

TASMANIA

EXPLOSIVES BILL 2011

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EXPLOSIVES BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
15 November 2011

(Brought in by the Minister for Workplace Relations, the Honourable David James O'Byrne)

A BILL FOR

An Act to provide for the safe handling of explosives, for the safe management of places where explosives are handled and for the safe management of incidents and emergencies involving explosives, to repeal the *Dangerous Substances (Safe Handling) Act 2005* and for related and consequential purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Explosives Act 2011*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

In this Act, unless the contrary intention appears –

“**acceptable level of risk**” – see section 10;

“**approved code of practice**” – see section 23;

“**approved form**” means a form approved by the Secretary;

“**Australian Dangerous Goods Code**” means the *Australian Code for the Transport of Dangerous Goods by Road and Rail* published by the Commonwealth, as from time to time amended;

“**Australian Explosives Code**” means the *Australian Code for the Transport of Explosives by Road and Rail* published by the Commonwealth, as from time to time amended;

“**authorised officer**” means an authorised officer appointed under section 31(1), and includes a person authorised under section 31(6);

“**conviction**”, in relation to an offence, includes a finding of guilt without the recording of a conviction for the offence;

“**dangerous situation**”, at any premises, means that, although there is not an explosives emergency at the premises –

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- (a) it is likely that there will be an explosives emergency at the premises if appropriate action is not taken; and
- (b) it is reasonable to conclude, at the least, that taking the action should not be indefinitely delayed;

“emergency services” means –

- (a) the State Emergency Service within the meaning of the *Emergency Management Act 2006*; and
- (b) the Tasmanian Ambulance Service established under the *Ambulance Service Act 1982*; and
- (c) the Tasmania Fire Service established under the *Fire Service Act 1979*; and
- (d) the Department;

“employee” includes a person engaged, either directly or indirectly, under a contract for services;

“environment” includes –

- (a) animals and organisms; and
- (b) ecosystems and their constituent parts; and

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- (c) all natural and physical resources; and
- (d) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (e) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a), (b), (c) and (d);

“explosive” means a substance that is –

- (a) a Class 1 dangerous goods within the meaning of the Australian Dangerous Goods Code; or
- (b) listed in the Australian Explosives Code Appendix 1 or 2;

“explosives emergency” means an incident that exposes persons, property or the environment in the vicinity of the place where the incident occurs to an immediate risk of serious harm from one or more of the following:

- (a) the escape, spillage or leakage of explosives;

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- (b) a fire involving explosives;
- (c) an explosion;
- (d) a harmful reaction from explosives;
- (e) the evolution of flammable, corrosive or toxic vapours from explosives;

“explosives location” has the meaning given by section 25(1);

“export” means export from Tasmania;

“facility” means premises where explosives are, or are to be, handled;

“handling system” means any of the following used in connection with the handling of explosives:

- (a) a container;
- (b) a spill containment system;
- (c) a pipe or system of pipes;
- (d) a fire-fighting or fire protection system;
- (e) any other plant;

“hazard” means a thing or situation having the potential to do one or more of the following:

- (a) kill or harm a person;

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(b) harm property;

(c) harm the environment;

“import” means import into Tasmania;

“large explosives location” has the meaning given by section 25(3);

“material harm” is harm that is less extreme than serious harm but which causes or has the potential to cause, either directly or indirectly, one or more of the following:

(a) harm to a person of a kind that requires, or may require, medical treatment;

(b) harm to property;

(c) harm to the environment;

“modification”, of an explosives location, includes –

(a) a change to plant, processes or quantities of explosives at the facility or location; and

(b) the introduction of different explosives or new plant, processes or operating procedures at the facility or location; and

(c) organisational change at the location; and

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(d) a change to the safety management system at the facility or location;

“occupier”, of an explosives location, facility or other place, means an employer, or other person, who has overall management of the explosives location, facility or place;

“pipe” includes pipeline;

“powers”, of the Secretary or an authorised officer, includes any functions associated with the exercise of those powers;

“premises” includes –

- (a) an area of land, whether built on or enclosed; and
- (b) a building or a part of a building, whether permanent or temporary; and
- (c) a structure or a part of a structure, whether permanent or temporary –

but does not include a vehicle;

“qualifications” includes expertise, training and experience;

“regulations” means regulations made and in force under this Act;

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“relevant employees”, in relation to any facility or location, means employees –

- (a) whose normal duties expose them to a risk associated with the facility or location; or
- (b) who have responsibilities or expertise regarding the management of that risk;

“risk” means the likelihood of harm to a person, property or the environment arising out of a hazard;

“safety management system” means a safety management system that complies with section 27;

“safety obligation” – see section 9;

“Secretary” means the Secretary of the Department;

“sell” means sell by wholesale or retail, and includes –

- (a) offer, display or expose for sale; and
- (b) keep or possess for sale; and
- (c) barter or exchange; and
- (d) deal in or agree to sell; and
- (e) supply, send, forward or deliver for sale or for, or in expectation

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of receiving, any payment or consideration; and

- (f) receive for sale; and
- (g) authorise, direct, cause, permit or suffer a thing referred to in paragraph (a), (b), (c), (d), (e) or (f) to be done;

“serious harm” is harm that contributes in a substantial way, either directly or indirectly, to one or more of the following:

- (a) the death of a person;
- (b) serious personal injury within the meaning of section 11;
- (c) serious harm to property;
- (d) serious harm to the environment;

“State” includes Territory;

“workplace” means a workplace within the meaning of the *Work Health and Safety Act 2011*.

4. References to codes, &c.

A reference in this Act to a code, standard, guideline or rule includes a reference to a code, standard, guideline or rule made outside Australia.

5. What constitutes the handling of explosives?

- (1) A person handles an explosive for the purposes of this Act if they do one or more of the following:
- (a) import or export the explosive;
 - (b) manufacture, process or treat the explosive;
 - (c) sell, supply, receive or dispense the explosive;
 - (d) pack the explosive;
 - (e) mark or label articles, containers or packages of the explosive;
 - (f) put up placards or signs in relation to the explosive;
 - (g) possess, or otherwise have custody or control of, the explosive;
 - (h) store or keep the explosive;
 - (i) use the explosive;
 - (j) dispose of the explosive or render it harmless;
 - (k) design, manufacture or import a handling system for the explosive;
 - (l) install, use, alter or maintain a handling system for the explosive;

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- (m) organise, provide or undergo training in relation to the explosive or any aspect of its handling;
 - (n) carry out a prescribed activity in relation to the explosive.
- (2) However, a person who is transporting an explosive is not taken to be handling it for the purposes of this Act unless and except in so far as the transportation involves moving the explosive from one place to another by means of pipes.

6. Scope of Act

- (1) This Act applies to –
 - (a) the handling of explosives; and
 - (b) the operation of explosives locations.
- (2) This Act does not apply to land that is used for obtaining, mining or transporting petroleum under the *Petroleum (Submerged Lands) Act 1982*.
- (3) Also, except as provided by section 5(2), this Act does not apply to –
 - (a) the transportation of explosives; or
 - (b) explosives that are in transit.
- (4) For the purposes of subsection (3)(b), explosives are taken to be in transit if they –

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- (a) are on premises to which they have been supplied in unopened containers; and
- (b) have been at the premises for less than 5 consecutive days (calculated from the time at which they were supplied to the premises); and
- (c) have not, during that period, been opened or used at the premises.

7. Act binds Crown

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

8. Inconsistencies, &c., with other Acts

- (1) If a provision of this Act is inconsistent with a provision of any of the following Acts, the provision of that Act prevails over the provision of this Act to the extent of the inconsistency:
 - (a) *Dangerous Goods (Road and Rail Transport) Act 2010*;
 - (b) *Emergency Management Act 2006*;
 - (c) *Gas Act 2000*;
 - (d) *Gas Pipelines Act 2000*;
 - (e) *Poisons Act 1971*;

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- (f) *Radiation Protection Act 2005*;
 - (g) *Security-sensitive Dangerous Substances Act 2005*.
- (2) If –
- (a) this Act imposes a safety obligation on a person; and
 - (b) any of the other Acts referred to in subsection (1) imposes an obligation on the person or on another person that is at least equivalent to the safety obligation –
- compliance with the obligation under the other Act is taken, for this Act, to be compliance with the safety obligation.
- (3) This Act is in addition to but does not derogate from any other Act relating to the health or safety of persons in a workplace.

