

Western Australia

Dangerous Goods Safety Act 2004

As at 10 Jun 2004

No. 7 of 2004

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Dangerous Goods Safety Act 2004

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Defined Terms

Western Australia

Dangerous Goods Safety Act 2004

No. 7 of 2004

An Act relating to the safe storage, handling and transport of dangerous goods and for related purposes.

[Assented to 10 June 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Dangerous Goods Safety Act 2004*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Interpretation and abbreviations

- (1) In this Act, unless the contrary intention appears —
 - “approved”** means approved by the Chief Officer;
 - “Chief Officer”** means the person designated as the Chief Dangerous Goods Officer under section 25(2);
 - “container”** means any container, package or other thing capable of containing dangerous goods, or an assemblage of such containers, packages or things, but does not include a pipeline;
 - “dangerous goods”** means a substance or article that is —
 - (a) prescribed by the regulations to be dangerous goods; or
 - (b) determined by the Chief Officer under the regulations to be dangerous goods;
 - “dangerous goods incident”** means any incident that involved dangerous goods and that caused or, but for intervening events, could have caused —
 - (a) the death of an individual, unreasonable bodily injury to an individual that interferes with his or her health or comfort, or unreasonable harm to the health of an individual;

- (b) significant and unreasonable damage or harm to property or the environment;

“dangerous goods officer” (“DGO”) means a person appointed as such under section 27;

“dangerous goods site” means a place —

- (a) where dangerous goods were or are, or are intended to be, stored or handled; or
- (b) where the loading or unloading of dangerous goods in connection with transporting them was or is, or is intended to be, carried out;

“dangerous situation” means a situation where there is an imminent and high risk to people, property or the environment from dangerous goods;

“driver”, in relation to a vehicle, means the person driving or in charge of the vehicle and includes the master of a vehicle transporting people or things by water;

“exemption” means an exemption granted under Part 4 and includes such an exemption as amended from time to time;

“give”, in relation to any document or information, includes (without limiting sections 75 and 76 of the *Interpretation Act 1984*) sending the document or information by remote communication;

“handle”, in relation to dangerous goods, includes to manufacture, process, pack, use, sell, supply, carry (including by pipeline), and treat the dangerous goods and to destroy or otherwise dispose of dangerous goods;

“record” means any record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

- (a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

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- (b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

“remote communication” means any way of communicating at a distance including by telephone, fax, email and radio;

“risk”, in relation to dangerous goods, means —

- (a) in relation to people — the probability of the goods causing the death of, unreasonable injury to, or unreasonable harm to the health of, one or more individuals;
- (b) in relation to property or the environment — the probability of dangerous goods causing unreasonable damage or harm to property or the environment;

“safety management document” means a document that the regulations require to be prepared in relation to —

- (a) the safe storage, handling or transport of dangerous goods; or
- (b) dealing with emergencies involving dangerous goods, and that the regulations prescribe to be a safety management document;

“specified”, in relation to an order, exemption, notice, or direction, means specified in the order, exemption, notice, or direction, as the case may be;

“substance” means a solid, liquid or gas or a mixture of them;

“transport”, in relation to dangerous goods, means the transport of dangerous 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 labelling, marking or placarding of containers and vehicles in which the goods are transported; and
- (c) other matters incidental to the transport of the goods;

“vehicle” means any thing capable of transporting people or things by road, rail or water, including a hovercraft, and it does not matter how the thing is moved or propelled.

- (2) In this Act these abbreviations are used —
“DGO” for dangerous goods officer.

4. Risk from dangerous goods, assessment of

For the purposes of this Act, the risk to people, property or the environment from dangerous goods is to be assessed having regard to —

- (a) public knowledge about the intrinsic potential of the goods to cause death or injury to, or harm to the health of, individuals, or damage or harm to property or the environment;
- (b) the situation of the goods; and
- (c) all relevant surrounding circumstances.

5. Unreasonable harm, assessment of

- (1) In this section —

“harm” means —

- (a) injury to, or harm to the health of, an individual; or
- (b) damage or harm to property or the environment.

- (2) For the purposes of references in this Act to **“unreasonable”** harm, harm from dangerous goods is capable of being reasonable if, and only if —

- (a) it was foreseen, and caused intentionally, by the person who had the control or management of the goods at the time the harm occurred;
- (b) it was caused by a lawful act; and
- (c) in the case of harm to an individual or to property, it was caused with the consent of the individual or of the owner of the property, as the case may be.

6. Relationship with other laws

- (1) This Act does not apply to a pipeline, carrying dangerous goods, to which the *Gas Standards Act 1972*, *Petroleum Pipelines Act 1969* or *Petroleum (Submerged Lands) Act 1982* applies.
- (2) If another written law applies to or in respect of dangerous goods, that law applies in addition to this Act, unless subsection (3) or (4) applies or this Act expressly provides otherwise.
- (3) If a provision of this Act conflicts or is inconsistent with a provision of another written law that applies to or in relation to dangerous goods, the provision of this Act prevails, unless subsection (4) applies.
- (4) If a provision of this Act conflicts or is inconsistent with a provision of another written law that applies to or in relation to dangerous goods of a category that is prescribed for the purposes of this subsection by regulations made under this Act, the provision of the other written law prevails.

7. Crown bound

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

Part 2 — General duties as to dangerous goods

8. Duty to minimise risk from dangerous goods

- (1) A person who is involved directly or indirectly in storing, handling or transporting dangerous goods must take all reasonably practicable measures to minimise the risk to people, property and the environment from the goods.
Penalty:
 - (a) for an individual, \$100 000 or imprisonment for 4 years or both;
 - (b) for a body corporate, \$500 000.
- (2) For the purposes of subsection (1), whether measures are reasonably practicable is to be determined having regard to —
 - (a) the severity of the risk to people, property or the environment from the goods;
 - (b) the severity of any injury, harm or damage that might be caused by the goods to people, property or the environment;
 - (c) public knowledge about the matters in paragraphs (a) and (b);
 - (d) public knowledge about means to reduce or eliminate the risk referred to in paragraph (a) or to reduce the severity referred to in paragraph (b); and
 - (e) the availability, suitability and cost of those means.
- (3) If an individual is involved directly or indirectly in storing, handling or transporting dangerous goods the reference in subsection (1) to people includes a reference to the individual.

9. Duty to report certain situations

- (1) In this section —

“reportable situation” means a situation that involves dangerous goods and that is prescribed by the regulations to be a reportable situation.

- (2) If in the course of storing, handling or transporting dangerous goods a reportable situation arises, any person who to any extent has the control or management of the dangerous goods involved must as soon as reasonably practicable report the situation to a DGO.

Penalty: \$50 000.

- (3) The regulations may prescribe information to be included in the report required by subsection (2).
- (4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged honestly and reasonably believed that another person to whom subsection (2) applies had reported the event.

10. Safety management documents

A person commits an offence if —

- (a) the regulations require the person to prepare a safety management document; and
- (b) the person does not prepare the document in accordance with the regulations.

Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
- (b) for a body corporate, \$250 000.

11. Unlicensed person involved with dangerous goods

- (1) In this section —
“**licence**” includes an accreditation and a permit.
- (2) A person who engages in an activity relating to the storage, handling or transport of dangerous goods, other than an activity to which section 12, 13 or 15 applies, commits an offence if —
- (a) the regulations require the person to hold a licence to engage in the activity; and
 - (b) the person does not hold a licence under the regulations.

Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
- (b) for a body corporate, \$250 000.

12. Unlicensed possession of dangerous goods

A person who is in possession of dangerous goods commits an offence if —

- (a) the regulations require the person to have a licence or permit to possess the dangerous goods; and
- (b) the person does not have a licence or permit under the regulations.

Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
- (b) for a body corporate, \$250 000.

13. Unregistered or unlicensed dangerous goods sites

A person who has the control or management of a dangerous goods site commits an offence if —

- (a) the regulations require the site to be licensed; and
- (b) the site is not licensed under the regulations.

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Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
- (b) for a body corporate, \$250 000.

14. Unlicensed vehicle transporting dangerous goods

- (1) A person who, whether as the owner within the meaning of the *Road Traffic Act 1974* of the vehicle or otherwise, uses or permits or authorises the use of a vehicle to transport dangerous goods commits an offence if —
 - (a) the regulations require the vehicle to be licensed to transport the dangerous goods; and
 - (b) the vehicle is not licensed under the regulations.

Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
 - (b) for a body corporate, \$250 000.
- (2) A person, other than the owner within the meaning of the *Road Traffic Act 1974* of the vehicle, who drives a vehicle transporting dangerous goods commits an offence if —
 - (a) the regulations require the vehicle to be licensed to transport the dangerous goods; and
 - (b) the person knows the vehicle is not licensed under the regulations.

Penalty: \$10 000.

15. Unlicensed driver transporting dangerous goods

- (1) A person who employs, engages or permits another person to drive a vehicle transporting dangerous goods commits an offence if —
 - (a) the regulations require the driver to be licensed to drive the vehicle; and

- (b) the driver is not licensed under the regulations.

Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
 - (b) for a body corporate, \$250 000.
- (2) A person who is the owner within the meaning of the *Road Traffic Act 1974* of a vehicle transporting dangerous goods and who drives the vehicle commits an offence if —
- (a) the regulations require the person to be licensed to drive the vehicle; and
 - (b) the person is not licensed under the regulations.

Penalty: \$50 000 or imprisonment for 2 years or both.

- (3) A person who drives a vehicle transporting dangerous goods, other than in the circumstances described in subsection (2), commits an offence if —
- (a) the regulations require the driver to be licensed to drive the vehicle; and
 - (b) the person is not licensed under the regulations.

Penalty: \$10 000.

16. Transporting goods too dangerous to transport

A person who transports goods that are prescribed by regulations to be goods too dangerous to transport commits an offence.

Penalty:

- (a) for an individual, \$50 000 or imprisonment for 2 years or both;
- (b) for a body corporate, \$250 000.

17. Aggravated offence, penalty for

(1) In this section —

“aggravated circumstances” means circumstances in which, immediately before or during the commission of the offence, the offender knew, or ought reasonably to have known, that the commission of the offence would, or be likely to, endanger —

- (a) the safety or health of a person (including the offender); or
- (b) property or the environment.

(2) A person who commits an offence under any of sections 11 to 16 or the regulations in aggravated circumstances is liable —

- (a) for an individual, to a fine of \$100 000 or imprisonment for 4 years or both; or
- (b) for a body corporate, to a fine of \$500 000.

Part 3 — Regulations and codes of practice

18. Regulations, general matters (Sch. 1)

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for all or any of the purposes, or about all or any of the matters, set out in Schedule 1.
- (3) Regulations may create offences and may provide for any such offence a maximum penalty of —
 - (a) for an individual, a fine of \$10 000 with or without imprisonment for 10 months;
 - (b) for a body corporate, a fine of \$50 000.
- (4) Regulations may control an activity by prohibiting it from being carried out by a person except under a licence or a permit issued by the Chief Officer to the person.
- (5) Regulations may control the possession of dangerous goods by a person by prohibiting it except under a licence or a permit issued by the Chief Officer to the person.
- (6) Regulations may control the possession, storage, handling or transport of particular dangerous goods by prohibiting them from being possessed, stored, handled or transported unless the goods are authorised by the Chief Officer.
- (7) Regulations may control the use of a place by prohibiting it from being used unless it is licensed by the Chief Officer.
- (8) Regulations may control the use of a thing or the use of plant or equipment, by prohibiting it from being used unless it is authorised by the Chief Officer.

- (9) Regulations may control the use of a vehicle, by prohibiting it from being used unless it is licensed by the Chief Officer.
- (10) Regulations may be made in relation to a reserve (within the meaning of the *Land Administration Act 1997*) on which activities relating to the storage, handling or transport of dangerous goods are carried out, but the regulations must not be inconsistent with that Act and in particular with —
 - (a) the order in effect under section 41 of that Act in relation to the reserve; and
 - (b) any management order in effect under section 46 of that Act in relation to the reserve.

19. Regulations may adopt codes or legislation

- (1) In this section —
 - “code”** means a code, standard, rule, specification or other document, made in or outside Australia, that does not by itself have legislative effect in this State;
 - “subsidiary legislation”** includes rules, regulations and instructions.
- (2) Regulations may adopt, either wholly or in part or with modifications —
 - (a) any code; or
 - (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.
- (3) If the regulations adopt a code or subsidiary legislation, it is adopted as in force from time to time unless the regulations specify that a particular text is adopted.
- (4) If the regulations adopt a code or subsidiary legislation, the Chief Officer must —
 - (a) ensure that a copy of the code or subsidiary legislation, including any amendments made to it from time to time

that have been adopted, is available, without charge, for public inspection;

- (b) publish a notice in the *Gazette* giving details of where such documents may be inspected or obtained; and
- (c) if the regulations adopt a code or subsidiary legislation as in force from time to time and the code or subsidiary legislation is subsequently amended, publish in the *Gazette* a notice of the amendment.

20. Codes of practice, approval of

- (1) For the purpose of providing practical guidance to persons engaged, directly or indirectly, in storing, handling or transporting dangerous goods, the Minister may approve any code of practice as in force from time to time or as in force at a particular time.
- (2) A code of practice —
 - (a) may consist of any code, standard, rule, specification or provision relating to the storage, handling or transport of dangerous goods published by a body recognised as having an expertise on the subject; and
 - (b) may incorporate by reference any other such document as in force from time to time or as in force at a particular time.
- (3) The Minister may approve any revision of the whole or any part of a code of practice.
- (4) The Minister may cancel the approval of a code of practice.
- (5) The Chief Officer must —
 - (a) publish a notice in the *Gazette* giving details of any approval or cancellation made under this section;
 - (b) ensure that a copy of every approved code of practice, including any revision of the code and any document

incorporated in it by reference, is available, without charge, for public inspection; and

- (c) publish a notice in the *Gazette* giving details of where such documents may be inspected or obtained.
- (6) An approval or cancellation made under this section comes into force on the day on which notice of it is published in the *Gazette* or on a later date specified in the notice.
- (7) A code of practice approved under this section is a regulation for the purpose of section 42 of the *Interpretation Act 1984*.
- (8) A person is not liable in any civil or criminal proceeding only because the person has not complied with a provision of an approved code of practice.

Part 4 — Exemptions

21. Exemption may be granted by Minister

- (1) The Minister, by order published in the *Gazette*, may exempt —
 - (a) a specified place, vehicle or thing, or a specified class of places, vehicles or things;
 - (b) a specified activity relating to the storage, handling or transport of dangerous goods, or a specified class of such activities;
 - (c) specified dangerous goods, a specified class of dangerous goods or all dangerous goods;
 - (d) a specified person or a specified class of person,from all or specified provisions of the regulations.
- (2) An exemption granted under subsection (1) may be granted indefinitely or for a specified period.
- (3) The Minister, by order published in the *Gazette*, may amend or cancel an exemption granted under subsection (1).
- (4) Section 42 of the *Interpretation Act 1984* applies to an order made under this section as if the order were regulations.

22. Exemption may be granted by Chief Officer

- (1) The Chief Officer, in writing, may exempt —
 - (a) a specified place, vehicle or thing, or a specified class of places, vehicles or things;
 - (b) a specified activity relating to the storage, handling or transport of dangerous goods, or a specified class of such activities;
 - (c) specified dangerous goods, a specified class of dangerous goods or all dangerous goods;
 - (d) a specified person or a specified class of person,

from a specified provision of the regulations.

- (2) The Chief Officer must not grant an exemption under subsection (1) unless satisfied —
 - (a) that circumstances exist in which it is not reasonably practicable to comply with the specified provision of the regulations; and
 - (b) that the exemption —
 - (i) would not result in an increased risk to people, property or the environment from dangerous goods; and
 - (ii) would not cause unnecessary administrative or enforcement difficulties.
- (3) An exemption granted under subsection (1) must be granted for a specified period.
- (4) The Chief Officer, in writing, may amend or cancel an exemption granted under this section.

23. General provisions

- (1) In this section —

“exemption” means an exemption granted under this Part;

“national scheme” means a scheme involving substantially uniform laws that operate in a majority of Australian jurisdictions.
- (2) An exemption may be granted on an application to, or on the initiative of, the Minister or the Chief Officer, as the case requires.
- (3) An exemption may be granted subject to specified conditions.
- (4) If an exemption is granted subject to a specified condition, the exemption has no effect at any time when the condition is being contravened.

- (5) In deciding whether to grant an exemption under this Part from a regulation operating as part of a national scheme, the Minister or the Chief Officer, as the case requires, should take into account the effect the exemption would have on the operation of the scheme.
- (6) If an exemption is granted to a specified person —
 - (a) it must be given to the person; and
 - (b) it comes into operation on the day it is given to the person or on a later date specified in the exemption.
- (7) If an exemption is not granted to a specified person —
 - (a) it must be published in the *Gazette*; and
 - (b) it comes into operation on the day on which it is so published or on a later date specified in the exemption.
- (8) The Chief Officer must keep a register of every exemption granted and make the register available, without charge, for public inspection.
- (9) If an exemption from a regulation operating as part of a national scheme is granted to a specified class of persons or for longer than 6 months the Chief Officer must notify the appropriate authorities in the other Australian jurisdictions.

