

2010

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**DANGEROUS GOODS (ROAD TRANSPORT)
REGULATION 2010**

EXPLANATORY STATEMENT

Subordinate Law SL2010—12

Overview

The *Dangerous Goods (Road Transport) Regulation 2010* (the Regulation) is made under part 5.5 of the *Dangerous Goods (Road Transport) Act 2009* (the Act). The Act and the Regulation adopt the national model legislation for the transport of dangerous goods by road and rail (omitting the provisions about rail) that was developed by the National Transport Commission at the request of the Australian Transport Council.

The Act and the Regulation are intended to be used in conjunction with the Australian Dangerous Goods Code 7th edition (the ADG code), which in turn reflects the United Nations Model Regulations for the Transport of Dangerous Goods 14th and 15th editions. The Act and Regulation establish the formal mechanisms for giving legal effect and enforceability to the detailed provisions governing the transport of dangerous goods in the ADG code. All Australian jurisdictions have committed to adopting the model legislation by the end of 2010.

The Regulation is largely based on the model subordinate law for the transport of dangerous goods, which is set out in Schedule 2 of the *National Transport Commission (Model Legislation — Transport of Dangerous Goods by Road or Rail) Regulations 2007* (Cwlth).

The National Transport Commission's webpage on the model law for the transport of dangerous goods states that:

"This model law aims to reduce the risks of personal injury, property damage and environmental harm arising from the transport of dangerous goods by road and rail. It gives effect to relevant requirements of the 7th edition Australian Dangerous Goods Code and promotes national uniformity or consistency."¹

The explanatory statement for the model legislation can be viewed at [http://www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/5FF6CF31ABFD02BCCA2573700006D07B/\\$file/F2007L03868.pdf](http://www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/5FF6CF31ABFD02BCCA2573700006D07B/$file/F2007L03868.pdf).

As the primary mechanism for enforcing the ADG code, the Regulation sets out provisions relating to the following aspects of the transportation of dangerous goods:

- definitions of key concepts, including concepts relating to packaging and containers for the transport of dangerous goods (part 1.2);
- training and competency of people involved in a transport of dangerous goods activity (chapter 2);
- determinations and other rule-setting by competent authorities including administrative determinations and approvals (chapters 3 and 19);
- transporting dangerous goods to which special provisions apply - these are goods listed in the ADG code as having special provisions restricting

¹ <http://www.ntc.gov.au/viewpage.aspx?documentid=853>

- or prohibiting their transportation by road (chapter 4);
- packaging of dangerous goods for transportation (chapters 5 and 6);
- consignment procedures, including marking, labelling and placarding loads (chapter 7);
- safety standards for vehicles and equipment involved in transporting dangerous goods (chapter 8)
- transporting higher-risk goods such as self-reactive substances, organic peroxides and goods too dangerous to be transported (chapter 9);
- stowage, loading and restraint (chapter 10);
- segregation of dangerous goods (chapter 11);
- bulk transfer of dangerous goods (chapter 12);
- documentation requirements for transporting dangerous goods (chapter 13);
- safety equipment (chapter 14);
- procedures during transport (chapter 15);
- dealing with emergencies during transportation (chapter 16);
- mutual recognition schemes for interstate matters (chapter 17);
- exemptions from the legislation and the ADG code requirements (chapter 18);
- licences for drivers and vehicles (chapter 20);
- insurance requirements (chapter 21);
- review of decisions (chapter 22); and
- transitional arrangements (chapter 23).

The Regulation needs to be read in conjunction with the ADG code as that code sets out in detail the content of the various safety duties that are the subject of the offence provisions in the Regulation. The ADG Code can be accessed and downloaded free of charge from the National Transport Commission's website at

<http://www.ntc.gov.au/viewpage.aspx?DocumentId=01147>.

The Regulation applies the chain-of-responsibility concept to many of the safety obligations created by the ADG code, by creating several series of parallel offences that apply to people who are consignors, loaders, prime contractors and drivers of vehicles involved in the transportation of dangerous goods. It should be noted that the Regulation, like the model subordinate law, tends to specify a lower penalty for drivers than for other persons in the chain-of-responsibility, recognising that drivers may have less capacity to establish and influence work practices associated with the transport of dangerous goods.

Many of the offences in the Regulation, which are drawn from the model subordinate law, have fault elements of knowledge and a form of constructive knowledge that applies if a person "ought reasonably to know" a matter. While the *Criminal Code 2002* does not include this type of constructive knowledge as a fault element under that Code, section 17 (2) of the Code expressly anticipates that a law that creates an offence may provide for other fault elements for a physical element of the offence. This form of fault element is more prevalent in regulatory offences than in criminal law offences,

especially in relation to offences involving breaches of safety duties, and can be seen as philosophically related to the tort law concept of risk or damage that is reasonably foreseeable.

Examples of other safety-related legislation that use the “ought reasonably to know” fault element include the *Food Act 2001*, the *Road Transport (Safety and Traffic Management) Act 1999*, the *Dangerous Substances (General) Regulation 2004* and the *Road Transport (Mass, Dimension and Loading) Act 2009*.

Several of the offences in the Regulation, particularly those involving noncompliance with the ADG code, are either strict liability offences or have elements to which strict liability applies. For those offences or elements of offences to which strict liability applies, there is no requirement for the prosecution to establish that the defendant had a particular state of mind (for example, intention, knowledge, recklessness or negligence) when the actions or circumstances constituting the offence or element of the offence were done or otherwise occurred.

When assessing whether an offence in new legislation is suitable to be a strict liability offence, the following criteria may be relevant:

- whether the defendant was “put on notice” of a requirement to do an act, and that a failure to do so will result in the commission of an offence;
- whether the defendant can be reasonably expected, because of his or her admission to a particular profession or because the requirements of a regulatory regime to which he or she is subject, to know of the person’s legal obligations under that regime;
- whether the commission of the conduct constituting the offence is technical in nature, or whether the commission of the conduct is “morally blameworthy” or “repugnant”: see *Wholesale Travel Group Inc v R* [1991] 3 S.C.R. 154;
- whether the burden on the defendant to raise a mistake of fact defence is an evidential or legal one;
- whether requiring the prosecution to prove a subjective mental fault element or higher level of fault would impose a difficult or impossible burden on it, thereby undermining the legitimate regulatory objectives of the state; and
- the severity of the penalty for the offence: a penalty of imprisonment is very serious, and requires exceptional justification.

In *Travel Group Inc* a majority Court drew a distinction between ‘true crimes’ and regulatory offences. The Court observed the earlier distinction it had drawn in *R v City of Sault Ste. Marie* [1978] 2 S.C.R. 1299. In that case Dickson J (as he then was), writing on behalf of a unanimous Court, recognised:

‘public welfare offences as a distinct class. ... such offences, although enforced as penal laws through the machinery of the criminal law, ‘are in substance of a civil nature and might well be regarded as a branch of administrative law to which traditional principles of criminal law have but limited application.’

Cory J, writing for the majority in *Travel Group Inc*, observed that:

'It has always been thought that there is a rational basis for distinguishing between crimes and regulatory offences. Acts or actions are criminal when they constitute conduct that is, in itself, so abhorrent to the basic values of human society that it ought to be prohibited completely. Murder, sexual assault, fraud, robbery and theft are all so repugnant to society that they are universally recognized as crimes. At the same time, some conduct is prohibited, not because it is inherently wrongful, but because unregulated activity would result in dangerous conditions being imposed upon members of society, especially those who are particularly vulnerable.'

The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

It follows that regulatory offences and crimes embody different concepts of fault. Since regulatory offences are directed primarily not to conduct itself but to the consequences of conduct, conviction of a regulatory offence may be thought to import a significantly lesser degree of culpability than conviction of a true crime. The concept of fault in regulatory offences is based upon a reasonable care standard and, as such, does not imply moral blameworthiness in the same manner as criminal fault. Conviction for breach of a regulatory offence suggests nothing more than that the defendant has failed to meet a prescribed standard of care.'

The Court recognized that strict liability offences would be more readily justified when applied to regulatory offences which do not imply the same degree of moral blameworthiness as 'true crimes'.

Having regard to the matters considered above, it is considered that the strict liability offences in the Regulation impose reasonable and proportionate limitations on the presumption of innocence in section 22 (1) of the *Human Rights Act 2004*. The offences are essentially of a regulatory nature and are expressly intended to reduce the risks to public health and safety that may arise in the course of transporting dangerous goods by road. The use of strict liability offences will substantially assist in protecting the efficiency and integrity of the regulatory scheme for transporting dangerous goods and is consistent with the approach taken in the national model legislation.

