

House of Assembly—No 86

As laid on the table and read a first time, 6 December 2006

South Australia

**Dangerous Substances and Major Hazard
Facilities Bill 2006**

A BILL FOR

An Act to provide for matters relating to dangerous substances and major hazard facilities; to repeal the *Explosives Act 1936*; to amend the *Dangerous Substances Act 1979*, the *Environment Protection Act 1993* and the *Road Traffic Act 1961*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Dangerous Substances and Major Hazard Facilities Act 2006*.

5 **2—Commencement**

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Interpretation

- 10 (1) In this Act, unless the contrary intention appears—
 - activity involving a dangerous substance*—see section 5;
 - ADG Code* means the *Australian Code for the Transport of Dangerous Goods by Road and Rail* endorsed by the National Transport Commission, as in force from time to time;
 - 15 *alternative compliance scheme*—see section 29 and section 30;
 - approved auditor* means a person approved as an auditor under Part 7 Division 1;
 - audit* includes inspection;
 - Class 1 explosive* means an explosive in a form that satisfies the requirements for assignment to Class 1 under the ADG Code;
 - 20 *close associate*—see subsection (2);
 - combustible liquid*—see section 4;
 - commercial vehicle* means—
 - (a) a commercial motor vehicle, or semi-trailer, within the meaning of the *Motor Vehicles Act 1959*; or
 - 25 (b) a commercial vessel within the meaning of the *Harbors and Navigation Act 1993*; or
 - (c) any other vehicle constructed or adapted solely or mainly for the carriage of substances or articles;
 - compliance plan*—see section 24 and section 25;

condition includes a limitation;

contravene includes fail to comply with;

dangerous goods—see section 4;

5 *dangerous situation* means a situation involving a dangerous substance that is creating or likely to create imminent risk of harm to a person, property or the environment, and includes a situation that involves—

(a) an unplanned explosion or fire involving a dangerous substance; or

(b) a leakage or breakage of packaging of a dangerous substance during transport; or

10 (c) the unplanned discharge or release of a dangerous substance;

dangerous substance—see section 4;

director of a body corporate includes a person who exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs;

15 *explosive*—see section 4;

harm to a person includes death of the person;

import means bring into the State (whether from inside or outside Australia);

licence means a licence in force under Part 4;

major hazard facility—see section 41;

20 *Major Hazard Facilities Code* means NOHSC:2016(1996) *National Code of Practice for the Control of Major Hazard Facilities*, as in force from time to time;

Major Hazard Facilities Standard means NOHSC:1014(2002) *National Standard for the Control of Major Hazard Facilities*, as in force from time to time;

manufacture includes—

25 (a) assemble, disassemble or adapt an article; and

(b) mix or extract substances; and

(c) conduct steps preliminary to manufacture such as product development or production trials;

NOHSC means National Occupational Health and Safety Commission;

30 *occupier*, in relation to a place, includes a person with a right to occupy the place and a licensee authorised to carry on an activity at the place, but does not include a mortgagee in possession unless the mortgagee assumes active management of the place;

officer of a body corporate means—

- (a) a director of the body corporate; or
- (b) the chief executive officer of the body corporate; or
- 5 (c) a receiver or manager of property of the body corporate or a liquidator of the body corporate,

and includes, in relation to a contravention or alleged contravention of this Act by the body corporate, an employee of the body corporate with management responsibilities in respect of the matters to which the contravention or alleged contravention related;

10 ***plant*** includes—

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

premises includes land and a structure on land;

15 ***prescribed*** means prescribed by regulation;

register—see Part 3;

registered, in relation to a dangerous substance, means an explosive or registrable dangerous substance that conforms to the definition of the dangerous substance on the register;

20 ***registrable dangerous substance*** means a dangerous substance declared by regulation to be a registrable dangerous substance;

Registrar means the person appointed by the Minister to hold or act in the position of Registrar;

25 ***Regulator*** means the person appointed by the Minister to hold or act in the position of Regulator;

safety duty—see section 9;

safety management plan—see section 24;

safety risk means risk of harm to a person, property or the environment;

secure means secure from—

- 30 (a) loss; or
- (b) theft; or
- (c) sabotage; or
- (d) unauthorised access;

security duty—see section 10;

35 ***security management plan***—see section 25;

security risk means risk of—

- (a) loss, theft or sabotage of a dangerous substance; or
- (b) unauthorised access to a dangerous substance;

security sensitive substance—see section 4;

spouse includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);

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

5 *too dangerous to be transported*—see section 4;

unregistered, in relation to a dangerous substance, means an explosive, or registrable dangerous substance, that is not registered on the register or does not conform to the definition of the dangerous substance on the register (whether through deterioration or otherwise);

10 *vary* a licence or approval means—

- (a) vary or revoke a condition of the licence or approval; or
- (b) impose a further condition on the licence or approval;

vehicle means a vehicle, vessel or aircraft that is used or is capable of being used to transport a substance or article and includes a caravan, trailer and anything attached to a vehicle.

15

(2) For the purposes of this Act, 2 persons are *close associates* if—

- (a) 1 is a spouse, parent, child, brother or sister of the other; or
- (b) they are in partnership; or
- (c) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
- (d) 1 is a body corporate and the other is a director, manager, secretary or public officer of the body corporate; or
- (e) 1 is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
- 25 (f) 1 is a trustee of a trust and the other is a beneficiary of the trust or, in the case of a discretionary trust, an object of the trust; or
- (g) 1 has a right to participate, or participates, (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
- 30 (h) 1 is in a position to exercise, or exercises, control or significant influence over the conduct of the other.

(3) A reference to *keeping dangerous substances secure* includes a reference to keeping the substances secure for the purposes of security within the meaning of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth.

35 **4—Dangerous substances**

(1) The following are *dangerous substances*:

- (a) explosives;
- (b) dangerous goods;
- (c) goods too dangerous to be transported;

- (d) combustible liquids;
- (e) other substances or articles declared by or under the regulations to be dangerous substances.

Note—

5 The same goods may fall into more than 1 of the listed categories.

(2) Goods are *explosives* if—

- (a) the goods comprise a solid or liquid substance, or a mixture of substances, that is (or is designed to be) in itself capable by chemical reaction of producing gas at such a temperature and pressure, and at such a speed, as to cause damage to the surroundings (an *explosive substance*); or
- 10 (b) the goods comprise a substance or a mixture of substances that produces (or is designed to produce) an effect by heat, light, sound, gas or smoke, or a combination of these, as the result of a non-detonative self-sustaining exothermic chemical reaction (a *pyrotechnic substance*); or
- 15 (c) the goods comprise an article containing (or designed to contain) 1 or more explosive or pyrotechnic substances and used (or designed to be used) to produce an explosive or pyrotechnic effect; or
- (d) the goods are declared by or under the regulations to be explosives.

Note—

20 Goods are explosives if they meet the above criteria, even though—

- (a) they are rejected for assignment to a Class 1 hazard division under the ADG Code because they are thermally unstable or too dangerous to be transported; or
- (b) they are assigned to a different class of dangerous goods under the ADG Code because of the nature of the packaging in which they are contained or for any other reason.

(3) Subsection (2)(a) includes an emulsion, suspension or gel, primarily made up of ammonium nitrate (with or without other inorganic nitrates) and containing other substances such as oxidisers and fuels, and intended for use as a blasting explosive following modification prior to use.

30 (4) Goods are *dangerous goods* if—

- (a) the goods are in a form that satisfies the requirements for assignment under the ADG Code to a class of dangerous goods other than Class 1 (whether or not the goods satisfy the requirements for assignment to a hazard division under the Code); or
- 35 (b) the goods are declared by or under the regulations to be dangerous goods.

(5) Goods are *too dangerous to be transported* if—

- (a) the goods are in a form that satisfies the requirements for assignment under the ADG Code to the class of goods that are too dangerous to be transported; or
- 40 (b) the goods are declared by or under the regulations to be too dangerous to be transported.

(6) Goods are *combustible liquids* if the goods satisfy the requirements for combustible liquids under AS 1940—2004 *The storage and handling of flammable and combustible liquids*, as in force from time to time.

5 (7) The regulations may vary, or provide for the variation of, the category of dangerous substances into which goods fall under this section.

(8) Dangerous substances may be declared by or under the regulations to be *security sensitive substances*.

(9) In this section—
goods means substances or articles.

10 **5—Activity involving dangerous substance**

(1) A person carries on an *activity involving a dangerous substance* if the person—

(a) manufactures, processes or treats a dangerous substance; or

(b) imports or exports a dangerous substance; or

(c) sells, supplies or dispenses a dangerous substance; or

15 (d) packs a dangerous substance or marks or labels a dangerous substance or a container or package of a dangerous substance; or

(e) transports, consigns, loads or unloads a dangerous substance; or

(f) conveys a dangerous substance within plant or by pipeline; or

(g) stores a dangerous substance; or

20 (h) acquires or has possession or control of a dangerous substance; or

(i) uses a dangerous substance (including by testing the substance); or

(j) disposes of a dangerous substance or renders a dangerous substance harmless;
or

25 (k) owns, uses, installs, alters, repairs or modifies plant that is used, or is to be used, in connection with a dangerous substance; or

(l) modifies a combustion engine or associated plant for the purpose of enabling the engine to be operated with a dangerous substance as a fuel other than that for which it is designed; or

30 (m) undertakes gas fitting work in relation to an internal combustion engine designed to be operated with liquefied petroleum gas, compressed natural gas or some other dangerous substance as a fuel.

(2) This section does not limit the circumstances in which a person may be taken to carry on an activity involving a dangerous substance.

(3) In this section—

35 *gas fitting work* means the installation, alteration, repair, maintenance, modification, connection or disconnection of pipes, fittings or equipment used for, or designed for use in, the consumption of fuel in an internal combustion engine, but does not include the actual connection or disconnection of portable cylinders designed to contain the fuel.

6—Identification and assessment of risks

(1) In identifying and assessing safety risks associated with an activity involving a dangerous substance as required or contemplated by this Act, proper regard is to be had to, amongst other things—

- 5 (a) the chemical and physical properties of the dangerous substance and its potential to react with other substances or articles and the risk of such a reaction; and
- 10 (b) the processes and practices involved in the activity including, if the activity involves manufacturing a dangerous substance or conveying a dangerous substance within plant or by pipeline, the temperatures and pressures to which the substance is subjected and any changes of state to which the substance may be subject; and
- 15 (c) the nature of plant used in connection with the dangerous substance or which could come into contact with the dangerous substance; and
- 20 (d) the nature and location of the premises on which the activity takes place and its proximity to other premises of a kind, or where persons engage in activities of a kind, which may exacerbate the safety risks associated with the activity; and
- (e) other aspects of the physical context in which the activity takes place that may exacerbate the safety risks associated with the activity; and
- (f) information about the safety risks that is, with the exercise of reasonable diligence, readily available; and
- (g) other factors prescribed by the regulations.