PART 2 – SAFETY OBLIGATIONS

Division 1 – Preliminary

9. Safety obligations

- (1) All persons who handle explosives have the following obligations:
 - (a) to comply with this Act;
 - (b) to take all reasonable precautions and care to achieve an acceptable level of risk.
- (2) In addition to their obligations under subsection (1), the following persons have obligations under Division 2:
 - (a) the occupier of an explosives location;
 - (b) an employee at an explosives location;
 - (c) a manufacturer, importer or supplier of explosives;
 - (d) a designer, manufacturer, importer or supplier of handling systems for use at an explosives location;
 - (e) an installer of handling systems at an explosives location;
 - (f) a person that alters or maintains a handling system at an explosives location.

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- (3) The occupier of an explosives location has, in addition to the obligations under subsections (1) and (2), the obligations under Part 4.
- (4) For the purposes of this Act, the obligations referred to in subsection (1), (2) or (3) are called “safety obligations”.

10. Achieving acceptable levels of risk

- (1) An acceptable level of risk is achieved when risk is minimised as far as reasonably practicable.
- (2) To decide whether risk is minimised as far as reasonably practicable, regard must be had to –
 - (a) the likelihood of harm to a person, property or the environment related to the risk; and
 - (b) the severity of the harm.
- (3) The regulations may prescribe the acceptable level of risk in terms of the likelihood and the severity of the consequences of the risk or in another way.
- (4) The assessment of risk to decide its acceptability must take account of good industry practice and compliance with approved codes of practice if –
 - (a) the regulations do not prescribe an acceptable level of risk or set performance objectives and measures for the avoidance, reduction or monitoring of risk; or

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- (b) it is not practicable in the circumstances to calculate or estimate the level of risk.

11. Discharge of obligations

- (1) A person who has a safety obligation must discharge that obligation.

Penalty: If –

- (a) the contravention causes multiple deaths and serious harm to property or the environment – a fine not exceeding 10 000 penalty units or imprisonment for a term not exceeding 5 years; or
- (b) the contravention causes multiple deaths – a fine not exceeding 8 000 penalty units or imprisonment for a term not exceeding 4 years; or
- (c) the contravention causes death or serious personal injury – a fine not exceeding 6 000 penalty units or imprisonment for a term not exceeding 3 years; or
- (d) the contravention involves exposure to a substance likely to cause death or serious personal injury or illness – a

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fine not exceeding 4 000
penalty units or imprisonment
for a term not exceeding 2
years; or

(e) the contravention causes minor
personal injury or serious harm
to property or the
environment – a fine not
exceeding 2 000 penalty units
or imprisonment for a term not
exceeding 12 months; or

(f) if paragraphs (a), (b), (c), (d)
and (e) of the penalty under
this subsection do not apply – a
fine not exceeding 1 000
penalty units.

(2) However, if –

(a) a person is alleged to have contravened
subsection (1); and

(b) it is alleged that the safety obligation the
person failed to discharge is the
obligation to comply with this Act; and

(c) the specific provision of this Act that the
failure relates to provides a penalty for
contravening that specific provision; and

(d) a circumstance of aggravation mentioned
in paragraph (a), (b), (c), (d) or (e) of the
penalty under subsection (1) is not
proved for the alleged offence –

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the maximum penalty that can be imposed for the alleged offence is the monetary penalty for that specific provision.

(3) In this section –

“minor personal injury” means bodily injury that interferes with health or comfort;

“multiple deaths” means the death of 2 or more people;

“serious personal injury” means injury that –

- (a) results in the full or partial loss of a distinct part or organ of the body or of the use of a distinct part or organ of the body; or
- (b) results in serious disfigurement; or
- (c) if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health –

whether or not treatment is or could have been available.

12. Obligations may be owed in more than one capacity

A person who has a safety obligation in one capacity may have the same or another safety obligation in another capacity.

13. Obligations are owed even if others also have them

To avoid doubt, it is declared that the imposition of a safety obligation on one person does not relieve another person of a safety obligation that the other person may have.

14. How to discharge obligations if there are regulations or approved codes of practice

- (1) If the regulations prescribe a way of achieving an acceptable level of risk, a person may discharge the person's safety obligation regarding the risk only by following the prescribed way.
- (2) If the regulations prohibit exposure to a risk, a person may discharge the person's safety obligation regarding the risk only by ensuring that the prohibition is not contravened.
- (3) Subject to subsections (1) and (2), if an approved code of practice states a way of achieving an acceptable level of risk, a person may discharge the person's safety obligation regarding the risk only by –
 - (a) adopting and following the stated way; or
 - (b) adopting and following another way that achieves a level of risk equal to or lower than the acceptable level.

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15. How to discharge obligations if there are no regulations or approved codes of practice

- (1) This section applies if there is no regulation or approved code of practice prescribing or stating a way to discharge a person's safety obligation regarding a risk.
- (2) The person may choose an appropriate way to discharge the person's safety obligation regarding the risk.
- (3) However, the person discharges the person's safety obligation regarding the risk only if the person takes reasonable precautions, and exercises proper diligence, to ensure that the obligation is discharged.

Division 2 – Obligations of occupiers and others

16. Obligations of occupiers regarding risk reduction

The occupier of an explosives location has the following obligations:

- (a) as far as practicable, to minimise the risk associated with the explosives location by –
 - (i) eliminating or minimising hazards at the location; and
 - (ii) implementing measures to minimise the likelihood of a dangerous situation or explosives emergency at the location; and

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- (iii) implementing measures to limit the consequences if an explosives emergency occurs at the location;
- (b) to ensure the safety of the occupier, employees and other persons while at the explosives location, including, for example, by providing and maintaining a safe place of work including safe handling systems;
- (c) to document or be able to demonstrate the way the occupier has complied with the occupier's obligations under paragraphs (a) and (b);
- (d) to provide appropriate induction, information, supervision, education and training to all persons at the location so that they may carry out their roles and duties safely;
- (e) to develop, implement and maintain a safety management system for the location;
- (f) in consultation with relevant employees, to review the safety management system –
 - (i) at least once a year; and
 - (ii) before any modification of the location that would significantly alter the risk associated with the location is carried out;

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- (g) to maintain, for the explosives location, an explosives inventory of –
 - (i) which explosives are at the explosives location; and
 - (ii) the form of those explosives; and
 - (iii) the whereabouts and, if applicable, method of storage or containment of those explosives; and
 - (iv) the maximum containment capacity of the explosives location for those explosives; and
 - (v) any prescribed information;
- (h) to ensure that employees at the explosives location can readily consult the inventory in connection with their duties;
- (i) to make the inventory available to authorised officers and emergency services workers on request.

17. Obligations of occupiers regarding emergency plans and procedures

The occupier of a large explosives location also has the following obligations:

- (a) in consultation with relevant employees, and with the emergency services, to

establish and document emergency plans and procedures to –

- (i) contain and control an explosives emergency occurring at the location; and
 - (ii) minimise the effect of the emergency on persons, property and the environment;
- (b) in consultation with relevant employees and the emergency services, to review and update emergency plans and procedures before any modification of the location that would significantly alter the risk associated with the location is carried out.

18. Obligations of employees

An employee at an explosives location has the following obligations:

- (a) to comply with procedures applying to the employee that are part of a safety management system for the location;
- (b) to comply with instructions given for the safety of persons by the occupier of the location or a supervisor at the location;
- (c) to report to a supervisor at the location any matter at the location that may lead to or cause an explosives emergency;

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- (d) to take any other reasonable and necessary course of action at the location to ensure that no-one is exposed to an unacceptable level of risk.

19. Obligations of manufacturers, importers and suppliers of explosives

- (1) A manufacturer, importer or supplier of explosives has the following obligations:
 - (a) to ensure that the explosives are in a condition that is safe for handling;
 - (b) to ensure that appropriate information about the safe handling of the explosives is provided with, or before the receipt of, the explosives.
- (2) For subsection (1)(b), information is appropriate if it clearly identifies the explosives and specifies –
 - (a) the precautions to be taken for the safe handling of the explosives; and
 - (b) the hazards associated with the handling of the explosives.

20. Obligations of designers, manufacturers, importers, suppliers and installers of handling systems

- (1) A designer or importer of a handling system for use at an explosives location has an obligation to

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ensure that the system is designed in such a way that the risk to persons, property or the environment from its proper use is at an acceptable level.

- (2) A manufacturer or importer of a handling system for use at an explosives location has an obligation to ensure that the system is constructed in such a way that the risk to persons, property or the environment from its proper use is at an acceptable level.
- (3) A designer, manufacturer, importer or supplier of a handling system for use at an explosives location has an obligation to take all reasonable steps to ensure that appropriate information about the safe use and maintenance of the system is available to the occupier of the location.
- (4) For subsection (3), information is appropriate if it specifies –
 - (a) the use for which the handling system has been designed and tested; and
 - (b) any conditions that must be complied with if the handling system is to be used safely so that risk to persons, property or the environment is at an acceptable level.
- (5) An installer of a handling system at an explosives location has an obligation to install the system in such a way that the risk to persons, property or the environment from its proper use is at an acceptable level.

