

(Reprint No. 4)

SOUTH AUSTRALIA

DANGEROUS SUBSTANCES ACT, 1979

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 June 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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DANGEROUS SUBSTANCES ACT, 1979

being

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

as amended by

Dangerous Substances Act Amendment Act, 1980, No. 7 of 1980 [Assented to 3 April 1980]²
Dangerous Substances Act Amendment Act, 1985, No. 33 of 1985 [Assented to 11 April 1985]
Dangerous Substances Act Amendment Act, 1987, No. 17 of 1987 [Assented to 9 April 1987]
Dangerous Substances Act Amendment Act, 1988, No. 98 of 1988 [Assented to 15 December 1988]³
Dangerous Substances (Cost Recovery) Amendment Act 1991 No. 47 of 1991 [Assented to 21 November 1991]
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]⁴
Dangerous Substances (Equipment and Permits) Amendment Act 1992 No. 81 of 1992 [Assented to 3 December 1992]⁵

An Act to regulate the keeping, handling, conveyance, use and disposal, and the quality, of dangerous substances; to repeal the Liquefied Petroleum Gas Act, 1960-1973, and the Inflammable Liquids Act, 1961-1976; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

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

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.
(2) The Governor may, in a proclamation made for the purposes of subsection (1) of this section, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

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

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

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

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

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

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

Arrangement

3. This Act is arranged as follows:—

- PART I—PRELIMINARY
- PART II—ADMINISTRATIVE
- PART III—DANGEROUS SUBSTANCES
 - DIVISION I—GENERAL
 - DIVISION II—LICENCES TO KEEP DANGEROUS SUBSTANCES
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 - DIVISION IV—LICENCES GENERALLY
- PART IIIA—IMPROVEMENT NOTICES AND PROHIBITION NOTICES
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Repeals and transitional provisions

4. (1) The *Liquefied Petroleum Gas Act, 1960-1973*, is repealed.
 (2) The *Inflammable Liquids Act, 1961-1976*, is repealed.

Interpretation

5. In this Act, unless the contrary intention appears—

* * * * *

“conveyance” in relation to a dangerous substance means movement of the dangerous substance whether by vehicle, pipeline or any other means and “convey” has a corresponding meaning:

“dangerous substance” means any substance, whether solid, liquid or gaseous, that is toxic, corrosive, flammable or otherwise dangerous and declared by regulation to be a dangerous substance for the purposes of this Act:

“the Director” means—

- (a) the person for the time being holding, or acting in, the office of the Chief Executive Officer of the Department of the Minister to whom the administration of this Act is committed;

or

- (b) any other person directed by the Minister to exercise the powers of the officer so designated by this Act:

“the Government Analyst” means the person appointed by the Governor to be the Government Analyst or any person for the time being acting in that office:

“inspector” means a person appointed to be an inspector under Part II of this Act:

“plant” includes—

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

“premises” means any land or any building or structure whether fixed or moveable:

“vehicle” includes any kind of aircraft or vessel.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Act binds the Crown

6. This Act binds the Crown.

Non-derogation

7. (1) The provisions of this Act shall be in addition to and shall not derogate from the provisions of any other Act.

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

PART II
ADMINISTRATIVE

Inspectors

8. (1) The Minister may, by notice in the *Gazette*, appoint a person to be an inspector for the purposes of this Act.

(2) The Minister shall provide each inspector with a certificate of identification in the prescribed form.

(3) An inspector shall produce his certificate at the request of any person in relation to whom he is exercising his powers or functions under this Act.

Powers of inspectors

9. (1) An inspector may—

- (a) at any time, enter into or upon any premises or vehicle, inspect the premises or vehicle and anything in or on the premises or vehicle, and open any container or other thing, for the purpose of determining whether or not any provision of this Act is being or has been complied with;
- (b) direct a vehicle to stop, or stop a vehicle, for the purpose of determining whether or not any provision of this Act is being or has been complied with;
- (c) take, without payment, a sample of any substance that he suspects on reasonable grounds to be a dangerous substance or an ingredient thereof for the purpose of determining whether or not any provision of this Act is being or has been complied with;
- (d) remove any substance or thing in relation to which he suspects upon reasonable grounds that an offence against this Act has been committed;
- (e) inspect and examine, analyse and test or cause to be analysed or tested any substance or thing for the purpose of determining whether or not any provision of this Act has been or is being complied with;
- (f) require any person to answer a question put to him, whether the question is put to him directly or through an interpreter, for the purpose of determining whether or not any provision of this Act is being or has been complied with;
- (g) search, copy and take extracts of, and if necessary for that purpose remove any books, documents or records of any kind for the purpose of determining whether or not any provision of this Act is being or has been complied with;

or

(h) give such directions as are reasonably necessary for, or incidental to, the effective exercise of his powers under this Act.

