

(Reprint No. 5)

SOUTH AUSTRALIA

DANGEROUS SUBSTANCES ACT 1979

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 September 1998.

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DANGEROUS SUBSTANCES ACT 1979

being

Dangerous Substances Act 1979 No. 47 of 1979
[Assented to 22 March 1979]¹

as amended by

Dangerous Substances Act Amendment Act 1980 No. 7 of 1980 [Assented to 3 April 1980]²

Dangerous Substances Act Amendment Act 1985 No. 33 of 1985 [Assented to 11 April 1985]

Dangerous Substances Act Amendment Act 1987 No. 17 of 1987 [Assented to 9 April 1987]

Dangerous Substances Act Amendment Act 1988 No. 98 of 1988 [Assented to 15 December 1988]³

Dangerous Substances (Cost Recovery) Amendment Act 1991 No. 47 of 1991 [Assented to 21 November 1991]

Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]⁴

Dangerous Substances (Equipment and Permits) Amendment Act 1992 No. 81 of 1992 [Assented to 3 December 1992]⁵

Dangerous Substances (Transport of Dangerous Goods) Amendment Act 1998 No. 27 of 1998 [Assented to 16 April 1998]⁶

¹ Came into operation (except ss. 4, 14, 17-20) 1 July 1981; remainder of Act came into operation 1 October 1981: *Gaz.* 4 June 1981, p. 1638.

² Came into operation 1 July 1981: *Gaz.* 4 June 1981, p. 1638.

³ Came into operation 1 January 1989: *Gaz.* 22 December 1988, p. 2098.

⁴ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

⁵ Came into operation 1 June 1993: *Gaz.* 13 May 1993, p. 1630.

⁶ **Came into operation 1 September 1998: *Gaz.* 27 August 1998, p. 632.**

NOTE:

- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

An Act to regulate the keeping, handling, transporting, conveyance, use and disposal, and the quality, of dangerous substances; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Dangerous Substances Act 1979*.

Interpretation

2. (1) In this Act, unless the contrary intention appears—

"**authorised officer**" means a person appointed as an authorised officer under Part 2;

"**Competent Authority**" means a person, officer or authority appointed as a Competent Authority under Part 2;

"**conveyance**" in relation to a dangerous substance means movement of the dangerous substance whether by a craft, pipeline or other means, other than by a vehicle, and "**convey**" has a corresponding meaning;

"**craft**" means—

- (a) an aircraft or vessel; or
- (b) any other craft brought within the ambit of this definition by the regulations;

"**dangerous goods**" means—

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

"**dangerous situation**" means a situation that is creating or likely to create—

- (a) imminent risk to the health or safety of a person, or the safety of a person's property; or
- (b) imminent risk of environmental harm;

"**dangerous substance**" means—

- (a) dangerous goods; or
- (b) any other substance or article that is toxic, corrosive, flammable or otherwise dangerous and declared by the regulations to be a dangerous substance;

"**the Government Analyst**" means the person appointed by the Governor to be the Government Analyst or any person for the time being acting in that office;

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"**plant**" includes—

- (a) any machine, engine, equipment, container or device;
- (b) any component, fitting, pipe or accessory used in or in connection with any machine, engine, equipment, container or device;

"**premises**" means any land or any building or structure whether fixed or moveable;

"**substance**" means a solid, liquid or gas or any mixture of solids, liquids or gases;

"**transport**" in relation to dangerous goods encompasses any form of 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; and
- (b) the marking of packages and unit loads containing dangerous goods, and the placarding of containers and vehicles in which dangerous goods are transported; and
- (c) other matters incidental to their transport;

"**unit load**" has the meaning assigned by regulations under this Act;

"**vehicle**" means a vehicle that is used or capable of being used to transport any substance or article on land and includes—

- (a) a trailer or caravan; and
- (b) a locomotive, carriage, wagon or other vehicle that operates on a railway track; and
- (c) anything attached to a vehicle,

but does not include a vehicle excluded from the ambit of this definition by the regulations.

(2) The circumstances where a person may be involved in the transport of dangerous goods include—

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

- (g) by providing emergency information in relation to the transport of dangerous goods; and
- (h) by driving a vehicle carrying or transporting dangerous goods; and
- (i) by being the consignee of dangerous goods that are to be transported; and
- (j) by being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity referred to above.

(3) The regulations may provide that the *Acts Interpretation Act 1901* of the Commonwealth applies to the interpretation of a regulation or regulations, or a regulation, code, standard, rule or other document applied or adopted by the regulations, subject to any modification or exclusion prescribed by the regulations (and if a regulation is made under this subsection, then the *Acts Interpretation Act 1915* does not apply to the interpretation of the relevant regulation, code, standard, rule or other document).

Act binds Crown

3. This Act binds the Crown in right of the State and also, to the extent declared by the regulations (and so far as the legislative power of the State extends) the Crown in all its other capacities.

Non-derogation

4. (1) The provisions of this Act are in addition to and do not derogate from the provisions of another Act.

- (2) The provisions of this Act do not limit or affect any civil remedy at law or in equity.

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**PART 2
ADMINISTRATION**

Appointment of Competent Authorities

5. (1) The Minister may, by notice in the *Gazette*—

- (a) appoint a person, officer or authority as a Competent Authority under this Act;
- (b) revoke an earlier appointment under this section.

(2) The appointment of an officer as a Competent Authority extends to a person who may be acting in the position of that officer while the officer is absent from the duties of office.

(3) A Competent Authority has all the powers of an authorised officer under this Act.

Delegation

6. (1) The Minister or a Competent Authority may delegate a power or function vested in or conferred on the Minister or Competent Authority (as the case may be) under this Act—

- (a) to a particular person; or
- (b) to the person for the time being occupying a particular office or position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act in a matter; and
- (c) is revocable at will by the delegator.

(4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister or a Competent Authority, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

Appointment of authorised officers

7. (1) The Minister may appoint persons, or classes of persons, to be authorised officers for the purposes of this Act.

(2) An appointment under subsection (1) must be notified in the *Gazette*.

(3) An appointment may be made subject to conditions specified—

- (a) in the instrument of appointment; or
- (b) in the *Gazette*.

(4) The Minister may, at any time, revoke an appointment or vary, revoke or add a condition of appointment.

(5) All members of the police force are authorised officers for the purposes of this Act.

Identification cards

8. (1) An authorised officer, other than a member of the police force, must be issued with an identification card that contains the prescribed details.

(2) An authorised officer who is not a member of the police force must carry his or her card while carrying out duties under this Act.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act—

- (a) in the case of an authorised officer who is a member of the police force—produce his or her police identification card;
- (b) in the case of an authorised officer who is not a member of the police force—produce his or her identification card under this section,

for inspection by the person.

(4) A person who ceases to be an authorised officer (other than as a member of the police force) must immediately return his or her identification card to a Competent Authority.

Secrecy

9. A person who is or has been engaged in an office or position connected with the administration of this Act must not disclose information obtained by virtue of that office or position except—

- (a) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (b) in connection with the administration, operation or enforcement of this or another Act (including an Act in force in another State or a Territory that corresponds to this Act); or
- (c) for the purpose of any legal proceedings arising out of the administration, operation or enforcement of this or another Act (including an Act in force in another State or a Territory that corresponds to this Act); or
- (d) in accordance with the regulations or with guidelines approved by the Minister.

Maximum penalty: \$10 000.

Person acting without authority

10. A person must not falsely represent, by words or conduct, that the person is engaged in or associated with the administration of this Act.

Maximum penalty: \$10 000.

