

CLAUSE NOTES

Dangerous Goods (Road and Rail Transport) Bill 2010

Part I	Preliminary
Section 1	A formal provision specifying the title of the proposed Act. The Act regulates the transport of dangerous goods by road and rail to promote public safety and protect property and the environment.
Section 2	A formal provision specifying the commencement date of the Act. The Act will commence on a day to be proclaimed.
Section 3	Sets out the purpose of the Act. The main purpose is to provide for nationally consistent road and rail transport laws regarding transporting of dangerous goods. This aims to increase safety to people, the environment and property.
Section 4	Is a section containing definitions of commonly used terms throughout the Act and Regulations. Other important terms used in the Act and Regulations are defined at sections 4A – 4L that follow.
Section 4A	Defines the term associate very broadly to include various types of relationships and roles.
Section 4B	Defines the terms consign and consignor.
Section 4C	Defines the terms pack and packer.
Section 4D	Defines the terms load and loader.
Section 4E	Defines the term operator.

Section 4F	Provides that rolling stock is only regarded as rolling stock under the Act whilst it is being operated on railway track.
Section 4G	Sets out the circumstances where a person is qualified, fit or authorised to drive or run an engine.
Section 4H	Describes when a vehicle will be regarded as an unattended vehicle.
Section 4I	Describes when a motor vehicle or trailer will be regarded as broken down.
Section 4J	Provides that a reference to road includes a road-related area and that these terms have the same meanings as they have in the <i>Traffic (Road Rules) Regulations 1999</i> .
Section 4K	Provides that examples that are used in the Act and Regulations form part of the Act and Regulations but they are not exhaustive, do not limit the meaning of a provision and may extend the meaning of a provision.
Section 4L	Provides that notes at the foot of a provision are part of the Act and Regulations although marginal notes, footnotes and end notes are not part of the Act or Regulations.
Section 5	The Crown (which includes any instrumentality, agency, statutory authority or Government Business Enterprise) must comply with the Act although the Act does not render the Crown liable to be prosecuted for an offence.
Section 6	This Act is to be interpreted using the <i>Commonwealth Acts Interpretation Act 1901</i> but this does not prevent the <i>Tasmanian Acts Interpretation Act 1931</i> also applying where it can do so consistently.

Section 7 Limits what the Act covers by excluding dangerous goods that are or part of personal safety equipment in a vehicle or dangerous goods that form part of a vehicle's engine or propulsion equipment.

Part 2 Regulations

Section 8 Provides a Regulation making power in the Act that enables the Governor to make regulations for a variety of purposes and to adopt codes, standards or rules.

Codes, standards and/or rules may be adopted in total or as amended by the regulation.

(This provision is similar to Section 7 of the *Dangerous Goods Act (1998)*)

Section 9 Provides information about the maximum penalties under the Regulations for an individual or a body corporate.

(This provision is similar to Section 8 of the *Dangerous Goods Act (1998)*)

Section 10 The Regulations may contain a process for review of decisions made under the Act.

Part 3 Competent Authorities and Authorised Officers

Section 11 Enables and describes how the Minister may appoint one or more Competent Authorities; when an appointment takes effect and that the Competent Authority may exercise all powers and functions of an authorised officer and enjoys all the immunities of an authorised officer.

(This provision is similar to Section 9 of the *Dangerous Goods Act (1998)*)

Section 12

Enables the Competent Authority to appoint individuals or a class of individuals as authorised officers.

Authorised Officers, except police officers, must be issued with an identity card. The appointment can be combined with an identity card issued under the *Workplace Health and Safety Act 1995* or the *Dangerous Substances (Safe Handling) Act 2005* so that only one card needs to be carried.

(This provision is similar to Sections 10 and 11 of the of the *Dangerous Goods Act (1998)*)

Section 13

Authorised Officers, except police officers, must carry the identification card and produce it if practicable before exercising a power under the Act. Police officers may exercise the power of an authorised officer by producing police identification or otherwise identifying themselves.

(This provision is similar to Section 11 of the *Dangerous Goods Act (1998)*)

Section 14

This section creates an offence if, on ceasing to be an authorised officer, a person does not return the identification card to the Competent Authority.

