

TASMANIA

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**SECURITY-SENSITIVE DANGEROUS  
SUBSTANCES BILL 2005**

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# **SECURITY-SENSITIVE DANGEROUS SUBSTANCES BILL 2005**

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

## **A BILL FOR**

**An Act to restrict and regulate access to certain dangerous substances whose deliberate misuse would constitute an especial threat to State security and public safety, to regulate and monitor, and improve the security of, commercial, industrial and other activities carried out in connection with such dangerous substances and for related purposes**

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

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Security-sensitive Dangerous Substances Act 2005*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

### 3. Interpretation

In this Act, unless the contrary intention appears –

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

**“authorised”** means –

- (a) in relation to an SSDS and an SSDS permit, the SSDS for which the permit is issued; and
- (b) in relation to a restricted activity and an SSDS permit, the restricted activity that the permit authorises to be carried out;

**“authorised officer”** means an authorised officer appointed under section 52(1), and includes a person authorised under section 52(6);

**“background check”** means a police and security check into a person’s background, with the particular aim of checking whether the person has engaged in, or encouraged or supported, acts of politically motivated violence;

**“close associate”** – see section 15;

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

**“corresponding Australian law”** means a law of another State, or of a Territory, that –



- (a) corresponds, or substantially corresponds, to this Act; or
- (b) regulates a dangerous substance other than an SSDS and is prescribed to be a corresponding Australian law for the purposes of this Act;

**“corresponding regulator”** means a person who, under a corresponding Australian law, is responsible for determining or vetting applications for permits or other forms of regulatory authority relating to activities that involve security-sensitive dangerous substances;

**“Director”** means the Director of Industry Safety appointed under section 33 of the *Workplace Health and Safety Act 1995*;

**“form of regulatory authority”** includes a permit, licence, approval, accreditation, authorisation, certification or registration;

**“identity card”** means a responsible worker’s identity card issued under section 37(1);

**“nomination”** means a nomination under section 39;

**“notify”** means give notice in writing;

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

**“premises”** includes –

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

but does not include a vehicle;

**“qualifications”** includes expertise, training and experience;

**“register”** means the register kept under section 28;

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

**“related State law”** means –

- (a) an Act referred to in section 7; or
- (b) a prescribed law of the State;

**“responsible worker”**, for an SSDS permit, means a person who, besides the holder of the permit, is authorised by the permit to have either or both of the following:

- (a) independent and unsupervised access to the authorised SSDS;
- (b) independent and unsupervised carriage of the authorised restricted activity;

**“restricted activity”**, in relation to an SSDS,  
means –

- (a) manufacturing, importing, exporting, buying, selling, supplying, storing, using or disposing of any quantity of the SSDS; or
- (b) transporting more than 20 kilograms of the SSDS; or
- (c) a prescribed activity carried out in relation to the SSDS;

**“right of review”** means a right of review under section 74;

**“security threat”** means an incident or situation, whether or not involving an SSDS, that threatens or has the potential to threaten State security or public safety;

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

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

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

**“SSDS”** means a security-sensitive dangerous substance – see section 4;

**“SSDS permit”** means a permit issued under Part 2;

**“terrorism offence”** means an offence under Part 5.3 of the *Criminal Code* of the Commonwealth;

**“vehicle”** includes any kind of –

- (a) vessel; and
- (b) aircraft; and
- (c) vehicle built or adapted to move on rails; and
- (d) motor vehicle, being a vehicle built to be propelled by a motor that forms part of the vehicle; and
- (e) trailer, being a vehicle built or adapted to be towed by a motor vehicle.

#### 4. What is a security-sensitive dangerous substance?

A security-sensitive dangerous substance (“SSDS”) is a substance specified in Part 2 of Schedule 1.

## **5. Application requirements**

An application to the Director in relation to a matter under this Act is to be in an approved form and must –

- (a) be accompanied by the prescribed fee, if any; and
- (b) be supported by such evidence or information as the Director requires; and
- (c) comply with such additional requirements, if any, as relate specifically to the application.

## **6. Act does not bind Crown**

This Act does not bind the Crown.

## **7. Act does not derogate from other laws dealing with dangerous substances**

The provisions of this Act are in addition to, and not in derogation of, the provisions of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, *Dangerous Goods Act 1998*, *Fertilizers Act 1993* and *Poisons Act 1971*.

**PART 2 – SECURITY-SENSITIVE DANGEROUS  
SUBSTANCES PERMITS**

*Division 1 – Need for permits*

**8. Offence to carry out certain activities without permit**

- (1) A person must not carry out a restricted activity in relation to an SSDS unless the person –
  - (a) is authorised to carry out the restricted activity by an SSDS permit; and
  - (b) complies with the conditions of the SSDS permit in carrying out the restricted activity.
- (2) A person must not direct, cause or allow another person to carry out a restricted activity in relation to an SSDS unless –
  - (a) the first-mentioned person is the holder of an SSDS permit that authorises the restricted activity to be carried out, and the other person –
    - (i) is a responsible worker for the SSDS permit; or
    - (ii) carries out the restricted activity under the direct and constant supervision of the first-mentioned person or a responsible worker for the SSDS permit; or
  - (b) the first-mentioned person is a responsible worker for an SSDS permit that authorises the restricted activity to

be carried out and the other person carries out the restricted activity under the close and constant supervision of –

(i) the first-mentioned person; or

(ii) the holder of the SSDS permit.

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence.

Penalty: In the case of –

(a) 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

(b) an individual –

(i) 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; or

(ii) imprisonment for a term not exceeding 12 months.

***Division 2 – Applications*****9. Applications for permits**

- (1) A person may apply to the Director for an SSDS permit.
- (2) The application must –
  - (a) specify the SSDS and restricted activity for which the SSDS permit is being sought and explain precisely why and for how long the applicant will need the permit; and
  - (b) be accompanied by a security plan complying with the prescribed requirements, if any, based on a risk assessment of the SSDS and restricted activity for which the permit is being sought; and
  - (c) nominate, if applicable, those persons who the applicant wishes to have as responsible workers; and
  - (d) give the full name, date of birth and address of each person so nominated.
- (3) The application must also satisfy the Director that the applicant and each person nominated as a responsible worker knows and accepts that they are liable to be subjected to a background check as part of the application process.
- (4) The Director may assist the applicant by providing advice or written guidelines about the security plan requirement.



**10. Consideration of applications**

- (1) In considering an application for an SSDS permit, the Director may –
  - (a) carry out such inquiries, consult such persons and take into account such matters as the Director considers necessary or expedient having regard to the nature of the application and the proposed restricted activity; and
  - (b) require the applicant to provide any further information or evidence about any matter relating to the application.
- (2) After considering an application for an SSDS permit, the Director may, subject to sections 11, 12, 13 and 14 –
  - (a) approve the application; or
  - (b) refuse the application.

**11. Applications not to be approved without police clearance**

The Director must not approve an application for an SSDS permit unless –

- (a) a copy of it has been referred to the Commissioner of Police; and
- (b) the Commissioner of Police has notified the Director to the effect that there is no objection, on security grounds, to the application being approved.

**12. Applications not to be approved unless certain general requirements are met**

The Director must not approve an application for an SSDS permit unless he or she is satisfied of each of the following:

- (a) that, having regard to any relevant corporate or business structure, proprietary interests, business practices or occupational responsibilities, the applicant is an appropriate person to be making the application;
- (b) that, having regard to the guidelines in Schedule 2, the applicant has demonstrated a legitimate need to carry out the proposed restricted activity;
- (c) that the applicant has a security plan complying with the prescribed requirements, if any, based on a risk assessment of the proposed restricted activity;
- (d) that each person nominated as a responsible worker (and the applicant too if it is a natural person) has attained the age of 18 years;
- (e) that other legislative requirements, if any, specifically governing the proposed restricted activity in relation to the relevant SSDS (whether State or Commonwealth) have been, or are capable of being, met;
- (f) that any prescribed requirements have been, or are capable of being, met.