Notes on clauses

Chapter 1 Preliminary

Part 1.1 Introduction

This Part provides introductory details relevant to the Regulation.

Clause 1 provides that the Regulation, when enacted, will be known as the *Dangerous Goods (Road Transport) Regulation 2010*.

Clause 2 states that the Regulation commences on the day that section 196 (regulation making power) of the *Dangerous Goods (Road Transport) Act 2009* commences.

Clauses 3 to 5 are standard provisions about the dictionary, the status of notes in the Regulation and the application of the Criminal Code.

Clause 6 states the main objects of the Regulation are to detail the obligations of people who transport dangerous goods by road transport; limit the risks of injury and damage that may arise from transporting dangerous goods by road and to give effect to the requirements of the ADG code.

Clause 7 sets out situations or cases where the application of the Regulation does not apply. These relate to the transport of dangerous goods by, or at the direction of, an authorised person or member of an emergency service, to the extent necessary to avoid, eliminate or minimise a dangerous situation; the transport of small loads (with stated restrictions) that are not in the course of transporting goods by road; dangerous goods that are part of a vehicle's operating or portable safety equipment. Also, the Regulation does not apply to the transport of explosives or radioactive materials except where they are being transported with other dangerous goods.

Clause 8 provides that when people transport quantities of specified dangerous goods below a stated level as tools of trade or for private use, they are exempt from all the obligations imposed by the Regulation with the exception of requirements in relation to packing and labelling of the goods. Limitations are also placed on where stated amounts of specified dangerous goods may be stowed in the transport vehicle. It is an offence to not comply with the requirements set down in this clause. The term 'aggregate quantity' is defined in the Regulation's dictionary as being the number of kilograms or litres of the dangerous goods.

Part 1.2 Interpretation

Division 1.2.1 Key concepts

Clause 9 states that goods are dangerous goods if they are so determined under clause 29(1)(a), or they satisfy the dangerous goods classification

criteria in part 2 of the ADG code. However, even though goods may satisfy the dangerous goods classification in the ADG code, they may be considered not to be dangerous goods under a clause 29(1)(a) determination or identified in a special provision of the ADG code as not being subject to the code.

Clause 10 identifies goods that are too dangerous to be transported – these being those that are listed in Appendix A of the ADG code, those determined under clause 29(2)(a) and goods that are too sensitive or unstable to be transported.

Clause 11 provides that a UN class, UN division or UN category of dangerous goods may be that which is determined under clause 29(1)(b) or if there is no such determination then the class, division or category determined for the goods in accordance with the ADG code. Note 1 explains that there are 9 classes of dangerous goods, some of which are further divided into divisions and categories.

Clause 12 explains that dangerous goods that are able to be assigned to more than 1 UN class or division are assigned a subsidiary risk. Such goods have a subsidiary risk if a determination under clause 29(1)(c) is made to that effect or if there is no such determination, the subsidiary risk is that determined in accordance with the ADG code.

Clause 13 explains that dangerous goods are assigned to a packing group indicating the degree of danger (high, medium or low) and the level of containment required for the goods. If there is no determination under clause 29(1)(d) assigning the goods to a particular packing group, then the packing group is determined in accordance with the ADG code.

Clause 14 explains that dangerous or other goods are incompatible with dangerous goods if identified as such under chapter 9.1 of the ADG code, or are so determined under this Regulation or there is an increased risk if the goods are mixed, contact each other or otherwise interact with the dangerous goods.

Division 1.2.2 - Other important concepts

Clauses 15 to 21 provide the meaning of a number of important concepts including:

- packaging
- bulk container
- intermediate bulk container (IBC)
- multiple element gas container (MEGC)
- packed in limited quantities
- tank
- loads.

Division 1.2.3 - Certain references and inconsistency between regulation and codes etc

This division, clauses 22 to 26, clarifies what is meant by references in this Regulation to instruments, determinations, exemptions, approvals and licences and corresponding determinations, exemptions, approvals and licences and variations of the same.

Clause 23 disappplies section 47 (6) of the *Legislation Act 2001*. This means that future changes to the ADG code do not need to be notified on the Legislation Register in order to be applied under the Regulation. The note to this clause explains that the ADG code can be accessed through the National Transport Commission website.

Chapter 2 - Training and competency

Clause 27 provides that a person commits an offence if that person is responsible for the management and control of a transport of dangerous goods activity and has not received proper training to enable him or her to manage, control or supervise another person to properly undertake the activity. Subclause (4) defines the term ‘transport of dangerous goods’ for the section as meaning an activity involved in the transport of dangerous goods and includes a range of matters such as packing, unloading and driving a vehicle.

A person also commits an offence if the person employs or permits another person who is not adequately trained to undertake the activity or fails to properly supervise that person to ensure that they can perform the activity satisfactorily.

Clause 28 provides that the competent authority may approve a test of competence or a training course for drivers of road vehicles transporting dangerous goods only if satisfied that a person who completes such test or training will have the appropriate skills and knowledge to satisfy the requirements of this Regulation.

Chapter 3 - Determinations

Clause 29 provides that the competent authority may determine, by notifiable instrument, whether goods are or are not dangerous goods, the particular UN class, division, category or packing group of the dangerous goods, any particular subsidiary risk, and incompatibility with particular dangerous goods.

The competent authority may also determine whether the dangerous goods are too dangerous to be transported, whether they can be transported in the same freight container or whether they can be transported in any packaging despite any prohibition or authorisation in the dangerous goods list.

Clause 30 permits the competent authority to determine the kind of vehicle, transport route, areas, times, quantities and packaging that may or may not apply to the transport of dangerous goods.

Clause 31 explains that an administrative determination is one that is made on the application of a person and applies only to the person.

Clause 32 explains that the competent authority can place conditions on determinations if necessary for the safe transport of dangerous goods.

Clause 33 provides that it is a strict liability offence to contravene a condition of a determination.

Clause 34 explains that if a determination places an obligation on a person that is contrary to an obligation imposed by the Regulation, the person is taken to fulfil the obligation under the Regulation if he or she instead complies with the determination. In effect, a determination can displace an obligation under the Regulation.

Clause 35 requires the competent authority to keep a register of determinations or, in conjunction with other competent authorities, a central register. It requires the competent authority to record each determination (except administrative determinations), revocation of determinations and decisions of the competent authorities panel (CAP) reversing a decision that a corresponding determination has effect in all or participating jurisdictions.

Clause 36 sets out the details that must be included in the register in regard to registered determinations.

Clause 37 provides that, where a determination prohibits or regulates something, a person commits an offence if the determination applies to that person and the person does something prohibited or contrary to that determination. The person has a defence to a prosecution against this clause if they did not know, and could not be reasonably expected to know, about the determination, or that the determination applied to them.

Chapter 4 - Transport of dangerous goods to which special provisions apply

Clause 38 explains that this chapter applies to dangerous goods which are subject to a special provision prohibiting the transport of the goods by road or restricting the way the goods are to be transported by road. Special provisions may apply to dangerous goods in the dangerous goods list set out in section 3.2.3 of the ADG code.

Clauses 39 to 43 apply chain-of-responsibility principles to breaches of a special provision relating to the transport of dangerous goods by road, by creating a series of parallel offences that apply when a person, who is a consignor, packer, loader, prime contractor or driver is involved in transporting

dangerous goods by road and fails to comply with the special provision, and the person either knows, or ought reasonably to know, about the non-compliance.

Chapter 5 - Packaging

This chapter deals with packaging requirements in relation to dangerous goods, including packaging design, suitability, testing, approvals and offences where a person contravenes a packaging requirement.

Part 5.1 - General

This part provides general requirements in regard to dangerous goods packaging.

Clause 44 indicates that the requirements of this chapter do not apply to dangerous goods packed in limited quantities.

Clause 45 explains that a reference in this chapter to dangerous goods packed in accordance with the ADG code, part 4, includes a reference to the goods being packed in accordance with any packing requirements stated in the dangerous goods list (which is part of the code).

Part 5.2 - Suitability and design of packaging

This part deals primarily with matters relating to the testing and approval of designs for packaging of dangerous goods for transport and the creation of offences where there has been a contravention of a packaging design requirement.

Clause 46 explains that for this part a ***recognised testing facility*** for a packaging design may be one of the following:

- a testing facility registered by the National Association of Testing Authorities (NATA) to conduct performance testing under the ADG code for the packaging design type;
- if there is not a NATA registered facility, a testing facility in Australia capable of conducting the tests;
- a facility in a foreign country that has been approved by a public authority to conduct such performance tests.

Clause 47 sets out when packaging is unsuitable for the transport of dangerous goods, for example, the packaging is not approved, does not meet relevant requirements of the ADG code, is damaged or defective, etc.