25 (2) In identifying and assessing security risks associated with an activity involving a dangerous substance as required or contemplated by this Act, proper regard is to be had to, amongst other things—

- 30 (a) the nature of the dangerous substance and its potential use for a criminal purpose; and
- (b) the physical context in which the activity takes place; and
- (c) records or information kept about the dangerous substance or the activity, access to which may give rise to or exacerbate security risks; and
- (d) information about the security risks that is, with the exercise of reasonable diligence, readily available; and
- (e) other factors prescribed by the regulations.

35 **7—Application and interaction with other Acts**

(1) Subject to this section, this Act is in addition to and does not limit or derogate from the provisions of the *Environment Protection Act 1993*, the *Occupational Health, Safety and Welfare Act 1986* or any other Act.

40 (2) This Act does not apply in relation to an explosive to which Part 2 of the *Explosives Act 1961* of the Commonwealth applies.

- (3) Documentation prepared under the *Petroleum Act 2000*, the *Environment Protection Act 1993*, the *Occupational Health, Safety and Welfare Act 1986* or any other Act may be accepted, with or without modification, for the purposes of this Act.

Example—

5 In the case of a major hazard facility for which a licence is held under the *Petroleum Act 2000*, documentation provided under that Act that identifies and assesses risks or details management systems or emergency response procedures may be accepted for the purposes of a safety management plan or its supporting material under this Act.

8—Civil remedies not affected

10 The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

Part 2—Duties and standards for safety and security

9—Safety duty

15 (1) A person must, in carrying on an activity involving a dangerous substance, take such precautions and exercise such care as is reasonable in the circumstances in order to eliminate or minimise, as far as reasonably practicable, safety risks associated with the activity.

20 (2) In determining what measures are required to be taken, regard is to be had to, amongst other things—

- (a) the nature of the dangerous substance, the activity and any plant involved in the activity; and
- (b) the locality at which the activity is being carried on; and
- (c) the likelihood and severity of the harm to persons, property or the environment that may be caused by the activity if the safety risks are not eliminated; and
- (d) the extent to which the measures are reasonably feasible in the circumstances, taking into account measures taken by persons carrying on similar activities; and
- (e) the current state of technical knowledge and likelihood of successful application of the various measures that might be taken; and
- (f) other factors prescribed by the regulations.

35 (3) In order to comply with the safety duty, the person must give proper consideration to identifying and assessing safety risks associated with the particular activity carried on by the person.

(4) Proper consideration includes monitoring safety risks and taking action to identify and assess additional or varied risks associated with a change in circumstances.

40 (5) If the activity involves plant that is used, or is to be used, in connection with a dangerous substance, a safety risk will be taken to be associated with the activity if the risk is—

- (a) associated with the use of the plant; or

- (b) associated with the plant after it has been used in connection with a dangerous substance; or
- (c) associated with the installation, alteration, repair, maintenance or modification of the plant.

10—Security duty

- (1) A person, in carrying on an activity involving a dangerous substance, must take such precautions and exercise such care as is reasonable in the circumstances in order to keep the substance secure.
- (2) In determining what measures are required to be taken, regard is to be had to, amongst other things—
 - (a) the nature of the dangerous substance and the activity; and
 - (b) the locality at which the activity is being carried on; and
 - (c) the extent to which the measures are reasonably feasible in the circumstances, taking into account measures taken by persons carrying on similar activities; and
 - (d) other factors prescribed by the regulations.
- (3) In order to comply with the security duty, the person must give proper consideration to identifying and assessing security risks associated with the particular activity carried on by the person.
- (4) Proper consideration includes monitoring security risks and taking action to identify and assess additional or varied risks associated with a change in circumstances.

11—Safety and security standards imposed by regulations

- (1) The regulations may specify standards in relation to dangerous substances or activities involving dangerous substances for the purposes of protecting persons, property or the environment from harm or keeping dangerous substances secure.
- (2) The regulations—
 - (a) may be expressed in terms of performance standards or prescriptive standards; and
 - (b) may be mandatory or in the form of guidelines; and
 - (c) unless the contrary intention appears, apply to a person holding a licence whether granted before or after the making of the regulations.
- (3) A standard may consist of or include a prohibition or restriction or a requirement to take action and may include anything necessary or incidental to the implementation of the standard.
- (4) Without limiting the preceding subsections, the regulations may prescribe standards relating to—
 - (a) the quality and composition of dangerous substances or substances or articles from which dangerous substances may be derived;
 - (b) the use of dangerous substances or substances or articles from which dangerous substances may be derived;

- (c) analysis and testing of dangerous substances;
- (d) the specification of substances that are incompatible with dangerous substances;
- (e) packaging and labelling of dangerous substances;
- 5 (f) the siting, design, construction, ventilation, illumination, fittings, signage and management of premises used in connection with dangerous substances;
- (g) separation distances for the storage of dangerous substances;
- 10 (h) the design, construction, installation, ventilation, illumination, signage, repair and maintenance of vehicles and plant used in connection with dangerous substances;
- (i) matters that must be considered as a means of eliminating or minimising safety risks and security risks;
- (j) safety procedures and the provision of safety equipment and facilities;
- 15 (k) the qualifications, experience, training and supervision of employees, contractors and others;
- (l) procedures for controlling and monitoring access to dangerous substances;
- (m) records relating to dangerous substances and activities involving dangerous substances;
- (n) the provision of information to the Regulator or another person;
- 20 (o) the prohibition or regulation of activities in the vicinity of dangerous substances or in the vicinity of premises or plant used in connection with dangerous substances (including activities carried on by persons not carrying on an activity involving a dangerous substance);
- (p) monitoring compliance with other standards.

25 **12—Offences**

(1) If—

- (a) a person contravenes the safety duty or the regulations; and
- (b) the contravention results in harm to another person, another person's property or the environment or in a dangerous situation; and
- 30 (c) the person knew or was recklessly indifferent as to the safety risks associated with the contravention,

the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- 35 (b) in the case of a natural person—\$100 000 or imprisonment for 4 years or both.

- (2) If a person contravenes the security duty and the person knew or was recklessly indifferent as to the security risks associated with the contravention, the person is guilty of an offence.

5 Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$100 000 or imprisonment for 4 years or both.

- (3) If—

- 10 (a) a person contravenes the safety duty or the regulations; and
 (b) the contravention results in harm to another person, another person's property or the environment or in a dangerous situation,

the person is guilty of an offence.

Maximum penalty:

- 15 (a) in the case of a body corporate—\$250 000;
 (b) in the case of a natural person—\$50 000 or imprisonment for 2 years or both.

- (4) If a person contravenes the safety duty or the security duty, the person is guilty of an offence.

Maximum penalty:

- 20 (a) in the case of a body corporate—\$50 000;
 (b) in the case of a natural person—\$10 000.

- (5) If, in proceedings for an offence against this section, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of some other offence against this section for which a lesser maximum penalty may be imposed, the court may find the defendant guilty of the latter offence.
- 25

13—Defence

In proceedings where it is alleged that a person contravened the safety duty or the security duty, it is a defence if—

- 30 (a) the regulations or the conditions of a licence held by the person provide that compliance with specified regulations or specified licence conditions would satisfy the duty in its application to the activity concerned in the alleged contravention; and
 (b) it is proved that the person complied with the regulations, or, in the case of a person who is exempt from compliance with the regulations, the conditions of the exemption, or that the person complied with the licence conditions (as the case requires).
- 35

14—Prohibitions by proclamation

- (1) The Governor may, by proclamation, prohibit any person or a class of persons from carrying on or engaging in any activity or a class of activities involving a dangerous substance.
- 40
- (2) A prohibition is subject to conditions stated in the proclamation.

(3) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

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

5 Maximum penalty:

 (a) in the case of a body corporate—\$50 000;

 (b) in any other case—\$10 000.

Part 3—Register

15—Register of explosives and registrable dangerous substances

10 (1) The Registrar must keep a register of explosives and registrable dangerous substances (the *register*).

 (2) The Registrar may, on application by the holder of a licence authorising the manufacture or import of a dangerous substance or on the Registrar's own initiative, register an explosive or a registrable dangerous substance by defining it, and assigning it a classification, in accordance with the regulations and recording those details on the register.

 (3) The definition of a dangerous substance may extend to the manner in which it is packaged or contained and the manner in which the package or container is labelled.

 (4) The registration of a dangerous substance expires after 10 years or such shorter period as is specified on the register by the Registrar when the dangerous substance is registered.

 (5) The Registrar may refuse to register, or cancel the registration of, a dangerous substance on any of the following grounds:

 (a) the regulations provide that the dangerous substance should not be registered;

 (b) the dangerous substance is no longer manufactured in or imported into the State;

 (c) the person who applied for registration of the dangerous substance no longer holds a licence authorising the manufacture or import of the dangerous substance or the licence held by the person has been suspended or cancelled;

 (d) for the purposes of protecting persons, property or the environment from harm;

 (e) any other relevant ground.

 (6) A cancellation of registration takes effect when a note of the cancellation is entered on the register or at such later time as is specified in the note of the cancellation on the register.

 (7) The Registrar may, on application by the holder of a licence authorising the manufacture or import of a dangerous substance or on the Registrar's own initiative, vary the definition or classification of a dangerous substance on the register.

(8) The register (excluding the confidential section) must be kept available for inspection, on payment of the prescribed fee, by members of the public during ordinary office hours at a prescribed office and may be made available to the public by electronic means.

5 (9) A member of the public may, on payment of the prescribed fee, obtain a copy of part of the register (excluding the confidential section).

(10) In this section—

confidential section of the register means—

10 (a) the part of the register containing details of the composition, quality and character of dangerous substances constituting trade secrets; and

(b) any other part of the register that should, in the opinion of the Registrar, be kept confidential for safety or security reasons.