**13. Applications not to be approved unless applicants are fit and proper persons**

- (1) The Director must not approve an application for an SSDS permit unless he or she is satisfied that the applicant is a fit and proper person to be issued with the permit.
- (2) For the purposes of subsection (1), the Director must have regard to at least the following matters:
  - (a) the applicant's qualifications in relation to security-sensitive dangerous substances or dangerous substances generally;
  - (b) if applicable, the applicant's mental fitness;
  - (c) the applicant's conduct as regards any other SSDS permit or any similar form of regulatory authority, either in this State or elsewhere;
  - (d) whether the applicant or a close associate or related body corporate of the applicant has given false or misleading information in or in connection with an application or nomination or about another matter under this Act;
  - (e) whether the applicant or a close associate or related body corporate of the applicant has ever contravened this Act, a related law of the State or a corresponding Australian law (whether or not the contravention resulted in a conviction);

- (f) whether the applicant or a close associate or related body corporate of the applicant has, in this State or elsewhere, been convicted of an offence involving an SSDS or another dangerous substance;
  - (g) whether the applicant, or a close associate of the applicant, has been convicted of a terrorism offence;
  - (h) whether the applicant or a close associate of the applicant has, in this State or elsewhere, been convicted of an offence involving –
    - (i) violence or weapons; or
    - (ii) dishonesty; or
    - (iii) the obstruction or intimidation of persons exercising statutory powers or functions;
  - (i) any prescribed matter.
- (3) For the purposes of subsection (2), the Director is not required to have regard to the activities of an applicant's close associate under that subsection if that close associate is a prescribed person or a person of a prescribed class.
- (4) In this section –
- “related body corporate”**, of an applicant, means a body corporate that the applicant is or has been an officer of.

**14. Applications not to be approved unless responsible workers are fit and proper persons**

- (1) The Director must not approve an application for an SSDS permit unless he or she is satisfied that each person nominated as a responsible worker is a fit and proper person to be a responsible worker for the permit.
- (2) For the purposes of subsection (1), the Director must have regard to at least the following matters:
  - (a) the nominee's qualifications in relation to security-sensitive dangerous substances or dangerous substances generally;
  - (b) the nominee's mental fitness;
  - (c) the nominee's conduct as regards any other SSDS permit or any similar form of regulatory authority, either in this State or elsewhere;
  - (d) whether the nominee has given, or been responsible for the giving of, false or misleading information in or in connection with an application or nomination or about another matter under this Act;
  - (e) whether the nominee has ever contravened this Act, a related law of the State or a corresponding Australian law (whether or not the contravention resulted in a conviction);
  - (f) whether the nominee has, either in this State or elsewhere, been convicted of an

- offence involving an SSDS or another dangerous substance;
- (g) whether the applicant has been convicted of a terrorism offence;
  - (h) whether the nominee has, either in this State or elsewhere, been convicted of an offence involving –
    - (i) violence or weapons; or
    - (ii) dishonesty; or
    - (iii) the obstruction or intimidation of persons exercising statutory powers or functions;
  - (i) any prescribed matter.

### **15. What is a close associate?**

- (1) For the purposes of section 13, a person is a close associate of someone (in this section referred to as “the related person”) if –
  - (a) the person holds an executive position (however described) in the related person’s business; or
  - (b) the Director is satisfied that the person is or will be able to exercise a significant influence in relation to the conduct of the related person’s business because the person holds or will hold a financial interest, or is entitled to exercise a relevant power, in the business.
- (2) In this section –

**“business”** includes –

- (a) a business not carried on for profit; and
- (b) a trade or profession;

**“executive position”**, in a business, means a position (however described) held by a person who is concerned with, or takes part in, the management of the business;

**“exercise”**, a power, includes exercise the power on behalf of someone else;

**“financial interest”**, in a business, means –

- (a) a share in the capital of the business; or
- (b) an entitlement to receive income derived from the business (however the entitlement arises);

**“hold”**, a position, includes hold the position on behalf of someone else;

**“power”** means a power exercisable –

- (a) by voting or otherwise; or
- (b) exercisable alone or with others;

**“relevant power”**, in a business, means a power to –

- (a) take part in a directorial, managerial or executive decision for the business; or

- (b) elect or appoint a person to an executive office in the business.

#### **16. Regard may be had to other checks**

In deciding or considering any matter that the Director is required to be satisfied of or have regard to for the purposes of section 12, 13(2) or 14(2), the Director may take into account and accept, either wholly or in part, the findings of any background check or other relevant check or inquiry that may have been –

- (a) carried out by a corresponding regulator for the purposes of a corresponding Australian law; or
- (b) carried out for the purposes of a related State law; or
- (c) previously carried out by the Director for the purposes of this Act.

#### **17. Amendment of applications**

- (1) If the Director is of opinion that an application for an SSDS permit ought to be refused but that the application would be capable of being approved with minor amendments, the Director may –
  - (a) notify the applicant of that opinion and of the specific minor amendments that would render the application capable of being approved; and



- (b) ask the applicant whether the applicant would like to –
  - (i) have the application considered as if it were so amended; or
  - (ii) have the application considered in its original form; or
  - (iii) withdraw the application.
- (2) If the applicant chooses the option specified in subsection (1)(b)(i), the Director's decision under section 10(2) may be made on the basis of the amended application.

**18. Actions to be taken following approval or refusal of applications**

- (1) If an application for an SSDS permit is approved, the Director is to –
  - (a) notify the applicant of the approval; and
  - (b) issue the applicant with the permit; and
  - (c) if applicable, issue the applicant with any supplementary documents; and
  - (d) if applicable, take the action required by section 37; and
  - (e) make an appropriate entry in the register.
- (2) If an application for an SSDS permit is refused, the Director is to notify the applicant of –
  - (a) the refusal; and

- (b) subject to section 73, the reasons for the refusal; and
- (c) the applicant's right of review.

### ***Division 3 – Nature of SSDS permits***

#### **19. Types of permit**

- (1) The Director, having regard to the SSDS and restricted activity concerned and the applicant's demonstrated legitimate need, may issue an SSDS permit as –
  - (a) a long-term SSDS permit; or
  - (b) a short-term SSDS permit.
- (2) A long-term SSDS permit is to be issued for a period of 3 years.
- (3) A short-term SSDS permit may, in the Director's discretion, be issued for –
  - (a) a period not exceeding 12 months determined by the Director; or
  - (b) if it is certain or likely that the authorised restricted activity only needs to be carried out for a period of less than 12 months, the expected duration of the restricted activity.

#### **20. Form of permits**

- (1) An SSDS permit is to be in an approved form but it must at least specify –

- (a) whether it is a long-term or short-term SSDS permit; and
  - (b) the name and business address of the person it is issued to; and
  - (c) the authorised SSDS and authorised restricted activity; and
  - (d) the place where the authorised restricted activity is to be carried out (if that place is different from the permit holder's business address); and
  - (e) its date of issue; and
  - (f) when it expires (either by reference to a period or date or, if section 19(3)(b) applies, to the expected duration of the authorised restricted activity).
- (2) The responsible workers for an SSDS permit may, in the Director's discretion –
- (a) be named in the permit itself; or
  - (b) be named in a supplementary document, in an approved form, issued with the permit.

## **21. Permit conditions**

- (1) An SSDS permit may be issued unconditionally or on such conditions as the Director determines having regard to the authorised SSDS and authorised restricted activity.
- (2) The conditions of an SSDS permit may, in the Director's discretion, be set out –

- (a) in the permit itself; or
  - (b) in a supplementary document, in an approved form, issued with the permit.
- (3) The conditions are to be entered in the register.
- (4) The holder of an SSDS permit must not –
  - (a) contravene a condition of the SSDS permit; or
  - (b) direct, cause or allow a responsible worker or any other person to contravene a condition of the SSDS permit.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues; and
  - (b) an individual, a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.
- (5) A responsible worker for an SSDS permit must not –
  - (a) contravene a condition of the SSDS permit; or

- (b) direct, cause or allow another person to contravene a condition of the SSDS permit.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 1 penalty unit for each day during which the offence continues.

## **22. What do permits authorise?**

- (1) An SSDS permit authorises the holder of the permit and each responsible worker to carry out the restricted activity specified in the permit, in relation to the SSDS specified in the permit, in accordance with –
  - (a) the conditions of the permit; and
  - (b) any prescribed conditions.
- (2) An SSDS permit also authorises other persons to carry out the restricted activity specified in the permit, in relation to the SSDS specified in the permit, if they are –
  - (a) employees or agents of the holder of the permit; and
  - (b) working under the direct and constant supervision of the holder of the permit or a responsible worker.