(This provision is similar to Section 12 of the *Dangerous Goods Act (1998)*)

Section 15

This section creates an offence where a person impersonates an authorised officer.

Section 16

This section allows the Competent Authority to delegate any of the powers that it has under

the Act except the power to appoint authorised officers or its power of delegation.

(This provision is similar to Section 13 of the *Dangerous Goods Act (1998)*)

- Section 17 This section allows certain information to be given to a Competent Authority in another jurisdiction subject to protections provided by privacy legislation.
- Section 18 This section allows our Minister to enter into agreements with Ministers in other jurisdictions whereby authorised officers in one jurisdiction may exercise their powers in a corresponding jurisdiction and vice versa.
- Section 19 Determines the circumstances in which Division 2 “General powers – road vehicles” will apply. For example the Division will apply where a vehicle has a placard on it; where an authorised officer believes the vehicle is carrying dangerous goods or the vehicle is licensed under the Act and where the vehicle is on a road or in a public place or on premises where an authorised officer is lawfully present.
- Section 20 For compliance purposes (e.g. inspection) an authorised officer has the power to direct a driver to stop a vehicle; not to move a vehicle or interfere with it or any equipment, or interfere with its load. The section provides that a person who fails to comply with a direction may be guilty of an offence.
- (This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)
- Section 21 For compliance purposes (e.g. inspection) an authorised officer may direct a driver to move a vehicle up to 30 kilometres to a more suitable location. Failure to comply with such

as direction is an offence. Although it is a defence if the person charged can establish that it wasn't possible to move the vehicle because it was broken down.

(This provision is similar to Section 14(4) of the *Dangerous Goods Act (1998)*)

Section 22

For compliance purposes an authorised officer has the power to direct a driver to produce his driver's licence and transport documentation that is required to be carried pursuant to the regulations. A driver who fails to comply is guilty of an offence.

The authorised officer has the power to seize a licence issued under this Act in certain circumstances where he believes there is some irregularity.

Section 23

An authorised officer has the power to order a vehicle to be moved if they believe there is a danger to public safety, the environment or road infrastructure, or if the vehicle is or will cause an obstruction. Failure to comply with a direction is an offence. Although it is a defence if the person charged can establish that it wasn't possible to move the vehicle because it was broken down.

Section 24

A driver must leave a vehicle if directed by an authorised officer in circumstances where the driver is not fit to drive the vehicle, is not qualified to drive the vehicle or is not authorised to drive the vehicle. The authorised officer also has the power to direct other people to leave or not enter the vehicle. A driver or person who fails to comply with a direction is guilty of an offence.

Section 25

An authorised officer can move or permit another person to move a vehicle if they think

it is unattended; they are seeking to exercise powers to check for compliance with the Act and believe the vehicle should be moved in order to exercise those powers. Reasonable force can be used to gain entry to the vehicle.

Section 26

An authorised officer can stop and inspect vehicles to ensure compliance with this Act. This power includes the power to enter a vehicle, weight, test, measure, photograph any part of the vehicle or load, take samples, access electronic equipment and data.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 27

An authorised officer has the power to search a vehicle if they believe on reasonable grounds that it has or will be used in an offence or dangerous situation. This section provides an authorised officer with broad powers to search the vehicle and to seize and remove records or devices from the vehicle that may provide evidence of an offence.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 28

Where a vehicle is unattended or broken down and is causing a dangerous situation, an authorised officer can move or have the vehicle moved to remove the dangerous situation. The officer may drive the vehicle or have someone else drive it, even if neither is qualified to do so.

(This provision is similar to Section 23 of the *Dangerous Goods Act (1998)*)

Section 29

An authorised officer has the power to give directions about how an immobilised vehicle should be: repaired, towed, dangerous goods

removed, dangerous goods dealt with following removal. Failure to comply with such direction is an offence.

Section 30 If a vehicle is involved in an incident resulting in a dangerous situation, an authorised officer may give directions to the driver or person in charge regarding transporting the dangerous goods from the place of the incident and how to deal with them. The direction must be in writing and signed by the authorised officer, state the name of the recipient and identify the incident and the dangerous goods. Failure to comply with such direction is an offence.