Part 4—Licensing

Division 1—Licences

15 16—Requirement for licence

(1) A person must not, except as authorised by licence—

(a) manufacture or import—

(i) a substance or article for use (whether in its manufactured form or in a modified form) as an explosive; or

20 (ii) a registrable dangerous substance; or

(b) carry on or personally engage in an activity involving an unregistered dangerous substance; or

(c) carry on or personally engage in a prescribed activity involving a dangerous substance.

25 Maximum penalty:

(a) in the case of a body corporate—the prescribed amount, but not exceeding \$250 000;

(b) in the case of a natural person—the prescribed maximum penalty, but not exceeding \$50 000 or imprisonment for 2 years, or both.

30 (2) A person must not supply a dangerous substance to a person whose acquisition of the substance must be authorised by licence unless the person acquiring the substance holds such a licence.

Maximum penalty:

35 (a) in the case of a body corporate—the prescribed amount, but not exceeding \$250 000;

(b) in the case of a natural person—the prescribed maximum penalty, but not exceeding \$50 000 or imprisonment for 2 years, or both.

(3) If, in proceedings for an offence against subsection (1), the evidence gives rise to a reasonable inference that the activity carried on or engaged in by the defendant was not authorised by the licence, the onus shifts to the defendant to establish that the activity was authorised by the licence.

5 (4) If the registration of a dangerous substance is cancelled and a person is charged with an offence against subsection (1) involving an activity involving the dangerous substance, it is a defence to the charge if the defendant proves—

(a) that the dangerous substance was registered at the time it came into the person's possession or control; and

10 (b) that, if the dangerous substance had remained registered at the time of the alleged offence, the activity would have been authorised by licence or it would have been lawful for the defendant to carry on or personally engage in the activity without the authority of a licence; and

15 (c) not more than 10 years, or such other period specified (from time to time) for the dangerous substance by the Registrar on the register, has elapsed since the date the registration was cancelled.

(5) At the time a period is specified for a dangerous substance under subsection (4), the period must not be shorter than the period that has elapsed since registration of the dangerous substance was cancelled.

20 **17—Grant or renewal of licence**

(1) The Regulator may, on application by a person, grant or renew a licence.

25 (2) If an applicant applies to the Regulator for the grant or renewal of a licence authorising several activities involving dangerous substances, the Regulator may, in the Regulator's discretion, grant the applicant either a single licence or multiple licences authorising those activities.

30 (3) The Regulator may, subject to such conditions as the Regulator thinks fit, conditionally approve the grant of a licence in respect of proposed premises and if the Regulator is subsequently satisfied that the premises have been established in substantial compliance with those conditions (and within such period, if any, as the Regulator may have determined), the Regulator must grant a licence.

18—Temporary grant or renewal of licence

(1) The Regulator may, pending determination of an application for the grant or renewal of a licence, grant a temporary licence.

35 (2) A temporary licence operates for a term not exceeding 6 months, and on conditions, determined by the Regulator.

19—Term of licence

(1) Subject to this Act, a licence remains in force for the period specified in the licence on its grant or renewal.

(2) The period specified must not exceed 3 years.

40 (3) The Regulator may, if the Regulator thinks fit and on payment of a prescribed late application fee, renew a licence despite the fact that application for renewal of the licence was made after the end of the previous term of the licence.

(4) The Regulator may, on the Regulator's own initiative and without application by the licensee, renew the licence if the Regulator is satisfied that it is necessary for the purposes of protecting persons, property or the environment from harm, or keeping dangerous substances secure, that the licensee continue to be bound by the licence conditions.

(5) A licence has effect, on grant or renewal, from the date specified in the licence for that purpose, which may be earlier than the date of application for the grant or renewal of the licence.

20—Annual fees and returns

(1) This section applies to a licence granted or renewed for a term of 2 years or more.

(2) A licensee must—

(a) in each year lodge with the Regulator, before the date notified in writing to the licensee by the Regulator for that purpose, an annual return containing the information required by the Regulator by licence condition or by written notice; and

(b) in each year (other than a year in which the licence is due to expire) pay to the Regulator, before the date notified in writing to the licensee by the Regulator for that purpose, the prescribed annual licence fee.

(3) If a licensee fails to lodge the annual return or pay the annual licence fee in accordance with subsection (2), the Regulator may, by written notice, require the licensee to make good the default and, in addition, to pay to the Regulator the amount prescribed as a penalty for default.

(4) An annual licence fee (including a penalty for default) payable under this section is recoverable by the Regulator as a debt due to the Regulator.

(5) In this section—

licensee includes the holder of a licence that has been suspended.

21—Licence non-transferable

A licence is not transferable.

22—Surrender of licence

(1) The Regulator may, on application by a licensee, approve the surrender of a licence.

(2) Without limiting subsection (1), the Regulator may refuse to approve the surrender of a licence if the Regulator is satisfied that it is necessary for the purposes of protecting persons, property or the environment from harm, or keeping dangerous substances secure, that the licensee continue to be bound by the licence conditions.

Division 2—Licence conditions

23—Licence conditions

(1) A licence is subject to conditions imposed by the Regulator.

(2) Without limiting subsection (1), licence conditions may include the following:

(a) conditions specifying the activities authorised by the licence;

- (b) conditions specifying the persons or classes of persons to whom the authorisation extends;
- (c) conditions specifying the nature or quantity of dangerous substances that may be involved in the activity authorised by the licence;
- 5 (d) conditions specifying the premises, vehicles or plant that may be used under the licence;
- (e) conditions requiring any alteration to premises, vehicles or plant to be approved by the Regulator;
- 10 (f) other conditions limiting or regulating the activities authorised by the licence for the purposes of protecting persons, property or the environment from harm or keeping dangerous substances secure (including conditions requiring compliance with standards of a kind that may be prescribed by regulation).
- (3) Without limiting subsection (1), licence conditions may relate to premises and plant associated with, or in the vicinity of, a dangerous substance or premises or plant used, or to be used, in connection with a dangerous substance.
- 15

24—Safety management plan

- (1) It is a condition of a licence to which this section applies that the licensee must—
- (a) have a safety management plan approved by the Regulator; and
- 20 (b) ensure that activities under the licence conform with the safety management plan approved by the Regulator; and
- (c) allow an approved auditor to perform, at a reasonable time of which the licensee has been given at least 2 days written notice—
- 25 (i) the number of periodic audits of the safety management plan required by condition imposed by the Regulator (if any); and
- (ii) if an audit shows a failure to comply with the safety management plan—such additional audits as the Regulator considers appropriate; and
- (d) pay all or a proportion of the reasonable costs associated with those audits as required by condition imposed by the Regulator; and
- 30 (e) review the safety management plan in a manner, at intervals, and within a period, as required by conditions imposed by the Regulator and provide a report of the review to the Regulator.
- (2) A safety management plan—
- 35 (a) must incorporate or refer to a written report identifying and assessing safety risks associated with the activities authorised by the licence; and
- (b) must incorporate a set of processes adopted by the licensee to apply to—
- (i) the activities authorised by the licence; and
- (ii) emergencies that may arise out of those activities,
- 40 for the purposes of protecting persons, property and the environment from harm; and

- (c) must be fully documented; and
- (d) must conform to any prescribed requirements.
- (3) Without limiting subsection (2), the processes adopted by the licensee may relate to 1 or more of the following:
 - 5 (a) storage, handling and monitoring of dangerous substances;
 - (b) maintenance and monitoring of premises, vehicles and plant used in connection with dangerous substances;
 - (c) commissioning and de-commissioning of plant used in connection with dangerous substances;
 - 10 (d) technical standards to be applied in relation to the activities authorised by licence;
 - (e) emergency procedures, command structures and alarm systems and the performance of emergency drills;
 - (f) reporting and responding to dangerous situations and other incidents;
 - 15 (g) investigating the causes of, and assessing the responses to, dangerous situations and other incidents;
 - (h) induction and ongoing training, and, where appropriate, supervision, of employees, contractors and visitors to the premises the subject of the plan;
 - (i) assignment of responsibility for tasks covered by the plan;
 - 20 (j) monitoring of compliance with the processes;
 - (k) reviewing identification and assessment of safety risks, in particular, where there may be additional or varied risks associated with a change in circumstances;
 - (l) reviewing the processes.
- 25 (4) The plan must provide appropriate processes for communication for the purposes of ongoing assessment of safety risks and facilitating implementation of emergency procedures between—
 - (a) the licensee and the local community, including other licensees engaged in activities in proximity to the premises the subject of the plan; and
 - 30 (b) the licensee and South Australia Police; and
 - (c) the licensee and the South Australian Metropolitan Fire Service or the South Australian Country Fire Service (as appropriate); and
 - (d) the licensee and an ambulance service that provide services in the locality of the premises.
- 35 (5) The Regulator may issue guidelines about safety management plans for particular activities.
- (6) The Regulator may, on application by a licensee or an applicant for a licence, approve a safety management plan for that licence.

(7) If a licence that is in force becomes or is to become subject to this section, the Regulator may grant an exemption from the application of subsection (1) for such period as the Regulator considers necessary to allow the licensee to prepare a safety management plan and its supporting material.

5 (8) An exemption under subsection (7)—

(a) may be conditional on the licensee—

(i) having, within a specified period, a compliance plan approved by the Regulator; and

(ii) conforming with the approved compliance plan; and

10 (b) is subject to other conditions imposed by the Regulator.

(9) A compliance plan—

15 (a) must require a process of identification and assessment of safety risks to be undertaken by the licensee in consultation with employees and persons engaged in other licensed activities that take place in proximity to the premises the subject of the plan; and

(b) may provide for the development, review and implementation of processes to be incorporated in the safety management plan in stages.

20 (10) A safety management plan may be combined with a security management plan, and a compliance plan for a safety management plan may be combined with a compliance plan for a security management plan.

(11) This section applies to the following:

(a) a licence to which the section is applied by regulation;

(b) a licence to which the section is applied by the Regulator by licence condition.

25 (12) In this section—

compliance plan means a plan setting out the manner in which, and the period within which, a safety management plan and its supporting material will be prepared;

supporting material, in relation to a safety management plan, means—

30 (a) a proposed scheme for auditing compliance with the plan or an explanation of the grounds on which it is proposed that auditing in accordance with licence conditions is not required; and

(b) a detailed explanation of the grounds on which it is proposed that the plan should be approved.