Clause 48 creates strict liability offences which apply if a person applies an ADG code marking on packaging that is not a design which has been approved under clause 50 or in circumstances where the marking is not appropriate for the packaging.

Clause 49 provides that where packaging is required to be tested under the ADG code, a person may apply under clause 175 to the competent authority seeking approval of the packaging design for use in transporting dangerous goods. The application must contain the information required under the ADG code.

Clause 50 provides that, before approving a packaging design for use in the transport of dangerous goods, the competent authority must be satisfied that it complies with, or is permitted by, the ADG code and that it satisfies relevant code testing and inspection requirements. The competent authority may rely on any complying test certificate issued by a recognised testing facility in its decision on whether the packaging design satisfies any particular testing requirement.

The competent authority may put a condition on the packaging design approval about construction, packing, maintenance or use of the packaging where it considers it is necessary for the safe transport of dangerous goods.

Clause 51 creates an offence which applies if a person contravenes an approval condition about the construction, packing, maintenance or use of the packaging and the person knows, or ought reasonably to know, about the contravention.

Clause 52 provides that a recognised testing facility may certify that a packaging design type has passed particular performance tests for particular dangerous goods. In the case of an NATA registered testing facility, the test certificate or report must contain details required of the ADG code and be in the approved form. Where the test is conducted in Australia by a recognised testing facility that is not NATA registered, the test is required to be observed either by the competent authority or by someone acting for the competent authority, and the test certificate or report must contain the details required by the ADG code.

Clause 53 enables a competent authority to approve an application for an overpack preparation method which does not comply with the ADG code, if it considers the alternative method does not involve greater risk than the code approved method. The competent authority can apply any condition to the approval it considers will improve the safe use of the overpack to transport dangerous goods.

Clause 54 creates an offence which applies if a person contravenes a condition about an overpack's use and the person knows, or ought reasonably to know, about the contravention.

Clause 55 enables the competent authority to authorise an entity to issue approvals under clause 50 (packaging designs) and clause 53 (overpack preparation methods). The entity must comply with any conditions the competent authority requires it to abide by when issuing approvals as well as complying with the requirements of the ADG code. The entity must provide the competent authority with the required details of the approval.

The clause also clarifies that a reference to the competent authority may be read as a reference to the authorised entity where the entity has issued approvals relevant to clauses 49, 50 and 53 and parts 19.1 and 19.4 of the Regulation (these parts deal with administrative determinations and cancellations or variations of determinations).

The competent authority may withdraw an entity's authorisation given under this provision, but such action does not affect any approvals issued by the entity before such action takes effect.

Chapter 6 - Offences

This chapter contains various offences relating to preliminary matters for the transport of dangerous goods.

Part 6.1 - Goods suspected of being dangerous goods

Clause 56 applies where a person consigns goods for transport and it is not clear if those goods are dangerous goods. The person commits an offence if he or she either suspects, or ought reasonably to suspect, that they are dangerous goods and consigns or transports them before they are classified under the ADG code or become the subject of a determination under clause 29 of the Regulation.

Part 6.2 - Prohibition on the sale or supply of non-compliant packaging

Clause 57 provides that it is a strict liability offence to sell, supply or offer to sell or supply packaging for use in transporting dangerous goods, but no offence is committed if the packaging:

- has received design approval under clause 50 and is appropriately marked in accordance with the ADG code; or
- complies with any relevant requirements of the ADG code.

Part 6.3 - Offences - general packaging

Clause 58 explains the concept **general packaging**, which is used in part 6.3. It means any packaging that is not a portable tank, MEGC, bulk container, freight container, tank on a tank vehicle or an overpack.

Clause 59 deals with consigning goods in unsuitable general packaging or where goods are not packed properly. It provides that a consignor commits an offence if the person knows, or ought reasonably to know, that the packaging for the consigned goods is unsuitable or does not comply with the ADG code, part 4.

Clause 60 provides that it is an offence to pack dangerous goods if the packer knows, or ought reasonably to know, that the packaging is unsuitable or does not comply with the ADG code.

Clause 61 provides that it is an offence if a person is a loader for dangerous goods in general packaging and knows, or ought reasonably to know, that the packaging is so damaged or defective that it is not safe for transporting the goods.

Clause 62 parallels clause 61 and applies to prime contractors.

Clause 63 parallels clause 61 and applies to drivers.

Part 6.4 - Offences - other packaging

Clause 64 explains that ***other packaging***, when used in part 6.4 of the Regulation, means a portable tank, MEGC, demountable tank, bulk container, freight container and a tank on tank vehicle.

Clause 65 provides that the manufacturer of a portable tank or MEGC used for transporting goods commits an offence if he or she fails to attach a compliance plate as required by the ADG code. It is a defence if the manufacturer has marked the tank in accordance with the ADG code in lieu of a compliance plate. Clause 65(2) provides that the manufacturer of tank vehicles used for transporting goods commits an offence if he or she fails to attach a compliance plate as required by the ADG code. The offences under the clause are strict liability offences.

Clause 66 provides that it is a strict liability offence for a person who owns a portable tank, demountable tank or MEGC to use that item for transporting dangerous goods if it unsuitable for that purpose.

Clause 67(1) deals with consignors who provide other packaging for transporting dangerous goods, and provides that the consignor commits a strict liability offence if the packaging is unsuitable or the goods are not packed in compliance with the ADG code, part 4. Clause 67(3) applies to consignors who use other packaging provided by someone else, and provides that the consignor commits an offence if he or she knows, or ought reasonably to know, the other packaging is unsuitable or the goods are not packed in compliance with the ADG code

Clause 68 is related to clause 67 and provides that a packer of dangerous goods for transport commits an offence if the packer knows, or ought reasonably to know, that the other packaging is unsuitable or the goods are not packed in compliance with the ADG code.

Clause 69 provides that a person who loads dangerous goods in other packaging commits an offence if the person knows, or ought reasonably to know, that the other packaging is unsuitable for transporting the goods.

Clause 70(1) applies to prime contractors and parallels clause 67(1). Clause 70(3) also applies to prime contractors and parallels clause 67(3) but has a fault element of knowledge or constructive knowledge.

Clause 71 applies to drivers and makes it an offence for a driver to transport dangerous goods if he or she knows, or ought to know, that the other packaging for the goods is unsuitable or does not comply with the ADG code, part 4.

Part 6.5 Offences - overpacks

Clause 72 provides that it is a strict liability offence to consign dangerous goods in an overpack that does not comply with the ADG code, section 5.1.2 or an overpack approval under clause 53 of the Regulation.

Clause 73 provides that a person commits an offence if he or she packs dangerous goods in an overpack if the person knows, or ought reasonably to know, that the packing of the overpack or the preparation of the overpack or its contents does not comply with the ADG code, section 5.1.2 or an overpack approval under clause 53 of the Regulation.

Clauses 74 to 76 inclusive parallel clause 73 and apply to loaders, prime contractors and drivers, respectively, using chain-of-responsibility principles.

Chapter 7 - Consignment procedures

Part 7.1 – Marking and labelling

This part deals with offences involving the marking and labelling of dangerous goods for transportation. As marking and labelling provide important information to people transporting the goods that affects safety procedures for the transportation, it is very important that marking and labelling is accurate and complete if accident risk is to be minimised. Many of the offences in this part are strict liability offences, to highlight that people involved in transporting dangerous goods have a positive duty to ensure that these goods are correctly marked and labelled. There are also offences where the fault element is knowledge or constructive knowledge.

Clause 77 explains when something is ***appropriately marked***, and refers to the requirements of the ADG code.

Clause 78 provides that it is a strict liability offence for a person to consign goods for transport if the package for those goods is not appropriately marked, or if the marking or labelling is false or misleading in a material particular. This provision provides for higher penalties if the packaging is large packaging or an overpack.

Clause 79 makes it a strict liability offence to consign packaged goods for transport if they are marked or labelled as dangerous goods but in fact those goods are not dangerous goods.

Clause 80 creates two offences that apply to people who pack dangerous goods for transport. The first offence applies where a person packs

dangerous goods and the package is not, or will not be, appropriately marked when it is transported and the packer either knows, or ought reasonably to know, that the package is not or will not be appropriately marked. The second offence applies where a packer marks or labels a package in a way that is false or misleading in a material particular, and the packer either knows, or ought reasonably to know, that the mark or label is false or misleading.

Clause 81 is similar to clause 79 and makes it an offence for a packer to mark or label goods as though they were dangerous goods if they are not in fact dangerous goods. Unlike clause 79, this offence has a fault element of knowledge or constructive knowledge.

