

TASMANIA

DANGEROUS GOODS AMENDMENT BILL 2005

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DANGEROUS GOODS AMENDMENT BILL 2005

(Brought in by the Minister for Infrastructure, Energy and Resources, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to amend the *Dangerous Goods Act 1998*

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:

1. Short title

This Act may be cited as the *Dangerous Goods Amendment Act 2005*.

2. Commencement

This Act commences on the day on which the *Dangerous Substances (Safe Handling) Act 2005* commences.

3. Principal Act

In this Act, the *Dangerous Goods Act 1998** is referred to as the Principal Act.

*No. 6 of 1998

THIS BILL IS COGNATE WITH THE *DANGEROUS SUBSTANCES (SAFE HANDLING) BILL 2005*

4. Long title amended

The long title of the Principal Act is amended by omitting “**regulate the manufacture, transport and sale of dangerous goods, to regulate other activities in relation to such goods,**” and substituting “**provide for the safe transportation of dangerous goods,**”.

5. Section 1 amended (Short title)

Section 1 of the Principal Act is amended by inserting “(*Safe Transport*)” after “*Goods*”.

6. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definitions of “authorised officer”, “Competent Authority”, “contravene” and “dangerous goods” and substituting the following definitions:

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

“**AS 1940**” means Australian Standard AS 1940 *The Storage and Handling of Flammable and Combustible Liquids* made by Standards Australia, as from time to time amended;

“**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 10(1), and includes a person authorised under section 23(5);

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

“corresponding law” means a law prescribed under section 7(5) as being a corresponding law for the purposes of this Act;

“corresponding regulator” means a person who, under a corresponding law, has powers that correspond or substantially correspond to the powers of the Secretary under this Act;

“dangerous goods” means a substance or article that –

- (a) can be classified as an explosive substance or explosive article under the Australian Explosives Code; or
 - (b) is listed in the Australian Explosives Code, appendix 1 or 2; or
 - (c) can be classified as a dangerous good under the Australian Dangerous Goods Code; or
 - (d) is listed as a dangerous good or good too dangerous to be transported under the Australian Dangerous Goods Code; or
 - (e) can be classified as a combustible liquid under AS 1940; or
 - (f) is determined by the Secretary in accordance with the regulations to be dangerous goods;
- (b) by omitting “handling” from the definition of “dangerous situation” and substituting “transportation”;
- (c) by omitting “or” second occurring from paragraph (c) of the definition of “government authority”;

- (d) by omitting paragraph (d) from the definition of “government authority”;
- (e) by omitting the definitions of “handling” and “hose assembly”;
- (f) by omitting the definition of “involvement in the handling of dangerous goods” and substituting the following definition:

“involvement in the transportation of dangerous goods” includes –

- (a) importing, or arranging for the importation of, dangerous goods into Tasmania; and
- (b) marking or placarding packages and unit loads containing dangerous goods for transportation, and placarding containers and vehicles in which dangerous goods are transported; and
- (c) consigning dangerous goods for transportation; and
- (d) loading dangerous goods onto a vehicle, or into a container that is to be put on a vehicle, for transportation or unloading dangerous

goods that have been transported; and

(e) undertaking, or being responsible for, otherwise than as an employee or subcontractor, the transportation of dangerous goods; and

(f) driving a vehicle carrying dangerous goods; and

(g) being the consignee of transported dangerous goods; and

(h) being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity covered by this definition;

(g) by inserting the following definition after the definition of “offence”:

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

(h) by omitting the definition of “premises” and substituting the following definition:

“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;
- (i) by omitting the definition of “store”;
 - (j) by omitting “transport” from paragraph (a) of the definition of “transport” and substituting “transportation”;
 - (k) by omitting paragraph (c) from the definition of “transport” and substituting the following paragraph:
 - (c) matters incidental to the transportation of the goods;

7. Section 7 amended (Regulation-making powers and adoption of codes, &c.)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting paragraph (e) from subsection (2) and substituting the following paragraph:
 - (e) the marking or placarding of packages and unit loads

containing dangerous goods for transportation and the placarding of containers and vehicles in which dangerous goods are transported;