25—Security management plan

35 (1) It is a condition of a licence to which this section applies that the licensee must—

(a) have a security management plan approved by the Regulator; and

(b) ensure that activities under the licence conform with the security management plan approved by the Regulator; and

40 (c) allow an approved auditor to perform, at a reasonable time of which the licensee has been given at least 2 days written notice—

- 5
- (i) the number of periodic audits of the security management plan required by condition imposed by the Regulator (if any); and
 - (ii) if an audit shows a failure to comply with the security management plan—such additional audits as the Regulator considers appropriate; and
- (d) pay all or a proportion of the reasonable costs associated with those audits as required by condition imposed by the Regulator; and
- (e) review the security management plan in a manner, at intervals, and within a period, as required by conditions imposed by the Regulator and provide a report of the review to the Regulator.
- 10
- (2) A security management plan—
- (a) must incorporate or refer to a written report identifying and assessing security risks associated with the activities authorised by the licence; and
 - (b) must incorporate a set of processes adopted by the licensee to apply to the activities authorised by the licence for the purposes of keeping dangerous substances secure; and
 - (c) must, if it contemplates a dangerous substance—
 - (i) being kept in a building, container or area that is not physically secured; or
 - (ii) being transported in a vehicle in a compartment that is not physically secured,
 require that the substance be under constant surveillance by specified means for each period during which the substance is so kept or transported; and
 - (d) must be fully documented; and
 - (e) must conform to any prescribed requirements.
- 25
- (3) Without limiting subsection (2), the processes adopted by the licensee may relate to 1 or more of the following:
- (a) security of premises or of magazines, buildings, tanks or other containers or storage areas for dangerous substances;
 - (b) security during transport of dangerous substances, including during loading and unloading;
 - (c) the mechanisms for controlling and recording access to dangerous substances;
 - (d) recording and stocktaking of dangerous substances;
 - (e) security of information about dangerous substances or activities involving dangerous substances;
 - (f) assignment of responsibility for ensuring compliance with the plan or tasks included in the plan;
 - (g) monitoring of compliance with the processes;
 - (h) reviewing identification and assessment of security risks, in particular, where there may be additional or varied risks associated with a change in circumstances;
- 30
- 35
- 40

(i) reviewing the processes.

(4) The Regulator may issue guidelines about security management plans for particular activities.

(5) The Regulator may, on application by a licensee or an applicant for a licence, approve a security management plan for that licence.

(6) If a licence that is in force becomes or is to become subject to this section, the Regulator may grant an exemption from the application of subsection (1) for such period as the Regulator considers necessary to allow the licensee to prepare a security management plan and its supporting material.

(7) An exemption under subsection (6)—

(a) may be conditional on the licensee—

(i) having, within a specified period, a compliance plan approved by the Regulator; and

(ii) conforming with the approved compliance plan; and

(b) is subject to other conditions imposed by the Regulator.

(8) A compliance plan may provide for the development, review and implementation of processes to be incorporated in the security management plan in stages.

(9) A security management plan may be combined with a safety management plan, and a compliance plan for a security management plan may be combined with a compliance plan for a safety management plan.

(10) This section applies to the following:

(a) a licence relating to a security sensitive substance;

(b) a licence to which the section is applied by regulation;

(c) a licence to which the section is applied by the Regulator by licence condition.

(11) In this section—

compliance plan means a plan setting out the manner in which, and the period within which, a security management plan and its supporting material will be prepared;

supporting material, in relation to a security management plan, means—

(a) a proposed scheme for auditing compliance with the plan or an explanation of the grounds on which it is proposed that auditing in accordance with licence conditions is not required; and

(b) a detailed explanation of the grounds on which it is proposed that the plan should be approved.

26—Security clearance of certain persons

(1) It is a condition of a licence to which this section applies that the licensee must ensure that—

(a) each person who supervises or manages the activities authorised by the licence is an approved security cleared manager for that licence; and

(b) each person—

- (i) who has responsibility for ensuring compliance with an approved security management plan or tasks included in the plan; or
- (ii) who may have access to a dangerous substance other than in the presence, and under the direct supervision, of an approved security cleared manager or approved security cleared agent,

is an approved security cleared manager, or an approved security cleared agent, for that licence; and

- (c) if required by licence condition imposed by the Regulator, each approved security cleared manager and approved security cleared agent for the licence wears, while undertaking duties relating to the activity authorised by the licence, an identification card that is in a form approved by the Regulator and is clearly visible to other persons.

(2) The Regulator may, on application by a licensee or an applicant for a licence, approve a person as an approved security cleared manager, or approved security cleared agent, for that licence.

(3) An approval granted under this section remains in force for a period specified in the approval.

(4) This section applies to—

- (a) a licence relating to a security sensitive substance; and
- (b) a licence to which the section is applied by regulation; and
- (c) a licence to which the section is applied by the Regulator by licence condition.

27—Reporting of loss, theft or unauthorised interference

(1) It is a condition of a licence that the licensee must ensure that the theft, loss or apparent unauthorised interference with a dangerous substance to which the licence relates is reported immediately to a police officer and the Regulator.

(2) A person is required to make a report despite the fact that to do so might incriminate the person or make the person liable to a penalty.

28—Offence to contravene licence conditions

If a licence condition is contravened, the licensee is guilty of an offence.

Maximum penalty: the maximum penalty for an offence against section 16(1) in relation to a licence of the kind concerned.

Division 3—Alternative compliance schemes

29—Alternative compliance scheme comprised of approved safety or security management plan

(1) The Regulator may, on application, approve compliance by a licensee with an approved safety management plan or approved security management plan (an *alternative compliance scheme*) instead of specified regulations.

- 5
- (2) An approval under this section operates as an exemption from the regulations specified in the approval subject to the condition that the licensee must ensure that activities under the licence conform with the approved safety management plan or approved security management plan (as the case requires) and any other conditions of the approval.
- (3) An approval is subject to conditions imposed by the Regulator.
- (4) An approval must be endorsed on the licence.
- (5) This section does not derogate from the power of the Regulator to grant an exemption under section 61.

10 **30—Other alternative compliance schemes**

- 15
- (1) The Regulator may, on application, approve compliance by a licensee with a scheme to be implemented by the licensee (an *alternative compliance scheme*) instead of specified regulations.
- (2) An approval under this section does not operate as an exemption from the regulations specified in the approval but, in proceedings where it is alleged that a licensee with an approval under this section contravened regulations specified in the approval, it will be a defence if it is proved—
- 20
- (a) that the licensee complied with its alternative compliance scheme and any conditions of the approval; and
- (b) that compliance with the scheme eliminated or minimised the safety risks or security risks associated with the activity (as the case requires) to at least the same extent as would have compliance with the specified regulations.
- (3) An approval is subject to conditions imposed by the Regulator.
- (4) An approval must be endorsed on the licence.

25 **Division 4—Making and determination of applications**

31—Applications

- 30
- (1) An application under this Part—
- (a) must be made to the Regulator; and
- (b) must conform to the requirements of the Regulator about its form, contents and the manner in which it is made; and
- (c) must, in the case of an application for a licence, specify the purposes for which the person requires the licence; and
- 35
- (d) must, in the case of an application for a licence, be accompanied by proof (to the satisfaction of the Regulator) of the applicant's identity and age, or, if the applicant is a body corporate, the identity and age of each of the directors; and
- (e) must, in the case of an application for approval of a security cleared manager or security cleared agent, be accompanied by proof (to the satisfaction of the Regulator) of the identity and age of the person proposed to be approved; and
- 40
- (f) must, in the case of an application for an approval, be accompanied by—

(i) a detailed explanation of the grounds on which it is proposed that the approval should be granted; and

(ii) any prescribed information or material; and

(g) must be accompanied by the prescribed fee.

5 (2) The Regulator may, by written notice—

(a) ask the applicant to give the Regulator further information, documents or records relevant to the application (including reports about the person's physical or mental health); or

10 (b) ask the applicant to allow persons authorised by the Regulator to inspect premises, vehicles, plant or dangerous substances proposed to be used by the applicant in connection with activities proposed to be authorised by the licence; or

15 (c) ask the applicant, a close associate of the applicant, a person proposed to be approved as a security cleared manager or security cleared agent or a close associate of such a person to submit to the taking of photographs and finger prints; or

20 (d) ask the applicant, a close associate of the applicant, a person proposed to be approved as a security cleared manager or security cleared agent or a close associate of such a person to obtain from the Commissioner of Police or a prescribed person such reports on the person as the Regulator considers necessary, or to provide consents appropriate for the obtaining of such reports.

(3) The Regulator may refuse the application if a person does not comply with such a request.

25 (4) The applicant may, with the approval of the Regulator or at the request of the Regulator, amend the application before the Regulator has finished considering it.

(5) The Regulator may, as the Regulator considers appropriate, accept a single application from an applicant in respect of different activities of the applicant or activities of the applicant at different locations or may require separate applications.

30 **32—Licence may include photograph**

(1) A licence granted to a natural person will, if the Regulator so determines, include a photograph of the licensee.

(2) For that purpose, an applicant for a licence who is a natural person may be required by the Regulator—

35 (a) to attend at a specified place to have the applicant's photograph taken; or

(b) to supply the Regulator with 1 or more photographs of the applicant as specified by the Regulator.

33—Criteria—general

40 (1) In determining an application under this Part and what should be the term and conditions of a licence, the Regulator must have regard to the safety duty and the security duty.

- (2) The regulations may—
- (a) specify minimum requirements that must be satisfied before a person may hold a licence or a licence of a specified class; or
 - (b) prohibit a body corporate from holding a licence of a specified class.

5 **34—Criteria—minimum age**

- (1) A licence is not to be granted to a natural person unless that person has attained 18 years of age and a licence is not to be granted to a body corporate unless each of the directors has attained 18 years of age.
- (2) A person is not to be approved as a security cleared manager or security cleared agent unless that person has attained 18 years of age.

10 **35—Criteria—suitability of person**

- (1) The Regulator may refuse an application for the grant, renewal or variation of a licence if the Regulator is not satisfied that the licensee or proposed licensee is a suitable person to hold the licence (or the licence as proposed to be varied).
- (2) The Regulator may refuse an application for the approval of a security cleared manager or security cleared agent if the Regulator is not satisfied that the person is a suitable person to be so approved.
- (3) Without limiting subsection (1) or subsection (2)—
- (a) a person who is the subject of an adverse security assessment within the meaning of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth will not be regarded as a suitable person to hold a licence or to be approved as a security cleared manager or security cleared agent; and
 - (b) in assessing the suitability of a person, the Director may have regard to the character and reputation of the person and the person's close associates and may, without limitation, take into account relevant offences.