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**PART 3
DANGEROUS SUBSTANCES**

DIVISION 1—GENERAL

General duty

11. A person must, in keeping, handling, conveying, using or disposing of a dangerous substance, or in transporting dangerous goods, take such precautions and exercise such care as is reasonable in the circumstances in order to—

- (a) avoid endangering the health or safety of any person (including himself or herself), or the safety of property; and
- (b) prevent the risk of environmental harm.

Maximum penalty: (a) Unless paragraph (b) applies—

- (i) in the case of a body corporate—\$250 000;
- (ii) in any other case—\$50 000 or imprisonment for 2 years, or both;

(b) In a case involving an offence that results in death or serious injury to a person—

- (i) in the case of a body corporate—\$500 000;
- (ii) in any other case—\$100 000 or imprisonment for 4 years or both.

Duty in relation to plant

12. (1) This section applies to any plant that is used, or that is reasonably expected to be used, in connection with any dangerous substance.

(2) A person who is in charge of any plant to which this section applies must—

- (a) take such precautions and exercise such care as is reasonable in the circumstances in order to ensure that the plant is in a safe condition whenever it is used in connection with a dangerous substance; and
- (b) ensure that the plant is in a safe condition when it is not in use.

(3) A person who uses any plant to which this section applies must—

- (a) ensure that the plant is in a safe condition; and
- (b) take such precautions and exercise such care as is reasonable in the circumstances in order to avoid endangering the health or safety of any other person, or the safety of any other person's property (whether during the use of that plant, or as a result of the use of that plant); and
- (c) ensure that the plant is left in a safe condition after use.

(4) A person who performs, or supervises the performance of, any work on, or in relation to, plant to which this section applies must take such precautions and exercise such care as is reasonable in the circumstances in order to avoid endangering the health or safety of any person (including himself or herself), or the safety of any other person's property (whether during the performance of that work, or as a result of the performance of that work).

(5) A person must not misuse or damage any plant to which this section applies.

(6) A person who contravenes or fails to comply with a provision of this section is guilty of an offence.

Maximum penalty: In the case of a body corporate—\$250 000.
 In any other case—\$50 000 or imprisonment for 2 years, or both.

DIVISION 2—LICENCES TO KEEP DANGEROUS SUBSTANCES

"Prescribed dangerous substance" for the purposes of this Division

13. In this Division "**prescribed dangerous substance**" means a dangerous substance for the time being declared by regulation to be a prescribed dangerous substance for the purposes of this Division.

Offence to keep dangerous substances without a licence

14. (1) A person must not keep a prescribed dangerous substance in any premises unless the person is the holder of a licence under this Division.

Maximum penalty: In the case of a body corporate—\$50 000.
 In any other case—\$10 000 or imprisonment for 1 year.

(2) The regulations may exempt (either absolutely or subject to conditions or limitations) a specified person or class of persons from the requirement to be licensed under this Division.

Licence to keep dangerous substances

15. (1) A Competent Authority may, subject to this Act, in his or her discretion, on application in the prescribed form and payment of the prescribed fee, grant a licence to any person to keep any prescribed dangerous substance in any premises.

(2) A licence granted under this section is subject to such conditions relating to—

(a) the prescribed dangerous substance that may be kept; or

(b) its keeping; or

(c) the premises in which it may be kept; or

(d) any other matter,

as a Competent Authority may specify by notice in writing given to the holder of the licence.

(3) A Competent Authority may, by notice in writing given to the holder of a licence under this section, add to, vary or revoke any conditions of the licence.

(4) The holder of a licence under this section who breaches, or fails to comply with, a condition of the licence is guilty of an offence.

Maximum penalty: \$10 000.

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(5) A Competent Authority may grant a licence under this section in respect of premises notwithstanding that the premises do not comply with the regulations, provided that—

- (a) a Competent Authority is satisfied that the keeping of the prescribed dangerous substance in the premises would not immediately endanger the health or safety of any person, or the safety of any person's property; and
- (b) a Competent Authority in granting the licence imposes conditions designed to ensure compliance with the regulations within a specified period.

Term of licences

16. (1) A licence granted under this Division will, subject to this Act, remain in force for such term as a Competent Authority may specify in the licence.

(2) A Competent Authority may, subject to this Act, in his or her discretion, on application made in the prescribed manner and form and payment of the prescribed fee, renew a licence granted under this Division.

(3) A licence renewed under this section will, subject to this Act, remain in force for such term (being not less than one year) as a Competent Authority may specify in the licence.

DIVISION 3—LICENCES TO CONVEY DANGEROUS SUBSTANCES

"Prescribed dangerous substance" for the purposes of this Division

17. In this Division, "prescribed dangerous substance" means a dangerous substance for the time being declared by regulation to be a prescribed dangerous substance for the purposes of this Division.

Offence to convey dangerous substances without a licence

18. (1) A person must not convey any prescribed dangerous substance unless the person is the holder of a licence under this Division.

Maximum penalty: In the case of a body corporate—\$50 000.
 In any other case—\$10 000 or imprisonment for 1 year.

(2) The regulations may exempt (either absolutely or subject to conditions or limitations) a specified person or class of persons from the requirement to be licensed under this Division.

Licence to convey dangerous substances

19. (1) A Competent Authority may, subject to this Act, in his or her discretion, on application in the prescribed form and payment of the prescribed fee, grant a licence to any person to convey any prescribed dangerous substance.

- (2) A licence granted under this section is subject to such conditions relating to—
 - (a) the prescribed dangerous substance that may be conveyed; or
 - (b) its conveyance; or
 - (c) any other matter,

as a Competent Authority may specify by notice in writing given to the holder of the licence.

(3) A Competent Authority may, by notice in writing given to the holder of a licence under this section, add to, vary or revoke any conditions of the licence.

(4) The holder of a licence under this section who breaches, or fails to comply with, a condition of the licence is guilty of an offence.

Maximum penalty: \$10 000.

Term of licences

20. (1) A licence granted under this Division will, subject to this Act, remain in force for such term as a Competent Authority may specify in the licence.

(2) A Competent Authority may, subject to this Act, in his or her discretion, on application made in the prescribed manner and form and payment of the prescribed fee, renew a licence granted under this Division.

(3) A licence renewed under this section will, subject to this Act, remain in force for such term as a Competent Authority may specify in the licence.

DIVISION 4—LICENCES GENERALLY

General ground for not granting or renewing licences

21. A Competent Authority must not grant or renew a licence under this Part if he or she is satisfied that it is not in the interests of public safety so to do.

Surrender, suspension and cancellation of licences

22. (1) A person holding a licence under this Part may surrender the licence.

(2) A Competent Authority may suspend, or cancel, a licence under this Part if he or she is satisfied—

- (a) that the grant or a renewal of the licence was obtained improperly; or
- (b) that the holder of the licence has been convicted of an offence against this Act; or
- (c) in the case of a licence to keep a dangerous substance in any premises, that the premises do not comply with the prescribed requirements; or
- (d) that the holder of the licence has breached, or failed to comply with, a condition of the licence.