Section 31 It does not matter that an authorised officer or other authorised person who drives a vehicle is not authorised to do so by the person who is usually responsible for the control and operation of the vehicle.

Section 32 Provides that Division 3 – “Directions in respect of rolling stock and trains” applies to a unit of rolling stock or a train that has a placard on it or its container or that an authorised officer reasonably knows or believes is carrying dangerous goods or a dangerous goods container.

Section 33 An authorised officer has the power to direct a rail operator to cause a train to stop at a place where it can be inspected safely. Failure to comply with such direction is an offence.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 34 An authorised officer has the power to direct a train driver not to move the train, interfere with it or any equipment, or interfere with its load.

Failure to comply with such direction is an offence.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 35

If a vehicle designed to run on rails does not form part of a train, an authorised officer has the power to direct a person not to move it, interfere with it or any equipment, interfere with its load, or attach any other rolling stock to it.

Failure to comply with such direction is an offence.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 36

An authorised officer can direct the driver of a train to produce any transport documents required to be carried under the regulations. Failure to comply with such direction is an offence.

Section 37

An authorised officer can inspect a vehicle that is designed to run on rails to ensure compliance with this Act. They can enter, inspect and take copies of relevant records and documentation, weigh, test, measure and take photos of any part of the train. They can also access or download information that is stored electronically on the train. The use of force is not authorised. Consent of the driver or person in charge is not required.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 38

An authorised officer has the power to search a vehicle designed to run on rails covered by Division 3 if they believe it is, has been or will be used in an offence or dangerous situation.

The officer has broad powers including power to take copies of documents or records located in or on the vehicle. They can remove records, devices, or anything else they believe provides evidence of an offence. Reasonable force may be used.

(This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)

Section 39

An authorised officer has the power to give directions about how dangerous goods on an immobilised train should be removed, or how the dangerous goods should be dealt with following removal from the train. Failure to comply with such direction is an offence.

Section 40

This section provides powers to authorised officers in emergencies. For example if a train carrying dangerous goods is involved in an incident resulting in a dangerous situation, an authorised officer may give directions to the train driver or rail operator regarding transporting the dangerous goods from the place of the incident and how to deal with them. The direction must be in writing and signed by the authorised officer, stating the name of the recipient and identifying the incident and the dangerous goods. It may not be practicable due to the emergency nature of the incident to give the directions in writing in which case the direction may be provided verbally and confirmed in writing within 48 hours. Failure to comply with such direction is an offence.

(This provision is similar to Section 23 of the *Dangerous Goods Act (1998)*)

- Section 41 Provides that Division 4 applies to premises that are controlled or occupied by a person involved in the transport of dangerous goods.
- Section 42 A place is not used for residential purposes merely because temporary or casual sleeping and other accommodation are provided for vehicle drivers (for example, sleeping cabins in long-distance trucks).
- Section 43 For compliance purposes an authorised officer has the power to enter and inspect premises including any vehicle at the premises. Before entering they must give the occupier reasonable notice unless: this would defeat the purpose for entering the premises; the occupier consents; there is immediate risk to safety or entry is authorised by warrant. Officers are provided with broad inspection powers including power to take copies or extracts from records, to check and inspect relevant devices, to take samples. Force is not authorised.
- (This provision is similar to Section 14 of the *Dangerous Goods Act (1998)*)
- Section 44 An authorised officer has the power to search premises and any vehicles located at the premises if they believe there may be evidence of an offence. The officer has to give notice of their intent unless there is an immediate risk, the occupier has given permission, they have a warrant, or giving notice would defeat the purpose.
- (This provision is similar to Section 16 of the *Dangerous Goods Act (1998)*)
- Section 45 An authorised officer may require anyone believed to be involved in transporting dangerous goods to give their name and

address and other personal details. Failure to comply with such direction is an offence.