* * * * *

(4) In the exercise of his powers under this section, an inspector may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(5) A person shall not hinder or obstruct an inspector, or any person accompanying an inspector, in the exercise of his powers under this section.

Penalty: Division 6 fine.

(6) A person to whom a question is put under this section shall not refuse or fail to answer the question to the best of his knowledge, information or belief.

Penalty: Division 6 fine.

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(7) A person shall not be guilty of an offence against subsection (6) of this section if he refuses to answer a question, the answer to which would tend to incriminate him.

(8) A person given any direction under this section shall not refuse or fail to comply with the direction.

Penalty: Division 6 fine.

(9) Where any substance or thing is removed under this section and—

(a) proceedings are not instituted for an offence against this Act in relation to the substance or thing within two months of its removal;

or

(b) proceedings having been so instituted, the substance or thing is not ordered to be forfeited to the Crown or the defendant is not convicted,

the person from whom the substance or thing was removed shall be entitled to recover it, or, if it has been destroyed or damaged or has deteriorated, to recover from the Minister, by action in any court of competent jurisdiction, the reasonable value of the substance or thing at the time of its removal.

Delegation by Director

9a. (1) The Director may, by instrument in writing, delegate to any officer engaged in the administration of this Act any of his powers or functions under this Act.

(2) A delegation under subsection (1) may be revoked by the Director by instrument in writing and shall not derogate from the power of the Director to act himself in any matter.

(3) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the Director containing particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of those particulars.

Secrecy

10. Any person who is engaged or has been engaged in any office or position connected with the administration of this Act shall not, otherwise than in the performance of the duties or functions appertaining to that office or position, divulge or communicate any information obtained by virtue of that office or position.

Penalty: Division 6 fine.

Person acting without authority

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

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

PART III

DANGEROUS SUBSTANCES

DIVISION I—GENERAL

General duty

12. A person shall, in keeping, handling, conveying, using, or disposing of, any dangerous substance, take such precautions and exercise such care as is reasonable in the circumstances in order to avoid endangering the health or safety of any other person, or the safety of any other person's property.

Penalty: (a) in the case of a body corporate—Division 2 fine;

(b) in any other case—Division 5 fine or division 5 imprisonment, or both.

Duty in relation to plant

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

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

(a) take such precautions and exercise such care as is reasonable in the circumstances in order to ensure that the plant is in a safe condition whenever it is used in connection with a dangerous substance;

and

(b) ensure that the plant is in a safe condition when it is not in use.

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

(a) ensure that the plant is in a safe condition;

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

and

(c) ensure that the plant is left in a safe condition after use.

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

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

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

Penalty:

(a) in the case of a body corporate—Division 2 fine;

(b) in any other case—Division 5 fine or division 5 imprisonment, or both.

DIVISION II—LICENCES TO KEEP DANGEROUS SUBSTANCES

“Prescribed dangerous substance” for the purposes of this Division

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

Offence to keep dangerous substances without a licence

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

Penalty: (a) in the case of a body corporate—a division 3 fine;

(b) in any other case—a division 6 fine or division 6 imprisonment.

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

Licence to keep dangerous substances

15. (1) The Director may, subject to this Act, in his discretion, upon application in the prescribed form and payment of the prescribed fee, grant a licence to any person to keep any prescribed dangerous substance in any premises.

* * * * *

(3) A licence granted under this section shall be subject to such conditions relating to—

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

(b) its keeping;

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

or

(d) any other matter,

as the Director may specify by notice in writing given to the holder of the licence.

(4) The Director may, by notice in writing given to the holder of a licence under this section, add to, vary or revoke any conditions of the licence.