- (b) by omitting from subsection (2)(f) “handling” and substituting “transportation”;
- (c) by omitting from subsection (2)(g) “handling” and substituting “transportation”;
- (d) by omitting paragraph (h) from subsection (2);
- (e) by omitting from subsection (2)(i) “handling” twice occurring and substituting “transportation”;
- (f) by inserting in subsection (2)(j) “for and after transportation” after “goods”;
- (g) by omitting paragraphs (k), (l) and (m) from subsection (2);
- (h) by omitting paragraphs (n), (o) and (p) from subsection (2) and substituting the following paragraphs:
 - (n) the transportation of dangerous goods into and out of Tasmania;
 - (o) the determination of routes along which, the areas in which and the times during which dangerous goods may or may not be transported;

- (i) by omitting from subsection (2)(q) “handling” first occurring and substituting “transportation”;
- (j) by omitting from subsection (2)(q)(i) “handled” and substituting “transported”;
- (k) by omitting subparagraph (ii) from subsection (2)(q);
- (l) by omitting subparagraph (iv) from subsection (2)(q);
- (m) by omitting from subsection (2)(r)(i) “handling” and substituting “transportation”;
- (n) by omitting subparagraph (ii) from subsection (2)(r) and substituting the following subparagraph:
 - (ii) vehicles and equipment used in the transportation of dangerous goods;
- (o) by omitting paragraph (s) from subsection (2);
- (p) by omitting from subsection (2)(u)(i) “handling” and substituting “transportation”;
- (q) by omitting from subsection (2)(u)(ii) “handling” and substituting “transportation”;
- (r) by omitting from subsection (2)(v) “handling” and substituting “transportation”;

- (s) by omitting from subsection (2)(w)(i) “functions” and substituting “duties”;
- (t) by omitting from subsection (2)(w)(ii) “handling” and substituting “transportation”;
- (u) by omitting from subsection (2)(x) “handling” and substituting “transportation”;
- (v) by omitting from subsection (3) “guideline or rule” and substituting “guideline, rule or other document”;
- (w) by omitting from subsection (3) “handling” and substituting “transportation”;
- (x) by omitting from subsection (4) “guideline or rule” and substituting “guideline, rule or other document”;
- (y) by omitting from subsection (5) “manufacture, transport or other handling” and substituting “transportation”;
- (z) by omitting from subsection (6)(c) “a Competent Authority” and substituting “the Secretary or an authorised officer”.

8. Section 8 substituted

Section 8 of the Principal Act is repealed and the following section is substituted:

8. Offences under the regulations

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 –
 - (i) for a body corporate, a fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; and
 - (ii) for an individual, 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.

9. Part 3: Heading amended

Part 3 of the Principal Act is amended by omitting “**COMPETENT AUTHORITIES AND AUTHORISED OFFICERS**” from the heading to that Part and substituting “**ADMINISTRATION AND ENFORCEMENT**”.

10. Sections 9, 10, 11, 12 and 13 substituted

Sections 9, 10, 11, 12 and 13 of the Principal Act are repealed and the following sections are substituted:

9. 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.

10. 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 –

- (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).

- (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 –
- “person”** includes a class of persons;
- “qualifications”** includes expertise, training and experience.

11. 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 10 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 that person may exercise powers.

- (3) Also, a person appointed or authorised under section 10 is subject to the directions of the Secretary in exercising powers.

12. 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 under this Act must, if practicable, comply with a request to identify himself or herself by –
 - (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.

13. 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 that function or power.

11. Section 14 amended (General powers of inspection, &c., of authorised officers)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “handling of dangerous goods but, if the premises are unattended or are a residence, the authorised officer may only enter if the occupier consents.” and substituting “transportation of dangerous goods.”;
- (b) by omitting subsection (2) and substituting the following subsections:
 - (1A) 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.
 - (1B) Schedule 1 has effect in relation to the issue, execution, effect and expiry of warrants for the purposes of this section.
- (2) Despite subsection (1A), 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 a dangerous situation exists as a result of anything occurring at the premises in relation to the

transportation of dangerous goods.

- (c) by omitting from subsection (3) “has been, is being or is likely to be used in the handling” and substituting “or equipment has been, is being or is likely to be used in the transportation”;
- (d) by omitting from subsection (3)(a) “or cause the vehicle” and substituting “or equipment or cause the vehicle or equipment”;
- (e) by inserting in subsection (3)(b) “or equipment” after “vehicle”;
- (f) by omitting from subsection (3)(b) “handling” and substituting “transportation”;
- (g) by omitting from subsection (4) “handling” and substituting “transportation”;
- (h) by omitting from subsection (7) “handled” and substituting “transported”;
- (i) by inserting the following subsection after subsection (7):
 - (7A) If subsection (7) 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

(b) gives the sample.

