

TASMANIA

**DANGEROUS GOODS AND SUBSTANCES
LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2008**

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**DANGEROUS GOODS AND SUBSTANCES
LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2008**

*(Brought in by the Minister for Planning and Workplace
Relations, the Honourable David John Bartlett)*

A BILL FOR

An Act to amend the *Dangerous Goods (Safe Transport) Act 1998*, the *Dangerous Goods Amendment Act 2005*, the *Dangerous Substances (Safe Handling) Act 2005*, the *Security-sensitive Dangerous Substances Act 2005* and the *Dangerous Goods and Substances (Transitional and Consequential Provisions) Act 2005*

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 *Dangerous Goods and Substances Legislation (Miscellaneous Amendments) Act 2008*.*

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.

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Amendments) Act 2008*
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s. 2

Part 1 – Preliminary

- (2) Parts 2 and 5 commence immediately after the *Dangerous Substances (Safe Handling) Act 2005* commences.

*Dangerous Goods and Substances Legislation (Miscellaneous
Amendments) Act 2008*
Act No. of

Part 2 – Dangerous Goods (Safe Transport) Act 1998 Amended

s. 3

**PART 2 – DANGEROUS GOODS (SAFE TRANSPORT)
ACT 1998 AMENDED**

3. Principal Act

In this Part, the *Dangerous Goods (Safe Transport) Act 1998** is referred to as the Principal Act.

4. Section 19 substituted

Section 19 of the Principal Act is repealed and the following section is substituted:

19. 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 that 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 –

*No. 6 of 1998

*Dangerous Goods and Substances Legislation (Miscellaneous
Amendments) Act 2008*
Act No. of

s. 4 Part 2 – Dangerous Goods (Safe Transport) Act 1998 Amended

- (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.

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Amendments) Act 2008*
Act No. of

Part 3 – Dangerous Goods Amendment Act 2005 Amended

s. 5

**PART 3 – DANGEROUS GOODS AMENDMENT ACT
2005 AMENDED**

5. Principal Act

In this Part, the *Dangerous Goods Amendment Act 2005** is referred to as the Principal Act.

**6. Section 6 amended (Section 3 amended
(Interpretation))**

Section 6(f) of the Principal Act is amended by omitting paragraph (a) of the definition of “involvement in the transportation of dangerous goods”.

*No. 51 of 2005

*Dangerous Goods and Substances Legislation (Miscellaneous
Amendments) Act 2008*
Act No. of

s. 7 Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

**PART 4 – DANGEROUS SUBSTANCES (SAFE
HANDLING) ACT 2005 AMENDED**

7. Principal Act

In this Part, the *Dangerous Substances (Safe Handling) Act 2005** is referred to as the Principal Act.

8. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “acceptable level of risk”:

“agvet chemical” has the meaning given by section 8A;

- (b) by inserting the following definition after the definition of “approved form”:

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

*No. 50 of 2005

*Dangerous Goods and Substances Legislation (Miscellaneous
Amendments) Act 2008*
Act No. of

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

s. 8

Commonwealth (as the successor
to the NOHSC) to –

- (a) lead and co-ordinate national efforts to improve occupational health and safety and workers compensation arrangements; and
 - (b) declare national standards and codes of practice on occupational health and safety matters; and
 - (c) provide government with policy advice on those matters;
- (c) by omitting the definition of “chemical”;
- (d) by omitting paragraph (a) from the definition of “emergency services” and substituting the following paragraph:
- (a) the State Emergency Service within the meaning of the *Emergency Management Act 2006*; and
- (e) by inserting the following definition after the definition of “emergency services”:
- “employee”** includes a person engaged, either directly or

*Dangerous Goods and Substances Legislation (Miscellaneous
Amendments) Act 2008*
Act No. of

s. 9 Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

indirectly, under a contract for
services;

- (f) by inserting the following definition after
the definition of “hazard”:

“hazardous substance” has the
meaning given by section 8;

- (g) by inserting “and abolished under the
*National Occupational Health and Safety
Commission (Repeal, Consequential and
Transitional Provisions) Act 2005*” after
“Commonwealth” in the definition of
“NOHSC”;

- (h) by inserting the following definition after
the definition of “occupier”:

“pipe” includes pipeline;

- (i) by inserting the following definition after
the definition of “Standards Australia”:

“State” includes Territory;

**9. Section 5 amended (Meaning of “dangerous
substance”)**

Section 5(2) of the Principal Act is amended by
omitting “and chemicals” and substituting “,
hazardous substances and agvet chemicals”.