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**PART 4
DANGEROUS GOODS—SPECIAL PROVISIONS**

Dangerous goods—regulations

23. The regulations may make provision for or in relation to any of the following matters:

- (a) the classification of dangerous goods according to class, type or category and methods for assigning dangerous goods to those classes, types or categories;
- (b) the determination by a Competent Authority of which goods are dangerous goods or dangerous goods of a particular class, type or category, or are too dangerous to be transported, or too dangerous to be transported in bulk (except under a specific authority or under another Act);
- (c) the determination by a Competent Authority of which goods are incompatible with dangerous goods;
- (d) the analysis and testing of dangerous goods;
- (e) goods too dangerous to be transported, or too dangerous to be transported in bulk (except under a specific authority or under another Act);
- (f) the identification and marking of dangerous goods, packages, unit loads or containers of dangerous goods, and vehicles used or to be used for the transport of dangerous goods;
- (g) packaging and containers used in the transport of dangerous goods;
- (h) the manufacture of vehicles and containers for use in the transport of dangerous goods;
- (i) voluntary accreditation schemes, including privileges to be accorded or sanctions to be imposed under the schemes and the cancellation or suspension of the schemes, relating to the transport of dangerous goods, or particular aspects of the transport of dangerous goods;
- (j) the mandatory accreditation of people involved in the transport of dangerous goods, or particular aspects of the transport of dangerous goods;
- (k) the licensing of—
 - (i) vehicles and drivers for the purposes of the transport of dangerous goods; and
 - (ii) people responsible for the transport of dangerous goods or for vehicles used in the transport of dangerous goods;
- (l) the loading of dangerous goods for, and the unloading of dangerous goods after, their transport;
- (m) the determination by a Competent Authority of routes along which, the areas in which, the times during which and the vehicles by which dangerous goods may or may not be transported;
- (n) procedures for the transport of dangerous goods, including, but not limited to—
 - (i) the quantities and circumstances in which dangerous goods, or particular types of dangerous goods, may be transported; and

- (ii) safety procedures and equipment;
- (o) the approval by a Competent Authority of—
 - (i) packages, containers, equipment and other items used in relation to the transport of dangerous goods; and
 - (ii) facilities for and methods of testing or using packages, containers, equipment and other items used, and processes carried out, in relation to the transport of dangerous goods;
- (p) documents required to be prepared or kept by people involved in the transport of dangerous goods and the approval by a Competent Authority of alternative documentation, and the provision of information with respect to the transport of dangerous goods;
- (q) insurance or indemnity requirements in respect of the transport of dangerous goods;
- (r) the duties and obligations of people involved in the transport of dangerous goods;
- (s) the training and qualifications required of people involved in, and the approval of training courses and qualifications relating to involvement in, the transport of dangerous goods;
- (t) obligations arising, and procedures to be followed, in the event of a dangerous situation in relation to the transport of dangerous goods;
- (u) obligations of passengers in respect of transport of dangerous goods;
- (v) the recognition of laws of other jurisdictions relating to the transport of dangerous goods and of things done under those laws, and the giving effect to those things.

Specific offences

24. (1) A person must not transport goods that the regulations identify as being too dangerous to transport.

Maximum penalty: In the case of a body corporate—\$250 000.
 In any other case—\$50 000 or imprisonment for 2 years, or both.

(2) A person must not use a vehicle to transport dangerous goods (other than as the driver of the vehicle) if—

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

Maximum penalty: In the case of a body corporate—\$250 000.
 In any other case—\$50 000 or imprisonment for 2 years, or both.

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

Maximum penalty: In the case of a body corporate—\$250 000.
 In any other case—\$50 000 or imprisonment for 2 years, or both.

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

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

Maximum penalty: \$10 000.

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

Maximum penalty: In the case of a body corporate—\$250 000.
In any other case—\$50 000 or imprisonment for 2 years, or both.

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

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

Maximum penalty: \$10 000.

Prohibiting a person from involvement in the dangerous goods transport industry

25. (1) If a person is convicted of an offence involving an aspect of the transport of dangerous goods, a court may, after taking into account the matters referred to in subsection (2) and other matters considered relevant by the court, in addition to imposing any other penalty, order that the person be prohibited, for a specified period, to the extent specified by the court, from involvement in the transport of dangerous goods.

(2) The matters to be taken into account by a court under subsection (1) are—

- (a) the person's record in the transport of goods; and
- (b) any prior convictions of the person relating to dangerous goods; and
- (c) the circumstances surrounding the commission of the offence for which the person is being sentenced.

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

Maximum penalty: In the case of a body corporate—\$250 000.
In any other case—\$50 000 or imprisonment for two years, or both.

Guidelines

26. (1) For the purposes of this section, an **approved guideline** is a guideline, code of practice or other document that is approved by the Ministerial Council for Road Transport for the purpose of providing practical guidance to people engaged in the transport of dangerous goods and that is recognised for the purposes of this section by the Minister by notice in the *Gazette*.

(2) In proceedings for an offence against this Act relating to the transport of dangerous goods, it is a defence to prove that the defendant acted in accordance with the provisions of an approved guideline specifying a means of complying with the provision the defendant is alleged to have contravened.

**PART 5
INSPECTIONS, ETC.**

Powers of authorised officers

27. (1) Subject to this Part, an authorised officer may—

- (a) enter, inspect and search any place or vehicle, and open any container or other thing, for any reasonable purpose connected with the administration, operation or enforcement of this Act;
- (b) with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on, any place or vehicle;
- (c) give directions with respect to the stopping or movement of a vehicle as reasonably required in connection with the administration, operation or enforcement of this Act;
- (d) require a vehicle to be presented for inspection at a place and time specified by the authorised officer;
- (e) take, or require a person to take and provide, samples of any substance or thing from any place or vehicle for analysis as reasonably required in connection with the administration, operation or enforcement of this Act;
- (f) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration, operation or enforcement of this Act;
- (g) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information;
- (h) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration, operation or enforcement of this Act;
- (i) examine or test any substance, sample, plant, equipment, article, vehicle or other thing for the purpose of determining whether a provision of this Act is being or has been complied with, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
- (j) seize and retain, or issue a seizure order in respect of, anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;
- (k) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (l) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration, operation or enforcement of this Act to answer questions in relation to those matters;
- (m) require a person holding or required to hold a licence, accreditation or permit to produce it for inspection;

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(n) give any directions reasonably required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration, operation or enforcement of this Act;

(o) exercise other prescribed powers.

(2) If—

(a) a person whose native language is not English is suspected of having committed an offence against this Act; and

(b) the person is not reasonably fluent in English,

the following provisions apply:

(c) the person is entitled to be assisted by an interpreter during questioning conducted by an authorised officer in the course of an investigation of the suspected offence;

(d) if it appears that the person may be entitled to be assisted by an interpreter, an authorised officer must not proceed with any questioning, or further questioning, as part of the investigation until the person has been informed of the right to an interpreter;

(e) if the person requests the assistance of an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until an interpreter is present.

(3) Subsection (2) does not apply to the extent that an authorised officer requires information necessary to deal immediately with a dangerous situation.

(4) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

(5) An authorised officer may require an occupier of a place or a person apparently in charge of a substance, plant, equipment, article, vehicle or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.

Issue of warrants

28. (1) If, on the application of an authorised officer, a magistrate is satisfied that there are reasonable grounds to believe—

(a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or

(b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or

(c) that access is otherwise reasonably required to a place or vehicle in connection with the administration, operation or enforcement of this Act,

the magistrate may issue a warrant in respect of the place or vehicle authorising an authorised officer, with such assistants as he or she consider necessary, to use reasonable force to break into or open any part of, or anything in or on, the place or vehicle as specified in the warrant.

(2) An application for the issue of a warrant may be made either personally or by facsimile or telephone.

(3) The grounds of an application for a warrant must be verified by affidavit.

(4) An application for the issue of a warrant may not be made by facsimile or telephone unless in the opinion of the applicant a warrant is urgently required and there is insufficient time to make the application personally.