**23. Mutual recognition**

- (1) The Director, by notice in the *Gazette*, may certify that a class of permit capable of being issued under a corresponding Australian law is recognised in this State if the Director is satisfied that the permits of that class correspond, or substantially correspond, to SSDS permits.
- (2) A permit that is of a class recognised in this State by virtue of a Director's certification under subsection (1) has force and effect in this State, according to its terms, as an SSDS permit to the same extent to which it is in force and effect in the jurisdiction in which it was issued.
- (3) Also, a person whose status or authority in respect of a recognised permit corresponds to the status or authority of a responsible worker under an SSDS permit is taken to be a responsible worker for that recognised permit if and when the person is required to work in this State under that recognised permit.
- (4) Subsection (3) has effect whether the corresponding status and authority referred to in that subsection is derived from the recognised permit itself or from a separate permit issued to the person under a corresponding Australian law.
- (5) The regulations may provide for the recognition of other matters under corresponding Australian laws for the purpose of enabling persons who are authorised to carry out a restricted activity in relation to an SSDS in another jurisdiction (with or without supervision) to carry out the same restricted activity in this State.

- (6) A notice under subsection (1) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.
- (7) In this section –
  - “**issued**” includes granted, conferred and awarded;
  - “**permit**” includes any form of regulatory authority besides a permit;
  - “**recognised permit**” means a permit, issued under a corresponding Australian law, that has force and effect in this State as an SSDS permit by virtue of a certification under subsection (1).

## 24. Permits are not transferable

An SSDS permit is not transferable.

## 25. Renewal of permits

- (1) A short-term SSDS permit is not renewable.
- (2) A long-term SSDS permit is from time to time renewable.
- (3) An application to renew a long-term SSDS permit is to be in an approved form and –
  - (a) is to be made to the Director at least one month (but not more than 3 months) before the permit is due to expire; and
  - (b) may be made even if the permit is suspended.

- (4) However, the Director, in his or her absolute discretion, may accept a late application to renew a long-term SSDS permit if –
  - (a) the permit has not expired; and
  - (b) the applicant pays a prescribed penalty, if any.
- (5) If an application to renew a long-term SSDS permit is not determined before the day on which it is due to expire, it is, despite section 27, taken to continue in force on and after that day until whichever of the following first occurs:
  - (a) the 3-month period immediately following that day expires;
  - (b) the permit is renewed or its renewal is refused.
- (6) However, subsection (5) does not apply to a suspended long-term SSDS permit if it is still suspended immediately before the day on which it is due to expire.
- (7) Section 10(1) and section 18 have the same application to an application for the renewal of a long-term SSDS permit as they have to an application for the issue of an SSDS permit.
- (8) Despite subsection (5), the renewal of a long-term SSDS permit takes effect on the day on which, but for the renewal, it would have expired.
- (9) A refusal to renew a long-term SSDS permit takes effect on the day on which the holder of the permit is notified of the refusal.



- (10) The Director is to issue the holder of a long-term SSDS permit with a fresh permit on its renewal.

## **26. Surrender of permits**

- (1) The holder of an SSDS permit may surrender it at any time.
- (2) The surrender takes effect when the Director is notified of it.
- (3) However, the surrender is not effective unless the notification to the Director is accompanied by –
- (a) the SSDS permit; or
  - (b) a statutory declaration as to its loss, theft or destruction.

## **27. Expiry of permits**

- (1) Unless it is renewed, a long-term SSDS permit expires 3 years after the day on which it is issued.
- (2) A short-term SSDS permit expires –
- (a) if section 19(3)(a) applies, on the expiration of the period for which it is issued; or
  - (b) if section 19(3)(b) applies, on the completion of the authorised restricted activity or after 12 months, whichever occurs first.

***Division 4 – Regulation of SSDS permits*****28. Register of permits**

- (1) The Director is to keep a register of SSDS permits.
- (2) The register is to be kept in such manner as the Director determines and, without limiting that discretion, may be kept wholly or partly by use of a computer.
- (3) The Director is to ensure that the entries made in the register for each SSDS permit are sufficient to identify –
  - (a) the holder of the permit; and
  - (b) the authorised SSDS; and
  - (c) the authorised restricted activity; and
  - (d) the conditions of the permit; and
  - (e) the responsible workers, if any; and
  - (f) when the permit was issued; and
  - (g) when (by reference to a date or event) the permit expires; and
  - (h) any prescribed matters.
- (4) The Director is to make such other entries in the register about SSDS permits as the Director determines or this Act or the regulations require.
- (5) The register is not a public register but the Director may make the register available, or provide information from the register, to –

- (a) a government department or other agency of the Commonwealth, or of a State or Territory, having SSDS responsibilities; or
  - (b) any other person who the Director reasonably considers has a legitimate reason to access the register.
- (6) Without limiting subsection (5)(b), the Director may allow the holder of an SSDS permit to verify, without fee, a register entry relating to that permit.
- (7) In providing any person with access to the register, or information from the register, the Director is to have regard to considerations of commercial confidentiality, State security and public safety.
- (8) However, the Commissioner of Police is entitled to have unrestricted free access to the register and to be provided with any information from the register.

## **29. Variation of permit conditions**

- (1) The Director may vary the conditions of an SSDS permit at any time by doing one or more of the following:
  - (a) omitting a condition;
  - (b) amending or substituting a condition;
  - (c) imposing an extra condition.
- (2) The variation is to be entered in the register.

- (3) The variation may be done –
  - (a) on the application of the holder of the permit; or
  - (b) on the Director's own initiative.
- (4) If the Director reasonably considers that an application under subsection (3)(a) has any security implications, he or she is to –
  - (a) refer a copy of the application to the Commissioner of Police; and
  - (b) allow the Commissioner of Police a reasonable period (of at least 10 clear days) to consider it; and
  - (c) take any advice or recommendations of the Commissioner of Police into account in determining the application.
- (5) If subsection (3)(a) applies and the application is approved, the Director is to notify the applicant of the approval, the variation and when the variation is to take effect.
- (6) If subsection (3)(a) applies and the application is refused, the Director is to notify the applicant of –
  - (a) the refusal; and
  - (b) subject to section 73, the reasons for the refusal; and
  - (c) the applicant's right of review.
- (7) If subsection (3)(b) applies, the Director is to notify the holder of the permit of –

- (a) the variation; and
  - (b) subject to section 73, the reasons for the variation; and
  - (c) when the variation is to take effect; and
  - (d) if the variation has the effect of making the permit conditions more restrictive, the applicant's right of review.
- (8) The Director may consult the permit holder before varying the conditions of an SSDS permit on the Director's own initiative, but there is no obligation to consider exercising that discretion if the Director considers that the variation should be effected urgently in the public interest.
- (9) The Director, if he or she thinks it is warranted, may issue the holder of an SSDS permit with an updated permit and updated supplementary documents when its conditions are varied.

### **30. Amendment of permit particulars**

- (1) The holder of an SSDS permit is to notify the Director of any change in the permit particulars.
- (2) On receiving the notification, the Director –
- (a) is to amend the register as necessary; and
  - (b) may, if the Director thinks it is warranted, issue the applicant with an updated permit containing the amended particulars.
- (3) In this section –

**“permit particulars”** includes such things as business and email addresses, telephone numbers and other contact information but does not include –

- (a) the permit conditions; or
- (b) the names of responsible workers.

### **31. Cancellation and suspension of permits by Director**

- (1) The Director must –
  - (a) suspend an SSDS permit immediately if the holder of the permit is charged with a terrorism offence; and
  - (b) cancel an SSDS permit immediately if the holder of the permit is convicted of a terrorism offence.
- (2) The Director may cancel or suspend an SSDS permit at any time if the Director believes on reasonable grounds that –
  - (a) the holder of the permit no longer requires it or can no longer demonstrate a legitimate need for it; or
  - (b) the conditions of the permit have been or are being contravened; or
  - (c) persons other than the holder of the permit or responsible workers have been carrying out the authorised restricted activity without supervision or adequate supervision; or

- (d) the holder of the permit has given the Director false or misleading information in or in connection with an application or nomination or about another matter under this Act; or
  - (e) the holder of the permit has contravened this Act, a related State law or a corresponding Australian law; or
  - (f) the holder of the permit has contravened a direction under Division 6; or
  - (g) the holder of the permit has, either in this State or elsewhere, committed an offence involving –
    - (i) violence or weapons; or
    - (ii) dishonesty; or
    - (iii) the obstruction or intimidation of persons exercising statutory powers or functions; or
  - (h) the holder of the permit has, either in this State or elsewhere, committed an offence of another kind that calls into question his or her fitness or competence to continue holding the SSDS permit; or
  - (i) the suspension is prudent or necessary having regard to a security threat.
- (3) In deciding under subsection (2) whether cancellation or suspension is the more appropriate course of action in the circumstances, the Director is to regard State security and public safety, rather than the rights

and convenience of the holder of the SSDS permit, as being the paramount consideration.