Clause 82 is similar to clause 80, and applies to prime contractors. The first offence applies where a prime contractor transports packaged dangerous goods that are not appropriately marked and the prime contractor either knows, or ought reasonably to know, that the package is not appropriately marked. The second offence applies where the mark or label on the package is false or misleading in a material particular, and the prime contractor either knows, or ought reasonably to know, that the mark or label is false or misleading.

Clause 83 is similar to clause 81 and makes it an offence for a prime contractor to transport goods that are marked as dangerous goods if the prime contractor knows, or ought reasonably to know, that the goods are not dangerous goods.

Part 7.2 - Placarding

Clause 84 explains the concept of **placards** and **appropriately placarded**, which are used in part 7.2 of the Regulation.

Clause 85 explains when goods must be placarded.

Clause 86 provides that it is an offence for person to consign a placard load if the person knows, or ought reasonably to know, that the load is not appropriately placarded. It is also an offence if the person knows, or reasonably ought to know, that the placarding is false or misleading in a material particular.

Clause 87 makes it an offence to consign a load for transport in a transport unit that is placarded, if the consignor knows, or ought to know, that the goods are not dangerous goods.

Clause 88 to 93 contain offences that are parallel to the offences in clauses 86 and 87, and which apply to loaders, prime contractors and drivers.

Chapter 8 - Safety standards - vehicles and equipment

This chapter contains provisions that require people involved in transporting dangerous goods to comply with the safety standards set out in chapters 4.4 and 6.9 of the ADG code.

Clause 94 provides that it is an offence for a person who owns a vehicle used in transporting dangerous goods if the vehicle or its equipment does not comply with chapters 4.4 and 6.9 of the ADG code. This offence, and the offence under clause 97, are strict liability offences, unlike the related offences in clauses 94 to 96, which provide for a fault element of knowledge or constructive knowledge. This distinction is made because the owner of the vehicle, or a prime contractor, are better placed than other persons involved in the transport of dangerous goods to control and supervise the compliance of a vehicle or its equipment with the applicable safety standards.

Clauses 95 to 98 apply chain-of-responsibility principles to breaches of safety standards for vehicles and equipment, by creating a series of parallel offences that apply when a person who is a consignor, loader, prime contractor or driver are involved in transporting dangerous goods in a vehicle where that vehicle or its equipment fail to comply with the safety standards in chapters 4.4 and 6.9 of the ADG code, and the person either knows, or ought reasonably to know, about the non-compliance.

Chapter 9 - Transport operations – certain dangerous goods

Part 9.1 - Self-reactive substances, organic peroxides and certain other substances

This part deals with the transport of certain dangerous goods that are particularly reactive or dangerous to handle and to which special handling provisions are included in the ADG code, chapter 7.1.

Clause 99 describes the dangerous goods to which part 9.1 applies. Many of these goods are chemically unstable, self-reactive, toxic or infectious - they require especially sensitive handling if the risk of harm to the public or the environment is to be minimised.

Clauses 100 to 103 apply chain-of-responsibility principles to breaches of the ADG code, chapter 7.1 by creating a series of parallel offences that apply when a person who is a consignor, loader, prime contractor or driver involved in transporting goods listed in clause 99, the person fails to comply with their obligations under the ADG code, chapter 7.1 and the person either knows, or ought reasonably to know, about their non-compliance. Clause 101, which applies to a loader, is a strict liability offence.

Clause 102(2) creates an additional offence that applies where a prime contractor who is transporting infectious substances of UN division 6.2 becomes aware that the packaging is leaking or damaged and fails to comply with section 7.1.7.2.2. of the ADG code. That section requires the prime contractor to avoid handling the damaged packages, to inspect adjacent packages for damage or contamination, to inform emergency services and to notify the consignor and/or consignee about the problem. This offence was inserted into the model subordinate law in 2008. It applies only to prime contractors, and at this stage there is no parallel offence for loaders or drivers.

Part 9.2 - Goods too dangerous to be transported

This part deals with goods that are designated as goods too dangerous to be transported, and creates offences for transporting goods that are so designated. The concept of **goods too dangerous to be transported** is explained in clause 10.

The note at the beginning of the part explains that the offence for people who consign goods too dangerous to be transported is contained in the Act itself, in recognition of the seriousness of that offence and the penalties attached to it.

Clauses 104 to 106 create offences that apply to a person who is the loader, prime contractor or driver in relation to the transport of goods too dangerous to be transported, where the person either knows, or ought reasonably to know, that the goods are goods too dangerous to be transported.

Chapter 10 - Stowage, loading and restraint

This chapter deals with the stowage, loading and restraint of dangerous goods being transported by road.

Clauses 107 to 110 apply chain-of-responsibility principles to breaches of the ADG code, chapter 8.1 and chapter 8.2 by creating a series of parallel offences. The first series of parallel offences - clauses 107(1), 108(1), 109(1) and 110(1) - applies to a person involved in transporting a placard load of dangerous goods, where the person either knows, or ought reasonably to know, that the requirements for stowing, loading and restraining those goods under chapter 8.1 of the ADG code are not being met. The term **placard load** is defined in the dictionary to the Act. General requirements relating to placard loads are set out in part 7.2 of the Regulation, including clause 85 which explains when a load must be placarded.

The second series of parallel offences - clauses 107(2), 108(2), 109(2) and 110 (2) - applies to a person involved in transporting dangerous goods in a transport unit where the goods are not restrained in accordance with the ADG code, chapter 8.2, and the person either knows, or reasonably ought to know, about the non-compliance with that chapter.

Chapter 11 - Segregation

This chapter deals with requirements for segregating incompatible goods during transportation. The concept of when goods are *incompatible* is explained in clause 14 of the Regulation. The purpose of the segregation requirements is to minimise the risk of harm to people or the environment from mixing dangerous goods that are incompatible.

Clause 111 explains which goods are covered by the segregation requirements. In summary, these goods are:

- placard loads
- non-placard loads of certain dangerous goods that are transported with food or food packaging.

Clause 112 provides that the offences in chapter 11 do not apply where dangerous goods are transported with food that the driver has in the cabin for his or her own use.

Clauses 113 to 116 apply chain-of-responsibility principles to breaches of the ADG code, part 9 or segregation requirements in approvals made under clause 118 of the Regulation. This series of offences deals with consignors, loaders, prime contractors and drivers involved in transporting dangerous goods where they know, or ought reasonably to know, that incompatible goods are being transported together and are not properly segregated.

Clause 117 deals with applications for design approval for type II segregation devices and permits the competent authority to approve a design that complies with the ADG code, chapter 6.11.

Clause 118 deals with applications for approval of methods of segregation that do not comply with the ADG code, part 9. This clause recognises that there may be occasions when strict adherence to the ADG code is impracticable and the alternative method carries no greater risk than an ADG code-compliant segregation method. The competent authority can impose conditions on methods of segregation approved under clause 119.

Clause 119 makes it an offence for a person to contravene a condition of the approval. This is a strict liability offence, as persons who have been granted an approval can reasonably be expected to be familiar with the conditions associated with an approval and to be in a position to ensure compliance with those conditions.

Chapter 12 - Bulk transfer of dangerous goods

Part 12.1 - Bulk transfer of dangerous goods - general

This part consists of clause 120, which explains the meaning of *bulk transfer* for the purposes of chapter 12. In summary, bulk transfer is the process of moving otherwise unpackaged dangerous goods by pipework or hose

between containers that may be tanks, bulk containers, pressure drums, tubes, multiple-element gas containers (MEGCs) or intermediate bulk containers (IBCs).

As bulk transfers involve goods that are unpackaged, there is a risk of spillage, leaking or other environmental contamination if the transfer equipment is faulty. The ADG code addresses these risks by imposing requirements for hose assemblies to meet Australian Standards, and to be inspected and tested regularly, including electrical and hydrostatic pressure testing.

Part 12.2 - Equipment and transfer

This part contains provisions to enforce the ADG code requirements relating to equipment used in bulk transfers, which are set out in chapter 10.1 of the ADG code, and the requirements relating to transfers that are set out in chapter 10.2 of that code.

Clause 121 creates an offence if a person uses a damaged or defective hose assembly for a bulk transfer, and the person either knows, or ought reasonably to know, about the damage or defect and the safety risk it poses for the transfer of the goods. It also creates an offence of using a hose assembly where the person knows, or ought reasonably to know, that the hose assembly has not met requirements in the ADG for construction, assembly, maintenance, inspection or testing.