(This provision is similar to Section 15 of the *Dangerous Goods Act (1998)*)

- Section 46 For compliance purposes an authorised officer can direct a person to produce records, devices, and other evidence for the purposes of inspection, making copies. They may seizure and remove records and other things if they believe they will provide evidence of an offence.
Failure to comply with such direction is an offence.
- Section 47 An authorised officer may direct any person involved in the transport of dangerous goods to provide information about a vehicle, load or equipment carried or intended to be carried on a vehicle. They can also direct a person to provide information including the location of the start, route, and destination of a trip.
Failure to comply with such direction is an offence.
- Section 48 An authorised officer may direct a person involved in transporting dangerous goods to provide assistance for example to gain access to and search for records and information, weigh and measure vehicles, operate relevant equipment and facilities, and provide access to photocopy equipment.
Failure to comply with such direction is an offence.
- Section 49 Enables an authorised officer to apply to a magistrate for a warrant to enter and search a premises or vehicle where the officer believes on reasonable grounds there may be evidence of an offence.

Section 50	Provides that an authorised officer may use assistants or equipment that might be necessary in exercising his powers.
Section 51	The authorised officer in exercising his powers may use any equipment that is reasonably necessary to examine and process things. They may remove things to another location for examination if necessary, and use any equipment already at the premises or vehicle to help examine things.
Section 52	Provides that an authorised officer, who believes on reasonable grounds, that information on a disk, tape or device is relevant to determine if an offence has been created can operate the equipment to access information.
Section 52A	Sets out the procedure for taking and handling samples during the search and inspection process.
Section 53	Provides that where an authorised officer seizes a record, device or other thing then they must give a receipt and allow the person from whom it was taken to have reasonable access.
Section 54	Provides that an authorised officer may issue an embargo notice forbidding the movement, sale, leasing, transfer, over-recording, deletion of information in circumstances where a record, device or other thing cannot be readily seized or removed. Failure to comply with such a notice is an offence.
Section 55	An authorised officer can not use force against a person unless the authorised officer is also a police officer.
Section 56	Before obtaining the consent of a person, (for example to entering premises) an authorised

officer must inform the person that he or she may refuse to give consent otherwise the exercise of any power is not lawful.

- Section 57 Stipulates the manner in which directions may be given under this Part of the Act including orally, in writing, by post, fax, e-mail, radio, or any other way.
- Section 58 Directions under this Part of the Act must state when the direction must be complied with.
- Section 59 Directions may be given under more than one provision of this Part of the Act. In the course of exercising powers an authorised officer can give further directions if necessary.
- Section 60 If an authorised officer causes damage by the unreasonable exercise of his powers or unauthorised use of force he must take reasonable steps to restore the vehicle, load or premises to its original condition.
- (This provision is similar to Section 17 of the *Dangerous Goods Act (1998)*)
- Section 61 This section requires a person to answer questions that are asked of him by an authorised officer. The purpose is so that the facts and causes of an incident involving dangerous goods can be more easily ascertained.
- The answers to questions cannot be used against the person for an offence under the Act if they claim before giving the answer that the answer or information may tend to incriminate them. This entitlement must be drawn to the person's attention before answers are provided. Where there are a series of questions asked at the same time (e.g. an interview) it will be sufficient that the

entitlement is drawn to their attention at the start of the interview, i.e. not before each answer.

(This provision is similar to Section 19 of the *Dangerous Goods Act (1998)*)

Section 62

Allows the Competent Authority to provide information to others for law enforcement purposes.

Section 63

A person must not obstruct or hinder an authorised officer when they are exercising a power.

Failure to comply with such direction is an offence.

(This provision is similar to Section 18 of the *Dangerous Goods Act (1998)*)

Part 4

Exemptions

Section 64

A person may apply for an exemption from compliance with a provision of the regulations and the Competent Authority may on its own initiative exempt a person or class of persons if it is satisfied that it is not reasonably practicable for the person or class of persons to comply and if the exemption would not be likely to create a greater risk of death or injury to a person or harm to the environment or property than if the person was required to comply.

Failure to comply with conditions of an exemption is an offence.

An exemption granted by one jurisdiction is valid in another but can be cancelled or varied under section 65.

(This provision is similar to Section 24 of the *Dangerous Goods Act (1998)*)

Section 65

A Competent Authority may cancel or vary an exemption, by notice in writing, if the exemption has not been complied with, or if the circumstances under which it was issued not longer apply.

(This provision is the same as Section 25 of the *Dangerous Goods Act (1998)*)

Section 66

A person may apply to a Competent Authority for a review of a decision to refuse, cancel or impose conditions on an exemption.