24. Conditions of an exemption, failing to comply with

A person to whom an exemption granted under this Part applies who contravenes any condition to which the exemption is subject commits an offence.

Penalty:

- (a) for an individual, \$10 000 or imprisonment for 10 months or both;
- (b) for a body corporate, \$50 000.

Part 5 — Administration

Division 1 — Chief Dangerous Goods Officer

25. Chief Dangerous Goods Officer, appointment and functions

- (1) In this section —
“**departmental officer**” means a public service officer (as defined in section 3 of the *Public Sector Management Act 1994*) in the department that principally assists the Minister with the administration of this Act.
- (2) The Minister, by a notice in the *Gazette*, is to designate a departmental officer as the Chief Dangerous Goods Officer for the purposes of this Act.
- (3) The Chief Officer —
 - (a) has and may perform all the functions of a DGO; and
 - (b) when performing those functions, has all the immunities of a DGO.

26. Chief Officer may delegate

- (1) The Chief Officer may delegate to a DGO any power or duty of the Chief Officer under another provision of this Act other than the powers and duties in sections 48 and 54.
- (2) The delegation must be in writing signed by the Chief Officer.
- (3) A DGO exercising or performing a power or duty that has been delegated under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the Chief Officer to perform a function through an officer or agent.

Division 2 — Dangerous goods officers

27. Dangerous goods officers, appointment and extent of powers

- (1) The Chief Officer, by notice in the *Gazette*, may appoint persons, or a class of persons, to be dangerous goods officers.
- (2) The appointment of a DGO may specify that the appointment is subject to conditions or restrictions relating to —
 - (a) the functions that may be performed by the DGO; or
 - (b) when, where and in what circumstances the DGO may perform the functions of a DGO.

28. Identification cards

- (1) The Chief Officer must issue an identification card containing details prescribed by the regulations to each DGO.
- (2) A DGO should —
 - (a) carry his or her identification card while performing functions under this Act; and
 - (b) if it is practicable to do so, produce it before exercising a power of a DGO under this Act.
- (3) A person who has been issued with an identification card and who ceases to be a DGO must return the card to the Chief Officer as soon as practicable.
- (4) A person who contravenes subsection (3) without reasonable excuse, the onus of proving which is on the person, commits an offence and is liable to a fine of \$400.

29. Licences etc. under this Act not required

A provision of this Act that requires a person —

- (a) to hold a licence, permit or accreditation in order to handle, store or transport dangerous goods; or
- (b) to transport dangerous goods in a vehicle licensed to do so,

does not apply to a DGO in the course of duty.

Division 3 — General

30. Minister may delegate

- (1) The Minister may delegate to the Chief Officer any power or duty of the Minister under another provision of this Act, other than the powers in sections 21 and 25.
- (2) The delegation must be in writing signed by the Minister.
- (3) The Chief Officer exercising or performing a power or duty that has been delegated under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

31. Police officers' powers and immunities

A police officer —

- (a) has and may exercise all the powers of a DGO; and
- (b) when exercising those powers, has all the immunities of a DGO.

32. Immunity from tortious liability

- (1) In this section —
“**official**” means the Minister or a DGO.
- (2) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (3) An action in tort does not lie against an official for anything that the official has done, in good faith, in the performance or purported performance of a function under this Act.

- (4) The protection given by subsection (3) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act has been enacted.
- (5) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (3).

Part 6 — Investigation and enforcement

Division 1 — Preliminary

33. Interpretation

In this Part, unless the contrary intention appears —

“dwelling” means —

- (a) a building, structure or tent, or a part of a building, structure or tent, that is ordinarily used for human habitation; or
 - (b) a mobile home,
- and it does not matter that it is uninhabited from time to time;

“enforcement purposes” means the purposes of —

- (a) searching for dangerous goods;
- (b) investigating a dangerous goods incident or a dangerous situation;
- (c) investigating whether this Act is being contravened;
- (d) searching for and seizing or otherwise obtaining evidence of a contravention of this Act;
- (e) giving notices under Division 5;

“entry warrant” means an entry warrant issued under Division 3;

“mobile home” means a vehicle —

- (a) that is ordinarily used for human habitation; and
- (b) that is permanently or semi-permanently stationary in a single location;

“place” means any land, building, structure, tent or dwelling, or a part of any land, building, structure, tent or dwelling, but does not include a vehicle unless it is a mobile home.

Division 2 — Investigative powers

34. Obtaining identifying particulars

The offices of Chief Officer and DGO are each prescribed for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and any holder of either of those offices may exercise the powers in Part 3 of that Act.

35. Entering, inspecting and searching places

(1) If a DGO suspects on reasonable grounds that —

- (a) there are dangerous goods at a place;
- (b) a place has been, is being, or is likely to be, used to store or handle dangerous goods;
- (c) a dangerous goods incident has occurred, or that a dangerous situation exists, at a place; or
- (d) there is evidence of a contravention of this Act at a place,

the DGO may —

- (e) if the place is a dwelling, enter it for enforcement purposes only if —
 - (i) the occupier consents;
 - (ii) the DGO has an entry warrant for it; or
 - (iii) the DGO suspects on reasonable grounds that a dangerous goods incident has occurred, or a dangerous situation exists, in the dwelling;
- (f) if the place is not a dwelling, enter it for enforcement purposes without an entry warrant.

(2) If a DGO enters a place, the DGO must —

- (a) if requested to do so by the occupier, give the occupier a copy of the entry warrant for the place or, if no such warrant exists, a notice in an approved form about the entry; or

- (b) if the occupier is not there, leave a copy of the entry warrant or, if no such warrant exists, a notice in an approved form about the entry, at the place for the occupier.

- (3) On entering a place under this Part without a warrant, a DGO must take reasonable measures to inform the occupier of the DGO's presence.

36. Stopping, entering, searching and inspecting vehicles

- (1) If a DGO suspects on reasonable grounds that in respect of a vehicle that is not a mobile home —
 - (a) there are dangerous goods in or on the vehicle;
 - (b) the vehicle has been, is being, or is likely to be, used to transport dangerous goods;
 - (c) the vehicle has been or is involved in a dangerous goods incident or a dangerous situation; or
 - (d) there is evidence of a contravention of this Act in or on the vehicle,

the DGO may stop, detain and enter it for enforcement purposes.

- (2) A DGO may give directions to the person who is, or who apparently is, in charge of a vehicle in order to facilitate exercising the power in subsection (1), including directions that require the vehicle to be searched or inspected at a specified date, time or place.

37. Seizing samples, evidence etc.

- (1) If a DGO suspects on reasonable grounds that there has been a contravention of this Act, the DGO may seize —
 - (a) any dangerous goods involved, or a sample of them, and any container or vehicle in which they are being stored or transported; and

- (b) any thing that is or may afford evidence of the contravention.
- (2) If a DGO suspects on reasonable grounds —
 - (a) that any substance or thing may be dangerous goods or an ingredient of dangerous goods; or
 - (b) that any thing may have been in contact with dangerous goods,the DGO, for enforcement purposes, may seize the substance, a sample of it, or the thing, or may direct —
 - (c) a person in possession of the substance or thing; or
 - (d) the person in charge, or apparently in charge of, a place or vehicle where the substance or thing is situated,to give the DGO the substance, a sample of it, or the thing, as the case requires.
- (3) The direction may specify when and where the substance, a sample of it, or the thing is to be given to a DGO.
- (4) A DGO who has seized or been given dangerous goods, a thing, substance or sample under this section —
 - (a) must give the person who was in possession of it a receipt for it in an approved form; and
 - (b) may, for forensic purposes, submit it to an examination or to testing.

38. Obtaining records

- (1) In this section —
“relevant record” means a record that contains information about the storage, handling or transport of dangerous goods or that is required to be kept under this Act or that contains information that is relevant to a contravention of this Act.

- (2) A DGO, for enforcement purposes, may —
 - (a) seize or copy a record that the DGO suspects on reasonable grounds is a relevant record; or
 - (b) direct a person to give the DGO such a record or a copy of it.
- (3) The direction may specify the date, time and place where the record or copy is to be given to a DGO.
- (4) If a DGO seizes or is given a record, the DGO must if practicable allow a person who is otherwise entitled to possession of it to have reasonable access to it.