- (4) The cancellation or suspension takes effect when the holder of the SSDS permit is notified of it.
- (5) Subject to section 73, the notification of cancellation or suspension is to –
  - (a) specify the reasons for the cancellation or suspension; and
  - (b) indicate, in general terms, any information that the Director took into account in making the decision to cancel or suspend; and
  - (c) advise that there is a right of review against the decision; and
  - (d) specify, in the case of a suspension, the period of suspension and any conditions that must be met before the Director will consider revoking the suspension; and
  - (e) if necessary, contain instructions for securing or disposing of any SSDS affected by the cancellation or suspension.
- (6) The Director may, by notifying the holder of the permit, revoke the suspension of an SSDS permit at any time.
- (7) The Director may consult the permit holder before cancelling or suspending an SSDS permit, but there is no obligation to consider exercising that discretion if the Director considers that the cancellation or suspension should be effected urgently in the public interest.



- (8) A suspended SSDS permit is of no effect during the period of suspension.
- (9) However, a person who is acting strictly in accordance with instructions issued to the person pursuant to subsection (5)(e) is not guilty of any offence under this Act.
- (10) The cancellation or suspension of an SSDS permit is to be entered in the register.

### **32. Cancellation of permits by courts**

- (1) A court that convicts a person of an offence against this Act or a related State law may, in addition to imposing any other penalty, cancel an SSDS permit held by the person if the court, having regard to the nature of the offence and the objects of this Act, is satisfied that –
  - (a) it is not in the public interest for the person to continue to hold the permit; or
  - (b) the cancellation of the permit is merited in order to add to the punitive effect of the sentence or to deter others from committing the same offence.
- (2) The cancellation is to be entered in the register.

### **33. Loss and replacement of permits, &c.**

- (1) The holder of an SSDS permit must notify the Director within 7 days if it is stolen, lost or destroyed.

Penalty: Fine not exceeding 50 penalty units.

- (2) The Director, on receipt of a prescribed fee, if any, may give the holder of an SSDS permit a replacement for the permit if the Director is satisfied that the original permit has been –
  - (a) stolen, lost or destroyed; or
  - (b) damaged to a degree that renders it unsuitable for use.
- (3) The Director, on receipt of a prescribed fee, if any, may give the holder of an SSDS permit a replacement for a supplementary document issued in connection with the permit if the Director is satisfied that the original document has been –
  - (a) stolen, lost or destroyed; or
  - (b) damaged to a degree that renders it unsuitable for use.

#### **34. Permits to be returned if certain events occur**

A person who holds an SSDS permit must return it to the Director within 7 days, together with any supplementary documents issued in connection with the permit, if –

- (a) the permit expires; or
- (b) the permit is cancelled under section 31;  
or
- (c) the person is issued with a fresh permit under section 29(9) or section 30(2)(b);  
or

- (d) the person is given a replacement permit under section 33(2)(b).

Penalty: Fine not exceeding 50 penalty units.

### **35. Permits not to be lent**

The holder of an SSDS permit must not lend the permit to another person or allow another person to use the permit.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) an individual, a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 6 months.

### **36. Production of permits, and associated deceptions**

- (1) The holder of an SSDS permit must immediately produce it for inspection if required to do so by an authorised officer.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not produce to an authorised officer a document that is, or purports to be, an SSDS permit with the intention of falsely representing to the authorised officer that the person is the holder of the permit.

Penalty: Fine not exceeding 100 penalty units.

- (3) A person must not, with intention to deceive, produce to an authorised officer an SSDS permit that has been altered in a material respect or a document that resembles an SSDS permit.

Penalty: Fine not exceeding 100 penalty units.

- (4) The holder of an SSDS permit must not cause or allow it to be used in a manner calculated to deceive an authorised officer.

Penalty: Fine not exceeding 100 penalty units.

- (5) A person must not falsely represent to an authorised officer that –

- (a) the person is the holder of an SSDS permit in the person's own right; or
- (b) the person is the holder of an SSDS permit jointly with another person; or
- (c) a body corporate is the holder of an SSDS permit.

Penalty: Fine not exceeding 100 penalty units.

### ***Division 5 – Responsible workers***

#### **37. Identification of responsible workers**

- (1) As soon as practicable after a person becomes a responsible worker for an SSDS permit, the Director is to issue the holder of the permit with an identity card for the responsible worker.
- (2) The identity card is to be in an approved form but it must at least specify the responsible worker's name and the relevant SSDS permit.

- (3) The holder of an SSDS permit must ensure that an identity card issued under this section for a person who is a responsible worker for the permit is –
- (a) given to the person as soon as practicable after it is issued; and
  - (b) retrieved from the person within 14 days after the person ceases to be a responsible worker for the permit; and
  - (c) returned to the Director as soon as practicable after it is so retrieved.

Penalty: Fine not exceeding 50 penalty units.

- (4) It is a defence in proceedings for an offence under subsection (3)(b) if the defendant establishes that the defendant made a reasonable attempt to retrieve the responsible worker's identity card or had in place reasonable procedures for the retrieval of such identity cards generally.
- (5) A responsible worker for an SSDS permit must not lend his or her identity card to another person or allow another person to use the identity card.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding one month.

- (6) A responsible worker for an SSDS permit must carry his or her identity card whenever he or she is carrying out or supervising the authorised restricted activity.

Penalty: Fine not exceeding 25 penalty units.

**38. Loss and replacement of identity cards, &c.**

- (1) A responsible worker for an SSDS permit must inform the holder of the permit within 7 days if the responsible worker's identity card is stolen, lost or destroyed.

Penalty: Fine not exceeding 25 penalty units.

- (2) The holder of an SSDS permit must notify the Director of the theft, loss or destruction of a responsible worker's identity card within 7 days after finding out about the theft, loss or destruction.

Penalty: Fine not exceeding 30 penalty units.

- (3) The Director, on receipt of a prescribed fee, if any, may give the holder of an SSDS permit a replacement identity card for a responsible worker if satisfied that the original identity card has been –

- (a) stolen, lost or destroyed; or
- (b) damaged to a degree that renders it unsuitable for use.

**39. Responsible workers – new nominations**

- (1) The holder of an SSDS permit may from time to time nominate new persons as responsible workers for the permit.
- (2) However, the person does not become a responsible worker for the SSDS permit until the nomination is approved.

- (3) The nomination is to be in an approved form and must –
  - (a) be accompanied by the prescribed fee, if any; and
  - (b) specify the nominee's name, age and address; and
  - (c) specify the authorised restricted activity that the nominee will be required to carry out or supervise; and
  - (d) specify when the permit holder would like the nominee to be able to begin carrying out or supervising the restricted activity.
- (4) The nomination must also satisfy the Director that the nominee knows and accepts that, by being nominated as a responsible worker for the SSDS permit, he or she is liable to be subjected to a background check.
- (5) The Director is to consider the nomination and, in so doing, may –
  - (a) carry out such inquiries, consult such persons and take into account such matters as the Director considers necessary or expedient in the circumstances; and
  - (b) require the nominator or nominee to provide any further information.
- (6) After considering the nomination, the Director may –
  - (a) approve the nomination; or

- (b) refuse the nomination.
- (7) However, the Director must not approve the nomination unless –
- (a) a copy of it has been referred to the Commissioner of Police; and
  - (b) the Commissioner of Police has notified the Director to the effect that there is no objection, on security grounds, to the nominee being a responsible worker for the SSDS permit; and
  - (c) the Director is satisfied that the nominee has attained the age of 18 years; and
  - (d) the Director is satisfied that the nominee is a fit and proper person to be a responsible worker for the SSDS permit.
- (8) Section 16 has the same application to a nomination under this section as it has to an application for an SSDS permit.
- (9) If the nomination is approved –
- (a) the nominee becomes a responsible worker for the permit; and
  - (b) the Director is to notify the nominator of the approval, make an appropriate entry in the register and take the action required by section 37.
- (10) If the nomination is refused, the Director is to notify the nominator and the nominee of –
- (a) the refusal; and



- (b) subject to section 73, the reasons for the refusal; and
- (c) the nominator's and nominee's right of review.