Clause 122 creates a series of offences relating to the carrying out of bulk transfers. Clause 122(1) deals with failures to ensure that goods are transferred in the prescribed way (see subclause (7)) and failures to eliminate or reduce the risks associated with the bulk transfer. Clause 122(2) deals with transfers to incompatible receiving receptacles or receiving receptacles that already contain incompatible dangerous goods. Clause 122(3) deals with failures to deal appropriately with leakages, spills or escapes during a bulk transfer. Clause 122(5) provides a defence for an offence against clause 122(1), if the defendant proves that he or she complied with the obligations as far as was practicable. This defence has a legal onus of proof. A legal onus is considered appropriate for this defence, in order to emphasise that people who engage in the inherently risky activity of bulk transferring dangerous goods for payment are required to take all reasonable steps to minimise the risks of harm to people and the environment from that activity and are in the best position to inform the courts of the steps that they did in fact take to comply with their obligations.

Clause 123 is related to clause 121(2) and makes it a strict liability offence for a person who occupies premises where a bulk transfer occurs to fail to ensure that hose assemblies used in the transfer meet the requirements in the ADG for construction, assembly, maintenance, inspection or testing.

Clause 124 is similar to clause 122 and applies to the occupier of premises where a bulk transfer occurs. It makes it an offence if the occupier fails to

ensure that goods are transferred in compliance with the ADG code and fails to avert, eliminate or minimise risk. The defence in clause 124(3) mirrors the defence in clause 122(5), discussed above.

Clause 125 makes it an offence for an occupier to fail to keep records as required by section 10.1.3.4 of the ADG code. This is a strict liability offence.

Clause 126 deals with the duties of prime contractors in relation to hose assemblies used in bulk transfers and is related to clauses 121 and 123. This is a strict liability offence.

Clause 127 deals with the duties of prime contractors in relation to bulk transfers, and parallels clause 124. This is a strict liability offence.

Clause 128 provides that it is an offence if a prime contractor fails to keep records regarding hose assemblies used in the transfer of bulk goods as required by the ADG code. This is a strict liability offence.

Part 12.3 - Filling ratio and ullage

Clause 129 explains that part 12.3 deals with bulk transfers involving tank vehicles.

Clause 130 provides that it is a strict liability offence if a person engaged in a bulk transfer into a tank does not ensure compliance with the maximum permitted filling ratio that applies to those goods, or compliance with the ullage requirements in the ADG code for those goods. In this context, “ullage” is the free space above or around the substance in the tank, provided to accommodate expansion of the substance during transport. As different substances have different coefficients of expansion for given increases in temperature, it is necessary to ensure that the correct ullage is provided so that the pressure within the tank does not reach dangerous levels during transport.

Clause 131 provides that a prime contractor commits a strict liability offence if he or she fails to ensure that dangerous goods in a tank vehicle comply with the applicable filling ratio and ullage requirements under the ADG code.

Clause 132 provides that a driver commits an offence if the driver transports dangerous goods in a tank vehicle and knows, or ought reasonably to know, that the goods do not comply with applicable filling ratio and ullage requirements under the ADG code.

Chapter 13 - Documentation

Part 13.1 - Transport documentation

This part deals with the documentation requirements for people involved in the transportation of dangerous goods.

Clause 133 provides that it is an offence for a person to include information that is false or misleading information in a material particular in transport documentation for dangerous goods, if the person knows, or ought reasonably to know, that the information is false or misleading.

Clause 134(1) is the first in a series of parallel offences that apply chain-of-responsibility principles to transport documentation, and obliges consignors to ensure that prime contractors and drivers are given appropriate transport documentation. Failure to comply is a strict liability offence.

Clause 134(2) has the effect of making it an offence to consign dangerous goods for transport in separate loads without ensuring that drivers and prime contractors are given separate transport documentation for each load. This offence has knowledge or constructive knowledge as a fault element in relation to the transport of the goods in separate loads, but strict liability applies to the failure to provide separate transport documentation for each load.

Clause 135 makes it a strict liability offence for a prime contractor to fail to ensure that a driver of a vehicle used to transport dangerous goods has been given appropriate transport documentation for those goods.

Clause 136 provides that it is a strict liability offence for a driver to transport dangerous goods without proper documentation. It is also an offence for the driver to fail to produce appropriate documentation to an authorised person or member of an emergency service.

Part 13.2 - Emergency information

This part deals with the obligations of people involved in the transport of dangerous goods to include emergency information for placard loads (part 7.2 of the Regulation explains when a load must be placarded). The emergency information required for a placard load outlines the procedures to be taken in the event of an emergency involving the goods or a vehicle transporting those goods.

Clause 137 explains the term ***required emergency information***, which is used in the offences in part 13.2

Clause 138 makes it an offence for a person to consign a placard load if the person knows, or ought reasonably to know, that the vehicle does not have the required emergency information.

Clause 139 makes it a strict liability offence for a prime contractor to use a vehicle to transport a placard load if the vehicle is not equipped with the proper type of emergency information holder, or the holder does not contain the required emergency information.

Clause 140(1) parallels clause 139, and makes it an offence for a driver to drive a vehicle with a placard load if the vehicle is not equipped with the proper type of emergency information holder, or the holder does not contain the required emergency information. Clause 140(2) makes it an offence for a person to drive a vehicle with a placard load if the person fails to ensure that the emergency information holder only contains the required emergency information and the transport documentation for the goods. The purpose of this offence is to ensure that emergency information holders are not cluttered with irrelevant or inappropriate documents that might delay or impede immediate access to the emergency information. Clause 140(3) makes it an offence for a driver to fail to produce the required emergency information for inspection by an authorised person or member of an emergency service. All the offences in clause 140 attract strict liability.

Clause 141 explains that the competent authority may approve emergency information for a placard load, if the authority considers the information is at least as accurate, convenient and efficient as information that complies with the ADG code.

Chapter 14 - Safety equipment

This chapter deals with the safety equipment that must be carried by vehicles transporting placard loads under part 12 of the ADG code. In summary, part 12 of the ADG code requires vehicles to carry specified fire extinguishers, three double-sided reflector signals that comply with AS 3790 and are clean and in good condition; and specified personal protective equipment and safety equipment.

The offences in this part are strict liability offences, except for the offences in clauses 143 (2) and 144 (2) which have actual or constructive knowledge as a fault element.

Clause 142 makes it a strict liability offence for the owner of a vehicle used in transporting a placard load to use the vehicle if it is not equipped with the required safety equipment.

Clause 143(1) makes it a strict liability offence for a prime contractor to use a vehicle for transporting a placard load if the vehicle is not equipped with the required safety equipment. Clause 143(2) makes it an offence for a prime contractor to use a vehicle to transport a placard load where the contractor knows, or ought reasonably to know, that the safety equipment has not been properly inspected or tested under the ADG code, or is not in good repair or not in proper working order.

Clause 144 parallels clause 143 and makes it an offence for a person to drive a vehicle with a placard load if the vehicle is not equipped with the required safety equipment. Clause 143(2) makes it an offence for a person to drive a vehicle with a placard load where the driver knows, or ought reasonably to know, that the safety equipment has not been properly inspected or tested under the ADG code, or is not in good repair or not in proper working order.

Chapter 15 - Procedures during transport

Part 15.1 - Immobilised and stopped vehicles

This part contains provisions dealing with vehicles transporting a placard load when those vehicles are stationary. The purpose of this part is to reduce the risk to other road users from vehicles that have stopped in transit while carrying a placard load of dangerous goods.

Clause 145 applies if a driver of a vehicle carrying a placard load that is broken down or otherwise immobilised or stopped, in circumstances that make the vehicle a traffic hazard. It is a strict liability offence if the driver of such a vehicle fails to alert other road users to the hazard in accordance with the ADG code, part 13.

Clause 146(1) applies where a prime contractor knows, or ought reasonably to know, that the vehicle is immobilised or broken down, whether or not the vehicle poses a traffic hazard. It provides that it is an offence for the prime contractor to fail to arrange for the vehicle to be repaired or towed from the road for repairs. Clause 146(2) applies in the same circumstances as clause 146(1), and provides that it is an offence if the prime contractor fails to remove the dangerous goods from the vehicle and take them elsewhere before the vehicle is repaired or towed. However, the prime contractor is not required to remove the goods if it would be more risky to do so than to let them remain with the vehicle.

Part 15.2 - Vehicles - duties of drivers

This part deals with other safety duties of drivers while transporting a placard load.

Clause 147 makes it a strict liability offence for a driver to allow another person to ride in the vehicle otherwise than in accordance with the ADG code, part 13. The purpose of this offence is to ensure that only appropriately licensed or trained people have access to vehicles transporting placard loads, in order to reduce the risk of accidents or deliberate harm.