15 **36—Criteria—capacity and purpose**

The Regulator may refuse an application for the grant, renewal or variation of a licence if the Regulator is not satisfied—

- (a) that the licensee or proposed licensee has the capacity, or has made or proposes to make appropriate arrangements, to satisfy the requirements of this Act applicable to the activities authorised or to be authorised by the licence; or
- (b) that the licensee or proposed licensee has a genuine reason for carrying out or engaging in the activity authorised or to be authorised by the licence (or the licence as proposed to be varied).

20 **37—Criteria—approvals of plans and schemes**

- (1) The Regulator need not consider an application for approval of a safety management plan, security management plan or alternative compliance scheme unless the applicant has paid, or has agreed to pay, all or a proportion of the reasonable costs associated with assessment of the grounds for approval as required by the Regulator by written notice to the applicant.

- (2) The Regulator may refuse to approve a safety management plan or security management plan if not satisfied—
- (a) that compliance with the plan will adequately eliminate or minimise safety risks or security risks associated with the activity (as the case requires); or
 - (b) that the licensee has the capacity, or has made or proposes to make appropriate arrangements, to satisfy the requirements of this Act.
- (3) The Regulator may refuse to approve an alternative compliance scheme under section 29 if not satisfied that compliance with the applicant's approved safety management plan or approved security management plan will eliminate or minimise the safety risks or security risks (as the case requires) associated with the activity authorised by the licence to at least the same extent as would compliance with the regulations proposed to be specified in the approval.
- (4) The Regulator may refuse to approve an alternative compliance scheme under section 30 if not satisfied that the applicant has the capacity, or has made or proposes to make arrangements, to implement an alternative compliance scheme that will eliminate or minimise the safety risks or security risks (as the case requires) associated with the activity authorised by the licence to at least the same extent as would compliance with the regulations proposed to be specified in the approval.

Division 5—Suspension, cancellation or variation

38—Application by licensee for variation of licence or cancellation or variation of approval

The Regulator may, on application, vary a licence or cancel or vary an approval under this Part.

39—Suspension, cancellation or variation of licence or approval by Regulator

- (1) The Regulator may suspend, cancel or vary a licence if satisfied that—
- (a) the licence was obtained improperly; or
 - (b) the licensee—
 - (i) has ceased to carry on or engage in the activity authorised by the licence; or
 - (ii) has not paid fees or charges payable to the Regulator within the required time; or
 - (iii) has contravened this Act or a law of the Commonwealth or another State or a Territory of the Commonwealth that regulates activities involving dangerous substances; or
 - (iv) has ceased to be a suitable person to hold the licence; or
 - (c) the activities authorised by the licence should not be continued (or should not be continued under the licence conditions) because the safety risks or security risks associated with the activity are unacceptably high.
- (2) The Regulator may suspend, cancel or vary an approval of an alternative compliance scheme for a licence if satisfied that—
- (a) the approval was obtained improperly; or

- (b) the licensee has contravened a condition of the approval; or
- (c) the scheme should not be continued because the safety risks or security risks associated with the scheme are unacceptably high.

5 (3) The Regulator may cancel an approval of a person as a security cleared manager, or security cleared agent, for a licence if satisfied that—

- (a) the approval was obtained improperly; or
- (b) the person has contravened this Act or a law of the Commonwealth or another State or a Territory of the Commonwealth that regulates activities involving dangerous substances; or
- 10 (c) the person has ceased to be a suitable person to be approved.

(4) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Regulator.

(5) A suspension may be expressed to have effect at a specified future time, or to have effect at a specified future time unless a specified condition is fulfilled.

15 (6) If the Regulator cancels a licence, the Regulator may also disqualify the holder of the cancelled licence, or if the holder of the cancelled licence is a body corporate, any director of the body corporate, from obtaining any licence or a specified class of licence permanently or for a specified period, or until the fulfilment of specified conditions or until further order of the Regulator.

20 (7) Before the Regulator acts under this section, the Regulator must—

- (a) give written notice to the licensee of the proposed action specifying the reasons for the proposed action; and
- (b) unless satisfied that urgent action is required, allow the licensee at least 25 28 days within which to make submissions to the Regulator in relation to the proposed action.

(8) If the Regulator suspends or cancels a licence, the licensee must return the licence to the Regulator within 14 days.

Maximum penalty: \$1 250.

Expiation fee: \$160.

30 **40—Variation of plans**

(1) If, at any time, the Regulator is not satisfied as to the adequacy of a safety management plan, security management plan or compliance plan, the Regulator may require the plan to be resubmitted for approval within a specified period in a modified form (which may be specified by the Regulator).

35 (2) If a licensee fails to resubmit a safety management plan, security management plan or compliance plan as required, the licensee is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- 5 (3) Before action is taken under this section other than on application by the licensee or with the consent of the licensee, the Regulator must give the licensee written notice of the proposed action, inviting the licensee to make written submissions in relation to the proposed action within a period specified in the notice (being not less than 14 days from the day on which the notice is given to the licensee).

Part 5—Major hazard facilities

41—Classification as major hazard facility

- 10 (1) The Regulator may, by written notice to a licensee or an applicant for a licence, classify the facility or proposed facility that is or is to be subject to the licence as a major hazard facility having regard to the criteria set out in the Major Hazard Facilities Standard and the Major Hazard Facilities Code.
- (2) Before the Regulator acts under this section, the Regulator must—
- 15 (a) give written notice to the licensee or applicant specifying the reasons for the proposed classification; and
- (b) allow the person at least 28 days within which to make submissions to the Regulator in relation to the proposed classification.
- (3) The Regulator may, by subsequent written notice to the licensee or proposed licensee, revoke the classification of a facility as a major hazard facility.
- 20 (4) The Governor may, by regulation, extend the application of this section to a person who may otherwise be exempt under the regulations from the requirement to hold a licence.

42—Criteria for applications relating to major hazard facility

25 The Regulator must, in considering an application under Part 4 relating to a major hazard facility, have regard to the Major Hazard Facilities Standard and the Major Hazard Facilities Code.

43—Application of safety and security measures to major hazard facility

- (1) Sections 24, 25 and 26 apply to a licence for a major hazard facility.
- (2) Those sections must be applied to a major hazard facility subject to the following:
- 30 (a) a safety management plan for a major hazard facility must, in particular—
- (i) identify the type, relative likelihood and consequences of potential dangerous situations; and
- (ii) detail the planned responses to such dangerous situations, including responses for the protection of persons, property and the environment in the vicinity of the facility; and
- 35 (iii) detail a process for investigation and assessment following a dangerous situation, including a process involving consultation with employees;

- 5
- (b) the conditions of licence for a major hazard facility must require a number of periodic audits of the safety management plan and security management plan to be performed by an approved auditor, at a reasonable time of which the licensee has been given at least 2 days written notice, and, consequently, the supporting material in relation to a plan must incorporate a proposed scheme for auditing compliance with the plan;
- (c) if an exemption is given to the licensee of a major hazard facility to allow the licensee to prepare a safety management plan or security management plan and supporting material it must be conditional on the licensee—
- 10
- (i) having, within a specified period, a compliance plan approved by the Regulator; and
- (ii) conforming with the approved compliance plan.

Part 6—Notification

44—Information to be provided to Regulator by person other than licensee

- 15
- (1) A person who carries on a prescribed activity involving a dangerous substance but who is not required to hold a licence authorising the activity must—
- (a) in the case of a person who was carrying on the activity immediately before the activity was prescribed—within 60 days of the activity being prescribed; and
- 20
- (b) in any other case—within 60 days of first carrying on the activity, give written notice to the Regulator of—
- (c) the person's name and business or registered address; and
- (d) the address of the premises at which the person carries on the activity; and
- (e) the nature of the activity; and
- 25
- (f) the quantity and type of dangerous substances involved, or likely to be involved, in the activity.

Maximum penalty:

- (a) in the case of a body corporate—\$25 000;
- (b) in the case of a natural person—\$5 000.
- 30
- (2) The Regulator may, by written notice to a person who has given notice under this section, require the person to provide a report identifying and assessing the main safety risks and security risks associated with the activity and the action proposed to be taken to eliminate or minimise those risks.
- 35
- (3) A person who fails to provide a report as required under subsection (2) is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$15 000;
- (b) in the case of a natural person—\$2 500.

- (4) A person carrying on an activity to which this section applies must, within 30 days of a change occurring in the particulars required to be given under subsection (1), inform the Regulator in writing of the change.

Maximum penalty: \$1 250.

5 Expiation fee: \$160.

Part 7—Enforcement and emergencies

Division 1—Approved auditors

45—Approved auditors

- (1) The Minister may approve a person as an auditor for the purposes of this Act if the Minister is satisfied that the person can provide satisfactory and efficient audit services for the purposes of this Act and that the services will be provided by suitably qualified persons.
- (2) An approval is subject to conditions imposed by the Minister.
- (3) Without limiting subsection (2), the conditions may including the following:
- 15 (a) conditions requiring the person to enter into an agreement (an *audit agreement*) with the Minister;
- (b) conditions limiting the functions or powers of the person;
- (c) conditions limiting the area of the State in which those functions or powers may be exercised;
- 20 (d) conditions fixing fees to be paid to the Minister.
- (4) An audit agreement—
- (a) must regulate the provision of audit services for the purposes of this Act; and
- (b) must provide that the agreement terminates if the approval is withdrawn by the Minister; and
- 25 (c) must set out requirements relating to audit reports including the content of the reports; and
- (d) may regulate the charges to be made by the auditor for audit services under this Act (by fixing specific charges or maximum and minimum charges or by setting out a method of calculating charges); and
- 30 (e) may regulate the withdrawal of audit services for non-payment of charges; and
- (f) may contain any other provision agreed between the Minister and the person.
- (5) The Minister and an approved auditor may, by agreement, vary or terminate an audit agreement.
- 35 (6) The Minister may, by written notice to the approved auditor—
- (a) impose a further condition of approval; or
- (b) vary or revoke a condition of approval; or

- (c) cancel the approval if satisfied that the auditor is in breach of a condition of the approval or a term of the audit agreement between the auditor and the Minister.

- (7) An approval or audit agreement under this section does not derogate from the right of an authorised person to exercise a power under this Act.