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

Penalty: Division 6 fine.

(6) The Director may grant a licence under this section in respect of premises notwithstanding that the premises do not comply with the regulations, provided that—

(a) the Director is satisfied that the keeping of the prescribed dangerous substance in the premises would not immediately endanger the health or safety of any person, or the safety of any person’s property;

and

(b) the Director in granting the licence imposes conditions designed to ensure compliance with the regulations within a specified period.

Renewal of licence

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

(2) The Director may, subject to this Act, in his discretion, upon application made in the prescribed manner and form and payment of the prescribed fee, renew a licence granted under this Division.

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

DIVISION III—LICENCES TO CONVEY DANGEROUS SUBSTANCES

“Prescribed dangerous substance” for the purposes of this Division

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

Offence to convey dangerous substances without a licence

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

Penalty: (a) in the case of a body corporate—a division 3 fine;

(b) in any other case—a division 6 fine or division 6 imprisonment.

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

Licence to convey dangerous substances

19. (1) The Director may, subject to this Act, in his discretion, upon application in the prescribed form and payment of the prescribed fee, grant a licence to any person to convey any prescribed dangerous substance.

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

(a) the prescribed dangerous substance that may be conveyed;

(b) its conveyance;

or

(c) any other matter,

as the Director may specify by notice in writing given to the holder of the licence.

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

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

Penalty: Division 6 fine.

Renewal of licences

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

(2) The Director may, subject to this Act, in his discretion, upon application made in the prescribed manner and form and payment of the prescribed fee, renew a licence granted under this Division.

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

DIVISION IV—LICENCES GENERALLY

General ground for not granting or renewing licences

21. The Director shall not grant or renew a licence under this Part if he is satisfied that it is not in the interests of public safety so to do.

Surrender, suspension and cancellation of licences

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

(2) The Director may suspend, or cancel, a licence under this Part if he is satisfied—

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

or

- (d) that the holder of the licence has breached, or failed to comply with, a condition of the licence.

* * * * *

PART IIIA
IMPROVEMENT NOTICES AND PROHIBITION NOTICES

Improvement notices

23a. (1) Where an inspector is of the opinion that a person—

(a) is contravening a provision of this Act;

or

(b) has contravened a provision of this Act in circumstances that make it—

(i) likely that the contravention will be repeated;

or

(ii) reasonable to require that the contravention be remedied,

the inspector may issue an improvement notice requiring the person to remedy the matters occasioning the contravention.

(2) An improvement notice must—

(a) state that the inspector is of the opinion that the person to whom the notice is addressed—

(i) is contravening a provision of this Act;

or

(ii) has contravened a provision of this Act in circumstances that make it—

(A) likely that the contravention will be repeated;

or

(B) reasonable to require that the contravention be remedied;

(b) state the grounds of the inspector's opinion;

(c) specify the provision of this Act in respect of which that opinion is held;

and

(d) specify a day by which the matters referred to in the notice must be remedied.

(3) An inspector may include in an improvement notice directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of the Act.

(4) A person who contravenes or fails to comply with an improvement notice is guilty of an offence.

Penalty: Division 4 fine.

Prohibition notices

23b. (1) For the purposes of this section, a dangerous situation is a situation involving the keeping, handling, conveying, using or disposing of a dangerous substance that is causing immediate danger to the health or safety of any person, or to the safety of any person's property.

(2) Where an inspector is of the opinion that a dangerous situation exists, the inspector may issue a prohibition notice requiring the person to whom the notice is issued to take adequate measures to avert, eliminate or minimize the danger.

(3) A prohibition notice must—

(a) identify the situation that, in the inspector's opinion, is causing the danger;

(b) state the grounds of the inspector's opinion;

and

(c) specify a period within which the danger must be averted, eliminated or minimized.

(4) An inspector may include in a prohibition notice directions as to the measures to be taken to avert, eliminate or minimize the danger to which the notice relates.

(5) Subject to this Act, a person who contravenes or fails to comply with a prohibition notice is guilty of an offence.

Penalty: Division 2 fine.

Review of notices

23c. (1) A person to whom an improvement notice or prohibition notice is issued may apply to the President of the Industrial Court to have the notice reviewed by a review committee constituted under the *Occupational Health, Safety and Welfare Act, 1986*.