(j) by omitting from subsection (9)(b) “a form approved by a Competent Authority.” and substituting “an approved form.”.

12. Section 15 amended (Authorised officers may require names and addresses)

Section 15 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “handling” and substituting “transportation”;
- (b) by omitting subsection (2);
- (c) by omitting from the penalty under subsection (4) “5 penalty units.” and substituting “10 penalty units.”.

13. Section 16 amended (Powers of authorised officers regarding suspected offences)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting subsection (3);
- (b) by omitting subsection (4) and substituting the following subsections:

- (4) 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.
- (4A) Schedule 1 has effect in relation to the issue, execution, effect and expiry of warrants for the purposes of this section.
- (c) by omitting from subsection (5) “The” and substituting “Without limiting subsection (2), the”.

14. Section 17 amended (Authorised officers to restore premises, &c., to original condition after inspections)

Section 17(2) of the Principal Act is amended by omitting “a Competent Authority” and substituting “the Secretary”.

15. Section 18 substituted

Section 18 of the Principal Act is repealed and the following sections are substituted:

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

A person must not –

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

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

18A. 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 14 or 16.

Penalty: In the case of –

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

16. Section 20 amended (Directions to remedy contraventions)

Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “repeated –” and substituting “repeated; or”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (c) is, by any act or omission, likely to contravene this Act –
- (c) by omitting from subsection (1) “notice requiring the person to remedy the matters causing the contravention.” and substituting “direction requiring the person to remedy the matters causing, or likely to cause, the contravention.”;
- (d) by omitting from subsection (2) “notice” first occurring and substituting “direction”;
- (e) by omitting from subsection (2)(b) “directed” and substituting “given”;
- (f) by omitting from subsection (2)(c) “notice is directed” and substituting “direction is given”;
- (g) by omitting from subsection (2)(c)(ii) “repeated; and” and substituting “repeated; or”;

- (h) by inserting the following subparagraph after subparagraph (ii) in subsection (2)(c):
 - (iii) is, by an act or omission, likely to contravene a provision of this Act; and
- (i) by omitting from subsection (2)(f) “notice” and substituting “direction”;
- (j) by omitting from subsection (3) “notice” and substituting “direction”;
- (k) by omitting from subsection (3) “further” and substituting “the further or likely”;
- (l) by omitting from subsection (4) “notice” and substituting “direction”;
- (m) by inserting the following subsection after subsection (4):
 - (4A) Subsection (4) does not prevent a direction under this section from being given to a person by any other means permitted by this Act.
- (n) by omitting from subsection (5)(a) “notice” and substituting “direction”;
- (o) by omitting from subsection (5)(b) “notice” and substituting “direction”;
- (p) by inserting in subsection (5)(b) “or likely contravention” after “contravention”.

17. Section 21 amended (Directions to eliminate or minimise dangers)

Section 21 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “issue a notice” and substituting “give a direction”;
- (b) by omitting from subsection (2) “notice” and substituting “direction”;
- (c) by omitting from subsection (3) “notice” and substituting “direction”;
- (d) by omitting from subsection (3)(a) “directed” and substituting “given”;
- (e) by omitting from subsection (4) “notice” and substituting “direction”;
- (f) by inserting the following subsection after subsection (4):
 - (4A) Subsection (4) does not prevent a written direction under this section from being given to a person by any other means permitted by this Act.
- (g) by omitting from subsection (5)(a) “notice” and substituting “direction”;
- (h) by omitting from subsection (5)(b) “notice” and substituting “direction”.

18. Section 22 repealed

Section 22 of the Principal Act is repealed.

19. Section 23 substituted

Section 23 of the Principal Act is repealed and the following section is substituted:

23. 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 section 20 or 21, and the time for 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.
- (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 to contribute to the prevention, removal or minimisation of the dangerous situation.
- (7) As soon as practicable after exercising power under subsection (2), an authorised officer must –
 - (a) prepare a report for the Secretary 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 the occupier a copy of that report.
- (8) In this section –

“**serious harm**” means serious harm within the meaning of the *Dangerous Substances (Safe Handling) Act 2005*.