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- (6) A person that alters or maintains a handling system at an explosives location has an obligation to alter or maintain the system in such a way that the risk to persons, property or the environment from its proper use is at an acceptable level.

21. Obligations of suppliers and installers regarding known hazards, &c.

- (1) This section applies to a person if –
- (a) the person has –
 - (i) installed, altered or maintained a handling system in an explosives location; or
 - (ii) supplied a handling system to the occupier of an explosives location for use at the location; and
 - (b) the person becomes aware of a hazard or defect associated with the system that may create an unacceptable level of risk to users of the handling system.
- (2) As soon as practicable after becoming aware of the hazard or defect, the person has an obligation to take all reasonable steps to inform the present occupier of the explosives location of –
- (a) the nature of the hazard or defect and its significance; and

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- (b) any modifications or controls that the person knows of that have been developed to eliminate or correct the hazard or defect or manage the risk.

Division 3 – Defences

22. Defences for Division 1 or 2

- (1) It is a defence in proceedings against a person for a contravention of a safety obligation under Division 1 or 2 regarding a risk if the person establishes that –
 - (a) if regulations have been made about the way to achieve an acceptable level of risk, the person followed the way prescribed in the regulations in order to prevent the contravention; or
 - (b) subject to paragraph (a), if an approved code of practice has been made stating a way to achieve an acceptable level of risk –
 - (i) the person adopted and followed the stated way in order to prevent the contravention; or
 - (ii) the person adopted and followed another way that achieved a level of risk that is equal to or lower than the acceptable level in order to prevent the contravention; or

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- (c) if no regulations or approved code of practice prescribe or state a way to discharge the person's safety obligation regarding the risk, the person took reasonable precautions and exercised proper diligence to prevent the contravention.
- (2) Also, it is a defence in proceedings against a person for an offence against section 11 for the person to establish that the commission of the offence was due to causes over which the person had no control.

PART 3 – CODES OF PRACTICE

23. Minister may approve codes of practice

- (1) The Minister may approve codes of practice that state ways of achieving acceptable levels of risk.
- (2) A code of practice may –
 - (a) consist of any code, standard, guideline, rule or other document relating to explosives formulated, prepared or adopted by the Secretary or by a person who, under the law of another jurisdiction, has powers that are substantially similar to those of the Secretary under this Act; and
 - (b) apply, incorporate or refer to the whole or any part of any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) The Minister may approve any revision of a code of practice or revoke a code of practice.
- (4) Before approving a code of practice or the revision or revocation of a code of practice, the Minister must –
 - (a) consult with such employer and employee organisations as the Minister considers appropriate having regard to

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- the application of the code of practice;
and
- (b) by notice published in the *Gazette* and in 3 daily newspapers published and circulating in the State, give 30 days' notice of the Minister's intention to approve the code of practice or the revision or revocation of the code of practice.
- (5) The Minister must give notice in the *Gazette* of –
- (a) the approval of a code of practice; or
- (b) the approval of the revision of the whole or part of a code of practice; or
- (c) the revocation of a code of practice.
- (6) The Secretary must cause to be made available for inspection by members of the public without charge during normal office hours a copy of –
- (a) every approved code of practice; and
- (b) if an approved code of practice has been revised and the revision has been approved, the approved code of practice as so revised; and
- (c) if an approved code of practice applies, incorporates or refers to any other document, that other document.
- (7) The Minister may cause copies of an approved code of practice to be made available for purchase.

- (8) The Minister may from time to time cause an approved code of practice to be published in such ways as the Minister thinks fit.
- (9) An approved code of practice and any approved revision of a code of practice have effect on the day on which notice of the approval is published in the *Gazette*.
- (10) An approved code of practice ceases to have effect on the day on which notice of the revocation of the code is published in the *Gazette*.

24. Use of codes of practice in proceedings

An approved code of practice is admissible as evidence in proceedings under this Act if –

- (a) the proceedings relate to a contravention of a safety obligation that a person has under Part 2; and
- (b) it is claimed that the person contravened the obligation by failing to achieve an acceptable level of risk; and
- (c) the approved code of practice is, in whole or in part, about achieving an acceptable level of risk.

PART 4 – EXPLOSIVES LOCATIONS

Division 1 – Identification of explosives locations

25. Meaning of “explosives location” and “large explosives location”

- (1) A place is an explosives location if explosives are, or are likely to be, handled at the place in a greater than prescribed quantity.
- (2) However, a major hazard facility is not an explosives location.
- (3) An explosives location is a large explosives location if explosives are, or are likely to be, handled at the location in a greater than prescribed quantity.
- (4) To avoid doubt, if and when an explosives location becomes a large explosives location –
 - (a) it does not cease thereby to be an explosives location; and
 - (b) no provision of this Act applying to an explosives location ceases thereby to apply to it; and
 - (c) the provisions of this Act that apply to it as a large explosives location are additional to those that apply to it as an explosives location.
- (5) In this section –

“major hazard facility” has the same meaning as in the regulations made under the *Work Health and Safety Act 2011*.

Division 2 – Other obligations of occupiers of explosives locations

26. Obligation of occupiers regarding emergency plans and procedures

The occupier of a large explosives location must ensure that the emergency plans and procedures referred to in section 17(a) are established and documented.

27. Obligation of occupiers regarding safety management systems

- (1) The occupier of an explosives location must ensure that the safety management system referred to in section 16(e) is a documented system for managing the safety of explosives at the location and that it contains details of –
 - (a) the system’s safety objectives; and
 - (b) the procedures by which the objectives are to be achieved; and
 - (c) the performance criteria that are to be met; and
 - (d) the way in which adherence to the criteria is to be maintained; and

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- (e) such other matters as may be prescribed.
- (2) The occupier must ensure that the safety management system is developed and implemented.
- (3) The occupier of an explosives location must not operate the location unless there is a safety management system, complying with the requirements of subsection (1), for the location.

28. Obligation of occupiers to report, &c., explosives emergencies

- (1) The occupier of an explosives location must, if an explosives emergency occurs at the location –
 - (a) immediately advise the Secretary that the explosives emergency has occurred and of any resulting serious harm or material harm; and
 - (b) if that advice is given to the Secretary orally, confirm it in writing within 7 days; and
 - (c) investigate the explosives emergency as soon as practicable; and
 - (d) give the Secretary a written report of the investigation and its findings within one month after the explosives emergency occurs or, if the Secretary considers this is not practicable, the longer time allowed by the Secretary; and

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- (e) consult with relevant employees about ways of avoiding explosives emergencies in the future.

Penalty: Fine not exceeding 200 penalty units.

- (2) However, the occupier does not have to comply with subsection (1) if the explosives emergency is notified under any of the following:
 - (a) the *Dangerous Goods (Road and Rail Transport) Act 2010*;
 - (b) the *Emergency Management Act 2006*;
 - (c) the *Security-sensitive Dangerous Substances Act 2005*;
 - (d) a prescribed Act.

29. Obligation of occupiers to record dangerous situations

- (1) The occupier of an explosives location must, as soon as practicable after a dangerous situation occurs at the location –
 - (a) record the occurrence of the dangerous situation; and
 - (b) investigate the dangerous situation and record the findings of the investigation; and

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- (c) consult with relevant employees about ways of avoiding dangerous situations in the future.

Penalty: Fine not exceeding 80 penalty units.

- (2) The occupier must keep a record created under subsection (1) for as long as the explosives location continues to operate.

Penalty: Fine not exceeding 80 penalty units.

PART 5 – ADMINISTRATION AND ENFORCEMENT

Division 1 – Secretary

30. Powers of Secretary

- (1) The Secretary –
 - (a) has the powers conferred on the Secretary by this Act; and
 - (b) has power to do all things necessary or convenient to be done to exercise those powers.
- (2) The Secretary –
 - (a) may exercise all of the powers of an authorised officer; and
 - (b) when doing so, has all the immunities of an authorised officer.