(2) An application for review must be made within 14 days of the receipt of the notice.

(3) Pending the determination of an application for review under this section, the operation of the notice to which the application relates—

(a) in the case of an improvement notice—is suspended;

(b) in the case of a prohibition notice—continues.

(4) A review committee may, if it thinks fit, make an interim order suspending the operation of a prohibition notice until the matter is resolved.

(5) An order under subsection (4) must be made subject to such conditions as may be necessary to protect the health or safety of any person, or the safety of any property.

(6) Where a prohibition notice has been issued, proceedings under this section must be carried out as a matter of urgency.

(7) The provisions of the *Occupational Health, Safety and Welfare Act, 1986*, relating to the procedures and powers of a review committee under that Act extend, with necessary modifications, to proceedings on a review under this section.

Powers of committee on review

23d. (1) At the conclusion of a review under this Part, the review committee may—

(a) confirm any notice to which the review relates;

(b) confirm a notice with such modifications as the review committee thinks fit;

(c) cancel a notice;

(d) issue a different notice.

(2) Where the review committee confirms an improvement notice the operation of which has been suspended or confirms such a notice with modifications, the review committee may order the person to whom the notice was issued to comply with the notice within a period specified by the review committee.

(3) A person who contravenes or fails to comply with a notice that is confirmed or issued by the review committee within the period specified by the review committee is guilty of an offence.

Penalty: Division 4 fine.

(4) If a notice is modified or cancelled by the review committee, the person to whom the notice was issued has no right of recovery against the Crown in respect of any loss or expenses incurred by him or her as a result of having complied with the notice as it was issued by the inspector.

Action on default

23e. (1) Where a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the inspector who issued the notice may have those measures carried out and, for that purpose, the inspector or any person authorized by the inspector may, after giving reasonable notice to the person required to take the measures, enter and take possession of any place (taking such measures as are reasonably necessary for the purpose) and do, or cause to be done, such things as full and proper compliance with the notice may require.

(2) The Crown may recover the costs and expenses reasonably incurred by an inspector or other authorized person exercising the powers under subsection (1) from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

Action in emergency situations

23f. (1) Where an inspector considers on reasonable grounds that there is immediate danger to the health or safety of any person, or to the safety of any person's property, and that there is insufficient time to issue a notice under this Part, the inspector may, after giving such notice (if any) as may be reasonable in the circumstances, do such things as may be necessary to avert, eliminate or minimize the danger.

(2) In the exercise of powers under this section, an inspector—

(a) may at any time enter and take possession of any place (taking such measures as are reasonably necessary for the purpose);

and

(b) may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(3) The Crown may recover the costs and expenses reasonably incurred by an inspector exercising the powers under this section from the person who caused the danger, as a debt in a court of competent jurisdiction.

PART IV
MISCELLANEOUS

Exemption by Director

24. (1) Subject to the provisions of this section, the Director may, upon the application of any person, by notice in writing, exempt that person from compliance with any specified provision of this Act.

(2) An exemption granted under this section shall be subject to such conditions as the Director may specify in the notice.

(3) The Director shall not grant an exemption from compliance with any provision of this Act unless he is satisfied—

(a) that compliance with the provision is not reasonably practicable in the circumstances;

and

(b) that the granting of the exemption subject to such conditions as he may specify will not endanger the health or safety of any person, or the safety of any property.

(4) The Director may, by notice in writing given to any person granted an exemption under this section, add to, vary, or revoke any conditions of the exemption.

(5) The Director may, after due inquiry and for good cause, by notice in writing to any person, revoke any exemption granted to that person under this section.

(6) Any person who has been granted an exemption under this section and who breaches, or fails to comply with, any condition of the exemption shall be guilty of an offence and liable to the penalty prescribed for contravention of the provision in relation to which the exemption was granted.

Appeal to Industrial Court

24a. (1) A right of appeal to the Industrial Court lies against—

(a) a decision of the Director relating to a licence under Part III;

(b) a decision of the Director on an application for an exemption under section 24;

or

(c) a decision of the Director relating to a permit under the regulations.