**40. Responsible workers – cessation and changes of name**

- (1) The holder of an SSDS permit must notify the Director within 7 days if –
  - (a) a responsible worker for the permit changes his or her name; or
  - (b) a responsible worker for the permit ceases to work for the holder of the permit; or
  - (c) a responsible worker for the permit ceases, other than temporarily, to have any involvement with the authorised SSDS or authorised restricted activity; or
  - (d) a prescribed event happens to or in connection with a responsible worker for the permit.

Penalty: Fine not exceeding 50 penalty units.

- (2) On being so notified, the Director is to make an appropriate entry in the register.

**41. Responsible workers – revocation of status**

- (1) The Director may revoke a person's status as a responsible worker for an SSDS permit if the Director believes on reasonable grounds that –
  - (a) the person has ceased to have any involvement with the authorised SSDS or authorised restricted activity or has ceased working for the holder of the permit; or
  - (b) the person has been negligent in carrying out or supervising the authorised restricted activity; or
  - (c) the person has contravened or been responsible for other persons contravening the conditions of the permit; or
  - (d) the person is not mentally fit to continue as a responsible worker for the permit; or
  - (e) the person has given, or been responsible for the giving of, false or misleading information to the Director or an authorised officer in connection with an application or nomination or about another matter under this Act; or
  - (f) the holder of the permit has given the Director or an authorised officer false or misleading information about the person; or
  - (g) the person has contravened this Act, a related State law or a corresponding Australian law; or

- (h) the person has contravened a direction under Division 6; or
  - (i) the person has, either in this State or elsewhere, committed an offence involving –
    - (i) violence or weapons; or
    - (ii) dishonesty; or
    - (iii) the obstruction or intimidation of persons exercising statutory powers or functions; or
  - (j) the person has, either in this State or elsewhere, committed an offence of another kind that calls into question his or her fitness to continue as a responsible worker for the permit; or
  - (k) the revocation is prudent or necessary having regard to a security threat.
- (2) The Director must revoke a person's status as a responsible worker for an SSDS permit if the person is convicted of a terrorism offence.
- (3) The revocation takes effect as soon as the person whose status as a responsible worker is being revoked, and the holder of the SSDS permit, have both been notified of –
  - (a) the revocation; and
  - (b) subject to section 73, the reasons for the revocation; and
  - (c) their respective rights of review.
- (4) Also, the Director is to –

- (a) notify the Commissioner of Police of the revocation; and
- (b) make an appropriate entry in the register.

**42. Production of identity cards, and associated deceptions**

- (1) A responsible worker for an SSDS permit must immediately produce his or her identity card for inspection if required to do so by an authorised officer.
- (2) A person must not produce to an authorised officer a document that is, or purports to be, an identity card with the intention of falsely representing to the authorised officer that the person is the holder of the identity card.
- (3) A person must not, with intention to deceive, produce to an authorised officer an identity card that has been altered in a material respect or a document that resembles an identity card.
- (4) A responsible worker for an SSDS permit must not cause or allow his or her identity card to be used in a manner calculated to deceive an authorised officer.
- (5) A person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence.

Penalty: Fine not exceeding 50 penalty units.

*Division 6 – Directions***43. Directions to furnish reports**

- (1) The Director may direct the holder of an SSDS permit to give the Director a report about any matter concerning the permit.
- (2) Without limiting the generality of subsection (1), and depending on the circumstances, the direction may be to report about any, or any combination, of the following:
  - (a) the continued need for the permit;
  - (b) any breach of security or other incident concerning the authorised SSDS or authorised restricted activity;
  - (c) any commercial or other dealing involving the authorised SSDS;
  - (d) any security drill carried out under the security plan;
  - (e) any practical or compliance problems with the conditions of the permit;
  - (f) supervisory or security arrangements for any matter relating to the permit;
  - (g) the characteristics or adequacy of any equipment, facility or system.

**44. Directions to furnish medical reports**

- (1) This section applies if the Director reasonably suspects that the holder of an SSDS permit or a

responsible worker for the permit is not, on health grounds, fit to hold the permit or be a responsible worker for the permit.

- (2) The Director may direct the holder of the SSDS permit or the responsible worker for the permit to –
  - (a) have a medical examination of a kind specified in the direction; and
  - (b) furnish the Director with a report of that examination.
- (3) The cost of the medical examination is to be met by the person who is directed to have it.
- (4) The Director must –
  - (a) keep the medical report in such manner as will ensure its confidentiality; and
  - (b) not, except as may be reasonably necessary for the purposes of this Act, disclose the contents of the medical report to any person without the consent of the person medically examined; and
  - (c) return the medical report, or, if it cannot for any reason be returned, destroy it once it is no longer needed for the purposes of this Act.

#### **45. Directions to respond to security threats**

- (1) The Director or an authorised officer, on the instructions of the Commissioner of Police, may direct the holder of an SSDS permit to take specified actions to respond to a security threat.

- (2) Without limiting the generality of subsection (1), and depending on the circumstances, the direction may be to do any, or any combination, of the following:
- (a) do an immediate inventory of, and account for, all stocks of the authorised SSDS;
  - (b) isolate, centralise or disperse the stock of authorised SSDS;
  - (c) place the stock of authorised SSDS under watch or close guard;
  - (d) temporarily transfer some or all of the stock of authorised SSDS to a secure facility;
  - (e) change a method of storage or containment;
  - (f) change locks, passes or access codes;
  - (g) change an itinerary, routine or timetable;
  - (h) install or upgrade fences, barriers or lighting;
  - (i) check the readiness and effectiveness of any security equipment;
  - (j) modify the way in which the authorised restricted activity is carried out or supervised;
  - (k) deny access to the authorised SSDS, or information about that SSDS, to a specified person;

- (l) speed up or defer the taking of any decision or action;
- (m) stop a responsible worker from carrying out, or supervising, all or part of the authorised restricted activity;
- (n) stop another worker from carrying out all or part of the authorised restricted activity;
- (o) audit production, order, despatch, delivery, freight or similar documents relating to the authorised SSDS or authorised restricted activity.

#### **46. Directions to take corrective actions**

- (1) The Director may direct the holder of an SSDS permit to take specified corrective actions if the Director believes on reasonable grounds that –
  - (a) this Act has been or is being contravened by any person in relation to the permit; or
  - (b) the conditions of the permit have been or are being contravened by any person; or
  - (c) there has been negligence on the part of any person in relation to the authorised SSDS or authorised restricted activity.
- (2) Without limiting subsection (1), and depending on the circumstances, the direction may be to do any, or any combination, of the following:
  - (a) conduct a training course for responsible workers;



- (b) reprimand a responsible worker or other worker;
  - (c) stop a responsible worker from carrying out, or supervising, all or part of the authorised restricted activity;
  - (d) stop another worker from carrying out all or part of the authorised restricted activity;
  - (e) put in place, or improve, any supervisory, compliance or auditing procedure relating to the authorised SSDS or authorised restricted activity;
  - (f) revise the security plan for the authorised SSDS and authorised restricted activity;
  - (g) carry out, and furnish the Director with, an independent study or audit of any system;
  - (h) revise any recruitment or training procedures;
  - (i) conduct a security drill;
  - (j) furnish periodic returns, about a matter relating to the authorised SSDS permit or authorised restricted activity, to the Director or an authorised officer.
- (3) The Director may exercise his or her power to give a corrective direction under this section in addition to, or as an alternative to, any other action (short of cancellation of the relevant SSDS permit) that may be taken in relation to the conduct to which the direction relates.

**47. Procedure for giving directions**

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

**48. Offence not to comply with directions**

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

Penalty: In the case of –

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

**49. Taking action to forestall security threats if directions not complied with**

(1) This section applies if –

- (a) the holder of an SSDS permit (in this section referred to as “the delinquent permit holder”) fails to comply with a direction under section 45; and
- (b) the Director, having regard to the nature of the direction and the nature, seriousness and urgency of the relevant security threat, believes on reasonable grounds that the failure to comply poses a clear and present danger to State security or public safety.