(5) If an application for the issue of a warrant is made by facsimile, the following provisions apply:

- (a) the application must be in a form approved by the Chief Judge of the District Court of South Australia and be accompanied (through facsimile transmission) by an affidavit made by the applicant verifying the facts referred to in the application;
- (b) the applicant must be available to speak to the magistrate by telephone;
- (c) the magistrate is entitled to assume, without further inquiry, that the applicant is an authorised officer and that a person who identifies himself or herself as the applicant during a telephone conversation with the magistrate is indeed the applicant;
- (d) the magistrate may, on being satisfied that there are sufficient grounds for the issue of a warrant (relying on the application and, if the magistrate thinks it necessary to speak to the applicant, one or more telephone conversations with the applicant), make out and sign a warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant;
- (e) the warrant will be taken to have been issued, and will come into force, when signed by the magistrate;
- (f) the magistrate must inform the applicant of the terms of the warrant (and may do this by telephone).

(6) If an application for the issue of a warrant is made by telephone, the following provisions apply:

- (a) the applicant must inform the magistrate of his or her name and identify himself or herself as an authorised officer, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorised officer;
- (b) the applicant must inform the magistrate of the grounds on which the issue of the warrant is sought;
- (c) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of a warrant, the magistrate must inform the applicant of the facts on which he or she relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
- (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant;
- (e) the warrant will be taken to have been issued, and will come into force, when signed by the magistrate;
- (f) the magistrate must inform the applicant of the terms of the warrant;

- (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

(7) A magistrate by whom a warrant is issued must file the warrant, or a copy of the warrant, and the affidavit (or a facsimile copy of the affidavit) verifying the grounds on which the application for the warrant was made, in the Administrative and Disciplinary Division of the District Court.

(8) A warrant, if not executed at the expiration of one month from the date of its issue, then expires.

Provisions relating to seizure

29. (1) A seizure order under this Part—

- (a) must be in the form of a written notice served on the owner or person in control, or apparently in control, of the thing to which the order relates; and
- (b) may be varied or revoked by further such written notice.

(2) If a seizure order is issued under this Part, a person who removes or interferes with the thing to which the order relates without the approval of a Competent Authority before an order is made under subsection (3)(b) in respect of the thing or the seizure order is discharged under subsection (3)(c) is guilty of an offence.

Maximum penalty: \$5 000.

(3) If a thing has been seized or made subject to a seizure order under this Part, the following provisions apply:

- (a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless a Competent Authority, on application, authorises its release to the person from whom it was seized, or to a person who had legal title to it at the time of its seizure, subject to such conditions as a Competent Authority thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
- (b) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—
- (i) order that it be forfeited to a Competent Authority and, if appropriate, that the defendant pay to the Competent Authority an amount equal to the cost to the Competent Authority of disposing of, or destroying, the thing; or
- (ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to a Competent Authority or that the person to whom it was released or the defendant pay to a Competent Authority an amount equal to its market value at the time of its seizure or the issuing of the seizure order, as the court thinks fit;
- (c) if—
- (i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure or the issuing of the seizure order; or

- (ii) proceedings have been so instituted and—
 - (A) the defendant is found not guilty of the offence; or
 - (B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

- (iii) in the case of a thing seized—the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from a Competent Authority (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure; or
- (iv) in the case of a thing subject to a seizure order—the order is discharged.

(4) In subsection (3)—

"the prescribed period" means six months or such longer period as the Administrative and Disciplinary Division of the Court may, on application by a Competent Authority, allow.

Offence to hinder, etc., authorised officers

30. (1) A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or
- (d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief,

is guilty of an offence.

Maximum penalty: \$10 000.

(2) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$10 000.

Self-incrimination

31. (1) A person is not excused from answering a question or from producing, or providing a copy of, a document or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

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(2) However, if compliance by a natural person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

Offences by authorised officers, etc.

32. An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

PART 6
NOTICES AND EMERGENCIES

Notices

33. (1) An authorised officer may issue a notice under this section for the purposes of—

- (a) securing compliance with a requirement imposed by or under this Act (including a requirement imposed by a condition of an accreditation, licence or permit); or
- (b) averting, eliminating or minimising danger to the health or safety of a person or to the safety of property or to the environment that has arisen from an activity involving a dangerous substance.

(2) A notice under this section—

- (a) subject to subsection (3), must be in the form of a written notice served on the person to whom the notice is issued;
- (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person);
- (c) must state the purpose for which the notice is issued and give details of the requirement or the danger to which it relates;
- (d) may impose any requirement reasonably required for the purpose for which the notice is issued including one or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a Competent Authority;
 - (ii) a requirement that the person not carry on a specified activity subject to specified conditions;
 - (iii) a requirement that the person take specified action within a specified period;
- (e) must state that the person may appeal to the Administrative and Disciplinary Division of the District Court against the notice.

(3) A notice under this section may be issued orally if the authorised officer is of the opinion that urgent action is required, but in that event, the notice will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written notice served on the person.

(4) A Competent Authority may, by written notice served on a person to whom a notice has been issued under this section, vary or revoke the notice.

(5) A person to whom a notice is issued under this section must comply with the notice.

Maximum penalty: In the case of a body corporate—\$100 000.
 In any other case—\$20 000 or imprisonment for 1 year.

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(6) A person must not hinder or obstruct a person complying with a notice issued under this section.

Maximum penalty: \$10 000.

Action on default

34. (1) If the requirements of a notice under this Part are not complied with, the authorised officer who issued the notice (or, in the absence of that authorised officer, another authorised officer authorised for the purpose by a Competent Authority) may take the action required by the notice or cause that action to be taken.

(2) In the exercise of powers under this section, an authorised officer has, in addition to any other powers of an authorised officer under this Act, power to—

- (a) enter and take possession of any place (taking such action as is reasonably necessary for the purpose); and
- (b) seize, retain, move or destroy or otherwise dispose of a dangerous substance.

(3) The Crown may recover the costs and expenses reasonably incurred by an authorised officer or other person exercising powers under this section from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

Action in emergency situations

35. (1) If an authorised officer considers on reasonable grounds that a dangerous situation exists and that immediate action is required, the authorised officer may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, eliminate or minimise the danger or risk.

(2) In the exercise of powers under this section, an authorised officer has, in addition to any other powers of an authorised officer under this Act, power to—

- (a) enter and take possession of any place (taking such action as is reasonably necessary for the purpose); and
- (b) seize, retain, move or destroy or otherwise dispose of a dangerous substance.

(3) Action may be taken or caused to be taken under this section whether or not a notice has been given to a person in relation to the danger under a preceding section.

(4) The Crown may recover the costs and expenses reasonably incurred by an authorised officer or other person exercising powers under this section from the person who caused the dangerous situation, as a debt in a court of competent jurisdiction.

**PART 7
MISCELLANEOUS**

Exemptions

36. (1) A Competent Authority may confer exemptions from this Act or specified provisions of this Act—

- (a) on specified persons or persons of a specified class; or
- (b) in relation to specified places, vehicles or activities, or places, vehicles or activities of a specified class.

(2) However, a Competent Authority must not grant an exemption unless satisfied—

- (a) that compliance with the Act or the specified provisions of this Act (as the case may be) is not reasonably practicable in the circumstances; and
- (b) that the exemption (subject to compliance with specified conditions (if any))—
 - (i) would not result in an increased risk of personal injury, property damage or environmental harm; and
 - (ii) would not cause unnecessary administrative or enforcement difficulties.

(3) A Competent Authority should, in deciding whether to grant an exemption from a provision that operates as part of a scheme that involves the uniform application of laws on a national basis, take into account the effect that the exemption would have on the operation of that scheme.

(4) An exemption may be granted on application or on the initiative of the Competent Authority.

(5) An exemption may be subject to conditions determined by the Competent Authority (including a condition that the exemption will only operate for a specified period).