20. Section 24 amended (Exemptions)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a Competent Authority” and substituting “the Secretary”;
- (b) by omitting from subsection (1) “handling” and substituting “transportation”;
- (c) by omitting from subsection (2) “A Competent Authority” and substituting “The Secretary, by instrument in writing,”;
- (d) by omitting from subsection (2) “Competent Authority” second occurring and substituting “Secretary”;
- (e) by omitting from subsection (2)(b)(ii) “handling” and substituting “transportation”;
- (f) by omitting from subsection (4) “A Competent Authority that grants an exemption to one person must send” and

- substituting “The Secretary, on granting an exemption to one person, must give”;
- (g) by omitting from subsection (5) “A Competent Authority that” and substituting “The Secretary, on granting”;
 - (h) by omitting from subsection (5)(a) “grants”;
 - (i) by omitting from subsection (5)(b) “grants”;
 - (j) by omitting subsection (8) and substituting the following subsection:
 - (8) If the Secretary grants –
 - (a) an exemption to a class of persons; or
 - (b) an exemption that is to remain in force for longer than 6 months –

the Secretary must give notification and details of the exemption to the corresponding regulator of each other State, and of each Territory.
 - (k) by omitting from subsection (9) “Competent Authority” and substituting “corresponding regulator”.

21. Section 25 amended (Variation and cancellation of exemptions and conditions)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A Competent Authority” and substituting “The Secretary”;
- (b) by omitting from subsection (1)(a) “Competent Authority” and substituting “Secretary”;
- (c) by omitting from subsection (1)(b) “Competent Authority” and substituting “Secretary”;
- (d) by omitting from subsection (4) “A Competent Authority” and substituting “The Secretary”.

22. Section 26 repealed

Section 26 of the Principal Act is repealed.

23. Section 27 amended (Application orders and emergency orders)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) The Minister, by order, may do either or both of the following:

- (a) temporarily suspend the operation of all or part of the regulations;
 - (b) temporarily vary the operation of all or part of the regulations.
- (b) by omitting from subsection (3) “If the suspension or variation relates to the transport of dangerous goods by road, the order” and substituting “The order”;
- (c) by omitting subsection (4).

24. Part 5: Heading amended

Part 5 of the Principal Act is amended by omitting “**OFFENCES, PENALTIES, EVIDENCE AND PROCEDURE**” from the heading to that Part and substituting “**OFFENCES**”.

25. Section 28 amended (Failure to be accredited)

Section 28 of the Principal Act is amended as follows:

- (a) by omitting “handling” first occurring and substituting “transportation”;
- (b) by omitting “handling” second occurring and substituting “transportation”.

26. Section 31 amended (Duties concerning the transportation of dangerous goods)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “handling” and substituting “transportation”;
- (b) by omitting from subsection (1) “handled” and substituting “transported”;
- (c) by omitting from subsection (2) “handling” and substituting “transportation”.

27. Section 32 amended (Infringement notices)

Section 32(3) of the Principal Act is amended by omitting “A Competent Authority” and substituting “The Secretary”.

28. Part 5A: Heading inserted

The Principal Act is amended by inserting the following heading after section 32:

PART 5A – OFFENCE PROCEEDINGS AND RELATED MATTERS

29. Section 34 amended (Authorised officers may prosecute offences)

Section 34 of the Principal Act is amended by inserting “, but is not required to,” after “may”.

30. Section 35 amended (Evidentiary matters)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(d) “or otherwise handle” twice occurring;
- (b) by omitting from subsection (4) “a Competent Authority or by a person exercising powers delegated by a Competent Authority” and substituting “the Secretary or by a person exercising powers delegated by the Secretary”;
- (c) by omitting from subsection (4)(b) “a Competent Authority” and substituting “the Secretary”;
- (d) by omitting from subsection (4)(c) “a Competent Authority” and substituting “the Secretary”;
- (e) by omitting from subsection (4)(d) “a Competent Authority” and substituting “the Secretary”;
- (f) by omitting from subsection (6) “a Competent Authority” and substituting “the Secretary”.