(2) The Director, or an authorised officer acting with the express approval of the Director, may –

- (a) enter and remain on premises to which the direction applies without consent or a warrant (if necessary using assistance and reasonable force) even if the premises are unattended or a residence; and
  - (b) stop all or part of a restricted activity from being carried out on the premises; and
  - (c) secure any SSDS on the premises (if necessary by temporarily removing the SSDS and its container to a secure facility); and
  - (d) take all or any of the actions that were supposed to have been taken in respect of the premises pursuant to the direction; and
  - (e) take any other actions that the Director (or authorised officer) considers on reasonable grounds to be necessary or expedient to forestall the security threat.
- (3) The costs, if any, reasonably incurred by the Director (or authorised officer) in acting to forestall the security threat under subsection (2) may be recovered from the delinquent permit holder as a debt due to the Crown.

***Division 7 – Reporting*****50. Loss or theft of SSDS, &c., to be reported**

- (1) The holder of an SSDS permit must notify the Director and the Commissioner of Police immediately if –
  - (a) any quantity of the authorised SSDS –
    - (i) is, or appears to have been, stolen; or
    - (ii) is damaged or destroyed other than as authorised by the permit; or
    - (iii) is lost or cannot be accounted for; or
  - (b) a person attempts to steal, damage or destroy any quantity of the authorised SSDS; or
  - (c) a person steals, destroys or falsifies, or attempts to steal, destroy or falsify, records relating to the authorised SSDS; or
  - (d) any threat or improper inducement apparently involving the authorised SSDS is made against or to the holder of the SSDS permit; or
  - (e) the holder of the SSDS permit knows of any threat or improper inducement, apparently involving the authorised SSDS, being made against or to a responsible worker or other worker, a

close associate or, if the permit holder is a natural person, a relative.

Penalty: Fine not exceeding 100 penalty units.

- (2) A notification under subsection (1) –
- (a) may be given orally or in writing; and
  - (b) is to be supported by such relevant particulars (including particulars of any responsive actions) as are known to the holder of the SSDS permit.
- (3) The holder of an SSDS permit who notifies the Director and the Commissioner of Police of a matter under subsection (1) must give the Director and that Commissioner such particulars as the Director or that Commissioner may require concerning the matter.

Penalty: Fine not exceeding 100 penalty units.

- (4) The holder of an SSDS permit must, within 7 days after giving the Director and the Commissioner of Police an oral notification under subsection (1), give the Director and that Commissioner written confirmation of the oral notification.

Penalty: Fine not exceeding 50 penalty units.

**PART 3 – ADMINISTRATION AND ENFORCEMENT****51. Powers of Director****(1) The Director –**

- (a) has the powers conferred on the Director by this Act; and
- (b) has power to do all things necessary or convenient to be done to exercise those powers.

**(2) The Director –**

- (a) may exercise all of the powers of an authorised officer; and
- (b) when doing so, has all the immunities of an authorised officer.

**52. Appointment of authorised officers**

- (1) The Director, by instrument in writing, may appoint persons to be authorised officers if the Director 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 Director 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 Director is satisfied that the person has the qualifications to do so competently.
- (7) In this section –



**“person”** includes a class of persons.

### **53. 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 52 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 52 is subject to the directions of the Director in exercising powers.

### **54. Identification of authorised officers**

- (1) The Director –
  - (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 Director is to retrieve the person's identity card, if issued, as soon as practicable.
- (4) An authorised officer who is not a police officer must –
  - (a) carry his or her identity card while carrying out duties under this Act; and
  - (b) if practicable, produce the identity card before exercising a power of an authorised officer.
- (5) A police officer who is exercising or about to exercise a power of an authorised officer must, if practicable, comply with a request to identify 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.

**55. Delegation of Director's powers to authorised officers**

The Director may delegate to an authorised officer any of the Director's powers under this Act except –

- (a) the power of appointment or authorisation under section 52; or
- (b) the power of authorisation under section 65; or
- (c) this power of delegation.

**56. General powers of inspection, &c., of authorised officers**

- (1) An authorised officer may enter and search any premises if the authorised officer believes on reasonable grounds that the entry and search is necessary in order to –
  - (a) check whether this Act is being complied with; or
  - (b) check whether the conditions of an SSDS permit are being complied with; or
  - (c) check on the security or condition of an SSDS; or
  - (d) check on the security of a restricted activity in relation to an SSDS; or
  - (e) assess or respond to a security threat.
- (2) 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.

- (3) Schedule 3 has effect in relation to the issue, execution, effect and expiry of warrants for the purposes of this section.
- (4) Despite subsection (2), an authorised officer may enter and search premises, whether attended or not and whether or not a residence, and without consent or a warrant, if he or she believes on reasonable grounds that –
  - (a) an urgent security threat exists as a result of anything occurring, or failing to occur, at the premises in relation to an SSDS; and
  - (b) the authorised officer needs to assess or respond to the security threat urgently; and
  - (c) seeking consent or a warrant would jeopardise or unreasonably delay that assessment or response.
- (5) If an authorised officer believes on reasonable grounds that a vehicle has been, is being or is likely to be used in connection with an SSDS or restricted activity, the officer may, for a relevant purpose –
  - (a) stop or detain the vehicle or cause the vehicle to be stopped or detained; and
  - (b) search the vehicle for an SSDS or for documents, equipment or other things relating to an SSDS or restricted activity.

- (6) If an authorised officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in connection with an SSDS or restricted activity, the officer may, for a relevant purpose, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.
- (7) If the inspection is not to take place immediately, the direction is to be given by notice in writing specifying the time, date and location for the inspection.
- (8) An authorised officer may carry out an inspection of the kind referred to in subsection (6) without notice if the authorised officer believes on reasonable grounds that an urgent security threat exists.
- (9) An authorised officer may, to find out whether this Act is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (4), (5) or (6) or another person capable of doing so to give samples, of a substance for examination and testing if the authorised officer believes on reasonable grounds that the substance is an SSDS or goods that are connected with an SSDS.
- (10) If subsection (9) applies, the authorised officer must give a receipt in an approved form to the person who –
  - (a) appears to be in charge of the premises, vehicle or equipment from or in respect of which the sample is taken; or

- (b) gives the sample.
- (11) An authorised officer may, for a relevant purpose, direct a person in charge or apparently in charge of premises or a vehicle or equipment referred to in subsection (1), (4), (5) or (6) to produce documents.
- (12) The authorised officer may make copies of the documents, or remove them to make copies, but if they are removed the authorised officer must –
  - (a) if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them; and
  - (b) give a receipt in an approved form.
- (13) An authorised officer may, for a relevant purpose, leave at premises written directions to the occupier requiring the occupier, within a specified time –
  - (a) to give, for examination and testing, samples of a substance the authorised officer believes on reasonable grounds to be an SSDS; or
  - (b) to produce documents that may help the authorised officer.
- (14) An authorised officer may, for a relevant purpose, direct a person to answer questions that may help the authorised officer.
- (15) An authorised officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorised officer under this section.

(16) In this section –

**“relevant purpose”** means a purpose specified in subsection (1)(a), (b), (c), (d) or (e)

**57. Authorised officers may require names and addresses**

- (1) An authorised officer may require a person to state the person’s name, age and address if the authorised officer believes on reasonable grounds that the person has been involved with an SSDS or in carrying out a restricted activity in relation to an SSDS.
- (2) When making the requirement, the authorised officer must warn the person that it is an offence to fail to state the person’s name, age and address unless the person has a reasonable excuse.
- (3) The authorised officer may require the person to give evidence of the correctness of the stated name, age or address if the authorised officer suspects on reasonable grounds that the stated name, age or address is false.
- (4) A person must comply with a requirement made of the person by an authorised officer under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Penalty: Fine not exceeding 10 penalty units.

**58. Powers of authorised officers regarding suspected offences**

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



cause it to be moved, to a suitable location for inspection.

- (6) The authorised officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment or another person capable of doing so to give samples of a substance for examination and testing.

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

- (1) After inspecting premises, a vehicle or equipment under section 56 or 58, an authorised officer must take reasonable steps to return the premises, vehicle or equipment to the condition they were in immediately before the inspection.
- (2) No action lies against an authorised officer, the Director or the Crown in relation to the failure by an authorised officer to comply with subsection (1).