39. Asking questions

- (1) A DGO, for enforcement purposes, may direct a person to answer questions.
- (2) A person is not excused from answering a question on the ground that the answer to the question might tend to incriminate the person, but except in the case of a body corporate —
 - (a) the answer to the question; or
 - (b) any information, record or thing obtained as a direct 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 55(3).

40. Restricting access to sites of dangerous goods incidents and dangerous situations

- (1) In this section —
 - “**unauthorised person**”, in relation to a restricted access site, means any person other than —
 - (a) a DGO, a police officer, or an officer or employee of the Fire and Emergency Services Authority of Western Australia; or

- (b) a person authorised by a person referred to in paragraph (a).
- (2) If a DGO reasonably suspects that a dangerous goods incident has occurred, or that a dangerous situation exists, at a place and that it is necessary to isolate the place for the purposes of —
 - (a) investigating and dealing with the incident or situation; or
 - (b) ensuring that people or property will not be endangered,the DGO may establish a restricted access site that includes the place and, if necessary, an area around it.
- (3) In order to establish a restricted access site, a DGO must take reasonable measures to notify people of the existence and boundaries of the site.
- (4) The area of a restricted access site must not be greater than is reasonably necessary for the purposes for which it is established.
- (5) The boundaries of a restricted access site may be altered at any time.
- (6) A DGO must disestablish a restricted access site when the purposes for which it was established cease to exist.
- (7) While a restricted access site is established, a DGO may remain at the site and take reasonable measures, including giving orders —
 - (a) to secure the site against, and to prevent, unauthorised entry or disturbance;
 - (b) to remove an unauthorised person from the site; or
 - (c) if there is a vehicle at the site, to prevent the vehicle from being moved.

- (8) While a restricted access site is established, an unauthorised person must not, without reasonable excuse, enter it.
Penalty: \$10 000.
- (9) While a restricted access site is established, an unauthorised person must not, without reasonable excuse, disturb any thing at the site.
Penalty: \$10 000.

Division 3 — Entry warrants

41. Interpretation

In this Division —

“**JP**” stands for Justice of the Peace.

42. Applying for an entry warrant

- (1) A DGO may apply to a JP for an entry warrant authorising the entry of a place or vehicle for enforcement purposes.
- (2) A DGO may apply for an entry warrant for a place or vehicle even if, under Division 2, the DGO may enter the place or vehicle without an entry warrant.
- (3) The application must be made in accordance with section 43 and must —
 - (a) describe with reasonable particularity the place or vehicle to be entered;
 - (b) state one or more of the following —
 - (i) that the DGO suspects there are dangerous goods at the place;
 - (ii) that the DGO suspects the place has been or is being used to store or handle dangerous goods;
 - (iii) that the DGO suspects the vehicle has been or is being used to transport dangerous goods;

- (iv) that the DGO suspects there is, or is likely to be in the 72 hours after the time of the application, dangerous goods at the place or in the vehicle; or
 - (v) that the DGO suspects there is, or is likely to be in the 72 hours after the time of the application, at the place or in the vehicle evidence of a contravention of this Act,
- and the grounds for the suspicion;
- (c) describe with reasonable particularity the enforcement purposes for which entry to the place or vehicle is required and the evidence or dangerous goods to be searched for (if any);
 - (d) if a contravention or likely contravention of this Act is suspected, specify the provision of this Act concerned;
 - (e) if efforts have been made to obtain consent to enter the place or vehicle, state the results of those efforts;
 - (f) if no effort to obtain such consent have been made, state why no effort was made; and
 - (g) state for how long the DGO believes the warrant should remain in force.

43. Applications, how they are to be made

- (1) In this section —
“application ” means an application for an entry warrant.
- (2) A reference in this section to making an application includes a reference to giving information in support of the application.
- (3) An application must be made in person before a JP unless —
 - (a) the warrant is needed urgently; and
 - (b) the applicant reasonably suspects that a JP is not available within a reasonable distance of the applicant,in which case —

- (c) it may be made to a JP by remote communication; and
 - (d) the JP must not grant it unless satisfied about the matters in paragraphs (a) and (b).
- (4) An application must be made in writing unless —
 - (a) the application is made by remote communication; and
 - (b) it is not practicable to send the JP written material,in which case —
 - (c) it may be made orally; and
 - (d) the JP must make a written record of the application and any information given in support of it.
- (5) An application must be made on oath unless —
 - (a) the application is made by remote communication; and
 - (b) it is not practicable for the JP to administer an oath to the applicant,in which case —
 - (c) it may be made in an unsworn form; and
 - (d) if the JP issues an entry warrant, the applicant must as soon as practicable send the JP an affidavit verifying the application and any information given in support of it.
- (6) If on an application made by remote communication a JP issues an entry warrant, the JP must if practicable send a copy of the original warrant to the applicant by remote communication, but otherwise —
 - (a) the JP must send the applicant by remote communication any information that must be set out in the warrant;
 - (b) the applicant must complete a form of a warrant with the information received and give the JP a copy of the form as soon as practicable after doing so; and

- (c) the JP must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (7) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (6) has the same force and effect as the original warrant.
- (8) If an applicant contravenes subsection (5)(d) or (6)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court.

44. Issuing an entry warrant

- (1) On an application made under sections 42 and 43, a JP may issue an entry warrant if satisfied that, in respect of the matters in section 42(3) on which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion.
- (2) An entry warrant must contain this information —
 - (a) a reasonably particular description of the place or vehicle to which it relates;
 - (b) a reasonably particular description of the enforcement purposes for which entry to the place or vehicle is authorised and of the evidence or dangerous goods to be searched for (if any);
 - (c) if a contravention or likely contravention of this Act is suspected, the provision of this Act concerned;
 - (d) the period, not exceeding 7 days, in which it may be executed;
 - (e) the date and time when it was issued.

45. Effect of entry warrant

- (1) An entry warrant has effect according to its content and this section.

- (2) An entry warrant may be executed by any DGO.
- (3) An entry warrant must be executed between 6 a.m. and 9 p.m. unless the DGO executing it suspects on reasonable grounds that —
 - (a) if the warrant were executed during those hours, the purposes for which it was obtained would be frustrated; or
 - (b) a dangerous goods incident has occurred, or a dangerous situation exists, at the place or in the vehicle to be entered.
- (4) If in the course of executing an entry warrant a DGO by chance finds a thing that is not specified in the warrant and that the DGO suspects on reasonable grounds is —
 - (a) dangerous goods; or
 - (b) evidence of a contravention of this Act,the DGO may seize the thing if the DGO reasonably suspects it is necessary to do so for one or more of these purposes —
 - (c) to prevent the thing from being concealed, damaged, destroyed, interfered with or lost;
 - (d) to preserve the thing's evidentiary value;
 - (e) to submit the thing to an examination or to testing;
 - (f) to prevent the thing being used in the commission of an offence against this Act.

Division 4 — Audits of dangerous goods sites

46. Audit may be directed by Chief Officer

- (1) In this section —
 - “approved auditor”**, in relation to an audit, means a person approved by the Chief Officer under subsection (5);
 - “audit”** includes an investigation.

- (2) The Chief Officer may direct a person who is involved in the control or management of a dangerous goods site to engage and pay for an approved auditor to conduct an audit into and report to the Chief Officer about all or any of the following —
- (a) the risk to people, property or the environment from dangerous goods on the site;
 - (b) the safety of the whole or a part of the site, or of any building, structure, plant, equipment or thing on the site, or of any activities on the site;
 - (c) the adequacy and effectiveness of any safety management document relating to the site;
 - (d) a dangerous goods incident or a dangerous situation on the site.
- (3) The direction must —
- (a) state the reasons for and the objectives of the audit;
 - (b) specify the matters in subsection (2) to be audited; and
 - (c) set a date on or before which the report is to be given to the Chief Officer.
- (4) The Chief Officer may at any time amend or cancel a direction given under this section.
- (5) For the purposes of this section the Chief Officer may approve a person as an auditor in relation to an audit if the Chief Officer is satisfied the person —
- (a) has qualifications and experience that are appropriate to the audit;
 - (b) is independent of the site where the audit is to be conducted and of any business conducted there; and
 - (c) is able to conduct the audit and to prepare a report in accordance with the direction given as to the audit.

