A person who contravenes subregulation (1), (2), or (3) commits an offence.
- Penalty: \$3 000.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Emergencies

Part 4

r. 38

Part 4 — Emergencies

38. Incidents or releases involving dangerous cargoes, duty to notify authorities

- (1) This regulation applies if, in a port area, a dangerous cargo is involved in —
 - (a) an incident resulting in a situation in which a dangerous cargo 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;
 - (b) an incident resulting in a fire or explosion involving or affecting a dangerous cargo; or
 - (c) the release of a liquid or gaseous dangerous cargo because of a failure in the containment structure of a bulk tank, intermediate bulk container, or pipeline.
- (2) As soon as practicable after the incident or release, each accountable person in relation to the vessel, and the berth operator, must tell the Competent Authority about the incident or release, and provide details of —
 - (a) when and where the incident or release happened;
 - (b) the nature of the incident or release; and
 - (c) the shipping name, class, and quantity of the dangerous cargo being transported when the incident or release happened.
- (3) Not later than 21 days after the day on which the incident or release happened, the accountable person and the berth operator must give the Competent Authority a written report about the incident or release.
- (4) The report must provide details of —
 - (a) when and where the incident or release happened;
 - (b) the nature of the incident or release;

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Part 4 Emergencies

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- (c) in the case of a release, the quantity of the liquid or gas released;
- (d) any death of or harm to a person or any damage to property resulting from the incident or release;
- (e) the shipping name, class, and quantity of the dangerous cargo being transported when the incident or release happened;
- (f) what the person believes to be the likely cause of the incident or release;
- (g) the measures taken to control any leak, spill or accidental escape of a dangerous cargo, and any fire or explosion, arising out of the incident or release;
- (h) the measures taken after the incident or release in relation to the dangerous cargo involved in the incident or release; and
- (i) the measures taken after the incident or release to prevent a similar incident or release happening again.

Penalty: \$1 500.

39. Emergency plan of master

The master of a vessel transporting a bulk dangerous cargo who takes the vessel into a port without —

- (a) a written emergency plan for dealing with any dangerous situation arising from the handling or transport of the dangerous cargo in a port area;
- (b) adequate crew and equipment to carry out the plan should the need to do so arise; or
- (c) consulting the berth operator with regard to the management of any emergency that might arise from handling or transporting a dangerous cargo in the port area,

commits an offence.

Penalty: \$3 000.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Emergencies **Part 4**

r. 40

40. Emergency plan of berth operator

(1) In this regulation —

“receiving authority” means —

- (a) in the case of a port within the meaning of section 3(1) of the *Port Authorities Act 1999*, the port authority of the port; or
- (b) in the case of a port within the meaning of section 3 of the *Shipping and Pilotage Act 1967*, a Competent Authority;

“FESA” means the Fire and Emergency Services Authority of Western Australia established under section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*.

- (2) A berth operator having regard to any guidelines approved by the receiving authority must prepare a written emergency plan for dealing with any dangerous situation arising from the handling or transport of a dangerous cargo in a port area.
- (3) The berth operator must submit the emergency plan to the receiving authority.
- (4) If the receiving authority so directs, an emergency plan must be amended in accordance with the directions so given.
- (5) A berth operator must ensure that all persons engaged in handling or transporting a dangerous cargo in a port area —
 - (a) are aware of any emergency plan applicable to the port area; and
 - (b) are competent to operate all safety equipment including vehicles, pumps, fire protection equipment, and breathing apparatus, they may be required to use in connection with an emergency.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Part 4 Emergencies

r. 41

- (6) Nothing in an emergency plan prevents a person from refusing to carry out any operation where that person has reasonable grounds to believe that to carry out the operation would expose him or her to a risk of imminent and serious harm to his or her health.
- (7) A berth operator must ensure that adequate resources to carry out the emergency plan are available in the port area.
- (8) A berth operator must consult the master of a vessel using a berth with regard to the management of any emergency that might arise from handling or transporting a dangerous cargo in the port area.
- (9) A port authority must in consultation with FESA prepare and maintain a port emergency plan.
- (10) A person who contravenes subregulation (2), (3), (4), (5), (7), or (8) commits an offence.
Penalty: \$3 000.

41. Safety equipment

A berth operator who does not ensure that safety equipment including vehicles, pumps, fire protection equipment, and breathing apparatus that may be required to be used in connection with an emergency in a port area is available in the port area commits an offence.

Penalty: \$3 000.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Miscellaneous

Part 5

r. 42

Part 5 — Miscellaneous

42. Order to discontinue handling of a dangerous cargo

- (1) If the harbour master of a port is satisfied in relation to a vessel that the handling of a dangerous cargo is not being carried out in accordance with the requirements of AS 3846 or these regulations the harbour master may order the master of the vessel or the berth operator to stop the handling of the dangerous cargo until the handling is carried out in accordance with the requirements of AS 3846 or these regulations.
- (2) A master of a vessel or the berth operator who does not comply with the order of the harbour master commits an offence.
Penalty: \$3 000.