(6) An exemption under this section may be granted—

- (a) by written notice to the person or persons to whom the exemption is granted; or
- (b) by notice in the *Gazette*.

(7) However, if an exemption—

- (a) may or is expressed to operate for more than six months; or
- (b) is granted to a class of persons,

then the Competent Authority must give notice of the exemption by notice in the *Gazette* (unless the exemption is granted under subsection (6)(b)).

(8) A notice under subsection (6) or (7) must—

- (a) state the conditions (if any) to which the exemption is subject; and
- (b) comply with any requirement prescribed by the regulations.

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(9) A Competent Authority may, if the Competent Authority considers it appropriate to do so, vary the conditions of an exemption by the addition, substitution or deletion of one or more conditions.

(10) A Competent Authority may, after due inquiry and for good cause, revoke an exemption.

(11) If a Competent Authority decides to take action under subsection (9) or (10), the Competent Authority must give notice in the same manner as when the exemption was granted.

(12) A person who contravenes or fails to comply with a condition imposed under this section is guilty of an offence.

Maximum penalty: In the case of a body corporate—\$50 000.
 In any other case—\$10 000 or imprisonment for 6 months, or both.

(13) If an exemption is granted to a person individually, the person must keep a copy of the notice of exemption in any vehicle or premises to which the exemption applies.

Maximum penalty: \$5 000.

(14) A Competent Authority must, in prescribed circumstances, give notice to a prescribed authority of the granting of an exemption under this section.

(15) No liability attaches to a Competent Authority (or to the Crown) by virtue of the fact that the Competent Authority has granted an exemption under this Act.

Appeals

37. (1) An appeal to the Administrative and Disciplinary Division of the District Court may be made—

- (a) by a person directly affected by a decision of a Competent Authority relating to a licence, accreditation or permit against that decision; or
- (b) by a person to whom a notice has been issued under Part 6 against the decision to issue the notice; or
- (c) by an applicant for an exemption under section 36 against a decision of a Competent Authority not to grant the exemption, or against a decision to impose a particular condition on an exemption; or
- (d) by a person in circumstances where an application for a review of a decision may be made under the regulations.

(2) However, a right to make an application under subsection (1) operates subject to any process under the regulations that provides for reconsideration of a decision before an application for a review of the decision may be made to the Court.

(3) The Court may, in exercising its jurisdiction under this section, be constituted of a Magistrate.

(4) An appeal must be instituted—

- (a) in the case of an appeal against a decision of a Competent Authority under subsection (1)(a) or (c)—subject to the regulations, within one month of the making of the decision appealed against;

(b) in the case of an appeal against a decision to issue a notice under subsection (1)(b)—within 14 days of receipt of the notice;

(c) in the case of an appeal under subsection (1)(d)—within the time prescribed by the regulations.

(5) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be instituted within the period fixed by or under this section.

(6) Subject to subsection (7), the making of an appeal under this section against a decision or notice does not affect the operation of the decision or notice or prevent the taking of action to implement the decision or notice.

(7) The Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of a decision or notice appealed against if the Court is satisfied that it is appropriate to do so.

(8) An order under subsection (7)—

(a) may be varied or revoked by the Court by further order; and

(b) is subject to such conditions as are specified in the order (including conditions necessary to protect the health or safety of any person, or the safety of any property or to protect the environment); and

(c) has effect until—

(i) the end of the period of operation (if any) specified in the order; or

(ii) the decision of the Court on the appeal comes into operation,

whichever is the earlier.

(9) The Court must not make an order under subsection (7) unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.

(10) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court so determines, by affidavit.

(11) The Court may, on the hearing of an appeal—

(a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate; and

(b) make an order as to any other matter that the case requires (including an order for costs).

Evidentiary provisions

38. (1) In proceedings for an offence against this Act, an allegation in the complaint—

(a) that any person named holds or held at a specified time a specified office; or

(b) that any person named was or was not at a specified time the holder of a specified licence, accreditation or permit under this Act; or

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- (c) that any specified substance is or was a dangerous substance; or
- (d) that any specified substance is or was a dangerous substance of a specified class; or
- (e) that any specified substance or article is or was a dangerous good; or
- (f) that any specified substance or article is or was a dangerous good of a specified class, type or category,

will, in the absence of proof to the contrary, be taken to be proved.

(2) In proceedings for an offence against this Act—

- (a) a licence, accreditation or permit and any conditions of a licence, accreditation or permit; or
- (b) an approval and any conditions of an approval; or
- (c) an exemption and any conditions of an exemption; or
- (d) any notice,

granted or given under this Act may be proved by the production of an apparently genuine document purporting to be a copy of the licence, accreditation, permit, approval, exemption or notice certified by a Competent Authority.

(3) In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate of the Government Analyst setting out the results of an analysis of any substance or thing, will, in the absence proof to the contrary, be accepted as proof of the matters stated therein.

Approved codes of practice

39. (1) The Minister may approve a code of practice for the purposes of this Act.

(2) A code of practice may be comprised of, or may incorporate, adopt or operate by reference to, a specified code or standard (with or without modification) as in force from time to time or as in force at a particular time.

(3) The Minister may—

- (a) approve an amendment of a code of practice; or
- (b) revoke a code of practice.

(4) The Minister must give notice in the *Gazette* of—

- (a) the approval of a code of practice; or
- (b) the approval of an amendment of a code of practice; or
- (c) the revocation of a code of practice.

(5) An approved code of practice and any approved amendment of a code of practice will come into operation on the day on which the notice of approval is published in the *Gazette* or on such later day as may be specified in the notice.

(6) An approved code of practice or amendment of a code of practice is subject to disallowance by Parliament.

(7) Every approved code of practice or amendment must be laid before both Houses of Parliament within 14 days of notice of its approval being published in the *Gazette* if Parliament is in session or, if Parliament is not then in session, within 14 days after the commencement of the next session of Parliament.

(8) If either House of Parliament passes a resolution disallowing an approved code of practice or an amendment of a code of practice, then the code of practice or the amendment ceases to have effect.

(9) A resolution is not effective for the purposes of subsection (8) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not all fall in the same session of Parliament) after the day on which the code of practice or amendment was laid before the House.

Use of codes of practice in proceedings

40. If in proceedings for an offence against this Act it is proved that the defendant failed to observe a provision of an approved code of practice dealing with the matter in respect of which the offence is alleged to have been committed, the defendant is, in the absence of proof to the contrary, to be taken to have failed to exercise the standard of care required by this Act.

Offences by bodies corporate

41. If a body corporate is guilty of an offence against this Act, each member of the governing body and the manager of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for that offence (when committed by a natural person) unless he or she proves that he or she did not know and could not reasonably be expected to have known of the commission of that offence or that he or she exercised all due diligence to prevent the commission of that offence.

Continuing offences

42. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

- (a) will be liable, in addition to the penalty otherwise applicable to that offence, to a penalty for each day during which the act or omission continued of not more than the amount equal to one-tenth of the maximum penalty prescribed for that offence; and
- (b) will, if the act or omission continues after he or she is convicted, be guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to that further offence, to a penalty for each day during which the act or omission continued after that conviction of not more than the amount equal to one-tenth of the maximum penalty prescribed for that offence.

(2) If an offence against a provision of this Act consists of an omission to do something that is required or directed to be done, the omission will, for the purposes of subsection (1), be taken to continue for so long as the thing required or directed to be done remains undone after the expiration of the period for compliance with the requirement or direction.

Forfeiture of dangerous substance upon conviction

43. (1) If a person is convicted of an offence against this Act, the court may order that any dangerous substance in relation to which the offence was committed and that is the property of that person be forfeited to the Crown.