Clause 148 provides that a driver for a placard load commits a strict liability offence if the driver parks the vehicle or leaves it standing somewhere otherwise than in accordance with the ADG code, part 13. The purpose of this provision is to ensure that vehicles with placard loads are not parked in such a way as to pose a risk of significant harm to people or the environment.

Clause 149 deals with the risks posed by the presence of ignition sources in vehicles transporting significant quantities of dangerous goods for which fire is a major risk. In summary, it is an offence for the driver to have matches or cigarette lighters in the vehicle or to smoke in the vehicle. It is also an offence if the driver fails to do everything practicable to ensure that another person in the vehicle does not have matches or a lighter, or does not smoke. The offences are strict liability offences.

Clause 150 provides that it is a strict liability offence if a driver allows dangerous goods to be unloaded in a way that does not accord with the ADG code, part 13.

Clause 151 provides that it is a strict liability offence if a driver detaches a trailer, or allows a trailer to be detached, other than in accordance with the ADG code, part 13.

Clause 152 provides that it is a strict liability offence if a driver for a placard load in a road tank equipped with a heater either operates the burner or allows the burner to be operated otherwise than in accordance with the ADG code, part 13.

Chapter 16 - Emergencies

Part 16.1 - Emergencies generally

Clause 153 makes it a strict liability offence if a driver is involved in an incident resulting in a dangerous situation and fails to tell the prime contractor, the competent authority, and the police or the fire service about the incident as soon as practicable. It is also an offence if the driver fails to give reasonable assistance to an authorised person or a member of an emergency service to deal with the situation.

Clause 154 applies where there is an incident involving the leakage, spillage or accidental escape of dangerous goods, or a fire or explosion, and there is food nearby that is in the control of a prime contractor. It is a strict liability offence if the prime contractor allows the food or food packaging to be transported away from the incident site without the written permission of the competent authority.

Clause 155 makes it a strict liability offence for a prime contractor to fail to give a competent authority details of an incident resulting in a dangerous situation as soon as practicable after it occurs, or fails to give the competent authority a written report about the incident within 21 days.

Part 16.2 - Emergencies involving placard loads

Clause 156(1) provides that it is a strict liability offence if a prime contractor transports a load of dangerous goods either involving a receptacle with a capacity exceeding 500 litres or with more than 500 kilograms in a receptacle

(this type of load attracts placarding requirements under clause 85 of the Regulation), and there is no telephone advisory service available for that transportation of goods. Clause 156(2) creates a parallel offence for consignors. Clause 156(5) explains the concept of a telephone advisory service for the transport of dangerous goods, which in summary is a 24 hour phone service providing advice on certain safety issues relevant to the transport of those goods.

Clause 157 requires prime contractors and consignors to have emergency plans for the transport of dangerous goods. A failure to have an emergency plan is a strict liability offence.

Clause 158 imposes obligations on consignors to provide information about the transport of dangerous goods to an authorised person or emergency services member, on request, following an incident resulting in a dangerous situation. Consignors must also provide equipment and resources necessary for controlling the situation and dealing with goods that have leaked, spilled or accidentally escaped. The offence is a strict liability offence.

Clause 159 creates a parallel strict liability offence for prime contractors. If the consignor and prime contractor are both requested to provide information or resources, the obligation is discharged if either one provides that information or resources.

Chapter 17 Mutual recognition

Part 17.1 - Registers of determinations, exemptions, approvals and licences

Clause 160 defines the following as a register for the Regulation:

- the register of determinations kept under clause 35;
- the register of exemptions kept under clause 170;
- the register of approvals kept under clause 183;
- the register of dangerous goods driver licences kept under clause 225;
- the register of dangerous goods vehicle licences kept under clause 225.

Clause 161 provides that a register may be kept electronically.

Clause 162 requires the competent authority to make the registers available for inspection by corresponding authorities and the public.

Part 17.2 - Recommendations by competent authority and corresponding authorities

Clause 163 provides that the competent authority may recommend to a corresponding authority that it do any of the following:

- revoke or vary a corresponding determination that is not a corresponding administrative determination;

- cancel or vary a corresponding administrative determination;
- cancel or vary a corresponding approval or exemption;
- cancel, suspend or vary a corresponding dangerous goods driver licence or dangerous goods vehicle licence.

The competent authority must give reasons for the recommendation and, if the recommendation is about a determination (other than an administrative determination), approval or exemption that has effect in one or more jurisdictions, the competent authority must also refer the recommendation to the competent authorities panel (CAP).

Clause 164 applies if a corresponding authority recommends to the competent authority that the competent authority do any of the following:

- revoke or vary a determination that is not an administrative determination;
- cancel or vary an administrative determination;
- cancel or vary an approval or exemption;
- cancel, suspend or vary a dangerous goods driver licence or dangerous goods vehicle licence.

If the recommendation is about a determination (other than an administrative determination), approval or exemption that has effect in one or more other participating jurisdictions, the competent authority need not take any action on the recommendation until CAP has considered the recommendation. In any other case the competent authority must have regard to the recommendation.

Part 17.3 - Mutual recognition of determinations, exemptions, approvals and licences

Clauses 165 to 167 provide for a determination, approval and exemption made by corresponding authorities have effect in the ACT as if they were made or given by the competent authority if CAP has decided that the determination, approval or exemption should have effect in all participating jurisdictions or in participating jurisdictions that include the ACT.

Clause 168 provides for dangerous goods driver and vehicle licences granted in another jurisdiction to have effect in the ACT, except in circumstances that do not exist in the ACT, as if they were a licence granted by the competent authority.

Chapter 18 - Exemptions

Part 18.1 - Exemptions - general

Clause 169 provides for how an application for an exemption is to be made. In particular, the application must state the following:

- the provisions of Regulation and of the ADG code, to which the application relates;
- the dangerous goods to which the application relates;

- why, in the applicant's opinion, compliance with the provisions is not reasonably practicable;
- why, in the applicant's opinion, the exemption is not likely to involve a greater risk than the risk involved in complying with the provisions;
- the period for which the exemption is sought and the geographical area within which the exemption is to have effect.

The competent authority may, in writing, require the applicant to give to the authority any additional information necessary for a proper consideration of the application.

Clauses 170 and 171 provide for the keeping of a register of exemptions and corresponding exemptions. The register must include either the terms of the exemption or the following information:

- if the exemption was published in a participating jurisdiction (including the ACT) details of the publication including the date of publication;
- the name of the person to whom, or the name, or a description, of the class of persons to which, the exemption applies;
- the date when the exemption was granted;
- the provisions of this Regulation, and of the ADG code, to which the exemption relates;
- the period for which the exemption has effect;
- the dangerous goods, equipment, packaging, vehicle or other thing to which the exemption relates.

Part 18.2 - Reference of matters to CAP

Clause 172 requires the competent authority to refer an application for an exemption to the competent authorities panel (CAP) if the authority considers that the exemption should have effect in all participating jurisdictions or participating jurisdictions including the ACT. The competent authority is also required to refer to CAP an exemption having effect in the ACT, and at least one other participating jurisdiction, if the authority considers that the exemption should be cancelled or varied or a corresponding authority recommends to the competent authority in writing that the exemption should be cancelled or varied.

Clause 173 requires the competent authority to have regard to a decision of CAP if CAP decides that the exemption should be given, what the terms of the exemption should be, and that the exemption should have effect in all participating jurisdictions or participating jurisdictions including the ACT or that the exemption should not have effect in the ACT.

Clause 174 provides that the competent authority must similarly have regard to a CAP decision that an exemption should, or should not, be cancelled or varied.

Chapter 19 - Administrative determinations and approvals

Part 19.1 - General

Clause 175 requires that an application for an administrative determination or approval, or for the variation of an administrative determination or approval, must be made to the competent authority in writing. The competent authority may, in writing, require the applicant to give to the authority any additional information necessary for a proper consideration of the application.

Clause 176 provides that an administrative determination, or an approval given on application, must be in writing.

Clause 177 prevents the competent authority from making an administrative determination on the application of, or give an approval under the Regulation to, a person who is prohibited by a court order from involvement in the transport of dangerous goods.

Clause 178 requires the competent authority, if the authority refuses to make or vary an administrative determination or approval, to tell an applicant for the determination or approval in writing about the refusal and give reasons for the refusal.

Clause 179 provides that an administrative determination or approval under the Regulation has effect for the period stated in the determination or approval and that a condition to which an administrative determination, or approval, is subject must be stated in the determination or approval.

Clause 180 provides for the replacement of defaced, destroyed, lost or stolen administrative determinations and approvals.