Division 2 – Authorised officers

31. Appointment of authorised officers

- (1) The Secretary, by instrument in writing, may appoint persons to be authorised officers if the Secretary is satisfied that they have the qualifications to exercise the powers of that office competently.
- (2) The persons so appointed may be –

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- (a) State Service officers or State Service employees employed in the Department;
or
 - (b) with the consent of the Head of another State Service Agency, State Service officers or State Service employees employed in that other Agency; or
 - (c) with the consent of the Commissioner of Police, police officers.
- (3) If a State Service officer or State Service employee is appointed as an authorised officer –
- (a) he or she holds that office in conjunction with State Service employment; and
 - (b) duties that he or she performs as an authorised officer are taken to be part of his or her duties as a State Service officer or State Service employee.
- (4) If a police officer is appointed as an authorised officer –
- (a) he or she holds that office in conjunction with police employment; and
 - (b) duties that he or she performs as an authorised officer are taken to be part of his or her duties as a police officer.
- (5) A person who is not a State Service officer, State Service employee or police officer is not capable of being given an appointment under subsection (1).

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- (6) However, the Secretary may authorise a person who is not a State Service officer, State Service employee or police officer to exercise the powers of an authorised officer if the Secretary is satisfied that the person has the qualifications to do so competently.
- (7) In this section –
 - “**persons**” includes a class of persons.

32. Powers of authorised officers

- (1) An authorised officer –
 - (a) has the powers conferred on authorised officers by this Act; and
 - (b) has power to do all things necessary or convenient to be done to exercise those powers.
- (2) However, an appointment or authorisation under section 31 may specify that the appointment or authorisation is subject to conditions or restrictions relating to –
 - (a) the powers that are exercisable by the person appointed or authorised; or
 - (b) when, where and in what circumstances the person may exercise powers.
- (3) Also, a person appointed or authorised under section 31 is subject to the directions of the Secretary in exercising powers.

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33. Identification of authorised officers

- (1) The Secretary –
 - (a) is to issue an identity card to each authorised officer who is not a police officer; and
 - (b) may issue an identity card to each authorised officer who is a police officer.
- (2) The identity card is to –
 - (a) be in an approved form; and
 - (b) contain a recent photograph of the authorised officer; and
 - (c) contain the prescribed particulars, if any.
- (3) When a person ceases to be an authorised officer the Secretary is to retrieve the person's identity card, if issued, as soon as practicable.
- (4) An authorised officer who is not a police officer must –
 - (a) carry his or her identity card while carrying out duties under this Act; and
 - (b) if practicable, produce the identity card before exercising a power of an authorised officer.
- (5) A police officer who is exercising or about to exercise a power of an authorised officer must, if practicable, comply with a request to identify him or herself by –

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- (a) producing the officer's police identification, or authorised officer identity card, if issued; or
 - (b) stating orally or in writing the officer's name, rank and place of duty, or the officer's identification number.
- (6) This section does not prevent the issue of a single identity card to a person for this Act or other Acts.

34. Delegation

- (1) The Secretary may delegate any of his or her functions or powers under this Act.
- (2) Notwithstanding subsection (1), if a function or power has been delegated to a person or to the holder of a particular office or position, that person or the holder of that office or position may, with the approval of the Secretary, delegate any of those functions or powers.

35. General powers of inspection, &c., of authorised officers

- (1) An authorised officer may, to ascertain whether this Act is being complied with, enter and search premises if the authorised officer believes on reasonable grounds that he or she will find a thing that has been, is being or is likely to be used in the handling of explosives.

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- (2) However, if the premises are unattended or are a residence, the authorised officer may only enter with the consent of the occupier or under the authority of a warrant issued by a magistrate.
- (3) Schedule 1 has effect in relation to the issue, execution, effect and expiry of warrants for the purposes of this section.
- (4) Despite subsection (2), an authorised officer may enter and search premises, whether attended or not and whether or not a residence, and without consent or a warrant, if he or she believes on reasonable grounds that an explosives emergency exists as a result of anything occurring at the premises in relation to the handling of explosives.
- (5) If an authorised officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in the handling of explosives, the officer may, to ascertain whether this Act is being complied with –
 - (a) stop or detain the vehicle or equipment or cause the vehicle or equipment to be stopped or detained; and
 - (b) search the vehicle or equipment for explosives or for documents, equipment or other things relating to the handling of explosives.
- (6) If an authorised officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in the handling of explosives, the officer may, to ascertain whether

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this Act is being complied with, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.

- (7) If the inspection is not to take place immediately, the direction is to be given by notice in writing specifying the time, date and location for the inspection.
- (8) An authorised officer may carry out an inspection of the kind referred to in subsection (6) without notice if the authorised officer believes on reasonable grounds that an explosives emergency exists.
- (9) An authorised officer may, to ascertain whether this Act is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (4), (5) or (6) or another person capable of doing so to give samples of a substance for examination and testing if the authorised officer believes on reasonable grounds that the substance is an explosive, an ingredient of an explosive or a substance that has been handled together with explosives.
- (10) If subsection (9) applies, the authorised officer must give a receipt in an approved form to the person who –
 - (a) appears to be in charge of the premises, vehicle or equipment from or in respect of which the sample is taken; or

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- (b) gives the sample.
- (11) An authorised officer may, to ascertain whether this Act is being complied with, direct a person in charge or apparently in charge of premises or a vehicle or equipment referred to in subsection (1), (4), (5) or (6) to produce documents.
- (12) The authorised officer may make copies of the documents, or remove them to make copies, but if they are removed the authorised officer must –
- (a) if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them; and
 - (b) give a receipt in an approved form.
- (13) An authorised officer may, to ascertain whether this Act is being complied with, leave at premises written directions to the occupier requiring the occupier, within a specified time –
- (a) to give samples of a substance the authorised officer believes on reasonable grounds to be an explosive, or an ingredient of an explosive, for examination and testing; or
 - (b) to produce documents that may help the authorised officer.
- (14) An authorised officer may, in order to ascertain whether this Act is being complied with, direct a

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person to answer questions that may help the authorised officer.

- (15) An authorised officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorised officer under this section.

36. Authorised officers may require names and addresses

- (1) An authorised officer may require a person to state the person's name and address if the authorised officer believes on reasonable grounds that the person has been involved in the handling of explosives.
- (2) The authorised officer may require the person to give evidence of the correctness of the stated name or address if the authorised officer suspects on reasonable grounds that the stated name or address is false.
- (3) A person must comply with the authorised officer's requirement under subsection (1) or (2) unless the person has a reasonable excuse for not complying with it.

Penalty: Fine not exceeding 10 penalty units.

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37. Powers of authorised officers regarding suspected offences

- (1) This section applies if an authorised officer believes on reasonable grounds that he or she will find evidence of an offence at premises, including on a vehicle or equipment at the premises.
- (2) The authorised officer may enter the premises and may –
 - (a) search for or test the evidence; and
 - (b) do whatever is necessary to preserve the evidence, including placing a seal, lock or guard; and
 - (c) seize the evidence.
- (3) However, if the premises are unattended or are a residence, the authorised officer may only enter them with the consent of the occupier or under the authority of a warrant issued by a magistrate.
- (4) Schedule 1 has effect in relation to the issue, execution, effect and expiry of warrants for the purposes of this section.
- (5) Without limiting subsection (2), the authorised officer may –
 - (a) stop or detain the vehicle or cause the vehicle to be stopped or detained; or
 - (b) search the vehicle or equipment; or

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- (c) direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.
- (6) The authorised officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment, or another person capable of doing so, to give samples of a substance for examination and testing.

38. Authorised officers to restore premises, &c., to original condition after inspections

- (1) After inspecting premises, a vehicle or equipment under section 35 or 37, the authorised officer must take reasonable steps to return the premises, vehicle or equipment to the condition they were in immediately before the inspection.
- (2) No action lies against an authorised officer, the Secretary or the Crown in respect of the failure by an authorised officer to comply with subsection (1).

39. Offence to obstruct, &c., authorised officers

A person must not –

- (a) obstruct or hinder; or
- (b) threaten; or

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- (c) attempt to intimidate; or
- (d) attempt to improperly influence –

an authorised officer, or a person assisting the authorised officer, in the exercise of a power of the authorised officer under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months.

40. Offence to fail to comply with authorised officer's directions

A person must not, without reasonable excuse, fail to comply with a direction given by an authorised officer under section 35 or 37.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months.

41. Self-incrimination no excuse

- (1) A person is not excused from answering any question asked, or providing any information required, by an authorised officer under this Act on the ground that the answer or information may tend to incriminate the person.
- (2) However, in proceedings for an offence against this Act, any answer or information given or provided to an authorised officer pursuant to a requirement of an authorised officer under this Act is not admissible in evidence against the person giving the answer or providing the information –
 - (a) if the person claims before giving the answer or providing the information that the answer or information may tend to incriminate the person; or
 - (b) unless the person’s entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person’s attention before the answer was given or the information was provided.