(This provision is similar to Section 26 of the *Dangerous Goods Act (1998)*)

Section 67

The Minister may suspend or vary any part of the Act in relation to the whole jurisdiction or part of it by notice in the Gazette.

(This provision is similar to Section 27 of the *Dangerous Goods Act (1998)*)

Part 5

Offences and Penalties

Section 68

This section is left blank to ensure uniformity with regard to numbering with the model Act.

Section 69

Penalties apply to a person who permits the use of an unlicensed vehicle or permits the driving of a vehicle by an unlicensed driver. An unlicensed driver and the driver of an unlicensed vehicle are subject to a similar penalty.

(This provision is similar to Section 29 of the *Dangerous Goods Act (1998)*)

Section 70 Certain goods are internationally recognised as being too unstable and dangerous to be transported. This section imposes severe penalties on persons who consign or arranges for the transport of such goods.

(This provision is similar to Section 30 of the *Dangerous Goods Act (1998)*)

Section 71 A person involved in transporting dangerous goods has a duty to ensure the goods are transported in a safe manner. Failure to do so means the person is guilty of an offence. The maximum applicable penalty depends on the seriousness of the consequence. For example if death or serious injury results the maximum penalty is higher than in other cases.

(This provision is similar to Section 31 of the *Dangerous Goods Act (1998)*)

Part 6

Improvement Notices

Section 72 Enables an authorised officer to issue an improvement notice if he is of the opinion that a person has, is or is likely to contravene the Act. This is a useful enforcement tool as an alternative or prior action to prosecution.

Section 73 A person must not engage in activity that breaches the requirements of an improvement notice. If a person had a reasonable excuse, they bear the burden of proving this.

Section 74 An improvement notice can be amended by an authorised officer.

Section 75 An improvement notice may be cancelled by an authorised officer.

- Section 76 An authorised officer can issue a clearance certificate stating the requirements of an improvement notice has been completed.
- Section 77 This section allows an authorised officer to issue a formal warning in writing as an alternative or prelude to taking court proceedings or issuing an infringement notice for a contravention of the Act.
- Section 78 A Competent Authority can withdraw a formal warning within 21 days. An infringement notice or court proceedings can be taken against the person once a formal warning has been withdrawn.
- Section 79 An authorised officer may issue and serve an infringement notice on a person 16 years or over who he reasonably believes has committed an infringement notice offence prescribed in the regulations.

(This provision is similar to Section 32 of the *Dangerous Goods Act (1998)*)

Part 7 General Court-Based Sanctions

- Section 80 Provides that proceedings for offences may be dealt with in the Magistrates Court jurisdiction.
- Section 81 Provides that proceedings for an offence under the Act (including the regulations) may be brought against an individual or body corporate by an authorised officers.
- (This provision is the same as Section 34 of the *Dangerous Goods Act (1998)*)
- Section 82 Proceedings for an offence may be started within 2 years of the alleged offence being committed. Or proceedings may be started

within 1 year of the Competent Authority or an authorised officer obtaining evidence of the commission of an offence provided that the Authority or officer considers the evidence reasonably sufficient to justify starting proceedings (i.e. the 1 year time period does not start until the Authority or officer is satisfied that the evidence obtained is enough to justify proceedings).

- Section 83 Is a general provision about a courts ability to impose sanctions where a person is found guilty of an offence under the Act. The court must take into account the combined effect when more than one penalty is imposed. In cases where one or more courts impose a supervisory order and an exclusion order, the supervisory order will have no effect while the exclusion order applies.
- Section 84 This section is left blank to ensure uniformity with regard to numbering.
- Section 85 Where a person, or associate, found guilty of an offence would have received a commission; the court may make a commercial benefits penalty order requiring the person to pay up to three times the amount the court has estimated as the commercial benefit. The court must take into account whether the benefit was, or would have been, monetary or other.
- Section 86 When a driver of a vehicle is found guilty of an offence, the court may cancel, modify, or suspend the licence and disqualify the driver from holding a licence for a certain time.
- Section 87 Where the registered operator of a vehicle is found guilty of an offence, the court may cancel or suspend vehicle registration for a certain period and disqualify the owner from

registering the vehicle for a certain time. If the court believes another person will be unfavourably affected it can summon that person to explain why the order should not be made.