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

s. 10

10. Section 6 amended (Meaning of “dangerous goods”)

Section 6 of the Principal Act is amended by omitting paragraphs (e) and (f) and substituting the following paragraph:

- (e) are prescribed to be dangerous goods.

11. Section 8 substituted

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

8. Meaning of “hazardous substance”

A hazardous substance is a substance that is, or is capable of being, classified according to the *Approved Criteria for Classifying Hazardous Substances* published by the ASCC.

Note: The *Approved Criteria for Classifying Hazardous Substances* is available on the ASCC website.

8A. Meaning of “agvet chemical”

An agvet chemical is –

- (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.

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Amendments) Act 2008*
Act No. of

s. 12 Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

Note: The Agvet Code of Tasmania is the code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth. By virtue of section 5 of the *Agricultural and Veterinary Chemicals (Tasmania) Act 1994* this code applies as a law of Tasmania.

12. Section 9 amended (What constitutes the handling of dangerous substances?)

Section 9 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (k) and (l) from subsection (1) and substituting the following paragraphs:
 - (k) design, manufacture or import a handling system for the dangerous substance;
 - (l) install, use, alter or maintain a handling system for the dangerous substance;
 - (m) organise, provide or undergo training in relation to the dangerous substance or any aspect of its handling;
 - (n) carry out a prescribed activity in relation to the dangerous substance.
- (b) by omitting subsection (2) and substituting the following subsection:

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Amendments) Act 2008*
Act No. of

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

s. 13

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- (2) However, a person who is transporting a dangerous substance 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 dangerous substance from one place to another by means of pipes.

13. Section 10 amended (Scope of Act)

Section 10 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:

- (2) However, this Act does not apply to –

- (a) class 6.2 or class 7 dangerous goods within the meaning of the Australian Dangerous Goods Code; or
- (b) dangerous substances that are in a container that is designed to form part of, and does form part of, the fuel or battery system of a vehicle's engine, auxiliary engine, fuel-burning

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Amendments) Act 2008*
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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

appliance or other part of
a vehicle's propulsion
system.

(b) by omitting subsection (4) and
substituting the following subsections:

(4) Also, except as provided by
section 9(2), this Act does not
apply to –

(a) the transportation of
dangerous substances; or

(b) dangerous substances that
are in transit.

(5) For the purposes of
subsection (4)(b), dangerous
substances are taken to be in
transit if they –

(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

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

s. 14

- (c) have not, during that period, been opened or used at the premises.

14. Section 12 amended (Inconsistencies, &c., with other Acts)

Section 12(1) of the Principal Act is amended by omitting paragraphs (e) and (f) and substituting the following paragraphs:

- (e) *Poisons Act 1971*;
- (f) *Radiation Protection Act 2005*;
- (g) *Security-sensitive Dangerous Substances Act 2005*.

15. Section 13 amended (Safety obligations)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “, through their involvement with the handling of dangerous substances or with handling systems at any place, may affect the safety of any person or harm any property or the environment” and substituting “handle dangerous substances”;

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s. 16 Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

- (b) by omitting from subsection (2)(b) “or other person”;
- (c) by omitting from subsection (2)(e) “DSL.” and substituting “DSL;”;
- (d) by inserting the following paragraph after paragraph (e) in subsection (2):
 - (f) a person that alters or maintains a handling system at an MHF or DSL.

16. Section 20 amended (Obligations of occupiers regarding risk reduction)

Section 20 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a)(ii) “an incident” and substituting “a dangerous situation”;
- (b) by omitting from paragraph (f)(ii) “out.” and substituting “out;”;
- (c) by inserting the following paragraphs after paragraph (f):
 - (g) to maintain, for the MHF or DSL, a dangerous substances inventory of –

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

s. 16

- (i) which dangerous substances are at the MHF or DSL; and
 - (ii) the form of those dangerous substances; and
 - (iii) the whereabouts and, if applicable, method of storage or containment of those dangerous substances; and
 - (iv) the maximum containment capacity of the MHF or DSL for those dangerous substances; and
 - (v) any prescribed information;
- (h) to ensure that employees at the MHF or DSL 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.