Division 3 – Directions by authorised officers

42. Authorised officers may give directions

An authorised officer may give directions under and in accordance with this Division.

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43. Procedure for giving directions

- (1) A direction under this Division may be given to a person orally or in writing.
- (2) However, if the direction is given to the person orally, the giver of the direction is to give the person written confirmation of the direction within 3 days.
- (3) An authorised officer is, as soon as practicable after giving a direction under this Division, to inform the Secretary of –
 - (a) the giving of the direction; and
 - (b) why it was given; and
 - (c) its content.
- (4) A failure to comply with subsection (2) or (3) does not affect the validity of a direction.
- (5) A direction under this Division must specify when the actions specified in the direction are required to be taken.
- (6) For the purposes of subsection (5), a timing requirement may be specified by reference to a date, event, period or other factor.

44. Directions to carry out risk assessments

- (1) This section applies if an authorised officer reasonably suspects that a risk from an explosives location is not at an acceptable level.

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- (2) The authorised officer may direct the occupier of the explosives location to carry out a specified assessment or give specified information to enable the authorised officer to decide whether the risk is at an acceptable level.

45. Directions to reduce risks

- (1) This section applies if an authorised officer reasonably believes that a risk from an explosives location is not at an acceptable level.
- (2) The authorised officer may direct the occupier of the explosives location to take specified corrective or preventative action to reduce the risk to an acceptable level.

46. Directions to review safety management systems

- (1) This section applies if an authorised officer reasonably believes that the safety management system for an explosives location is inadequate.
- (2) The authorised officer may direct the occupier of the explosives location to review the safety management system.

47. Directions to review emergency plans and procedures

- (1) This section applies if an authorised officer reasonably believes that the emergency plans

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and procedures mentioned in section 17(a) for a large explosives location are inadequate.

- (2) The authorised officer may direct the occupier of the large explosives location to review the emergency plans and procedures.

48. Directions to stop and secure handling systems

- (1) This section applies if an authorised officer reasonably believes that a handling system at an explosives location has caused, or is likely to cause, material harm.
- (2) The authorised officer may direct the person apparently in charge of the handling system to stop the operation of the system and prevent it from being further operated.

49. Directions to suspend operations for unacceptable levels of risk

- (1) This section applies if an authorised officer reasonably believes that a risk from operations being conducted at an explosives location is not at an acceptable level.
- (2) The authorised officer may direct the occupier of the explosives location to suspend the operations, totally or partially, in all or part of the explosives location.

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50. Directions to isolate sites

- (1) This section applies if an authorised officer believes that it is necessary to preserve evidence after an explosives emergency has occurred at an explosives location.
- (2) The authorised officer may direct the occupier of the explosives location to isolate and protect the site of the explosives emergency.

51. Directions to address specific manufacturing, import or supply risks

- (1) This section applies if an authorised officer reasonably believes a risk relating to the manufacture, import or supply of an explosive or handling system is not at an acceptable level.
- (2) The authorised officer may direct the manufacturer, importer or supplier to take specified corrective or preventative action to reduce the risk to an acceptable level.
- (3) Without limiting the generality of subsection (2), the manufacturer, importer or supplier may be directed to undertake a general, limited or individual recall of the relevant explosive or handling system.
- (4) If subsection (3) applies, the Crown is not liable to pay for or contribute to the costs of the recall.

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52. Directions for independent studies or audits

- (1) An authorised officer may direct the occupier of an explosives location to –
 - (a) have an independent study or audit carried out into a prescribed matter; and
 - (b) give the Secretary a copy of the study or audit.
- (2) The direction is to state –
 - (a) the reasons for requiring the study or audit to be carried out and its objectives; and
 - (b) that the person who carries out the study or audit must be a person approved by the Secretary.
- (3) For subsection (2)(b), the Secretary may approve a person only if –
 - (a) the person has relevant qualifications to carry out the study or audit; and
 - (b) the Secretary is satisfied that the person is able to provide an independent study or audit.
- (4) The Crown is not liable to pay for or contribute to the costs of the independent study or audit.
- (5) In this section –

“prescribed matter” means –

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- (a) risks arising out of the operation of the explosives location; or
- (b) the safety of part or all of any handling system, building or other structure at the explosives location; or
- (c) an explosives emergency or dangerous situation at the explosives location; or
- (d) the adequacy of emergency plans, safety management systems and safety reports for the explosives location.

53. Directions to importers or exporters to have explosive analysed, &c.

- (1) An authorised officer may direct a person who is or has been engaged in importing or exporting an explosive to do either or both of the following:
 - (a) have the explosive analysed or tested by a specified person in accordance with specified directions;
 - (b) allow the explosive to be inspected by an authorised officer at a specified time and place or at a time and place negotiated between the person and an authorised officer.

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- (2) The Crown is not liable to pay for or contribute to the costs of an analysis or test under this section.
- (3) It is a defence in proceedings for an offence under section 54 relating to a direction under this section involving the export of an explosive if the defendant establishes that, at the relevant time, all of the explosive had been lawfully exported and none of it was available in Tasmania for testing or analysis or inspection.

54. Offence not to comply with directions

A person who is given a direction under this Division must comply with that direction.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues; and
- (b) an individual, a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.

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55. Orders to secure compliance with directions

- (1) This section applies if it appears to an authorised officer that –
 - (a) a person has contravened section 54; and
 - (b) the contravention has caused or contributed to a dangerous situation at any premises or an explosives emergency at any facility.
- (2) The authorised officer may apply to the Supreme Court for an order that the person comply with the relevant direction under this Division.
- (3) If, consequent on the application, the Supreme Court is satisfied that the relevant contravention has occurred and that it has caused or contributed to a dangerous situation or explosives emergency at the relevant facility, the court may make any order it considers appropriate in the circumstances.
- (4) Nothing in this section is to be taken as preventing other proceedings or other actions from being taken in respect of the contravention.

56. Obligation of occupiers to make directions available for inspection by employees

- (1) This section applies to an occupier of an explosives location or other facility who is given a direction under this Division.

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- (2) In the case of a written direction, the occupier must take reasonable steps to ensure that relevant employees –
- (a) are informed of the direction as soon as practicable after it is given; and
 - (b) may inspect a copy of the direction.

Penalty: Fine not exceeding 40 penalty units.

- (3) In the case of an oral direction, the occupier must take reasonable steps to ensure that relevant employees –
- (a) are informed of the direction as soon as practicable after it is given; and
 - (b) may inspect a copy of the written confirmation of the direction.

Penalty: Fine not exceeding 40 penalty units.

- (4) As soon as practicable after any action is taken to comply with the direction, the occupier must –
- (a) document that action; and
 - (b) take reasonable steps to ensure that relevant employees may inspect a copy of that document.

Penalty: Fine not exceeding 40 penalty units.

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Division 4 – Preventative measures and other matters

57. Taking urgent direct action to prevent dangerous situations causing serious harm

- (1) This section applies if an authorised officer reasonably believes that –
 - (a) a dangerous situation exists at a place; and
 - (b) the dangerous situation threatens to cause serious harm; and
 - (c) having regard to the nature of the threat, action needs to be taken urgently to prevent, remove or minimise the dangerous situation.
- (2) The authorised officer may –
 - (a) take the necessary action; or
 - (b) cause that action to be taken.
- (3) Subsection (2) has effect even if the authorised officer has previously given a person a direction under Division 3, and the time complying with the direction has not ended.
- (4) However, in determining the nature and extent of the action to be taken, the authorised officer must consult with the occupier of the place and the Secretary to the extent that it is reasonably practicable to do so.

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- (5) The action that the authorised officer may take includes engaging the help of a person who the authorised officer reasonably believes has appropriate qualifications to contribute to the prevention, removal or minimisation of the dangerous situation.
- (6) A person whose help is engaged pursuant to subsection (5) is taken to have the powers of an authorised officer to the extent reasonably necessary for the person to contribute to the prevention, removal or minimisation of the dangerous situation.
- (7) As soon as practicable after exercising power under subsection (2), the authorised officer is to –
 - (a) prepare a report that –
 - (i) describes the action taken; and
 - (ii) specifies why the action was taken; and
 - (iii) sets out particulars of any resulting property damage; and
 - (b) give a copy of the report to the occupier of the place and the Secretary.