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(2) Any dangerous substance forfeited to the Crown may be disposed of in such manner as the Minister may direct and, if any dangerous substance is disposed of by way of sale, the proceeds of the sale will be paid into the Consolidated Account.

Recovery of costs from convicted person

44. If a person is convicted of an offence against this Act following action taken by an authorised officer under Part 5, the court may, on application by or on behalf of a Competent Authority, order that, in addition to any other penalty, the defendant must pay any costs that were reasonably incurred in taking that action and are directly related to the investigation of the offence (including costs for testing, transporting, storing or disposing of dangerous substances and other evidence).

Proceedings for offences

45. (1) Proceedings for a summary offence against this Act may only be commenced by—

- (a) an authorised officer; or
- (b) a Competent Authority.

(2) Proceedings for a summary offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- (b) in any other case—within three years of the date on which the offence is alleged to have been committed or, with the authorisation of the Attorney-General, a later time within six years of that date.

(3) A document apparently signed by the Attorney-General and stating that the Attorney-General authorises a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

Cost recovery

46. (1) In this section—

"agency or instrumentality of the Crown" means any body corporate (other than a council) established for a public purpose by, or in accordance with, an Act;

"council" means a municipal or district council;

"dangerous substance" includes a mixture of a dangerous substance with any other substance;

"government authority" means—

- (a) a department or administrative unit of the Public Service; or
- (b) an agency or instrumentality of the Crown; or
- (c) a council;

"principal officer", in relation to a government authority, means—

- (a) in the case of a department or administrative unit of the Public Service—the chief executive officer of that department or unit;

(b) in the case of an agency or instrumentality of the Crown—the chief executive officer of that agency or instrumentality or a person designated by the regulations as principal officer of that agency or instrumentality;

(c) in the case of a council—the chief executive officer of that council.

(2) This section applies to any incident—

(a) constituted of or arising from (whether wholly or in part) the escape of a dangerous substance; or

(b) that involves the danger of the escape of a dangerous substance.

(3) For the purposes of this section, the escape of a dangerous substance includes—

(a) a discharge of the dangerous substance onto or into any land or water, or any structure or thing;

(b) the release of the dangerous substance into the air.

(4) Where a government authority incurs costs or expenses as a result of the occurrence of an incident to which this section applies, any such costs or expenses reasonably incurred by the government authority are recoverable as a debt in a court of competent jurisdiction.

(5) The costs or expenses may be recovered by—

(a) in the case of costs or expenses incurred by a council—the council;

(b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown;

(c) in any other case—the Crown.

(6) The recovery of costs or expenses incurred by one government authority as a result of the occurrence of an incident to which this section applies (including an award or judgment in relation to those costs or expenses) does not preclude the recovery of costs and expenses incurred by another government authority as a result of the occurrence of the incident.

(7) The costs or expenses may be recovered (jointly or severally) from—

(a) the person who was the owner of the dangerous substance at the time of the incident;

(b) the person who was in control or possession of the dangerous substance at the time of the incident;

(c) the person who caused the incident.

(8) For the purposes of subsection (7)—

(a) any dangerous substance in the control or possession of an employee or agent while acting in the course of employment will be taken to be in the control or possession of the employer or principal; and

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- (b) an act or omission of an employee or agent while acting in the course of employment will be taken to be the act or omission of the employer or principal,

unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent.

(9) Costs and expenses are not recoverable against a person who establishes—

- (a) that the incident was due to the act or default of another person, or to some cause beyond the person's control; and
- (b) that he or she could not by the exercise of reasonable diligence have prevented the occurrence of the incident; and
- (c) that the incident is not attributable to an act or omission of a person who was an employee or agent of his or hers at the time when the incident occurred (unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent).

(10) This section does not exclude or derogate from any right to recover an amount in respect of costs or expenses that exists apart from this section but the Crown or a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on rights that exist apart from this section.

(11) For the purposes of this section, a body that forms part, or is established for the purposes, of an agency or instrumentality of the Crown is not to be regarded as itself constituting a separate agency or instrumentality.

(12) In any proceedings under this section, a document apparently signed by the principal officer of the relevant government authority certifying as to the incurring of costs or expenses as a result of the occurrence of an incident to which this section applies, and as to the amount of those costs or expenses, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

Immunity from personal liability

47. (1) No personal liability attaches to an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Assistance in emergencies or accidents

48. (1) No personal liability attaches to a person for an honest act undertaken without fee, charge or other reward for the purpose of assisting or attempting to assist in a situation in which an emergency or accident involving a dangerous substance occurs or is likely to occur.

(2) Subsection (1) does not exempt a person from liabilities against which the person is insured.

(3) Subsection (1) does not apply—

- (a) to a person whose act or omission was wholly or partly the cause of the occurrence or likely occurrence; or

(b) to an authorised officer.

Prohibitions

49. (1) The Minister may prohibit (either absolutely or conditionally) any person—

- (a) engaging in any or specified activities involving a dangerous substance; or
- (b) using a dangerous substance for a particular purpose or in a particular manner; or
- (c) having a dangerous substance in his or her custody, possession or control.

(2) A prohibition under this section may be varied or revoked by the Minister at any time.

(3) A prohibition under this section, and any variation or revocation, must be notified in the *Gazette* (and takes effect when the notice is published in the *Gazette* or at such later time as is specified in the notice).

(4) A person who contravenes a prohibition imposed under this section is guilty of an offence.

Maximum penalty: In the case of a body corporate—\$50 000.
 In any other case—\$10 000 or imprisonment for six months, or both.

Regulations

50. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) prescribe fees for licences and accreditations under this Act varying according to the activity authorised under any such licence or accreditation and the term of any such licence or accreditation; and
- (b) regulate the keeping, handling, transport, conveyance, use and disposal of any dangerous substance; and
- (c) prescribe standards of quality and composition in relation to any dangerous substance; and
- (d) prohibit the sale of any dangerous substance that does not conform to any relevant prescribed standard of quality or composition; and
- (e) prescribe standards for the siting, design, construction, ventilation, illumination, fittings, fixtures and management of premises used, or to be used, in connection with any dangerous substance; and
- (f) prescribe standards for the design, construction, cleanliness, venting, ventilation, marking, and maintenance of any vehicle or means of conveyance, or any container or any other thing used, or to be used, in connection with any dangerous substance; and
- (g) prohibit the keeping of any dangerous substance in any premises or containers that do not conform to any standard prescribed therefor; and
- (h) prohibit the transport or conveyance of any dangerous substance in containers or by vehicles, pipelines or any other means that do not conform to any standard prescribed therefor; and