46—Duty of auditors to report certain matters

If an approved auditor, in the course of conducting an audit in respect of a licensee's activities, forms a reasonable belief that the licensee has—

- (a) engaged in conduct creating a serious safety risk or serious security risk; or
- (b) engaged in prescribed conduct,

the auditor must, as soon as reasonably practicable, inform the Regulator of the name and address of the licensee and details about the facts and circumstances giving rise to the belief.

Maximum penalty: \$2 500 or imprisonment for 6 months.

47—Offence to hinder or obstruct auditor

A person who hinders or obstructs a person performing an audit under a licence condition is guilty of an offence.

Maximum penalty: \$5 000.

Division 2—Authorised persons

48—Appointment of authorised persons

- (1) The Minister may appoint suitable persons with appropriate qualifications and experience to be authorised persons for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) The Minister may, at any time, revoke an appointment of an authorised person or vary or revoke a condition of appointment or impose a further condition of appointment.
- (4) All police officers are authorised persons for the purposes of this Act.

49—Identification of authorised persons

- (1) An authorised person appointed under this Act must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised person under this Act.
- (2) If the powers of an authorised person have been limited by conditions, the identity card issued to the authorised person must indicate those limitations.
- (3) An authorised person must, at the request of a person in relation to whom the authorised person intends to exercise powers under this Act, produce for the inspection of the person—
 - (a) in the case of an authorised person who is a police officer and is not in uniform—his or her certificate of authority; or

- (b) in the case of an authorised person appointed under this Act—his or her identity card.

50—General powers of authorised persons

(1) Subject to this section, an authorised person may—

- 5 (a) enter and inspect and, if necessary, use reasonable force to break into or open—
- (i) a place or vehicle to which this section applies; or
- (ii) part of, or anything in or on, a place or vehicle to which this section applies; and
- 10 (b) give directions with respect to the stopping or movement of a vehicle to which this section applies; and
- (c) require a vehicle to which this section applies to be presented for inspection at a specified place and time; and
- (d) take samples of or from a dangerous substance or thing for analysis; and
- 15 (e) examine or test any plant, vehicle or other thing, or cause or require it to be examined or tested, or seize it or require its production for examination or testing; and
- (f) require a person to produce a document, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and
- 20 (g) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information; and
- (h) take photographs, films or audio, video or other recordings; and
- 25 (i) seize and retain, or issue a seizure order in respect of a dangerous substance—
- (i) that the authorised person reasonably suspects is unregistered; or
- (ii) in order to prevent the dangerous substance being used before it can be determined whether it is registered or is a dangerous substance other than an explosive or registrable dangerous substance; and
- 30 (j) seize and retain, or issue a seizure order in respect of anything that the authorised person reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
- (k) require a person who the authorised person 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 and, if relevant to the contravention, the person's age; and
- 35 (l) require a person who the authorised person reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters; and
- 40

- (m) require a person holding or required to hold a licence to produce it for inspection; and
- (n) give a direction required in connection with the exercise of a power conferred by a paragraph above or otherwise in connection with the administration or enforcement of this Act.

(2) An authorised person—

- (a) may only exercise the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and
- (b) may only exercise the power to use force under subsection (1)(a) on the authority of a warrant issued by a magistrate or in circumstances in which the authorised person reasonably believes that immediate action is required.

(3) In the exercise of powers under this Act, an authorised person may be assisted by such persons as the authorised person considers necessary in the circumstances.

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

(5) This section applies to the following places and vehicles:

- (a) a place or vehicle subject to a licence;
- (b) a place or vehicle that an authorised person reasonably suspects is being, or has been, used for or in connection with an activity involving a dangerous substance;
- (c) a place or vehicle in which an authorised person reasonably suspects there may be records relating to an activity involving a dangerous substance or anything that has been used in, or may constitute evidence of, a contravention of this Act;
- (d) a commercial vehicle or a vehicle that an authorised person reasonably suspects is a commercial vehicle.

51—Warrant procedures

- (1) A magistrate must not issue a warrant for the purposes of this Division unless satisfied that the warrant is reasonably required in the circumstances.
- (2) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and appear before a magistrate, by fax or telephone.
- (3) The grounds of an application for a warrant must be verified by affidavit.
- (4) If an application for the issue of a warrant is made by fax, the following provisions apply:
- (a) the application must be in a form approved by the Chief Magistrate;
- (b) the application must be accompanied (through fax transmission) by an affidavit made by the applicant verifying the facts referred to in the application;

- 5
- (c) the applicant must be available to speak to the magistrate by telephone;
- (d) the magistrate is entitled to assume, without further inquiry, that a person who identifies himself or herself as the applicant acting in the capacity of an authorised person during a telephone conversation with the magistrate is indeed the applicant acting in that capacity;
- (e) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of a warrant, make out and sign a warrant;
- (f) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;
- 10 (g) the magistrate must forward the warrant to the applicant by fax transmission.
- (5) If an application for a warrant is made by telephone, the following provisions apply:
- (a) the applicant must inform the magistrate of the applicant's name and identify himself or herself as an authorised person and the magistrate, on receiving that information, is entitled to assume its accuracy without further inquiry;
- 15 (b) the applicant must inform the magistrate of the purpose for which the warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application;
- (c) the magistrate may, on being satisfied as to the circumstances of urgency and the grounds for the issue of the warrant, inform the applicant of the facts on which the magistrate 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;
- 20 (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant;
- (e) the warrant is to be taken to have been issued, and comes into force, when signed by the magistrate;
- 25 (f) the magistrate must inform the applicant of the terms of the warrant;
- (g) the applicant must fill out and sign a warrant form (the *duplicate warrant*) that—
- 30 (i) sets out the name of the magistrate who issued the original and the terms of the warrant; and
- (ii) complies with any other prescribed requirements;
- (h) 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) and a copy of the duplicate warrant.
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- (6) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

52—Provisions relating to seizure

- (1) A seizure order—
- 40 (a) must be in the form of a written notice given to the owner or person in control of the thing to which the order relates; and

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(b) may be varied or discharged by further such written notice.

- (2) If a seizure order is issued, a person who, knowing of the order, removes or interferes with the thing to which the order relates without the approval of an authorised person before the thing is dealt with under this section or the seizure order discharged is guilty of an offence.

Maximum penalty: \$5 000.

- (3) If a dangerous substance has been seized or made the subject of a seizure order under section 50(1)(i), the following provisions apply:

(a) if an authorised person is satisfied that the dangerous substance is registered or is a dangerous substance other than an explosive or registrable dangerous substance—it must be released immediately;

(b) if an authorised person is satisfied that the dangerous substance is unregistered—the authorised person may dispose of it as the authorised person thinks fit or direct its disposal in a specified manner.

- (4) Before exercising a power under subsection (3)(b), the authorised person must—

(a) give the owner of the dangerous substance written notice of the proposed action and the reasons for the proposed action; and

(b) allow the owner of the dangerous substance a reasonable opportunity to comment on the proposed action.

- (5) Subject to this section, if any thing has been seized or made the subject of a seizure order under section 50(1)(j), 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 the Minister, 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 the Minister 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 designated 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 the Minister; 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 the Minister or that the person to whom it was released or the defendant pay to the Minister an amount equal to its market value at the time of its seizure as the court thinks fit;

(c) if—

(i) proceedings are not instituted for an offence against this Act relating to the thing within the designated 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 a person with legal title to it, is entitled to recover from the Minister (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.

(6) If, in the opinion of the Regulator or the Commissioner of Police, a dangerous substance seized under this Act is likely to constitute a danger if stored pending proceedings for an offence against this Act relating to the dangerous substance or there are no adequate facilities available for its storage pending such proceedings, the following provisions apply:

(a) the Regulator or Commissioner of Police may direct that the dangerous substance be destroyed, whether or not a person has been or is to be charged with an offence in relation to it;

(b) the dangerous substance may be destroyed at the place at which it was seized or at any other suitable place;

(c) if a charge is laid, or is to be laid, for an offence in relation to the dangerous substance, samples of the substance that provide a true representation of the nature of the substance must be taken and kept for evidentiary purposes;

(d) the samples must remain at all times within the control of the Regulator, the Commissioner of Police or a nominee of the Regulator or Commissioner of Police.

(7) In this section—

designated period means 6 months or such longer period as a magistrate may, on application by the Minister, allow.

53—Offence to hinder etc authorised persons

A person who—

(a) hinders or obstructs an authorised person, or a person assisting an authorised person, in the exercise of powers conferred by this Act; or

(b) refuses or fails to comply with a requirement or direction of an authorised person under this Act; or

(c) when required by an authorised person under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(d) falsely represents, by words or conduct, that he or she is an authorised person,

is guilty of an offence.

Maximum penalty: \$10 000.

54—Self-incrimination

If a person is required to answer a question or to produce, or provide a copy of, a document or information under this Act and the answer, document or information would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless answer or produce, or provide a copy of, the document or information, but the answer, document or information will not be admissible in evidence against the person in proceedings for an offence other than proceedings in respect of the making of a false or misleading statement or declaration.

Division 3—Notices and emergencies

55—Notification of dangerous situations

- (1) If a dangerous situation arises in the course of an activity involving dangerous substances, the person in charge of the activity must, as soon as reasonably practicable after becoming aware of the situation, notify the Regulator of the situation, its nature, the circumstances in which it occurred and the action taken to deal with it.

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
 - (b) in the case of a natural person—\$10 000.
- (2) A person is required to notify the Regulator of such a situation despite the fact that to do so might incriminate the person or make the person liable to a penalty.

56—Notices

- (1) An authorised person may issue a notice for the purposes of—
- (a) securing compliance with a duty or other requirement imposed by or under this Act; or
 - (b) averting harm to persons, property or the environment, or eliminating or minimising safety risks, arising out of a dangerous situation.
- (2) A notice—
- (a) subject to subsection (3), must be in the form of a written notice served on the person to whom the notice is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must state the purpose for which the notice is issued and give details of the requirement or the dangerous situation to which it relates; and
 - (d) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 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 the Regulator;
 - (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; and

(e) must state that the person may, within 28 days, apply to the Regulator for a review of the notice.

5 (3) A notice may be issued orally if the authorised person 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.

10 (4) The Regulator or the Commissioner of Police 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:

(a) in the case of a body corporate—\$125 000;

(b) in any other case—\$25 000 or imprisonment for 1 year.

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

Maximum penalty: \$5 000.