58. Recovery of costs of government action

- (1) This section applies if an authorised officer has –

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- (a) taken an action under section 57 to prevent, remove or minimise a dangerous situation; or
 - (b) caused such an action to be taken.
- (2) If the Crown incurs costs as a result of the taking of the action, so much of the costs as were reasonably incurred are recoverable as a debt due to the Crown.
- (3) The costs are recoverable jointly and severally from the following persons:
 - (a) the person who owned the explosives involved in the dangerous situation;
 - (b) the occupier of the place where the dangerous situation existed;
 - (c) the person who caused the dangerous situation.
- (4) However, costs are not recoverable from a person who establishes that –
 - (a) the dangerous situation was due to the act or default of someone else, other than an employee or agent of the person; or
 - (b) the person could not, exercising reasonable care, have prevented the dangerous situation.
- (5) This section does not limit the powers that the Crown has apart from this Act.

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Part 6 – Offence Proceedings and Related Matters

PART 6 – OFFENCE PROCEEDINGS AND RELATED MATTERS

59. Time limit for prosecuting offences

Proceedings for an offence against this Act may be commenced not later than 12 months after the date on which the offence is alleged to have been committed.

60. Authorised officers may prosecute offences

A prosecution for an offence against this Act may be, but is not required to be, brought by an authorised officer.

61. Analysts

- (1) The Secretary, by instrument in writing, may authorise appropriately qualified persons to perform analyses for the purposes of this Act.
- (2) A person so authorised may be, but is not required to be –
 - (a) a person in State Service employment; or
 - (b) a person appointed or employed by the Commonwealth.
- (3) If a State Service officer or State Service employee is so authorised, he or she may

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perform analyses for the purposes of this Act in conjunction with State Service employment.

62. Evidentiary matters

- (1) In any proceedings, the production of a certificate purporting to be signed by the Secretary and stating that, at a time specified in the certificate –
- (a) a specified facility was or was not classified, or classifiable, as an explosives location or large explosives location under this Act; or
 - (b) a specified place was or was not an explosives location or large explosives location; or
 - (c) a specified facility or location was, either generally or in a particular way, operational; or
 - (d) a specified person was given a specified direction or notice under this Act; or
 - (e) a specified requirement was imposed on a specified person under this Act; or
 - (f) a specified person had or had not, to the Secretary's knowledge, been consulted about, or informed of, a matter under this Act; or
 - (g) a specified standard issued or published by Safe Work Australia, the ASCC, the

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NOHSC or Standards Australia or something in the standard was, or was not, in force –

is evidence of the matters stated in the certificate.

- (2) In any proceedings, the production of a certificate purporting to be signed by the Secretary and stating that –
- (a) a specified substance is (or was at a specified time) an explosive or an explosive of a particular class or specific kind; or
 - (b) a specified amount is payable under this Act by a specified person and has not been paid; or
 - (c) a specified document is –
 - (i) a direction, or a copy of a direction, given under this Act; or
 - (ii) a decision or declaration, or a copy of a decision or declaration, given or made under this Act; or
 - (iii) a notice, or a copy of a notice, given under this Act; or
 - (iv) a copy of a receipt given under this Act; or
 - (v) a record or document, a copy of a record or document, or an extract

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from a record or document, kept
under this Act –

is evidence of the matters stated in the
certificate.

(3) In any proceedings, the production of a report
purporting to be signed by an analyst for the
purposes of this Act and stating –

(a) that at a specified time the person took or
received a specified sample from a
specified person; and

(b) that at a specified time and place the
person analysed the sample; and

(c) what the results of the analysis were –

is evidence of the matters stated in the report.

(4) In any proceedings, a document purporting to be
published by or under the authority of Safe Work
Australia, the ASCC, the NOHSC or Standards
Australia is evidence of the matters appearing on
and in the document.

(5) In any proceedings, it is not necessary to prove –

(a) the appointment of the Secretary or an
authorised officer; or

(b) an authorisation under section 31(6); or

(c) the authorisation or qualifications of an
analyst.

(6) In any proceedings –

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- (a) it is not necessary to prove the authority of the Secretary or an authorised officer to do anything under this Act; and
- (b) a signature purporting to be that of the Secretary or an authorised officer is evidence of the signature it purports to be.

(7) In this section –

“**analyst**” means a person who is authorised under section 61 to perform analyses for the purposes of this Act;

“**ASCC**” means the Australian Safety and Compensation Council, being the tripartite (government, employer and employee) body of that name that was established under the executive power of the Commonwealth (as the successor to the NOHSC) to –

- (a) lead and coordinate national efforts to improve occupational health and safety and workers compensation arrangements; and
- (b) declare national standards and codes of practice in relation to occupational health and safety matters; and
- (c) provide government with policy advice on those matters;

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“NOHSC” means the National Occupational Health and Safety Commission (more commonly known as Worksafe Australia) established under the *National Occupational Health and Safety Commission Act 1985* of the Commonwealth and abolished under the *National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005* of the Commonwealth;

“proceedings” means proceedings for an offence against this Act;

“Safe Work Australia” means Safe Work Australia as established under section 5 of the *Safe Work Australia Act 2008* of the Commonwealth;

“specified”, in relation to a certificate or report, means specified in the certificate or report;

“Standards Australia” means Standards Australia International Ltd ACN 087 326 690;

“time” means a time, a day or a period of time.

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63. Responsibility for acts or omissions of representatives

- (1) Subsections (2) and (3) apply in proceedings for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to establish that –
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person establishes that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section –

“executive officer”, of a corporation, means a person who –

 - (a) is a member of the governing body of the corporation; or
 - (b) is concerned with, or takes part in, the corporation's management, whatever the

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person's position is called and whether or not the person is a director of the corporation;

“representative” means a representative –

- (a) of a corporation, an executive officer, employee or agent of the corporation; or
- (b) of an individual, an employee or agent of the individual;

“state of mind” of a person includes –

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

64. Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –
 - (a) the act or omission constituting the offence took place without the person's knowledge or consent; or

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(b) the person used all due diligence to prevent that act or omission of the body corporate.

(2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

65. Recovery of investigation costs from convicted persons

(1) A court that convicts a person of an offence against this Act may, on application by or on behalf of an authorised officer involved in investigating the offence, order that, in addition to any other penalty, the defendant must pay any costs that were reasonably incurred in, and directly related to, investigating the offence.

(2) For the purposes of this section, the costs of investigating an offence include, but are not limited to, the cost of testing, transporting, storing and disposing of explosives.

66. Prohibiting convicted persons from involvement in handling of explosives

(1) In sentencing a person for an offence against this Act, a court may, having regard to the matters referred to in subsection (2) and to such other matters as it thinks fit, and in addition to any other penalty, order that the person be prohibited for a specified period from having any

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involvement, or a particular involvement, in the handling of explosives.

- (2) The matters to which the court is to have regard are –
- (a) the person’s record in the handling of explosives; and
 - (b) any prior convictions of the person relating to explosives; and
 - (c) the circumstances surrounding the commission of the offence for which the person is being sentenced.
- (3) A person who contravenes an order under this section is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; and
- (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

67. Forfeiture

- (1) If –
- (a) a person is convicted by a court of an offence in relation to an explosive; and

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- (b) the person owns the explosive or the owner cannot be identified –

the court may, in addition to imposing any other penalty, order the explosive (and, if applicable, its container) to be forfeited to the Crown.

- (2) The explosive so forfeited to the Crown (and, if applicable, its container) may be destroyed, sold or otherwise disposed of as the Secretary, having regard to any relevant safety considerations, thinks fit.
- (3) Any costs reasonably incurred in effecting the destruction, sale or other disposal are recoverable from the convicted person as a debt due to the Crown.

68. Infringement notices

- (1) An authorised officer may issue and serve a person with an infringement notice if the authorised officer considers that the person has committed a prescribed offence.
- (2) An infringement notice is –
- (a) to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) not to relate to more than 3 prescribed offences; and
 - (c) not to be served on a person who has not attained the age of 18 years.

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- (3) A penalty prescribed in respect of an infringement notice, under this section, is not to exceed 25 penalty units.
- (4) Any payments in respect of an infringement notice are payable into the Consolidated Fund.

PART 7 – MISCELLANEOUS

69. Applications for review of decisions

- (1) A person who is aggrieved by a decision made by the Secretary or an authorised officer under this Act, or a prescribed decision under this Act, may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.
- (2) In this section –

“decision” includes a direction under Division 3 of Part 5.

70. False or misleading statements, &c.

A person must not, in giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without the matter the statement is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

71. Delegation of Minister’s power to Secretary

The Minister may by instrument in writing delegate all or any of the Minister’s powers under this Act or the regulations to the Secretary.

72. Protection from liability

- (1) The Secretary or an authorised officer does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties under this Act.
- (2) A liability that would, apart from this section, attach to the Secretary or an authorised officer attaches instead to the Crown.