Division 5 — Remediating dangerous and other situations

47. Remediation notice

- (1) A DGO may give a person a remediation notice if the DGO suspects on reasonable grounds one or more of the following matters —
 - (a) that the person has contravened this Act in circumstances that make it likely that the contravention will be repeated;
 - (b) that the person is contravening, or is about to contravene, this Act;
 - (c) that a dangerous goods incident has occurred at a place or in or on a vehicle and that the person is involved in the control or management of the place or vehicle;
 - (d) that there is or is about to be at a place, or in or on a vehicle, a dangerous situation and that the person is involved in the control or management of the place or vehicle;
 - (e) that the whole or a part of the site, or of any building, structure, plant, equipment or thing on the site, or that any activity on the site, is unsafe;
 - (f) that the person is under a duty to prepare a safety management document and that the document has not been prepared properly, or is inadequate or ineffective.
- (2) A remediation notice must —
 - (a) be in writing;
 - (b) identify the person to whom it is directed, whether by name or a sufficient description;
 - (c) state which of the matters in subsection (1) are suspected;
 - (d) if a contravention of a provision of this Act is suspected, specify the provision concerned and the grounds for the suspicion;

- (e) specify the measures that the person must take;
 - (f) if the measures relate to a place or vehicle, specify the place or vehicle;
 - (g) if the measures relate to specific dangerous goods, plant or equipment, specify the goods, plant or equipment;
 - (h) specify a date that is at least 7 days after the date of the notice on or before which the measures are to be taken, unless the Chief Officer has given an approval under section 48(1); and
 - (i) explain the effect of sections 49 and 54.
- (3) The measures specified in a remediation notice must be ones that are reasonably necessary to —
 - (a) remedy the matter suspicion of which has given rise to the notice; and
 - (b) ensure the safe storage, handling or transport of the dangerous goods involved.
- (4) Without limiting subsection (3), the measures may include —
 - (a) requiring a person who has the control or management of a place —
 - (i) to stop storing or handling all or specific dangerous goods at the place;
 - (ii) to stop the operation of all or specific plant or equipment at the place;
 - (iii) to isolate the place or a part of the place;
 - (b) requiring a person who has the control or management of a vehicle to stop using it to transport all or specific dangerous goods,

for a specified period or until a specified event.
- (5) In the case of an unoccupied place or unattended vehicle, a remediation notice may be given to the person concerned by

fixing it securely to the place or vehicle in a conspicuous position.

- (6) A DGO may at any time cancel or amend a remediation notice.
- (7) A person who has been given a remediation notice must comply with it.

Penalty:

- (a) for an individual, \$10 000;
- (b) for a body corporate, \$50 000.

48. Chief Officer may approve earlier or immediate compliance with remediation notice

- (1) If the Chief Officer is of the opinion that the measures specified in a remediation notice should be taken —
 - (a) on or before a date that is less than 7 days after the date of the notice; or
 - (b) immediately,

in order to avert a dangerous situation, the Chief Officer may approve of the notice being issued or amended so as to require the measures to be taken —

- (c) on or before a date that is less than 7 days after the date of the notice; or
 - (d) immediately.
- (2) The Chief Officer must give the person to whom a remediation notice is given written reasons for any opinion formed under subsection (1).
- (3) If the Chief Officer approves of a notice being issued or amended so as to require the measures to be taken immediately, a DGO must remain at any place where the measures are to be taken until the person to whom the notice is directed has been given the notice or amended notice.

49. Contravention of remediation notice, action by DGO

- (1) If a remediation notice has been given to a person and the person has not complied with it, a DGO may take the measures specified in the notice.
- (2) For the purposes of subsection (1), a DGO may —
 - (a) enter and take possession of a place or vehicle;
 - (b) seize, move or destroy or otherwise dispose of any dangerous goods; and
 - (c) take any other action that is reasonably necessary and incidental.
- (3) A DGO's powers under this section are in addition to the other powers of a DGO under this Act.
- (4) The Crown may recover from a person who did not comply with a remediation notice, as a debt in a court of competent jurisdiction, the reasonable costs and expenses incurred by a DGO, or any person acting at the request of a DGO, in exercising the powers under this section.

50. Dangerous situation, emergency remedial measures

- (1) If a DGO suspects on reasonable grounds —
 - (a) that a dangerous situation exists; and
 - (b) that immediate measures are needed in order to identify, assess, reduce, eliminate or avert the risk to people, property or the environment from the dangerous goods involved in the situation,the DGO may take the measures.
- (2) For the purposes of subsection (1), a DGO may —
 - (a) enter and take possession of a place or vehicle;
 - (b) seize, move or destroy or otherwise dispose of any dangerous goods;

- (c) cordon off or prevent people other than those authorised by a DGO from entering an area where the dangerous situation exists;
 - (d) direct people to leave or not to enter an area where the dangerous situation exists;
 - (e) take any other action that is necessary and incidental.
- (3) A DGO's powers under this section are in addition to the other powers of a DGO under this Act and may be exercised whether or not a remediation notice has been given to any person.

51. Recovering costs of government action

- (1) In this section —
“government agency” means any body, whether incorporated or not, a DGO or any other holder of an office, post or position, being a body or office, post or position that is established or continued under a written law for a public purpose.
- (2) If a government agency takes measures, whether under section 50 or otherwise, to deal with a dangerous goods incident or a dangerous situation, the Crown or the agency may recover, as a debt in a court of competent jurisdiction, such of the costs and expenses incurred in taking the measures as were reasonably incurred.
- (3) The costs and expenses are recoverable jointly or severally from —
 - (a) the person who was the owner of the dangerous goods at the time of the dangerous goods incident or dangerous situation;
 - (b) the person who was in control or possession of the dangerous goods at the time of the incident or situation;
 - (c) the person who caused the incident or situation;

- (d) if the incident occurred or the situation arose while the dangerous goods were being transported, the person responsible, otherwise than as an employee, agent or subcontractor of another person, for the transport of the dangerous goods.
- (4) The costs and expenses are not recoverable from a person who proves that —
 - (a) the dangerous goods incident or dangerous situation was due to the act or default of another person;
 - (b) the person took all reasonably practicable measures to prevent the incident or situation; and
 - (c) the incident or situation was not attributable to an employee, agent or subcontractor of the person.
- (5) The recovery of costs and expenses incurred by one government agency as a result of a dangerous goods incident or dangerous situation does not preclude the recovery of costs and expenses incurred by another government agency as a result of the incident or situation.
- (6) This section does not affect a right to recover costs or expenses that exists apart from this section, but a government agency 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 chief executive officer of a government agency specifying details of the costs and expenses incurred by the agency as a result of a dangerous goods incident or dangerous situation is, in the absence of evidence to the contrary, proof of the details specified.

Division 6 — General

52. Directions, general matters

- (1) A direction may be given under this Part orally or in writing.
- (2) A direction given orally must be confirmed in writing within 2 working days after it is given, unless within that period it is complied with or cancelled.
- (3) Failure to comply with subsection (2) does not invalidate the direction.

53. Ancillary powers and duties

- (1) This section applies in relation to the exercise of a power under this Part.
- (2) A DGO may record the exercise of a power, including by making an audiovisual recording.
- (3) A DGO exercising the power may authorise as many other people to assist in executing the power as are reasonably necessary in the circumstances.
- (4) In exercising the power a DGO, and any person assisting a DGO, may use any force that is reasonably necessary in the circumstances.
- (5) A DGO who seizes any thing may take reasonable measures to prevent the thing being concealed, lost, damaged or destroyed.
- (6) If it is not practicable to move any thing that has been seized, a DGO may do whatever is reasonably necessary to secure it where it is situated and to notify people that it is under seizure.
- (7) A person must not, without a DGO's approval, interfere or deal with any thing that the person knows, or ought reasonably to know, has been seized by a DGO.

Penalty: \$5 000.

- (8) After entering a place or vehicle, a DGO must take reasonable steps to return it to the condition it was in immediately before the entry.

54. Review by Chief Officer

- (1) In this section —
 “direction” means a direction given by a DGO under this Part other than section 39;
 “notice” means a remediation notice given under section 47.
- (2) The Chief Officer on his or her own initiative may inquire into the circumstances relating to a direction or notice and review it, and after doing so, may amend, suspend, cancel or confirm it.
- (3) A person who has been given a direction or a notice may request the Chief Officer to review it.
- (4) Such a request must be in writing and must be made before the time for complying with the direction or notice expires or before such later date as the Chief Officer may allow.
- (5) On receiving such a request the Chief Officer may suspend the direction or notice pending making a decision under subsection (6).
- (6) On receiving such a request the Chief Officer must inquire into the circumstances relating to the direction or notice and review it, and after doing so, may amend, suspend, cancel or confirm it.
- (7) If the Chief Officer amends a direction or notice it has effect accordingly.
- (8) If the Chief Officer reviews a direction or notice at the request of a person, the Chief Officer must give the person written advice of the decision on the review and the reasons for the decision.