(2) An appeal must be instituted within one month of the date of the decision appealed against but the Industrial Court may, if it thinks fit, dispense with the requirement that the appeal should be instituted within that time.

(3) The Industrial Court may on the hearing of an appeal, taking into account what is just and reasonable in the circumstances—

(a) affirm, vary or quash the decision appealed against and make any incidental or other order that may be just and reasonable in the circumstances;

(b) remit the decision for reconsideration.

Evidentiary provisions

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

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

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

(c) that any specified substance is or was a dangerous substance;

or

(d) that any specified substance is or was a dangerous substance of a specified class, shall, in the absence of proof to the contrary, be deemed to be proved.

(2) In proceedings for an offence against this Act, a licence and any conditions of a licence, an exemption and any conditions of an exemption, or any notice, granted or given under this Act may be proved by production of an apparently genuine document purporting to be a copy of the licence, exemption or notice certified by an officer authorized by this Act to grant or give such licence, exemption or notice.

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

Offences by bodies corporate

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

Continuing offences

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

(a) shall be liable, in addition to the penalty otherwise applicable to that offence, to a penalty for each day during which the act or omission continued of not more than the amount equal to one-tenth of the maximum penalty prescribed for that offence;

and

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

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

Forfeiture of dangerous substance upon conviction

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

(2) Any dangerous substance forfeited to the Crown shall be disposed of in such manner as the Minister may direct and, where any dangerous substance is disposed of by way of sale, the proceeds of the sale shall be paid into the general revenue of the State.

Proceedings for offences

29. (1) Proceedings for an offence against this Act—

(a) shall be disposed of summarily;

and

(b) shall not be commenced except upon the complaint of an inspector.

(2) A prosecution for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Attorney-General may, in a particular case, allow.

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

Cost recovery

29a. (1) In this section—

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

“council” means a municipal or district council:

“dangerous substance” includes a mixture of a dangerous substance with any other substance:

“government authority” means—

(a) a department or administrative unit of the Public Service;

(b) an agency or instrumentality of the Crown;

or

(c) a council:

“principal officer”, in relation to a government authority, means—

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

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

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

(2) This section applies to any incident—

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

or

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

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

- (a) a discharge of the dangerous substance onto or into any land or water, or any structure or thing;
- (b) the release of the dangerous substance into the air.

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

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

- (a) in the case of costs or expenses incurred by a council—the council;
- (b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown;
- (c) in any other case—the Crown.

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

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

- (a) the person who was the owner of the dangerous substance at the time of the incident;
- (b) the person who was in control or possession of the dangerous substance at the time of the incident;
- (c) the person who caused the incident.

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

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

and

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

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

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

- (a) that the incident was due to the act or default of another person, or to some cause beyond the person's control;
- (b) that he or she could not by the exercise of reasonable diligence have prevented the occurrence of the incident;

and

(c) that the incident is not attributable to an act or omission of a person who was an employee or agent of his or hers at the time when the incident occurred (unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent).

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

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

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

Regulations

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

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

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

- (j) prescribe the safety procedures to be followed and the provision, maintenance and use of safety equipment and facilities in connection with the keeping, handling, conveyance, use and disposal of any dangerous substance;
 - (k) regulate, restrict or prohibit the disposal of any dangerous substance;
 - (l) prohibit the handling, conveyance or use of any dangerous substance except by a person who has received the prescribed training and who is the holder of a permit;
 - (la) prohibit the manufacture, installation, repair or maintenance of any machine, equipment, container or device in or in connection with which any dangerous substance is kept or used except by a person who has received the prescribed training and who is the holder of a permit;
 - (lb) provide for the grant, suspension and revocation of permits by the Director;
 - (lc) prescribe fees for permits granted by the Director;
 - (ld) regulate the manufacture, installation, repair or maintenance of any machine, equipment, container or device in or in connection with which any dangerous substance is kept or used;
 - (m) require the reporting to the Director of accidents occurring in connection with the keeping, handling, conveyance, use or disposal of any dangerous substance;
 - (n) require the keeping of records and the furnishing of returns to the Director in connection with the keeping, handling, conveyance, use or disposal of any dangerous substance;
- and
- (o) provide for and prescribe penalties not exceeding, in each case, a division 6 fine for breach of, or non-compliance with, any regulation.
- (3) Any regulations made under this section may—
- (a) be of general or limited application according to the persons or classes of persons to whom, or the dangerous substances or classes of dangerous substances, or the time, place or circumstances, to which they are expressed to apply;
- and
- (b) refer to, or incorporate, in whole or in part, a standard or code of practice, as in force at a particular time, or as in force from time to time, of the Standards Association of Australia, the International Standards Organization, or any other prescribed body.
- (4) Where—
- (a) the regulations prohibit an activity unless carried on by a person who is the holder of a permit;
- and
- (b) a person who is the holder of such a permit carries out that activity (as an employee or contractor) for another person (“the principal”) in the course of a trade or business carried on by the principal,