73. Assistance in emergencies or accidents

- (1) A person does not incur civil liability for an act done honestly and in good faith, and without any fee, charge or other reward, for the purpose of assisting or attempting to assist in a situation in which an emergency or accident involving explosives occurs or is likely to occur.
- (2) Subsection (1) does not apply to a person whose act or omission was wholly or partly the cause of the occurrence or likely occurrence.
- (3) Subsection (1) applies to a government authority even though the authority requires payment for a service provided in connection with the occurrence or likely occurrence.

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- (4) This section does not apply to an authorised officer.

74. Status of *Gazette* notices

Except as otherwise expressly provided by this Act, a *Gazette* notice in respect of any matter under this Act is not –

- (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or
- (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

75. Service of documents

A notice or other document is effectively given to or served on a person under this Act if –

- (a) in the case of a natural person, it is –
 - (i) handed to the person; or
 - (ii) left at, or sent by post to, the person's postal or residential address or place of business or employment last known to the giver or server of the notice or document; or
 - (iii) faxed to the person's fax number; or

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- (iv) emailed to the person's email address; and
- (b) in the case of any other person, it is –
 - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) faxed to the person's fax number; or
 - (iii) emailed to the person's email address.

76. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide for the prevention or minimisation of risks associated with the handling of explosives, including for non-commercial purposes; and
 - (b) provide for the prevention or minimisation of risks associated with the operation of explosives locations or other facilities; and

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- (c) prescribe ways of achieving acceptable levels of risk for the purposes of discharging safety obligations; and
- (d) provide for the giving of advice and assistance in explosives emergencies and in other incidents involving explosives; and
- (e) establish licensing, permit or accreditation schemes for places where explosives are handled; and
- (f) control and regulate the handling of explosives, including (but not limited to) –
 - (i) fireworks and fireworks displays; and
 - (ii) mining, quarrying and building demolition operations; and
- (g) without limiting paragraph (f), establish licensing, permit or accreditation schemes for the handling of explosives; and
- (h) control and regulate the import and export of explosives; and
- (i) provide for the collection, keeping and disclosure of information by any person in respect of any matter; and
- (j) provide for exemptions in respect of any matter; and

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- (k) provide, in respect of any matter, for the recognition of any kind of qualification, standing or authority under a law of the Commonwealth or another State relating to the handling of explosives; and
 - (l) prescribe fees and charges in respect of any matter under this Act; and
 - (m) deal with matters that are incidental or ancillary to any matter referred to in this subsection.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined by the Secretary or an authorised officer.
- (5) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding –
 - (i) 150 penalty units if the regulation contravened imposes a requirement for the handling of explosives at explosives locations; and
 - (ii) 50 penalty units for any other contravention.

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- (6) The regulations may apply, adopt or incorporate all or any of the provisions of a code, standard, guideline, rule or other document relating to explosives or their handling and those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.
- (7) Regulations of the kind referred to in subsection (2)(i) may, in so far as they relate to the handling of explosives, authorise the disclosure of personal information to any law enforcement or regulatory agency of the Commonwealth or of another State.

77. Minister to notify adoption of codes, &c., by regulation

- (1) If the regulations apply, adopt or incorporate provisions of a code, standard, guideline, rule or other document, the Minister must, as soon as practicable after the regulations are made, publish in the *Gazette* a notice giving details of places where the code, standard, guideline, rule or other document may be obtained or inspected.
- (2) If –
 - (a) the regulations apply, adopt or incorporate provisions of a code, standard, guideline, rule or other document as in force from time to time; and

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- (b) the code, standard, guideline, rule or other document is amended or replaced –

the Minister must, as soon as practicable after the amendment or replacement, publish in the *Gazette* a notice stating that the code, standard, guideline, rule or other document has been amended or replaced and giving details of places where the amended or replaced code, standard, guideline, rule or other document may be obtained or inspected.

78. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Workplace Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

79. Savings and transitional provisions

The provisions in Schedule 2 have effect.

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80. Consequential amendments of regulations do not prevent their subsequent amendment

The amendment by this Act of a provision of any regulations does not prevent that or any other provision of those regulations or notice from being amended or rescinded by a subsequent regulation.

81. Consequential amendments

The legislation specified in Schedule 3 is amended as specified in that Schedule.

82. Legislation repealed

The legislation specified in Schedule 4 is repealed.

83. Legislation rescinded

The legislation specified in Schedule 5 is rescinded.

84. Legislation revoked

The legislation specified in Schedule 6 is revoked.

**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
WARRANTS**

Section 35(3) and section 37(4)

1. Interpretation

In this Schedule –

“issuing magistrate”, in relation to a warrant,
means the magistrate who issues the
warrant;

“occupier” includes a person in charge of
premises.

2. Applications for warrant in standard situation

- (1) An application to a magistrate for a warrant is to be in writing.
- (2) The magistrate may issue the warrant if satisfied that there are reasonable grounds for doing so.
- (3) However, the magistrate must not issue the warrant unless –
 - (a) the applicant for the warrant sets out the grounds for seeking the warrant; and
 - (b) the applicant for the warrant has given the magistrate, either orally or in writing, any further information that the magistrate requires concerning the grounds for seeking the warrant; and

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- (c) the information given by the applicant is verified before the magistrate on oath or by affidavit.
- (4) The warrant is to be in such form as the issuing magistrate determines but it must at least specify –
 - (a) when the warrant is issued; and
 - (b) the premises it authorises to be entered; and
 - (c) whether entry is authorised to be made at any time or only during certain hours; and
 - (d) any conditions that the warrant is subject to; and
 - (e) when the warrant ceases to have effect.

3. Warrants may be applied for and issued by telephone, &c., in urgent situations

- (1) Despite clause 2, an authorised officer may apply to a magistrate for a warrant by telephone or radio if the authorised officer believes that the urgency of the situation requires it.
- (2) The magistrate may complete and sign the warrant in the same way as for a warrant applied for in person if satisfied that –
 - (a) there are reasonable grounds for issuing the warrant urgently; and

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- (b) it is not practicable in the circumstances for the authorised officer to apply for the warrant in person.
- (3) The issuing magistrate is to –
- (a) inform the authorised officer of –
 - (i) the terms of the warrant; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (iii) the date on which, and the time at which, the warrant ceases to have effect; and
 - (b) record on the warrant the reasons for issuing it.
- (4) The authorised officer is to –
- (a) complete a form of warrant in the same terms as the warrant signed by the issuing magistrate; and
 - (b) write on the form –
 - (i) the name of the issuing magistrate; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the completed form of warrant to the issuing magistrate not later than the

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day after the warrant is executed or ceases to have effect.

- (5) On receipt of the form of warrant, the issuing magistrate is to attach it to the warrant that the magistrate signed.
- (6) The form of warrant completed by the authorised officer has the same force as the warrant signed by the issuing magistrate.

4. Record of proceedings before issuing magistrate

A magistrate who issues a warrant is to cause a record to be made of all relevant particulars of the grounds the magistrate has relied on to justify the issue of the warrant.

5. Expiry of warrant

A warrant ceases to have effect –

- (a) on the date specified in the warrant as the date on which it ceases to have effect; or
- (b) if it is withdrawn before that date by the issuing magistrate; or
- (c) after it has been executed; or
- (d) if the person to whom it is issued ceases to be an authorised officer –

whichever occurs first.

6. Report to issuing magistrate following execution of warrant

- (1) An authorised officer who is issued with a warrant must furnish a report in writing to the issuing magistrate –
 - (a) stating whether or not the warrant has been executed; and
 - (b) if the warrant has been executed, setting out briefly the result of the execution, including a brief description of anything seized; and
 - (c) if the warrant has not been executed, setting out briefly the reasons why it has not been executed.
- (2) The report is to be furnished within 10 days after the warrant is executed or expires, whichever occurs first.

7. Death, absence, &c., of issuing magistrate

If the magistrate who issued a warrant has died, has ceased to be a magistrate or is absent, a report required to be furnished to that magistrate –

- (a) must still be made; but
- (b) may be furnished to any other magistrate.

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8. Duty to show warrant

An authorised officer who is executing a warrant must produce it for inspection by an occupier of the premises if requested to do so by the occupier.

9. Assistance and use of force in executing warrant

- (1) An authorised officer may execute a warrant using such assistance as the authorised officer considers necessary.
- (2) Except as may be otherwise provided by the terms of the warrant, an authorised officer may execute a warrant using such force as may reasonably be required in the circumstances.

10. Defect in warrant

A warrant is not invalidated by any defect that does not affect its substance in a material particular.