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s. 17

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

17. Section 22 amended (Obligations of employees)

Section 22 of the Principal Act is amended as follows:

- (a) by omitting “or other person” first occurring;
- (b) by omitting from paragraph (a) “or other person”.

18. Section 24 amended (Obligations of designers, manufacturers, importers, suppliers and installers of handling systems)

Section 24 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (6) A person that alters or maintains a handling system at an MHF or DSL 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.

19. Section 25 amended (Obligations of suppliers and installers regarding known hazards, &c.)

Section 25(1)(a)(i) of the Principal Act is amended by inserting “, altered or maintained” after “installed”.

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Amendments) Act 2008*
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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

s. 20

20. Section 35 amended (Obligation of occupiers to notify Secretary of certain upgrades of facilities)

Section 35(2) of the Principal Act is amended by inserting “as required by subsection (3)” after “about the facility”.

21. Section 36 amended (Obligation of occupiers to notify Secretary of modifications of major hazard facilities)

Section 36 of the Principal Act is amended by inserting “as prescribed” after “Secretary”.

22. Section 44 amended (Obligation of occupiers to give safety reports to Secretary)

Section 44(1) of the Principal Act is amended by omitting “that contains sufficient detail to enable the Secretary to decide whether –” and substituting “demonstrating that –”.

23. Section 45 amended (Obligation of occupiers to report, &c., dangerous substances emergencies)

Section 45(1)(a) of the Principal Act is amended by omitting “to persons, property or the environment”.

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Amendments) Act 2008*
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s. 24

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

24. Section 47 amended (Meaning of “dangerous substances location” and “large dangerous substances location”)

Section 47 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) A place is a dangerous substances location (“DSL”) if dangerous goods or combustible liquids are, or are likely to be, handled at the place in a greater than prescribed quantity.

(b) by omitting subsection (3) and substituting the following subsections:

(3) A DSL is a large dangerous substances location (“LDSL”) if dangerous goods or combustible liquids are, or are likely to be, handled at the location in a greater than prescribed quantity.

(4) To avoid doubt, if and when a DSL becomes an LDSL –

(a) it does not cease thereby to be a DSL; and

(b) no provision of this Act applying to a DSL ceases thereby to apply to it; and

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s. 25

- (c) the provisions of this Act that apply to it as an LDSL are additional to those that apply to it as a DSL.

25. Section 52 amended (Obligation of occupiers to report, &c., dangerous substances emergencies)

Section 52(1)(a) of the Principal Act is amended by omitting “to persons, property or the environment”.

26. Section 55 amended (Appointment of authorised officers)

Section 55(4)(a) of the Principal Act is amended by omitting “State Service” and substituting “police”.

27. Section 65 substituted

Section 65 of the Principal Act is repealed and the following section is substituted:

65. 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

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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.

28. Section 68 amended (Directions to carry out risk assessments)

Section 68 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or DSL” and substituting “, DSL or other facility”;

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

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- (b) by omitting from subsection (2) “or DSL” and substituting “, DSL or other facility”.

29. Section 69 amended (Directions to reduce risks)

Section 69 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or DSL” and substituting “, DSL or other facility”;
- (b) by omitting from subsection (2) “or DSL” and substituting “, DSL or other facility”.

30. Section 74 amended (Directions to stop and secure handling systems)

Section 74(1) of the Principal Act is amended by omitting “place” and substituting “facility”.

31. Section 75 amended (Directions to suspend operations for unacceptable levels of risk)

Section 75 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or DSL” and substituting “, DSL or other facility”;

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s. 32

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

- (b) by omitting from subsection (2) “or DSL” and substituting “, DSL or other facility”;
- (c) by omitting from subsection (2) “or DSL.” and substituting “, DSL or facility.”.

32. Section 76 amended (Directions to isolate sites)

Section 76 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or DSL.” and substituting “, DSL or other facility”;
- (b) by omitting from subsection (2) “or DSL” and substituting “, DSL or other facility”.

33. Section 76A inserted

After section 76 of the Principal Act, the following section is inserted in Division 3:

76A. 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 a

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Amendments) Act 2008*
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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

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dangerous substance 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 dangerous substance or handling system.
- (4) If subsection (3) applies, the Crown is not liable to pay for or contribute to the costs of the recall.

34. Section 77A inserted

After section 77 of the Principal Act, the following section is inserted in Division 3:

77A. 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

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Amendments) Act 2008*
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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.
- (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 78 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.