Clause 181 sets out the grounds on which an administrative determination or approval may be cancelled. They are as follows:

- the application did not comply with the Regulation or was false or misleading in a material respect;
- a change about something that the competent authority may or must consider in deciding whether to make the determination or give the approval has happened since the determination or approval was made or given and, if the change had happened earlier, the determination would have been made in the way in which it is proposed to be varied or the approval would have been given in the way in which it is proposed to be varied;
- if the person on whose application the determination or approval was made is unsuitable to continue to be a person to whom the determination applies, or the approval was given, without variation because the person has contravened a provision of the Act or a provision of the law in force in another participating jurisdiction corresponding to a provision of the Act.

Clause 182 sets out the grounds on which an administrative determination or approval may be varied. They mirror the grounds under clause 181.

Part 19.2 - Register of approvals

The part provides for the keeping of a register of approvals and corresponding approvals (see clauses 183 and 184). The register must include either the terms of the approval or the following information:

- the name of the person to whom the approval was given;
- the date when the approval was given;
- the provisions of this Regulation, and of the ADG code, to which the approval relates;
- the period for which the approval has effect;
- the dangerous goods, equipment, packaging, vehicle or other thing to which the approval relates.

Part 19.3 - Reference of approval matters to CAP

Clause 185 requires the competent authority to refer an application for an approval to the competent authorities panel (CAP) if the authority considers that the approval should have effect in all participating jurisdictions or participating jurisdictions including the ACT. The competent authority is also required to refer to CAP an approval having effect in the ACT, and at least one other participating jurisdiction, if the authority considers that the approval should be cancelled or varied or a corresponding authority recommends to the competent authority in writing that the approval should be cancelled or varied.

Clause 186 requires the competent authority to have regard to a decision of CAP if CAP decides that the approval should be given, what the terms of the approval should be, and that the approval should have effect in all participating jurisdictions or participating jurisdictions including the ACT or that the approval should not have effect in the ACT.

Clause 187 provides that the competent authority must similarly have regard to a CAP decision that an approval should, or should not, be cancelled or should be varied.

Part 19.4 - Cancellation and variation

Clause 188 provides that the competent authority must cancel or vary an administrative determination or approval if the authority reasonably believes that a ground exists to cancel or vary the determination or approval and it is necessary to do so to avoid, eliminate or minimise a dangerous situation.

Clause 189 provides that the competent authority must cancel an administrative determination or approval if the person to whom it applies is prohibited by a court order from involvement in the transport of dangerous goods.

Clause 190 provides for the competent authority to vary an administrative determination or approval in accordance with an application.

Clause 191 sets out a ‘show cause’ procedure which must be undertaken before the competent authority can cancel or vary an administrative determination or approval in circumstances other than to those which clauses 188 to 190 relate. In particular, the show cause notice must set out the proposed action, the grounds for the proposed action and invite the person to respond within a stated period of at least 28 days.

Clause 192 provides for the cancellation or variation of an administrative determination or approval to take place on the day when the person is given written notice by the competent authority of the cancellation or variation and of the reasons for the cancellation or variation or, if a later day is stated in the notice, the later day.

Chapter 20 - Licences

Part 20.1 - Preliminary

Clause 193 provides that the competent authority or a person or body authorised by the competent authority is the licensing authority for the chapter.

Clause 194 provides that despite anything else in the chapter, the chapter does not apply to the transport by road of dangerous goods on a vehicle if—

- the goods are transported in an intermediate bulk container (IBC); and
- the IBC is not filled or emptied on the vehicle; and
- the total capacity of IBCs containing dangerous goods on the vehicle is not more than 3 000 litres.

Clause 195 sets out the relationship of the chapter with other laws in force in the Territory about the licensing of a driver, the employment or engaging of a driver, the registration of vehicles or the transport of goods by road. The chapter is in addition to the other laws about these matters.

Part 20.2 - Vehicles and drivers to be licensed

Clause 196 requires a person uses a road vehicle to transport dangerous goods that are in a receptacle with a capacity of more than 500 litres or kilograms to hold a dangerous goods driver licence.

Clause 197 requires a person who drives a road vehicle transporting dangerous goods that are in a receptacle with a capacity of more than 500 litres or kilograms to hold a dangerous goods driver licence that authorises the person to drive the vehicle with those goods.

A person who fails to comply with a requirement under either of the above provisions commits a strict liability offence. The people to whom the offences are directed can be expected to know of the requirements.

Part 20.3 - Dangerous goods driver licences

This part provides for the making of applications for the issue and renewal of dangerous goods driver licences (see clauses 198 and 203). It sets out requirements to ensure that an applicant for the issue or renewal of a dangerous goods driver licence has not been convicted or found guilty of offences within the preceding 5-year period that would make the person unsuitable to hold the licence (see clauses 199, 202 and 204) and that the person has the required driving competency (see clause 200) and medical fitness (see clause 201) to hold the licence.

A dangerous goods driver licence may be issued or renewed for a period of not more than 5 years (see clause 205). A licence may be issued subject to conditions stated in the licence (see clause 206), which may be about—

- the dangerous goods that may or may not be transported in a road vehicle driven by the licensee; and
- the packaging that may or may not be used to transport dangerous goods in a road vehicle driven by the licensee; and
- the road vehicles that may be driven by the licensee in transporting dangerous goods; and
- the areas where the licensee may or may not drive a road vehicle transporting dangerous goods or particular dangerous goods; and
- the supervision of the licensee when driving a road vehicle transporting dangerous goods.

Clause 207 imposes a statutory licence condition on dangerous goods driver licences that the competent authority may, by written notice to the licensee, require the licensee to produce a certificate about the licensee's medical fitness to drive a road vehicle.

Clause 208 sets out the grounds on which a dangerous goods driver licence may be cancelled, suspended or varied. A licence may be cancelled, suspended or varied if the application for the issue or renewal of the licence did not comply with the Regulation or was false or misleading in a material respect. A licence may be cancelled or varied for a failure to comply with the Act or a corresponding law, the licensee has been found guilty by a court of an offence, the licensee's driver licence is cancelled or the licensee is suffering from a medical condition or has a physical or mental disability.

Clause 209 requires the holder of a dangerous goods driver licence to carry the licence when driving a vehicle transporting dangerous goods that are in a receptacle with a capacity of more than 500 litres or kilograms. The offence is a strict liability offence and the driver can be expected to know of the requirement to carry the licence.

Part 20.4 - Dangerous goods vehicle Licences

Clause 210 provides that, in the part, ‘vehicle’ does not include a prime mover or converter dolly. The intent is that only the trailers of semi-rigid vehicles are to be licensed.

This part provides for the making of applications for the issue and renewal of dangerous goods vehicle licences (see clauses 211 and 214). It sets out requirements to ensure that the vehicle is suitable to transport each type of dangerous goods intended to be transported in the vehicle (see clauses 213 and 215). For this purpose, the licensing authority may require information about the vehicle and require its inspection (see clause 212).

A dangerous goods vehicle licence may be issued or renewed for a period of not more than 5 years (see clause 216). A licence may be issued subject to conditions stated in the licence (see clause 217), which may be about—

- the dangerous goods that may or may not be transported in the vehicle; and
- the areas where the vehicle may or may not be used to transport dangerous goods or particular dangerous goods; and
- the inspections of the vehicle (if any) that are required.

Clause 218 requires the licensee for a vehicle, before transferring possession or otherwise disposing of a licensed vehicle, to remove the licence label and either attach it to the notice of disposal or to destroy it and, if required by the licensing authority, provide evidence of the label’s destruction. Similarly, the licence for the vehicle must be attached to the notice of disposal or destroyed. However, if the licence applies to more than one vehicle, the licence must be attached to the notice of disposal. The notice of disposal must be returned to the licensing authority within 21 days of the transfer or disposal. The licensing authority must amend the licence if it relates to more than one vehicle or, in any other case, cancel the licence. The offences under this clause are strict liability offences.

Clause 219 sets out the grounds on which a dangerous goods vehicle licence may be cancelled, suspended or varied. A licence may be cancelled, suspended or varied if the application for the issue or renewal of the licence did not comply with the Regulation or was false or misleading in a material respect or if the vehicle does not comply with the Act.

Clause 220 requires the licensing authority to give the holder of a dangerous goods vehicle licence a licence label for each vehicle to which the licence relates. It is a strict liability offence for a driver to drive a licensed vehicle, or for a prime contractor to transport dangerous goods by a licensed vehicle, if the licence label is not attached to the vehicle in a conspicuous place. The people to whom the offences are directed can be expected to know of the requirement.

Part 20.5 - Licences generally

Clause 221 defines 'licence' for the part as a dangerous goods driver or vehicle licence. It also defines 'licensee' as the holder of a licence.