**60. 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.

**61. Offence to fail to comply with authorised officer's directions**

A person must comply with a direction given to the person by an authorised officer under section 56 or 58, unless the person has a reasonable excuse for not complying with it.

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.

**62. Self-incrimination no excuse**

A person is not excused from answering a question asked under section 56 on the ground that the answer to the question might tend to incriminate the person, but, except for a corporation –

- (a) the answer to the question; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the answer to the question –

is not admissible in evidence against the person in proceedings other than proceedings for an offence against section 61.

## **PART 4 – OFFENCE PROCEEDINGS AND RELATED MATTERS**

### **63. Time limit for prosecuting offences**

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

### **64. Authorised officers may prosecute offences**

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

### **65. Analysts**

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

**66. Evidentiary matters**

(1) In any proceedings, the production of a certificate purporting to be signed by the Director and stating that, at a time specified in the certificate –

- (a) a specified person was or was not the holder of an SSDS permit; or
- (b) a specified person was or was not a responsible worker for an SSDS permit; or
- (c) a specified SSDS permit was or was not suspended or was or was not otherwise in force; or
- (d) a specified SSDS permit was subject to specified conditions –

is evidence of the matters stated in the certificate.

(2) In any proceedings, the production of a report purporting to be signed by an analyst and stating –

- (a) that at a specified time the analyst took or received a specified sample from a specified person; and
- (b) that at a specified time and place the analyst analysed the sample; and
- (c) what the results of the analysis were –

is evidence of the matters stated in the report.

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

- (a) the appointment of the Director or an authorised officer; or
  - (b) an authorisation under section 52(6); or
  - (c) the authorisation or qualifications of an analyst.
- (4) In any proceedings –
  - (a) it is not necessary to prove the authority of the Director or an authorised officer to do anything under this Act; and
  - (b) a signature purporting to be that of the Director or an authorised officer is evidence of the signature it purports to be.
- (5) In any proceedings, evidence about an entry in the register does not constitute evidence of the truth or otherwise of the matter that the entry relates to.
- (6) In this section –
  - “analyst”** means a person who is authorised under section 65 to perform analyses for the purposes of this Act;
  - “proceedings”** means proceedings for an offence against this Act;
  - “specified”**, in relation to a certificate or report, means specified in the certificate or report;
  - “time”** means a time, a day or a period of time.

**67. Responsibility for acts or omissions of representatives**

(1) If it is relevant in any proceedings to prove a person's state of mind about a particular act, it is enough to establish that –

(a) the act was done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(2) An act done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken have been done also by the person unless the person establishes that the person could not, by the exercise of reasonable diligence, have prevented the act.

(3) If an individual who is convicted of an offence against this Act would not have been so convicted had this section not been enacted, he or she is not liable to be punished by imprisonment for the offence.

(4) In this section –

**“act”** includes –

(a) an omission; and

(b) a course of conduct;

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

**“representative”** means –

- (a) for a body corporate, an officer, employee or agent of the body corporate; and
- (b) for an individual, an employee or agent of the individual;

**“state of mind”**, of a person, includes –

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

## **68. Offences by bodies corporate**

- (1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –
  - (a) the act or omission constituting the offence took place without the person’s knowledge or consent; or
  - (b) the person used all due diligence to prevent that act or omission by the body corporate.
- (2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.



- (3) For the avoidance of doubt, a person who is authorised by a body corporate to exert any degree of control, direction or influence over its activities in this State is taken to be a person concerned in the management of that body corporate.

**69. Proceedings for offences involving identity cards**

In any proceedings against a person for misusing an identity card as a responsible worker for an SSDS permit, it is a defence if the person establishes that he or she was never given that identity card by the holder of the SSDS permit.

**70. Recovery of investigation costs from convicted persons**

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

**71. Prohibiting convicted persons from SSDS involvement**

- (1) In sentencing a person for an offence against this Act, a court may, having regard to the matters referred to in subsection (2) and to such other matters as it thinks fit, and in addition to imposing any other penalty, order that the person be prohibited for a specified period from having any involvement, or a particular involvement, with security-sensitive dangerous substances.
- (2) The matters to which the court is to have regard are –
  - (a) the person's record in carrying out restricted activities in relation to security-sensitive dangerous substances; and
  - (b) any prior convictions of the person relating to security-sensitive dangerous substances; and
  - (c) the circumstances surrounding the commission of the offence for which the person is being sentenced.
- (3) A person who contravenes an order under this section is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) an individual, a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 12 months.

**72. Forfeiture**

(1) If –

- (a) a person is convicted by a court of an offence in relation to an SSDS; and
- (b) the person owns the SSDS or the owner cannot be identified –

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

- (2) The SSDS so forfeited (and, if applicable, its container) to the Crown may be destroyed, sold or otherwise disposed of as the Director, having regard to considerations of State security and public safety, 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.

**PART 5 – MISCELLANEOUS****73. Protection of security-sensitive information**

- (1) If the reasons for a decision made by the Director or another decision-maker under this Act are based, or partly based, on security-sensitive information –
  - (a) the Director or other decision-maker is not required to disclose the existence or content of that information when notifying a person of the decision; and
  - (b) it is sufficient, in any such notification, if it is stated that the decision was made “on security grounds”.
- (2) In the event of an inconsistency between subsection (1) and any other law of the State, subsection (1) prevails.
- (3) In this section –

**“decision”** includes a direction under Division 6 of Part 2;

**“security-sensitive information”** means information that concerns and, if publicly disclosed, may be prejudicial to –

  - (a) the security of the Commonwealth or a State or Territory; or
  - (b) the safety of the public or any group or individual; or

- (c) the operations of a law-enforcement agency of a State or Territory; or
- (d) the operations of a law-enforcement, security or customs agency of the Commonwealth.

#### **74. Applications for review of decisions**

- (1) A person who is aggrieved by a decision made by the Director or an authorised officer under this Act may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.
- (2) The following provisions of the *Magistrates Court (Administrative Appeals Division) Act 2001* do not apply to an application referred to in subsection (1) if the notification given under this Act of the relevant decision stated, pursuant to section 73, that the decision was made on security grounds:
  - (a) Division 1 of Part 4;
  - (b) section 21.
- (3) In determining an application referred to in subsection (1), the Magistrates Court (Administrative Appeals Division) –
  - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any security-sensitive information; and

- (b) in order to prevent the disclosure of the existence or content of any security-sensitive information, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representatives.

- (4) In this section –

**“decision”** includes a direction under Division 6 of Part 2;

**“security-sensitive information”** has the same meaning as in section 73.

**75. Commissioner of Police may intervene in review proceedings**

- (1) The Commissioner of Police may intervene in any proceedings instituted pursuant to section 74.
- (2) When the Commissioner of Police intervenes in proceedings, the Commissioner of Police is taken to be a party to the proceedings and –
  - (a) has all the rights, duties and liabilities of such a party; and
  - (b) may be represented in the proceedings by a State Service Officer, State Service employee, authorised officer, police officer or legal practitioner.

**76. 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 the matter the statement is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

**77. Protection from liability**

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

**78. Exemptions**

- (1) A person may apply to the Director to be exempted from this Act in relation to a low-scale restricted activity.
- (2) The Director, by instrument in writing, may grant the exemption applied for if, after consulting the Commissioner of Police, the Director is satisfied that –

- (a) the low-scale restricted activity does not constitute any kind of security risk; and
  - (b) in the circumstances, it would be unreasonable and onerous for the person to have to be subject to this Act in relation to the low-scale restricted activity.
- (3) If the Director is not so satisfied, the Director is to –
  - (a) refuse the application; and
  - (b) notify the applicant of the refusal and the applicant's right of review.
- (4) An exemption may be granted –
  - (a) on a permanent or temporary basis; and
  - (b) unconditionally or on such conditions as the Director specifies in the instrument of exemption.
- (5) If the exemption is granted on conditions, the person exempted must –
  - (a) comply with those conditions; and
  - (b) put in place procedures and safeguards to ensure that other persons comply with those conditions.

Penalty: Fine not exceeding 50 penalty units.

- (6) On granting an exemption, the Director is to make an appropriate entry in the register.



- (7) The Director, by notice, may revoke an exemption at any time if he or she is satisfied on reasonable grounds that –
- (a) the exemption is no longer justified or safe; or
  - (b) the conditions of the exemption are not being complied with.
- (8) In this section –
- “low-scale restricted activity”** means –
- (a) the acquisition, storage, possession, handling and use of less than 3 kilograms of an SSDS by and for the purposes of an educational, research or analytical laboratory; or
  - (b) a prescribed restricted activity.