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- (i) regulate or prohibit any activities of specified kinds in the vicinity of any dangerous substance; and
- (j) prescribe the safety procedures to be followed and the provision, maintenance and use of safety equipment and facilities in connection with the keeping, handling, transport, conveyance, use and disposal of any dangerous substance; and
- (k) regulate, restrict or prohibit the disposal of any dangerous substance; and
- (l) prohibit the handling, transport, conveyance or use of any dangerous substance except by a person who has received the prescribed training and who is the holder of a permit; and
- (m) prohibit the manufacture, installation, repair or maintenance of any machine, equipment, container or device in or in connection with which any dangerous substance is kept or used except by a person who has received the prescribed training and who is the holder of a permit; and
- (n) provide for the grant, suspension and revocation of permits by a Competent Authority; and
- (o) prescribe fees for permits granted by a Competent Authority; and
- (p) prescribe other fees that are to be paid in respect of any thing done under this Act, or matter occurring under this Act, and provide for the recovery of fees; and
- (q) regulate the manufacture, installation, repair or maintenance of any machine, equipment, container or device in or in connection with which any dangerous substance is kept or used; and
- (r) require the reporting to a Competent Authority of accidents occurring in connection with the keeping, handling, transport, conveyance, use or disposal of any dangerous substance; and
- (s) require the keeping of records and the furnishing of returns to a Competent Authority in connection with the keeping, handling, transport, conveyance, use or disposal of any dangerous substance; and
- (t) provide for the form or content of applications or other documents under this Act, or provide for the approval by a Competent Authority of the form in which applications are to be made to the Competent Authority, or the form in which documents are to be issued by a Competent Authority, for the purposes of this Act; and
- (u) make provision with respect to administrative procedures for the purposes of this Act and the form of decisions under this Act; and
- (v) provide for registers of decisions and exemptions under this Act; and
- (w) prescribe the training and qualifications required of authorised officers and other people performing functions under this Act; and
- (x) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in any circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and

- (y) confer jurisdiction on the Administrative and Disciplinary Division of the District Court to review decisions under the regulations; and
- (z) prescribe matters that are to be considered in proceedings for an offence against the regulations; and
- (za) fix expiation fees, not exceeding \$1 000 in cases involving natural persons and \$5 000 in cases involving bodies corporate, for alleged offences against the regulations; and
- (zb) prescribe fines, not exceeding \$5 000 in cases involving natural persons and \$25 000 in cases involving bodies corporate, for contravention of a regulation.

(3) The regulations may prescribe differential fees or provide for fees to be determined according to prescribed factors.

(4) If—

- (a) the regulations prohibit an activity unless carried on by a person who is the holder of a permit; and
- (b) a person who is the holder of such a permit carries out that activity (as an employee or contractor) for another person ("the principal") in the course of a trade or business carried on by the principal,

the principal—

- (c) must ensure, so far as is reasonably practicable, that the activity is carried out—
 - (i) safely; and
 - (ii) in accordance with any requirements prescribed by the regulations; and
 - (iii) in a proper and competent manner; and
- (d) must ensure, so far as is reasonably practicable, that any plant used, installed, repaired or maintained as part of, or for the purposes of, that activity is safe and suitable for use, and complies with any requirements prescribed by the regulations; and
- (e) must comply with any other duty imposed by the regulations for the purposes of this provision.

Maximum penalty: \$10 000.

(5) The regulations may apply, wholly or partially and with or without modification—

- (a) regulations in force under an Act of another State, a Territory or the Commonwealth (as in force from time to time or as in force at a particular time); or
- (b) a code, standard, rule or other document prepared or published by a body referred to in the regulation (as in force from time to time or as in force at a particular time),

as regulations applying under this Act (and, in so applying such regulations, code, standard, rule or other document, may provide for their citation for the purposes of the law of this State).

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(6) The regulations may adopt, wholly or partially and with or without modification, a code, standard, rule or other document prepared or published by a body referred to in the regulation (as in force from time to time or as in force at a particular time).

(7) Any regulations applying or adopting a regulation, code, standard, rule or other document may contain such incidental, supplementary or transitional provisions as appear to the Governor to be necessary.

(8) The regulations, or a regulation, code, standard, rule or other document applied or adopted by the regulations, may—

- (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard, rule or other document prepared or published by a particular body (as in force from time to time or as in force at a particular time); and
- (b) be of general or limited application; and
- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, a Competent Authority, an authorised officer or any other prescribed authority.

(9) If—

- (a) a regulation, code, standard, rule or other document is applied or adopted by the regulations; or
- (b) the regulations, or a regulation, code, standard, rule or other document applied or adopted by the regulations, refers to a code, standard, rule or other document prepared or published by a particular body,

then—

- (c) a copy of the regulation, code, standard, rule or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified by notice in the *Gazette*; and
- (d) in any legal proceedings, evidence of the contents of the regulation, code, standard, rule or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the regulation, code, standard, rule or other document.

Application orders and emergency orders

51. (1) The Minister may, by notice in the *Gazette*, declare that the operation of the regulations, or of specified parts of the regulations, relating to the transport of dangerous goods—

- (a) is suspended for a specified period; or
- (b) is varied in a manner specified by the Minister.

(2) An order must be consistent with the provisions relating to application orders and emergency orders in the agreements scheduled to the *National Road Transport Commission Act 1991* of the Commonwealth.

(3) An order may have effect in relation to the whole of the State, or to a specified part of the State.

(4) If the Ministerial Council for Road Transport terminates an order in accordance with the terms of an agreement referred to in subsection (2), the Minister must publish notice of the termination in the *Gazette*.

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APPENDIX

LEGISLATIVE HISTORY

Repeals

The *Dangerous Substances Act 1979* repealed the following Acts:

Liquefied Petroleum Gas Act 1960
Inflammable Liquids Act 1961

Transitional Provisions

(Transitional provisions from Dangerous Substances (Transport of Dangerous Goods) Amendment Act 1998, Sched. 3)

Interpretation

1. In this schedule—

"the relevant day" means the day on which this Act comes into operation.

The Director

2. (1) The person designated by the principal Act as "the Director" immediately before the relevant day will be taken to have been appointed as a Competent Authority under the principal Act on the commencement of this Act.

(2) Any power, function or duty vested in the Director under the principal Act immediately before the relevant day is exercisable by, or attaches to, a Competent Authority under the principal Act on and after the relevant day.

(3) A reference in any instrument to the Director (as designated by the principal Act immediately before the relevant day) will be read as a reference to a Competent Authority on and after the relevant day.

Inspectors

3. (1) The persons holding appointments as inspectors under the principal Act immediately before the relevant day continue as authorised officers under the principal Act on the commencement of this Act.

(2) Any power, function or duty vested in an inspector under the principal Act immediately before the relevant day is exercisable by, or attaches to, an authorised officer under the principal Act on and after the relevant day.

(3) A reference in any instrument to an inspector will be read as a reference to an authorised officer on and after the relevant day.

(4) An identification card held by an inspector immediately before the relevant day for the purposes of the principal Act will be taken to have been issued by a Competent Authority for the purposes of the principal Act (as amended by this Act).

Notices

4. A notice given under section 23a or 23b of the principal Act before the relevant day will continue in force and effect, and may be dealt with and enforced, as if this Act had not been enacted.

Exemption

5. An exemption given under section 24 of the principal Act before the relevant day may be dealt with as if it had been given under the principal Act as amended by this Act.

Proceedings

6. Any proceedings commenced under section 23c or 24a of the principal Act before the relevant day may be continued and completed as if this Act had not been enacted.

Other matters

7. The Governor may, by regulation, make other provisions of a transitional nature consequent on the enactment of this Act.

Acts Interpretation Act 1915

8. The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this schedule (or a regulation made under clause 7), to the amendments effected by this Act.

Renumbering

(Renumbering provision from Dangerous Substances (Transport of Dangerous Goods) Amendment Act 1998, s. 26)

26. When all provisions of this amending Act have been brought into operation, the sections and parts of the principal Act are to be renumbered in consecutive order (with necessary consequential changes to cross-numbering).