Section 88

Where a person is a systematic offender the court may impose a supervisory intervention order requiring the person to undertake activities to improve compliance with this Act for example appointing or removing staff from activities or positions; training and supervising staff; obtaining expert advice about compliance; installing monitoring, compliance and managerial equipment or systems; providing compliance.

Section 89

A person subject to a supervisory intervention order must not engage in conduct that results in a breach of the requirements of the order. Failure to comply is an offence.

Section 90

If a person is a systematic or persistent offender the court may make an exclusion order prohibiting them from any aspect relating to transporting dangerous goods. The court can only make an exclusion order if a supervisory intervention order is not appropriate and the person needs to be stopped from continuing dangerous, or potentially dangerous, behaviour. The court may revoke an exclusion order at the request of the Competent Authority or if it is satisfied there has been a change of circumstances warranting revocation or amendment.

Section 91

A person subject to an exclusion order must not engage in conduct that results in the breach of the requirements of the order. Failure to comply is an offence.

Section 92 Provides that where a person is found guilty of an offence in relation to dangerous goods the court may on the application of the Competent Authority order that the goods be forfeited to the Crown.

(This provision is similar to Section 42 of the *Dangerous Goods Act (1998)*)

Part 8 Compensation Orders

Section 93 Contains the terms that have a particular meaning for the purposes of Part 8 of the Act.

Compensation order is an order made under Part 8.

Rail or Road Authority is a person or body responsible for the care, control and management of a railway or road.

Rail or Road Infrastructure encompasses all parts of a railway or road. This includes surfaces, pavements, bridges, supporting materials, tunnels, causeways, fords, traffic control devices, railway or tramway equipment, emergency service telephone systems, electricity equipment.

Section 93A A court that finds a person guilty of an offence may make a compensation order under Part 8 of the Act.

Section 94 A person found guilty of an offence may be ordered to pay compensation for any damage to rail or road infrastructure that has been or is likely to be incurred as a consequence of the offence. Costs may include reinstatement of road paving and rail sleepers and tracks, road building material, costs for testing, transporting, storing and disposal of dangerous goods.

(This provision is similar to Sections 39 and 40 of the *Dangerous Goods Act (1998)*)

- Section 95 Provides that the court may assess the amount of compensation as it thinks appropriate, for example this might include the estimated cost of making good the damage.
- Section 96 Provides that if a road or rail authority proposes to use a certificate in proceedings it must serve the certificate on the defendant at least 28 working days before the hearing of the matter so as to provide the defendant with sufficient time to consider whether he wishes to challenge it. Similarly if a defendant wishes to challenge a statement in a certificate he must serve a notice on the rail authority 14 days before the matter is set down for hearing detailing the matters which are to be challenged.
- Section 97 This section provides that the court must limit the amount of compensation payable by the defendant if it considers other factors contributed to the damage that were not connected to the commission of the offence. The maximum amount of compensation payable can not be more than the monetary jurisdictional limit or the court of civil proceedings. The court can not include amounts for injury, death, loss of income, or damage to property that is not part of road or rail infrastructure.
- Section 98 A court that finds a person guilty of an offence may order the convicted person to pay the costs incurred by the Competent Authority in taking legal action and investigating the offence and including costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

that those persons give proper attention to the safe transport of dangerous goods and to meet public expectations that liability may attach to all persons who are responsible for serious failure to provide for the safe transport of dangerous goods.

It is a defence where the defendant establishes that the person was not in a position to influence the conduct of the body corporate in relation to the offence that the defendant took reasonable precautions to prevent the commission of the offence.

(This provision is similar to Section 38 of the *Dangerous Goods Act (1998)*)

Section 105

The section provides that persons other than the offender may be guilty of an offence. For example a person who aids, abets, counsels or procures an offence by another person is punishable as if they committed the offence themselves even if the primary offender has not been prosecuted or found guilty. A person cannot be found guilty if they ceased their involvement and took steps to prevent the offence prior to it being committed.