31. Section 36 amended (Codes of practice)

Section 36 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “handling” and substituting “transportation”;

- (b) by omitting from subsection (2)(a) “relating to” and substituting “relating, either wholly or in part, to the transportation of”;
- (c) by omitting from subsection (2)(a) “a Competent Authority” and substituting “the Secretary or a corresponding regulator”;
- (d) by omitting from subsection (6) “A Competent Authority” and substituting “The Secretary”;
- (e) by omitting from subsection (8) “version” and substituting “revision”.

32. Part 6: Heading repealed

The Principal Act is amended by omitting the heading “**PART 6 — MISCELLANEOUS**”.

33. Section 39 substituted

Section 39 of the Principal Act is repealed and the following section is substituted:

39. Recovery of investigation costs from convicted persons

- (1) A court that convicts a person of an offence may, on application by or on behalf of the 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 the investigation of the offence.

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

34. Section 40 amended (Recovery of costs of government action)

Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “handling” and substituting “transportation”;
- (b) by omitting from subsection (1)(b) “goods.” and substituting “goods; or”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (1):
- (c) wholly or partly constituted by or arising from a dangerous situation that has to be prevented, removed or minimised by an action taken pursuant to section 23.
- (d) by omitting from subsection (3)(d) “handling” and substituting “transportation”.

35. Section 41 amended (Prohibiting convicted persons from involvement in transportation of dangerous goods)

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “handling” and substituting “transportation”;
- (b) by omitting from subsection (2)(a) “handling” and substituting “transportation”.

36. Section 42 amended (Forfeiture)

Section 42 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “and their container” and substituting “(and, if applicable, their container)”;
- (b) by omitting subsections (2) and (3) and substituting the following subsections:
 - (2) The dangerous goods so forfeited to the Crown (and, if applicable, their 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.

37. Part 6: Heading inserted

The Principal Act is amended by inserting the following heading after section 42:

PART 6 – MISCELLANEOUS

38. Sections 42A and 42B inserted

After section 42 of the Principal Act, the following sections are inserted in Part 6:

42A. 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 may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.
- (2) In this section –

“**decision**” includes a direction under section 20 or 21.

42B. False or misleading statements

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 that matter

the statement is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

39. Section 43 amended (Delegation of Minister's powers to Secretary)

Section 43 of the Principal Act is amended by omitting "a Competent Authority" and substituting "the Secretary".

40. Section 44 amended (Protection from liability)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "An" and substituting "The Secretary or an";
- (b) by inserting in subsection (1) "under this Act" after "duties";
- (c) by omitting from subsection (2) "an authorised officer attaches instead to the relevant Competent Authority" and substituting "the Secretary or an authorised officer attaches instead to the Crown".

41. Section 46 amended (Minister to notify adoption by regulation of codes, &c.)

Section 46 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “guideline or rule” twice occurring and substituting “guideline, rule or other document”;
- (b) by omitting from subsection (2)(a) “guideline or rule” and substituting “guideline, rule or other document”;
- (c) by omitting from subsection (2)(b) “guideline or rule” and substituting “guideline, rule or other document”;
- (d) by omitting from subsection (2) “guideline or rule” third occurring and substituting “guideline, rule or other document”;
- (e) by omitting from subsection (2) “guideline or rule” fourth occurring and substituting “guideline, rule or other document”.

42. Sections 46A and 46B inserted

After section 46 of the Principal Act, the following sections are inserted in Part 6:

46A. Status of *Gazette* notices

A *Gazette* notice in relation to any matter under this Act is not –

- (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or
- (b) an instrument of a legislative character for the purposes of the

*Subordinate Legislation Act
1992.*

46B. 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 last known to the giver or server of the notice or document; or
 - (iii) faxed to the person's fax number; or
 - (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.

43. Section 49 amended (Savings and transitional regulations)

Section 49(5) of the Principal Act is amended by omitting “a Competent Authority” and substituting “the Secretary”.

44. Section 50 repealed

Section 50 of the Principal Act is repealed.

45. Schedule 1 inserted

After section 49 of the Principal Act, the following Schedule is inserted:

SCHEDULE 1 – PROVISIONS WITH RESPECT TO WARRANTS

Section 14(1B) and section 16(4A)

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. Application 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 application 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
 - (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 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. Warrant may be applied for and issued by telephone, &c., in urgent situation

- (1) Despite subclause (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
 - (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 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 that is required to be furnished to that magistrate –

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

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 that 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 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. Defects in warrant

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