57—Action on default

20 (1) If the requirements of a notice issued under this Division are not complied with, an authorised person 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 person has, in addition to the other powers of an authorised person under this Act, power to—

25 (a) enter and take possession of any place or vehicle (taking such action as is reasonably necessary for the purpose); and

(b) seize, retain, move or destroy or otherwise dispose of a dangerous substance.

58—Action in emergencies

30 (1) If an authorised person considers on reasonable grounds that a dangerous situation exists and that immediate action is required, the authorised person 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 harm to persons, property or the environment or to eliminate or minimise safety risks.

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

35 (a) enter and take possession of any place or vehicle (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 dangerous situation under this Division.

59—Review of notices by Regulator

- (1) Subject to this section, a person to whom a notice is issued under this Division may, within 28 days after the issue of the notice, apply to the Regulator for a review of the decision to issue the notice.
- 5 (2) The Regulator may determine an application for review as the Regulator thinks fit.
- (3) A review must be determined within 28 days of the application being lodged with the Regulator.
- (4) If a review is not determined within that period, the Regulator is to be taken to have confirmed the decision.

10 Part 8—Appeal

60—Appeal to District Court

- (1) A right of appeal to the Administrative and Disciplinary Division of the District Court lies against a decision of the Regulator under section 41, Part 4 or section 59.
- (2) A right of appeal does not lie in relation to a temporary licence.
- 15 (3) Subject to subsection (5), an appeal must be instituted within 28 days of the making of the decision appealed against.
- (4) The Regulator must, on application by a person affected by a decision that may be the subject of an appeal, give the person a written statement of the reasons for the decision.
- 20 (5) If a written statement of the reasons for a decision are not given by the Regulator at the time of making the decision and the person affected by the decision, within 28 days of the making of the decision, applies to the Regulator for a written statement of reasons for the decision, the time for instituting an appeal runs from the time when the person receives the written statement of reasons.

25 Part 9—Miscellaneous

61—Exemptions

- (1) The Regulator may, on application, exempt a person from compliance with this Act or specified provisions of this Act.
- (2) An exemption is subject to conditions stated in the notice of exemption.
- 30 (3) An exemption may be varied or revoked by further written notice to the holder of the exemption.
- (4) If an exemption is conferred on a licensee, the exemption extends to all persons acting under the authorisation of the licence.
- (5) A person who has been exempted from compliance with this Act or specified provisions of this Act must not contravene a condition of the exemption.
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Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in the case of a natural person—\$10 000.

62—Delegation by Minister, Regulator or Registrar

- (1) The Minister, Regulator or Registrar may delegate to a person (including a person for the time being holding or acting in a specified office or position) a function or power under this Act (except a prescribed function or power).
- 5 (2) A delegation—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will.
- 10 (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated.

63—Police reports

15 The Commissioner of Police must, at the request of the Regulator, provide to the Regulator information required by the Regulator for the purpose of determining an application for a licence or approval or whether a licence or approval should be suspended or cancelled.

64—Forfeiture of dangerous substance on conviction

- 20 (1) A court may, on finding a person guilty of an offence against this Act or on declaring a person charged with an offence against this Act liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*, order that a dangerous substance in relation to which the offence was committed (and its container) and that is the property of that person be forfeited to the Crown.
- 25 (2) A dangerous substance or container forfeited to the Crown may be disposed of in such manner as the Minister may direct and, if a dangerous substance or container is disposed of by way of sale, the proceeds of the sale will be paid into the Consolidated Account.

65—Recovery of administrative and technical costs associated with contraventions

- 30 (1) If a person has contravened this Act and an authorised person—
- (a) has taken action to—
 - (i) investigate the contravention; or
 - (ii) issue a notice under Part 7 Division 3 in respect of the contravention; or
 - (iii) ensure that the person has complied with requirements imposed in relation to the contravention by a notice under Part 7 Division 3 (including taking action or causing action to be taken under section 57); or
- 35

- (b) has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations or analyses or in storing or disposing of dangerous substances,

5 the Regulator may, by written notice served on the person, require the person to pay to the Regulator—

- (c) in respect of action to investigate the contravention or to issue a notice under Part 7 Division 3 in respect of the contravention—a fee fixed by, or calculated in accordance with, the regulations; or

10 (d) in respect of action to ensure that the person has complied with requirements imposed in relation to the contravention by a notice under Part 7 Division 3—the reasonable costs and expenses incurred in taking that action; or

15 (e) in respect of costs and expenses incurred in taking samples or in conducting tests, examinations or analyses or in storing or disposing of dangerous substances—the reasonable costs and expenses so incurred.

(2) Subject to subsection (3), an amount payable to the Regulator in accordance with a notice under this section must be paid within the period specified in the notice.

(3) On application by a person who has been served a notice under this section, the Regulator may, by notice in writing—

20 (a) extend the time for payment of an amount payable in accordance with the notice; or

(b) waive payment of such an amount or reduce the amount payable.

(4) A person who fails to pay an amount payable to the Regulator in accordance with this section is guilty of an offence.

25 Maximum penalty: \$1 250.

Expiation fee: \$500.

(5) If a notice is issued under this section in respect of a contravention and—

(a) the contravention is the subject of an appeal; or

30 (b) the notice requires payment of an amount in respect of the issue of a notice under Part 7 Division 3 and the notice is the subject of a review or appeal,

the notice is suspended until the review or appeal has been determined (but if it is found that the contravention was committed or that the notice was properly issued, as the case may be, the notice will have effect as if the period for payment specified in the notice commenced on the day on which the review or appeal was determined).

35 (6) If an amount payable to the Regulator is not paid in accordance with this section, the amount may be recovered as a debt by the Regulator.

66—Cost recovery for dealing with dangerous situations

(1) In this section—

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

council means a council constituted under the *Local Government Act 1999*;

dangerous substance includes a mixture of a dangerous substance with another substance;

government authority means—

- (a) an 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 an administrative unit of the Public Service—the chief executive of that unit;
- (b) in the case of an agency or instrumentality of the Crown—the chief executive 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 action taken to avert harm to persons, property or the environment, or to eliminate or minimise safety risks, arising from a dangerous situation.
- (3) If a government authority reasonably incurs costs or expenses as a result of taking action to which this section applies or causing such action to be taken, the costs or expenses are recoverable as a debt in a court of competent jurisdiction.
- (4) The costs or expenses may be recovered by—
 - (a) in the case of costs or expenses incurred by a council—the council; or
 - (b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown; or
 - (c) in any other case—the Crown.
- (5) If more than 1 government authority takes action to which this section applies or causes such action to be taken in relation to the same incident, the recovery of costs or expenses incurred by 1 government authority (including an award or judgment in relation to those costs or expenses) does not preclude the recovery of costs and expenses incurred by the other government authorities.
- (6) The costs or expenses may be recovered (jointly or severally) from—
 - (a) the person who caused the dangerous situation (otherwise than as an employee or agent of another person); or
 - (b) the person who was, at the time the action was taken, the owner of the dangerous substances involved; or
 - (c) the person who was, at the time the action was taken, in control or possession of the dangerous substances involved.
- (7) For the purposes of subsection (6)—
 - (a) a 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

- (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.

- (8) However, costs and expenses are not recoverable against a person who establishes—
- (a) that the dangerous situation 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 dangerous situation; and
- (c) that the dangerous situation was not attributable to an act or omission of a person who was an employee or agent of his or hers at the time.
- (9) 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.
- (10) 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.
- (11) In 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 action 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.

67—Immunity

- (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or performance or the purported exercise or performance of official powers or functions.
- (2) An action that would, but for subsection (1), lie against a person lies instead against the Crown.

68—Requirement to return licence on request

A licensee must, at the request of the Regulator and within the period stated by the Regulator, return the licence to the Regulator in order for the licence to be replaced or altered to record action under this Act.

Maximum penalty: \$1 250.

Expiation fee: \$160.

69—False or misleading statements

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or records kept, under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—
\$10 000 or imprisonment for 2 years;
- (b) in any other case—\$5 000.

70—Statutory declaration

If information is required by or under this Act to be provided to the Minister, the Regulator or the Registrar, the Minister, Regulator or Registrar may require that the information be verified by statutory declaration and, in that event, the information will not be taken to have been provided as required unless it has been verified in accordance with the requirements of the Minister, Regulator or Registrar.

71—Confidentiality

A person must not divulge information relating to trade secrets, business processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) as reasonably required in connection with the administration or enforcement of this Act; or
- (d) for the purpose of legal proceedings arising out of the administration or enforcement of this Act; or
- (e) for the purpose of ensuring that emergency services and local government authorities are fully informed in relation to activities involving dangerous substances; or
- (f) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the performance of its functions.

Maximum penalty: \$10 000.

72—Giving of notice

- (1) A notice required or authorised by this Act to be given to a person by the Minister, the Regulator or an authorised person may be given—
 - (a) by delivering it personally to the person or an agent of the person; or
 - (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
 - (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.
- (2) Without limiting subsection (1), a notice required or authorised to be given to an applicant under this Act or to a licensee under this Act may be given—
 - (a) by posting it to the person at the address last provided to the Minister or Regulator by the person for that purpose; or

(b) by transmitting it to the person by fax transmission or email to the fax number or email address last provided to the Minister or Regulator by the person for that purpose; or

(c) in the case of a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth—in accordance with that Act.

73—General defence

(1) It will be a defence in criminal proceedings in respect of an alleged contravention of this Act, including—

(a) proceedings against a body corporate or a natural person where conduct or a state of mind is imputed to the body or person under this Part; and

(b) proceedings against an officer of a body corporate under this Part,

if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.

(2) Without limiting subsection (1), the defence provided by that subsection includes the defence that the act or omission alleged to constitute the contravention was justified by the need to protect life, property or the environment in a situation of emergency and that the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.

(3) If a body corporate or other employer seeks to establish the defence provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof—

(a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and

(b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.

(4) A person who would, but for the defence provided by this section, have contravened a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of the issuing or enforcement of a notice under Part 7 Division 3.

74—Notice of defences

(1) A person who, in criminal proceedings, intends to rely on a defence under this Act may only do so if the person gives written notice of that intention to the Regulator.

(2) The notice must be given—

(a) if the proceedings are for a summary offence—within 28 days after the summons to answer the charge is served on the person; or

- (b) if the proceedings are for a minor indictable offence where the charge is to be dealt with in the same way as a charge of a summary offence—not less than 28 days before the date for hearing of the charge; or
- (c) in any other case—within 7 days after the person is committed for trial.