Section 106

The section provides that persons other than the offender may be guilty of an offence. For example a person who causes or permits another to commit an offence is taken to have committed the offence and is punishable accordingly.

Section 107

The section provides that persons other than the offender may be guilty of an offence. For example a person who urges another to commit an offence is guilty of an offence and is punishable accordingly.

Section 108	Provides a defence where a person conducts themselves in a way that constitutes an offence because of a sudden or extraordinary emergency. The rationale is that a person should not be guilty or punished if they acted to reasonably in an emergency situation involving dangerous goods e.g. moving a truck carrying dangerous goods to avoid loss of life or damage to property or the environment.
Section 109	If a person establishes that their conduct was authorised or excused by law they can use this as a defence against charges.
Section 110	Nothing in this Act affects other defences available under other laws of Tasmania.
Section 111	It is a defence for an owner or operator of a dangerous goods vehicle if they can establish that the vehicle was being used by an unauthorised person, an employee or agent acting outside the scope of their employment or agency or if the. It is also a defence if the alleged offender can establish that a vehicle was no longer under their control.
Section 112	It is a defence if a person charged establishes that their conduct was following the directions of an authorised officer or police officer.
Section 113	This section makes body corporates potentially liable for the actions of one of their directors, employees or agents. For example where a director, employee or agent, acting within the scope of his employment, commits an offence the body corporate is also taken to have committed the offence, unless it can show that it took all reasonable precautions and exercised due diligence to avoid the conduct. Where it is necessary for an offence to establish the state of mind (e.g. knowledge, intention, belief and reasons) of a body

corporate it will be enough to show that a director, employee or agent had the relevant state of mind and was acting within the scope of their authority.

(This provision is similar to Section 38 of the *Dangerous Goods Act (1998)*)

Section 114

This section is designed to assist with proving matters in court. A court must accept certain evidence which an authorised officer believes on reasonable grounds to be true, provided there is no contrary evidence. Matters include that particular goods are dangerous goods, that containers contain dangerous goods if they are so marked, that the capacity, tare weight, quantity, date of manufacture, ownership and origin as marked, and that a person did not at the relevant time have the necessary accreditation or licence.

The court may admit into evidence certain documents including copies made by an authorised officer provided they are certified as true copies by the officer. Documents must be accepted as proof of the facts stated in them unless there is contrary evidence.

(This provision is similar to Section 35 of the *Dangerous Goods Act (1998)*)

Section 115

This section is designed to assist with proving matters in court. A court must accept evidence, which a weighbridge operator, or employee of the operator, believes to be accurate regarding the mass of the vehicle transporting dangerous goods or the container carrying dangerous goods.

Section 116

This section is designed to assist with proving matters in court. Proof of the appointment

and signature of an authorised officer is not needed.

Section 117

This section means that transport documentation is prima facie evidence of the identity and involvement of persons with the transport of the dangerous goods and the destination of the dangerous goods.

Section 118

Failure to observe an approved Code of Practice may form part of the evidence used in a prosecution. Compliance with a Code is deemed to be compliance with any relevant provision of this Act.

(This provision is similar to Section 37 of the *Dangerous Goods Act (1998)*)

Part 10

Prohibition Notices

Section 119

Defines the term dangerous activity that is used in Part 10 of the Act.
Dangerous Activity means an activity relating to the transport of dangerous goods by road or rail and that is, or will, occur in the immediate vicinity of the dangerous goods, and is or could create a dangerous situation or risk to safety.

Section 120

This section enables an authorised officer to serve a prohibition notice on a person to prevent a person from carrying out a dangerous activity.

Section 121

A prohibition notice is effective from its date of served or a date otherwise detailed on the notice. A prohibition notice may contain direction to reduce or eliminate risks or information that prohibits the carrying out of an activity in a specified way.

- Section 122 The requirements set out in a prohibition notice must be complied with. Failure to do so is an offence.
- Section 123 An authorised officer can give oral directions before a prohibition notice is served if they believe it will prevent a dangerous activity from occurring or stop one that is occurring. Failure to comply with a direction is an offence although if an authorised officer did not inform the person it was an offence not to comply with a prohibition notice; this may be used as a defence.
An oral direction no longer applies if a prohibition notice has not been served within five days of the direction being given.
- Section 124 A prohibition notice can be withdrawn by the Competent Authority.
- Section 125 A prohibition notice can be amended but only if the amendment relates to the same contravention. An authorised officer will serve a notice of amendment on the person served with the prohibition notice.
- Section 126 The service, amendment or withdrawal of a prohibition notice does not affect proceedings for an offence under the Act.