35. Section 78A inserted

After section 78 of the Principal Act, the following section is inserted in Division 3:

78A. Orders to secure compliance with directions

- (1) This section applies if it appears to an authorised officer that –

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

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- (a) a person has contravened section 78; and
 - (b) the contravention has caused or contributed to a dangerous situation at any premises or a dangerous substances 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 dangerous substances 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.

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Amendments) Act 2008*
Act No. of

s. 36

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

36. Section 79 amended (Obligation of occupiers to make directions available for inspection by employees)

Section 79(1) of the Principal Act is amended by omitting “MHF or DSL” and substituting “MHF, DSL or other facility”.

37. Section 85 amended (Evidentiary matters)

Section 85 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(g) “the ASCC, the” after “by”;
- (b) by inserting in subsection (4) “the ASCC, the” after “authority of”.

38. Section 90A inserted

After section 90 of the Principal Act, the following section is inserted in Part 7:

90A. 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 –

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

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- (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.
- (3) For the purposes of section 14(a)(ii) of the *Monetary Penalties Enforcement Act 2005*, the prescribed penalty for a prescribed offence is not to exceed 25 penalty units.
- (4) Any payments in respect of an infringement notice are payable into the Consolidated Fund.
- (5) In this section –
- “prescribed”** means prescribed by the regulations.

39. Section 91 amended (Applications for review of decisions)

Section 91(1) of the Principal Act is amended by inserting “, or a prescribed decision under this Act,” after “Act”.

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Amendments) Act 2008*
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s. 40

Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

40. Section 98 amended (Regulations)

Section 98 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “dangerous goods or combustible liquids” and substituting “dangerous substances”;
- (b) by inserting in subsection (2)(b) “, dangerous substances locations or other facilities” after “facilities”;
- (c) by omitting from subsection (2)(e) “flammable or combustible liquids” and substituting “dangerous substances”;
- (d) by inserting the following paragraphs after paragraph (h) in subsection (2):
 - (ha) provide for the collection, keeping and disclosure of information by any person in respect of any matter; and
 - (hb) provide for exemptions in respect of any matter; and
 - (hc) 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 dangerous substances; and

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Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

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(e) by inserting the following subsection after subsection (6):

(7) Regulations of the kind referred to in subsection (2)(ha) 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.

41. Sections 99A and 99B inserted

After section 99 of the Principal Act, the following sections are inserted in Part 8:

99A. ASCC change of name, &c.

- (1) If the ASCC undergoes a change of name or ceases to exist, the Governor, by order, may amend this Act by omitting any references to that body (including those in this subsection) and, as the case requires, substituting –
- (a) the ASCC's new name; or
 - (b) the name of a body that the Governor is satisfied has functions equivalent or substantially similar to those of the ASCC.

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s. 41 Part 4 – Dangerous Substances (Safe Handling) Act 2005 Amended

- (2) An order under subsection (1) is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

99B. Status of notes

A note in the text of this Act is for explanatory purposes only and does not form part of the Act.

**PART 5 – SECURITY-SENSITIVE DANGEROUS
SUBSTANCES ACT 2005 AMENDED**

42. Principal Act

In this Part, the *Security-sensitive Dangerous Substances Act 2005** is referred to as the Principal Act.

43. Section 62 substituted

Section 62 of the Principal Act is repealed and the following section is substituted:

62. Self-incrimination no excuse

- (1) A person is not excused from answering a 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 –

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*Dangerous Goods and Substances Legislation (Miscellaneous
Amendments) Act 2008*
Act No. of

s. 43 Part 5 – Security-sensitive Dangerous Substances Act 2005 Amended

- (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.

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Amendments) Act 2008*
Act No. of

Part 6 – Dangerous Goods and Substances (Transitional and Consequential
Provisions) Act 2005 Amended

s. 44

**PART 6 – DANGEROUS GOODS AND SUBSTANCES
(TRANSITIONAL AND CONSEQUENTIAL
PROVISIONS) ACT 2005 AMENDED**

44. Principal Act

In this Part, the *Dangerous Goods and Substances (Transitional and Consequential Provisions) Act 2005** is referred to as the Principal Act.

45. Schedule 1 amended (Consequential Amendments)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting the item relating to the *Admission to Courts Regulations 1995*;
- (b) by omitting the item relating to the *Workplace Health and Safety Regulations 1998*.

*No. 52 of 2005