the principal—

(c) must ensure, so far as is reasonably practicable, that the activity is carried out—

(i) safely;

(ii) in accordance with any requirements prescribed by the regulations;

and

(iii) in a proper and competent manner;

(d) must ensure, so far as is reasonably practicable, that any plant used, installed, repaired or maintained as part of, or for the purposes of, that activity is safe and suitable for use, and complies with any requirements prescribed by the regulations;

and

(e) must comply with any other duty imposed by the regulations for the purposes of this provision.

Penalty: Division 5 fine.

(5) The regulations under this Act may—

(a) leave any matter or thing to be determined, modified, dispensed with or regulated according to the discretion of the Director (either generally or in a particular case or class of case);

and

(b) confer other forms of discretionary powers.

APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	amended by 98, 1988, s. 3
Section 5:	definition of "the Chief Inspector" repealed by 81, 1992, s. 3(a) definition of "the Director" amended by 81, 1992, s. 3(b) definition of "inspector" substituted by 81, 1992, s. 3(c) definition of "plant" inserted by 81, 1992, s. 3(c) substituted by 81, 1992, s. 4
Section 8(1):	repealed by 98, 1988, s. 4
Section 9(2) and (3):	amended by 17, 1987, s. 2(a); 98, 1988, s. 12(Sched.)
Section 9(5):	amended by 17, 1987, s. 2(b); 98, 1988, s. 12(Sched.)
Section 9(6):	amended by 17, 1987, s. 2(c); 98, 1988, s. 12(Sched.)
Section 9(8):	amended by 17, 1987, s. 2(c); 98, 1988, s. 12(Sched.)
Section 9a:	inserted by 33, 1985, s. 2
Section 10:	amended by 17, 1987, s. 3; 98, 1988, s. 12(Sched.)
Section 11:	amended by 17, 1987, s. 4; 98, 1988, s. 12(Sched.); 71, 1992, s. 3(1)(Sched.)
Section 12:	amended by 17, 1987, s. 5; 98, 1988, ss. 5, 12(Sched.)
Section 12a:	inserted by 81, 1992, s. 6
Section 14:	amended by 17, 1987, s. 6; substituted by 98, 1988, s. 6
Section 15(2):	repealed by 98, 1988, s. 7(a)
Section 15(5) and (6):	inserted by 33, 1985, s. 3; substituted by 98, 1988, s. 7(b)
Section 18:	amended by 17, 1987, s. 7; substituted by 98, 1988, s. 8
Section 19(4):	inserted by 98, 1988, s. 9
Section 23:	repealed by 81, 1992, s. 7
	Part IIIA comprising ss. 23a - 23f and heading inserted by 98, 1988, s. 10
Section 23a(1):	amended by 81, 1992, s. 8(a)
Section 23a(2):	amended by 81, 1992, s. 8(b)
Section 24(3):	amended by 98, 1988, s. 11
Section 24a:	inserted by 81, 1992, s. 9
Section 26:	amended by 17, 1987, s. 8
Section 29:	redesignated as s. 29(1) by 81, 1992, s. 10
Section 29(2) and (3):	inserted by 81, 1992, s. 10
Section 29a:	inserted by 47, 1991, s. 2
Section 30(2):	amended by 7, 1980, s. 3; 17, 1987, s. 9; 98, 1988, s. 12(Sched.); 81, 1992, s. 11(a), (b)
Section 30(4) and (5):	inserted by 81, 1992, s. 11(c)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.