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)
(entries in italic type indicate provisions that have been repealed and therefore not renumbered)

Long title:	amended by 27, 1998, ss. 3, 25 (Sched. 2)
Section 2:	<i>repealed by 27, 1998, s. 25 (Sched. 2)</i>
Section 3:	<i>amended by 98, 1988, s. 3; repealed by 27, 1998, s. 25 (Sched. 2)</i>
Section 4:	<i>repealed by 27, 1998, s. 25 (Sched. 2)</i>
Section 2: (previously section 5)	redesignated as s. 2(1) by 27, 1998, s. 4(g) definition of "authorised officer" inserted by 27, 1998, s. 4(a) definition of "the Chief Inspector" repealed by 81, 1992, s. 3(a) definition of "Competent Authority" inserted by 27, 1998, s. 4(a) definition of "conveyance" amended by 27, 1998, s. 4(b) definitions of "craft", "dangerous goods" and "dangerous situation" inserted by 27, 1998, s. 4(c) definition of "dangerous substance" substituted by 27, 1998, s. 4(c) definition of "the Director" amended by 81, 1992, s. 3(b); repealed by 27, 1998, s. 4(d) definition of "inspector" substituted by 81, 1992, s. 3(c); repealed by 27, 1998, s. 4(e) definition of "plant" inserted by 81, 1992, s. 3(c) definitions of "substance", "transport" and "unit load" inserted by 27, 1998, s. 4(f) definition of "vehicle" substituted by 27, 1998, s. 4(f) inserted by 27, 1998, s. 4(g)
Section 2(2) and (3): (previously section 5(2) and (3))	
Section 3: (previously section 6)	substituted by 27, 1998, s. 5
Section 4(1) and (2): (previously section 7(1) and (2))	amended by 27, 1998, s. 25 (Sched. 2)

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Part 2 comprising ss. 8 - 11 and heading amended by 33, 1985, s. 2; 17, 1987, ss. 2-4; 98, 1988, ss. 4, 12 (Sched.); 71, 1992, s. 3(1) (Sched.); 81, 1992, ss. 4, 5; **repealed and ss. 5 - 10 (previously ss. 8 - 11B) and heading inserted in its place by 27, 1998, s. 6**

Section 11:

(previously section 12)

Section 12:

(previously section 12A)

Section 12(4):

(previously section 12A(4))

Section 12(6):

(previously section 12A(6))

Section 14:

Section 14(1):**Section 15(1):***Section 15(2):***Section 15(2):**

(previously section 15(3))

Section 15(3):

(previously section 15(4))

Section 15(4):

(previously section 15(5))

Section 15(5):

(previously section 15(6))

Section 16(1):**Section 16(2):****Section 16(3):**

Section 18:

Section 18(1):**Section 19(1):****Section 19(2):****Section 19(3):****Section 19(4):****Section 20(1):****Section 20(2):****Section 20(3):****Section 21:****Section 22(2):***Section 23:*

amended by 17, 1987, s. 5; 98, 1988, ss. 5, 12 (Sched.);

substituted by 27, 1998, s. 7

inserted by 81, 1992, s. 6

amended by 27, 1998, s. 8**amended by 27, 1998, s. 25 (Sched. 1 cl. 1)**

amended by 17, 1987, s. 6; substituted by 98, 1988, s. 6

amended by 27, 1998, s. 25 (Sched. 1 cl. 2)**amended by 27, 1998, ss. 9(a), 25 (Sched. 2)***repealed by 98, 1988, s. 7(a)***amended by 27, 1998, ss. 9(b), 25 (Sched. 2)****amended by 27, 1998, s. 9(c)**

inserted by 33, 1985, s. 3; substituted by 98, 1988, s. 7(b);

amended by 27, 1998, s. 25 (Sched. 1 cl. 3)

inserted by 33, 1985, s. 3; substituted by 98, 1988, s. 7(b);

amended by 27, 1998, s. 9(d), (e)**amended by 27, 1998, ss. 10(a), 25 (Sched. 2)****amended by 27, 1998, ss. 10(b), 25 (Sched. 2)****amended by 27, 1998, ss. 10(c), 25 (Sched. 2)**

amended by 17, 1987, s. 7; substituted by 98, 1988, s. 8

amended by 27, 1998, s. 25 (Sched. 1 cl. 4)**amended by 27, 1998, ss. 11(a), 25 (Sched. 2)****amended by 27, 1998, ss. 11(b), 25 (Sched. 2)****amended by 27, 1998, s. 11(c)**inserted by 98, 1988, s. 9; **amended by 27, 1998, s. 25****(Sched. 1 cl. 5)****amended by 27, 1998, ss. 12(a), 25 (Sched. 2)****amended by 27, 1998, ss. 12(b), 25 (Sched. 2)****amended by 27, 1998, ss. 12(c), 25 (Sched. 2)****amended by 27, 1998, ss. 13, 25 (Sched. 2)****amended by 27, 1998, ss. 14, 25 (Sched. 2)***repealed by 81, 1992, s. 7*

Part 4 (previously Part 3AA) comprising ss. 23 - 26 (previously ss. 23AA - 23AAD) and heading inserted by 27, 1998, s. 15

Part 5 (previously Part 3AAB) comprising ss. 27 - 32 (previously ss. 23AAE - 23AAJ) and heading inserted by 27, 1998, s. 15

Part 6 (previously Part 3A) comprising ss. 23A - 23F and heading inserted by 98, 1988, s. 10; amended by 81, 1992, s. 8; repealed and ss. 33 - 35 (previously ss. 23A - 23C) and heading inserted in its place by 27, 1998, s. 16

Section 36:

(previously section 24)

Section 37:

(previously section 24A)

amended by 98, 1988, s. 11; **substituted by 27, 1998, s. 17**inserted by 81, 1992, s. 9; **substituted by 27, 1998, s. 17**

Section 38(1): (previously section 25(1))	amended by 27, 1998, ss. 18(a), (b), 25 (Sched. 2)
Section 38(2): (previously section 25(2))	substituted by 27, 1998, s. 18(c)
Section 38(3): (previously section 25(3))	amended by 27, 1998, s. 25 (Sched. 2)
Sections 39 and 40: (previously sections 25A and 25B)	inserted by 27, 1998, s. 19
Section 41: (previously section 26)	amended by 17, 1987, s. 8; 27, 1998, s. 25 (Sched. 2)
Section 42(1) and (2): (previously section 27(1) and (2))	amended by 27, 1998, s. 25 (Sched. 2)
Section 43(1) and (2): (previously section 28(1) and (2))	amended by 27, 1998, s. 25 (Sched. 2)
Section 44: (previously section 28A)	inserted by 27, 1998, s. 20
Section 45: (previously section 29)	redesignated as s. 29(1) by 81, 1992, s. 10; substituted by 27, 1998, s. 21(a)
Section 45(2): (previously section 29(2))	inserted by 81, 1992, s. 10; substituted by 27, 1998, s. 21(a)
Section 45(3): (previously section 29(3))	inserted by 82, 1992, s. 10; amended by 27, 1998, s. 21(b)
Section 46: (previously section 29A)	inserted by 47, 1991, s. 2
Sections 47 - 49: (previously sections 29B - 29D)	inserted by 27, 1998, s. 22
Section 50(2): (previously section 30(2))	amended by 7, 1980, s. 3; 17, 1987, s. 9; 98, 1988, s. 12 (Sched.); 81, 1992, s. 11(a), (b); 27, 1998, s. 23(a)-(n)
Section 50(3): (previously section 30(3))	substituted by 27, 1998, s. 23(o)
Section 50(4): (previously section 30(4))	inserted by 81, 1992, s. 11(c); amended by 27, 1998, s. 25 (Sched. 1 cl. 6), (Sched. 2)
Section 50(5): (previously section 30(5))	inserted by 81, 1992, s. 11(c); substituted by 27, 1998, s. 23(p)
Section 50(6) - (9): (previously section 30(6) - (9))	inserted by 27, 1998, s. 23(p)
Section 51: (previously section 31)	inserted by 27, 1998, s. 24