55. Offences

- (1) A person who does not comply with a direction given by the Chief Officer or a DGO under this Part commits an offence.
- (2) A person who obstructs a DGO or a person assisting a DGO in the exercise of a power under this Act commits an offence.
- (3) A person who, having been directed by a DGO under this Part to answer a question or to give a DGO a record, gives a DGO information that the person knows is false or misleading in a material particular commits an offence.
- (4) It is a defence to a charge under this section to prove that the person charged had a reasonable excuse.
- (5) The penalty for an offence under this section is —
 - (a) for an individual, \$10 000;
 - (b) for a body corporate, \$50 000.

Part 7 — Legal proceedings

56. Infringement notices

- (1) In this section —
 “authorised person” means a person appointed under subsection (10) to be an authorised person for the purposes of the subsection in which the term is used.
- (2) A DGO who has reason to believe that a person has committed a prescribed offence against the regulations may, within 60 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice is to be in the form prescribed by regulations and is to —
 - (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the modified penalty prescribed by regulations at the time the alleged offence is believed to have been committed.
- (5) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

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- (6) If the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the form prescribed by regulations stating that the infringement notice has been withdrawn.
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount of the modified penalty is to be refunded.
- (9) Payment of a modified penalty is not to be regarded as an admission for the purpose of any proceedings, whether civil or criminal.
- (10) The Chief Officer may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsections (3), (5) or (7), but a DGO who gives an infringement notice is not eligible to be an authorised officer for the purposes of any of those subsections in relation to that notice.
- (11) Regulations made for the purposes of this section must not prescribe an offence for the purposes of this section if the offence is punishable by imprisonment.

57. Prosecutions, who may commence

A prosecution for an offence against this Act may only be commenced by the Chief Officer or a person authorised to do so by the Chief Officer.

58. Evidentiary matters

- (1) In proceedings for an offence against this Act, an allegation in the complaint of any of the following matters is, in the absence of evidence to the contrary, taken to be proved —
 - (a) that the complainant is authorised to commence the prosecution;
 - (b) that at a specified time a specified substance or article was dangerous goods;
 - (c) that at a specified time a specified substance or article was dangerous goods of a specified classification;
 - (d) that at a specified time a person was or was not the holder of a licence, permit or accreditation under this Act;
 - (e) that at a specified time particular dangerous goods were not authorised under this Act;
 - (f) that at a specified time a place was not licensed or registered under this Act;
 - (g) that at a specified time a thing, or particular plant or equipment, was not authorised under this Act;
 - (h) that at a specified time a vehicle was not licensed under this Act;
 - (i) that at a specified time a person had not been granted an exemption under this Act;
 - (j) that at a specified time a person held a specified office.
- (2) In proceedings for an offence against this Act a notice, licence, permit, registration, approval or exemption, issued under this Act, including the conditions applying to any such thing, may be proved by tendering a copy of it certified by the Chief Officer to be a true copy of the original.
- (3) In proceedings for an offence against this Act, production of a copy of —
 - (a) a code that has been adopted by the regulations; or

- (b) a code of practice that has been approved under section 20,

certified by the Chief Officer as a true copy as at any date or during any period is proof of the contents of the code of practice or code as at that date or during that period.

- (4) A copy of a record obtained by a DGO under section 38(2) is admissible in evidence if it is certified by the DGO as having been obtained under that section.
- (5) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by the Minister, the Chief Officer or a DGO was signed by a person who at the time was the Minister, the Chief Officer or a DGO, as the case may be.
- (6) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a delegate of the Minister or the Chief Officer was signed by a person who at the time was such a delegate and was authorised to sign it.
- (7) This section is in addition to and does not affect the operation of the *Evidence Act 1906*.

59. Presumptions as to the contents of containers etc.

- (1) In this section —
“**label**”, in relation to a container or vehicle, means any label, marking, placard or other information on the container or vehicle.
- (2) If the label on a container or vehicle states or indicates that it contains dangerous goods then, in proceedings for an offence against this Act, it is to be taken, in the absence of evidence to the contrary —
 - (a) that the container or vehicle contains dangerous goods of the description and in the quantity stated on the label; and

- (b) that all other information on the label, or any other label on the container or vehicle, about the dangerous goods is true.

60. Corporations or employers, conduct on behalf of

- (1) In this section —

“director”, of a body corporate, includes a constituent member of a body corporate incorporated for a public purpose by a written law or a law of the Commonwealth, another State or a 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.
- (2) This section applies to and in relation to proceedings for an offence against this Act.
 - (3) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the relevant state of mind.
 - (4) 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.

- (5) If 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.
- (6) 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 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.

61. Body corporate’s officers, liability of

- (1) In this section —

“**officer**”, in relation to a body corporate, has the same meaning as in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body unless the employee was concerned in the management of the body.
- (2) If a body corporate is charged with an offence under this Act, every person who was an officer of the body at the time of the alleged offence may also be charged with the offence.
- (3) If a body corporate and an officer are charged as permitted by subsection (2) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).
- (4) If a body corporate commits an offence under this Act, then, although the body is not charged with the offence, every person

who was an officer of the body at the time the offence was committed may be charged with the offence.

- (5) If an officer is charged as permitted by subsection (4) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).
- (6) If under this section an officer is charged with an offence it is a defence to prove —
 - (a) that the offence was committed without the officer's consent or connivance; and
 - (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

62. Defence of complying with code of practice

- (1) In this section —

“approved code of practice” means a code of practice that has been approved by the Minister under section 20.
- (2) In proceedings for an offence against this Act, it is a defence to prove that the defendant acted in accordance with an approved code of practice that specified a means of complying with the provision of this Act that the defendant is alleged to have contravened.

63. Continuing offences, penalties for

For each separate and further offence committed by a person under section 71 of the *Interpretation Act 1984* the penalty is —

- (a) for an individual, \$500;
- (b) for a body corporate, \$2 500.

64. Forfeiture

- (1) If —
- (a) a court convicts a person of an offence against this Act; and
 - (b) either the person owns the dangerous goods in relation to which the offence was committed and their container (if any) or the owner of them cannot be found,
- the court may order the dangerous goods and their container (if any) to be forfeited to the Crown.
- (2) An order made under subsection (1) forms part of the sentence imposed for the offence.
- (3) The Chief Officer may destroy, sell or otherwise dispose of dangerous goods and containers forfeited to the Crown, as he or she sees fit.
- (4) The Crown may recover from the person convicted, as a debt in a court of competent jurisdiction, the reasonable costs and expenses of the destruction, sale or other disposal of dangerous goods and containers forfeited to the Crown.
- (5) The net proceeds of any sale under this section are to be credited to the Consolidated Fund.

65. Prohibiting offender from involvement with dangerous goods

- (1) If a court convicts a person of an offence against this Act, the court, having regard to the matters set out in subsection (3), may make a prohibition order prohibiting the person for a period set by the court from all or any of the following —
- (a) possessing or having the control or management of dangerous goods;
 - (b) having the control or management of a place where dangerous goods are stored or handled;

- (c) having the control or management of a vehicle used to transport dangerous goods;
 - (d) engaging in any or any specified activity relating to the storage, handling or transport of dangerous goods.
- (2) A prohibition order may relate to dangerous goods generally or to specific dangerous goods set out in the order and may be absolute or conditional.
- (3) The court must have regard to these matters —
 - (a) any prior convictions of the person relating to dangerous goods, whether or not dangerous goods under this Act;
 - (b) the person's history of engaging in activities relating to the storage, handling or transport of dangerous goods;
 - (c) the circumstances surrounding the commission of the offence for which the person is being sentenced;
 - (d) any other matter the court thinks is relevant.
- (4) A prohibition order forms part of the sentence imposed for the offence.
- (5) A person who contravenes a prohibition order commits an offence.

Penalty:

 - (a) for an individual, \$50 000 or imprisonment for 2 years or both;
 - (b) for a body corporate, \$250 000.

66. Investigation costs, defendant may be ordered to pay

- (1) If a court convicts a person of an offence against this Act, the court, on an application by the complainant, may order the person to pay any reasonable costs or expenses that were incurred by the State —
 - (a) in exercising the powers in Part 6 Division 2;

- (b) in transporting, storing or destroying, or otherwise disposing of, substances, articles or other material; or
 - (c) in submitting any thing to an examination or to testing,
- in connection with investigating and prosecuting the offence.
- (2) An order made under subsection (1) does not form part of the sentence imposed for the offence.