## **79. Disposal, &c., of unclaimed SSDS**

- (1) This section applies where –
- (a) the owner of an SSDS seized under this Act is unknown; or
  - (b) an authorised officer reasonably believes that an SSDS has been abandoned in a public place.
- (2) Where subsection (1)(b) applies, the authorised officer may remove the SSDS to a place of safe-keeping.

- (3) The Director is to make a reasonable attempt to identify the owner of the SSDS.
- (4) However, if the Director is unable to identify the owner of the SSDS within 3 months after it is seized or taken into safe-keeping, or no person claims the SSDS within that period –
  - (a) the SSDS becomes the property of the Crown; and
  - (b) the SSDS may be disposed of as the Director, having regard to considerations of State security and public safety, thinks fit.
- (5) This section has effect regardless of whether any proceedings are instituted in respect of the SSDS.
- (6) No action lies against the Crown for disposing of an SSDS under this section.

## **80. Partnership obligations**

- (1) If a partnership applies for an SSDS permit, the partners in that partnership are jointly and severally responsible in respect of that application.
- (2) If a partnership is issued with an SSDS permit –
  - (a) each partner in the partnership is liable to perform the obligations imposed on the holders of SSDS permits by the provisions of this Act; but
  - (b) the discharge by one partner in the partnership of an obligation imposed on

the holders of SSDS permits by a provision of this Act is, unless the provision implies otherwise, a discharge by all of the partners in the partnership of that obligation.

### **81. Refund of application and other fees**

- (1) The Director may waive or refund the whole or any part of an application or nomination fee payable or paid to the Director under this Act if he or she thinks there are compelling grounds to do so.
- (2) Without limiting the generality of this, the Director may make such a refund if the applicant notifies the Director, before the application or nomination is fully processed, that it is being withdrawn.

### **82. Service of documents**

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

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

- (iii) faxed to the person's fax number;  
or
  - (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.

### **83. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe requirements that must be met in relation to security plans for the purposes of section 9(2)(b) and section 12(c).
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined by the Director or an authorised officer.
- (5) The regulations may provide for any matter by incorporating, either specifically or by reference

and either wholly or in part and with or without modification, any code, standards, guidelines, rules or specifications relevant to any security-sensitive dangerous substances or their security, whether as in force at a particular time or as from time to time amended and whether published or issued before or after the commencement of this Act.

#### **84. Amendment of Schedules**

- (1) The Governor, by order, may amend Schedule 1 by doing any one or more of the following:
  - (a) adding an item to the Schedule;
  - (b) omitting an item from the Schedule;
  - (c) omitting a Part or item from the Schedule and substituting another Part or item.
- (2) The Governor, by order, may amend Schedule 2 by doing one or more of the following:
  - (a) adding an item to the Schedule;
  - (b) omitting an item from the Schedule;
  - (c) omitting an item from the Schedule and substituting another item;
  - (d) amending an item in the Schedule by doing one or more of the following:
    - (i) adding a paragraph to the item;
    - (ii) omitting a paragraph from the item;

- (iii) omitting a paragraph from the item and substituting another paragraph.
- (3) For the avoidance of doubt, an item added to or substituted in Part 2 of Schedule 1 pursuant to subsection (1) may, but is not required to, prescribe a substance to be an SSDS without qualification or by reference to –
  - (a) a concentration, quality or form of the substance; or
  - (b) a formulation, mixture or compound of the substance; or
  - (c) any other state, characteristic or quality of the substance; or
  - (d) matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the item.
- (4) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under this section as if the order were regulations within the meaning of that Act.
- (5) An order under subsection (1) is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

**85. Review of operation of Act**

- (1) The Minister is to cause an independent review of the operation of this Act to be undertaken as soon as practicable after 1 July 2010.
- (2) The person who undertakes the review is to give the Minister a written report on the outcome of the review.
- (3) The Minister is to cause of copy of the report to be tabled in each House of Parliament within 10 sitting-days of that House after the report is received by the Minister.
- (4) However, this section does not apply if a committee of either House of Parliament, or a joint committee of both Houses of Parliament, has reviewed the operation of this Act, or has started such a review, before 1 July 2010.

**86. Administration of Act**

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

- (a) the administration of this Act is assigned to the Minister for Infrastructure, Energy and Resources; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

**87. Transitional provision**

The transitional provision set out in Schedule 4 has effect.

**88. Consequential Amendments**

The legislation specified in Schedule 5 is amended as specified in that Schedule.



## SCHEDULE 1 – SECURITY-SENSITIVE DANGEROUS SUBSTANCES

### Section 4

#### PART 1 – INTERPRETATION

1. In this Schedule –

“**ADG 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;

“**explosive**” means a substance that is classified as Class 1 dangerous goods under the ADG Code;

“**UN number**”, of a substance, means the unique identifying serial number listed in the ADG Code for a substance of the same kind.

#### PART 2 – SECURITY-SENSITIVE DANGEROUS SUBSTANCES

1. Ammonium nitrate that –

- (a) has one of the following UN numbers: 1942, 2067, 2068, 2069, 2070, 2071, 2072, 3139, 3375; and
- (b) is not an explosive.

**2.** Ammonium nitrate emulsions that –

- (a) contain more than 45% ammonium nitrate; and
- (b) do not have a UN number; and
- (c) are not explosives.

**3.** Ammonium nitrate mixtures that –

- (a) contain more than 45% ammonium nitrate; and
- (b) do not have a UN number; and
- (c) are not explosives.

**SCHEDULE 2 – GUIDELINES FOR DETERMINING  
LEGITIMATE NEED FOR SSDS PERMIT**

Section 12

1. Prima facie, the use of an SSDS for the following purposes will not constitute a legitimate need to have an SSDS permit:
  - (a) agriculture or horticulture;
  - (b) film-making;
  - (c) fireworks displays or other forms of public or private entertainment;
  - (d) household or domestic purposes;
  - (e) journalism;
  - (f) public demonstrations of explosives;
  - (g) the maintenance of sports grounds, public parks and gardens or other recreational facilities.
2. Prima facie, the use of an SSDS for the following purposes will constitute a legitimate need to have an SSDS permit:
  - (a) academic, scientific or industrial research;
  - (b) building construction or building demolition work;
  - (c) commercial production processes;
  - (d) forestry operations;

- (e) manufacturing, smelting or refining;
- (f) mining;
- (g) quarrying;
- (h) roadworks;
- (i) tertiary education (in science and engineering);
- (j) transportation, distribution and storage connected with any of the above.

## **SCHEDULE 3 – PROVISIONS WITH RESPECT TO WARRANTS**

Section 56(3) and section 58(4)

### **1. Interpretation**

In this Schedule –

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

**“occupier”** includes a person in charge of premises.

### **2. 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 issuing magistrate determines but it must at least specify –
  - (a) when the warrant is issued; and
  - (b) the premises it authorises to be entered; and
  - (c) whether entry is authorised to be made at any time or only during certain hours; and
  - (d) any conditions that the warrant is subject to; and
  - (e) when the warrant ceases to have effect.

**3. Warrant may be applied for and issued by telephone, &c., in urgent situation**

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

- (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, &c.**

- (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 of the warrant, 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 has been 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 otherwise provided by the terms of the warrant, an authorised officer may execute a warrant using such force as may reasonably be required in the circumstances.

**10. Defect in warrant**

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

**SCHEDULE 4 – TRANSITIONAL PROVISION**

## Section 87

**1. Section 8 prosecutions**

No proceedings are to be instituted against a person for a contravention of section 8 that occurs during the 6-month period immediately following the day on which this Act commences.

**SCHEDULE 5 – CONSEQUENTIAL AMENDMENTS**

Section 88

***Annulled Convictions Act 2003***

1. Schedule 1 is amended by inserting after Part 7 the following Part:

**PART 7A – HAZARDOUS SUBSTANCES AND ACTIVITIES**

1. SSDS permit under the *Security-sensitive Dangerous Substances Act 2005*.
2. Responsible worker within the meaning of the *Security-sensitive Dangerous Substances Act 2005*.

***Workplace Health and Safety Act 1995***

1. Section 33(2) is amended by omitting “this Act” and substituting “this or any other Act”.