43. Application for exemptions

- (1) An application for an exemption from compliance with a provision of these regulations must —
 - (a) be made in writing to the Competent Authority;
 - (b) be signed and dated by or for the applicant;
 - (c) state the applicant's name and address;
 - (d) state the name of the person to whom, or the name, or a description, of the class of people to which, the application relates;
 - (e) specify the provisions of these regulations to which the application relates;
 - (f) specify the dangerous cargo to which the application relates;
 - (g) state why, in the applicant's opinion, compliance with the provisions is not reasonably practicable;
 - (h) state why, in the applicant's opinion, the exemption is not likely to involve a greater risk than the risk involved in complying with the provisions; and

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Part 5 Miscellaneous

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- (i) be accompanied by a fee of \$250.00.
- (2) The Competent Authority may, by written notice, require the applicant to give to the Authority any additional information necessary for a proper consideration of the application.

44. Extension of exemption

- (1) If a Competent Authority grants an exemption from compliance with a provision of the regulations in relation to the transport of a type of dangerous cargo to a person or a class of people, the Competent Authority may extend the exemption subject to specified conditions to another class of people.
- (2) If a Competent Authority extends an exemption to another class of people, the Competent Authority must place a notice in the *Gazette* specifying the class of people to which the extension of the exemption applies.
- (3) A person who fails to comply with conditions to which an extension of an exemption is subject is guilty of an offence.
Penalty: \$3 000.
- (4) If a Competent Authority extends an exemption to another class of people, the Competent Authority must notify a Competent Authority of each other State and of each Territory of the details of the extension of the exemption.

45. Unlawful entry to restricted areas

A person who contrary to section 8.2.4.1(a) of AS 3846 enters or takes equipment onto a vessel or into a restricted area commits an offence.

Penalty: \$3 000.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Miscellaneous

Part 5

r. 46

46. Unlawful entry to vessels

A person who contrary to section 8.2.4.1(b) of AS 3846 boards a vessel that is transporting a bulk liquid dangerous cargo commits an offence.

Penalty: \$3 000.

47. Unlawful entry to hazardous area or restricted area

A person who contrary to section 8.3.6 of AS 3846 takes a motor vehicle or equipment —

- (a) within 25m of a tanker berth;
- (b) within 25m of a vessel with bulk flammable liquids or liquefied flammable gases on board; or
- (c) into a hazardous area or a restricted area,

commits an offence.

Penalty: \$3 000.

48. Transitional

- (1) A person does not commit an offence against a regulation listed in the Table to this subregulation if the person contravenes or fails to comply with the regulation within the period of 6 months after the commencement of these regulations.

Table

regulation 21(2)	regulation 34
regulation 25(2)	regulation 35
regulation 25(7)	regulation 36
regulation 26(2)	regulation 37
regulation 27(2)	regulation 40
regulation 27(4)	

- (2) A person does not commit an offence against regulation 26(1) in relation to a requirement in section 5.2.3 of AS 3846 if the person contravenes or fails to comply with the requirement within the period of 6 months after the commencement of these regulations.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Part 6 Repeal and consequential amendments

r. 49

Part 6 — Repeal and consequential amendments

**49. *Dangerous Goods (Transport) (Explosives by Water)
Regulations 1999* repealed**

The *Dangerous Goods (Transport) (Explosives by Water) Regulations 1999* are repealed.

**50. *Explosives and Dangerous Goods (Dangerous Goods
Handling and Storage) Regulations 1992* amended**

After regulation 1.4 of the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992** the following regulation is inserted —

“

1.4A Scope of these regulations

(1) These regulations do not apply to the handling of dangerous cargoes in a port.

(2) In subregulation (1) —

“**handling**” has the same meaning as it has in section 1.3.32 of Australian Standard AS 3846—1998 *The handling and transport of dangerous cargoes in port areas*, published by Standards Australia as amended from time to time;

“**port**” has the same meaning as it has in regulation 3(1) of the *Dangerous Goods (Transport)(Dangerous Goods in Ports) Regulations 2001*.

”

[* Reprinted as at 10 March 2000.

For amendments to 4 December 2001 see 2000 Index to Legislation of Western Australia, Table 4, p. 96.]

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Repeal and consequential amendments

Part 6

r. 51

**51. *Explosives and Dangerous Goods (Explosives)
Regulations 1963 amended***

After regulation 2A of the *Explosives and Dangerous Goods (Explosives) Regulations 1963** the following regulation is inserted in Part I —

“

2B. Scope of these regulations

(1) Part VI and regulations 135-140 do not apply to the handling of explosives in a port.

(2) In subregulation (1) —

“**handling**” has the same meaning as it has in section 1.3.32 of Australian Standard AS 3846—1998 *The handling and transport of dangerous cargoes in port areas*, published by Standards Australia as amended from time to time;

“**port**” has the same meaning as it has in regulation 3(1) of the *Dangerous Goods (Transport)(Dangerous Goods in Ports) Regulations 2001*.

”

[* Reprinted as at 17 March 2000.

For amendments to 4 December 2001 see 2000 Index to Legislation of Western Australia, Table 4, p. 96-7.]

By Command of the Lieutenant-Governor and deputy of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

***Dangerous Goods (Transport) (Dangerous Goods in Ports)
Regulations 2001***

Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
accountable person.....	3(1)
AS 3846	3(1)
consignor.....	3(1)
Division.....	3(1), 8
emergency service.....	3(1)
Explosives Code.....	3(1)
FESA.....	40(1)
harbour master	3(1)
hazard.....	3(1)
instrument	7(1)
owner	3(1)
port area	3(1)
port authority.....	3(1)
port.....	3(1)
prime contractor	3(1)
receiving authority	40(1)
risk	3(1)
specified dangerous cargo.....	19(1)
UN dangerous goods tests and criteria.....	3(1)
vessel.....	3(1)