5 **75—Proof of intention etc for offences**

Subject to any express provision in this Act to the contrary, it will not be necessary to prove any intention or other state of mind in order to establish a contravention of this Act.

10 **76—Imputation in proceedings of conduct or state of mind of officer, employee etc**

- (1) For the purposes of proceedings for an offence against this Act—
 - (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate; and
 - 15 (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person.
- (2) If—
 - (a) a natural person is convicted of an offence against this Act; and
 - 20 (b) the person would not have been convicted of the offence but for the operation of subsection (1),

the person is not liable to be punished by imprisonment for the offence.
- (3) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

25 **77—Statement of officer evidence against body corporate**

In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

30 **78—Liability of officers of body corporate**

- (1) If a body corporate contravenes a provision of this Act, a person who is an officer of the body corporate is—
 - (a) subject to the general defence under this Part, guilty of a contravention of this Act; and
 - 35 (b) subject to subsection (2), liable to the same penalty as may be imposed for the principal contravention when committed by a natural person.
- (2) If an officer of a body corporate is convicted of an offence under subsection (1), the officer is not liable to be punished by imprisonment for the offence.
- (3) If a body corporate contravenes a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of contravening that provision.

- (4) An officer of a body corporate may be prosecuted and convicted of an offence pursuant to subsection (1) or (3) whether or not there has been a finding by a court that the body corporate committed the contravention.

79—Continuing offences

- 5 (1) If an offence against this Act is committed by a person by reason of a continuing act or omission—
- 10 (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty fixed for that offence; and
- 15 (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty fixed for that offence.
- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

80—Commencement of proceedings for summary offences

- 20 (1) Proceedings for a summary offence against this Act may only be commenced by an authorised person or the Regulator.
- (2) Proceedings for a summary offence against this Act may be commenced—
- 25 (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—at any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Director of Public Prosecutions, at any later time within 6 years after the date of the alleged commission of the offence.
- 30 (3) An apparently genuine document purporting to be signed by the Director of Public Prosecutions authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

81—Evidence

- 35 (1) In proceedings, a certificate apparently executed by the Minister or the Regulator certifying as to a matter relating to—
- (a) a licence; or
- (b) an approval; or
- (c) the appointment of an authorised person or analyst; or
- 40 (d) a delegation; or
- (e) the classification of a facility as a major hazard facility; or

- (f) an exemption; or
- (g) a notice; or
- (h) an application; or
- (i) the receipt or non-receipt of information,

5 under this Act constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) An allegation in a complaint that a specified substance or article was a dangerous substance of a specified kind will be accepted as proved in the absence of proof to the contrary.

10 (3) In proceedings, a certificate apparently executed by a person appointed or approved by the Regulator as an analyst for the purposes of this Act and setting out details as to an analysis carried out by or under the direction of the person and the results of the analysis constitutes proof, in the absence of proof to the contrary, of the matters so certified.

15 **82—Land acquisition**

Land (or an interest in land) may be acquired in accordance with the *Land Acquisition Act 1969* by the Minister for the purposes of a storage or testing facility for explosives, registrable dangerous substances or security sensitive substances or for other purposes relating to the administration of this Act in connection with explosives, 20 registrable dangerous substances or security sensitive substances.

83—Regulations

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

(2) Without limiting subsection (1), the regulations may—

25 (a) fix fees to be paid in respect of a matter under this Act and regulate, or provide for the Regulator to regulate, the payment, recovery, waiver or reduction of such fees;

30 (b) exempt, or provide for the Regulator to exempt, a class of persons, dangerous substances or activities from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions;

(c) impose fines, not exceeding \$50 000 in cases involving bodies corporate and \$10 000 in cases involving natural persons, for offences against the regulations;

35 (d) fix expiation fees, not exceeding \$5 000 in cases involving bodies corporate and \$1 000 in cases involving natural persons, for alleged offences against the regulations.

(3) Regulations under this Act may—

(a) be of general application or limited application;

40 (b) make different provision according to the matters or circumstances to which they are expressed to apply;

(c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Regulator, the Registrar or a person or authority with responsibilities relating to dangerous substances under the law of another State or a Territory of the Commonwealth;

(d) include evidentiary provisions to facilitate proof of contraventions of the regulations for the purposes of proceedings for offences.

(4) Regulations under this Act may provide for fees that vary or are determined by the Minister or the Regulator according to factors specified in the regulations.

(5) Regulations under this Act may refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from time to time.

(6) If a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at a prescribed office; and

(b) evidence of the contents of the code or standard may be given in legal proceedings by production of a document apparently certified by the Minister or the Regulator to be a true copy of the code or standard.

Schedule 1—Amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Dangerous Substances Act 1979*

2—Substitution of long title

Long title—delete the long title and substitute:

An Act to implement the nationally agreed scheme for the transport of dangerous goods; and for other purposes.

3—Substitution of section 1

Section 1—delete the section and substitute:

1—Short title

This Act may be cited as the *Dangerous Goods Transport Act 1979*.

4—Amendment of section 2—Interpretation

Section 2(1), definitions of *conveyance*, *convey*, *craft*, *dangerous substance* and *substance*—delete the definitions

5—Repeal of Part 3

Part 3—delete the Part

6—Amendment of section 27—Powers of authorised officers

Section 27(1)(m)—delete ", accreditation or" and substitute:

5 or accreditation

7—Amendment of heading to Part 6

Heading to Part 6—delete "and emergencies"

8—Amendment of section 33—Notices

Section 33(1)—delete subsection (1) and substitute:

10 (1) An authorised officer may issue a notice under this section for the purposes of securing compliance with a requirement imposed by or under this Act (including a requirement imposed by a condition of an accreditation or licence).

9—Amendment of section 34—Action on default

15 Section 34(2)(b)—delete "a dangerous substance" and substitute:
dangerous goods

10—Repeal of section 35

Section 35—delete the section

11—Amendment of section 37—Appeals

20 Section 37(1)(a)—delete ", accreditation or permit" and substitute:
or accreditation

12—Amendment of section 38—Evidentiary provisions

(1) Section 38(1)(b)—delete ", accreditation or permit" and substitute:
or accreditation
25 (2) Section 38(1)(c) and (d)—delete paragraphs (c) and (d)
(3) Section 38(2)(a)—delete paragraph (a) and substitute:
(a) a licence or accreditation and any conditions of a licence or
accreditation; or
(4) Section 38(2)—delete "permit,"

30 **13—Amendment of section 43—Forfeiture of dangerous goods on conviction**

(1) Section 43(1)—delete "dangerous substance in relation to which the offence was committed and that is" and substitute:
dangerous goods in relation to which the offence was committed and that are
(2) Section 43(2)—delete "substance" twice occurring and substitute in each case:
35 goods

(3) Section 43(2)—delete "is" and substitute:

are

14—Amendment of section 44—Recovery of costs from convicted person

Section 44—delete "substances" and substitute:

5

goods

15—Repeal of section 46

Section 46—delete the section

16—Repeal of sections 48 and 49

Sections 48 and 49—delete the sections

10

17—Amendment of section 50—Regulations

(1) Section 50(2)(b) to (o) (inclusive)—delete paragraphs (b) to (o)

(2) Section 50(2)(p) to (s) (inclusive)—delete paragraphs (p) to (s)

(3) Section 50(4)—delete subsection (4)

Part 3—Amendment of *Environment Protection Act 1993*

15

18—Amendment of Schedule 1—Prescribed activities of environmental significance

Schedule 1 Part B—delete "Dangerous substances within the meaning of the *Dangerous Substances Act 1979*" and substitute:

20

Dangerous substances, other than explosives, within the meaning of the *Dangerous Substances and Major Hazard Facilities Act 2006*

Part 4—Amendment of *Road Traffic Act 1961*

19—Amendment of section 47A—Interpretation

(1) Section 47A(1), definition of *prescribed vehicle*, (f)(i)—delete "*Dangerous Substances Act 1979*" and substitute:

25

Dangerous Substances and Major Hazard Facilities Act 2006

(2) Section 47A(1), definition of *prescribed vehicle*, (f)(ii)—after "that Act" insert:

or the *Dangerous Goods Transport Act 1979*

Part 5—Repeal of *Explosives Act 1936*

20—Repeal of Act

30

The *Explosives Act 1936* is repealed.

Part 6—Transitional provisions

21—Licences

- 5 (1) A licence in force under the *Explosives Act 1936* or the *Dangerous Substances Act 1979* immediately before the commencement of this clause will be taken to be a licence under this Act held by the person to whom the licence under the repealed Act was issued and authorising the activities authorised by the licence under the repealed Act.
- 10 (2) The licence under this Act is subject to the same conditions as the licence under the repealed Act and will expire on the date on which the licence under the repealed Act would have expired.
- (3) If the same person holds more than 1 licence, the licences may, at the Regulator's discretion on renewal under this Act, be consolidated into 1 licence.
- (4) Subclause (1) does not apply in relation to a licence under Part 4 of the *Dangerous Substances Act 1979*.

22—Permits to purchase explosives

- 15 (1) A permit to purchase explosives in force under the *Explosives Act 1936* immediately before the commencement of this clause (see Part 14 Division 1 of the regulations under that Act) will be taken to be a licence authorising the acquisition of explosives under this Act.
- 20 (2) The licence under this Act is subject to the same conditions as the permit under the repealed Act and will expire on the date on which the permit under the repealed Act would have expired.

23—Permits to carry out gas fitting work

- 25 (1) A permit to carry out gas fitting work in force under the *Dangerous Substances Act 1979* immediately before the commencement of this clause (see Part 6 of the regulations under that Act) will be taken to be a licence authorising gas fitting work under this Act.
- 30 (2) The licence under this Act is subject to the same conditions as the permit under the repealed Act and will expire on the date on which the permit under the repealed Act would have expired.

24—Notices

- 35 (1) A notice in force under section 33 of the *Dangerous Substances Act 1979* immediately before the commencement of this clause will be taken to be a notice issued under section 56 of this Act.
- (2) Subclause (1) does not apply to a notice issued for the purposes of securing compliance with a requirement imposed by or under Part 4 of the *Dangerous Substances Act 1979*.

25—Register

- (1) An explosive that was classified by the Director under the *Explosives Act 1936* immediately before the commencement of this clause will be taken to be registered under Part 3 of this Act and details relating to the classification are to be entered on the register.
- (2) The registration of the explosive will expire after 10 years.

5