Part II

Miscellaneous

Section 127

This section affords protection from liability to authorised officers where he acts in good faith in the course of their duties.

(This provision is the same as Section 44 of the *Dangerous Goods Act (1998)*)

Section 128

Provides that an indemnity is not affected if a vehicle was not carrying dangerous goods and/or the goods were not actually dangerous goods.

Section 129

Other indemnities under other laws are not affected unless they are inconsistent with an indemnity provided in this Act.

Section 130

This section is designed to protect persons who report breaches of the Act.

If an employee has provided information, or made a complaint, relating to a breach or alleged breach, of this Act, that employee can not be victimised or dismissed.

An employer or prospective employer can not refuse employment to a prospective employee because they have provided information regarding a breach.

It is an offence for an employer to victimise, dismiss, or otherwise treat an employee unfairly for providing information or making a complaint about a breach.

If found guilty the court may order that damages be paid to the employee or contractor, that their employment or contract be reinstated, or that they be given the position they applied for.

Section 131

This section is designed to protect the confidentiality of information that persons might obtain in the administration of the Act.

For example a person representing a Competent Authority can not disclose confidential information gained through the administration of this Act, except in certain cases including, if required by the Act, with the consent of the person, to the Competent Authority, authorised officer, or police officer, to a prescribed public authority in another jurisdiction, for law enforcement purposes in other jurisdictions, to court in connection with legal proceedings, or in accordance with Ministerial guidelines.

Section 132

False or misleading statements or records must not be provided to the Competent Authority or authorised officer. If this occurs the person is guilty of an offence.

(This provision is similar to Section 18 of the *Dangerous Goods Act (1998)*)

Section 133

This provision prevents persons from trying to contract out of or avoid any part of the obligations or operation of the Act.

Section 134

This section allows a public authority to recover costs reasonably incurred as the result of a fire or explosion involving dangerous goods, or the risk of such incidents. Costs are recoverable from a number of persons including the owner of the goods, the person in control or possession of the goods, the person causing the incident, or the person responsible for handling the goods (provided that the incident was not someone else's fault or the person could not have prevented the incident).

(This provision is similar to Section 40 of the *Dangerous Goods Act (1998)*)

- Section 135 This section is designed to protect a person who assists in an accident or emergency situation, involving dangerous goods from any civil liability, provided that they acted in good faith and without any fee, charge or other reward, and were not the cause of the occurrence. If the person assisting is a government authority it does not incur civil liability even if it requires a payment for services.
- (This provision is the same as Section 45 of the *Dangerous Goods Act (1998)*)
- Section 136 If the regulations adopt, apply, amend or incorporate a Code of Practice, Standard or Rule, a notice must be published in the Government Gazette so as to inform others.
- (This provision is similar to Section 46 of the *Dangerous Goods Act (1998)*)
- Section 137 The Minister can delegate any or all of their powers, other than the power to appoint a Competent Authority and application and emergency orders, to the Competent Authority.
- (This recognises that it is often impracticable for a Minister to be able to discharge or perform powers vested in him under an Act.)
- (This provision is similar to Section 43 of the *Dangerous Goods Act (1998)*)
- Section 138 The section provides that administration of the Act is assigned to the Minister for Workplace Relations and the Department that is responsible is the Department of Justice, Workplace Standards Tasmania is the Division responsible for the day to day operation of the Act.

- Section 139 Amends a number of other Acts where the Dangerous Substances (Safe Handling) Act is referred to as this Act repeals and replaces that Act.
- Section 140 Provides for the repeal Acts dealing with Dangerous Goods which this Act replaces
- Section 141 Rescinds various regulations dealing with the transport of dangerous goods in Tasmania which this Act (including regulations) will replace.
- Section 142 Is a mechanical provision which allows regulations that are amended by this Act to be further amended or rescinded by a later regulation.