67. Appeal against decisions under this Act

- (1) In this section —
“**appealable decision**” means —
 - (a) a decision made under Part 4 by the Chief Officer;
 - (b) a direction given under section 46(2) by the Chief Officer;
 - (c) a decision made under section 54 by the Chief Officer;
 - (d) a decision made under the regulations by the Chief Officer in relation to an application for, or in relation to, an authorisation, licence, registration, permit or other approval.
- (2) A person aggrieved by an appealable decision may appeal to a Local Court against the decision.
- (3) The appeal must be made within 21 days after the person was notified of the appealable decision and in accordance with rules of court.
- (4) On an appeal a Local Court may stay the appealable decision for any period and subject to any conditions the Court thinks fit, pending the Court’s decision on the appeal.
- (5) A Local Court may determine an appeal on the material that was before the Chief Officer or on such additional or fresh evidence, either oral or by affidavit, as the Court may allow.

- (6) On an appeal a Local Court may confirm, amend or cancel the appealable decision and make any other order that is necessary or desirable, including an order about costs.
- (7) If a Local Court amends an appealable decision, the decision has effect accordingly.

Part 8 — Miscellaneous

68. Protection from liability for volunteers etc.

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith and for no fee, charge or other reward, for the purpose of dealing with, helping to deal with, or attempting to deal with, a dangerous goods incident or a dangerous situation.
- (2) Subsection (1) does not apply to a person whose act or omission was wholly or partly the cause of the incident or situation.
- (3) Subsection (1) applies to a government agency (within the meaning given by section 51(1)) even though the agency requires payment for a service provided in connection with the situation or recovers its costs under section 51.
- (4) In the case of a DGO this section is subject to section 32.

69. Review of Act

- (1) As soon as practicable after the fifth anniversary of its commencement, the Minister must review the operation and effectiveness of this Act and prepare a report about the review.
- (2) As soon as practicable after preparing the report, the Minister must cause it to be laid before each House of Parliament.

70. Repeals and consequential amendments (Sch. 2)

Schedule 2 has effect.

Schedule 1 — Subjects for regulations

[s. 18(2)]

1. Dangerous goods generally

- (1) The classification of dangerous goods.
- (2) Methods for assigning dangerous goods to a class.
- (3) Empowering the Chief Officer to determine which substances or articles are —
 - (a) dangerous goods;
 - (b) dangerous goods of a particular class;
 - (c) dangerous goods that are too dangerous to be transported or too dangerous to be transported in bulk;
 - (d) incompatible with dangerous goods.
- (4) The analysis and testing of dangerous goods or substances or articles that may be dangerous goods.
- (5) Standards for the quality and composition of dangerous goods.
- (6) The information to be given to the Chief Officer about the composition or properties of dangerous goods that are proposed to be manufactured in or imported into the State.
- (7) Prohibiting or controlling the import, storage, handling or transport of dangerous goods.
- (8) Prohibiting or controlling the use of a place, vehicle, equipment or thing that is used in connection with the storage, handling or transport of dangerous goods.
- (9) The authorisation of dangerous goods.
- (10) The segregation of incompatible dangerous goods.
- (11) Requirements for the safe storage, handling or transport of dangerous goods.
- (12) Requiring the documentation of matters in relation to the safe storage, handling and transport of dangerous goods, including —

Schedule 1 Subjects for regulations

- (a) the identification of hazards;
 - (b) the assessment, minimisation and control of the risk to people, property or the environment from dangerous goods; and
 - (c) safe operating procedures.
- (13) Requiring written plans to deal with emergencies involving dangerous goods.
- (14) Specifying which of the documents required by the regulations are safety management documents for the purposes of this Act.
- (15) Requiring written reports of and about dangerous goods incidents and dangerous situations.
- (16) Requiring the theft or disappearance of dangerous goods to be reported to the Chief Officer.
- (17) The duties of persons engaged in activities relating to the import, storage, handling or transport of dangerous goods.

2. Persons involved with dangerous goods

- (1) The training and qualifications required of persons engaged in activities relating to the storage, handling or transport of dangerous goods, including activities relating to plant or equipment that is used in connection with dangerous goods.
- (2) The approval of training courses and of qualifications for the purposes of this Act.
- (3) Voluntary accreditation schemes, including privileges to be accorded and sanctions to be imposed under the schemes and suspension and cancellation of such schemes.
- (4) Requiring persons engaged in activities relating to the storage, handling or transport of dangerous goods to be accredited.

3. Possession, sale and supply of dangerous goods

- (1) Prohibiting or controlling the possession, sale or supply of dangerous goods.

- (2) The maximum quantities of dangerous goods that may be possessed by, or sold or supplied to, a person at any one time.
- (3) Prohibiting or controlling the supply of dangerous goods to persons under the age of 18 years or persons who are unable by reason of a mental disability (which term includes intellectual disability, a psychiatric condition, an acquired brain injury and dementia) to understand the risk from the goods.

4. Dangerous goods sites

- (1) The classification of dangerous goods sites.
- (2) Methods for assigning dangerous goods sites to a class.
- (3) Empowering the Chief Officer to determine the classification of dangerous goods sites.
- (4) Prohibiting or controlling the use of dangerous goods sites and activities on them.
- (5) The registration and licensing of dangerous goods sites.
- (6) The design, construction and use of structures, facilities and equipment on dangerous goods sites.
- (7) Standards for the quality of structures, facilities and equipment on dangerous goods sites.
- (8) The information to be given to the Chief Officer about the construction and use of any thing on a dangerous goods site, including about proposals for such matters.
- (9) The security, safety, and safe operation of dangerous goods sites.
- (10) Requiring signs to be displayed at dangerous goods sites.
- (11) The form and content of the signs.
- (12) The information to be made available to the public about hazards, and the risk to people, property or the environment from dangerous goods, on dangerous goods sites.
- (13) The duties of persons having the control or management of dangerous goods sites and of persons on such sites.

Schedule 1 Subjects for regulations

- (14) Insurance and indemnity requirements in respect of dangerous goods sites.

5. Pipelines carrying dangerous goods

- (1) In this clause —

“dangerous goods pipeline” means a pipeline that is or is intended to be used to carry dangerous goods across one or more cadastral boundaries.

- (2) The registration of dangerous goods pipelines.
- (3) The design, construction and use of dangerous goods pipelines.
- (4) Standards for the quality of dangerous goods pipelines.
- (5) The information to be given to the Chief Officer about the construction and use of dangerous goods pipelines, including about proposals for such matters.
- (6) The security, safety and safe operation of dangerous goods pipelines.
- (7) Requiring dangerous goods pipelines to be labelled, marked or signposted.
- (8) The form and content of the labels, marks and signs.
- (9) The duties of persons engaged in activities relating to the construction and use of dangerous goods pipelines.
- (10) Insurance and indemnity requirements in respect of dangerous goods pipelines.

6. Packaging and labelling of dangerous goods

- (1) The design, manufacture, construction and use of containers used to contain dangerous goods.
- (2) Standards for the quality of containers used to contain dangerous goods.
- (3) Empowering the Chief Officer to approve containers used to contain dangerous goods.

- (4) Requiring containers of dangerous goods to be labelled, marked or placarded.
- (5) The form and content of the labels, marks and placards.
- (6) The packing of dangerous goods and the packaging used.
- (7) The information to be displayed on dangerous goods.

7. Transport of dangerous goods

- (1) Prohibiting the transport of dangerous goods that are too dangerous to be transported or dangerous goods that are too dangerous to be transported in bulk.
- (2) The design, manufacture, construction and use of containers, equipment, vehicles and other items used in relation to the transport of dangerous goods.
- (3) Standards for the quality of containers, equipment, vehicles and other items used in relation to the transport of dangerous goods.
- (4) Empowering the Chief Officer to approve —
 - (a) containers, equipment and other items used in relation to the transport of dangerous goods;
 - (b) facilities for and methods of testing containers, equipment and other items used, and processes carried out, in relation to the transport of dangerous goods.
- (5) Requiring containers and vehicles used to transport dangerous goods to be labelled, marked or placarded.
- (6) The form and content of the labels, marks and placards.
- (7) The loading of dangerous goods for, and the unloading of dangerous goods after, their transport.
- (8) The licensing of vehicles used to transport dangerous goods.
- (9) The licensing of drivers of vehicles used to transport dangerous goods.