**SCHEDULE 2 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 79

1. Interpretation

In this Schedule –

“commencement day” means the day on which this Act commences;

“former Act” means the *Dangerous Substances (Safe Handling) Act 2005*.

2. Authorised officer appointments

If a State Service officer or State Service employee employed in the Department was appointed as an authorised officer under section 55 of the former Act and, immediately before the commencement day, holds that office –

- (a) that officer or employee is taken to have been appointed by the Secretary as an authorised officer under section 31 of this Act in respect of the term for which he or she was appointed under the former Act; and
- (b) an identity card issued to the authorised officer under the former Act is taken to have been issued to the authorised officer under section 33 of this Act.

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3. Directions by authorised officers

(1) If a direction was given by an authorised officer under the former Act, and before the commencement day –

(a) the action specified in the direction to be taken had not been taken; or

(b) the direction had not been cancelled –

the direction continues in effect, according to its terms, as if the former Act had not been repealed.

(2) The provisions of the former Act continue to apply in relation to a direction referred to in subclause (1) until the direction has been complied with or has been cancelled.

4. Analysts

If a person was authorised to perform analyses in relation to explosives under section 84 of the former Act, and immediately before the commencement day that person is so authorised, that person is taken to have been authorised by the Secretary to perform analyses under section 61 of this Act.

5. Review of decisions

An application for a review relating to a decision made under the former Act may be lodged or

continued under section 91 of the former Act after the commencement day, as if that Act had not been repealed.

6. Notification of adoption of codes, &c. by regulation

The Minister is taken to have complied with section 77(1) of this Act in respect of codes, standards, guidelines, rules or other documents if those codes, standards, guidelines, rules or other documents have been notified under section 99(1) of the former Act.

7. Savings and transitional regulations

- (1) The Governor may make regulations of a savings and transitional nature consequent on the enactment of this Act.
- (2) Without limiting the generality of subclause (1), the regulations may provide for the termination or continuation of any registration, licence, permit, accreditation, approval, certificate, authority or any other right or entitlement existing under the former Act immediately before the commencement day.
- (3) Regulations made under subclause (1) may –
 - (a) take effect on the commencement day or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made; and

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- (b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
- (c) authorise any matter to be from time to time determined, applied or regulated by the Secretary or an authorised officer.

8. Application of *Acts Interpretation Act 1931*

Nothing in this section is to be taken as restricting the application of section 16 of the *Acts Interpretation Act 1931* to an Act or regulation that is repealed or rescinded, or amended, by this Act.

SCHEDULE 3 – CONSEQUENTIAL AMENDMENTS

Section 81

Building Regulations 2004

1. Regulation 4(k) is amended by omitting “*Dangerous Substances (Safe Handling) Act 2005*” and substituting “*Explosives Act 2011* or *Work Health and Safety Act 2011*”.

Dangerous Goods (Road and Rail Transport) Act 2010

1. Section 12(5)(b) is amended as follows:
 - (a) by omitting “*Dangerous Substances (Safe Handling) Act 2005*” and substituting “*Explosives Act 2011*”;
 - (b) by omitting “section 57(1)” and substituting “section 33(1)”.

***Environmental Management and Pollution Control
(Controlled Waste Tracking) Regulations 2010***

1. Regulation 4(6) is amended by omitting the definition of “agvet chemical” and substituting the following definition:

“agvet chemical” means –

- (a) an agricultural chemical within the meaning of the Agvet Code of Tasmania; or

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- (b) a veterinary chemical product within the meaning of the Agvet Code of Tasmania;

Environmental Management and Pollution Control (Waste Management) Regulations 2010

1. Regulation 3 is amended by inserting after the definition of “Act” the following definition:

“agvet chemical” means –

- (a) an agricultural chemical product within the meaning of the Agvet Code of Tasmania; or
- (b) a veterinary chemical product within the meaning of the Agvet Code of Tasmania;

2. Regulation 4(5) is amended as follows:

- (a) by omitting “*Dangerous Substances (Safe Handling) Act 2005* or *Dangerous Goods (Safe Transport) Act 1998*” and substituting “*Dangerous Goods (Road and Rail Transport) Act 2010*, *Explosives Act 2011* or *Work Health and Safety Act 2011*”;
- (b) by inserting “or any” after “either”.

3. Regulation 5(a) is amended as follows:

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- (a) by omitting from subparagraph (i) “as defined in the *Dangerous Substances (Safe Handling) Act 2005*”;
- (b) by omitting from subparagraph (ii) “*Dangerous Goods (Safe Transport) Act 1998*” and substituting “*Dangerous Goods (Road and Rail Transport) Act 2010*”.

Fire Service Act 1979

1. Section 29 is amended by omitting subsection (13) and substituting the following subsection:

(13) In this section –

“**ASCC**” means the Australian Safety and Compensation Council, being the tripartite (government, employer and employee) body of that name that was established under the executive power of the Commonwealth to –

- (a) lead and coordinate national efforts to improve occupational health and safety and workers compensation arrangements; and
- (b) declare national standards and codes of practice in relation to occupational

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health and safety matters;
and

- (c) provide government with policy advice on those matters;

“dangerous substance” is a substance that –

- (a) has the potential to cause harm to persons, property or the environment because of one or more of the following:
 - (i) the chemical properties of the substance;
 - (ii) the physical properties of the substance;
 - (iii) the biological properties of the substance; and
- (b) is, but is not limited to, the following:
 - (i) a dangerous good, within the meaning of the *Dangerous Goods (Road and Rail*

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Transport) Act
2010;

- (ii) a combustible liquid under the Australian Standard AS 1940 The Storage and Handling of Flammable and Combustible Liquids made by Standards Australia, as amended from time to time;
- (iii) a substance that is, or is capable of being, classified as a hazardous substance according to the Approved Criteria for Classifying Hazardous Substances published by the ASCC;
- (iv) an agricultural chemical product within the meaning of the Agvet Code of Tasmania;

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- (v) a veterinary chemical product within the meaning of the Agvet Code of Tasmania;

“Standards Australia” means Standards Australia International Ltd ACN 087 326 690.

2. Section 51(3) is amended by omitting “*Dangerous Substances (Safe Handling) Act 2005* or” and substituting “*Explosives Act 2011, Work Health and Safety Act 2011* or”.
3. Section 133(3)(b) is amended by omitting “*Dangerous Substances (Safe Handling) Act 2005*” and substituting “*Explosives Act 2011*”.

Gas Act 2000

1. Section 6 is amended by omitting “, *Dangerous Substances (Safe Handling) Act 2005*”.

Gas Pipelines Act 2000

1. Section 6 is amended by omitting “, *Dangerous Substances (Safe Handling) Act 2005*”.

Right to Information Act 2009

1. Section 29 is amended by omitting subsection (2) and substituting the following subsection:

- (2) In this section –

“dangerous substance” is a substance that has the potential to cause harm to persons, property or the environment because of one or more of the following:

- (a) the chemical properties of the substance;
 - (b) the physical properties of the substance;
 - (c) the biological properties of the substance.

Security-sensitive Dangerous Substances Act 2005

1. Section 7 is amended as follows:

- (a) by omitting “*Dangerous Substances (Safe Handling) Act 2005*” and substituting “*Explosives Act 2011*”;
 - (b) by omitting “and *Poisons Act 1971*” and substituting “, *Poisons Act 1971* and *Work Health and Safety Act 2011*”.

Explosives Act 2011
Act No. of

sch. 3

2. Schedule 1 is amended by omitting “Division 11 of Part 5 of the *Dangerous Substances (Safe Handling) Regulations 2009*” from clause 6 of Division 2 of Part 2 and substituting “the regulations made under the *Explosives Act 2011*”.

Explosives Act 2011
Act No. of

sch. 4

SCHEDULE 4 – LEGISLATION REPEALED

Section 82

Dangerous Substances (Safe Handling) Act 2005 (No. 50 of
2005)

Explosives Act 2011
Act No. of

sch. 5

SCHEDULE 5 – LEGISLATION RESCINDED

Section 83

Dangerous Substances (Safe Handling) Regulations 2009 (No. 42 of 2009)

Dangerous Substances (Safe Handling - Transitional) Regulations 2009 (No. 43 of 2009)

Dangerous Substances (Safe Handling - Transitional) Amendment Regulations 2009 (No. 92 of 2009)

Dangerous Substances (Safe Handling) Amendment Regulations 2010 (No. 6 of 2010)

Explosives Act 2011
Act No. of

sch. 6

SCHEDULE 6 – LEGISLATION REVOKED

Section 84

*Proclamation under the Dangerous Substances (Safe
Handling) Act 2005 (No. 41 of 2009)*