The part provides for administrative matters in relation to licences. In particular, it provides for the replacement of licences and licence labels (see clause 222), the surrender of licences (see clause 224) and the keeping of a register of licences (see clauses 225 and 226) which must include the following:

- the name of the licensee;
- the date when the licence was granted or renewed;
- either the period for which the licence was granted or renewed or the expiry date of the licence;
- for a dangerous goods driver licence, the licensee's date of birth;
- for a dangerous goods vehicle licence, the registration number, make and type of each road vehicle to which the licence relates;
- the classes of dangerous goods for which the licence is valid;
- any condition to which the licence is subject.

Clause 223 creates a strict liability offence of a licensee failing to comply with a licence condition. Licensees can be expected to know of the conditions on their licences.

Clause 227 requires a licensee who becomes aware that information given by the licensee to the licensing authority in, or in relation to, an application for the grant or renewal of a licence is or has become incorrect in a material respect to give the correct information to the authority within 14 days after becoming aware of the matter. A failure to comply with the clause is a strict liability offence.

Clause 228 provides for the licensing authority to require a licensee to produce the licence to the authority. It is a strict liability offence if the licensee fails to produce the licence to the authority within 14 days after the day the notice is given to the licensee.

Clause 229 provides for a licence produced to the licensing authority under clause 228 to be returned to the licensee unless it has been cancelled or suspended or it has expired. If the licence is varied, the licence as varied must be returned to the licensee. If the licence is suspended and the suspension period has ended, the licence must be returned to the licensee or a replacement licence issued.

Part 20.6 - Cancellation, suspension and Variation

Clause 230 defines 'licence' for the part as a dangerous goods driver or vehicle licence. It also defines 'licensee' as the holder of a licence.

Clause 231 provides that the licensing authority must cancel, suspend or vary any licence granted by it, if the licensing authority reasonably believes that a ground exists to cancel, suspend or vary the licence and it is necessary to do so to avoid, eliminate or minimise a dangerous situation. The term ‘dangerous situation’ is defined in the Act as meaning a situation that is causing or likely to cause imminent risk of death or serious injury to a person, significant harm to the environment or significant damage to property.

Clause 232 provides that the licensing authority must cancel or suspend a licence if the licensee is prohibited by a court order from involvement in the transport of dangerous goods by road.

Clause 233 provides for the licensing authority to vary a licence in accordance with an application.

Clause 234 sets out a ‘show cause’ procedure which must be undertaken before the licensing authority can cancel, suspend or vary a licence in circumstances other than to those which clauses 231 to 233 relate. In particular, the show cause notice must set out the proposed action, the grounds for the proposed action and invite the licensee to respond within a stated period of at least 28 days.

Clause 235 provides for the cancellation, suspension or variation of a licence to take place on the day when the licensee is given written notice by the licensing authority of the cancellation, suspension or variation and of the reasons for the cancellation, suspension or variation or, if a later day is stated in the notice, the later day.

Clause 236 provides that a person’s dangerous goods driver licence is taken to be suspended if the person’s driver licence has no effect. Also, a person’s dangerous goods vehicle licence for a road vehicle is taken to be suspended in relation to the road vehicle if the road vehicle is not registered.

Chapter 21 - Insurance

Under sections 35 and 36 of the Act the owner of a vehicle that uses the vehicle, or permits it to be used, to transport a placard load, or a prime contractor who uses a vehicle to transport a placard load, must hold specified public liability insurance cover or an approval under the Regulation to not hold the cover.

Clause 237 provides for the competent authority to require the owner or prime contractor to give to the competent authority written evidence that the requisite insurance cover is held or an approval under clause 239.

Clause 238 creates a strict liability offence of a failure to comply with a notice under clause 237.

Clause 239 provides for the owner or prime contractor to apply to the competent authority for an approval to use a vehicle that is required to be

covered by the insurance under the Act without the insurance cover. The competent authority may give an approval if satisfied that the owner or prime contractor is adequately capable of self-insurance as required by the Act.

Chapter 22 - Review of decisions

Chapter 4 (Notification and review of decisions) of the Act provides for the review of decisions made under the Act and Regulation that are prescribed by Regulation. The prescribed decisions are listed in schedule 1. All of the prescribed reviewable decisions under clauses 240 and 241 are, in the first instance, internally reviewable, and the decision on internal review is reviewable by the ACT Civil and Administrative Tribunal.

Chapter 23 - Transitional

This chapter provides for the continuing effect of determinations, exemptions, approvals and licences that were in force in the Territory or a corresponding jurisdiction immediately before the commencement of the *Dangerous Goods (Road Transport) Act 2009* (the new Act). It also provides for the continuation of the appointment of authorised officers under the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) for a 3-month period.

The existing dangerous goods law for the transport of dangerous goods by road in the ACT is the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) (the former Act). It will be repealed on 5 April 2010 in accordance with a proclamation made under the *Road Transport Reform (Dangerous Goods) Repeal Act 2009* (Cwlth).

Clause 242 applies to an approval or exemption continued in effect under the transitional chapter which does not have an expiry date. The clause provides that the approval or exemption expires on 5 April 2015.

Clause 243 applies to a determination made under the former Act that was in force in the Territory immediately before the commencement of the new Act if it is in relation to something that may be determined under clause 29 (Determination—dangerous goods and packing) or clause 30 (Determinations—vehicles, routes, areas and time) of this Regulation. The determination has effect as if it were a determination made by the competent authority under the relevant clause and may be recorded in the register of determinations kept under clause 35.

Clause 244 applies to determinations made in another participating jurisdiction that were in force in the other jurisdiction immediately before the commencement of the new Act if it is a determination about something that may be determined under a provision of the laws of a participating jurisdiction that corresponds to clause 29 (Determination—dangerous goods and packing) or clause 30 (Determinations—vehicles, routes, areas and time) of the Regulation. Except for circumstances that do not exist in the ACT, the determination has effect for the Regulation as if it were a determination made

by a corresponding authority under the provision that corresponds to clause 29 or clause 30.

Clause 245 applies to an exemption made under the former Act that was in force in the Territory immediately before the commencement of the new Act if it is an exemption from a provision (the relevant provision) of the old Act that has a corresponding provision in the Regulation. The exemption has effect for the Regulation as if it were an exemption granted by the competent authority from compliance with the relevant provision.

Clause 246 applies to exemptions made in another participating jurisdiction that were in force in the other jurisdiction immediately before the commencement of the new Act if it is an exemption from compliance with a provision of the law of the other jurisdiction (the corresponding provision) that corresponds to a provision of the new Act (including the Regulations). Except for circumstances that do not exist in the ACT, the exemption has effect for the new Act as if it were an exemption given by a corresponding authority in compliance with the corresponding provision.

Clause 247 applies to an approval made under the former Act that was in force in the Territory immediately before the commencement of the new Act if it is an approval of something that may be approved under any of the following provisions (the relevant provision) of the Regulation:

- clause 28 (Approvals—tests and training courses for drivers);
- part 5.2 (Suitability and design of packaging);
- clause 117 (Approvals—segregation devices);
- clause 118 (Approvals—methods of segregation);
- clause 141 (Approval—emergency information).

The approval has effect for the Regulation as if it were an approval given by the competent authority under the relevant provision and may be recorded in the register of approvals kept under clause 183

Clause 248 applies to approvals made in another participating jurisdiction that were in force in the other jurisdiction immediately before the commencement of the new Act if it is an approval of something that may be approved under a provision of the law of the other jurisdiction (the corresponding provision) that corresponds to a provision of the Regulation listed in clause 247. Except for circumstances that do not exist in the ACT, the exemption has effect for the Regulation as if it were an approval given by a corresponding authority under the corresponding provision.

Clause 249 applies to a dangerous goods driver or vehicle licence granted under the former Act that was in force in the Territory immediately before the commencement of the new Act. The licence has effect for the Regulation as if it were a dangerous goods driver or vehicle licence granted by the competent authority under the relevant provision of the Regulation.

Clause 250 applies to a dangerous goods driver or vehicle licence granted in another participating jurisdiction that was in force in the other jurisdiction

immediately before the commencement of the new Act if it is a licence that may be granted under a provision of the law of the other jurisdiction (the corresponding provision) that corresponds to a provision under which such licences may be granted under the Regulation. Except for circumstances that do not exist in the ACT, the licence has effect for the Regulation as if it were a licence given by a corresponding authority under a corresponding provision.

Clause 251 provides for the continuation of the appointment of authorised officers under the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) for a 3-month period as authorised people under the new Act. The existing appointments are for the old Act generally and not for particular provisions of the old Act. As such, the continued appointments will apply to the new Act generally as well.

Clause 252 provides that the transitional chapter expires on 5 April 2015.

Dictionary

The dictionary contains definitions for the Regulation.