Schedule 1 Subjects for regulations

- (10) The records to be created and kept in respect of dangerous goods being transported and empowering the Chief Officer to approve alternative records.
- (11) Procedures for the transport of dangerous goods, including but not limited to —
 - (a) the quantities and circumstances in which dangerous goods, or particular classes of dangerous goods, may be transported;
 - (b) prohibiting or controlling the transport of different classes of dangerous goods together;
 - (c) the information about dangerous goods to be carried with them.
- (12) The security, safety and safe operation of vehicles used to transport dangerous goods.
- (13) Empowering the Chief Officer to determine the routes along which, the areas in which, and the periods during which, dangerous goods may or may not be transported.
- (14) The duties of persons engaged in activities relating to the transport of dangerous goods and passengers carrying dangerous goods.
- (15) Insurance and indemnity requirements in respect of the transport of dangerous goods.

8. Licences, registrations, permits and exemptions

- (1) In this clause —
 “approval” includes a licence, registration and permit.
- (2) Applications for approvals and exemptions.
- (3) The transfer of approvals and exemptions.
- (4) The training, qualifications and experience required of applicants for licences.
- (5) Requiring applicants for licences to sit tests to establish their competence and to submit to medical examinations.
- (6) Granting and amending approvals with or without conditions.

-
- (7) The conditions that may be imposed when granting or amending an approval including conditions that require the holder of the approval —
- (a) to be insured against any loss or damage, or to provide security for the remediation of any damage, injury or harm, that may result from the holder's acts or omissions in relation to dangerous goods; or
 - (b) to provide security for —
 - (i) the holder's compliance with any remediation notice that might be issued to the holder under section 47; or
 - (ii) any costs that might be recoverable from the holder under section 50.
- (8) The period for which approvals may be granted; not exceeding 5 years in the case of licences and registrations and one year in the case of permits.
- (9) Refusing, suspending and cancelling approvals, including empowering the Chief Officer to refuse, suspend or cancel approvals for good reason.
- (10) Reviewing decisions refusing, granting, amending, suspending or cancelling approvals or imposing conditions.
- (11) Requiring holders of approvals and exemptions to carry and produce them.

9. Fees and charges

- (1) The fees to be paid when applying for and on the issue, granting, variation, transfer or renewal of approvals, licences, registrations, permits and exemptions under this Act.
- (2) The fees to be paid for examinations or tests conducted on persons applying for licences or permits under this Act.
- (3) The fees and charges to be paid for official inspections, assessments, examinations, tests and analyses of places, vehicles, plant, equipment, articles, substances or records, that are made under or for the purposes of this Act.

Schedule 1 **Subjects for regulations**

- (4) The fees and charges to be paid for the use of any land or facility for storing or handling dangerous goods that is owned by the Crown, an agency of the Crown, the State, or a government agency within the meaning of section 51(1), and used for public purposes.
- (5) Refunds of fees and charges.

10. Miscellaneous

- (1) The authorisation of plant, equipment or things used in connection with the storage, handling or transport of dangerous goods.
- (2) Requiring records to be kept by persons engaged, directly or indirectly, in importing, storing, handling or transporting dangerous goods.
- (3) Requiring copies of reports, plans and other records made under the regulations to be given to a DGO or the Chief Officer.
- (4) The approval of persons, other than DGOs, to conduct inspections, assessments and examinations of, and tests on, places, vehicles, plant, equipment, articles, substances or people for the purposes of this Act.
- (5) The approval of laboratories to conduct tests on samples taken under this Act or on dangerous goods.
- (6) Forms to be used for the purposes of this Act and empowering the Chief Officer to approve such forms.
- (7) Transitional and savings provisions in relation to matters such as licences, permits, registrations and exemptions granted under the written laws that are repealed by this Act.

Schedule 2 — Repeals and consequential amendments

[s. 70]

Division 1 — *Dangerous Goods (Transport) Act 1998* repealed

1. *Dangerous Goods (Transport) Act 1998* repealed

- (1) The *Dangerous Goods (Transport) Act 1998* is repealed.
- (2) The following regulations, made under the *Dangerous Goods (Transport) Act 1998*, are repealed —
 - (a) *Dangerous Goods (Transport) (Dangerous Goods in Ports) Regulations 2001*;
 - (b) *Dangerous Goods (Transport) (Explosives by Road and Rail) Regulations 1999*;
 - (c) *Dangerous Goods (Transport) (General) Regulations 1999*;
 - (d) *Dangerous Goods (Transport) (Road and Rail) Regulations 1999*.

Division 2 — *Explosives and Dangerous Goods Act 1961* repealed

2. *Explosives and Dangerous Goods Act 1961* repealed

- (1) The *Explosives and Dangerous Goods Act 1961* is repealed.
- (2) The following regulations, made under the *Explosives and Dangerous Goods Act 1961*, are repealed —
 - (a) *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992*;
 - (b) *Explosives and Dangerous Goods (Explosives) Regulations 1963*;
 - (c) *Explosives and Dangerous Goods (Search Warrant) Regulations 1979*.

3. Consequential amendments

- (1) The *Consumer Affairs Act 1971** is amended in the Schedule by deleting “*Explosives and Dangerous Goods Act 1961*” and inserting instead —

“ *Dangerous Goods Safety Act 2004* ”.

[* *Reprinted as at 25 March 1999.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 74.]

- (2) The *Mines Safety and Inspection Act 1994** is amended as follows:
- (a) in section 4 by deleting the definition of “blasting agent”;
 - (b) in section 4 by deleting the definition of “explosives” and inserting instead —

“

“**explosives**” means a substance or article used or manufactured with the purpose of producing a practical effect by explosion or a pyrotechnic effect;

”;

- (c) in section 76(4)(c) by deleting “or blasting agents”;
- (d) in section 104(1)(d)(i) by deleting “, blasting agents,”;
- (e) in section 104(1)(d)(ii) by deleting “, blasting agents”.

[* *Reprinted as at 17 March 2000.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 243 and Act No. 16 of 2002.]

- (3) The *Petroleum Pipelines Act 1969** is amended in section 32 by deleting “*Explosives and Dangerous Goods Act 1961*” and inserting instead —

“ *Dangerous Goods Safety Act 2004* ”.

[* *Reprinted as at 12 May 2000.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 281.]

- (4) The *Port Authorities Act 1999** is amended in Schedule 7 item 7 by deleting “explosives and dangerous goods as respectively defined by the *Explosives and Dangerous Goods Act 1961*” and inserting instead —

“

dangerous goods as defined by the *Dangerous Goods Safety Act 2004*

”.

[* *Act No. 22 of 1999.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 295 and Act No. 20 of 2002.]

- (5) The *Western Australian Marine Act 1982** is amended as follows:

- (a) in section 3(1) in the definition of “dangerous goods” by deleting “*Explosives and Dangerous Goods Act 1961*” and inserting instead —

“ *Dangerous Goods Safety Act 2004* ”;

- (b) in section 3(1) by deleting the definition of “explosives” and inserting instead —

“

“explosives” means a substance or article used or manufactured with the purpose of producing a practical effect by explosion or a pyrotechnic effect;

”;

- (c) in section 91(1)(a) by deleting “*Explosives and Dangerous Goods Act 1961*” and inserting instead —

“ *Dangerous Goods Safety Act 2004* ”.

[* *Reprinted as at 28 January 2000.*]

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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)
aggravated circumstances	17(1)
appealable decision	67(1)
application	43(1)
approval	Sch. 1, cl. 8(1)
approved	3(1)
approved auditor	46(1)
approved code of practice	62(1)
audit	46(1)
authorised person	56(1)
Chief Officer	3(1)
code	19(1)
container	3(1)
dangerous goods	3(1)
dangerous goods incident	3(1)
dangerous goods officer	3(1)
dangerous goods pipeline	Sch. 1, cl. 5(1)
dangerous goods site	3(1)
dangerous situation	3(1)
DGO	3(2)
direction	54(1)
director	60(1)
driver	3(1)
dwelling	33
employer	60(6)
enforcement purposes	33
engaging in conduct	60(1)
entry warrant	33
exemption	3(1), 23(1)
give	3(1)
government agency	51(1)
handle	3(1)
harm	5(1)
incident	3(1)
JP	41
label	59(1)
licence	11(1)
mobile home	33
national scheme	23(1)
notice	54(1)

Defined Terms

officer.....	61(1)
official.....	32(1)
place.....	33
record.....	3(1)
relevant record	38(1)
remote communication.....	3(1)
reportable situation	9(1)
risk	3(1)
safety management document.....	3(1)
specified.....	3(1)
state of mind.....	60(1)
subsidiary legislation	19(1)
substance.....	3(1)
transport	3(1)
unauthorised person	40(1)
vehicle.....	3(1)